

POST-TRAUMATIC STRESS DISORDER AND  
VICTIMS OF HUMAN SEX TRAFFICKING:  
A PERPETUATION OF CHRONIC INDIGNITY

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*I. Introduction: The Parameters of Human Trafficking and the  
Nature of PTSD*

As a child, my parents taught me that Communism was the great threat to the world. They told me that people who lived under a Communist government could not travel outside their country, and they had to obey the government's decisions about their life— where they lived, what jobs they could work, and even what they could and could not believe in spiritually. My mother showed me where the U.S.S.R. was located on the globe, and all of the countries around it that were also Communist. Visually, I saw that Communism encompassed what looked like half of the globe, and the sight impressed on me the reality that half of the people living in the world did not know what it was like to go outside of the doors of their home and be free. This weighed greatly on my little mind, and I wanted those people to escape Communism and to find freedom. Yet, for millions of people<sup>1</sup>, the fall of Communism did not bring freedom; it brought a trap of mental and physical suffering barely rivaled by the atrocities of dictators.<sup>2</sup>

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<sup>1</sup> See U.S. Department of State, Trafficking in Persons Report 7 (2008), available at <http://www.state.gov/documents/organization/105501.pdf>. [hereinafter *TIP Report*]. The International Labor Organization estimates that 12.3 million people are held in some form of human trafficking related bondage at any point in time. *Id.* This is a conservative number considering that some estimates place the number at 27 million. *Id.*

<sup>2</sup> See Jennifer Murray, *Who Will Police the Peace-Builders? The Failure to*

*A. An Overview of Human Trafficking*

Human trafficking is a current crisis affecting every region of the world, and it perpetuates the ancient atrocities of slavery in a modern day context.<sup>3</sup> A human trafficker (“the Trafficker”), may kidnap and force victims to work within their own countries, or the Trafficker may trick victims into traveling to a foreign country with the promise of a decent job and the opportunity to live a better life.<sup>4</sup> The people caught in the Trafficker’s web may be forced to provide labor under deplorable conditions,<sup>5</sup> or they may be forced to provide sexual gratification as prostitutes and sex slaves.<sup>6</sup> Victims of human

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*Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 COLUM. HUM. RTS. L. REV. 475, 476-77 (2003). The vacuum created by the fall of Communism largely contributed the social, economic and governmental chaos which are among the root causes of human trafficking. *Id.* Human trafficking, in the context of sexual exploitation of women and children particularly, erodes human dignity. *See* Connie de la Vega & Chelsea E. Haley Nelson, *The Role of Women in Peacekeeping and Peacemaking: Devising Solutions to the Demand Side of Trafficking*, 12 WM & MARY J. WOMEN & L. 437, 437 (2006). The violation of the right to liberty and security, as well as the right bodily and mental integrity, deprive victims their human rights and leave them wide open to their trafficker’s abuse. *Id.*

<sup>3</sup> *See* Iris Yen, *Of Vice And Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 653 (2008).

<sup>4</sup> *See* John R. Miller, *Slave Trade: Combating Human Trafficking; Underground Markets*, 27 HARV. INT’L REV. 4, 4 (2006); *see also* Kalen Fredette, *International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation*, 32 B.C. INT’L & COMP. L. REV. 1, 5-6 (2009) (noting that traffickers use false promises of jobs to lure victims, and will resort to kidnapping them if needed).

<sup>5</sup> *See* Krista Friedrich, *Seeking Justice Under United States Law When Diplomats Traffic in Persons*, 72 BROOKLYN L. REV. 1139, 1145 (2007). When a person is trafficked for labor purposes, the environment typically fosters an abusive relationship between the laborer and the captor. *Id.* The laborer is prevented from escaping because the captor has complete control of all money and identification papers. *Id.* The condition is slavery-like because it so thoroughly abusive and isolating, and it tends to ensnare the weakest and most vulnerable groups of people. *Id.*

<sup>6</sup> *See TIP Report, supra* note 1, at 7 (describing specific instances of both sexual exploitation and forced labor as purposes behind human trafficking).

trafficking may be women and children, or even men.<sup>7</sup> They come from many different cultures and life circumstances, and each may be compelled to surrender different services, but, as victims of human trafficking, they share one thing in common—horrendous exposure to violence or coercion that strikes at the deepest chords of their dignity.<sup>8</sup>

### *1. The United Nations Legal Response to Human Trafficking*

Human trafficking as a worldwide phenomenon is extraordinarily complex and reducing it to a single definition is a controversy in itself.<sup>9</sup> Nonetheless, legal definitions have emerged which provide a workable means of grasping the chief characteristics of human trafficking.<sup>10</sup> The first globally accepted definition of

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<sup>7</sup> See Trafficking in Persons Report, A Closing Note from the Drafters of the Report, July 12, 2007. The 2008 *TIP Report* states that a majority of transnational people trafficked are women and girls, as high as 80%. See *TIP Report*, *supra* note 1, at 7. 50% out of 800,000 people trafficked across borders are children. *Id.* “The majority of transnational victims are females trafficked into commercial sexual exploitation.” *Id.*

<sup>8</sup> See Miller, *supra* note 4; see also *TIP Report*, *supra* note 1, at Introduction (noting that force, fraud and coercion are elements in every trafficking scenario, the means of using people for financial gain).

<sup>9</sup> See e.g., Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT’L L. 1, 27-38 (2004) (discussing the idea that the definition determines how the problem is responded to and what priorities are placed on outlawing particular behaviors); see also Grace Chuang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. CIV. RTS & CIV. LIB. 317, 328-29 (2007) (criticizing definitions of trafficking which narrowly cast the problem as a prostitution based crime); see also Janie Chuang, *The United States as Global Sheriff; Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 438 (2007) (calling the compromise definition in the Palermo Protocol “fragile”); see also Katrina Lynne Baker, *Don’t Forget the Family: A proposal for Expanding Immediate Protection to Families of Human Trafficking Survivors*, 30 FORDHAM INT’L L. J. 836, 842 (2007) (confirming that “[t]he definition of human trafficking is a hotly contested issue . . .”).

<sup>10</sup> See generally 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/55/25/Annex II (Nov. 15, 2000) [hereinafter *Palermo Protocol*];

human trafficking is found in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (the “Palermo Protocol”).<sup>11</sup> The Palermo Protocol broadly defines the crime of human trafficking, and it attempts to particularly stop the trafficking of women and children.<sup>12</sup> The Palermo Protocol does more than simply establish parameters for criminalizing and punishing acts of human trafficking; it utilizes a human rights approach that seeks to protect victims and encourage international cooperation to end the phenomena.<sup>13</sup> The Palermo Protocol defines trafficking in persons as:

[T]he recruitment, transportation, transfer, harboring 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

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*see also* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (the “TVPA”).

<sup>11</sup> *See generally* Palermo Protocol, *supra* note 10. The Palermo Protocol entered into force on December 25, 2003. *See* United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>. As of September 26, 2008, there are 124 states parties to the Protocol, and 117 signatories. UNOD, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>. State Parties to the Protocol include such countries as Algeria, Finland, United States and the United Kingdom of Great Britain and Northern Ireland. *Id.* *See also* Sarah Richelson, *Trafficking and Trade: How Regional Trade Agreements Can Combat the Trafficking of Persons in Brazil*, 25 ARIZ. J. INT’L & COMP. L. 857, 860 (2008).

<sup>12</sup> *See Palermo Protocol*, *supra* note 10, at art. 2. “The purposes of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children . . .” *Id.* *See also* Baker, *supra* note 9, at 843.

<sup>13</sup> *See Palermo Protocol*, *supra* note 10, at pmb1. “Declaring that effective action to prevent and combat trafficking in persons . . . [includes] measures . . . to protect the victims of such trafficking, including by protecting their internationally recognized human rights . . . ) *Id.* Further, among the purposes for the *Palermo Protocol* is “To protect and assist the victims of such trafficking, with full respect for the human rights; and to promote cooperation among States Parties in order to meet those objectives. *Id.* at art. 2(a), (b). *See also* Baker, *supra* note 9, at 843.

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of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs . . . <sup>14</sup>

In the last sentence of Article 3 (a), the Palermo Protocol specifically mentions slavery as a condition which human trafficking perpetuates, yet it also leaves room for conditions of false imprisonment that may not quite reach the level of slavery. Where Article 3(a) speaks of a minimum level of exploitation, it is identifying the wrongful practice of using such things as forced prostitution, other forms of sexual exploitation, forced labor practices, and even black market organ selling and buying, to gain an economic or personal advantage. These kinds of exploitation are the threshold level of wrongfulness that triggers a ratifying state's obligation to make such activity a domestic crime when it occurs within its territory.<sup>15</sup>

As for the techniques which are used to control victims, Article 3(a) establishes that physical violence to force a person to comply with a Trafficker's demands is not the only level of force recognized in the crime of human trafficking. The words "or other forms of coercion, of abduction, of fraud, of deception . . ." mean that, (1) when a person lies to a young girl about giving her job as a nanny in a more prosperous country, in order to initially obtain her consent to travel with that person, (2) such person is trafficking in humans if the young girl is instead forced to become a prostitute at the behest of the Trafficker. Article 3(a) identifies "abuse of power or of a position of vulnerability" in order to make it a crime for the Trafficker to confiscate a victim's identification and travel documents. This is a well known trafficking practice because it works so well for the

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<sup>14</sup> See *Palermo Protocol*, *supra* note 10, at art. 3(a). "[This] U.N. Protocol . . . shifted the focus from prohibition to prevention of the act of trafficking and the protection of victims." Mohamed Y. Mattar, *Human Security or State Security? The Overriding Threat in Trafficking in Persons*, 1 INTERCULTURAL HUM. RTS. L. REV. 249, 258 (2006).

