

# MODERN-DAY SLAVERY ECLIPSING THE SUNSHINE STATE COMPELS SAFE HARBOR LEGISLATION IN FLORIDA

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*From the day of our founding, we have proclaimed that every man and woman on this Earth has rights, and dignity, and matchless value . . . and no one deserves to be a slave.*<sup>1</sup>

## I. Introduction

Freedom from slavery is widely accepted as a fundamental human right;<sup>2</sup> however, approximately 800,000 men, women, and children worldwide have been denied this right as victims of human trafficking, which is recognized as modern-day slavery.<sup>3</sup> The

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<sup>1</sup> Second Inaugural Address of President George W. Bush, 43 WEEKLY COMP. PRES. DOC. 74 (Jan. 20, 2005).

<sup>2</sup> See, e.g., HUMAN TRAFFIC AND TRANSNATIONAL CRIME: EURASIAN AND AMERICAN PERSPECTIVES 127 (Louise Shelley & Sally Stoecker eds., 2005) [hereinafter AMERICAN PERSPECTIVES] (recognizing the United States' declaration of unalienable human rights in an analysis explaining the involvement of organized crime in perpetuating human trafficking); Rebecca L. Wharton, *A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act*, 16 WM. & MARY J. WOMEN & L. 753, 756 (2010) (stating “[t]he right not to be held in slavery or servitude is generally recognized as a fundamental human right”).

<sup>3</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2008, at 8 (2008). But see U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2010, at 7 (2010) [hereinafter TIP REPORT 2010]. In 2010, the United States Department of State reported that there are 12.3 million “[a]dults and children in forced labor, bonded labor, and forced prostitution around the world.” TIP REPORT 2010, *supra*. This implies that slavery is still clearly in existence worldwide and involves more than

transnational aspect of this offense leaves virtually no country unaffected. Although some trafficking instances occur purely within one nation's borders, most human trafficking offenses involve a constant flow of people from origin countries through transit areas and into destination countries.<sup>4</sup> The pervasive scale that human trafficking has realized is evidenced by the fact that it is a \$9.5 billion criminal operation, which capitalizes on the exploitation of human beings as profit-rendering commodities.<sup>5</sup> What separates this phenomenon from other organized illicit activity, including human smuggling and drug trafficking, is the key element of exploitation of one human being by another.<sup>6</sup> Victims of human trafficking are

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acts of human trafficking. *Id.* See *infra* note 29 and accompanying text, for further discussion of this idea.

<sup>4</sup> See HUMAN SMUGGLING AND TRAFFICKING CTR., FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING 1 (2006) [hereinafter FACT SHEET: HUMAN SMUGGLING DISTINCTIONS], available at <http://www.state.gov/documents/organization/90541.pdf> (identifying the distinctions between the crimes of human smuggling and human trafficking).

<sup>5</sup> Stephanie L. Mariconda, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L.J. 151, 153 (2009) ("Currently, human trafficking is the third largest criminal activity in the world behind drug and arms trafficking.").

<sup>6</sup> FACT SHEET: HUMAN SMUGGLING DISTINCTIONS, *supra* note 4, at 2. The Human Smuggling and Trafficking Center defines human smuggling as "the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries [sic] laws" and notes:

Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, trafficking specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. It follows that fraud, force or coercion all plays [sic] a major role in trafficking.

It may be difficult to make a determination between smuggling and trafficking in the initial phase. Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases the victim may believe they are being smuggled, but are really being trafficked, as they are unaware of their fate.

*Id.* at 2–3.

subjected to unimaginable abuses and suffer lifelong physical and psychological trauma.<sup>7</sup> Unfortunately, the abuse and exploitation may not cease when a victim is rescued or escapes from the situation since victims are at a high risk of being re-trafficked when they are not afforded basic protections and opportunities for rehabilitation after the fact.<sup>8</sup> Without shelter, care, and security, liberated victims often see no other option than to return to the ones who exploited them and be victimized a second time.<sup>9</sup>

Sadly, the popular perception in the United States is that slavery is a crime of the past and, if slavery does still exist, it occurs somewhere else far away.<sup>10</sup> But, in reality, between 14,500 and 50,000 of human trafficking victims will be trafficked throughout the United States for exploitation as labor and sex slaves.<sup>11</sup> Furthermore, traffickers see Florida as particularly attractive for carrying out this illicit activity.<sup>12</sup> Following international trends and the United States federal government's groundbreaking enactment of comprehensive legislation addressing human trafficking, the Florida Legislature enacted its own statutory scheme for combating the issue.<sup>13</sup> Unfortunately, Florida's efforts fall short in offering assistance and protection for victims that will prevent them from being re-

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<sup>7</sup> See *infra* Part II.C.

<sup>8</sup> See Denise Brennan, *Key Issues in the Resettlement of Formerly Trafficked Persons in the United States*, 158 U. PA. L. REV. 1581, 1584 (2010); Michelle Crawford Rickert, *Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level*, 4 LIBERTY U. L. REV. 211, 275 (2010).

<sup>9</sup> See Marisa Nack, *The Next Step: The Future of New York State's Human Trafficking Law*, 18 J.L. & POL'Y 817, 839 (2010).

<sup>10</sup> See Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the "Perfect Victim" Paradigm*, 26 BERKELEY J. GENDER L. & JUST. 204, 208–10 (2011) (explaining how the media has influenced the American people's understanding of human trafficking).

<sup>11</sup> See, e.g., Sarah King, *Human Trafficking: Addressing the International Criminal Industry in the Backyard*, 15 U. MIAMI INT'L & COMP. L. REV. 369, 372 (2008) (reporting that there are between 14,500 and 17,500 victims in the United States); Mariconda, *supra* note 5, at 154 (stating that there may be as many as 50,000 victims in the United States); Nack, *supra* note 9, at 818 (estimating 17,500 foreign nationals trafficked into the United States).

<sup>12</sup> See *infra* Part III.A.

<sup>13</sup> See *infra* Part III.B.

trafficked.<sup>14</sup> Until a victim-centered approach is utilized, the Sunshine State will continue to see modern-day slavery eclipse its ability to offer the American dream.<sup>15</sup>

Therefore, the principal contention of this article is that the Florida Legislature should adopt non-discriminatory safe harbor legislation providing immediate emergency services to all genders, ages, and nationalities of human trafficking victims.<sup>16</sup> Part II of this article discusses the issue within a global framework and how the international community has progressively responded.<sup>17</sup> Part III details the background of human trafficking in the United States and the current federal legislation being utilized to eradicate modern-day slavery.<sup>18</sup> Part IV analyzes the issue at the state level in Florida and its legislative efforts to follow the federal government's lead.<sup>19</sup> Finally, Part V recommends steps the Florida Legislature can take to embrace a victim-centered approach to combating human trafficking through safe harbor legislation.<sup>20</sup>

## *II. Human Trafficking as a Global Phenomenon*

Although crossing borders is not required to make a person a victim of human trafficking,<sup>21</sup> the fact that most incidents occur transnationally cannot be ignored and this is what has spurred the international community into action. Certain regions of the world are regularly identified as predominantly origin, transit, or destination areas, but it is common for a region to see an overlap, such as Southeast Europe, which is reported as a major origin and transit region.<sup>22</sup> Identifying and analyzing these trends, as well as

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<sup>14</sup> *See infra* Part III.C.

<sup>15</sup> *See infra* Part V.

<sup>16</sup> *See infra* Parts IV.B–C.

<sup>17</sup> *See infra* Part II.

<sup>18</sup> *See infra* Part III.

<sup>19</sup> *See infra* Part IV.

<sup>20</sup> *See infra* Part V.

<sup>21</sup> FACT SHEET: HUMAN SMUGGLING DISTINCTIONS, *supra* note 4, at 3.

<sup>22</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, TRAFFICKING IN PERSONS:

trends surrounding victim characteristics and prevalent forms of trafficking, explains the progressive responses by international organizations to the issue.

*A. Progressive Responses from the International Community*

Drawing on traditional notions of slavery as a legal institution regulating people as permanent chattels, the earliest international efforts to confront the modern trafficking phenomenon were narrowly tailored and failed to grasp the severity of the issue. One of the earliest international agreements to address the issue was the International Agreement for the Suppression of the White Slave Traffic in 1904.<sup>23</sup> The name of the agreement suggests its limitations and narrow view of the problem. Europeans became alarmed by the idea of white women being moved across borders as prostitutes so

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GLOBAL PATTERNS 80 (2006), available at [http://www.unodc.org/pdf/trafficking\\_inpersons\\_report\\_2006-04.pdf](http://www.unodc.org/pdf/trafficking_inpersons_report_2006-04.pdf). The United Nations Office on Drugs and Crime has made the following findings regarding the transnational element of human trafficking:

The Commonwealth of Independent States, Central and South Eastern Europe, West Africa, and South-Eastern Asia, are the most reported origin regions. Countries in Western Europe, North America and Asia, particularly in Western Asia, are reported more frequently as destination countries. Countries within Central and South Eastern Europe and Western Europe are highly reported transit regions. Beside Europe, South-Eastern Asia, Central America and Western Africa are also reported transit (sub-) regions. . . . With respect to the nationality of the traffickers, the largest number of reported references are to nationals of Asia, followed by Central and South Eastern Europe and then Western Europe. With respect to victim profiles at the global level, adult women are most frequently reported to be victims, followed by girls, children, boys, and men.

*Id.* The report also concluded that, at the global level, source institutions report cases of trafficking for sexual exploitation more often than trafficking for forced labor. *Id.* Furthermore, characteristics identified with organized crime groups involving human trafficking activities showed similarities to organized crime groups involved with other illicit activities. *Id.*

<sup>23</sup> International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 426, 1 L.N.T.S. 83.

the international community reacted in order to ensure that women and girls were protected from the horrors of sex slavery.<sup>24</sup> The limited focus on white women and the emphasis on protection over prosecution<sup>25</sup> led to the adoption of the International Convention for the Suppression of the White Slave Traffic in 1910.<sup>26</sup> The goal of this agreement was to impose criminal liability on the perpetrators of sex trafficking activities, and certain provisions set the standard for the criminalization of human trafficking activities today.<sup>27</sup>

Soon after these instruments pressed the issue of sex trafficking to the forefront, modern trafficking in human beings began to be identified with past notions of traditional slavery in the form of forced labor. This prompted the international community to react with the Slavery Convention of 1926,<sup>28</sup> which aimed at putting an end to all forms of slavery. The Slavery Convention defined

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<sup>24</sup> Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213, 216 (1997).

<sup>25</sup> *Id.* (“The provisions of the Agreement were aimed at protecting victims, not at punishing procurers. This approach proved ineffective . . .”).

<sup>26</sup> International Convention for the Suppression of White Slave Traffic, May 4, 1910, III L.N.T.S. 278.

<sup>27</sup> Roza Pati, *States’ Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus & Russia*, 29 B.U. INT’L L.J. 79, 105–06, (2011). Professor Pati analyzes the similarities to trafficking agreements of today and notes:

As seen in the wording of the [1910 Agreement], consent is irrelevant in cases when the victim is a minor. Article 2 describes the prohibited means against women and girls ‘over age,’ namely fraud, violence, threats, abuse of authority, or any other method of compulsion. However, the drafters felt the necessity of clarifying that this is to be considered a minimum standard, and countries were free to punish other acts as well, such as the procurement of women over age, even absent fraud or compulsion. These criminal elements, as well as the attempt to coordinate the anti-trafficking efforts of the states through extradition treaties or the sharing of information resemble the globally accepted definition of human trafficking today[.]

*Id.* (footnotes omitted).

<sup>28</sup> Slavery Convention of 1926, Sept. 25, 1926, 46 Stat. 2183, T.S. No. 778, 60 L.N.T.S. 253.

slavery specifically as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>29</sup> This definition was more inclusive than previous definitions regarding the modern trafficking phenomenon because it overcame the conceptual limitation of chattel slavery and encompassed labor and sex trafficking activities. Although the Slavery Convention created obligations for nation-states to act expeditiously and affirmatively in the fight to end slavery, experts felt that it did not do enough.<sup>30</sup>

The International Labor Organization (ILO) was also instrumental in recognizing that the problem of human trafficking was more than exploiting persons for sexual services, and so the ILO adopted both the 1930 Forced Labor Convention<sup>31</sup> and the 1957

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<sup>29</sup> Slavery Convention of 1926, *supra* note 28, at art. I § 1. The International Criminal Tribunal for the former Yugoslavia (“ICTY”), in the case of *Prosecutor v. Kunarac*, determined that this definition “reflects customary international law.” Pati, *supra* note 27, at 128. Utilizing this definition, the ICTY further determined that Dragoljub Kunarac was guilty of enslavement for holding Bosnian Muslim women and girls as domestic servants and exercising complete ownership over them during the Bosnian Serb reconnaissance in the early 1990s. *Id.* at 130; *Prosecutor v. Kunarac*, Case No. IT-96-23-T & IT-96-23/1-T, Trial Court Judgment (Int’l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001). “Anyone who reads this judgment of the ICTY cannot but observe the absolute similitude of enslavement to the crime of human trafficking. . . . [The ICTY] laid the foundation for applying the prohibition of slavery to human trafficking.” Pati, *supra* note 27, at 130. This application can be seen throughout the European Court of Human Rights’ decision in *Rantsev v. Cyprus and Russia*. *Rantsev v. Cyprus*, 51 Eur. H.R. Rep. 1 (2010). See Pati, *supra* note 27, for an in-depth analysis of how traditional views of slavery are reconciled with the emerging notions of human trafficking as modern-day slavery in the *Rantsev* case.

