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The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse

Karen E. Bravo^o

I. INTRODUCTION

Transatlantic slavery was a centuries-long international trade in people and their labor, spanning from the early 1500s to the 1880s.¹ Since the end of transatlantic slavery in 1888,² nation-states and international institutions have legally recognized and been committed to protecting the fundamental rights of human beings.³ In light of these promised protections, resurgence in the enslavement of human beings would seem impossible. However, that resurgence has been documented worldwide in the form of human trafficking.⁴ Indeed, an analysis of the economic roots and structure of the two forms of exploitation reveals that modern trafficking in human beings is as interconnected with, and central to, contemporary domestic and global economies as the transatlantic trade and slavery were to their contemporaneous economic systems.⁵

This article examines some uses of the transatlantic slave trade in modern anti-human trafficking efforts and discourse as well as the impact of those uses. In addition, this article identifies the role of the late nineteenth and early twentieth century efforts against white slavery in the modern discourse. While references to transatlantic slavery are used to frame the discourse of modern trafficking, it is the fight against white slavery, rather than the transatlantic slave trade, to which the typical modern trafficking combatant owes her intellectual debts. Even more, the focus of late nineteenth and early twentieth century activists on sex and the protection of women continues to limit understanding of the fundamental similarities among the transatlantic slave trade, white slavery, and contemporary trafficking in humans. Analysis of the transatlantic slave trade and of white

slavery offers a richer understanding of human trafficking, an understanding that may be used to combat modern trafficking in humans more effectively than current efforts.

Part II provides an overview of human trafficking, including the responses of the United States and the international community. Part III examines the uses made of the transatlantic slave trade⁶ in contemporary anti-trafficking discourse and efforts. Part IV discusses the ways in which white slavery frames the perceptions of and responses to human trafficking. Part V concludes that these two forms of exploitation could play more meaningful roles in current efforts against human trafficking. For example, by identifying similarities in the economic roles of these forms of exploitation and analyzing the effectiveness of various abolitionist tactics. I conclude that, to be successful, anti-trafficking efforts should target the economic incentives and structures that facilitate the trade in human beings.

II. MODERN TRAFFICKING IN HUMANS

Separated from the transatlantic slave trade by more than one hundred years and seeming eons in human development, modern human trafficking might appear to be an aberration, a dreadful anomaly in the march of human progress. According to varied and frequently *conflicting* sources,⁷ 27 million people worldwide are enslaved,⁸ either 4 million or 600,000–800,000 (or some unknown number of) individuals are trafficked annually across international borders,⁹ and 14,000–17,500 people are trafficked into the United States each year.¹⁰ The modern trade in human beings—their purchase, sale, and distribution—has significant ramifications for international human rights, international criminal law, and the global economy.¹¹ The modern “reemergence”¹² of trafficking in human beings and of slavery is said to be linked to the deepening interconnection among countries in the global economy, overpopulation (with its consequent production of disposable people), and the victims’ economic and other vulnerabilities.¹³ Despite the expenditure of a great deal of intellectual,

legal, social, and other resources to prevent and punish human trafficking, there is little or no evidence of effective, systemic impact on the size and operations of these activities.¹⁴

The UN Working Group on Contemporary Forms of Slavery first raised the issue of sex tourism in its 1978 report,¹⁵ and the existence of international sex markets became generally known through media reports and other information channels soon thereafter.¹⁶ However, it was not until the 1990s that modern human trafficking first began to fully engage the consciousness of Western legislators and the public in general.¹⁷ A perceived growth in the buying and selling of human beings followed the collapse and dissolution of the Soviet Union.¹⁸ Media and other reports disseminated frightening statistics and horrific tales of the purchase and sale of women and young girls from the former Soviet Union, in particular, into Western Europe.¹⁹

The images of forced sexual slavery on a large scale created alarm that spread around the world. Growing numbers of victims were said to be enslaved by modern-day traffickers. Tricked by schemes offering employment abroad or other prospects of fruitful economic opportunity—or simply sold by parents or other authority figures—countless men, women, and children around the world were being subjected to sexual or other exploitation without compensation.²⁰ Victims were deprived of their freedom of movement, raped, beaten, and violated in various ways through the mechanisms of violence, force, psychological abuse, and fraud. By the late 1990s, conventional knowledge held, based on varying statistical sources, that up to 4 million people were being trafficked annually across national borders.²¹ These numbers included 50,000 persons who were said to be trafficked annually into the United States²² and 27 million individuals who were alleged to be held in some form of involuntary servitude or peonage.²³ In addition, the trade in humans was said to be a \$5–7 billion-per-year illicit industry,²⁴ less profitable than only traffic in illegal drugs and arms.²⁵

Confronted with evidence of an increase in the traffic of human beings and violations of state borders and laws; scholars, policymakers, nongovernmental organizations (NGOs), and legislators came together in both the international and domestic arenas to combat human trafficking. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (hereinafter, the Trafficking Protocol)²⁶ was adopted and ratified as a protocol to the more wide-ranging Convention Against Transnational Organized Crime.²⁷ One of the principal achievements of the Trafficking Protocol is the creation of the first international definition of trafficking. The Trafficking Protocol provides the following definition of trafficking in persons:

[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 exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or other services, slavery or practices similar to slavery, servitude or the removal of organs.²⁸

The United States' domestic statute, the Trafficking Victims Protection Act (TVPA) of 2000,²⁹ was adopted a mere month before the UN Organized Crime Convention and Trafficking Protocol were opened for signature.³⁰ Together, these international instruments and US legislation have been influential in the fight against and interpretation of modern trafficking in humans.³¹

By 2006, it appeared that the United Nations' and United States' efforts had made progress against trafficking, and in comparison with the first major reports about the trade, official figures suggested a substantial decline in the scope of modern traffic.³² The US State Department Trafficking in

Persons Reports for the years 2004, 2005, and 2006 consistently estimated the number of persons trafficked across international borders was closer to 600,000–800,000 people,³³ as opposed to the 4 million first estimated in the United Nations' 1997 figures.³⁴ Also, the US Attorney General's annual report to Congress released in June 2006 noted that between 14,500–17,500 victims were imported annually into the United States, a more than 60 percent decline from the prior estimates.³⁵ Yet, only a month later, the July 2006 Government Accountability Office report on the United States' anti-trafficking strategy pointed to significant methodological flaws and challenges in the collection of data regarding the modern traffic in humans, questioning the validity of the statistics disseminated through the US State Department's annual Trafficking in Persons Reports and other mechanisms.³⁶

Two contrasting accounts illuminate the emergence of broad public awareness around trafficking and the subsequent development of an international consensus to combat it. Commentators such as Kelly Hyland pointed to growing international concern regarding the scope, complexity, and criminality of modern trafficking in humans as the impetus for the development and adoption of the United Nations' anti-trafficking treaty in 2000.³⁷ In contrast, other scholars have highlighted states' growing realization of the threats that modern trafficking poses to their sovereignty.³⁸

Given the general knowledge that child trafficking and debt bondage³⁹ have always existed and continued to exist even after the abolition of the transatlantic slave trade, there are three additional compelling—and potentially complementary—interpretations of activity leading to the international instrument adopted in 2000. First, the attainment of a level of human progress and acceptance of the norm against slavery may have led inevitably to the determination to stamp out continuing exploitation. Reported human rights violations and the victimization of women and children have offended the developed world's conception of where, what,

and who human beings had become in the post-World War II and post-Cold War era. Second, both the perceived sharp increase in illicit traffic, together with the types of victims (Eastern Europeans who are perceived as white), and the importation of trafficking into the very heart of the West, aroused a strong negative reaction. Third, the end of the Cold War facilitated international consensus about the danger of transnational criminal threats to state borders and freed state resources to combat a previously identified crisis for which resources and international cooperation were heretofore unavailable.

While intergovernmental efforts proceeded on the international level, other combatants against the modern traffic in human beings have looked to previous periods of human enslavement for insight into the trade and weapons to fight against it. Two particularly relevant examples of enslavement are the transatlantic slave trade and the white slavery of the late nineteenth and early twentieth centuries. The dominant perception of modern human trafficking views it as an abnormal parasitic appendage to global and domestic economies and the product of the greed of particularly monstrous individuals and groups. However, comparing modern trafficking in humans with the transatlantic slave trade reveals fundamental similarities in both their economic roles as well as the ways in which both systems of exploitation form (or formed) part of the dominant and “legitimate” economic systems of their times.⁴⁰ Analysis of white slavery and the responses to it adds depth to the understanding of modern efforts against human trafficking and the potential shortcomings of abolitionist methodologies.

III. THE TRANSATLANTIC SLAVE TRADE IN MODERN ANTI-TRAFFICKING DISCOURSE

The transatlantic slave trade emerged amidst the rush of European powers exploiting the “New World” discovered by Christopher Columbus.⁴¹ The Portuguese and Spanish⁴² introduced African slaves to replace the

indigenous inhabitants of the Americas who had quickly fallen prey to the colonists' depredations, diseases, and labor demands. The transatlantic slave trade and African slavery played an integral role in European exploration and settlement of the Western hemisphere.⁴³

Historians estimate that from the 1400s until Brazil ended its slave trade in 1888 (the last country in the hemisphere to do so),⁴⁴ over 9.5 million Africans were shipped from Africa to the Americas and elsewhere.⁴⁵ Slave labor was used in all areas of New World life. The vast bulk of the enslaved Africans and their New World descendants were destined for agricultural labor on the plantations of Europe's colonies in the Caribbean and in Central and South America, as well as the United States. However, slave labor was essential to all aspects of the New World economies.⁴⁶

Following hard-fought political battles in Britain, the African slave trade was outlawed in the British Empire in 1807, with the prohibition becoming effective on January 1, 1808.⁴⁷ Enshrined in and protected by the US Constitution,⁴⁸ the slave trade officially ended in the United States by congressional legislation that same year.⁴⁹ Nevertheless, illicit trade from Africa and a newly resurgent internal trade in black slaves continued in the continental United States.⁵⁰ In addition, the importation of slaves across the Atlantic to the Americas continued until 1850.⁵¹

A. Uses of the Transatlantic Slave Trade in Anti-Trafficking Discourse

Much of the literature describing and analyzing modern human trafficking—as well as scholarship from commentators, legislators, and government officials—invoke and analogize to the transatlantic slave trade. Such invocations and analogies occur in many venues and are widespread in media reports, scholarly literature, legislative history, and policy, as well as pronouncements from the President of the United States. The content of these references and analogies varies with the intent of their users. The “old slavery” is compared to the “new slavery” in order to distinguish the new slavery from the old. For example, the egregiousness of the abusive

treatment of slaves, the estimated number of victims of each trade, and the race or ethnicity of those victims are all categories which use this old-new comparison. Often the implicit or explicit hypothesis appears to be that modern trafficking in humans is more widespread and awful, and involves greater victimization and human degradation than did the transatlantic slave trade.⁵²

Those references are pervasive and wide-ranging in the anti-trafficking discourse, but they have been superficial, counterproductive, and harmful to the fight against human trafficking. The use of analogies is fundamental to human reasoning and analysis because it allows for the comparison of new experiences to old, categorization of the new, and decision making regarding how to deal with the newly encountered experience. Analysis of the usage of the transatlantic slave trade analogy exposes continuing trends and a strong appeal to emotions rather than to the intellect. I have identified these trends as (1) the emotional exhortation to action; (2) the diminution of the horror of transatlantic slavery; (3) the assumption of the mantle of righteousness; (4) distancing of our (enlightened) time from theirs or “how far we’ve come”; and (5) the “mythic slaying of the dragon,” or the perception of human trafficking as an entirely new form of exploitation.