<sup>15</sup> See *Palermo Protocol*, *supra* note 10, at art. 5. "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally." *Id.*

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Trafficker; the victim is even more vulnerable to the Trafficker's power when she cannot run away because she has no way of proving to any authority who she is or where she belongs.<sup>16</sup> Finally, where Article 3(a) states "the giving or receiving of payments or benefits to achieve the consent of a person having control over another person," it is acknowledging such sad practices as parents who accept compensation from Traffickers and allow them to leave with their children.<sup>17</sup> These words, of course, designate the person who leaves with the child as a Trafficker, but they also operate to make the parent or guardian, who consented to transaction, a Trafficker as well.

Thus, coercion has many forms in the Palermo Protocol, and all forms give rise to a responsibility of state parties to enact laws in their country through which they can punish Traffickers.<sup>18</sup> Further, consider what might happen if a person deceptively recruits a young girl to work as a nanny, but before the person is able to force her to be a prostitute, the two are picked up by law enforcement agents. Even though the young girl may not technically be exploited yet, the person who recruited her set the process of trafficking her into motion, and states parties are required to have a domestic legal framework in place to punish this as an attempt to traffic a person.<sup>19</sup>

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<sup>16</sup> See, e.g., Dr. Raneer Khooshie Lal Panjabi, *Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century*, 37 *DENV. J. INT'L L. & POL'Y* 1, 18 (2008). "Often the victims have no identification papers as their exploiters all too often take their documents away." *Id.* See also Elizabeth Hopper & José Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 *INTERCULTURAL HUM. RTS. L. REV.* 185, 198 (2006) (noting that Traffickers use their victims' lack of knowledge about foreign legal systems to their full advantage when establishing their control over them).

<sup>17</sup> See, e.g., Panjabi, *supra* note 16, at 25.

<sup>18</sup> See *Palermo Protocol*, *supra* note 10, at art. 3 (a). When coercion is a method employed by a trafficker to keep the victim restrained, it will not matter that the victim initially consented to go with the trafficker. See *id.* at art. 3(b).

<sup>19</sup> See *id.* at art. 5 (2)(a). "Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article. *Id.*

## 2. *The United States Legal Response to Human Trafficking*

In addition to ratifying the Palermo Protocol,<sup>20</sup> the 106th Congress of the United States enacted the Trafficking Victims Protection Act of 2000, (the “TVPA”), “[t]o combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude . . . .”<sup>21</sup> The United States distinguishes itself as a leader among nations in the full-scale combat of human trafficking.<sup>22</sup> The United States identifies the process of human trafficking as having a beginning, middle and destination, although the destination does not result in an end, but a perpetuation of harm.<sup>23</sup> While the social conditions in the U.S. are not typically those where human trafficking originates, the U.S. is very much affected by the phenomenon.<sup>24</sup> The United States Government estimates that 14,500 to 17,500 people are trafficked into its territory every year.<sup>25</sup> The

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<sup>20</sup> See generally *Palermo Protocol*, *supra* note 10.

<sup>21</sup> See generally *TVPA*, *supra* note 10.

<sup>22</sup> See *Chuang*, *supra* note 9, at 439 (calling the United States a self-proclaimed global sheriff on trafficking).

<sup>23</sup> See *TVPA*, *supra* note 10, at § 104 (a)(1)(B); see also *TIP Report* *supra* note 1, at 10. The *TIP Report* identifies countries of origin, transit and destination. *Id.* It is this failure to come to a definite end which helps to distinguish human trafficking from human smuggling. “[H]uman trafficking and human smuggling are two distinct crimes.” Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 *STAN. L. & POL’Y REV* 379, 382 (2005).

<sup>24</sup> See Shashi Irani Kara, *Decentralizing the Fight Against Human Trafficking in the United States: the Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations*, 13 *CARDOZO J.L. & GENDER* 657, 665 (2007). The U.S. is largely country of destination; however, it does have its own instances of origination. *Id.* There are numerous examples of people within the U.S. becoming a victim of human trafficking. *Id.* Traffickers within the U.S. were documented preying on girls from Midwestern towns. *Id.* They moved these girls from state to state, using them for profit in brothels. *Id.* The traffickers employed methods of force and coercion that were so traumatic to these girls, that their fear prevented them from attending the sentencing of the prostitution ring’s leader. *Id.* Tragically, American parents are not above selling their own children into sexual slavery. *Id.* (reporting that a mother in New York forced her mentally handicapped daughter to provide sexual services to men in order to pay her own keep at the family home).

<sup>25</sup> See, e.g., U.S. Department of State, *Trafficking in Persons Report I*.

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TVPA adopts a more detailed and methodical approach to defining and criminalizing human trafficking than does the Palermo Protocol,<sup>26</sup> while maintaining the Palermo Protocol's emphasis on protecting the victims.<sup>27</sup> The TVPA does not have one broad definition such as the one provided in the Palermo Protocol.<sup>28</sup> Rather, it defines distinct manifestations of human trafficking under separate headings, such as *Severe Forms of Trafficking in Persons and Sex Trafficking*.<sup>29</sup> A severe form of trafficking is:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>30</sup>

Next, Sex Trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of

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Introduction (2001), available at <http://www.state.gov/g/tip/rls/tiprpt/2001/3929.htm> (estimating the number to be between 45,000 and 50,000); see also U.S. Department of State, Trafficking in Persons Report I. Introduction (2004), available at <http://www.state.gov/g/tip/rls/tiprpt/2004/34021.htm> (lowering the estimate to between 14,500 and 17,500); see also Heather J. Clawson et al., *Estimating Human Trafficking in the United States: Development of Methodology*, NCJ 215475, 2 (2006) (reporting that since the passage of the TVPA in 2000, the estimates have decreased from 50,000 to between 14,700 and 17,500); see also Mattar, *supra* note 14, at 268.

<sup>26</sup> See Chuang, *supra* note 9, at 439 (referring to the TVPA as “one of the most comprehensive pieces of domestic anti-trafficking legislation in world”).

<sup>27</sup> See TVPA, *supra* note 10, at §102. “The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” *Id.* “A victim-centered approach to trafficking requires us also to address the “three R’s”—rescue, rehabilitation, and reintegration—and to encourage learning and sharing of best practices in these areas.” *TIP Report*, *supra* note 1, at 5.

<sup>28</sup> See *supra* p. 3.

<sup>29</sup> See TVPA, *supra* note 1, at §103 (8) and (9).

<sup>30</sup> *Id.* at §103 (8).

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a commercial sex act.”<sup>31</sup> The TVPA makes a significant distinction between *Severe* forms of Sex Trafficking and Sex Trafficking. As seen in the above definition (A) of Severe Sex Trafficking, the wording refers to victims who were actually used in a commercial sex act that was fully completed. The crime of Sex Trafficking coming right after, is merely a crime of attempt. The victim may have been procured by a Trafficker for the purpose of performing a commercial sex act, but some intervening event prevented the commercial sex act from being completed. One of the reasons why the distinction is important is that a victim classified as a severe trafficking victim is entitled to the protections offered in the TVPA, while the victim of sex trafficking is typically not afforded those same protections.<sup>32</sup>

The TVPA also makes certain amendments to Chapter 77 of Title 18.<sup>33</sup> The first aspect of these amendments is that the penalty for each of the designated crimes is lengthened from a ten-year prison sentence to a twenty-year prison sentence.<sup>34</sup> Under Title 18, forced labor, slavery, involuntary servitude, debt bondage, sex trafficking of children, and document servitude were all punishable crimes before the passage of the TVPA. However, the TVPA makes it quite clear that these are crimes that now fall under the umbrella of human trafficking.<sup>35</sup> This in turn ensures that the victims of such

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<sup>31</sup> *Id.* at §103 (9).

<sup>32</sup> *See e.g. id.* at §107(b)(1)(A). “[A]n alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State Program . . . to the same extent as an alien who is admitted lawfully to the United States as a refugee . . .” *Id.* There is also a requirement to expand those benefits where necessary, to a victim of a severe form of trafficking without taking into any account the victim’s immigration status. *Id.* at §107(b)(1)(B).

<sup>33</sup> *See id.*, at §112 (a); *see also* Crimes and Criminal Procedure (Title 18), Pub. L. 110-352, 62 Stat. 683 (1948). This is the statute that codifies Federal crimes. *Id.*

<sup>34</sup> *See* TVPA, *supra* note 10, at §112(a)(1)(A). This Amendment also allows for the imposition of a life sentence in certain instances. *Id.* at §112(a)(1)(B).

<sup>35</sup> *See id.* §112. § 1589. Forced Labor. §1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor. §1591. Sex trafficking of children or by force, fraud or coercion. §1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.

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crimes will also be entitled to the protections the TVPA makes available to human trafficking victims.<sup>36</sup>

In addition to defining human trafficking,<sup>37</sup> the TVPA also provides a definition of coercion that allows the mere words of the Trafficker, even in the absence of committing acts against the victim's body, to constitute part of the crime.<sup>38</sup> This is largely a response the United States Supreme Court ruling in *United States v. Kozminski*.<sup>39</sup> Before the passage of the TVPA in 2000, the Court sitting in 1988 was unwilling to hold that psychological coercion was enough to bring about the crime of involuntary servitude, and it held that there must be at the least "use or threatened use of physical or legal coercion."<sup>40</sup> This result displeased Congress immensely, and it specifically noted in the TVPA that, contrary to the holding in *Kozminski*, "[i]nvoluntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion."<sup>41</sup>

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<sup>36</sup> See Alien Benefits, *supra* note 32.

<sup>37</sup> See TVPA, *supra* note 10, at §102(a). "[T]rafficking in persons [is] a contemporary manifestation of slavery whose victims are predominately women and children . . ." *Id.* It also encompasses forced labor. *Id.* at § 102(b). Section 102 enumerates that human trafficking may also involve previously established domestic crimes such as rape and labor law violations. *Id.* at § 102(b). Section 103 defines what a commercial sex act is, *id.* at § 103(3), and it defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. *Id.* at § 103(9).

<sup>38</sup> See *id.* at §103(2).