<sup>30</sup> Pati, *supra* note 27, at 107 (“Despite its good intentions, the Slavery Convention did not have enough teeth.”). Under the provisions of the Slavery Convention, state parties were able to limit the application of the Convention in any part or all of their territory and denunciation of the Convention was permitted at any time. Slavery Convention of 1926, *supra* note 28, at art. 2(a)–(b), 9; see also Pati, *supra* note 27, at 107–08. Furthermore, the Slavery Convention lacked a supervisory body with the power to monitor implementation and enforce its provisions. Farrior, *supra* note 24, at 221.

<sup>31</sup> Forced Labor Convention, ILO Convention 29, June 28, 1930, 39 U.N.T.S. 55.

Abolition of Forced Labor Convention.<sup>32</sup> The conventions define forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>33</sup> Similar to the Slavery Convention of 1926, the ILO Conventions call on their nation-states parties to work towards the complete abolition of forced labor; however, the ILO has learned from the weaknesses of the Slavery Convention and has mandated strict reporting requirements on nation-states parties to its conventions.<sup>34</sup> Additionally, the ILO has established the ILO Committee of Experts on the Application of Conventions and Recommendations to review the reports, observe governments, and make recommendations on how nation-states parties can comply with convention provisions<sup>35</sup> and allows nation-states parties, employers, and workers’ organizations to file complaints on failures to comply with ratified convention provisions.<sup>36</sup> Recognizing the existence of multiple forms of modern-day slavery and working towards establishing supervisory bodies to monitor nation-state compliance with conventions they have ratified were key developments in the past responses of international bodies leading towards the holistic and effective documents in existence today.<sup>37</sup>

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<sup>32</sup> 1957 Abolition of Forced Labor Convention, ILO Convention 105, June 25, 1957, 320 U.N.T.S. 291.

<sup>33</sup> Forced Labor Convention, *supra* note 31, at art. 2(1).

<sup>34</sup> Constitution of the International Labor Organization, Oct. 9, 1946, art. 22, 62 Stat. 3532, 15 U.N.T.S. 18.

<sup>35</sup> Fariior, *supra* note 24, at 223–24.

<sup>36</sup> *Id.* at 224.

<sup>37</sup> *See* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol] (establishing the most recent international minimum standards for state reaction to the modern phenomenon of human trafficking). *See* Fariior, *supra* note 24, at 216–35, for a thorough discussion of international agreements leading up to the Palermo Protocol.



*B. The United Nations' Responses: Leading to a Comprehensive Approach*

Since its inception, the United Nations has constantly reaffirmed its commitment to promoting “the dignity and worth of the human person, in the equal rights of men and women.”<sup>38</sup> However, similar to other early conventions on human trafficking, the United Nations’ initial efforts to address the problem were under-inclusive. In 1949, this newly established international organization for world peace sought to intensify the previous efforts of the League of Nations in forming the Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others<sup>39</sup> (“1949 Convention”). The 1949 Convention ignored forms of trafficking other than trafficking for sexual services, and its principle aim was the prosecution of perpetrators of trafficking for prostitution, as well as the total abolition of brothels.<sup>40</sup> Criticisms of this means of addressing the issue quickly arose because the focus on prosecution ignored the rights-based approach to international agreements that was emerging in the post-World War II era.<sup>41</sup> For example, victim protection and repatriation were contingent on whether the victim’s “expulsion is ordered in conformity with

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<sup>38</sup> U.N. Charter, 59 Stat. 1033, T.S. No. 993 (1945), *available at* <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

<sup>39</sup> Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others, Mar. 25, 1950, 96 U.N.T.S. 271 [hereinafter 1949 Convention].

<sup>40</sup> *Id.* at 274.

<sup>41</sup> *See* Fariior, *supra* note 24, at 219–21 (discussing the weaknesses of the 1949 Convention). In the wake of the tragedies that occurred during World War II, the United Nations General Assembly adopted a non-binding resolution, known as the Universal Declaration of Human Rights, which advocates for universal human rights standards to be recognized and enforced by member states. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), *available at* [http://www.un.org/events/humanrights/2007/hrphotos/declaration%20\\_eng.pdf](http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf). This document serves as a guideline for member states to adopt legislation from a human rights-oriented approach that seeks to protect the freedom and security of all human beings. *Id.* Particularly, Article 4 specifies that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” *Id.* at Art. 4.

[domestic] law,”<sup>42</sup> which left victims in a continued vulnerable situation where they could be deported to the country where they were initially trafficked since destination countries were hesitant to assist undocumented persons.<sup>43</sup> The cumulative weaknesses of the 1949 Convention alerted the United Nations of the need for a more comprehensive approach to curtailing the growing trafficking problem.<sup>44</sup>

The development of international human rights law has done much to promote awareness of the human trafficking crisis; and the United Nations has been active in ensuring that its most recent conventions reflect a respect for the human rights of all people, especially in the area of slavery. The United Nations has been able to do this even with non-human rights treaties. Specifically, the Rome Statute of the International Criminal Court (Rome Statute), which was adopted in 1998 to establish the International Criminal Court (ICC), references enslavement as a “crime against humanity.”<sup>45</sup> The Rome Statute is a multilateral, criminal law treaty that empowers the ICC to “exercise jurisdiction over nationals of numerous countries for the most serious crimes of international concern.”<sup>46</sup> Criminalizing human trafficking at the international

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<sup>42</sup> 1949 Convention, *supra* note 39, at 283-84, art. 19(2).

<sup>43</sup> See Fariior, *supra* note 24, at 219 (explaining the qualifying provisions in the 1949 Convention that made it ineffective in suppressing the problem).

<sup>44</sup> *Id.* The United Nations did recognize that the modern phenomenon of human trafficking involved more than sexual services, which is why it sought to bring the 1926 Slavery Convention into its cooperative framework through the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *entered into force* Apr. 30, 1957, 266 U.N.T.S. 40. However, the two major forms of trafficking were confined to separate documents until the adoption of the Palermo Protocol in 2000. See Palermo Protocol, *supra* note 37.

<sup>45</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998), reprinted in 37 I.L.M. 999 (1998), at art. 7(1)(c) [hereinafter Rome Statute]. Importantly, the treaty defines enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.” *Id.* at art. 7(2)(c).

<sup>46</sup> Gennady M. Danilenko, *The Statute of the International Criminal Court*

level and providing an international venue for prosecuting perpetrators have been instrumental in drawing attention to the severity of the issue.

This theme was capitalized on when the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol)<sup>47</sup> in 2000. One expert noted, “On a global level, the most important modern-day instrument dealing specifically with the complex issue of trafficking in human beings is no doubt the Palermo Protocol.”<sup>48</sup> Fundamentally, the Palermo Protocol establishes the universally accepted definition of human trafficking and provides practical guidelines in the form of minimum standards for how individual countries should address the problem of trafficking using the “three Ps” scheme.<sup>49</sup> This is expressed in its

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*and Third States*, 21 MICH. J. INT’L L. 445, 448 (2000). As of October 2012, there are 121 state parties that have fully ratified the treaty, including Brazil, Canada, Democratic Republic of the Congo, France, Italy, and the United Kingdom. UNITED NATIONS TREATY COLLECTION, ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, *available at* [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en) (last visited Mar. 18, 2012). The United States signed the treaty in 2000. *Id.* In a letter released on May 6, 2002, the U.S. Under-Secretary of State for Arms Control and International Security, John R. Bolton, informed the United Nations Secretary General, Kofi Annan, that “the United States does not intend to become a party to the treaty.” W. MICHAEL REISMAN ET AL., INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE 1320 (2004).

<sup>47</sup> Palermo Protocol, *supra* note 37.

<sup>48</sup> Pati, *supra* note 27, at 115. *Contra* Ryszard Piotrowicz, *The Legal Nature of Trafficking in Human Beings*, 4 INTERCULTURAL HUM. RTS. L. REV. 175 (2009) (favoring a criminal law approach to human trafficking instead of a comprehensive approach from a human rights perspective).

<sup>49</sup> Pati, *supra* note 27, at 115–16. The Palermo Protocol defines trafficking in persons to mean:

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

Preamble, which reads:

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, *requires a comprehensive* international approach in the countries of origin, transit and destination that includes measures to *prevent* such trafficking, to *punish* the traffickers and to *protect* the victim of such trafficking, including by protecting internationally recognized human rights.<sup>50</sup>

The declarations made in this opening statement are further reflected throughout the text of the document.<sup>51</sup> Most notably, the progressive definition encompasses and identifies human trafficking's multiple forms, including sexual exploitation, forced labor, and slavery, which were lacking in previous documents.<sup>52</sup> Furthermore, the definition breaks down the offense into three elements that promote further uniformity in criminalization of the act of human trafficking for those countries choosing to adopt the Palermo Protocol's approach.<sup>53</sup>

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exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Palermo Protocol, *supra* note 37, at art. 3(a).

<sup>50</sup> Palermo Protocol, *supra* note 37, at pmb. (emphasis added) (proffering the three "Ps" approach as focusing on prevention, punishment (or prosecution), and protection as they relate to different elements of human trafficking). Furthermore, in 2008, the United Nations began promoting the construction of a fourth part of the approach to combat trafficking: *partnerships* (the "fourth P"). Maudisa McSween, *Investing in the Business Against Human Trafficking: Embracing the Fourth "P" -- Partnerships*, 6 INTERCULTURAL HUM. RTS. L. REV. 283, 294–96 (2011). This part of the equation would focus on encouraging the private sector to "merge and invest in the anti-trafficking business, especially on the international scale." *Id.* at 296.

<sup>51</sup> Palermo Protocol, *supra* note 37. Specifically, Article 5 addresses criminalization of trafficking in persons to satisfy the prosecution prong, Articles 6–8 address assistance to victims to satisfy the protection prong, and Articles 9–13 address measures countries can utilize to suppress the problem to satisfy the prevention prong. *Id.*

<sup>52</sup> *See id.* at art. 3(a).

<sup>53</sup> *Id.* The three parts are (1) the act, which is "recruitment, transportation, transfer, harbouring or receipt of persons"; (2) the means, which is "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the

Member parties to the United Nations Convention Against Transnational Organized Crime (UNCATOC) must abide by the mandates of the Palermo Protocol,<sup>54</sup> including the adoption of domestic legislation to criminalize the offense, the consideration of compassionate and humanitarian factors when dealing with victims, and the cooperation with other parties with the exchange of information.<sup>55</sup> Part of the strength of the United Nations' approach with this protocol is the use of a monitoring body, the Conference of the Parties, to monitor party compliance and make recommendations for improvement of the UNCATOC and the Palermo Protocol.<sup>56</sup> However, the provisions are weakened by qualifiers attached to certain mandates, such as “[s]ubject to the basic concepts of its legal system”<sup>57</sup> and “to the extent possible under its domestic law,”<sup>58</sup> which serve to maintain individual nation-state sovereignty in legislative decision-making at the expense of firmly addressing the human trafficking issue. Another criticism is that the Palermo Protocol’s framework ignores human trafficking in the purely domestic context. The argument suggests, “[I]t is entirely foreseeable that victims (and their traffickers) in an intra-national context could fall through the cracks.”<sup>59</sup>

Although these and other criticisms of the Palermo Protocol

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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”; and (3) the intent, which is “for the purpose of exploitation.” *Id.*

<sup>54</sup> Palermo Protocol, *supra* note 37, at art. 1(1) (“This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.”).

<sup>55</sup> *Id.* at art. 5, 7, and 10.

<sup>56</sup> Pati, *supra* note 27, at 119.

<sup>57</sup> Palermo Protocol, *supra* note 37, at art. 5(2)(a) (discussing criminalizing the attempt of a trafficking offense under domestic law).

<sup>58</sup> *Id.* at art. 6(1) (addressing the protection of privacy of victims).

<sup>59</sup> King, *supra* note 11, at 377. However, on the other hand, the framework for domestic legislation with transnational considerations can lead member parties to consider individual domestic issues that each legislature should also address. *Contra id.* Each individual legislature is competent to follow the guidelines and minimum standards of the Palermo Protocol while keeping its national safety and security a priority and enacting legislation addressing human trafficking in a purely domestic setting where necessary. *Contra id.*

204 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 7]

exist, another international agreement addressing all of the key elements of the modern phenomenon remains to be seen. Since 2000, groundbreaking legislation has been emerging in individual nation-states, as well as within regional intergovernmental organizations,<sup>60</sup> that addresses human trafficking utilizing the three “Ps” approach. Pioneering the fight against modern-day slavery is the United States. Aside from adopting legislation that closely mirrors the provisions in the Palermo Protocol, the United States has taken charge over monitoring international compliance with its own minimum standards that were established in its domestic legislation.<sup>61</sup> Similar to the plight of the international community, the United States has had to overcome its own obstacles to achieve comprehensive legislation and make its own efforts more effective.<sup>62</sup>

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<sup>60</sup> *E.g.*, Eur. Consult. Ass., Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. No. 197, available at [http://www.coe.int/T/E/human\\_rights/trafficking/PDF\\_conv\\_197\\_trafficking\\_e.pdf](http://www.coe.int/T/E/human_rights/trafficking/PDF_conv_197_trafficking_e.pdf); SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prosecution, *opened for signature* Jan. 5, 2002, Humantrafficking.org, available at <http://www.saarc-sec.org/userfiles/conv-trafficking.pdf>.

