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TARGETING DEMAND: A NEW APPROACH TO CURBING HUMAN TRAFFICKING IN THE UNITED STATES

*Morgan Brown*¹

“And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States. . . will recognize and maintain the freedom of said persons.”

- Abraham Lincoln, 16th President of the United States,
Jan. 1, 1863

“The 4th right in the Universal Declaration of Human Rights is that there can be no slavery. Virtually every human being agrees that it is a moral wrong. Those key battles were won by people who went before us, who had the really tough job. Our job is simply to make sure that countries enforce their own laws and that slaves, when freed, have an opportunity for rehabilitation, reintegration, education, and so forth.”

- Kevin Bales, Co-founder of Free the Slaves

INTRODUCTION

On December 6, 1865, Congress ratified the Thirteenth Amendment to the United States Constitution, and with it, released the last 40,000 slaves in the U.S. South. And yet today, 150 years after Abraham Lincoln gave notice of the Emancipation Proclamation, it is estimated that as many as 27 million individuals are trafficked around the world, and between 14,500 and 17,500 of those individuals are trafficked into the United States each year for purposes ranging from domestic servitude and forced labor, to prostitution and other forms of sexual exploitation, to organ harvesting.² Although human trafficking dates back to the slave trade, improvements in communication and

¹ J.D., 2013, University of Richmond School of Law, B.A., 2010, University of North Carolina at Chapel Hill. Thank you to the executive boards and staff of Volume XI and Volume XII of the *Richmond Journal of Global Law and Business* for your guidance, support, and editing assistance, my clients and mentors throughout the world for your encouragement, advice, and willingness to tell the stories that helped shape this paper, and my family for your never-ending support and encouragement.

² Office to Monitor and Combat Trafficking in Persons, U.S. Dep’t of State, *Trafficking in Person’s Report 2011* (June 27, 2011), available at <http://www.state.gov/g/tip/rls/tiprpt/2011>; see also Office to Monitor and Combat Trafficking in Persons,

transportation in recent decades, combined with the latest global financial crisis, have led to an exponential increase in the number of people traded around the world each year. Advances in transportation have increased the ease and decreased the time required to move human cargo from one side of the world to the other, privatization and liberalization of markets have created more accessible marketplaces, and improvements in technology have increased the volume and complexity of international financial transactions.³

Coerced into travel under the guise of a job or an education, trafficking victims face a different reality upon arrival in their destination country. Traffickers capitalize on victims' scarce knowledge of the language and laws of their new host country to keep victims in a state of disorientation and to prevent the individuals from attempting to escape. Because many victims come from developing countries with high rates of corruption, they are often distrustful of law officials in their new country and will not turn to them for help. As a result, many victims quickly become trapped in their situations, racking up their "debt" to their employer, too fearful to speak out or report their captors to the police.

International protocols and U.S. legislation have been passed to combat human trafficking worldwide. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("UN Protocol") defines trafficking as

- (a) the recruitment, transportation, transfer, harboring or receipt of persons, by means of 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs. . .
- (b) The consent of a victim of trafficking in persons to the intended exploitation. . . shall be irrelevant where any of the means set forth above have been used.⁴

U.S. Dep't of State, *Trafficking in Person's Report 2012* (June 19, 2012), available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

³ Donna M. Hughes, *The "Natasha" Trade: Transnational Sex Trafficking*, 246 NAT'L INST. JUST. J. 9, 10 (Jan. 2001) (discussing the global climate for trafficking).

⁴ G.A. Res. 55/25 (III), art. 3, U.N. Doc. A/RES/55/25 (Nov. 15, 2000).

The wording of the UN Protocol paints a broad picture of human trafficking, including within its definition instances of both nonconsensual exploitation and those situations in which the victim consents to the labor. This definition has since served as a template for the Trafficking Victims Protection Act (“TVPA”), which was passed by the U.S. Congress in 2000, and which adopts a more restrictive definition than the U.N. Protocol.⁵ Although Congress’s adopted definition generally follows the U.N. Protocol’s definition, the TVPA narrows the definition of trafficking by requiring proof of violence or coercion before an act qualifies as trafficking under the statute.⁶