[C]oercion means (A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse of the legal process. *Id.*

<sup>39</sup> See *United States v. Kozminski*, 487 U.S. 931 (1988). The defendants in *Kozminski* were charge, in part, with violating 18 U.S.C. § 1584 (involuntary servitude). *Id.* at 931. The defendants largely used threat of psychological coercion to keep two mentally retarded men working without pay on the defendant's farm. *Id.*

<sup>40</sup> *Id.* at 948.

<sup>41</sup> See TVPA, *supra* note 10, at §102(a)(13).

*B. Post-Traumatic Stress Disorder as a Consequence of  
Human Trafficking*

Mental and psychological consequences result from the violence, force, threat of force and coercion that are used against victims of human trafficking.<sup>42</sup> The experiences of victims go beyond mere danger. They rise to the level of “appalling . . . brutality [including] - systematic gang rape, physical assault, and even selective killings.”<sup>43</sup> This is the tragic case, whether the victims are subjected to sexual exploitation or labor exploitation, and they are left forever scarred.<sup>44</sup> Some victims are detected and rescued after only a short time of being trafficked, however, many will endure years of captivity before they escape or are rescued by authorities.<sup>45</sup> Yet, the profound effects of their experiences threaten to debilitate these victims long after the lucky ones are rescued.<sup>46</sup> It is often noted that rescued victims of human trafficking suffer from Post-Traumatic Stress Disorder (“PTSD”).<sup>47</sup> “[PTSD] is an anxiety

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<sup>42</sup> See Irani Kara, *supra* note 24, at 661 (noting that victims often suffer harm in the form of physical and mental dysfunction that may last their entire life); see also Sadruddin et al., *supra* note 23, at 382 (noting that human trafficking as a crime includes the element of force, fraud or coercion used by the trafficker to cause the victim to perform services).

<sup>43</sup> Sadruddin et al., *supra* note 23, at 383.

<sup>44</sup> *Id.* at 382.

<sup>45</sup> See, e.g., *United States v. Calimlim*, 538 F.3d 706, 708-09 (noting that at the age of nineteen, Irma Martinez was trafficked into domestic labor in the United States, but it was not until nineteen years later that she was rescued); see also *United States v. Udeozor*, 515 F.3d 260, 263 (2007) (recounting the traumas suffered by a girl held in captivity from the age of fourteen until she was nineteen).

<sup>46</sup> See PsychNet-UK, Post Traumatic Stress Disorder, <http://www.psychnet-uk.com/dsmiv/posttraumaticstressdisorder.htm#top> (last visited Mar. 20, 2009). A person who has lived through a traumatic experience that threatened death or grave bodily injury, combined with severe mental fear and resignation, is prone to relive that experience repeatedly, despite being in a safe environment. *Id.* Dreams, flashbacks, hallucinations and violent images can debilitate a person by habitually making them feel they are still in the midst of the terrifying event. *Id.*

<sup>47</sup> See Mary-Ann Burkhart & Joyce Lombardi, *Maryland's Response to Human Trafficking: A New Statute for New Times*, 41-AUG MD. B.J. 12, 14 (2008). “There are experts who believe that human trafficking victims never

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disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents, or military combat.”<sup>48</sup> Depression, anxiousness, loss of sleep and loss of appetite are symptoms recognized as a response to violent trauma since almost ancient times.<sup>49</sup> For centuries, the symptoms of what is known in modern times as PTSD were linked only to soldiers’ mental reactions to combat.<sup>50</sup> It was only after the end of the Vietnam War, when major human catastrophes and numerous airplane crashes resulted in an influx of non-soldier victims, that PTSD came to be recognized as a mental illness that could exist in a person who had never seen combat.<sup>51</sup> It was as late as 1980 before PTSD became an officially recognized clinical diagnosis.<sup>52</sup> Because the nature of the harms that Traffickers inflict on their victims to retain control over them closely parallels identified causes of PTSD,<sup>53</sup> it is vital to the restoration of the dignity of victims to understand how PTSD prolongs their suffering.

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recover, suffering lifelong effects of Post Traumatic Stress Disorder (PTSD), among other mental disorders.” *Id.*

<sup>48</sup> NIMH, Post Traumatic Stress Disorder, <http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>.

<sup>49</sup> See Major Timothy P. Hayes, Jr., *Post Traumatic Stress Disorder on Trial*, 190-91 MIL. L. REV. 67, 70 (2007). The first known documentation of a diagnosis of PTSD like symptoms comes from the Swiss in 1678. *Id.* They used the term “Nostalgia” to describe the mental condition of soldiers returning from war. *Id.* American doctors, during the American Civil War, called it “irritable heart” or “soldier’s heart.” *Id.*

<sup>50</sup> See *Id.* at 70.

<sup>51</sup> See *Id.*

<sup>52</sup> See *Id.* at 72. “After extensive research by veterans groups and recommendations by mental health workers, the 1980 update to the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-III) included a new category of illness: post-traumatic stress disorder.” *Id.*

<sup>53</sup> See PsychNet-UK, *supra* note 46. Rapes, kidnapping and other kinds of violent attacks are known triggers for PTSD. *Id.* Many Traffickers acquire their victims by kidnapping them. See *Palermo Protocol*, *supra* note 10, at art. 3(a); see also *TVPA*, *supra* note 10, at § 102 (10). Traffickers are well known to use rapes, beatings and threats of death to victims and to their loved ones in order to keep control over them. *Id.* at §102 (6).

*C. International Response to Human Trafficking Induced PTSD*

In terms of a dry statistic, as many as 800,000 people are thought to be trafficked across international borders every year; yet, even more disheartening, is the reality that this enormous number does not take into account the millions of people throughout the world who are trafficked within their own country of nationality.<sup>54</sup> These are not mere immigrants being shuffled around the globe until they find permanent residence; these are more than a million victims of a violent existence, who are tortured daily and forced to rot away their lives in an ugly and indecent servitude to wicked men and women.<sup>55</sup> PTSD becomes an even more alarming concern in the context of such a vast number of people with the potential to suffer from it. Largely through the auspices of the United Nations, the international community is responding to human trafficking as an international affliction and a phenomenon that carries with it severe mental consequences.<sup>56</sup> The countries of Europe responded to the provisions of the Palermo Protocol by adopting their own treaty, the Council of Europe Convention on Action to Combat Trafficking in Human Beings (the “Convention on Action”).<sup>57</sup> The Convention on Action is intended to complement the Palermo Protocol by

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<sup>54</sup> See *TIP Report*, *supra* note 1, at 7; see also Mattar, *supra* note 14, at 268.

<sup>55</sup> See *TVPA*, *supra* note 10, at § 102 (6). “Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.” *Id.* “Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations. *Id.* at § 102(b)(21).

<sup>56</sup> See *Palermo Protocol*, *supra* note 10, at art. 6(3). “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons . . . .” *Id.* “In particular, the provision of . . . medical, psychological and material assistance. *Id.* at 3(c). See also Bruch, *supra* note 9.

<sup>57</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Feb. 1, 2008, 16 V. 2005 C.E.T.S. No.197 [hereinafter *Council of Europe Convention*]. The *Council of Europe Convention* has been ratified by twenty-four European countries. See Council of Europe, Homepage, [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp) (last visited Apr. 23, 2009).

incorporating many of its provisions and stepping up the level of protection available to victims.<sup>58</sup> Individual nations are also working to address the human trafficking crisis within their national borders. Several countries have passed legislation specifically to address the mental injuries that victims of human trafficking incurred.<sup>59</sup>

#### *D. The United States Response to Human Trafficking Induced PTSD*

In keeping with its treatment of human trafficking as a detriment to the human rights of its victims, the United States identified the mental trauma that victims suffer under, and the reality that more than rescue is required in order to truly free a victim.<sup>60</sup> One example of the steps the U.S. government took to give more force to this recognition is illustrated in its issuance of T-Visas.<sup>61</sup> Under the TVPA, the U.S. Government instituted procedures to grant foreign victims special visas to remain in the country.<sup>62</sup> These T-Visas, as they are designated, originally were reserved only for victims who cooperated with the investigation and prosecution of their Traffickers.<sup>63</sup> It is only natural that such a requirement would generally lead to a victim needing to testify in open trial, in the presence of the Trafficker, about their ordeals. Even if there was never a trial, a victim, in aid of an investigation, would certainly be

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<sup>58</sup> See Mohamed Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 VAND. J TRANSNAT'L L. 1355, 1362 (2008).

<sup>59</sup> See, e.g., 2007 WLNR 11601633 (reporting that Manila opened a shelter specifically for trafficked victims); see also Mattar, *supra* note 14, at 263.

<sup>60</sup> See *TIP Report*, *supra* note 1, at 5. "We must go beyond an initial rescue of victims and restore to them dignity and the hope of productive lives." *Id.*

<sup>61</sup> See *TVPA*, *supra* note 10, at § 107(e)(1)(C)(I). The *TVPA* amended sec. 101(a)(15) of the Immigration and Nationality Act. *Id.* "(T)(i) . . . an alien who the Attorney General determines— (I) is or has been a victim of a severe form of trafficking in persons . . ." is eligible to receive a T-Visa. *Id.* In order to obtain a T-Visa, a victim must also be physically present in the U.S., comply with reasonable request from law enforcement to assist in investigations and prosecutions, and show that being deported back to the country of nationality would cause the victim severe hardship. *Id.* at (II),(III) and (IV).

<sup>62</sup> See *TVPA*, *supra* note 10, at § 107(e)(1)(C)(I).