Several of these examples—reproduced and analyzed below—fall within more than one of the categories identified. The intertwining of these categories demonstrates the deep-seated nature of the emotional reactions and the conventional perceptions of the transatlantic slave trade.

1. Emotional Exhortation to Action

In the first common use of the transatlantic slave trade analogy, modern human trafficking is compared to earlier slavery in order to stimulate the audience to action. Transatlantic slavery is used as an emotional and historic touchstone—the blueprint against which this “new” traffic is measured. The more immediate access to visceral imagery and emotions that this touchstone evokes, the more the new system of exploitation is said

to resemble the transatlantic slave trade. As a result, the analogy user's call to action becomes more powerful, and the audience is more likely to support the mechanisms suggested by the analogy user in their crusade against the modern traffic.

US President George W. Bush illustrated the methodologies used to exploit references to the transatlantic slave trade while speaking about trafficking to the UN General Assembly on September 23, 2003. In his speech, the President boldly referenced slave trade and slavery:

We must show new energy in fighting back an old evil. Nearly two centuries after the abolition of the transatlantic slave trade, and more than a century after slavery was officially ended in its last strongholds, the trade in human beings for any purpose must not be allowed to thrive in our time.⁵³

The identification of human trafficking as “an old evil” coupled with the martial tone of the call to arms appeals to the emotions of the listener, while giving direction to the revulsion that the language evokes.

Another example of the emotional exhortation to action comes from a speech by Ambassador John Miller, then-Director of the US State Department's Office to Monitor and Combat Trafficking in Persons:

We have to make sure that we get our language straight. There are a lot of euphemisms. I head up an office that is called the Office of Monitoring and Combating Trafficking in Persons. Trafficking in persons is the euphemism; what we are really talking about is the slave trade. Back in the nineteenth century, when people talked about slavery, they did not talk about slaves. They talked about field hands or house boys. It made it sound better. Today we talk about forced laborers or sometimes the phrase sex worker—as if one could describe it as a normal form of work. . . . [I]t is important to call it by its real name: slavery.⁵⁴

By explicitly invoking the transatlantic slave trade, then-Director Miller attempts to arouse the revulsion and rejection of his audience to the existence of the “new” trade.

Finally, in this excerpt from his *New York Times* video blog, journalist Nicholas Kristof exemplifies the use of emotional exhortation to action. Here, he invokes the image of the transatlantic slave trade to illustrate the horrors of modern sex trafficking in Cambodia.

[Audio Narration]: To us, slavery seems a remote part of history, but it is not. . . . They had been sold into slavery by their parents or kidnapped by neighbors. The problem here isn't prostitution, as such, and the real problem isn't trafficking; it is slavery. Every year worldwide, 700,000 people are ensnared by human trafficking across international borders. I found it stunning that [*simultaneous depiction of black slaves with the following scrolling text: It seems almost certain that the modern slave trade is larger in absolute terms than the Atlantic slave trade in the 18th and 19th centuries*] scholars estimate that the slavery trade today is probably larger than it was in the 18th or 19th centuries. At its worst, the trafficking system takes innocent village girls and imprisons them in brothels to be raped repeatedly. . . .⁵⁵

The depiction of black slaves serves to invoke the horror of transatlantic slavery and invites the listener to compare it to modern human trafficking. Kristof further states in his narration that “the talk about sex slavery may sound like hyperbole, but it is not. And the shame lies . . . with our own failure to respond as firmly to slavery today as our ancestors did in the 1860s,” thus implying that the modern traffic is as bad as or worse than transatlantic slavery. However, as is typical of such comparisons, while the image of transatlantic slavery is used, the user does not attempt an in-depth comparison of the two forms of exploitation.

2. Diminution of the Horror of Transatlantic Slavery

In this category, the user builds upon the emotional exhortation to action. Here, the analogy user once again evokes the touchstone of transatlantic slavery and takes for granted the audience's agreement that it must be condemned and rejected. However, unlike with the call to action, this analogy user implicitly or explicitly diminishes the horror of that historic

yet still influential system of exploitation. The purpose of the user is to magnify the modern traffic in humans, whether with respect to the extent of the human rights violations committed or the scope of the exploitation (usually the absolute number of victims or number of countries involved). That diminution also serves to arouse both emotional reactions and action in the listener-reader. The message, in effect, is “as horrible as you know the transatlantic slave trade and slavery to have been, an even greater horror is full-fledged in our time, in our country, in our lives.”

Some typical examples are as follows:

- There are more slaves alive today than all the people stolen from Africa in the time of the transatlantic slave trade.⁵⁶
- Two hundred million people are victims of contemporary forms of slavery. Most aren't prostitutes, of course, but children in sweatshops, domestic workers, migrants. During four centuries, 12 million people were believed to be involved in the slave trade between Africa and the New World. The 200 million—and many of course are women who are trafficked for sex—is a current figure. It's happening now, today.⁵⁷
- Contemporary forms of slavery include bonded labour, trafficking, the worst forms of child labour, forced marriage, and the abuse of domestic migrant workers. *These now involve many times the number of people the transatlantic slave trade ever involved.* Although reliable statistics on contemporary slavery are hard to come by due to its illegal nature, Kevin Bales estimates that 27 million people are contemporary slaves, while *some international NGOs have put the number as high as 200 million.*⁵⁸
- Whatever the exact number is, it seems almost certain that the modern global slave trade is larger in absolute terms than the Atlantic slave trade in the eighteenth and nineteenth centuries was.⁵⁹

In analyzing the examples above, several issues are worthy of note. First, in the authors' use of the transatlantic slave trade as a comparator to trafficking, they imply that modern trafficking is worse than this quintessential, readily accessible image of slavery. Second, the authors' use

of absolute versus proportional numbers as comparators is misleading.⁶⁰ A meaningful analysis would refer to the proportion of the existing human population that was enslaved at the time of the transatlantic slave trade versus the proportion of the contemporary human population that is enslaved. For example, a comparison could be drawn to the proportion of Africa's then population that was enslaved during the slave trade versus the proportion of source-country populations, such as post-Soviet Eastern European or Asian countries that are now enslaved. Another worthwhile calculation would be a comparison of the individual country's or region's proportion of export earnings or economic activity represented by the trade in enslaved persons at the time of the transatlantic slave trade to the present. Third, duplicative references to statistics presented by other authors are evidence of the struggle by academics, activists, NGOs, and officials to understand the scope of human trafficking. Unable to definitively pin down the scope of the modern traffic in humans, they repeat numbers offered up by prior authors—sometimes even while noting their potential inaccuracy—until those numbers gain the aura of hard fact.⁶¹

Running throughout is an inherently contradictory view of transatlantic slavery: it is both (a) the ultimate in evil that never should have been, but is being repeated, and (b) less noxious than the modern traffic in human beings (either because more persons are victimized now or because human trafficking is happening *today*).

3. Assumption of the Mantle of Righteousness

With this category of usage, the analogy user assumes the mantle of righteousness by invoking her own or her country's past actions against and continued condemnation of transatlantic slavery. The mantle of righteousness confers authority upon the individual spokesperson or country, and it delays or prevents questioning of the mechanisms against modern trafficking proposed or deployed by that individual or country. After all, who would (and why would they) question the activities of a

country or person with such an impeccable antislavery lineage and proven methods of combating the analogous scourge?

In addition to the first excerpt under *Emotional Exhortation to Action* (Part III.A.1 *supra*), some typical examples include the following:

- People of conscience have fought against the different manifestations of slavery for centuries. This antislavery legislation is in the tradition of William Wilberforce . . . who [was an] ardent abolitionist. . . .⁶²
- The right to be free from slavery and involuntary servitude is among [the inalienable rights recognized in the US Constitution]. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Yet, current practices of sexual slavery and human trafficking are similarly abhorrent to the principles upon which the United States was founded.⁶³
- More than 140 years ago, the United States fought a devastating war to rid our country of slavery and to prevent those who supported it from dividing the nation. Although we succeeded then in eliminating the state-sanctioned practice, human slavery has returned as a growing global threat to the lives and freedoms of millions of men, women, and children.⁶⁴

A more in-depth and objective analysis of the above examples would reveal (1) that the analogy user's affiliated country was not so committed in its opposition to transatlantic slavery, and (2) that abolitionist mechanisms deployed in the past (versions of which are now advocated) were not as successful as is implied.⁶⁵ That is, as discussed in *The Mythic Slaying of the Dragon* (Part III. A. 5. *infra*), state-supported slavery and enslavement continued in other guises, including in the United States. Both a denial of any complicity in or an avoidance of appearing to be involved in slavery's reemergence are also implicit, especially in light of claims regarding a country's staunch historical and contemporary opposition to the practice.

Yet another thread is the condemnation of developing countries that are identified as complicit in or not working hard enough against modern

trafficking. By implication, if country X (e.g., the United States or the United Kingdom) successfully eliminated slavery so long ago, why hasn't country Y (e.g., Ghana or Thailand) done the same?⁶⁶ This use also turns the tables so that the historically victimized—African countries whose territories were sources of transatlantic slaves—become the contemporary victimizers.