<sup>61</sup> *See infra* Part III.D (examining the United States’ federal legislation to address the phenomenon of human trafficking). The United States’ domestic legislation empowers the Department of State to unilaterally research and report on whether other countries, especially those receiving economic and security assistance, are complying with the United States has established as minimum standards for addressing the issue of human trafficking. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, Division A (2000). Each year, the Department of State issues a Trafficking in Persons Report that discusses emerging issues with the problem and ranks each country on a tier system based on their compliance with the United States minimum standards and efforts in the fight against human trafficking. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2011* (2011). See Mohamed Y. Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 *VAND. J. TRANSNAT’L L.* 1355, 1372 (2008), for an in-depth analysis of the reporting mechanisms utilized in the United States for human trafficking.

<sup>62</sup> *See infra* Part III. Perhaps not surprisingly, the debates that occurred in Vienna during the making of the Palermo Protocol involved many United States representatives who then shaped the United States domestic legislation with the provisions of the Palermo Protocol in mind. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 *MICH. J. INT’L L.* 437, 451 (2006) [hereinafter Chuang, *Global Sheriff*].

### *III. History of Human Trafficking in the United States*

The concepts of forced labor and sex services are not foreign ideas in the United States since slavery and prostitution have consistently played a role in society since the development of the new world.<sup>63</sup> Analyzing historical challenges will facilitate an understanding of how the different types of modern-day slavery have permeated the country. Although the United States is making great strides to prevent human trafficking, the problem is far from being suppressed.<sup>64</sup>

#### *A. The Evolution from Slavery to Labor Trafficking*

Slavery and the slave trade are considered the origins of modern-day trafficking in human beings.<sup>65</sup> The traditional image of slavery and forced labor in the United States consists of the buying and selling of African-Americans for use and exploitation in agricultural and domestic labor sectors.<sup>66</sup> In the early years of the United States, society was divided into classes largely determined by an individual's race.<sup>67</sup> Although the Declaration of Independence

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<sup>63</sup> See Editorial, *Slavery in the Modern Age*, N.Y. TIMES, July 2, 2011, at A18 (explaining that slavery did not end with the Thirteenth Amendment and modern-day slavery is a growing international problem).

<sup>64</sup> See ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED xxvii (2007) (assessing the United States legislation regarding human trafficking and the policy stance of the country compared to the international focus).

<sup>65</sup> TOM OBOKATA, TRAFFICKING OF HUMAN BEINGS FROM A HUMAN RIGHTS PERSPECTIVE: TOWARDS A HOLISTIC APPROACH 10 (2006) (analyzing the transnational issue of human trafficking from a human rights perspective).

<sup>66</sup> See Sandra L. Rierson, *The Thirteenth Amendment as a Model for Revolution*, 35 VT. L. REV. 765, 778–81 (2011) (reflecting on how American society today has been impacted by its history with slavery and what America has learned in its application and implementation of the Thirteenth Amendment).

<sup>67</sup> See OBOKATA, *supra* note 65, at 12. See generally Paul Finkelman, *The Constitution and the Intention of the Framers: The Limits on Historical Analysis*, 50 U. PITT. L. REV. 349 (1989) (discussing the original intentions of the United States Constitution and analyzing the role of race and slavery in its development).

206 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 7]

praised equality among all men,<sup>68</sup> inequality was commonplace where white males enjoyed every right under the Declaration while slaves were considered property of their owners.<sup>69</sup> However, slavery continued in part because it allowed the early United States economy to thrive substantially.<sup>70</sup>

The slave trade maintained a strong presence in the United States throughout the greater part of the nineteenth century.<sup>71</sup> The influential leadership of President Abraham Lincoln during the Civil War paved the way for the ratification of the Thirteenth Amendment to the United States Constitution in 1865.<sup>72</sup> The amendment states

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Tom Obokata specially notes how race defined society during the early nineteenth century:

In interpreting the Thirteenth Amendment in *Civil Rights Cases*, the United States Supreme Court made a distinction between Roman slavery and American slavery, and stated that while the former was about enslaving whites, the latter related only to black Africans. This illustrates that race was perceived as a defining element of slavery in the United States.

OBOOKATA, *supra* note 65, at 12 (footnotes omitted).

<sup>68</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); *see also* U.S. CONST. pmbl. (expressing that one purpose of the Constitution was to secure the blessings of liberty to the people of the United States). The most notorious claim of equality in the United States came from the Declaration of Independence, which states, “We hold these truths to be self-evident, *that all men are created equal*, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, *Liberty* and the pursuit of Happiness.” THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added).

<sup>69</sup> *See* Rierson, *supra* note 66, at 789.

<sup>70</sup> Wharton, *supra* note 2, at 763–64. Without the exploitation of slave labor, the plantation owners would not have been able to keep up with the growing demand for cotton both domestically and internationally. *Id.* As the United States became a bigger actor on the global economic stage, the role of slaves became more important and the United States delved deeper into a class-based society. *Id.*

<sup>71</sup> *See generally* Rierson, *supra* note 66.

<sup>72</sup> *Id.* at 851–57; *see also* The Emancipation Proclamation, 12 Stat. 1268 (1863). In the midst of the American Civil War, President Abraham Lincoln issued the Emancipation Proclamation, which officially prioritized the abolition of slavery as the central goal of the war. 12 Stat. 1268. A defining portion of the proclamation says that “all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free.” *Id.*



that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”<sup>73</sup> The amendment also expressly vested Congress with the power to enforce its provisions.<sup>74</sup> Through the Antipeonage Act of 1867,<sup>75</sup> Congress carried out the fundamental purposes of the Thirteenth Amendment: to end slavery and forced labor and to enforce a system of laborers able to freely and voluntarily enter into employment relationships throughout the United States.<sup>76</sup> However, the abolition of slavery yielded to the concept of sharecropping in the south.<sup>77</sup> In this alternative means of oppressive labor, farm owners contracted with laborers, mostly former slaves, to farm their lands and compensated them with only food and shelter.<sup>78</sup> Sharecropping ceased to be a significant aspect of the southern agricultural sector after the 1930s, but oppressive labor practices still lurked in the shadows.<sup>79</sup>

Today, the agricultural sector relies heavily on the use and

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<sup>73</sup> U.S. CONST. amend. XIII, § 1.

<sup>74</sup> *Id.* § 2 (“Congress shall have power to enforce this article by appropriate legislation.”).

<sup>75</sup> The Antipeonage Act, 42 U.S.C. § 1994 (1948) (implementing the ideas of the Thirteenth Amendment into a federal statute); 18 U.S.C. § 1581 (1948) (establishing the punishments for engaging in acts of peonage). The Antipeonage Act effectuates that “[t]he holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States.” § 1994. Specifically, anyone who engages in acts of peonage will be fined or imprisoned for no more than twenty years, or both, and if the acts of peonage result in death, or include kidnapping, sexual abuse, or an attempt to kill, kidnap, or sexually abuse, then the perpetrator shall be fined or imprisoned for any term of years, including a term of life imprisonment, or both. § 1581.

<sup>76</sup> *Pollock v. Williams*, 322 U.S. 4, 17 (1944) (noting that “[t]he undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States”).

<sup>77</sup> See E. Christi Cunningham, *Exit Strategy for the Race Paradigm*, 50 HOW. L.J. 755, 755–56 (2007) (identifying wholism as a means of escape from the race paradigm in the United States).

<sup>78</sup> Wharton, *supra* note 2, at 764.

<sup>79</sup> See *id.* at 764.

exploitation of migrant workers, which exemplifies the influence of slavery in the United States.<sup>80</sup> The fortunate workers are paid for their labor and are able to go home to their families at night, but a significant portion of these agricultural laborers are victims of labor trafficking.<sup>81</sup> These victims reportedly come from over thirty-five different countries and are trafficked into over ninety different cities throughout the United States.<sup>82</sup> The practice of labor trafficking is not limited to the exploitation of migrant agricultural workers,<sup>83</sup> but includes exploitation of United States citizens who have been manipulated into servitude under various pretenses.<sup>84</sup> Regardless of citizenship, once enslaved, many labor trafficking victims are forced to live and work in inhumane conditions.<sup>85</sup>

Two types of labor trafficking prevail in the United States.<sup>86</sup>

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<sup>80</sup> See Kevin Bales et al., *Hidden Slaves Forced Labor in the United States*, 23 *BERKELEY J. INT'L L.* 47, 47–48 (2005) (exposing the gruesome details of modern-day slavery in the form of forced labor in an extensive study done by Free the Slaves and the Human Rights Center of the University of California, Berkeley).

<sup>81</sup> See Eileen Overbaugh, *Human Trafficking: The Need for Federal Prosecution of Accused Traffickers*, 39 *SETON HALL L. REV.* 635, 637–38 (2009).

<sup>82</sup> Bales et al., *supra* note 80, at 48. The Human Rights Center of the University of California at Berkeley and the Free the Slaves organizations report that the largest group of victims comes from China, followed by Mexico and Vietnam. *Id.* These victims are then trafficked into states with major cities and large immigrant populations, such as California, Florida, New York, and Texas. *Id.*

<sup>83</sup> See HUMAN SMUGGLING AND TRAFFICKING CTR., *DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE* 6 (2008) [hereinafter *AN INTERNAL ISSUE*], available at <http://www.state.gov/documents/organization/113612.pdf> (analyzing the issue of United States citizens being trafficked within its own borders).

<sup>84</sup> See FSU CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, *FLORIDA STRATEGIC PLAN ON HUMAN TRAFFICKING* 1–2 (2010) [hereinafter *FLORIDA STRATEGIC PLAN*]. Many runaway teenagers and homeless persons who are United States citizens are trafficked under the assumption that they will be compensated for their work. *Id.*

<sup>85</sup> See *AN INTERNAL ISSUE*, *supra* note 83, at 6. Victims of labor trafficking are likely to find themselves living on migrant farms or in labor camps. *Id.* Labor camps attempt to stay hidden from society and force large amounts of people to live in small, mobile units so that the groups of workers can easily be transported between cities depending on the harvesting season. *Id.*

<sup>86</sup> See U.S. DEP'T OF HEALTH & HUMAN SERVS., *FACT SHEET: LABOR TRAFFICKING* [hereinafter *FACT SHEET: LABOR TRAFFICKING*],

The most widely utilized form is bonded labor, also known as debt bondage or debt servitude.<sup>87</sup> Bonded labor consists of demanding labor services of victims in order to pay off an ever-increasing debt owed to the trafficker.<sup>88</sup> Victims often incur these debts from transportation into the United States and the provision of basic necessities.<sup>89</sup> The second form is forced labor, which consists of victims being compelled to work against their will by way of force, fraud, coercion, and manipulation.<sup>90</sup> Traffickers enslave these victims by restricting their freedom and threatening violence to those

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[http://www.acf.hhs.gov/trafficking/about/fact\\_labor.html](http://www.acf.hhs.gov/trafficking/about/fact_labor.html) (last visited Oct. 27, 2011) (detailing the facts about labor trafficking and how it is being addressed in the United States); Adam S. Butkus, *Ending Modern-Day Slavery in Florida: Strengthening Florida's Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 309 (2007). Some authorities and reports treat forced labor involving children (specifically, those aged from five to seventeen) as a third category of labor trafficking because of their special vulnerabilities as minors. FACT SHEET: LABOR TRAFFICKING, *supra*.

<sup>87</sup> FACT SHEET: LABOR TRAFFICKING, *supra* note 86.

<sup>88</sup> Rickert, *supra* note 8, at 223 (explaining how the debt starts with a loan the trafficker gives to the victim, usually for smuggling services, and how it multiplies when the trafficker charges the victim for living expenses and uses false accounting records or high interests rates to exacerbate the debt).

<sup>89</sup> See AN INTERNAL ISSUE, *supra* note 83, at 15. In one particularly heinous incident of labor trafficking, the Navarrete family, a group of illegal immigrants, ran a migrant worker camp that enslaved Guatemalan and Mexican immigrants using debt servitude from April 2005 until November 2007. *Id.* at 14–16. Members of the Navarrete family exerted violent attacks and threats onto the victims and forced them to work as field laborers in the agricultural sectors of Florida, North Carolina, and South Carolina. *Id.* at 14–15. Whenever a victim tried to escape, he or she was beaten severely upon his or her capture. *Id.* at 15. In order to ensure that each worker would be present and able to work the next day, the traffickers would lock them in box trucks over night or chain their legs to a pole. *Id.* The living conditions for the victims were substandard and every expense was deducted from the victims' meager wages, including food, beverages, laundry, and showers. *Id.*

<sup>90</sup> See Bales et al., *supra* note 80, at 48–49; FACT SHEET: LABOR TRAFFICKING, *supra* note 86. Forced labor exists in many sectors of the United States economy: “prostitution and sex services (46%), domestic service (27%), agriculture (10%), sweatshop/factory (5%), and restaurant and hotel work (4%). Forced labor persists in these sectors because of low wages, lack of regulation and monitoring of working conditions, and a high demand for cheap labor.” Bales et al., *supra* note 80, at 48–49.

who do not succumb to the trafficker's authority.<sup>91</sup> Sadly, in the twenty-first century, forced labor and involuntary servitude show up in many spheres of society.<sup>92</sup>

*B. The Development of Prostitution and Sex Trafficking*

Prostitution is commonly known as the world's oldest profession because some form of prostitution can be found all throughout history.<sup>93</sup> Similar to its struggle with slavery, the United States has encountered prostitution in varying degrees.<sup>94</sup> Early cases involving the prosecution of prostitution defined the act as "a female given to indiscriminate lewdness for gain."<sup>95</sup> In the late nineteenth and early twentieth centuries, prostitution became increasingly widespread as women began seeking an independent means of supporting their families outside of the home.<sup>96</sup> Specifically, they were lured to employment opportunities where sexual exploitation

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<sup>91</sup> See Bales et al., *supra* note 80, at 49; FACT SHEET: LABOR TRAFFICKING, *supra* note 86; see *infra* Part II.C (discussing the intensely abusive effects of all types of human trafficking victims). Victims are reluctant in reporting their status because the traffickers tell them that the police will only deport them or throw them in prison. Bales et al., *supra* note 80, at 49. The victims easily believe this because most of them come from countries where the law enforcement system is full of corruption. *Id.*

<sup>92</sup> Rickert, *supra* note 8, at 224–29. Michelle Rickert points out that "victims of forced labor are notoriously difficult to find, because they appear to work as everyone else." *Id.* at 225. Forced labor victims can be found working in nail salons, restaurants, hotels, and construction sites. *Id.* at 229.