<sup>63</sup> See *id.*

required to recount in detail what happened to her while she was being trafficked. For a victim who suffers from PTSD, either scenario could present dire consequences, both for the victim and the successful prosecution of the Trafficker. When a victim of violent trauma suffers from PTSD, even seeing a picture of the person who committed the violent act may trigger in the brain the same chemical responses as the victim underwent during the attack itself.<sup>64</sup> If PTSD is triggered while the victim is on the stand, one of two reactions to questioning may occur. The “flight or fight” response may cause the victim to become abnormally agitated and hostile, unable to sit still or focus on one idea for long enough to relay intelligent testimony.<sup>65</sup> In the alternative, if the “freeze” reaction evidences itself, the victim may become strangely unresponsive to questioning, and seem completely numb to what is going on in the courtroom.<sup>66</sup> In either case, the jury may perceive the victim as completely lacking in credibility, and the conviction of the Trafficker may be significantly jeopardized. Further, it may seem to the prosecutor that the victim is not cooperating at all, thus placing the victim’s ability to obtain a T-Visa in equal peril.<sup>67</sup>

As experience with victims after the passage of the TVPA progressed, lawmakers became cognizant of how exceedingly difficult, perhaps impossible, the requirement of participation is for trafficking victims who suffer from PTSD.<sup>68</sup> Through the passage of

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<sup>64</sup> See Hopper & Hidalgo, *supra* note 16, at 202-03. “Under conditions of threat, the lower areas of the brain, including the brain stem and limbic system, are activated to create an automatic survival response.” *Id.* at 202. The survival response could manifest itself as a flight response, activating stress hormones that raise the victims heart rate, blood pressure and sweat glands to help the victim flee the danger. *Id.* at 202-03. However, as is more often the case in the trafficking scenario, a victim may realize that trying to escape is futile, and the body’s second response to danger will take over; the “freeze” or numbing effect in which a victim plays dead to survive the trauma. *Id.* at 203-04.

<sup>65</sup> See, e.g., *id.* at 202-03.

<sup>66</sup> See, e.g., *id.* at 203-04.

<sup>67</sup> See TVPA, *supra* note 10, at § 107(e)(1)(C)(I).

<sup>68</sup> See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No.110-457, 122 Stat. 5044, (the “Wilberforce Act”). The *Wilberforce Act* admonishes the Attorney General to take into account the reality

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the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,<sup>69</sup> law enforcement and investigators are now instructed to bear in mind that particular victims may legitimately be unable to work with them due to their mental trauma.<sup>70</sup> Thus, the cooperation requirement underwent a legal transformation that currently makes victim participation a less rigid demand, and, therefore, the remedies of the T-Visa are theoretically available to more victims.<sup>71</sup>

A major high point of the TVPA is that it specifically demands that victims may not be treated or housed as criminals.<sup>72</sup> This implicit recognition of these victims as innocent is an important first step in alleviating the types of stress that can exacerbate PTSD. Certainly, being housed in a jail cell, in close quarters with actual criminals, while awaiting the stressful ordeal of having to testify against a Trafficker, would not be an appropriate way to treat a victim who suffers from PTSD.

Another way that the TVPA attempts to help victims in post trafficking recovery is the creation of a means for victims to attain restitution in criminal proceedings and damages in civil litigations.<sup>73</sup> Certainly, awards of money would help victims obtain better and more consistent treatment for PTSD, however, this paper will demonstrate that one consequence of PTSD is that victims often lack the kind of motivation, energy and long term planning skills that are necessary to seek relief through the means of a lawsuit.

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that a victim may be “unable to cooperate with a request described in item (aa) due to physical or psychological trauma . . . .” *Id.* at § 201 (a)(1)(D)(iii).

<sup>69</sup> *See id.*

<sup>70</sup> *See id.*

<sup>71</sup> *See Wilberforce Act, supra* note 68.

<sup>72</sup> *See TVPA, supra* note §107 (c)(1)(A). “Victims of severe trafficking, while in the custody of the Federal Government . . . shall not be detained in facilities inappropriate to their status as crime victims.” *Id.*; *see also* Mattar, *supra* note 14, at 260.

<sup>73</sup> *See TVPA, supra* note 10, at §112. “(a) . . . in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.” *Id.*

*E. PTSD as a Narrowed Focus on the Larger Dilemma*

This paper will focus on the suffering that PTSD causes female victims of commercial sex trafficking<sup>74</sup> after they finally escape their Traffickers.<sup>75</sup> Particular focus is placed on the damage done to their mental health, and the specialized consequences a woman suffers from the cycle of violent dependence cultivated by the Traffickers to keep her under their control.<sup>76</sup> In addition, this paper will discuss the link between PTSD and the stigma of prostitution that further isolates female victims.<sup>77</sup> It will explore who the Traffickers are, who the victims are, and how the United States Government, non-governmental organizations (“NGOs”)<sup>78</sup> and society as a whole can

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<sup>74</sup> See *TVPA*, *supra* note 10, at §103(3). A commercial sex act “means any sex act on account of which anything of value is given or received by any person.” *Id.* See also *Severe Forms of Trafficking in Persons*, *supra* p. 6.

<sup>75</sup> See *TIP Report*, *supra* note 1, at 23. “Sex trafficking comprises a significant portion of overall trafficking and the majority of transnational modern day slavery.” *Id.* Forty-six percent of forced labor within the U.S. is oriented to prostitution and other sexually based services. See Free the Slaves & Human Rights Center of the University of California, Berkeley, *Hidden Slaves: Forced Labor in the United States*, 23 *BERKELEY J. INT’L L.* 47, 48 (2005) [hereinafter *Free the Slaves*].

<sup>76</sup> See Burkhart & Lombardi, *supra* note 47, at 14. “Beyond the daily humiliation and violence experienced by victims of human trafficking, victims also often suffer permanent damage to their physical and mental health.” *Id.*

<sup>77</sup> See Judith Lewis Herman, *Introduction: Hidden In Plain Sight: Clinical Observations on Prostitution*, in *PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS* 1, 3 (Melissa Farley ed., 2003) (discussing the shame and stigma that women involved in prostitution feel, and how it prevents them from seeking help or fully participating in therapy).

<sup>78</sup> See Definition of NGOs, <http://www.ngo.org/ngoinfo/define.html> (last visited Apr. 23, 2009). Non-governmental organizations, (“NGOs”) are made up of volunteers who organize in groups as non-profit entities to address particular social issues and problems. *Id.* They work with governments to address various difficulties and recommend solutions and they are instrumental in advocating for and increasing awareness of such things as human rights, disease prevention, economic crises and a host of other kinds of social ills. *Id.* There are NGOs all over the world, and different NGOs work with different countries and with country specific problems. *Id.* For instance, NGOs in the U.S. are largely credited with exposing forced labor in within U.S. borders. See *Free the Slaves*, *supra* note 75,

contribute to these victims' successful mental recoveries. Rescued victims of sex trafficking may be left alone in the world devoid of normal human emotions, and burdened with profound feelings of anger and disjointed thoughts.<sup>79</sup> Because society so readily sees such women as prostitutes, they are less apt to be considered according to what they truly are; the victims of violent crimes and severe human rights violations.<sup>80</sup> Traffickers in the commercial sex trade inflict grotesque, habitual, and dehumanizing trauma against their victims.<sup>81</sup> Typically, this leaves victims stripped of their natural personalities, and with no sense of identity other than being a woman who cannot trust, cannot control her anger and cannot understand life without abuse.<sup>82</sup> Suicidal thoughts and reoccurring hallucinations may be her only steadfast companions.<sup>83</sup> Along with acknowledging the grim reality that rescued victims face daily, another question must be asked. What are the dangers society faces when there is a real possibility that millions people, suffering from untreated, human trafficking induced PTSD, are abandoned and left to their own devices to reintegrate in communities?<sup>84</sup>

## *II. The Actors*

### *A. The Traffickers*

Dementors are among the foulest creatures that walk this earth.

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at 57.

<sup>79</sup> See Burkhart & Lombardi, *supra* note 47, at 14.

<sup>80</sup> See TVPA, *supra* note 10, at §102(b)(23). "The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern." *Id.*

<sup>81</sup> See TIP Report, *supra* note 1, at 23. "[P]rostitution is inherently harmful dehumanizing . . . [creating] an enabling environment for human trafficking." *Id.*

<sup>82</sup> See Burkhart & Lombardi, *supra* note 47, at 14.

<sup>83</sup> See *Id.*

<sup>84</sup> See Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights In The Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451. 453 (2005) (reviewing CRAIG MCGILL, HUMAN TRAFFIC: SEX, SLAVES & IMMIGRATION (2003)) (pointing out that failures by governments to give victims proper assistance, leaves the victim vulnerable to re-trafficking and plays right to the strength of Traffickers).

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They infest the darkest, filthiest places, they glory in decay and despair, they drain peace, hope, and happiness out of the air . . . long enough to reduce you to something like itself . . . soulless and evil.<sup>85</sup>

Perhaps it is easy to imagine how guns or cocaine can be trafficked around the globe by criminal organizations and individual criminals. After all, weapons and drugs are inanimate objects which sit nicely in corners of dark warehouses, do not speak, do not eat and do not try to run away. It might seem as though trafficking people would present difficulties for a Trafficker in this respect. However, it is the means which Traffickers employ to surmount such difficulties that reveal the true horrors of who the Trafficker is. Traffickers lure their victims with deception crafted precisely to offer what the potential victim wants most at that moment.<sup>86</sup> Once the victim is taken under his wing, the Trafficker will use what U.S. law identifies as coercion to keep the victim under control.<sup>87</sup> When the Trafficker uses such “threats of serious harm . . . physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of legal process,”<sup>88</sup> he or she satisfies an element that must be proven when the prosecutor brings a charge

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<sup>85</sup> J.K. ROWLING, *HARRY POTTER AND THE PRISONER OF AZKABAN* 187 (Scholastic Inc., 1999). Dementors are characters in this book that control people by invading their mind and sucking out their soul. *Id.* They feed on people’s souls in order to reduce them into the same evil that the Dementors are. They are an especially fitting analogy to who Traffickers are and what they do to their victims.