Assumption of the mantle of righteousness serves to hide from the listener-reader (and perhaps from the analogy user herself) the fact that the structural apparatus which facilitated past exploitation has remained in place even after its legal abolition. In so doing, the similarity in economic rationales and incentive structures—and the participation of “legitimate” enterprises and institutions in both transatlantic slavery and modern trafficking in humans—are obscured.⁶⁷

4. Distancing our Enlightened Times *or* “How Far We’ve Come”

In distancing our modern times from the centuries of the transatlantic slave trade, the analogy user assures the contemporary listener-reader of her own virtue and “hides the ball” so that the listener-reader cannot see the structural and systemic similarities between human trafficking and the transatlantic slave trade. So, unlike the average individual and consumer of the past, today's listener-reader believes that she is not complicit in or a beneficiary of the modern traffic in humans. In addition, because the modern traffic in humans is presented as an aberration in our enlightened times, the listener-reader does not understand that she should question the systemic framework of our society, economy, or political systems. By ignoring or rejecting the connections between the two forms of exploitation—and by assuring the listener of her lack of complicity—the analogy user makes it easier for the listener-reader to accept the dominant neo-abolitionist law enforcement paradigm⁶⁸ as potentially the most effective and complete method for ending the modern trade. Deeper inquiry

into the legal, economic, social, and political organization and institutions of our contemporary world seems unnecessary.

An example of this trend includes President George W. Bush's September 23, 2003, address to the United Nations that was excerpted in Part III.A.1 above. Note that President Bush refers to the "ending" of the transatlantic slave trade two centuries ago (the United States ended its slave trade in 1807) and to the "end" of slavery.⁶⁹ However, he glides over the reality that the United States' internal slavery and slave trade did not "end" until the Civil War and the adoption of the Thirteenth Amendment to the US Constitution. Also ignored is the question whether the conditions endured by the ex-slaves and their descendants (including peonage and Jim Crow laws, as well as other limitations on their freedom and autonomy) might fit within the definitions now used to delineate "modern slavery."⁷⁰ Ultimately, the effect of the tone of this speech is to enshroud the United States in righteousness—it is the crusader against the modern scourge—without acknowledgement of the United States' historic complicity or its modern role in the traffic in humans.

Another example is provided by commentator Ethan Kapstein:

Just as the British government (after much prodding by its subjects) once used the Royal Navy to stamp out the problem, today's great powers must bring their economic and military might to bear on this most crucial of undertakings.⁷¹

This distancing from ancestral wrongs facilitates an approach to trafficking that glosses over or ignores essential similarities between the transatlantic slave trade and the modern traffic in human beings. Those similarities might point to a fundamental problem with modern civilization's system of organizing itself. After all, as Ethan Kapstein cautions: "Just as the brutal facts of the Atlantic slave trade ultimately led to a reexamination of US history . . . so must growing awareness of the modern slave trade spark a recognition of the flaws in our contemporary economic and governmental arrangements."⁷²

5. The Mythic Slaying of the Dragon

In this category, just as in the myths of dragon slaying, the speaker, using triumphalist rhetoric, acclaims the historic abolition of transatlantic slavery. The speaker-writer then declares the wisdom of abolitionist techniques as the path to eradication of modern trafficking. The previously reproduced examples, excerpting the September 23, 2003, speech of US President George W. Bush⁷³ and the Purposes and Findings of the TVPA,⁷⁴ fall within this trend. In both, the speakers state that trafficking has appeared despite successful efforts to abolish slavery.

However, this trend in the use of the transatlantic slave trade analogy denies the reality that transatlantic slavery did not end with abolition. As a result of the continued necessity to secure cheap labor and of the racial hierarchy that sustained transatlantic slavery, the much-vaunted and celebrated abolition of the slave trade in the British Empire was followed by the introduction of indentured servitude. During this time, various alternative forms of slavery arose: the indentured servitude of Chinese and Indian laborers in the Caribbean colonies of the British Empire,⁷⁵ the “blackbirding” of the inhabitants of the South Pacific to the Queensland colony of Australia,⁷⁶ and the forced labor of native inhabitants in many of the newly colonized territories of the dismembered African continent.⁷⁷ Similarly, the United States’ Civil War, Emancipation Proclamation, and Thirteenth Amendment were followed by the horrors of Jim Crow laws, the Ku Klux Klan, and widespread lynchings and exploitation of the descendants of African slaves.⁷⁸

B. Effects of the Uses of the Transatlantic Slave Trade in Anti-Trafficking Discourse

The uses of the transatlantic slave trade analogy have focused on affronts to human dignity, the *jus cogens* violation status of slavery, and the efforts of developed countries to combat this modern manifestation of slavery under international law. The integral connection of modern traffic with the

contemporary global economic system has been substantially unexamined, at the same time that it had appeared to have been acknowledged in only a token fashion. An example of this token acknowledgment is provided by Ambassador John Miller:

I will list a few of the causes of human trafficking. Poverty is a tremendous push factor, and when coupled with the attraction for a more materialistic society, a pull factor, it forms one of the major foundations for human trafficking. Greed is a second cause. We have all heard about organized crime. We now talk about the big sources of revenue for organized crime: the drug trade, the arms trade, the people trade. Greed coupled with the attitude in many cultures towards women, imposes a higher toll on sex trade. Greed generates many categories of slavery, such as domestic servitude, child soldiers, factory, and farm labor slavery. There are exotic forms of slavery—such as child camel jockey slavery—in many of these countries. The challenges that these kinds of slavery pose for all nations are threefold. First and foremost, there is the challenge to human rights and dignity. Second, there is the health challenge. When you deal with sex slavery, you are dealing with HIV/AIDS and sexually transmitted diseases. Finally, there is the challenge of national security and stability. This challenge affects the stability of many countries, especially in how the slave trade is connected to organized crime.⁷⁹

Yet, despite this seeming acknowledgment by an anti-human trafficking official, the United States—in its efforts against human trafficking while recognizing the economic connections of the human trade and the global economy—chooses to focus legislative mechanisms on criminalization and punishment, rather than on structural economic solutions. As a result, the United States' anti-trafficking efforts—and the efforts that it encourages from other countries—do not focus on the economic forces underlying human trafficking. The *prevention* element of the “three P” anti-human trafficking paradigm (prosecution, protection, and prevention) centers its activities on the dissemination of information and education about the risks and evils of human trafficking.⁸⁰ These efforts do not constitute an attempt

at a structural transformation of the economic relationships and connections between vulnerable individuals and groups and their potential (and/or actual) exploiters. The efforts appear to focus on legal prohibitions against exploitation without examination of the economic reasons for such vulnerabilities.

This failure to proffer structural solutions does not necessarily denote policymakers' ignorance of the structural underpinnings.⁸¹ However, that seeming understanding of the universal economic moorings of the human trade has not given rise to a comprehensive or effective solution. Instead, a perhaps subconsciously directed decision to reject uncomfortable reality—a form of willful innocence—may be at play. As a consequence, the discourse and the weapons employed against the scourge are impoverished by the lack of widespread appreciation of the economic role of trafficking in the globalizing twenty-first century, its integration into the “legitimate” economy, and a failure to confront that role head-on.

The crucial challenge confronting anti-trafficking scholars and activists is to delve deeply enough so as to identify the root structural causes and contributors to modern trafficking in humans. Many of the examples discussed above demonstrate uses of the deeply ingrained image and interpretation of the transatlantic slave trade in the fight against human trafficking: that it is a revolting, tragic, and never-to-be-repeated error in human history. However, that depiction ignores the normalcy and mundanity of the exploitation of transatlantic slave trade victims; and thus, it fails to grasp an essential similarity to the mundanity and (in)visibility of the victimization experienced by victims of modern human trafficking.

IV. WHITE SLAVERY IN MODERN ANTI-TRAFFICKING DISCOURSE

While the transatlantic slave trade analogy is frequently invoked, the efforts to combat white slavery in the late nineteenth and early twentieth centuries are progenitors of the dominant conceptual and legal frameworks applied to the modern traffic in human beings.⁸² Governmental and

intergovernmental responses to modern human trafficking have evolved from international and domestic US legislative reactions to the white slavery hysteria of the late nineteenth and early twentieth centuries.⁸³

A. White Slavery in Historical Perspective

The phenomenon of and alarm about the enslavement of white women arose in Europe and the United States in the late nineteenth and early twentieth centuries. Beginning in the 1890s, the number of white women engaged in sex work in overseas colonies increased, and a universal racial hierarchy⁸⁴ took greater hold as women from Western Europe and the United States worked as prostitutes in South America, the Middle East, and Asia.⁸⁵ Rumors arose of organized networks that procured and sent women abroad for prostitution; their existence became an expanding affront to the public and legislators in metropolitan centers.⁸⁶ The increased visibility of “migratory prostitution” led to greater public perception of an onslaught against the mother country’s very identity.⁸⁷

Historians Marlene D. Beckman⁸⁸ and Eileen Scully⁸⁹ provided descriptions of public attitudes on both sides of the Atlantic. Beckman noted,

[t]he Progressive Era reformers who supported [antislavery legislation] had used the words ‘white slavery’ to promote the vision of women held in bondage against their will, of mysterious druggings and abductions of helpless young girls, and of unexplained disappearances of innocent and naïve immigrants forced into lives of prostitutions and vice.⁹⁰

Scully reported,

[b]y 1910, the image of the white slave trade conjured up by London purity groups had taken full hold of the American imagination. Lurid stories of sullied white womanhood and organized syndicates linking major cities helped bring on board southerners who otherwise would have argued states’ rights in the face of a broad expansion of federal police powers. The vision of a

vast network of Jewish and French procurers kidnapping and luring white women from Europe and America to service lowly natives and ‘eastern rich potentates’ was captivating, combining as it did racial anxieties, colonial debates, immigration politics, and public morality issues. Similar sensationalism and bourgeois prurience was evident elsewhere, from London to Moscow to Buenos Aires.⁹¹

In response, a number of international instruments and domestic statutes were adopted by the United States and European countries. The bi-Atlantic fear that white women were being sold into slavery to nonwhite males gave rise to the 1904 International Agreement for the Suppression of the White Slave Trade.⁹² Pursuant to the provisions of the treaty, victims would be protected while those who seduced them into prostitution would be punished. Historian Eileen Scully pointed out that only the victimization of whites was targeted, leaving unchallenged the exploitation of nonwhite women. The racialized character of this fight against the eighteenth and early nineteenth century traffic helped undermine the effectiveness of the international instruments adopted to combat the trade by targeting only the sexual exploitation of a single racial group.⁹³

After the 1904 Act proved largely ineffective, the International Convention for the Suppression of White Slave Traffic was adopted in 1910.⁹⁴ The two international instruments, together with two later treaties addressing the trafficking of women and children of all races,⁹⁵ were consolidated by the League of Nations in 1949 to produce the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁹⁶ In the United States, Congress passed the 1910 White Slave Traffic Act (the Mann Act) imposing felony liability for the transportation of women across interstate or international borders for “the purpose of prostitution or debauchery or any other immoral purpose.”⁹⁷