Whereas the U.N. Protocol provides protections for all victims of trafficking, the TVPA only guarantees protection for victims of “severe forms of trafficking in persons.”⁷ Under the TVPA, if a person consents to the labor, the labor does not constitute trafficking per se,⁸ which means a person may qualify as a trafficking victim in the United States by the U.N.’s definition, but still be ineligible for certain relief under the Act.⁹ Further, the TVPA includes any person under eighteen years old who is sexually exploited, but does not extend such expansive protection to minors coerced into other subsets of trafficking, such as labor exploitation.¹⁰ The U.N. Protocol, however, includes all children recruited, transported, transferred, harbored, or received by any means, regardless of their final destination or the work they are forced to do.¹¹ The result is situations in which the international community would offer protection to the individual, but the narrower U.S. definition precludes that same level of protection. The TVPA’s definition thus operates to withhold protection from workers who come to the United States under the guise of legitimate work and promises of work visas, and who subsequently find themselves trapped and working off high debts, without legal identification and subject to their employer’s abuses.

Although these differences in definition create enforcement issues for anti-trafficking laws throughout the world, they are not the biggest pitfalls of these provisions. Instead, the more prominent issue seems to be the provisions’ focus. Rather than focusing on the demand for the services provided by trafficked individuals, lawmakers and en-

⁵ Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, 106th Cong. (2000).

⁶ *Id.* §§ 103(2) and (8).

⁷ *Id.* § 103(8).

⁸ *Id.*

⁹ *Id.*

¹⁰ Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 *FORDHAM L. REV.* 2977, 2984–85 (May 2006).

¹¹ H.R. 3244.

forcement agencies focus heavily on attacking the supply of the labor, preferring to frame human trafficking as a foreign problem with unfortunate domestic manifestations rather than as a domestic problem.¹² To more effectively combat human trafficking, therefore, future anti-trafficking legislation and enforcement efforts should recognize human trafficking as a domestic problem and supplement the current approach, which focuses on victims and supply, with measures to limit the demand for services provided by trafficking victims.

Part I of this paper will provide a general framework for understanding human trafficking in the United States by laying out basic statistics relevant to human trafficking, describing the basic economic model under which the business of human trafficking should be understood, and discussing the major legislative approaches the United States has taken to curtail the increase in human trafficking in the country in the past ten years. Part II will then analyze the shortcomings of this approach and the successes of unique efforts to combat trafficking in Sweden. Part III recommends an approach the United States should take moving forward that complements its current anti-trafficking legislation, to more effectively combat human trafficking within its borders.

I. THE BUSINESS OF HUMAN TRAFFICKING: UNDERSTANDING THE TRADE'S GLOBAL ECONOMIC IMPACT

Before any meaningful analysis of human trafficking in the United States can be undertaken, it is important to identify the key players and motivating factors behind the human trafficking model, as well as the current state of efforts to combat the trade.

1. *Understanding the Breadth and Depth of the Problem: Basic Statistics*

Although the number of victims trafficked into the United States each year is decreasing, the number is still high,¹³ and with the recent global economic downturn, the number of countries and individuals involved in the trade globally is continuing to increase.¹⁴ Trafficking is not isolated or restricted to developing countries; rather, trafficked individuals travel from 127 countries and are exploited in 137 countries, on every continent and in any type of economy.¹⁵ The

¹² Chacon, *supra* note 10.

¹³ *A Horrible Business: The Modern Slave Trade Is Thriving*, ECONOMIST, June 14, 2008, <http://www.economist.com/node/11561082>.

¹⁴ Judy Lin, *Human Trafficking Escalates as World Economy Plunges*, UCLA TODAY, June 5, 2009, <http://www.international.ucla.edu/print.asp?parentid=109082>.

¹⁵ *Id.*

U.N. estimates that, overall, 161 countries are affected by trafficking as either a source, transit, or destination country.¹⁶

The International Labor Organization (ILO) further estimates that at any given time, there are 2.5 million individuals worldwide trapped in forced labor as a result of trafficking.¹⁷ Of those, 1.2 million are children.¹⁸ Victims are forced to work in brothels and strip clubs, private homes and on farms.¹⁹ They work in restaurants and factories, the hotel industry and construction.²⁰ Victims are used for economic and commercial sexual exploitation, and suffer physical, psychological, and sexual abuse at the hands of their captors and clients.²¹

Poor record keeping and the nature of the trade make it impossible to know its exact profits, but recent estimates put the value of global human trafficking at approximately \$32 billion annually.²² Of this, approximately 49% (\$15.5 billion) is generated in industrialized economies.²³ A single person can bring in between \$4,000 and \$50,000 for a trafficker, depending on the particular victim's country of origin and destination.²⁴ Once in the United States, a trafficked individual has a value of, on average, \$100,000.²⁵ These figures make human trafficking one of the most lucrative crimes in the world, second only to the illegal drug trade.²⁶ Crime experts expect human trafficking to surpass drug trafficking in profitability within the next ten years.²⁷

¹⁶ United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (2006).