<sup>86</sup> See Helga Konrad, *The OSCE and the Struggle Against Human Trafficking: The Argument for A Comprehensive, Multi-Pronged Approach*, 1 *INTERCULTURAL HUM. RTS. L. REV.* 79, 81(2006) (noting that Traffickers use poverty and lack of choices to their advantage when choosing their victims). If a Trafficker knows that women in a certain region cannot get work because the society is male dominated, the Trafficker may tell a woman there that if she comes with him, he will take her to a place where all of the women have decent jobs. *Cf.* Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 *HARV. L. REV.* 2574, 2576 (2006).

<sup>87</sup> See *TVPA*, *supra* note 10, at §103 (2). This is the U.S. definition of coercion, and it is an element that must be proven in a criminal charge of trafficking under the TVPA.

<sup>88</sup> See *TVPA*, *supra* note 10, at §103 (2).

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under the TVPA. This concept of Traffickers as people is helpful to understand how they may be statutorily prosecuted as criminals, but the nature of the legal language sterilizes the horrendous propensity for evil that Traffickers truly possess.

Traffickers have no empathy for others, and they do not care about the trauma they inflict on their victims. They torture, crush, starve, and incinerate the humanity of their victims to seal their power.<sup>89</sup> They intentionally assault the mind and body of their victims through “burnings, and the use of rape or murder as tools of control to instill terror in victims . . . [causing] them to believe that escape from their traffickers will lead to even worse situations.”<sup>90</sup> The victims are also made to believe that their loved ones will be subjected to the same torture if they do not yield to the trafficker’s demands, or if they try to escape.<sup>91</sup> Traffickers go beyond eradicating their victims’ sense of personal identity to bolster their control. Traffickers also strip their victims of their national identity by confiscating their national documents and convincing them that any government authority they run to will imprison them as illegal immigrants.<sup>92</sup> Traffickers exhaust their victims’ will to resist them to the point of making them participate in the rapes and beatings of “new recruits.”<sup>93</sup> In this final stage of humiliation, the vile Trafficker erases the moral identity of his victim so she can no longer recognize herself on the inside or the outside. She believes she can never go back to the life of her community because the Trafficker has turned her into himself, sealing his control of her and imprinting his evil on her soul for all of time.<sup>94</sup>

Thus it is seen that controlling the victims is pivotal to the Trafficker’s success, and they are ruthless in securing it. On a typical day, a Trafficker will rape, beat, and isolate a victim to wipe out any

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<sup>89</sup> See Sadruddin et al., *supra* note 23, at 383.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See Hopper & Hidalgo, *supra* note 16, at 200.

<sup>94</sup> *Id.*

trace of resistance.<sup>95</sup> Murdering one victim in order to scare others into silence is a known brutality employed by traffickers.<sup>96</sup> The next question is why? What is it that drives a person to become a living terror to other people? In the context of human trafficking, it is a one word answer—money. Traffickers are driven by profit, and human exploitation is an immensely lucrative enterprise.<sup>97</sup> Around the world, it is thought that Traffickers amass over thirty-two billion dollars every year.<sup>98</sup> It is a sobering amount of money, particularly when it is coupled with the reality that it is an illicit industry growing faster than even drug dealing and weapons trafficking.<sup>99</sup> Traffickers are acutely aware of how difficult it is to identify trafficked people, and they optimize their ability to perpetuate their cash-amassing enterprise in order to benefit from this unfortunate reality.<sup>100</sup> A very common tactic employed by Traffickers is to use the law itself to make victims reluctant to be found.<sup>101</sup> As identified in U.S. law, Traffickers “abuse . . . legal process” to keep control of their victims.<sup>102</sup> Traffickers are notorious for confiscating their victim’s travel documents, then using the victim’s lack of identification to threaten and convince her that, if she leaves, law enforcement will believe she is a criminal and arrest her.<sup>103</sup>

### B. The Victims

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<sup>95</sup> See Murray, *supra* note 2, at 493-94.

<sup>96</sup> *Id.* at 476-77.

<sup>97</sup> Loring Jones et al., *Globalization and Human Trafficking*, 34 J. SOCIOLOGY & SOC. WELFARE 107 (2007); see also Chuang, *supra* note 9, at 438.

<sup>98</sup> Jones et al., *supra* note 97.

<sup>99</sup> *Id.* “The U.S. Department of Health and Human Services (US DHHS) described trafficking as the fastest growing criminal industry in the world (2004). Among illegal enterprises, trafficking is second only to drug dealing, and tied with the illegal arms industry, in its ability to generate dollars.” *Id.* See also Chuang, *supra* note 9, at 438.

<sup>100</sup> See *Free the Slaves*, *supra* note 75, at 52. “Criminals also have learned that the odds are good that they will never be held accountable in a court of law.” *Id.*

<sup>101</sup> See Mattar, *supra* note 58, at 1375.

<sup>102</sup> See 18 U.S.C. § 1589 (a)(3) (as amended).

<sup>103</sup> See *Free the Slaves*, *supra* note 75, at 51-52.

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“There’s a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of sex trade see little of life before they see the very worst of life—an underground of brutality and lonely fear.”<sup>104</sup>

Every person wants to have a good life, to feel secure and to feel important in some way.<sup>105</sup> Yet, in every place on earth, there are people who live in poverty, and people who would do almost anything to escape it.<sup>106</sup> In the United States, the drive to have a better life often propels people to seek education, to gain more life experiences and seek out the best forms of employment suited to their individual talents. Many women and children within the U.S., however, are driven out of their homes and into the dangerous streets by violence, sexual abuse and incest.<sup>107</sup> Other women may originally live in less developed countries where their human urge to have a good life makes them extremely vulnerable to the lies of the Trafficker.<sup>108</sup> Victims commonly come from poverty stricken regions where opportunities to have even a marginally prosperous life are scarce.<sup>109</sup> In these places, if a woman wants to survive, she knows she must leave her home.<sup>110</sup> In many regions of the world,

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<sup>104</sup> See White House Press Release, President Bush Addresses the United Nations General Assembly (Sept. 23, 2003)(on file with author).

<sup>105</sup> See UNDP, Human Development Report, *New Dimensions of Human Security* 24 (1994), [http://hdr.undp.org/en/media/hdr\\_1994\\_en\\_chap2.pdf](http://hdr.undp.org/en/media/hdr_1994_en_chap2.pdf). “There have always been two major components of human security: freedom from fear and freedom from want.” *Id.*

<sup>106</sup> See Kevin Bales & Steven Lize, *Trafficking in Persons in the United States, Final Report*, NCJ 211980, 7 (2005), <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>.

<sup>107</sup> See DORCHEN A. LEIDHOLDT, *Prostitution and Trafficking in Women: An Intimate Relationship*, in *PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS* 167, 171 (Melissa Farley ed., Haworth Press 2004).

<sup>108</sup> See Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 *WIS. INT’L L.J.* 131, 145 (2008). “Human traffickers prey upon their victims’ most fundamental human desire: to find a better life.” *Id.*

<sup>109</sup> See Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, 13 *IND. J. GLOBAL LEGAL STUD.* 137, 140-41 (2006).

<sup>110</sup> *Id.* “Push Factors” are instances where impoverished people in destitute regions are looking for chances to escape rather than to voluntarily leave to pursue

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women are seen merely as a burden and a mouth to feed, worthwhile only because someone else is willing buy them for labor or sexual servitude.<sup>111</sup> Many girls are not valued even by their parents.<sup>112</sup> Thus it is that vulnerable and exposed women are poised on the brink of the Trafficker's cliff. Observe that for both U.S. and foreign victims, the striking common thread of their pre-trafficking history reveals the absence of a support structure even before the Trafficker begins to destroy their lives. There may be few or no people in their lives to make them feel secure, or unique and valuable. This circumstance alone can contribute enormously to their propensity to develop PTSD after they withstand the brutality of life under their Trafficker's control.<sup>113</sup>

So it is that PTSD is a danger to victims of commercial sex trafficking from the moment they encounter the Trafficker. Once a woman is subjected to the Trafficker's violent, isolating and will destroying techniques, PTSD becomes almost an inevitable certainty in her future. This is demonstrated by several factors. PTSD is far more likely to develop when the traumatic event or chain of events are instigated by human force and violence, as opposed to a natural catastrophe or accidents such as plane crashes and automobile wrecks.<sup>114</sup> Further, the most common cause of PTSD in females

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opportunities. *Id.* It is "migration for survival . . . as opposed to opportunity-seeking migration." *Id.*

<sup>111</sup> See Mattar, *supra* note 58, at 1389. "[T]he exact number of women who are sentenced to a life of degradation and servitude . . ." is unknown. *Id.*

<sup>112</sup> *Id.* In Chinese culture, male children are highly valued over female children. *Id.* Because the Chinese Government has a rigid one child policy, many parents sell their female children so they can still have a male child. *Id.*

<sup>113</sup> See PsychNet-UK, *supra* note 46 (noting that, in the case of soldiers, those who had strong support systems before seeing combat were less likely to develop PTSD). Those with weak or, or no support systems, were more likely not only to develop PTSD, but to develop a form of lifetime PTSD. *Id.*; see also Murray, *supra* note 2, at 489-92.

<sup>114</sup> See Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 33, 36 (Melissa Farley ed., Haworth Press 2004). "PTSD is likely to be especially severe or long lasting when the stressor is planned and implemented by humans (as in war, rape, incest, battering, torture, or prostitution) rather than being a natural catastrophe." *Id.*

generally is rape and sexual assault.<sup>115</sup> It is also true that women are more likely than men to develop lifetime PTSD; this is in contradistinction to PTSD which may occur immediately after the traumatizing event, but recedes away fairly quickly and does not reemerge.<sup>116</sup> While the amount of traumatic incidences that a victim withstands contributes to her likelihood of developing PTSD, it is the level of violence in the attack that has the most impact.<sup>117</sup> Combining this knowledge with the further known fact that traffickers and clients use an extreme level of violence to rape their *prostitutes*, in comparison with the typical amount of violence used in a random rape of a stranger, the psychological danger to victims of commercial sex trafficking is strikingly clear.<sup>118</sup>

It is important to know why the victims of commercial sex trafficking are so likely to develop PTSD, but one must also consider exactly what PTSD does to the mind, and how this mental debilitation is an especial hardship on rescued trafficking victims. The normal human being, when faced with danger, will instinctively “fight, [flee] or freeze.”<sup>119</sup> In order to accomplish fleeing or fighting, the brain will be flooded with hormones that make the body less receptive of physical pain and aggressively able to run or fight back.<sup>120</sup> While the ability to act aggressively is heightened, other abilities, such as clear decision making, rational perception and the ability to focus on long term outcomes is markedly diminished.<sup>121</sup> When safety is reached, the hyper-driving hormones normally recede and the brain returns its usual state.<sup>122</sup> When escape is not possible and fighting back is perceived as impossible, the body will shut

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<sup>115</sup> See PsychNet-UK, *supra* note 46.