Just as the specter of involuntary sex and despoilment of innocent white maidens seized the Western world’s attention in the late 1800s and early 1900s, overtones of that appalled, fascinated, and condemnatory prurience

continued to pervade public and institutional perceptions of the traffic in human beings into the early twenty-first century.⁹⁸ The focus on innocent women and children and the illicit sex foisted upon them draws the attention of policymakers, scholars, and the public from the systemic reality of human trafficking, leading to the dominant conventional perception of traffickers as aberrant (in)human beings. Further, it leads to the failure to appreciate that traffickers, like their victims, are cogs in a vast and interconnected economic machine⁹⁹ in which we all play a role and of which we are beneficiaries.¹⁰⁰ Thus, the modern fight against human trafficking—including commentary, analysis, and would-be legislative solutions—is influenced by the search for the innocent, helpless, and worthy victim who will be rescued by law enforcement or another governmental agency.¹⁰¹

B. References to White Slavery: The Roles of Race and Sex

Relatively few overt analogies to nineteenth and early twentieth century white slavery are made in the anti-trafficking discourse. Nonetheless, in addition to the role of white slavery in framing the legal architecture of international and domestic laws targeting the coerced sexual servitude of women, the influence of white slavery continues to be evident in discussions of modern human trafficking in a multiplicity of venues, including the media and legislative history. The excerpts from media and legislative sources reproduced and analyzed below illustrate the focus on sex and race.

1. Media Reports and Commentary

Much like the response to white slavery in the eighteenth and nineteenth century, the media's discussion of contemporary human trafficking is largely framed by race and also reveals the perpetuation of a racial hierarchy. A 1998 *New York Times* exposé of modern trafficking reported,

The international bazaar for women is hardly new, of course. Asians have been its basic commodity for decades. But economic hopelessness in the Slavic world has opened what experts call the most lucrative market of all to criminal gangs that have flourished since the fall of Communism: *white women* with little to sustain them but their dreams. Pimps, law enforcement officials, and relief groups all agree that Ukrainian and Russian women are now the most valuable in the trade.¹⁰²

As reported in the article, an anti-trafficking expert explained, “It’s no secret that the highest prices now go for the white women. . . . They are the novelty item now. It used to be Nigerians and Asians at the top of the market. Now it is the Ukrainians.”¹⁰³

A 1997 report by *Global Survival Network* quotes Vladimir, a Russian trafficker, who explained: “The Japanese will take anything, as long as she has a passport and she is Russian. Whether she is fat or skinny does not concern them.”¹⁰⁴ The authors further explained,

Russian women are in high demand in many countries because of their “exotic” nature and relative novelty in the sex market. Russia and the Newly Independent States, including Ukraine and Latvia, have become primary “sender” countries, supplementing and sometimes replacing previously significant sources of women from Asia and Latin America.¹⁰⁵

These descriptions of the customer demand forces at work in markets serviced by the international sex trade may evidence both the objectification and sexualization of the exotic (and perhaps forbidden) as well as the ongoing impact of the racialized hierarchy of the nineteenth and early twentieth century migratory sex trade that was identified by Eileen Scully.¹⁰⁶ The contemporary public, the pushers, and the customers share the same racialized perceptions of the “worth” of white human “merchandise” vis-à-vis nonwhite “merchandise.” Just as the owners of African and African-descended women in the era of the transatlantic slave trade created and exploited a hypersexualized erotic image of their slaves,

the lingering desire to exploit and dominate “otherness” may drive the valuation of the traffic’s victims.¹⁰⁷

The viewpoints and perceptions expressed can be analyzed on a number of levels—modern slavery is said not to be based on race, unlike the slavery of yesteryear.¹⁰⁸ Yet, the racism which arose with and permitted transatlantic slavery makes today’s enslaved white women more valuable vis-à-vis enslaved black or Asian women.¹⁰⁹ In addition, it was the specter of the enslaved white women that most outraged public opinion in the West and spurred to action Western legislators, many of whom had ignored decades-long reports of the enslavement of Asian and African women and children.¹¹⁰

2. Legislative History and “Official” Positions

Concerns about the enslavement of white women continue to attract the attention of Western legislators today. Despite some acknowledgement of the existence and importance of labor trafficking in public debates leading to the passage of the TVPA, some influential US lawmakers seem particularly alarmed about the sexual enslavement of white women from Eastern Europe. For example, Senator Sam Brownback, reading from the *New York Times* exposé discussed above, claimed,

It happens every single day. Not just in Israel, which has deported nearly 1,500 Russian and Ukrainian women like Irina in the past three years. But throughout the world, where selling naïve and desperate young women into sexual bondage has become one of the fastest-growing criminal enterprises in the robust global economy.¹¹¹

Senator Paul Wellstone expressed similar motivations for supporting the trafficking legislation:

My wife Sheila urged me to do something about this problem several years ago. Consequently, she and I spent time with women trafficked from the Ukraine to work in brothels in Western Europe and the United States. They told us after the breakup of the Soviet

Union and the ascendancy of the mob, trafficking in women and girls became a booming industry that destroyed the lives of the youngest and most vulnerable in their home countries.¹¹²

Senator Wellstone also noted, “[O]ver a 3-year period, hundreds of women from the Czech Republic who answered advertisements in Czech newspapers for modeling were ensnared in an illegal prostitution ring.”¹¹³

The emphasis on sexual exploitation and a thrust toward prohibiting all forms of paid sex work are both exemplified by administration official Paula Goode, then-Acting Director of the Office to Monitor and Combat Trafficking in Persons, in a 2007 letter responding to a *New York Times* editorial: “[Your editorial] about sex slavery, leaves the impression that force and rape are somehow separate from prostitution. This impression is wrong. Few activities are as brutal and damaging to people as prostitution...The demand for prostitution creates sex slaves today.”¹¹⁴

The focus on sex and the conflation of prostitution, forced prostitution, and trafficking for the purposes of sexual exploitation detract from and weaken the fight against human trafficking. Using the anti-trafficking discourse to attack prostitution in all its forms, even where consensual, diminishes the resources targeted at forced prostitution and trafficking for the purposes of sexual exploitation. It also creates an image of trafficking as a phenomenon purely exploitative of the sexuality and bodies of women and children, hiding the systemic human-to-human exploitation of which trafficking in humans is but one extreme example. This conflation and the focus on sex fail to address the power/subordination dynamic in economic and political relationships, the exploitation of labor and the economically vulnerable, as well as the “developing” versus “developed” country imbalances that form the stabilizing matrix that facilitate modern human trafficking.¹¹⁵

C. *The Effects of White Slavery*

The effect of white slavery is pervasive on the perceptions of and mechanisms used to fight modern human trafficking, and it is present in the explicit and implicit invocations of white slavery made in diverse venues. Law professor Elizabeth M. Bruch argued that, “[t]he early emphasis on protecting white women now seems obviously racist and sexist. Yet that emphasis has continued to pervade the current discussions of, and policy towards, human trafficking.”¹¹⁶ Professor Bruch further noted, “[a]s a result of these biases, the current approaches to human trafficking replicate many of the flaws of earlier approaches—namely, a focus on victimization, a fruitless cycle of debate on the role of prostitution, problematic definitional questions, and a process of decision making that excludes critical voices.”¹¹⁷

A 2005 letter to the *New York Times* in reaction to planned regulation of prostitution in Tijuana, Mexico, is also illuminative of this approach. The author, Ambassador John Miller, asserted,

In addition to being inherently harmful and dehumanizing, prostitution and related activities fuel the modern-day slavery known as sex trafficking. What other “profession” creates such abuse and devastation? While some attempts to regulate prostitution may be well intentioned, we should not be focusing on regulation of prostitution, but rather on abolition of slavery.

Apologists for the transatlantic slave trade of yesteryear advocated for better ventilation and mattresses on ships for slaves, but all the regulation in the world would not have changed the fact that people used as slaves deserved freedom. The children and women of today deserve freedom too.¹¹⁸

Ambassador Miller’s letter verges on the conflation of enslavement with sexual exploitation. The “people” enslaved during the transatlantic slave trade “deserved freedom.” However, it is women and children—by implication, the sexually exploited—who deserve freedom today. While Ambassador Miller evokes the image of the historic systematic enslavement of Africans and the contemporaneous societal rationalizations in support of

that trade, his concern about modern trafficking is focused on the sexual exploitation of innocent and vulnerable women and children.

V. CONCLUSION—THE ANALOGIES OFFER MUCH MORE

The examples reproduced and analysis conducted above expose the inherent contradictions of the competing and complementary invocation of analogies to the transatlantic slave trade and white slavery. While the transatlantic slave trade analogy is used to invoke the image of enslaved blacks in order to inspire taking action against modern trafficking in humans, the subordination of blacks, blackness, and the colored “other” is viewed as more “natural” than the enslavement of whites and whiteness.

The racial hierarchy and subordination that arose with, allowed, and fostered the centuries-long transatlantic slave trade are deeply engrained. Professor Jonathan Todros discussed the ways in which racial discrimination underlies and facilitates sex tourism, an industry in which many human trafficking victims are exploited:

While these other forms of discrimination operate to make the poor and minorities more susceptible to trafficking, *such discrimination also serves to fuel the demand for prostitution*. The sex tourism industry in Australia, the United States and Western Europe plays on crude stereotypes of Asian women, by emphasizing the ‘submissiveness of Asian prostitutes and the [supposed] complicity of their families in their situation.’ Advertisements for sex tours ‘build on the patriarchal and racist fantasies of European, Japanese, American, and Australian men by touting the exotic, erotic subservience of Asian women.’ Racism clearly plays a role when white men from Western countries are willing to take advantage of women in Thailand, the Philippines, or other developing countries but would not treat white women in their own countries in the same manner.¹¹⁹

The enslavement of whiteness—together with the threats to state borders and authority—has precipitated coordinated international action by state entities against the modern traffic in humans, but it is the image of enslaved

Africans that will arouse and harness visceral public outrage and support for anti-trafficking efforts. Ironically, however, the racism that arose from the transatlantic slave trade prevents users of the analogy from delving more deeply into the substantive meanings and similarities of modern traffic and the transatlantic slave trade.