<sup>93</sup> See e.g., NILS JOHAN RINGDAL, LOVE FOR SALE: A WORLD HISTORY OF PROSTITUTION 4 (1st ed. 2004) (1997) (utilizing the adage in a recount of the history of prostitution around the world); RUTH ROSEN, THE LOST SISTERHOOD: PROSTITUTION IN AMERICA, 1900-1918, at 1 (1982) ("Calvinists had certainly inherited a harsh judgment of women in the 'oldest profession.'"); Wharton, *supra* note 2, at 759 (tendering that because prostitution has long been condemned by society, sex trafficking receives more national and international attention than other forms of human trafficking).

<sup>94</sup> Wharton, *supra* note 2, at 759.

<sup>95</sup> *State v. Stovell*, 54 Me. 24, 27 (1866) (defining prostitution in the mid-1800s).

<sup>96</sup> See ROSEN, *supra* note 93, at 2–3.

flourished because it gave them cash-based financial stability.<sup>97</sup>

As prostitution became more visible in society, those opposed to its abhorrent nature vigorously began to advocate for reform.<sup>98</sup> Feminists who supported an abolitionist approach to the cause advocated the most aggressively.<sup>99</sup> Attention to the abolitionist movement increased when prostitution was legalized in Europe and Americans began fearing the exploitation of white Europeans and Americans for sexual services.<sup>100</sup> Many groups, including abolitionists and the United States Congress, condemned prostitution as the cause of the exploitation of white women and children occurring in Europe at the time.<sup>101</sup> In 1909, Congressional reports indicated that “white slavery” did have a presence in the United States in the form of forced prostitution.<sup>102</sup> Following this proclamation, the federal government enacted the Mann Act in 1910,<sup>103</sup> which prohibited the deliberate transportation of any woman or girl for prostitution or “any other immoral purpose.”<sup>104</sup> Although the Mann Act purported to combat sexual exploitation, the legislation failed to recognize the severity of the issue and punish violators accordingly.<sup>105</sup>

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<sup>97</sup> See ROSEN, *supra* note 93, at 2–3.

<sup>98</sup> See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1666 (2010) [hereinafter Chuang, *Rescuing Trafficking*].

<sup>99</sup> See *id.*

<sup>100</sup> Wharton, *supra* note 2, at 759–60.

<sup>101</sup> See Chuang, *Rescuing Trafficking*, *supra* note 98, at 1666–67.

<sup>102</sup> Wharton, *supra* note 2, at 760; see also Chuang, *Rescuing Trafficking*, *supra* note 98, at 1666–67. In the end, the reality of white slavery proved to be far less significant than what was being depicted by advocates; however, the emergence of the idea of slavery in the twentieth century allowed anti-trafficking initiatives to be prioritized internationally. Chuang, *Rescuing Trafficking*, *supra* note 98, at 1667.

<sup>103</sup> See White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2006)).

<sup>104</sup> *Id.* § 2. The Mann Act imposed a significant fine and imprisonment of up to ten years as the maximum penalty for a transportation violation. *Id.* § 3–4.

<sup>105</sup> See AMERICAN PERSPECTIVES, *supra* note 2, at 127. The current federal legislation on human trafficking was written to fill the gaps where the Mann Act was lacking in adequately addressing the issue. *Id.* Beatrix Siman Zakhari, an

Today, forced prostitution accounts for almost half of all trafficking cases in the United States.<sup>106</sup> Modern-day victims of sex trafficking, like the victims of labor trafficking, include adults and children, males and females, and foreigners and American citizens.<sup>107</sup> The United States Department of Health and Human Services notes four common ways that sex trafficking victims are lured into a situation where they are exploited: (1) the promise by a trafficker of a legitimate job in the United States; (2) a false marriage proposal to someone in the United States; (3) the manipulation by parents and boyfriends who sell a victim into the sex trade; and (4) a kidnapping by a trafficker.<sup>108</sup> Once the victim is enslaved into the sex trade, he or she usually undergoes a conditioning process consisting of repeated beatings, rapes, confinement, threats of violence, forced drug use, and starvation to exploit the victim's vulnerabilities and ensure compliance.<sup>109</sup>

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Assistant Professor at American University in Washington, D.C., offers a detailed explanation of the shortcomings of the Mann Act in stating:

The broad-based, coordinated approach necessary to identify and eradicate the underlying causes of trafficking was lacking in this earlier legislation. In addition, many trafficked persons were not informed of their rights as victims, were not recognized as having rights, and were ultimately deported. The traffickers typically escaped punishment because there were no victims to testify against them. The Mann Act not only failed to protect victims of trafficking, but it often punished the victims who were illegal immigrants more harshly than it punished their traffickers.

*Id.*

<sup>106</sup> Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 86 (2009) (stating that 46% of all trafficking cases in the United States involve forced prostitution and noting that the majority of victims are women and young girls).

<sup>107</sup> See AN INTERNAL ISSUE, *supra* note 83, at 4. The Human Smuggling and Trafficking Center graphically depicts two instances of minor United States citizens being sexually exploited, one in Las Vegas, Nevada, and the other in Atlanta, Georgia. *Id.* at 13.

<sup>108</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., FACT SHEET: SEX TRAFFICKING [hereinafter FACT SHEET: SEX TRAFFICKING], [http://www.acf.hhs.gov/trafficking/about/fact\\_sex.html](http://www.acf.hhs.gov/trafficking/about/fact_sex.html) (last visited Oct. 27, 2011).

<sup>109</sup> *Id.*; AN INTERNAL ISSUE, *supra* note 83, at 4–5. The Human Smuggling and Trafficking Center explains that there is often a specific grooming process in

Sex trafficking victims will find themselves either as a domestic sex servant or a commercial sex slave, which includes exploitation in the areas of brothel prostitution, military prostitution, sex tourism, stripping, pornography, and mail-order brides.<sup>110</sup> The most exploitative forms of sex slavery are usually prostitution and pornography because they can be done almost anywhere (on the street, in a home, or an underground brothel) and can have the front of a legitimate business (commonly massage parlors, spas, and strip clubs).<sup>111</sup> In a nation that views this type of behavior as beyond all moral acceptability, it is astonishing how the brutality and exploitation continue.

### *C. The Nightmares that All Trafficking Victims Face*

Common threads connect all victims of trafficking in the way they are abused and exploited.<sup>112</sup> Whether smuggled into the United States or residing legally, traffickers will confiscate the identification or travel documents of the victims to prevent them from escaping.<sup>113</sup>

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order to draw United States citizen victims away from their homes. AN INTERNAL ISSUE, *supra* note 83, at 4. These victims tend to be female teenagers and other minors. *Id.* The trafficker will solicit adolescent females and exploit their vulnerabilities by showering them with flattery, gifts, and other acts of love so that the victim comes to see the trafficker as her “boyfriend.” *Id.* The trafficker then coerces the victim into engaging in a sexual relationship with him, which eventually leads to him convincing her to provide sexual favors to his friends and using physical force if she refuses. *Id.* at 4–5. Within a short period of time, the victim is encouraged to permanently stay away from her home and manipulated into becoming a common prostitute. *Id.*

<sup>110</sup> See DEStEFANO, *supra* note 64, at 1–8 (analyzing one particularly horrific instance of sex trafficking in Florida by the Cadena family who forced Mexican women and girls to provide sexual services to hundreds of men each week); FACT SHEET: SEX TRAFFICKING, *supra* note 108.

<sup>111</sup> FACT SHEET: SEX TRAFFICKING, *supra* note 108.

<sup>112</sup> See Barnhart, *supra* note 106, at 91 (proffering the idea that sex trafficking is not inherently worse than labor trafficking and noting how both types often involve sexual abuse).

<sup>113</sup> See Wharton, *supra* note 2, at 773. Furthermore, smugglers and traffickers often sexually and physically abuse many of the victims during the process of transporting them into the United States from other countries. *Id.*

The deprivation of travel documents also serves as a tool to threaten the foreign victims with exposure to law enforcement officials and deportation.<sup>114</sup> However, both foreign and domestic victims are usually transported throughout the United States without being informed of where they are going, which is a disorientation method utilized by traffickers to maintain dependency.<sup>115</sup> The victims are kept isolated and denied any opportunity to leave the trafficker's supervision.<sup>116</sup> Victims who protest are confronted with brutal beatings, sexual assault, food deprivation, and incarceration.<sup>117</sup>

Regardless of the nature of the trafficking, the types of physical and psychological harm imposed on the victim are grossly similar.<sup>118</sup> All victims face severe health risks from the nature of their work and the trafficker's brutality, such as drug and alcohol addiction, broken bones, scars, burns, and headaches.<sup>119</sup> Furthermore, because both labor and sex trafficking tend to involve some degree of sexual abuse, most victims face the additional risk of obtaining sexually transmitted diseases, and female victims also face sterility, menstrual problems, miscarriages, and forced abortions.<sup>120</sup> Physical abuse of child victims becomes particularly enhanced because they face all of the above health risks as well as

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<sup>114</sup> See *Developments in the Law -- Jobs and Borders: The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2185 (2005) [hereinafter *Developments in the Law*]. Victims are reluctant to try to escape when they do not have any form of identification or official travel documents, and so they are forced to be dependent on the traffickers for every need. *Id.*

<sup>115</sup> See AN INTERNAL ISSUE, *supra* note 83, at 4. It is important to note that transportation from place to place is not a requirement for a person to be found a victim of human trafficking. *Id.* Some domestic minor victims are trafficked within miles of their parents' home. *Id.*

<sup>116</sup> See *id.* at 7.

<sup>117</sup> See *Developments in the Law*, *supra* note 114; see *supra* text accompanying note 89.

<sup>118</sup> See Mariconda, *supra* note 5, at 165–66.

<sup>119</sup> See FACT SHEET: LABOR TRAFFICKING, *supra* note 86; FACT SHEET: SEX TRAFFICKING, *supra* note 108.

<sup>120</sup> See Overbaugh, *supra* note 81, at 639. “According to the State Department, sex trafficking also contributes to the worldwide epidemic of HIV/AIDS.” *Id.* (footnote omitted).



malnourishment that can hinder growth and development.<sup>121</sup> All these risks are heightened when the victims are held in inhumane living conditions and forced to work extensive hours.<sup>122</sup>

Psychological abuse can be as debilitating as the physical abuse victims endure.<sup>123</sup> The constant violence and abuse forces victims into a mental state overwhelmed by feelings of helplessness, humiliation, shock, denial, confusion, and anxiety.<sup>124</sup> Victims who suffer from anxiety usually see it materialize in the form of panic attacks, depression, culture shock, posttraumatic stress disorder, and traumatic bonding.<sup>125</sup> Traffickers will threaten to expose the victims' status to their families, which furthers feelings of shame and humiliation that lead to thoughts of suicide and self-hatred.<sup>126</sup> Some traffickers will also employ psychological coercion techniques unique to the victim's culture, such as witchcraft, to instill a greater sense of fear.<sup>127</sup> Psychological coercion techniques further a victim's

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<sup>121</sup> See FACT SHEET: LABOR TRAFFICKING, *supra* note 86.

<sup>122</sup> See *United States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008) (affirming a conviction for defendants who obtained forced labor services from an alien by forcing her to maintain the defendants' houses, children, cars, and businesses seven days a week for little or no pay); Uy, *supra* note 10, at 212 (describing one labor trafficking victim who "had her passport taken away, was forced to work seven days a week, sixteen hours a day for nineteen years, was not allowed to leave the home of her employers, . . . and was barely paid \$1,000 per year"); *supra* text accompanying note 89.

<sup>123</sup> See *Developments in the Law*, *supra* note 114, at 2185.

<sup>124</sup> See Mariconda, *supra* note 5, at 166.

<sup>125</sup> See *id.* at 166. Traumatic bonding, or "Stockholm Syndrome," is characterized by victims developing positive feelings towards their captors because their emotions become distorted as a result of living in a state of constant fear and apprehension. *Id.*

<sup>126</sup> See FACT SHEET: LABOR TRAFFICKING, *supra* note 86; FACT SHEET: SEX TRAFFICKING, *supra* note 108.