<sup>116</sup> *Id.*

<sup>117</sup> Farley, *supra* note 114, at 36-37.

<sup>118</sup> See Michelle J. Anderson, *Prostitution and Trauma in U.S. Rape Law*, in *PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS* 75, 79 (Melissa Farley ed., Haworth Press 2004).

<sup>119</sup> See Sadruddin et al., *supra* note 23, at 399.

<sup>120</sup> See *id.* at 400.

<sup>121</sup> *Id.*

<sup>122</sup> See Hopper & Hidalgo, *supra* note 16, at 204. “Fight, Flight, and Freeze are designed to be short-term responses to immediate danger.” *Id.*

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down as a means of surviving the traumatic event.<sup>123</sup> This response is particularly dangerous to victims of Traffickers. In addition to the fact that they may be brutalized multiple times during a day, this disassociating means of survival is most likely to result in chronic illness once the violent situation is finally ended.<sup>124</sup> Once PTSD sets in, the brain functions do not return to normal, thus even a smell or mention of a name can trigger in the victim the same responses that were triggered when the stress of violence was actually in progress.<sup>125</sup> Further, the alteration of brain functions can prevent the victim from even telling her story.<sup>126</sup> This will further isolate her because, in addition to behaving in ways that are very strange and off-putting to the people she comes into contact with, she will lack the verbal and mental skills necessary to explain to them what happened to her and why she behaves as she does.

As the violence of the Trafficker breaks into the mind of the victim over time, the initial symptoms of PTSD begin to develop; one of the first things it does is create a mind chain that prevents the victim from trying to escape.<sup>127</sup> Other categorized symptoms a victim may endure include the following: re-living the trauma in the mind—a flashback—careful evasion of places that remind the victim of the violence, numbing herself to any feelings, inability to sleep, hyper-activeness, and chronic bad temper.<sup>128</sup> The symptoms might not all emerge at once.<sup>129</sup> However, over the course of a victim's life, they may begin evidencing their presence and severely limiting her ability to reclaim her personal dignity or to believe that life is something that can be enjoyed.

It may seem counterintuitive, but rescuing a victim is often dangerous to her immediate mental health.<sup>130</sup> It is the removal from

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<sup>123</sup> See Sadruddin et al., *supra* note 23, at 400.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 381.

<sup>127</sup> See Hopper & Hidalgo, *supra* note 16, at 191.

<sup>128</sup> Farley, *supra* note 114, at 36-37.

<sup>129</sup> *See id.*

<sup>130</sup> *See id.* at 59

the immediate danger that typically causes PTSD to evidence itself in the victim.<sup>131</sup> However, the victim herself may not realize the symptoms are actually evidence of a disease, and she will likely suffer much mental anguish until someone else, perhaps a social worker or a prosecutor, puts two and two together and realizes that this victim must begin treatment for PTSD. Hence, even when rescued, a victim of human trafficking who suffers from untreated PTSD can never feel secure. It will not matter that she is safe or with people who treat her well. Her mind will be trapped in enslavement and feelings of fear and pain that continue to seem real. Thus, rescuing victims is not enough to restore their personal sense of security.<sup>132</sup>

### *C. The United States Government's Responsibilities*

“From its founding the Nation’s basic commitment has been to foster the dignity and well-being of all persons within its borders.”<sup>133</sup>

It is the official policy of the United States to fight the incidences of human trafficking within its borders from a “victim centered approach.”<sup>134</sup> In the United States, the role of inquiring into whether the Government is providing the necessary protection to victims belongs to the Department of Justice.<sup>135</sup> Further, U.S. law affirmatively mandates the Federal Government train its law enforcement, as well as other government officials who are likely to come to contact with victims, in the recognition and proper treatment

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<sup>131</sup> *See id.*

<sup>132</sup> U.N. OFF. ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS, at Prevention of Trafficking in Persons, Protection and Empowerment of Victims of Human Trafficking and Domestic Violence, at 221, U.N. Sales No. E.08.V.14 (2008), available at [http://www.unodc.org/documents/human-trafficking/HT\\_Toolkit08\\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf).

<sup>133</sup> *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970).

<sup>134</sup> *See* Assessment of U.S. Government Efforts to Combat Trafficking in Persons 6 (Sept. 2006), <http://www.usdoj.gov/ag/annualreports/tr2006/assessmentofeffortstocombattip.pdf>.

<sup>135</sup> *See* Mattar, *supra* note 58, at 1374.

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of victims.<sup>136</sup> The next frontier in the battle to end human trafficking is to take the fight to the states. It is imperative for the recovery and rescue of victim that the fifty states also keep pace with the advances of human trafficking laws and protections.<sup>137</sup> State and local law enforcement should be entities best able to identify victims and understand the unique way human trafficking impacts an individual community.<sup>138</sup> They are much closer to communities and could be valuable assets to the Federal Government as it seeks to understand how trafficking operates in each of the individual states. However, trafficking crimes, such as forced labor, are generally federal crimes.<sup>139</sup> When victims are intercepted by local law enforcement, they are more likely to be identified as illegal aliens rather than victims of a statutorily recognized crime.<sup>140</sup> This scenario might be particularly likely when a woman is arrested as a prostitute.<sup>141</sup> Local law enforcement will be fully aware that prostitution is a crime in their state,<sup>142</sup> but they may have no concept of the idea that the woman did not consent to being in the illicit profession.<sup>143</sup> It is

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<sup>136</sup> See *Wilberforce Act*, *supra* note 68, §106 (2) (B). The minimum standards for the elimination of trafficking in the TVPA were amended in the 2008 reauthorization to “[include] providing training to law enforcement and immigration officials regarding the identification and treatment of victims using approaches on the needs of victims.” *Id.*

<sup>137</sup> See Burkhardt & Lombardi, *supra* note 47, at 16.

<sup>138</sup> *Id.* at 14.

<sup>139</sup> See *Free the Slaves*, *supra* note 75, at 57.

<sup>140</sup> See *id.* at 48.

<sup>141</sup> See FED. BUREAU OF INVESTIGATION, U.S. DEP’T OF JUSTICE, CRIME IN THE UNITED STATES 2004: UNIFORM CRIME REPORTS 280 (2004), <http://www.fbi.gov/ucr/cius04/documents/CIUS2004.pdf>. There were 87,872 arrests for Prostitution and commercialized vice within the U.S. in 2004. *Id.* How many of this number are, in reality, among the estimated 18,000 trafficking victims in the U.S.?

<sup>142</sup> See *Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs: Hearing before the H. Comm. On the Judiciary*, 110th Cong. 3 (2007) (statement of Laurence E. Rothenburg, Office of Legal Policy, D.O.J.) “[P]imping, pandering, and other prostitution related crimes have traditionally been and continue to be crimes prohibited by state law and these crimes are prosecuted by local District Attorneys across the country.” *Id.*

<sup>143</sup> See LEIDHOLDT, *supra* note 107. Most women and young girls are driven into prostitution because of sexual abuse and incest. *Id.* Most women and children

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therefore highly unlikely they will see her as a traumatized victim rather than a criminal.<sup>144</sup> Proper training of all law enforcement officers to learn to recognize the incidents and markers of a trafficking victim is particularly crucial when the victim has been exploited in the commercial sex trade. This is primarily because women labeled as prostitutes have an uphill battle to fight when it comes to seeking justice for the sexual crimes committed against them.<sup>145</sup> Often, such women face what amounts to an un rebuttable presumption that, because she is a prostitute, the violent sexual attack she suffered was the result of a prior financial arrangement and not a forced rape.<sup>146</sup> Sadly, the stigma of prostitution slithers in tandem with the debilitating effects of PTSD. A woman, mentally traumatized to the extent that she cannot tell her story, may not be able to relate the extent of the violence used against her.<sup>147</sup> She may be so deeply under her Trafficker's thumb that she herself may fail to realize she did not consent.<sup>148</sup> This is one illustration of the isolation

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want to get out of prostitution the moment they are entrapped by it. *Id.*

<sup>144</sup> Bales & Lize, *supra* note 106, at 5. "Trafficking victims often have contact with local law enforcement authorities. But because they lack sufficient training, local law enforcement agents failed to notice the victims and take appropriate action to bring them to safety." *Id.*

<sup>145</sup> See Anderson, *supra* note 118, at 81-82 (discussing the numerous courts that have allowed a defendant charged with rape to introduce his victim's history of prostitution as credible evidence she consented to the sex act).

<sup>146</sup> See *Mitchell v. State*, 544 S.W. 2d 927, 927 (1977). A reviewing court ruled that the lower court erred when it did not allow in evidence the rape victim was a common prostitute, and that the defendant should have been able to use such to prove she consented to the sexual act. *Id.* Further, hearsay evidence was ruled admissible to present the victim as a prostitute. *Id.* at 928-29. See also *Brown v. State*, 50 Ala. App. 471, 474 (1973) (affirming that when the defense contends sexual intercourse was consensual, the rape victim's reputation for chastity is competent to determine if she consented); see also ANDERSON, *supra* note 118, 81-82.

<sup>147</sup> See Wendy Freed, *From Duty to Despair: Brothel Prostitution in Cambodia*, in *PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS* 133, 140 (Melissa Farley ed., 2004) (noting some women do not tell everything they have been through in order to keep their level of depression manageable).