A layer of irony and contradiction is exposed with the realization that, like the transatlantic slave trade, white slavery was a product of labor imbalances¹²⁰ (albeit with greater agency inhering in white slaves of the late nineteenth and early twentieth century). Yet, much like today's anti-trafficking champions, the leaders of efforts to combat white slavery chose to focus on the sexual enslavement of victimized females rather than on structural, economic, and social causes.

A. Rethinking the Lessons Offered by These Analogies

Both the white slavery and the transatlantic slave trade analogies have been ill-used. The analogy to white slavery evokes sexual exploitation of hapless and vulnerable females, while the analogy to transatlantic slavery evokes emotions of horror, rejection, and denial, all the while tapping into popular misperceptions of that enslavement—that it was an aberrational practice. The systemic attributes of these two earlier forms of exploitation remain unexamined, despite the availability of critical scholarship that offers a deeper understanding of both by situating them within contemporaneous economic, social, and political realities.¹²¹

In the legal and conceptual frameworks constructed in response to the modern traffic, the heritage of white slavery is more entrenched than the heritage of the transatlantic slave trade. While the legal weaponry has been broadened so as to not overtly exclude victims of any race, and to implicitly include the victims of both genders,¹²² the white slavery analogy's evocation of sexual exploitation has a persistent hold on the analyses of policymakers and scholars. In effect, users of the analogies talk the talk of the transatlantic slave trade, but walk the walk of white slavery. They

invoke the image and perceptions of transatlantic slavery to evoke visceral reactions and action while employing the largely ineffective tools that have evolved from the instruments deployed against white slavery.

Yet, the analogy to the transatlantic slave trade, thoughtfully and substantively explored, may provide a richer understanding of the modern exploitation and illuminate a potentially more effective path to its eradication. Therefore, the focus on abolition and law as the weapons of choice must be widened to address structural economic realities.

For example, the rhetoric that invokes the transatlantic slave trade to mobilize action against modern human trafficking often inveighs against the greed of the modern trafficker. However, as Willem van Schendel and Itty Abraham note, “[m]any key words are reserved for the bad guys and their organizations. . . . Such language constructs conceptual barriers between illicit bad-guy activities (trafficking, smuggling) and state-authorized good-guy activities (trade, migration) that obscure how these are often part of a single spectrum.”¹²³ Greed may be understood as the desire to make profit, with that desire being an inevitable, necessary, and oft-celebrated element of a market economy. In contrast, the greed of the modern human trafficker is merely the desire for profit, and the word “greed” is employed to characterize as illegitimate a central tenet of economic theory (profit-seeking) that society and economic theorists celebrate when speaking of the industries and activities of which society and the legal system approve. Is the greed or profit motive of today’s owner-participants in human trafficking so different from the greed or profit motive of either the transatlantic slaver or the modern entrepreneur?¹²⁴

B. Moving Away From the Neo-Abolitionist Model

The abolitionist model provided by *superficial* analysis of the transatlantic slave trade and by white slavery’s legislative heritage provides inadequate tools in the efforts against human trafficking. The four dominant conceptual and legal models utilized to comprehend and combat the modern

traffic (i.e., law enforcement, human rights, women's and children's rights, and labor rights) are fundamentally neo-abolitionist, targeting not only the traffic in humans, but the sale of sex.¹²⁵ Neo-abolitionist thinking manifests a deep-seated conviction that this vastly complex and intricately networked economic, social, cultural, and political issue will be eradicated or controlled through legal mechanisms that focus almost exclusively on prohibition and punishment of the trafficker and rehabilitation of the violated victims.¹²⁶ Such an approach will fail. Instead, a structural response to sources of vulnerability and the economic roles of human trafficking would more successfully combat the modern trade in human beings.¹²⁷

Neo-abolitionism is also reflected in the efforts to abolish prostitution.¹²⁸ However, on its own, abolitionism does not succeed in ending institutionalized exploitation.¹²⁹ That is, to the extent that legal instruments are not aimed at structural foundations of and incentives for the actors involved in trafficking, mere prohibition and criminalization of the activities will not and *cannot* transform exploitative relationships. The modern traffic in persons includes many more factors and causes than the greed of "monstrous" traffickers. The trade presents significant economic opportunity to those who may have limited access to legitimate enterprises, in addition to those who have human capital as their most readily available resource for profitably exploitation.

C. A New Focus for Anti-Human Trafficking Advocates

The challenge confronting anti-trafficking scholars and activists is to identify the root structural causes and contributors to modern trafficking in humans. The references to and invocations of the transatlantic slave trade and white slavery offer the potential of in-depth insights from further research and analysis of all aspects of these forms of exploitation. While studying the applicability of the transatlantic slave trade provides insight into the economic structure of human trafficking, an analysis of white slavery's influence illuminates societal responses to sexual servitude and

racial attitudes. Reactions to the reports of white slavery illustrate virulent responses to the alleged transgression of racial and sexual boundaries—that is, the transgression of whiteness and its genteel womanhood. Do these reactions to human trafficking—the visceral and prurient interests that are aroused regarding the sexual servitude suffered by its victims—illuminate society’s and the state’s analogous reaction to transgression of borders and state sovereignty both by the traffickers and their victims?

Further, the link between the protection of the nation-state’s borders and the smuggling in and trafficking of humans demands further research.¹³⁰ The growth of the nation-state and the consequent increase in legislative and other barriers to the movement of peoples have driven, and continue to drive, these people and their labor underground. Human beings seek to exchange their labor for value, and migrants respond to market forces that promise higher prices for that labor across international borders.¹³¹ As Willem van Schendel and Itty Abraham have urged, “[w]e need to approach flows of goods and people as visible manifestations of power configurations that weave in and out of legality, in and out of states, and in and out of individuals’ lives, as socially embedded, sometimes long-term processes of production, exchange, consumption, and representation.”¹³²

The references to the transatlantic slave trade in the contemporary anti-trafficking discourse encapsulate a particular interpretation of the past, seek to project that interpretation onto the present, and extrapolate an inadequate and too constrained set of lessons. Those who have used the analogy to date have failed to explore it more than superficially or to adequately map out both the similarities and differences between the two systems of exploitation. As a consequence, the ability to effectively combat the modern traffic in human beings (or indeed, to combat the slavery—or exploitative or forced labor—of the 27 million people that at least one activist claims are held in slavery within state borders but not trafficked)¹³³ has been compromised both internationally and domestically by a failure to recognize and act upon the structural roots of this modern trade. Instead, use of the

transatlantic slave trade analogy too often appeals to emotions in order to serve the particular ends of the user. However, the analogy can be relevant if explored more deeply—there are similarities not merely in individual plights but in deeper structures of the world economic system and the factors that caused and fostered the rise of both forms of exploitation.

We should learn from the past and not merely exploit it for emotional gain. The use of the transatlantic slave trade thus far in the fight against human trafficking has, in a sense, been self-protective of “modern” humanity as well as the developed world’s sense of self and willful innocence. It serves to prevent a deeper understanding that the world and human-to-human exploitation may not have changed as much as we would like to believe since the era of trading African slaves. It serves to protect us from understanding that, like the consumers of the past, we are dependent on the abhorrent exploitation of others. It is easier to characterize traffickers as greedy rather than profit-seeking, and as deviant rather than as an integral part of the economic structure within which we exist daily. But it would be impossible and irresponsible to ignore the cruel irony of anti-trafficking rhetoric that exploits imagery of the transatlantic slave trade alongside willful innocence regarding that trade’s continued structural effects in the United States and around the globe, including the universal racial (and gender) hierarchy that subordinates the interests of the nonwhite and the nonmale.

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¹ See DAVID B. DAVIS, *INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD* 80 (2006) [hereinafter DAVIS, *INHUMAN BONDAGE*].

² Brazil abolished slavery in 1888 making it the last country in the western hemisphere to put a legal end to that form of exploitation. *Id.* at 238, 325–27.

³ Examples of such commitments include the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/217(III) (Dec. 10, 1948); International Covenant

on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A (Dec. 16, 1966); International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A (Dec. 16, 1966).

⁴ See, e.g., U.S. DEP'T OF ST., TRAFFICKING IN PERSONS REPORT (2010) [hereinafter 2010 TRAFFICKING IN PERSONS REPORT]. Pursuant to the Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 § 2A, 114 Stat.1464 (2000) codified at 22 U.S.C. § 7101 (hereinafter TVPA), the State Department is required to provide annual reports on the anti-trafficking efforts of all other countries. The State Department is also required to rank all countries listed and described in the report according to its determination of the adherence of those countries to the minimum standards provided for in the TVPA. See Trafficking Victims Protection Act, 22 U.S.C. § 7101 §§ 6(e)(3)(A), (B) (2000).

⁵ See Bravo, *supra* introductory endnote, at 280–91.

⁶ As used herein, the term “transatlantic slave trade” also includes transatlantic slavery, which the trade itself helped to form and was embedded into.

⁷ “Unverified statistics, such as the figure of US \$5 billion to US \$7 billion a year in commercial profit, have remained a standard feature [of the discussions about human trafficking].” Diana Wong, *The Rumor of Trafficking: Border Controls, Illegal Migration, and the Sovereignty of the Nation-State*, in ILLICIT FLOWS AND CRIMINAL THINGS 69, 76 (Willem van Schendel & Itty Abraham eds., 2005).

⁸ KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 8–9 (2004) [hereinafter DISPOSABLE PEOPLE]. Alternatively, according to other sources, perhaps “only” 12 million are enslaved worldwide. See Ethan B. Kapstein, *The New Global Slave Trade*, 85 FOREIGN AFF. 103, 105 (2006).

⁹ See *Women as Chattel: The Emerging Global Market in Trafficking*, 1 GENDER MATTERS Q. 1, 1 (1999) (citing the United Nations’ 1997 calculations); U.S. DEP'T OF ST., TRAFFICKING IN PERSONS REPORT 6 (2006) [hereinafter 2006 TRAFFICKING IN PERSON REPORT].

¹⁰ Kapstein, *supra* note 8, at 110 (discussing the 2006 US Department of Justice report). Earlier estimates had indicated that up to 50,000 people were trafficked into the United States. See AMY O'NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3 (1999), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>.

¹¹ The use of the word “trade” denotes the buying and selling of human beings. As used herein with respect to human “merchandise,” modern “trade” does not imply the imposition of customs duties or imposts, licenses, or other revenue raising governmental regulation such as those that accompanied the transatlantic trade in Africans in earlier centuries.

¹² In reality, human trafficking has reemerged only in the sense that it has reentered public consciousness. Slavery has always been a part of human existence and was not eliminated by the nineteenth century abolition of transatlantic slavery. See, e.g., SUZANNE MIERS, SLAVERY IN THE TWENTIETH CENTURY: THE EVOLUTION OF A GLOBAL PROBLEM 345–50 (2003) (discussing the abolition of legal slavery in Saudi Arabia in the 1960s).