<sup>127</sup> See Mark Sidel, *Richard B. Lillich Memorial Lecture: New Directions in the Struggle Against Human Trafficking*, 17 J. TRANSNAT'L L. & POL'Y 187, 195 (2008). For example, one Florida trafficker coerced his young Guatemalan victim by telling her that he had taken a lock of her hair and one of her shoes and used them in a witchcraft ceremony that would bind her to him even if she resisted. *Id.* When the victim was finally rescued, she refused to leave the house of her imprisonment for several hours because she did not believe that she was actually free. *Id.*

dependency on the traffickers and can be attributed as the reason why many victims return to their traffickers after they have been rescued.<sup>128</sup>

The abuses victims of trafficking encounter are horrific on many levels, regardless of the type of trafficking.<sup>129</sup> A more educated societal understanding of the issue has led federal and state legislative affiliates to call for a holistic, victim-centered approach to combating the problem.<sup>130</sup> This approach demands more than legislation criminalizing the act and punishing the traffickers, because it insists on victims being provided aid and protection.<sup>131</sup>

*D. Federal Legislation Making Strides to Combat All Types of  
Human Trafficking*

Provocative cases involving the abuse detailed above, along with the realization that slavery in the land of the free is not just a thing of the past, prompted the United States Congress to take action.<sup>132</sup> A void existed within the statutes for prosecuting crimes

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<sup>128</sup> See Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 112 (2008). See generally Suzanna L. Tiapula & Melissa Millican, *Identifying the Victims of Human Trafficking*, 42 PROSECUTOR 34, 40 (2008). Traffickers instill a variety of false ideas in the victim to the point where if they are rescued then they may return for fear of repercussions: “The trafficker knows where my family is so if I do not return then he or she will harm them”; “I have a debt I must pay and so the trafficker will never stop hunting me”; “The trafficker will tell my family what I have done and I will be shamed”; and “The trafficker is the only one who has given me shelter and I have nowhere else to go.” See Cherish Adams, *Re-Trafficked Victims: How A Human Rights Approach Can Stop the Cycle of Re-Victimization of Sex Trafficking Victims*, 43 GEO. WASH. INT’L L. REV. 201, 206–11 (2011) (examining the typical human trafficking scenarios and the most common reasons why victims are re-trafficked after being rescued).

<sup>129</sup> Wharton, *supra* note 2, at 773.

<sup>130</sup> See Kathleen A. McKee, *It’s 10:00 P.M. Do You Know Where Your Children Are?*, 23 REGENT U. L. REV. 311, 326 (2011).

<sup>131</sup> See Sidel, *supra* note 127, at 203 (“We have learned from several states that it helps if the statute requires steps beyond the mere criminalization of trafficking.”).

<sup>132</sup> See *Developments in the Law*, *supra* note 114, at 2183.

2012]

FL SAFE HARBOR LEGISLATION

217

relating to slavery, and prosecutors were finding that laws enacted in conformity with the provisions of the Thirteenth Amendment were not carrying penalties commensurate with the nature of the crime.<sup>133</sup> In 2000, the United States pioneered the first comprehensive approach to addressing the problem of modern-day slavery with the Trafficking Victims Protection Act (TVPA).<sup>134</sup> The holistic approach of the TVPA centers on the three “Ps”: *preventing* human trafficking, *prosecuting* perpetrators, and *protecting* victims.<sup>135</sup>

Through the TVPA, Congress seeks to combine all crimes typically present in a human trafficking case, including forcible rape, battery, assault, kidnapping, slavery, and extortion, into one comprehensive crime and sufficiently penalize violators.<sup>136</sup> Especially notable is the definition of “severe forms of trafficking in persons,” which distinguishes between the two most prevalent types of trafficking:

The term ‘severe forms of trafficking in persons’ means—

(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 services,

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<sup>133</sup> See *United States v. Kozminski*, 487 U.S. 931 (1988) (holding that the defendant’s actions of obtaining labor services from two retarded farm workers through psychological coercion and holding them in squalor did not amount to involuntary servitude where no force or threat of force was used); *Chuang, Rescuing Trafficking*, *supra* note 98, at 1661 (“During the 1990s, it quickly became evident that the United States was a major destination country for all forms of human trafficking, but outdated criminal laws made it difficult to convict traffickers.”) (footnotes omitted).

<sup>134</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, Division A (2000). Division A of the Victims of Trafficking and Violence Protection Act is known as the Trafficking Victims Protection Act of 2000 and deals specifically with combating trafficking in persons. *Id.*

<sup>135</sup> See Sidel, *supra* note 127, at 196.

<sup>136</sup> See Trafficking Victims Protection Act § 102(b)(9)–(10).

through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>137</sup>

Importantly, this definition provides for prosecuting involuntary servitude cases involving nonviolent coercion, which was lacking in previous provisions.<sup>138</sup> Although criticized by some as favoring sex trafficking over labor trafficking, this definition serves an important role not only in guiding prosecutors in the prosecution of trafficking violations but also in providing protective services to those considered victims of severe forms of trafficking.<sup>139</sup>

Along with the adoption of the TVPA, Congress amended the federal criminal code to criminalize sex and labor trafficking.<sup>140</sup> Sex trafficking convictions carry a mandatory minimum sentence of fifteen years and a maximum sentence of life imprisonment.<sup>141</sup> Labor trafficking convictions impose a maximum prison sentence of twenty years.<sup>142</sup> The federal criminal statutes also prohibit the destruction of travel and immigration documents<sup>143</sup> and require convicted traffickers to pay restitution to victims.<sup>144</sup>

Under the prevention prong, the United States developed a chain of accountability within the federal government to diminish human trafficking nationally and internationally.<sup>145</sup> The Secretary of

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<sup>137</sup> Trafficking Victims Protection Act § 103(8); *see also id.* § 103(3), (9). Subsection (9) of the TVPA definitions specifically defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” § 103(9). Subsection (3) defines a commercial sex act as “any sex act on account of which anything of value is given to or received by any person.” § 103(3).

<sup>138</sup> *See Kozminski*, 487 U.S. 931.

<sup>139</sup> *See* Trafficking Victims Protection Act § 103(8).

<sup>140</sup> *See* 18 U.S.C. §§ 1589, 1591 (2000).

<sup>141</sup> *Id.* § 1591. If a victim is under the age of eighteen then proof of the use of force, fraud, or coercion is not required. *Id.*

<sup>142</sup> *Id.* § 1589. The criminalization of labor trafficking is focused on the harm, threats, and restraint suffered by the trafficking victim more so than the criminal act of sex trafficking. *Id.*

<sup>143</sup> *Id.* § 1592.

<sup>144</sup> *Id.* § 1593.

<sup>145</sup> *See* DESTEFANO, *supra* note 64, at 44.

State is responsible for writing reports on human rights violations linked to human trafficking<sup>146</sup> and the president is required to establish interagency task forces to monitor the United States' status on the issue.<sup>147</sup> The TVPA further provides that the United States will withhold assistance from any countries that do not comply with minimum standards in the effort to eliminate human trafficking.<sup>148</sup>

Since 2004, the United States Department of State has worked to establish a three "Rs" platform for protecting victims: *rescue* from a cycle of exploitation, *rehabilitation* for physical and

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<sup>146</sup> See DESTEFANO, *supra* note 64, at 44.

<sup>147</sup> *Id.* at 45.

<sup>148</sup> *Id.* at 45. The TVPA provision on international minimum standards says:

Minimum Standards

For purposes of this chapter, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for victims of severe forms of trafficking are the following:

The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficient stringent to deter and that adequately reflects the heinous nature of the offense.

The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

*Trafficking Victims Protection Act of 2000*, Div. A of Pub. L. No. 106-386, § 108, *as amended*. The United States Department of State monitors state compliance with these minimum standards and issues an annual Trafficking in Persons Report detailing its findings. Chuang, *Global Sheriff*, *supra* note 62, at 452. In this regard, the United States is becoming instrumental in shaping anti-trafficking policy beyond its borders and using extraterritorial measures to establish itself as the "global sheriff on trafficking." *Id.* at 439.

mental harms, and *reintegration* as productive members of society.<sup>149</sup> The primary means of facilitating these goals is a process for immigrant victims to obtain a legitimate, documented status in the United States through the use of T-visas or continued presence status, which is established in the TVPA.<sup>150</sup> Foreign-born victims may receive additional benefits akin to those given to refugees, such as medical care and shelter, from programs directed by the Department of Health and Human Services and the Legal Services Corporation.<sup>151</sup> Also notably, the TVPA enumerates the specific rights and services that are available to trafficking victims in the statute.<sup>152</sup> These protection measures can prevent traffickers from benefitting from their victims' undocumented status.<sup>153</sup>

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<sup>149</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2004*, at 5 (2004) ("rescue, removal, and reintegration"); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2008*, at 5 (2008) ("We must go beyond an initial rescue of victims and restore to them dignity and the hope of productive lives"); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2009*, at 6 (2009) ("rescue, rehabilitation, and reintegration").

<sup>150</sup> See DEStEFANO, *supra* note 64, at 453. The T-visa is a special visa that was created along with the TVPA. *Id.* Guidelines surrounding the T-visas are as follows:

Eligibility for the T-visa extends only to those who (1) have been a victim of severe forms of trafficking; (2) are physically present in the United States or port of entry; (3) have complied with reasonable requests for assistance in the investigation or prosecution of traffickers; and (4) would suffer extreme hardship upon removal. Victims under the age of eighteen who will suffer extreme hardship if deported from the United States can qualify for a T-visa without assisting in the investigation or prosecution of their traffickers. T-visas are valid for three years and holders may receive permanent resident status after this time if they have complied with requests for aid in the prosecution of traffickers. A victim's spouse, children and parents for those under twenty-one years of age can also come to the United States and qualify for a T-visa if the government determines their presence is necessary to avoid extreme hardship to the trafficked person.

*Id.* (footnotes omitted).

<sup>151</sup> DEStEFANO, *supra* note 64, at 44.

<sup>152</sup> Stephanie Richard, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 453–54 (2005).

<sup>153</sup> *Id.* at 452. Traffickers would benefit from their victims' undocumented

Unfortunately, the protection prong of the TVPA is usually criticized as the least effective part of the Act, but subsequent reauthorizations of the TVPA have worked to strengthen this and other weaknesses.<sup>154</sup>

### *E. Federal Prosecutions Utilizing the TVPA*

The United States government has appropriated millions of dollars and other resources to facilitate the tasks set out in the TVPA, and it has seen some successful results because of that.<sup>155</sup> Federal prosecutors did not waste time in bringing charges against perpetrators under the 2000 legislation. On August 30, 2001, one of

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status because the victims would be treated as criminals and deported before law enforcement officials could identify them as human trafficking victims. *Id.* Upon return to their countries of origin, foreign-born victims would be shunned in their communities and often re-trafficked. *Id.*

<sup>154</sup> See Regina Bernadin, *The Evolution of Anti-Slavery Laws in the United States*, 17 ILSA J. INT'L & COMP. L. 507, 510 (2011). The Trafficking Victim Protection Reauthorization Act of 2003 enhanced the legislation in five principal ways: (1) expanded the appropriations given to anti-human trafficking efforts by \$200 million; (2) expanded the agendas of federal agencies involved in combating the issue, including larger awareness campaigns; (3) allowed victims to bring a federal civil action against their traffickers for damages; (4) mandated annual reports from the United States Department of State and the United States Attorney General's office on their office to combat the issue; and (5) authorized the federal government to terminate contracts with those found to be involved in human trafficking activities. *Id.* at 510–11. The Trafficking Victim Protection Reauthorization Act of 2005 sought to address the problem of protection and victim services for both immigrant and domestic victims by allocating funding to establish rehabilitation centers for domestic victims and put services for them on par with the services available to immigrant and undocumented victims. *Id.* at 511–12. The William Wilberforce Trafficking Victim Protection Reauthorization Act of 2008 focused on aid to child victims of human trafficking, specifically targeting foreign minor victims involved in child soldiering, and on punishing perpetrators more stringently. *Id.* at 512. Furthermore, during the debates over this most recent reauthorization, the federal legislature noted its commitment to promoting “public-private partnerships to end trafficking.” McSween, *supra* note 50, at 300 (discussing the importance of the fourth “P” (partnerships) in anti-trafficking efforts).

<sup>155</sup> See Bernadin, *supra* note 154, at 510.

the first cases to utilize the new forced labor statute was brought in the United States District Court for the District of Hawaii.<sup>156</sup> *United States v. Lee*, 472 F.3d 638 (9th Cir. 2006), involved the exploitation of individuals recruited from American Samoa, China, and Vietnam to work in a garment factory under the command of Kil Soo Lee, the defendant, in American Samoa.<sup>157</sup> The victims endured daily abuse from Lee and his associates, including imprisonment, starvation, threats of deportation, and severe beatings.<sup>158</sup> After his arrest, Lee was indicted for violations involving forced labor (18 U.S.C. § 1589) and involuntary servitude (18 U.S.C. § 1584).<sup>159</sup> Lee's convictions for these offenses, and others, were affirmed on appeal and he was

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<sup>156</sup> *United States v. Lee*, 159 F. Supp. 2d 1241 (D. Haw. 2001), *aff'd*, 472 F.3d 638 (9th Cir. 2006). Although, the criminal acts for which this cause was brought before the court occurred in American Samoa, an unincorporated territory of the United States, part of the decision of the district court was that the District of Hawaii was a proper venue. *Lee*, 159 F. Supp. 2d at 1249.

<sup>157</sup> *Lee*, 472 F.3d at 639–40.