<sup>148</sup> See Christine Stark & Carol Hodgson, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in *PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS* 17, 22 (Melissa Farley, ed., 2004). Pimps, like Traffickers,

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a victim of sexually based trafficking endures which may often prevent her from seeking any help at all.

A victim-centered approach to trafficking must recognize this reality, and it is incumbent on the U.S. Government to train not only federal, but state law enforcement as well, to recognize sex trafficking as a crime, and a prostituted woman as potentially a victim of that crime.<sup>149</sup> Some people may argue that the Federal Government lacks the power to instruct states regarding what laws to pass within each state's legal and judicial system. Certainly it is true that, under the Tenth Amendment, states are given the freedom to pass their own laws regarding the health, welfare, morals and safety of their people.<sup>150</sup>

However, this exercise of police power is not without room for Federal manipulation. The Federal Government cannot make state legislation of human trafficking laws an outright requirement, and it must respect the law-making choices of each of the states. Nonetheless, the Federal Government can make state governments' receipt of Federal money contingent on complying with desirable Federal trafficking policies.<sup>151</sup> A mechanism for this approach is

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utilize "hitting, punching, kicking, starving, raping, verbally abusing [a woman], telling her she chose to be in prostitution, and telling her she is good for nothing but sex." *Id.*

<sup>149</sup> See Bales & Lize, *supra* note 106, at 6. One of the major reasons that trafficking in the U.S. continues unabashed is that local law enforcement do not know trafficking is a crime. *Id.* Because they do not recognize the crime, they in turn have a lack of sympathy for the victims. *Id.*

<sup>150</sup> See U.S. CONST. amend. X. (providing that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people").

<sup>151</sup> See *South Dakota v. Dole*, 483 U.S. 203, *passim* (1987). The Federal Government was unhappy with many of the states for failing to make the legal drinking age above twenty-one. *Id.* at 203. It withheld federal highway funds from any state that had a legal drinking age of less than twenty-one. *Id.* The United States Supreme Court upheld this policy as Constitutional and a valid exercise of Congress's spending power. *Id.* at 211-12. Thus, even where the Congress cannot force states to comply with certain policies, it can "further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." *Id.* at 206.

already in place in the Wilberforce Act.<sup>152</sup> The Act instructs the Secretary of Homeland Security and the Attorney General to assist state and local law enforcement in working with Federal law enforcement to help victims obtain means of staying in the country.<sup>153</sup> The next direction for the law to take is an amendment to require states, desiring Federal funding for social service programs, to comply with the Federal trafficking law examples, and to work with the Federal Government to implement such state laws.

This Federal incentive should not stop at the encouragement of state laws and victim identification. The local authorities must also be trained to identify the symptoms of PTSD that are overwhelmingly likely to exist in a rescued victim. In truth, the rescue and removal of a victim from the immediately dangerous situation typically worsens her symptoms of PTSD.<sup>154</sup> While this is a terrible fact, rescue workers may be able to use it to their advantage to help the victim emotionally. If her symptoms are more pronounced, it may make it easier for officials and aid workers to recognize that she suffers from PTSD. It should become standard policy that any person involved in operations to identify and rescue victims, also be trained in the recognition of PTSD symptoms. Thus, the U.S. Government's training of law enforcement and aid workers to identify and handle victims should continue to be developed, refined and handed down to the states.

There is a current trend in state governments to step up local efforts to contribute to solutions and protections for victims.<sup>155</sup> These states have a substantial opportunity to fill in the gaps of U.S. protections because their position as local first responders makes state governments uniquely able to address the specific needs of

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<sup>152</sup> See *Wilberforce Act*, *supra* note 68, at § 205, (a)(1)(C).

<sup>153</sup> See *id.*

<sup>154</sup> See Farley, *supra* note 114, at 59. In one study, woman who escaped prostitution reported increased physical and psychological distress compared to women who were still involved actively in prostitution. *Id.*

<sup>155</sup> See Burkhart & Lombardi, *supra* note 47, at 15. The first state initiated anti-trafficking laws appeared in 2003. *Id.* As of 2007, thirty-two states have in place some kind of criminalization of trafficking. *Id.*

victims in a unique community.<sup>156</sup> The state governments have historically been regarded as laboratories of freedom.<sup>157</sup> In this capacity, a state government is free to provide more protection to victims of human trafficking than the U.S. government offers to them. States are not obligated to maintain the U.S. standard of severe victim certification<sup>158</sup> before they can offer services to the victims. Whether it is to help victims utilize social work and local charities, or to raise community awareness of trafficking issues, states are free to enact legislation to aid all victims of trafficking whenever they are found within the state, and regardless of how severe the victims experience in trafficking may have been.

#### *D. Society*

“[T]he greatest menace to freedom is an inert people . . . .”<sup>159</sup>

When people look the other way, they help Traffickers and increase the isolation that a victim feels. NGOs must take the lead to increase the awareness of Americans regarding the plight of victims of commercial sex trafficking. “Given the cross-jurisdictional nature of trafficking and the difficulty in finding and helping victims, collaboration among nonprofit and law enforcement agencies is critical.”<sup>160</sup> NGOs help to create awareness within communities about the existence of trafficking in the U.S., and they are uniquely suited to combat trafficking from the grass roots level.<sup>161</sup> NGOs are

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<sup>156</sup> *See id.* at 16.

<sup>157</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 386-87 (1932) (Brandeis, J., dissenting). “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country . . . If we would guide by the light of reason, we must let our minds be bold.” *Id.*

<sup>158</sup> *See Severe Victim definition supra* p. 6.

<sup>159</sup> *Whitney v. California*, 274 U.S. 357, 375 (1927). Justice Brandeis offering his beliefs in the fundamental right of freedom of speech, but is also the most eloquent way of stating the role of the American people in restoring freedom to the victims of human trafficking. *Id.*

<sup>160</sup> *See Burkhart & Lombardi, supra* note 47, at 16; *see also Wilberforce Act, supra* note 68.

<sup>161</sup> *See TIP Report, supra* note 1, at 35. “In light of the magnitude and global

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authorized to receive the benefits of U.S. grant money to fight trafficking, and they are often the organizations that first identify and report victims of trafficking to law enforcement.<sup>162</sup>

The NGOs, however, cannot begin the healing process for victims without the aid of the American people. One of the first priorities of NGOs in this task must be to obliterate the myth of the voluntary prostitute.<sup>163</sup> The average member of society will not have sympathy for a woman's mental trauma if she is perceived as having assumed the risk by choosing an illegal profession. Compassion is fundamental in treating a victim who suffers from PTSD, and the community as a whole has a very important role to play in a victim's long term chance of recovering the semblance of a normal life.<sup>164</sup> The typical man or woman, who works hard every day and may feel overwhelmed by the stress of their own lives, might think they are much too small to stop the world wide scourge of human trafficking. However, there is a role for them to play in supporting victims in their own towns and neighborhoods. Just by making a victim feel comfortable at a church, school, community center or the local grocery store, they can contribute vitally to a victim's emotional need to feel valued as a human being.<sup>165</sup> Society must be patient and understanding of these victims when their PTSD causes them to react to normal situations in strange and seemingly antisocial ways. "Now

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reach of this problem, collaboration between governments and NGOs is of critical importance to efforts to eradicate modern-day slavery." *Id.*

<sup>162</sup> See TVPA, *supra* note 10, at § 107 (2)(A). NGOs are entitled to Federal grant money to organize and provide human trafficking victims services. *Id.*

<sup>163</sup> See Lynne Marie Kohm, *Women as Perpetrators: Does Motherhood Have a Reformative Effect on Prostitution?*, 33 FORDHAM URB. L.J. 407, 413-14 (2006). "Prostitution is viewed as a matter of free choice. The prostitute is often portrayed as being strong, independent and autonomous, and as having pride in her work." *Id.*

<sup>164</sup> Sadruddin et al., *supra* note 42, at 399. "The greater the degree of social support, the lower the risk of long-term mental health consequences." *Id.*

<sup>165</sup> See Herman, *supra* note 77, at 11 (telling the story of Kevin, who did not begin to recover until he found a group of people who gave him a sense of belonging). A "basic [principle] of trauma treatment—establishing safety, working through the trauma, reconnecting with a community—are potentially useful and effective for survivors of prostitution. *Id.* at 12.

we exhort you, brethren, warn those who are unruly, comfort the fainthearted, uphold the weak, be patient with all.”<sup>166</sup>

### *III. Past Trends in Decision*

The U.S. Government continues to adjust its response to the victims of human trafficking in order to keep current with new understandings and developments within the problem.<sup>167</sup> The Government is very well acquainted by now with the idea of PTSD being a disorder and a defense in law.<sup>168</sup> However, the U.S. justice system also has a long history of treating victims of sexual trauma less than sympathetically where the victim is perceived as a prostitute.<sup>169</sup> A woman who is thought to be a prostitute faces presumptions that she cannot tell the truth,<sup>170</sup> consented to the violence done to her, chose freely to be a criminal, and is not an equal among legitimate members of society.<sup>171</sup> Thus, while the U.S. effort to combat trafficking is extensive, law making alone is not enough to overcome the prejudice that victims of commercial sex trafficking potentially face. The U.S. must increase its efforts to make judges, litigators and society at large aware that victims of trafficking did not consent to their violent or exploitative situations. Coercion may be defined in the law,<sup>172</sup> and the text may explicitly denounce initial consent as irrelevant,<sup>173</sup> but this is insufficient to transform the social prejudice that is historically attached to women

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<sup>166</sup> 2 *Thessalonians* 5:14 (The New King James).

<sup>167</sup> See Wilberforce Act, *supra* note 68, at § 108 (b)(D),(E). The Federal government continues to “identify emerging issues . . . [establish] integrated methods to combat them . . . and identify research priorities to respond to global patterns and emerging issues.” *Id.*

<sup>168</sup> See Hayes, Jr., *supra* note 49, at 69.