¹³ See, e.g., DISPOSABLE PEOPLE, *supra* note 8.

- ¹⁴ See, e.g., 2006 TRAFFICKING IN PERSONS REPORT, *supra* note 9.
- ¹⁵ MIERS, *supra* note 12, at 429 (“Sex tourism was first raised at the [UN] Working Group in 1978. By 1989, it [sex tourism] was rife in the Philippines, Sri Lanka, Thailand, and Taiwan, and by 1996, it was active in Brazil.”).
- ¹⁶ See, e.g., Paul Handley, *The Lust Frontier*, FAR E. ECON. REV., Nov. 2, 1989, at 44; Steven Erlanger, *Thriving Sex Industry in Bangkok Is Raising Fears of an AIDS Epidemic*, N.Y. TIMES, March 30, 1989, <http://www.nytimes.com/1989/03/30/world/thriving-sex-industry-in-bangkok-is-raising-fears-of-an-aids-epidemic.html>; Marline Simons, *The Littlest Prostitutes*, N.Y. TIMES, Jan. 16, 1994, <http://www.nytimes.com/1994/01/16/magazine/the-littlest-prostitutes.html>. See Kamala Kempadoo, *Introduction: From Moral Panic to Global Justice: Changing Perspectives on Trafficking*, in TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS vii (Kamala Kempadoo, Jyoti Sanghera & Bandana Pattanaik eds., 2005) (“Human trafficking exploded into the public consciousness at the start of the twenty-first century, yet it is not a new issue and has been a global concern since the mid-nineteenth century.”); *id.* at xi (describing the issue of trafficking as “integral” to the international women’s movement by 1985).
- ¹⁷ See, e.g., Associated Press, *Man Pleads Guilty to Enslaving Women*, LAS VEGAS REV. J., Dec. 4, 1999, at 3A; Kate Connolly, *Czechs Struggle to Curb Sex Tourism*, GLOBE & MAIL (Toronto), Jan. 16, 1999, at A13; Brian D. Crecente, *Sex-Slave Ringleader Admits Role*, PALM BEACH POST, Jan. 16, 1999, at 1B; Peter Chen, *Australia Aims to Eradicate Asian Sex Slave Trade*, CENTRAL NEWS AGENCY (Taiwan), Jan. 5, 1999; John Barry, *Tortured Au Pair Finds A New Life*, MIAMI HERALD, July 31, 1998, at 1B; Kieran Nicholson & Sheba R. Wheeler, *3 Held in Alleged Sex-Slave Ring*, DENVER POST, Nov. 13, 1998, at B-02; *Triads Taking Women to UK for Prostitution*, S. CHINA MORNING POST, Aug. 14, 1997, at 7 [hereinafter, collectively, Media Reports].
- ¹⁸ Wong, *supra* note 7, at 75. See also PETER ANDREAS & ETHAN NADELMAAN, POLICING THE GLOBE: CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS 34 (2006).
- ¹⁹ See, e.g., Gillian Caldwell et al., *Crime and Servitude: An Exposé of the Traffic in Women for Prostitution from the Newly Independent States*, 3 TRENDS ORGANIZED CRIME 10 (1997).
- ²⁰ See, e.g., Media Reports, *supra* note 17.
- ²¹ See *Women as Chattel*, *supra* note 9, at 1.
- ²² See RICHARD, *supra* note 10, at 3.
- ²³ DISPOSABLE PEOPLE, *supra* note 8, at 8–9.
- ²⁴ Wong, *supra* note 7, at 76.
- ²⁵ See Susan Tiefenbrun, *The Saga of Susannah, A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 140 (2002) (citing to congressional testimony of the Assistant Secretary of State for Democracy, Human Rights and Labor).
- ²⁶ Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25 (II), U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (Vol. I), at 60 (Sept. 9, 2003) [hereinafter Trafficking Protocol].

²⁷ United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I) (2001) [hereinafter, UN Organized Crime Convention, or UN Convention].

²⁸ See Trafficking Protocol, *supra* note 26, at art. 3, para. 1.

²⁹ See Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

³⁰ The UN General Assembly adopted the Convention on Nov. 15, 2000, opening it for member state signature. The Trafficking Victims Protection Act (TVPA) became law in the United States on Oct. 28, 2000. See Presidential Statement on Signing the Victims of Trafficking and Violence Protection Act of 2000, 36 WEEKLY COMP. PRES. DOC. 44, 2662 (Oct. 28, 2000).

³¹ In addition to the obligations voluntarily undertaken by state parties under the Convention and Protocol, the series of State Department reports issued pursuant to the mandates of the TVPA have vastly increased public and institutional awareness of, and knowledge about, human trafficking. The US State Department has issued Annual Reports from 2001 through 2010 with successive reports reflecting an increase in the depth and breadth of coverage.

³² See RICHARD, *supra* note 10, at 3.

³³ See U.S. DEP'T OF ST., TRAFFICKING IN PERSONS REPORT 6 (2004) [hereinafter 2004 TRAFFICKING IN PERSONS REPORT]; U.S. DEP'T OF ST., TRAFFICKING IN PERSONS REPORT 6 (2005) [hereinafter 2005 TRAFFICKING IN PERSONS REPORT]; 2006 TRAFFICKING IN PERSONS REPORT, *supra* note 9, at 6.

³⁴ See generally *Women as Chattel*, *supra* note 9.

³⁵ See ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2005 (2006), [hereinafter 2006 ATTORNEY GENERAL REPORT]. That decline may reflect changes in information-gathering methodologies rather than a decrease in the scope of the traffic in human beings.

³⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTI-TRAFFICKING EFFORTS ABROAD 10-17 (2006) [hereinafter 2006 GAO REPORT]. The GAO Report seriously questioned the scope of the modern traffic in human beings as currently depicted, noting, among other things, discrepancy between the official estimates of the trade and the number of victims actually assisted worldwide or within the United States. *Id.* at 17. See also Kempadoo, *supra* note 16, at xix ("Many of the claims made about trafficking are unsubstantiated and undocumented, and are based on sensationalist reports, hyperbole, and conceptual confusions. . .").

³⁷ See Kelly E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. BRIEF 30 (2001).

³⁸ See, e.g., Wong, *supra* note 7, at 74:

[T]he conjunction of trafficking and illegal immigration materialized into the political consciousness of Europe at the 11th International Organization for Migration (IOM) Seminar, devoted to the theme of "Global Human Trafficking" in 1994. In an influential paper presented to that conference by a leading European scholar on international migration, the emergent model of

the new unholy trinity threatening the borders of Europe—trafficking, illegal immigration, and organized crime—was introduced and authoritatively quantified.

Diane Wong pinpointed European alarm about human trafficking that arose in the period following the fall of the Berlin Wall within broader European fears of being inundated by migrants from the former Soviet Bloc. Wong, *supra* note 7, at 74–75. See also Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 976 (2001) (“While human rights concerns may have provided some impetus (or cover) for collective action, it is the sovereignty/security issues surrounding trafficking and migrant smuggling which are the true driving force behind such efforts.”). Gallagher pointed to a widespread state concern regarding the threat of illegal and unregulated immigration. *Id.* at 976 (“Wealthy states are increasingly concerned that the actions of traffickers and migrant smugglers interfere with orderly migration and facilitate the circumvention of national immigration restrictions.”).

³⁹ Debt bondage is a form of exploitation by which an individual’s labor is appropriated to “pay off” a debt (real or purported) that is virtually impossible to repay, due to the low wages and/or the imposition of interest and additional indebtedness (sometimes for items whose costs are assessed at more than market value).

⁴⁰ See Bravo, *supra* introductory endnote, at 280–84.

⁴¹ The traffic of African slaves to Europe and European territories (such as Madeira) preceded the transatlantic trade. See DAVIS, *supra* note 41, at 84; SIDNEY W. MINTZ, *SWEETNESS AND POWER: THE PLACE OF SUGAR IN MODERN HISTORY* 30–32 (1985).

⁴² DAVIS, *INHUMAN BONDAGE*, *supra* note 1, at 98, 103.

⁴³ *Id.* at 80–81; see also PETER KOLCHIN, *AMERICAN SLAVERY* 4 (Eric Folner ed., 10th ed. 2003).

⁴⁴ DAVIS, *INHUMAN BONDAGE*, *supra* note 1 at 238, 323–27.

⁴⁵ See JAMES A. RAWLEY ET AL., *THE TRANSATLANTIC SLAVE TRADE* 16 (revised ed. 2005) (reporting, analyzing and presenting in table format the analyses conducted in 1968 by historian Philip D. Curtin and in 2001 by historian David Eltis, who estimated, respectively, that 9,556,000 and 9,599,000 Africans were shipped across the Atlantic during the transatlantic slave trade.).

⁴⁶ DAVIS, *INHUMAN BONDAGE*, *supra* note 1, at 129.

⁴⁷ *Id.* at 231–37.

⁴⁸ According to Article I, Section 9, clause 1 of the US Constitution:

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax may be imposed on such Importation, not exceeding ten dollars for each Person.

U.S. CONST. ART. I, § 9, cl. 1.1. See PAUL FINKELMAN, *SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON* 3–36 (2001) (discussing the debate about slavery and the slave trade at the Constitutional Convention and the “dirty compromise”).

⁴⁹ An Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States, From and After the First Day of January, in the Year of our Lord One Thousand Eight Hundred and Eight, ch. 22, 2 Stat. 426 (1807). *See also* DAVIS, *supra* note 1, at 237.

⁵⁰ DAVIS, *supra* note 1, at 183.

⁵¹ *Id.* at 117.

⁵² *See, e.g.*, [Author Unknown], Vatican official says human trafficking now is worse than African slave trade, Nov. 14, 2006, *available at* http://www.iht.com/articles/ap/2006/11/14/europe/EU_GEN_Vatican_Human_Trafficking_g.php; DISPOSABLE PEOPLE, *supra* note 8, at 8–9.

⁵³ George W. Bush, President, Address to the United Nations General Assembly in New York City (Sept. 23, 2003), *available at* <http://www.un.org/webcast/ga/58/statements/usaeng030923.htm>.

⁵⁴ John R. Miller, *The Call for A 21st Century Abolitionist Movement*, 1 INTERCULTURAL HUM. RTS. L. REV. 37, 41–42 (2006).