<sup>158</sup> *Id.* at 640. In the appellate opinion, the court noted one particular incident of physical violence:

Lee, faced with a difficult deadline on a large contract, ordered Nu'u'Uli, a Samoan supervisor, to beat disobedient workers. According to one witness, Lee said to Nu'u'Uli, “[Y]ou can beat anyone who don't [sic] listen to you. If anyone die [sic], I will be responsible.” Immediately thereafter, Nu'u'Uli grabbed the shirt collar of one of the workers and choked her until she was unable to breath. When Vietnamese workers came to her rescue, approximately 20 Samoan guards attacked the seamstresses with plastic plumbing pipes. During the altercation, one Vietnamese worker lost her eye. Several other Vietnamese workers were injured. In describing the event, one worker testified, “It was [like] watching a film where the people are being brutally beaten to the point of like massacre.... [T]here was a lot of blood on the line and on the floor of the factory and on the fabrics.”

*Id.* Lee controlled the victims within a compound environment to isolate them from civil society. *Id.* Testimony of the victims at trial revealed that the workers were fed “so sparingly that they were forced to sneak out of the compound in search of food.” *Id.* This testimony was actually corroborated by people outside of the compound who had “observed Vietnamese women behind barbed-wire fences crying for food and help.” *Id.*

<sup>159</sup> *Id.* Surprisingly, the government and law enforcement of American Samoa were not active in procuring Lee's arrest, and authorities refused to prosecute him there. *Id.*



sentenced to a total of 40 years imprisonment.<sup>160</sup>

Cases involving the sexual exploitation of minors also began to emerge under the TVPA within the first five years of its enactment. In *United States v. Jimenez-Calderon*, 183 Fed. App'x 274, 276 (3d Cir. 2006), the defendant, Antonia Jimenez-Calderon, conspired with her sister and two brothers to entice young, impoverished girls from Mexico to come to the United States as the brothers' fiancés.<sup>161</sup> The girls were smuggled into the United States and then exploited under a debt bondage scheme where they had to prostitute themselves in Jimenez-Calderon's brothel in New Jersey to earn money to give to their "husbands" for marriage.<sup>162</sup> Jimenez-Calderon and her siblings maintained control over the girls through verbal and physical abuse and violence.<sup>163</sup> Upon arrest, she was charged with conspiracy to promote sex trafficking (18 U.S.C. § 371) and promoting sex trafficking by force (18 U.S.C. § 1591), and subsequently convicted and sentenced to a term of 210 months imprisonment.<sup>164</sup>

More recently, in 2009, a final judgment was entered in *United States v. Paulin*, 329 F. App'x 232 (11th Cir. 2009), which involved the exploitation of a young Haitian girl as a domestic servant for a schoolteacher in Florida for six years.<sup>165</sup> The victim, Simone Celestin, was only 14 years old at the time of the initial exploitation, and had come to the United States with the defendant, Maude Paulin, upon the promise that Paulin would provide her with an education.<sup>166</sup> Celestin was never given an education, nor was she

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<sup>160</sup> *Lee*, 472 F.3d at 642.

<sup>161</sup> *United States v. Jimenez-Calderon*, 183 Fed. App'x 274, 276 (3d Cir. 2006).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 276–77 (“The girls were not allowed to be friendly or establish relationships with the customers, talk to each other, or make any phone calls. The girls were beaten if they broke the rules.”)

<sup>164</sup> *Id.* at 275. The issues and discussion on appeal provide insight into the available sentencing guidelines and enhancements available in human trafficking cases. *Id.* at 277–81.

<sup>165</sup> *United States v. Paulin*, 329 F. App'x 232 (11th Cir. 2009).

<sup>166</sup> *Id.* at 233. Unfortunately, this is a practice that is all too common in Haiti, where young, often orphaned, children are exploited under the *restavek* system to

compensated for her labor as a domestic servant:

Celestin was required to wake up at 5 a.m. to begin her chores, which included cooking the family's meals and spending the day cleaning the house on her hands and knees. She was not allowed to sit with Paulin's family to eat the meals that she prepared. Instead, she had to wait until after they had finished and then go out to the back porch to eat whatever was left over. She was also forced to bathe outside, using a bucket of cold water. When Celestin objected to her treatment or otherwise 'got fresh' with Paulin, Paulin beat her or threatened to send her back to Haiti. . . . Celestin was not even allowed to leave the house unaccompanied or to make friends.<sup>167</sup>

After six years of holding Celestin in slavery, Paulin was charged and convicted of conspiracy to violate the Thirteenth Amendment by forcing a person into involuntary servitude (18 U.S.C. § 241) and obtaining forced labor (18 U.S.C. § 1589), which was affirmed on appeal.<sup>168</sup>

These cases represent part of the success the TVPA has been able to achieve in combating modern-day slavery, even if it is not a perfect piece of legislation.<sup>169</sup> However, a localized approach to the problem may be what can strengthen its weaknesses. Individual state legislation maintains an important role in supplementing the provisions of the TVPA and effectuating its goals at the local level, especially in the ways of identifying and protecting victims.<sup>170</sup>

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work as domestic servants for wealthier families in exchange for shelter, food, and education. Jennifer S. Abrams, *"The Kids Aren't Alright": Using a Comprehensive Anti-Trafficking Program to Combat the Restavek System in Haiti*, 24 TEMP. INT'L & COMP. L.J. 443, 445–46 (2010).

<sup>167</sup> *Paulin*, 329 F. App'x at 233–34.

<sup>168</sup> *Id.* at 232, 235.

<sup>169</sup> See Bernadin, *supra* note 154, at 515.

<sup>170</sup> See *id.* at 664; Richard, *supra* note 152, at 460 ("A state law criminalizing human trafficking could assist federal identification efforts since it would empower state and local law enforcement with greater knowledge about this problem and provide enforcement mechanisms within their jurisdictions.") (footnote omitted).

*IV. Where Florida Stands in the Fight Against  
Modern-Day Slavery*

The State of Florida is far from immune to the epidemic of modern-day slavery that is plaguing the United States<sup>171</sup> due to the fact that Florida is a popular locality for trafficking international and domestic persons for labor and sex services.<sup>172</sup> Because most trafficking activity is hidden behind legitimate business fronts or conducted underground, there is considerable difficulty in estimating exactly how many victims are located in each state.<sup>173</sup> Even so, Florida has been reported as the leading destination for women and children trafficked into the United States, and reports indicate that all types of human trafficking are present in the state.<sup>174</sup>

*A. How the Sunshine State is Eclipsed by an Unnecessary Evil*

Many conditions in Florida facilitate trafficking activity. First, Florida has an extremely diverse demographic, making it attractive to traffickers because it allows foreign-born victims to blend in with the rest of society.<sup>175</sup> Florida's diversity includes large Guatemalan populations in central Florida, many Europeans in north Florida, sizeable Russian and Haitian populations in south Florida, and other Hispanic populations located in pockets throughout the state.<sup>176</sup> Second, human trafficking flourishes under Florida's

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<sup>171</sup> See Butkus, *supra* note 86, at 323. Florida is reported as being among the top three states, along with California and New York, where human trafficking occurrences are most prevalent. *Id.*

<sup>172</sup> Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Florida Law on Human Trafficking*, 31 FLA. ST. U. L. REV. 289, 290 (2004).

<sup>173</sup> See Overbaugh, *supra* note 81, at 638.

<sup>174</sup> FSU CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, FLORIDA RESPONDS TO HUMAN TRAFFICKING 27 (2003) [hereinafter FLORIDA RESPONDS].

<sup>175</sup> See Butkus, *supra* note 86, at 325.

<sup>176</sup> *Id.* at 313; FLORIDA RESPONDS, *supra* note 174, at 29. "Over 70% of Florida's immigrant population is from the Caribbean, Mexico, Central America, and South America. . . . Immigration from Asian nations to Florida [has increased] by 78% during the last 10 years." FLORIDA RESPONDS, *supra* note 174, at 29.

agriculture, hospitality, and tourism industries that rely on the availability of unskilled laborers.<sup>177</sup> Traffickers exploit these business sectors by marketing the cheap services of their victims as a way for businesses to stay competitive and increase profits.<sup>178</sup> Third, the transnational aspect of trafficking is especially facilitated by Florida's location as a peninsula with major ports of entry.<sup>179</sup> Lastly, numerous military bases throughout the state create a demand for sex services on a large scale and become centers for corrupt practices in the surrounding areas.<sup>180</sup>

In its October 2010 strategic plan, the Florida State University Center for the Advancement of Human Rights (CAHR) included a list of the most discernible human trafficking trends in Florida.<sup>181</sup> CAHR's research found that labor trafficking is the leading form of trafficking instances in Florida.<sup>182</sup> The victims are usually coerced into working in the agriculture, hospitality, and

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These populations tend to be more susceptible to the coercive nature of human trafficking because they crave the American dream of freedom and prosperity that does not exist in their country of origin. *Id.*

<sup>177</sup> FLORIDA RESPONDS, *supra* note 174, at 27.

<sup>178</sup> See Coonan, *supra* note 172, at 290–91; Mariconda, *supra* note 5, at 162 (“[H]uman trafficking, to its perpetrators, is nothing more than a business endeavor.”) (footnote omitted).

<sup>179</sup> See Overbaugh, *supra* note 81, at 656. Furthermore, Miami International Airport is a major hub for the entry of victims into the United States that facilitates the entry because it is relatively easy to commit visa fraud. FLORIDA RESPONDS, *supra* note 174, at 28. Ironically, the other two United States cities leading in visa fraud are Los Angeles, California and New York, New York. *Id.*

<sup>180</sup> *Id.* The FSU Center for the Advancement of Human Rights notes: U.S. military bases represent some of the greatest sites for sex services. . . . Large numbers of women and girls, particularly Asians, have been trafficked to the United States to work in the sex industries surrounding military bases. There are eight military bases in Florida that employ over 32,000 civilians and house over 57,000 military personnel. . . . Due to the large number of personnel at Florida military bases, it is likely that a number of trafficked women and girls may be living in areas surrounding these bases.

*Id.* (footnotes omitted).

<sup>181</sup> FLORIDA STRATEGIC PLAN, *supra* note 84, at 1–12.

<sup>182</sup> *Id.* at 1.

tourism industries under a debt bondage scheme.<sup>183</sup> Males have recently become more commonly identified as trafficking victims, although the majority still tends to be women.<sup>184</sup> CAHR reported that temporary employment agencies left unregulated are often responsible for facilitating labor trafficking and exploitation in Florida's business sector.<sup>185</sup>

The second most prevalent type of human trafficking in Florida is sex trafficking among domestic minors.<sup>186</sup> Traffickers recruit domestic runaways in common areas such as the streets, schools, and malls, as well as through online social networks such as Myspace and Facebook.<sup>187</sup> Florida's sex traffickers are also showing an increasing preference towards utilizing mobile brothels for its services and Internet websites, such as Craigslist, for advertising.<sup>188</sup>

Many federally prosecuted human trafficking cases relate to incidents that occurred in Florida.<sup>189</sup> Although the exact number of

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<sup>183</sup> FLORIDA STRATEGIC PLAN, *supra* note 84, at 1.

<sup>184</sup> *Id.* at 5–6.

<sup>185</sup> *Id.* at 2. A sheriff's office investigator in the Panhandle noted "that exploitation and human trafficking appear to be the rule, rather than the exception, among Florida's unregulated 'temp' agencies. Such companies routinely violate wage and hour law, use physical force and psychological coercion against employees, and refuse to pay medical treatment for injured workers." *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> FLORIDA STRATEGIC PLAN, *supra* note 84, at 2–3. CAHR reported that estimates have revealed somewhere between 30,000 and 40,000 pre-teen and teenage runaways exist throughout Florida, and these minors are extremely susceptible to the exploitation of pimps who enslave them into the adult entertainment industry. *Id.* at 2.

<sup>188</sup> *Id.* at 3. Sex traffickers are moving away from maintaining a stationary brothel and are now focusing on prostitution as a delivery service by having the women drive to a client's residence or hotel room. *Id.*

<sup>189</sup> *See* United States v. Paulin, 329 F. App'x 232 (11th Cir. 2009) (affirming a defendant's conviction of conspiracy to violate the Thirteenth Amendment by obtaining forced labor, harboring an alien for private financial gain, and violating the TVPA); United States v. Carpenter, 280 F. App'x 866 (11th Cir. 2008) (affirming a sentence of 180 months imprisonment and life term of supervised release, under 18 U.S.C. § 1591, for a defendant who engaged in the sex trafficking of minors); United States v. Evans, 476 F.3d 1176 (11th Cir. 2007) (affirming a defendant's conviction of enticing a minor to engage in prostitution and a commercial sex act under the TVPA where the defendant operated a

victims is unknown, the CAHR contends that the problem is significant, widespread throughout the state, and still growing regardless of the federal legislative efforts.<sup>190</sup> Unfortunately, the storm of human trafficking has left a shadow over Florida and darkened its sunny veneer.

*B. Florida's Anti-Trafficking Legislation from Start to Not-Quite-Finished*

Like in other states, Florida's law enforcement officials seemed unaware of the issue and unable to identify it.<sup>191</sup> With local law enforcement ignorant to the growing problem in their cities, victims of trafficking were not being identified and helped.<sup>192</sup> Upon enactment of the comprehensive federal legislation to combat human trafficking in 2000, the Florida Legislature was prompted to take steps at the state level to aid in tackling the issue.<sup>193</sup> In 2004, the Florida Legislature took its initial steps to criminalize human trafficking by establishing a human trafficking statute that makes it a second-degree felony to knowingly engage in human trafficking activities, including forced labor and compelled sexual services.<sup>194</sup> At the same time, the Florida Legislature also made it a second-degree felony to engage in labor trafficking<sup>195</sup> or sex trafficking of

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prostitution ring in Miami, Florida).