<sup>169</sup> See Mitchell, 544 S.W. at 927.

<sup>170</sup> See Brown, 50 Ala. App. at 474 (acknowledging the theory that “a person of bad moral character is less likely to speak the truth as a witness than one of good moral character.” *Id.*

<sup>171</sup> See *Lingenfelter v. State*, 73 Tex.Crim. 186, 189 (1913). The statute in this case made it a crime to be person known to associate with prostitutes as equals. *Id.*

<sup>172</sup> See discussion *supra*, at 326.

<sup>173</sup> See *Palermo Protocol*, *supra* note 10, at art.3(a).

who are perceived as prostitutes.<sup>174</sup>

#### *IV. Predictions*

While the United States government has demonstrated an absolute willingness to prosecute Traffickers,<sup>175</sup> the progress for victim recovery remains doubtful. Certainly, the letter of the law does propose to offer the victims psychological help.<sup>176</sup> However, the numbers are telling of the reality. We know that as many as 18,000 victims, possibly more, will be trafficked the United States during a yearly period.<sup>177</sup> Yet, between the year 2007 and the year 2008, the Department of Justice reports that only 1,229 incidents of human trafficking were identified by its task forces.<sup>178</sup> Of this number, one hundred and forty individuals were prosecuted, sixty-one were convicted, and only thirty-eight went to jail.<sup>179</sup> Thus, untold numbers of vicious Traffickers are still at large in this country. Thousands upon thousands of their victims are still without support, despite the TVPA's services and benefits. These statistics, coupled with the reduced capacity of a victim suffering from PTSD

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<sup>174</sup> See LINDA SMITH, *FROM CONGRESS TO THE BROTHEL: A JOURNEY OF HOPE, HEALING, AND RESTORATION* 79 (Shared Hope International, 2007). As long as society comfortably uses the word "prostitute," the idea of rescuing her and bring her justice will be remain foreign. *Id.*

<sup>175</sup> See, e.g., *TIP Report supra* note 1, at 5.

<sup>176</sup> See *Wilberforce Act, supra* note 68, at § 213 (a)(1), (2).

<sup>177</sup> See, e.g., U.S. Department of State, *Trafficking in Persons Report I. Introduction* (2001), available at <http://www.state.gov/g/tip/rls/tiprpt/2001/3929.htm> (estimating the number to be between 45,000 and 50,000); see also U.S. Department of State, *Trafficking in Persons Report I. Introduction* (2004), available at <http://www.state.gov/g/tip/rls/tiprpt/2004/34021.htm> (lowering the estimate to between 14,500 and 17,500); see also Clawson et al., *supra* note 25, at 3-4.

<sup>178</sup> Tracey Kyckelhahn et al., *BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, NCJ 224526, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007-08 1* (2009).

<sup>179</sup> See *id.* at 10.

to reach out for help on her own, make it impossible to avoid the implication that countless victims' PTSD remains undiagnosed and untreated. A trafficking victim forced into the commercial sex trade may be even more unlikely to reach out for help. Asking for help will entail having to tell other people about the sexual acts committed against her, acts which may personally revolt her.<sup>180</sup> Telling her story may cause her to feel she is reliving the horror all over again, and she may also feel further humiliated by having to reveal the sexual acts her Trafficker forced her to perform.<sup>181</sup> Caught between the lies her Trafficker injected into her soul, and the myth of the defiantly proud prostitute to which *upstanding* society so readily endorses,<sup>182</sup> her untold suffering continues to poison her future. Even if she escaped her Trafficker, her freedom is meaningless to her while the weight of her indignity is chronically perpetuated.

Thus, it is crucial that identification of the victims of commercial sex trafficking increase exponentially. Recognizing when a woman on the street is a victim of human trafficking, rather than a voluntary prostitute, is the first step in recognizing her special forms of emotional and mental scarring, and beginning the procedures necessary to ease her symptoms of PTSD.

*V. Recommendations for a Solution to End Commercial Sex  
Trafficking In Order to Serve the Best Interests of Human Dignity*

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<sup>180</sup> See Hopper & Hidalgo, *supra* note 16, at 200. "Many women who have been coerced into sexual practices that they see as immoral come to view themselves as dirty or spoiled." *Id.*

<sup>181</sup> See, e.g., Anderson, *supra* note 118, at 78 (revealing that rape victims in the general population are extremely reluctant to report the attack to police because talking about the violent attack makes them feel they have suffered a "second rape"). This reluctance would surely be compounded in a victim of sexual trafficking, who may never have learned to trust law enforcement in the first place, and will have been mentally indoctrinated to fear authority.

<sup>182</sup> See Farley, *supra* note 114, at 34. Prostitution is not about a woman proudly selling her sexuality to a man for her own gratification. *Id.* It is about her becoming less and less of a person, with no desires or needs of her own, and the man satisfying whatever it is he wants by using her body. *Id.* "They describe the act of being prostituted as unwanted, violating, and assaultive." Leidholdt, *supra* note 107, at 172.

*A. Reconceptualizing Legal Presumptions and Role Stereotypes*

“[O]rder cannot be secured merely through fear of punishment for its infraction . . . the fitting remedy for evil counsels is good ones.<sup>183</sup>

Governments and society must learn to not be so fast to label a girl caught up in the commercial sex trade as a prostitute. Many, many of these individuals were helpless children on the streets when pimps and sexual predators offered them “safety” if they came to work for them.<sup>184</sup> These children then grow up in a cycle of sexual exploitation, abuse of trust and violence. They will have sustained mental damage over the course of their entire life, and they may have no idea how to get out of it, nor what to do with themselves if they do escape. When they are dismissed so easily as being prostitutes out of their own choice, they are labeled with the stigma of a social outcast deserving of no one’s help, much less long term care. This is particularly ironic given that the states consistently pass laws that affirm a child cannot legally consent to having sex.<sup>185</sup> If a child cannot consent to the act of sex, how is it the justice system can label this child a juvenile delinquent and a prostitute?<sup>186</sup> If the child is legally unable to consent to the underlying act of the crime of prostitution, how can the child be a criminal? No one would dare conceive of calling child, who is sexually exploited by a family member, a criminal. A child exploited for commercial sex is equally a victim, and just as certainly not a criminal. The label of prostitute allows the people who exploit children and women, along with the rest of society, to see the girl as bad, thus the guilt of doing nothing

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<sup>183</sup> *Whitney v. California*, 274 U.S. 357, 375 (1927).

<sup>184</sup> See Leidholdt, *supra* note 107, at 172. There is a very tight correlation between childhood sexual abuse and prostitution. *Id.* “Studies real that between 55 and 90 percent of prostituted women have histories of childhood sexual abuse.” *Id.*

<sup>185</sup> See, e.g., *Ellison v. State*, 2009 WL 708321, 4 (G.A. App. Mar. 19, 2009). “[A] child does not have the capacity to consent to a sexual act.” *Id.* Further examples include Texas law that make sex with a child a *per se* sexual assault. See *West v. State*, 2008 WL 4899189, 3 (Tex. App. Nov. 14, 2008).

<sup>186</sup> See Nesheba Kittling, *God Bless the Child: The United States Response to Domestic Juvenile Prostitution*, 6 NEV. L.J. 913, 913 (2006). “[T]he Government criminalizes domestic juvenile prostitutes.” *Id.*

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to help her recedes in the corners of her dark existence. No one “ask[s] this child where she comes from, to learn that she is someone’s daughter.”<sup>187</sup>

Traffickers and consumers force the label of prostitute on the victims of the commercial sex trafficking industry, and society is quick to use this label as a reason to ignore women who are stripped of their human rights, human dignity and human empathy. Traffickers happily revel in the perception of society that “prostitution and trafficking can *appear voluntary*.” The pressing solution for the chronic indignity of sexually trafficked women is for the U.S. Government, state governments and NGOs to work to dispel this myth that society so readily accepts. Vast portions of society must be educated to understand that prostitution is virtually never taken up freely, nor do the women who fall into it have any number of professional opportunities at their disposal. The myth of the voluntary prostitute is a lie told by wicked slavemongers. It is an instrument of deceit crafted to strip away a woman’s dignity,<sup>188</sup> and to enable those who use her to blind their eyes to her human form. Society must come to understand the truth that most prostituted women long for escape and need extraordinary help to accomplish it.<sup>189</sup> Once this truth becomes universally understood, the goodhearted among society will surely take a more active role in reporting, looking after, and contributing to the long term recovery of victims. The chains of trafficking induced PTSD will then begin to loosen, and dignity will have a chance to speak to the heart of every woman once a victim.

### *B. The Hope of the Future*

The objective is imperative. Just like my childhood hope that

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<sup>187</sup> See SMITH, *supra* note 174, at 79.

<sup>188</sup> See Freed, *supra* note 147, at 139. The girls who are prostituted and sexually trafficked are acutely aware of how society and their own families see them after they have been used as prostitutes. *Id.* The shame and stigma are so severe that even when they recover and make progress in life, they cannot tell people about their past. *Id.*

<sup>189</sup> See Farley, *supra* note 114, at 65.

people would escape Communism and be free, our foremost hope today is that all who are enslaved by human traffickers will be freed by nightfall. Yet, just as the fall of Communism was not enough to make people free, rescuing the victims of human trafficking will not end their nightmare. Their minds must be as free as their bodies before their dignity is truly to be restored to them. A free mind is one that is not taunted by stigma, nightmares, flashbacks, heart palpitations, and perpetual feelings of being back in the middle of their trafficker's violence. A freed mind is one that can understand a safe place and the truth that the danger is gone forever. This is why treating human trafficking induced PTSD is every bit as vital as rescuing the victims. Criminal laws to punish traffickers and an international framework to eliminate the root causes of human trafficking are, of course, vital. Nonetheless, a peaceful world will not be possible until the world is full of peaceful minds— people at rest from the fear of harm, who may walk out of their doors every morning and be free.