⁵⁵ Nicholas Kristof, *Heartbreak and Hope: A Return to Cambodia*, N.Y. TIMES, Dec, 18, 2006, <http://video.nytimes.com/video/2006/12/18/opinion/1194817092163/heartbreak-and-hope.html> (author’s transcription).

⁵⁶ DISPOSABLE PEOPLE, *supra* note 8, at 9.

⁵⁷ Michael Specter, *Traffickers’ New Cargo: Naïve New Slavic Women*, N.Y. Times, Jan. 11, 1998, *reprinted in* 146 Cong. Rec. 15, 22042–43 (2000).

⁵⁸ Christien van den Anker, *Contemporary Slavery, Global Justice and Globalization, in THE POLITICAL ECONOMY OF NEW SLAVERY* 15, 18 (Christien van den Anker ed., 2004) (emphasis added).

⁵⁹ Kapstein, *supra* note 8, at 105.

⁶⁰ Ethan Kapstein, at least, appears to acknowledge this in passing: “Whatever the exact number is, it seems almost certain that the modern global slave trade is larger *in absolute terms* than the Atlantic slave trade in the eighteenth and nineteenth century was.” *Id.* (emphasis added).

⁶¹ *See* 2006 GAO REPORT, *supra* note 36, discussing the challenges of gathering reliable statistics about modern trafficking in human beings.

⁶² Statement of Sen. Brownback, 146 Cong. Rec. 15, 22044 (2000) (invoking the famous British anti-slavery crusader and legislator on the Senate floor during debate preceding passage of the TVPA, which had been bundled with the Violence Against Women Act, Justice for Victims of Terrorism Act and Aimee’s Law).

⁶³ Trafficking Victims Protection Act, 22 U.S.C.A. § 1701(b)(22) (Purposes and Findings).

⁶⁴ 2004 TRAFFICKING IN PERSONS REPORT, *supra* note 33, at 6.

⁶⁵ For discussion of neo-abolitionism see Bravo, *supra* introductory endnote, at 240–43.

⁶⁶ *See* Kempadoo, *supra* note 16, at xvii:

[T]he dominant international approach to trafficking primarily identifies foreign-originating international gangs and “source” countries as the main culprits, criminals, and beneficiaries in the trafficking business. Given that the majority of “destination” countries are claimed to be Western, postindustrial

countries, this creates an international divide around nationality and race. . . . The narrow lens of the state anti-trafficking approach and the skewed representation of migration are particularly evident for the United States. . . . Thus, the first US government report to document trafficking in the country identifies Mexican, African, and Middle Eastern families; Thai and Latin American men; Russian, East European, and Italian organized crime groups and syndicates; Asian, Mexican, and Nigerian smuggling rings; the Canadian “West Coast Players”; Chinese Triads; Hmong gangs, etc., as the primary agents who profit and benefit from trafficking.

⁶⁷ As Kempadoo states:

The crediting of trafficking to the foreign “Other” who is configured as a threat to Western societies and civilization, serves thus as a scare tactic to corral racist, nationalist sentiments and to obfuscate the interaction between the state, corporate capital, and underground sectors The few cases of corporate corruption and use of trafficked labor that have come to light—such as Walmart and Tyson Foods in the US . . . suggest that there are indeed multiple parties who benefit from criminal activities.

Id. at xix.

⁶⁸ See Bravo, *supra* introductory endnote, at 224–29.

⁶⁹ The “end” and “ending” of slavery and the slave trade are in quotations to refer to the viability of the argument that there was no such historic end to the practice(s).

⁷⁰ See Guyora Binder, *The Slavery of Emancipation*, 17 CARDOZO L. REV. 2063, 2101–03, 2064 (1996) (discussing the post-Emancipation United States and “the paradoxical possibility that the institution of slavery could persist without any individual being lawfully held as a slave”); see also Kathleen A. McKee, *Modern-Day Slavery: Framing Effective Solutions for an Age-Old Problem*, 55 CATH. U. L. REV. 141, 150 (2005) (describing some of the mechanisms through which the freedom of blacks was constrained in the American South after Emancipation). See generally DOUGLASS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008).

⁷¹ Kapstein, *supra* note 8, at 104.

⁷² *Id.* at 103.

⁷³ See *supra* Part III.A.1.

⁷⁴ See *supra* Part III.A.3 (excerpt of Trafficking Victims Protection Act, 22 U.S.C. § 1701(b)(22)).

⁷⁵ See ERIC WILLIAMS, *FROM COLUMBUS TO CASTRO: THE HISTORY OF THE CARIBBEAN* 347–60 (Vintage Books 1984).

⁷⁶ The practice of blackbirding involved the kidnapping of South Pacific Islanders and their transport to the sugar-producing regions of Queensland. See A. PRICE GRENELL, *ISLAND CONTINENT* 164 (Angus & Robertson eds., 1972) (“North Queenslanders had successfully established a plantation system which, in spite of controls, reproduced certain aspects of slavery, particularly in the disgraceful ‘blackbirding’ of island natives.”).

⁷⁷ See LOWELL J. SATRE, *CHOCOLATE ON TRIAL: SLAVERY, POLITICS & THE ETHICS OF BUSINESS* 43 (2005):

All European powers in the nineteenth and early twentieth centuries sought regular and inexpensive labor for their colonies. . . . The ending of slavery and the slave trade in the nineteenth century forced employers to look elsewhere for labor. Indentured labor was one alternative, leading to the transfer of millions of people throughout the world. . . . Natives were drafted by governments to build roads, haul goods, collect rubber, and mine gold.

See also *id.* at 1–12 (describing eyewitness accounts of the enslavement of natives in Africa in 1904–1905); MIERS, *supra* note 12, at 24. The perceived necessity and use of that cheap labor is demonstrated by, for example, the definition of slavery in the Slavery Convention of 1926. Pursuant to the 1926 Convention, while states are required “to prevent compulsory or forced labour from developing into conditions analogous to slavery,” at the same time, “forced labour may only be exacted for public purposes.” See 1926 Slavery Convention at Art 5, 60 L.N.T.S 253, 265 (1926). The definition therefore was expressly circumscribed so as to exclude the forced labor exacted by colonial powers from the natives of their colonial possessions. It was that forced labor that built the roads, public buildings, and other infrastructure of many African colonies.

⁷⁸ See generally McKee, *supra* note 70; BLACKMON, *supra* note 70. See also Binder, *supra* note 70, at 2101–03 (arguing that slavery persisted and still persists in the form of racial subordination after the passage of the Thirteenth Amendment).

⁷⁹ Miller, *supra* note 54, at 38–39 (citations omitted).

⁸⁰ See, e.g., 2010 TRAFFICKING IN PERSONS REPORT, *supra* note 4, at 12.

⁸¹ For example, in discussing the reasons for the TVPA on the Senate floor, Senator Wellstone noted that “[t]he trafficking of human beings for forced prostitution and sweatshop labor . . . is one of the greatest aspects of the globalization of the world economy.” 146 Cong. Rec. 15, 22045 (2000). In the same speech, he further stated that “[p]rofit in the trade can be staggering. . . . Trafficking has become a major source of new income for criminal rings.” *Id.*

⁸² See, e.g., ANDREAS & NADELMANN, *supra* note 18, at 36 (“Intense media coverage and activism by governmental and nongovernmental organizations have drawn enormous attention to sex trafficking in recent years, leading to a *flurry of new international criminalization initiatives that very much echo the earlier debates and moralizing rhetoric about white slavery.*”) (emphasis added). Similarly, just as the scope of the nineteenth century white slavery is now questioned, the contraction in the number of estimated trafficked victims may reflect an initial hysteria about the widespread scope of the modern phenomenon. See, e.g., 2006 GAO REPORT, *supra* note 36, at 2, 10–18 (discussing, among other things, the challenges of and flaws in data collection methodology, unreliability of the data, and the fall in the estimated numbers of trafficking victims since 2000). Worthy of further study is the question of whether the initial hysteria may have stemmed from and led to the conflation of trafficking with prostitution, with a consequent overcounting of the number of estimated victims.

⁸³ See, e.g., Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65 (1998); Stephanie

Farrior, *The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213 (1997); A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade under Customary International Law*, 39 VA. J. INT'L L. 303 (1999).

⁸⁴ See Eileen Scully, *Pre-Cold War Traffic in Sexual Labor and Its Foes: Some Contemporary Lessons*, in GLOBAL HUMAN SMUGGLING 74, 77 (David Kyle & Rey Koslowski eds., 2001) (identifying “the emergence of universal racialized sexual hierarchy”).

⁸⁵ *Id.* at 78–79.

⁸⁶ *Id.* at 77, 82–87.

⁸⁷ *Id.* at 78–79.

⁸⁸ Marlene D. Beckman, Note, *The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO. L.J. 1111 (1984).

⁸⁹ Scully, *supra* note 84, at 86.

⁹⁰ Beckman, *supra* note 88, at 1111 (referring to the White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2006))).

⁹¹ Scully, *supra* note 84, at 86 (citations omitted). As discussed, the reported public sentiments are reminiscent of the reactions to the modern traffic in humans.

⁹² Agreement between the United States and other Powers for the Repression of the Trade in White Women, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 (1905).

⁹³ Scully, *supra* note 84, at 86–87 (“Those who might have been able to shut down the traffic as completely as had been the African slave trade were white, metropolitan populations easily outraged by tales of their young pure women brought to the outposts of barely veiled barbarity.”).

⁹⁴ International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45, 103 B.F.S.P. 244 (1910).

⁹⁵ The International Convention on the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 416 and the International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431.

⁹⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271.

⁹⁷ White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2006)). Commentator Marlene D. Beckman noted that:

[T]he Act was so named because its central purpose was to halt what many believed was a serious and widespread practice: Commercial procurers taking innocent young girls and women by force and holding them captive with threats to their lives, a practice that *resembled black servitude in its exploitative and barbarous nature*.

Beckman, *supra* note 88, at 1112 (emphasis added).

Beckman discussed the legislative history of the Mann Act and the moral policing function to which it was later put. *Id. passim*.

⁹⁸ See, e.g., Senator Paul Wellstone, *supra* note 81, 22045–56. Despite his acknowledgement that some victims were destined for sweatshops and other types of

forced labor, Senator Wellstone's proffered examples of trafficking victims centered on women and young girls who had been sexually enslaved, some in the United States.