<sup>190</sup> See generally FLORIDA STRATEGIC PLAN, *supra* note 84.

<sup>191</sup> Butkus, *supra* note 86, at 324.

<sup>192</sup> See Overbaugh, *supra* note 81, at 656. Local law enforcement officials need training in how to handle human trafficking cases because they are the ones who are likely to encounter victims first. *Id.*

<sup>193</sup> See Richard, *supra* note 152, at 456. Florida was one of the first states to enact state legislation that criminalized the act of human trafficking along with Washington, Texas, and Missouri. *Id.*

<sup>194</sup> FLA. STAT. § 787.06 (2004) (amended 2012) (creating Florida's first statute criminalizing the specific act of human trafficking); see also FLA. STAT. § 775.082(3)(c) (2011) (stating that a felony of the second degree imposes a maximum term of imprisonment of fifteen years); FLA. STAT. § 775.083(1)(b) (2011) (allowing for a fine of up to \$10,000 for a person convicted of a felony of the second degree).

<sup>195</sup> FLA. STAT. § 787.05 (2004) (repealed 2012). This section broke down

adults,<sup>196</sup> and a first-degree felony to engage in sex trafficking of minors.<sup>197</sup>

Florida's human trafficking laws were first amended in 2006 when a series of reforms were initiated by the state legislature.<sup>198</sup> In these amendments, the Florida Legislature expressed that "[i]t is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies,"<sup>199</sup> which appeared to be in line with the holistic approach utilized in the TVPA. These amendments also mandated that prosecutors and law enforcement officers are to receive training on the investigation and prosecution of human trafficking crimes, which will be developed by state attorneys in conjunction with the Criminal Justice Standards and Training Commission.<sup>200</sup>

Further in 2006, the legislature sought to increase the penalties for human trafficking activities by amending two civil

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Florida's first official definition of forced labor or services from § 787.06(2)(b), and criminalized the behavior citing:

Any person who knowingly obtains the labor or services of a person by: (1) Causing or threatening to cause bodily injury to that person or another group; (2) Restraining or threatening to restrain that person or another person without lawful authority and against her or his will; or (3) Withholding that person's governmental records, identifying information, or other personal property, commits a felony of the second degree.

*Id.*

<sup>196</sup> FLA. STAT. § 796.045 (2004) (repealed 2012) ("Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a felony of the second degree").

<sup>197</sup> *Id.* § 796.035 (amended 2012) (stating that any parent or legal guardian of a minor who transfers custody of that minor with knowledge that the minor will participate in the trade of sex trafficking commits a first degree felony); *see also* § 775.082(3)(b) (citing that a felony of the first degree imposes a maximum term of imprisonment of thirty years); § 775.083(1)(b) (allowing for a fine of up to \$10,000 for a person convicted of a felony of the first degree).

<sup>198</sup> FLORIDA STRATEGIC PLAN, *supra* note 84, at 91.

<sup>199</sup> § 787.06(1)(d).

<sup>200</sup> § 787.06(5)–(6).

230 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 7]

statutes.<sup>201</sup> Florida's civil code section 772.102 lists human trafficking and commercial sexual exploitation of children as types of criminal activity that provide victims with a civil cause of action.<sup>202</sup> In addition, Florida's civil code section 772.104 was amended to provide human trafficking victims the opportunity to bring a civil cause of action whereby they can obtain a maximum of three times the amount that their trafficker gained from their exploitation.<sup>203</sup> Although the statute expressly prohibits a victim from receiving punitive damages for the trafficking violations,<sup>204</sup> the Florida Legislature is furthering its intent to assist victims by offering the opportunity for a civil remedy.<sup>205</sup> These amendments and reforms have been a step in the right direction, but the legislation leaves much to be desired when it comes to adequately addressing trafficking victims' need for protection.<sup>206</sup>

The human trafficking statutes in Florida were amended once again in 2012, and the most significant change was the consolidation of the involuntary servitude, sex trafficking, and human trafficking statutes into a single statute. The definition of the crime in Florida today not only makes human trafficking a specific and general intent crime with the possibility of higher penalties than before, but also presents a much more detailed and comprehensive approach to enumerating which activities constitute trafficking offenses.<sup>207</sup> These measures will not only aid in combating human trafficking through prosecution, but they will also bring better awareness to the issue and further the goal of prevention.

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<sup>201</sup> See FLA. STAT. §§ 772.102, 772.104 (2012).

<sup>202</sup> *Id.* § 772.102(1)(a)(15), (23).

<sup>203</sup> *Id.* § 772.104(1)–(2).

<sup>204</sup> *Id.* § 772.104(3).

<sup>205</sup> See § 787.06(1)(d).

<sup>206</sup> Butkus, *supra* note 86, at 327.

<sup>207</sup> FLA. STAT. § 787.06 (2012).



*C. Evaluating Florida's Approach on a National Scale*

Critics of state human trafficking statutes generally maintain that most state statutes fail to embody the holistic approach taken by the federal government in the TVPA.<sup>208</sup> State provisions often focus solely on the prosecution and punishment aspects of human trafficking cases, which can adversely affect victim protection.<sup>209</sup> Every human trafficking case constitutes an acute violation of human rights that is easily overlooked by legislation emphasizing prosecution of the crime above all other factors.<sup>210</sup>

Florida's human trafficking statute is no exception because it focuses almost solely on criminalizing the act.<sup>211</sup> An important strength of the statute is in its stringent punishment of the offense, which authorizes a punishment more comparable to the offense than other states.<sup>212</sup> Unfortunately, the effectiveness of the criminal statute has yet to be fully determined due to the lack of prosecutions utilizing the statutes.<sup>213</sup> While criminalizing human trafficking is still beneficial to the overall goal, the narrow focus neglects to care for the person whose rights the statute is intended to protect.<sup>214</sup>

The Florida statute mentions that the intent of the legislature is to ensure that victims of trafficking are "protected and assisted by [the State of Florida] and its agencies,"<sup>215</sup> but the statute fails to enumerate what protections and means of assistance are available

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<sup>208</sup> Barnhart, *supra* note 106, at 87 (noting how the federal statutes are more comprehensive than state statutes for human trafficking because criminal enforcement is easier at the local level); Sidel, *supra* note 127, at 203.

<sup>209</sup> Richard, *supra* note 152, at 458–59.

<sup>210</sup> *Id.* at 462.

<sup>211</sup> See § 787.06.

<sup>212</sup> Compare FLA. STAT. § 775.082(3)(b) (2011) (providing that the maximum prison sentence for a trafficking violation that amounts to a first-degree felony is thirty years), with CAL. PENAL CODE § 236.1(c) (West 2011) (providing that the maximum prison sentence for a trafficking violation is eight years).

<sup>213</sup> See FLA. STAT. § 787.06 (2012).

<sup>214</sup> See Richard, *supra* note 152, at 462.

<sup>215</sup> FLA. STAT. § 787.06(1)(d).

232 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 7]

and guaranteed to victims.<sup>216</sup> When victims are rescued, they are broken human beings who have been torn apart physically and mentally from the atrocities they have endured.<sup>217</sup> Post-trafficking care becomes essential to their survival and the restoration of their lives and dignity.<sup>218</sup> Without this care, victims become highly at risk for re-victimization.<sup>219</sup>

Other states have recognized the need for a holistic, victim-centered approach to combating human trafficking and have focused their internal policy on emphasizing victim protection and rights along with prosecution and prevention.<sup>220</sup> Oklahoma has gone so far as to enact an entire statute devoted to enumerating trafficking victim's protections, entitled "Guidelines for treatment of trafficking victims."<sup>221</sup> Similar to Florida's provisions, Oklahoma authorizes a civil remedy for victims of trafficking, but it further provides that victims are entitled to certain benefits upon identification as a victim, including: (1) access to housing in shelters as soon as practicable; (2) the right not to be detained or jailed; (3) access to medical care; (4) protection from traffickers; and (5) opportunity for legal assistance.<sup>222</sup> The enactment of these provisions, along with Oklahoma's statute that criminalizes both labor and sex trafficking in persons,<sup>223</sup> offers a prime example of a state statute embracing a

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<sup>216</sup> See FLA. STAT. § 787.06. In 2011, the Florida Legislature enacted a public health statute, section 402.87, "Services to immigrant survivors of human trafficking, domestic violence, and other serious crimes," which enumerates certain services available only to immigrant victims of human trafficking; but it proves to be inadequate because it burdens a victim with eligibility assessments and qualifiers and it fails to address the whole issue, including services to non-immigrant victims. See FLA. STAT. § 402.87 (2011).

<sup>217</sup> See *supra* Part II.C.

<sup>218</sup> See Rickert, *supra* note 8, at 275.

<sup>219</sup> See Nack, *supra* note 9, at 839. Re-victimization, or re-trafficking, occurs when victims, who have been rescued, return to their traffickers because the previous dependency has made the victims unable to provide for themselves. *Id.*

<sup>220</sup> See, e.g., CAL. PENAL CODE § 236.2 (West 2011); N.H. REV. STAT. ANN. § 633:6-7 (2011); N.J. STAT. ANN. § 2C:13-8 (West 2011); N.M. STAT. ANN. § 30-52-2 (West 2011); OKLA. STAT. ANN. tit. 21, § 748.2 (West 2011).

<sup>221</sup> OKLA. STAT. ANN. tit. 21, § 748.2 (West 2011).

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* § 748.

holistic and victim-centered approach that can adequately supplement the federal statute at the state level.<sup>224</sup>

New Mexico and California are other states that have embraced a more holistic approach to their individual state human trafficking legislation.<sup>225</sup> Not only do these states have distinct laws criminalizing the trafficking behavior but they also provide for victim aid and services.<sup>226</sup> Like the Oklahoma statute, New Mexico enumerates the benefits and services that the state will provide to eligible trafficking victims, such as case management, housing, health care, counseling, job placement, and language interpretation, in a separate statute.<sup>227</sup> California's statute incorporates a unique provision in its legislation directing law enforcement officers on how to assist victims in gaining certification for benefits under the TVPA.<sup>228</sup>

In its innovative approach, New York has acknowledged that implementation of a victim-centered perspective to combating human trafficking requires “a coordinated effort by various agencies to ensure the services promised under the legislation are available . . . and that victims and their advocates are aware of the protections and benefits provided.”<sup>229</sup> The New York Legislature recognized a gap in its previous protection schemes that left rescued victims at risk for re-victimization.<sup>230</sup> Around 2008, New York's Office of Children

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<sup>224</sup> See OKLA. STAT. ANN. tit. 21, §§ 748–748.2 (West 2011). Although the Oklahoma human trafficking and victim protection statutes have yet to be fully tested for effectiveness, the statutes remain admirable models for how a state can avoid a solely prosecution-focused approach to combating human trafficking. *Id.*

<sup>225</sup> See CAL. PENAL CODE §§ 236.1–236.5 (West 2011); N.M. STAT. ANN. §§ 30-52-1–30-52-3 (West 2011).

<sup>226</sup> See CAL. PENAL CODE §§ 236.1–236.5; N.M. STAT. ANN. §§ 30-52-1–30-52-3.

<sup>227</sup> N.M. STAT. ANN. § 30-52-2.

<sup>228</sup> See CAL. PENAL CODE § 236.5(a) (“Within 15 business days of the first encounter with a victim of human trafficking . . . law enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency (LEA) endorsement regulations as found in [the applicable immigration laws].”).

<sup>229</sup> N.Y. STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING, A REPORT ON THE INTERAGENCY TASK FORCE IMPLEMENTATION OF THE 2007 LAW 16 (2008) [hereinafter N.Y. TASK FORCE REPORT].

<sup>230</sup> See K. Michael Baker, *Time for Change: Handling Child Prostitution*

and Family Services (OCFS) worked with the legislature to make prevention of re-victimization a priority.<sup>231</sup> Their efforts culminated in the Safe Harbour for Exploited Children Act, which focuses on providing safe housing for sexually exploited minors upon rescue.<sup>232</sup> The provisions call upon the federal government, the state legislature, local social services districts, the OCFS, not-for-profit agencies, and other foundations to lend their support, services, and funding to see that every sexually exploited child in New York is provided at least short-term housing and care.<sup>233</sup>

Furthermore, a New York task force instituted the Response to Human Trafficking Program (RHTP), which provides specifically for the care of adult victims of trafficking without a legitimate immigration status, and offers them case management, health care, counseling, job training, drug treatment, and immigration assistance.<sup>234</sup> The RHTP also provides referrals for local social services to all victims, including adults and foreign-born persons.<sup>235</sup> New York's equal treatment in meeting the post-trafficking needs of all victims is a model for Florida to consider as it seeks to adopt a more victim-centered approach to fighting modern-day slavery.

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*Cases in Georgia*, 4 J. MARSHALL L.J. 177, 196 (2011) (mentioning New York's Safe Harbour for Exploited Children Act and comparing it to the actions Georgia has taken to combat human trafficking); Nack, *supra* note 9, at 839 (discussing the strengths and weaknesses of New York's victim-centered human trafficking legislation).

<sup>231</sup> Nack, *supra* note 9, at 840.

<sup>232</sup> See N.Y. SOC. SERV. LAW §§ 447-a, 447-b (McKinney 2010) (creating the Safe Harbour for Exploited Children Act and explaining the safe house care options available to sexually trafficked minors); Nack, *supra* note 9, at 840.

<sup>233</sup> See SOC. SERV. § 447-b.