¹⁷ International Labor Organization, *Forced Labor Statistics Factsheet* (2012).

¹⁸ United Nations Children's Fund, *UK Child Trafficking Information Sheet* (2003).

¹⁹ *2011 Trafficking in Persons Report*, *supra* note 2, at 121.

²⁰ *See generally id.*

²¹ *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, AM. CIV. LIBERTIES UNION (May 31, 2007), <http://www.aclu.org/womens-rights/human-trafficking-modern-enslavement-immigrant-women-united-states>.

²² *A Horrible Business*, *supra* note 13.

²³ Patrick Belser, *Forced Labor and Human Trafficking: Estimating the Profits* 17 (Int'l Labor Office, Working Paper, 2005), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>.

²⁴ *Human Trafficking's Dirty Profits and Huge Costs*, INTER-AM. DEV. BANK (Nov. 2, 2006), <http://www.iadb.org/en/news/webstories/2006-11-02/human-traffickings-dirty-profits-and-huge-costs,3357.html>.

²⁵ Elizabeth M. Wheaton et al., *Economics of Human Trafficking*, 48 INT'L MIGRATION 114, 124 (2010).

²⁶ *Human Trafficking's Dirty Profits and Huge Costs*, *supra* note 24, at 1. Drug trafficking brings in an estimated \$32 billion annually. U.N. President of the General Assembly, Letter dated May 18, 2012 from the President of the General Assembly to All Permanent Representatives and Permanent Observers of the United Nations (May 18, 2012).

²⁷ Wheaton, *supra* note 25, at 114.

Federal and state efforts to curb trafficking in the United States over the past decade have met varied success, but the majority of analysts and critics see these efforts as falling short of their ultimate goals. In 2006, for example, there were only 5,808 prosecutions and 3,160 convictions of human traffickers throughout the world, mostly outside of the U.S.,²⁸ or approximately one conviction for every 800 people trafficked.²⁹ In 2010, federal law enforcement officers in the United States obtained 141 convictions in 103 human trafficking prosecutions.³⁰

Despite existing efforts to combat trafficking in the United States, the number of victims trafficked into and within the United States annually is not showing significant decreases because human trafficking is a crime that, despite its reach, has not until recently captured the public's attention or topped any political agendas.³¹ Victims come cheap, and many countries either lack the laws to target traffickers or do not properly enforce the laws they do have in place.³² Few cases even make it into a courtroom, and when they do, the brunt of the punishment usually falls on the victim, while traffickers receive light sentences.³³ Thus, even when efforts are made to deter traffickers, those efforts are often hampered because traffickers see the trade as a big business with a high reward and low risk as the incentives to stay in the market far outweigh the costs of getting caught.³⁴

2. *Why Human Trafficking Continues: The Economic Model of Human Trafficking*

Trafficking is a successful business precisely because it exploits the best and worst aspects of globalization. Today, business can be conducted across national borders with ease.³⁵ Improvements in communication tools and relaxed banking laws make exchanging assets

²⁸ Office to Monitor and Combat Trafficking in Persons, U.S. Dep't of State, *Trafficking in Person's Report 2007* 36 (June 12, 2007), available at <http://www.state.gov/g/tip/rls/tiprpt/2007>.

²⁹ *Id.*

³⁰ *2011 Trafficking in Persons Report*, *supra* note 2, at 373.

³¹ *Human Trafficking's Dirty Profits and Huge Costs*, *supra* note 24. In 2010, the FBI opened 126 human trafficking investigations and made 115 arrests, and completely dismantled 12 human trafficking organizations. *Human Trafficking – FBI Initiatives*, FEDERAL BUREAU OF INVESTIGATION (Jan. 28, 2011), available at http://www.fbi.gov/news/stories/2011/january/trafficking_012811.

³² *A Horrible Business*, *supra* note 13.

³³ *See generally 2011 Trafficking in Persons Report*, *supra* note 2, at 343.

³⁴ *A Horrible Business*, *supra* note 13.