⁹⁹ To the contrary, the economic gains accruing from the enslavement and trafficking of others are spread throughout the society and economy. The economic benefits of trafficking to society as a whole and to individual states were noted by Professor Nora Demleitner in her 1994 article on modern trafficking. See Nora V. Demleitner, *Forced Prostitution: Naming an International Offense*, 18 FORDHAM INT'L L.J. 163, 189 (1994) ("Trafficking in women has become a huge international business that brings immense economic benefits to everyone involved except the women forced to work as prostitutes."). Venturing to more specifically identify the beneficiaries of the trade, Demleitner notes that

In addition to the tourist agencies, hotels, and transportation services, the police and the government bureaucracy all benefit directly or indirectly from forced prostitution which has turned into a large industry. In some countries, such as Thailand, government officials and the local elites have come to accept . . . forced prostitution because they view the practice as *the key to regional development* and an important source of foreign currency.

Id. at 190 (emphasis added) (internal footnote omitted).

See also Saskia Sassen, *Women's Burden: Counter-Geographies of Globalization and the Feminization of Survival*, 71 NORDIC J. INT'L L. 255, 268–70 (2002) (describing the increasing role of women and their exploitation in the economic development strategies of poorer countries); Louise Shelley, *Trafficking in Women: The Business Model Approach*, 10 BROWN J. WORLD AFF. 119, 125 (2003)

The investment patterns of the traffickers resembled those of people who were smuggled rather than those of drug traffickers. Just as individuals smuggled to the United States return their salaries to buy land and build and improve homes, the traffickers followed the same pattern on a large scale. They could buy millions of dollars worth of farms with the enormous profits made from trafficking even a relatively small number of women.

¹⁰⁰ See, e.g., David Batstone, *From Sex Workers to Restaurant Workers, the Global Slave Trade is Growing*, ALTERNET, Mar. 15, 2007, <http://www.alternet.org/story/48951>

We may not even realize how each one of us drives the demand during the course of a normal day. Kevin Bales, a pioneer in the fight against modern slavery, expresses well those commercial connections: 'slaves in Pakistan may have made the shoes you are wearing and the carpet you stand on. Slaves in the Caribbean may have put sugar in your kitchen and toys in the hands of your children.'

¹⁰¹ See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 187 (2007). See also Dina Haynes, *(Not) Found Chained in a Bed in a Brothel: Conceptual, Legal, and Procedural*

Failures to Fulfill the Promise of the Trafficking Victims Protection Act, 21 GEO. IMMIGR. L. REV. 337 (2007).

¹⁰² See Specter, *supra* note 57 (emphasis added).

¹⁰³ *Id.* (quoting Marco Buffo of On the Road, an Italian anti-trafficking organization). That the perspective reflected in this New York Times article was influential in and reflective of the views of US legislators perhaps may be inferred by the reproduction, in full, of the article in the Congressional record containing the discussions leading to adoption of the TVPA.

¹⁰⁴ Caldwell et al., *supra* note 19, at 5.

¹⁰⁵ *Id.*

¹⁰⁶ See Scully, *supra* note 84, at 77 (identifying “the emergence of universal racialized sexual hierarchy”).

¹⁰⁷ See Chuang, *supra* note 83, at 69 (“racial factors can drive international trafficking across borders for the purpose of recruiting foreign women to meet the racial preferences of certain brothel clientele”).

¹⁰⁸ For example, according to John R. Miller, then-Director of the US State Department’s Office to Monitor and Combat Trafficking in Persons, “[w]e believe that when we look at victims of the world today—unlike the slavery of preceding centuries where the chief criterion was race—we look at the victims of all races, and sadly as many as 80% are of the female gender, and as many as one-third are children.” Miller, *supra* note 54, at 38.

¹⁰⁹ The disparity in the perceived “value” of women is exemplified in the United States by the difference in the coverage of kidnapped, abused, or murdered white and nonwhite women. See, e.g., Eugene Robinson, Editorial, *(White) Women We Love*, WASH. POST, June 10, 2005, at A23; *Media Under Fire for Missing Persons Coverage: Uneven Emphasis on Attractive White Girls, Women Criticized*, MSNBC, June 15, 2005, <http://www.msnbc.com/id/8233195/from?ET/>; Kristal Brent Zook & Cynthia Gordy, *Have You Seen Her?*, ESSENCE, July 2005, at 128.

¹¹⁰ Added to the sense of urgency now surrounding the issue was the newly perceived vulnerability of national borders following the fall of the Soviet Union. See generally MIERS, *supra* note 12; Specter, *supra* note 57.

¹¹¹ Statement of Sen. Brownback, 146 Cong. Rec. 15, 22041–42 (2000) (quoting Specter, *supra* note 57).

¹¹² *Id.* at 22045. However, the trafficking cases cited by Wellstone included the enslavement of nonwhite women and children, i.e., Thai, Albanian, Mexican, Russian, Chinese and Czech. *Id.* at 22045–46. Yet despite his focus on sex trafficking during debate on the Senate floor, Senator Wellstone did acknowledge that trafficking victims were exploited in “sweatshops and other types of forced labor” in addition to brothels. *Id.* at 22046. And, of the draft of the TVPA, Senator Brownback stated, “[t]his bill challenges the myriad forms of slavery including sex trafficking, temple prostitution, and debt bondage, among other forms.” *Id.* at 22044.

¹¹³ *Id.* at 22046.

¹¹⁴ See Paula Goode, Letter to the Editor, *Prostitution’s Brutality*, N.Y. TIMES, Mar. 18, 2007, at 11 (writing as the Acting Director of US Office to Monitor and Combat Trafficking).

¹¹⁵ Structural inequalities that may appear to be “natural” because they are historically ingrained or biologically or otherwise “inevitable” are all manifested in the modern traffic in humans: male versus female; rich versus poor; developed versus developing countries; white versus nonwhite; and the state and corporate interests versus the individual.

¹¹⁶ See Elizabeth M. Bruch, *Models Wanted: The Search for An Effective Response to Human Trafficking*, 40 STAN. J. INT’L L. 1, 3 (2004).

¹¹⁷ *Id.* See also Janie Chuang, *The United States As Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 443–44 (2006):

On one side of the divide are the “abolitionists,” who believe that all prostitution is inherently exploitative and degrading to women. Abolitionists recognize no distinction between “forced” and “voluntary” prostitution and believe that the failure of states to prohibit all prostitution violates women’s rights to sexual autonomy. On the other side are those who believe that women can choose sex work as a viable livelihood option because it is the absence of adequate protections for sex work—not the sex industry itself—that opens the door to trafficking and other abuses. Under this view, state action to penalize adults choosing to engage in prostitution amounts to a denial of individual liberty. (citations omitted).

¹¹⁸ John R. Miller, *Letter to the Editor, The Slavery of Prostitution*, N.Y. TIMES, Dec. 20, 2005, at A30 (discussing the planned regulation of prostitution in Tijuana, Mexico).

¹¹⁹ Jonathan Todres, *The Importance of Realizing “Other Rights” to Prevent Sex Trafficking*, 12 CARDOZO J. L. & GENDER 885, 894 (2006) (emphasis added) (alteration in original) (citations omitted).

¹²⁰ Bravo, *supra* introductory endnote, at 215–16.

¹²¹ See, e.g., Scully, *supra* note 84; Kempadoo, *supra* note 16; DAVIS, INHUMAN BONDAGE, *supra* note 1.

¹²² For example, the gradual transition from the race and gender specific titles of the relevant international treaties to more inclusive terminology. See *supra* notes 92–97 and accompanying text. The change in the titles of the instruments reflects the modern instruments’ more encompassing identification of victims and offenses. Note, however, the Trafficking Protocol’s full title: “Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”

¹²³ See Willem van Schendel & Itty Abraham, *Introduction to Illicit Flows*, in ILLICIT FLOWS AND CRIMINAL THINGS 9 (Willem van Schendel & Itty Abraham eds., 2005).

¹²⁴ See DAVIS, INHUMAN BONDAGE, *supra* note 1, at 181 (describing the strong economic basis for the transatlantic slave trade and slavery).

¹²⁵ See, e.g., Goode, *supra* note 114. See also ANDREAS & NADELMANN, *supra* note 18, at 37 (“As in the earlier prohibitionist crusade against white slavery, an underlying agenda for some of the most influential state and nonstate actors today is the targeting of prostitution via the transnational angle of targeting trafficking.”).

¹²⁶ See A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN. ST. INT’L L. REV. 809, 850 (2005)

Not only does abolition of slavery fail to provide economic measures requisite to remedy the social injustice perpetrated on the enslaved, it fails to create the conditions for agency. The limited utility of abolitionism, which reinforces the victimization of slaves and fails to provide post-emancipatory alternatives, is evidenced in the emancipation movement in the United States.

¹²⁷ Anker, *supra* note 58, at 3:

On the one hand globalization contributes to exacerbated poverty, which leaves more people vulnerable to contemporary slavery, such as chattel slavery, child labour, trafficking, bonded labor and abuse of domestic workers. On the other hand, globalization contributes to more effective campaigns to raise awareness and to better international legal mechanisms to combat contemporary slavery. *The way in which globalization influences particular forms of contemporary slavery influences which types of action may be most successful in combating the practice* (emphasis added).

For an example of such an attempt, see Karen E. Bravo, *Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans*, 18 TRANS. L. & CONTEMP. PROBS. 545 (2009).

¹²⁸ See generally Goode, *supra* note 114.

¹²⁹ See, e.g., ANDREAS & NADELMANN, *supra* note 18, at 34 (“The creation of a global regime directed at the suppression of the white slave trade early in the twentieth century accomplished little toward its objectives.”) (discussing the attempt to abolish prostitution via the international instruments created to combat the white slave trade). See also Anker, *supra* note 58, at 3 (“[I]nitiatives to end slavery may sometimes take away people’s livelihoods so viable alternatives need to be available in aid of effective implementation of legislation. Most importantly, victims’ needs and rights as well as their agency need to be recognized in developing campaigns and policies to combat slavery.”).

¹³⁰ For example, it is well-established that the trafficking in humans from Central and Eastern Europe increased in tandem with the tightening of Western European borders and the immigration and refugee laws stimulated by the fall of the Soviet Union.

¹³¹ If the comparative advantage of some—usually developing—countries is their abundance of available labor, individuals and organizations from those countries should be able to freely trade their labor internationally, ideally within the institutional framework of the GATT/WTO system. Bravo, *supra* note 127, at 615.

¹³² Itty Abraham & Willem Ven Schendel, *Introduction: The Making of Illicitness*, in ILLICIT FLOWS AND CRIMINAL THINGS 1, 9 (Willem van Schendel & Itty Abraham eds., 2005).

¹³³ DISPOSABLE PEOPLE, *supra* note 8, at 8.