<sup>234</sup> See Nack, *supra* note 9, at 841. One of the shortcomings of the RHTP is that an illegal immigrant's status as a victim of a severe form of trafficking must be confirmed before the person may access RHTP benefits. *Id.*

<sup>235</sup> N.Y. TASK FORCE REPORT, *supra* note 229, at 16.

*V. A Victim-Centered Approach for Florida  
Through Safe Harbor*

Legislation focusing solely on the trafficker deprives victims of valuable resources that can be used to ensure that their rights as human beings are never violated again.<sup>236</sup> Victim-centered legislation at the state level can fulfill a great need in regards to protection from re-victimization.<sup>237</sup> The unique, local advantages that states have to combat human trafficking<sup>238</sup> make it imperative that state legislation adopts the three “Ps” approach<sup>239</sup> and embrace the three “Rs” approach: *rescue*, *rehabilitation*, and *reintegration* of victims.<sup>240</sup> This approach involves removing a victim from the exploitative situation, providing them with the means to heal their physical and psychological wounds, and assisting them in being reunited with their families and becoming productive members of society. Essentially, the goal is to restore the individual’s human dignity that was stripped away from them during their exploitation. One way to embrace and integrate this approach into Florida’s anti-trafficking legislation is through a Safe Harbor Act.<sup>241</sup>

*A. Florida’s Current Plight with a Proposed Safe Harbor Act*

The Florida Legislature has begun to recognize the benefit of what states like New York have done to offer safe harbor for child trafficking victims.<sup>242</sup> During the 2010 Florida Legislative Session, a

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<sup>236</sup> See Coonan, *supra* note 172, at 295 (“[Human trafficking] constitutes one of the most egregious and systematic human rights violations of the new century, and should be countered at every turn”).

<sup>237</sup> *Id.* at 295.

<sup>238</sup> Richard, *supra* note 152, at 460.

<sup>239</sup> See *supra* Part III.D.

<sup>240</sup> See *supra* note 149 and accompanying text.

<sup>241</sup> See *supra* Part IV.C (identifying safe harbor and victim-centered legislation in other state statutes).

<sup>242</sup> See DEP’T OF CHILDREN AND FAMILIES, STATEWIDE HUMAN TRAFFICKING TASK FORCE IMPLEMENTATION PLAN 38 (2011) [hereinafter DCF IMPLEMENTATION PLAN], available at <http://www.dcf.state.fl.us/initiatives/>

proposed bill was presented for consideration in both the Florida House of Representatives (House) and the Florida Senate (Senate).<sup>243</sup> The proposal was designated as the Florida Safe Harbor Act (FSHA) and involved providing long and short-term shelter and care to minors brought into custody on prostitution charges.<sup>244</sup> Ultimately, these and subsequent resolutions failed to be enacted,<sup>245</sup> but, the 2012 Florida Legislature passed House Bill 99, the most recent proposal for a FSHA, and it was signed by the executive branch in April 2012.<sup>246</sup>

Fundamentally, the new FSHA will provide guidelines for local law enforcement to direct sexually exploited children to safe houses where they can receive shelter, as well as physical and mental care, under the supervision of Florida's Department of Children and Families (DCF) and Florida's Office of Adoption and Child Protection.<sup>247</sup> In regards to the FSHA, the legislature maintains the following goals: (1) ensure safety for sexually exploited children; (2) treat exploited children as dependents instead of delinquents; (3) reunite exploited children with their families and prevent them from returning to their traffickers; and (4) help children be reliable witnesses for the prosecution of traffickers.<sup>248</sup> The FSHA strives to independently aid minor victims through the dependency process as an alternative to treating a child victim as a delinquent.<sup>249</sup>

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humantrafficking/docs/2011ImplementationPlan.pdf (pointing out that current proposals for safe harbor provisions in Florida were modeled after the New York statute).

<sup>243</sup> See H.R. 535, 2010 Leg., 112th Reg. Sess. (Fla. 2010); S. 1700, 2010 Leg., 112th Reg. Sess. (Fla. 2010).

<sup>244</sup> See DCF IMPLEMENTATION PLAN, *supra* note 242.

<sup>245</sup> *Id.* at 36. See H.R. 145, 2011 Leg., 113th Reg. Sess. (Fla. 2011).

<sup>246</sup> See H.R. 99, 2012 Leg., 114th Reg. Sess. (Fla. 2012). House Bill 99 was pre-filed on August 18, 2011, passed in the House on February 23, 2012 and in the Senate on March 8, 2012, and was signed by Florida's governor on April 13, 2012. *Id.*

<sup>247</sup> See 2012 Fla. Laws ch. 105.

<sup>248</sup> *Id.* § 2.

<sup>249</sup> See DEP'T OF CHILDREN AND FAMILIES, STATEWIDE TASK FORCE ON HUMAN TRAFFICKING: DOMESTIC MINOR SEX TRAFFICKING AD HOC COMMITTEE MEETING June 29, 2010, 2 (2010), available at [http://www.dcf.state.fl.us/initiatives/HumanTrafficking/DMST/docs/629%20meeting%20min\\_FinalDSM.pdf](http://www.dcf.state.fl.us/initiatives/HumanTrafficking/DMST/docs/629%20meeting%20min_FinalDSM.pdf).

The provisions in the new FSHA center on equipping law enforcement officers with the ability to recognize sexually exploited minors when they have taken one into custody.<sup>250</sup> Once probable cause to believe that the child in custody has been sexually exploited is established, the child is to be placed in a short-term safe house,<sup>251</sup> which is specifically defined in the FSHA.<sup>252</sup> Importantly, the FSHA indicates that funding for certain activities will come from appropriations, grants, the federal government, gifts, and other sources.<sup>253</sup> The provision of shelter and other services at these safe houses will be instrumental in the process of restoring a victim's dignity and setting them on a path towards rehabilitation and reintegration into society.

With the passage of laws and amendments like the FSHA, the legislature will fill a great need in the state since estimates suggest that around half of all trafficking victims are minor children.<sup>254</sup> The sexual exploitation of children is a particularly reprehensible offense and, because of this, it is not a surprise that legislatures have focused primarily on them. However, the unfortunate situation then becomes that the other half of trafficking victims, consisting of adult men and women, are left to restore themselves alone even though they are also at risk of re-victimization.<sup>255</sup>

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<sup>250</sup> 2012 Fla. Laws ch. 105 § 4. Section 5 further discusses how a suspected sexually exploited child may be assessed for placement in these safe houses. *Id.* § 5.

<sup>251</sup> *Id.* § 4.

<sup>252</sup> *Id.* § 6(1)(e) (“‘Short-term safe house’ means a shelter operated by a licensed residential child-caring agency . . . that has set aside gender-specific, separate, and distinct living quarters . . . . [T]he house shall provide services and care . . . including food, clothing, medical care, counseling, and appropriate crisis-intervention services”).

<sup>253</sup> *Id.* § 2.

<sup>254</sup> Overbaugh, *supra* note 81, at 638.

<sup>255</sup> *See supra* Part II.C.

*B. Proposal for a Non-Discriminatory Safe Harbor Provision  
in Florida*

Safe harbor should be extended to all victims of human trafficking regardless of the victim's age, gender, and immigration status or the type of trafficking offense.<sup>256</sup> It is important to keep in mind the special vulnerability of trafficked minors, but foreign adult victims take on similar vulnerabilities to a child when they come to a foreign country and are stripped of their documentation with no safe place to turn to for safety.<sup>257</sup> A victim's most urgent post-trafficking needs are for personal safety and security in order to begin on the path to restoration.<sup>258</sup> A non-discriminatory safe harbor provision, either as its own statute or in the form of an amendment to Florida's current human trafficking statute, will allow the state to offer post-trafficking victims the protections they desperately need to regain control of their lives.

*1. A Non-Discriminatory Safe Harbor Statute*

To appropriately address the holes in the current FSHA, the legislature should draft a new safe harbor bill that includes a right to safe housing for all victims of forced labor and for adult victims of sex trafficking. The new statutory scheme should provide for (1) immediate short-term safe housing with adequate security measures for all suspected victims of human trafficking; (2) immediate medical care for all suspected victims of human trafficking; (3) legal assistance for foreign victims to facilitate establishing a legal immigration status upon certification as a victim; (4) options for

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<sup>256</sup> See *supra* Parts II.A–B.

<sup>257</sup> See *supra* Part III.C. See generally Symposium, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective*, 18 *YALE J.L. & FEMINISM* 181, 186 (2006) (exemplifying the vulnerability of all victims in noting how some of the trafficking victims rescued by the Standing Against Global Exploitation organization do not even know in what city they have been working).

<sup>258</sup> See Adelson, *supra* note 128, at 122.



permanent housing for all trafficked minors upon certification of dependency status; and (5) options for enhanced services upon an assessment based on need.<sup>259</sup> The enhanced services may include addiction counseling, mental health counseling, job placement, and protection for a victim's family members.<sup>260</sup> Most importantly, the services and benefits should be clearly enumerated in the statute so there is no question as to the assistance available.<sup>261</sup> These provisions will allow for an affordable way to meet the immediate needs of potential victims, as well as allow for the option of providing more expensive services at the discretion of the lead agency.

## 2. *A Non-Discriminatory Safe Harbor Amendment*

Alternatively, the Florida Legislature can further the protection prong of its anti-human trafficking legislation through amending the current human trafficking statute instead of enacting a new statute focusing on safe harbor. The current Florida statute lists that part of its intent is to ensure that victims are able to access benefits and services after being rescued; but, the legislature fails to define what those benefits are and how victims can obtain them.<sup>262</sup> The Florida Legislature should amend the current statute to enumerate the benefits and services that it intended to provide victims.<sup>263</sup> The services should include, but not be limited to, safe housing, security, and medical care. Furthermore, any amendments should expressly state that all trafficking victims are entitled access to these services. Adding these provisions to the current statute will clarify the express intention of the legislature and make Florida's statute more reflective of a victim-centered approach.

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<sup>259</sup> See *supra* Part IV.A.

<sup>260</sup> See N.M. STAT. ANN. § 30-52-2 (West 2011).

<sup>261</sup> E.g. CAL. PENAL CODE § 236.2 (West 2011); OKLA. STAT. ANN. tit. 21, § 748.2 (West 2011), for examples of statutes that clearly enumerate victim benefits.

<sup>262</sup> See FLA. STAT. § 787.06 (2011).

<sup>263</sup> See *id.* § 787.06(1)(d) ("It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies.").

*C. Working Together to Bring a New Dawn of Freedom*

With the collaboration of agencies and organizations that are already active in the fight against human trafficking in Florida, safe housing and other immediate needs of trafficking victims can be supplied and effectively afforded upon rescue.<sup>264</sup> Specifically, DCF should be listed as the lead agency to facilitate access to victim rights and benefits since it has the most relevant resources.<sup>265</sup> DCF also has established relationships with other agencies and organizations that can supplement its resources to see that the benefits are adequately utilized.<sup>266</sup> These relationships will be key in obtaining necessary funds and physical resources that cannot be provided by other means. Of course, funds will be required from state congressional appropriations, but advocates have noted that certain victim services can be revenue neutral by reallocating funds from interconnected programs.<sup>267</sup>

When these agencies and organizations join together to support safe harbor legislation, they will encourage the Florida Legislature to prioritize protection along with prosecution and prevention at the local level. As protection comes to the forefront, a new dawn will bring hope for Florida's victims to see freedom in the Sunshine State. Rescued victims who benefit from the services provided under future safe harbor legislation will have the opportunity to be rehabilitated and reintegrated into society in a positive way that minimizes their risk of being re-victimized.

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<sup>264</sup> See DEP'T OF CHILDREN AND FAMILIES, LIST OF COALITIONS, TASK FORCES AND WORKING GROUPS IN FLORIDA 2–11, available at <http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/coalitions.pdf> (last visited Oct. 16, 2012) (listing many of the human trafficking organizations in Florida).

<sup>265</sup> See generally DEP'T OF CHILDREN AND FAMILIES, DCF QUICK FACTS 3–27 (2011), available at <http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf>.

<sup>266</sup> *Id.* at 29.

<sup>267</sup> See Jan Pudlow, *Bar Children's Committee Focuses on Child Trafficking*, 38 Fla. Bar News 18 (2011).

### VI. Conclusion

*I am not for sale. You are not for sale.*

*No one should be for sale.*<sup>268</sup>

Although Florida's image as the Sunshine State is overshadowed at times by the image of sex and labor slaves being exploited up and down the coasts, the state is not without resources to alleviate the problem. The holistic approach utilized by international efforts, the United States federal government, and some individual states of the United States, have exemplified how victims can, and should, be prioritized in the fight against modern-day slavery. Furthermore, comprehensive statutory schemes can serve as models for Florida as it rethinks its own anti-trafficking policies. Providing all victims with safe harbor, even for a limited time, will greatly aid in severing the victim's dependency on the trafficker and preventing re-victimization. Florida's future human trafficking legislation should seek to provide protective measures for victims that are independent of the victim's age, gender, and immigration status. The legislation should embrace the three "Rs" platform and establish a foundation for victims to be *rescued* (safe from re-victimization), *rehabilitated* (physical and psychological needs met), and *reintegrated* (taught skills to reenter society).<sup>269</sup> With the collaboration of legislators, law enforcement officials, and advocates, the eclipsing effect human trafficking has over Florida can give way to the realistic hope of rescuing victims today and ensuring they see freedom tomorrow.

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<sup>268</sup> DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE AND HOW WE CAN FIGHT IT 301 (2007).

<sup>269</sup> See *supra* Part V.