³⁵ *Trafficking and Globalization*, NOT FOR SALE, <http://www.notforsalecampaign.org/about/slavery> (last visited Jan. 7, 2012).

internationally both possible and easy.³⁶ Through virtual enterprises, businesses can operate everywhere and nowhere, choosing when, where, and to whom they are known, when they so choose.³⁷ For law-abiding, legitimate businesses, these are some of the key advantages of operating in our globalizing world. These are also key advantages for illicit, organized crime syndicates that take advantage of these improvements to create more efficient overseas networks.³⁸ Thus, as businesses continually seek the lowest-cost labor sources to maximize profits and as the world's financial situation grows dimmer, more people become vulnerable to exploitation as the significant profits associated with human trafficking give birth to a thriving market for the illicit trade.³⁹

To understand the basic human trafficking model, it is important to recognize a few key components of that market, which follows the same basic economic model as any other monopolistically competitive business.⁴⁰ As with other industries, these markets have three key components – the product, the consumer, and the intermediary. The basic human trafficking model also includes each of these components — the product (the vulnerable individual) and a buyer (the employer) with a seller (the trafficker) that connects the two.⁴¹ Current efforts to combat trafficking naturally tend to focus on these three components of the human trafficking model. When formulating anti-trafficking legislation, however, the U.S. government should also focus directly and indirectly on a fourth component of the market — the second group of consumers who use the trafficked individuals' products or services and thus drive the demand for those services.

Focusing on the first three groups of actors precludes current efforts to combat trafficking from being as effective as they could be because none of these groups will ever completely exit the market as long as there is a demand for trafficked labor within the global economy. There are several reasons for this. First, there is a steady group of potential sellers. This pool continues to drive the market because the benefits of entering the human trafficking market greatly outweigh the costs, ensuring a continuous source of individuals and networks willing to supply the market with goods.⁴² Traffickers can easily enter the market, which they do when they see other traffickers mak-

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Wheaton, *supra* note 25.

⁴⁰ A monopolistically competitive business is one in which many buyers and sellers make deals in differentiated products. Here, the differentiated product is trafficked individuals with different personal attributes. *Id.* at 118.

⁴¹ *Id.* at 116-17.

⁴² *See id.* at 118-19.

ing a high profit. Additionally, if the trafficker does not subsequently make the profit he or she expected or desires, there are few barriers to exiting the market with minimal cost. The ease of entry into and exit from the market combines with the differentiated nature of the product being sold to preclude the creation of a monopoly or oligopoly and to ensure that competition in the market will thrive.⁴³

Second, there is a steady pool of buyers who demand trafficked individuals for different reasons ranging from sexual exploitation to domestic servitude.⁴⁴ By definition, trafficked individuals are exploited, having no right to decide whether and how many hours to work, what kind of work to do, or when to move to another job or another employer. These features make these victims ideal employees. As the number of individuals seeking work and the ease of moving humans and capital around the world each continue to increase, both buyers and sellers of trafficked individuals continue to have an endless pool of cheap, vulnerable workers from which to draw their victims and maximize their own profits.

Finally, the products being sold in this market are highly differentiated and readily available. The characteristics that make an individual suitable for work in a brothel differ greatly from those characteristics needed for an agricultural worker, which, in turn also differ from the characteristics desirable in a housekeeper. Because of this differentiation, the buyer and seller can negotiate over the price of the product until they reach a price upon which they both agree. Unlike markets for undifferentiated products, the seller here still maintains some control over the final selling price despite the large number of sellers in the market.⁴⁵ By taking advantage of and asserting this control, traffickers are able to make a heftier profit than if the buyers controlled the price, increasing the incentive for sellers to stay in the trade.

Further, the availability of the product, which depends heavily on vulnerable individuals, is also key to the market's survival. Income differentials between developed and developing countries, strict government immigration policies, and other factors provide a steady stock of individuals who are vulnerable to market exploitation.⁴⁶ It is no se-

⁴³ In monopolistic and oligopolistic competitive markets, prices remain relatively stable because even the smallest price increase will lose many customers. *Id.* at 118.

⁴⁴ *See id.* at 119.

⁴⁵ *See* Wheaton, *supra* note 25, at 118.

⁴⁶ Other factors include globalization, political instability, worldwide capitalism and transnational corporations, the universal devaluation and marginalization of women and children, poverty, lack of education, urbanization and centralization of educational and employment opportunities, cultural thinking and attitude, traditional practices, domestic violence, corruption, and conflicts. *Id.* at 121.

cret that the number of people wishing to migrate to countries with better jobs, better government structures, and overall better life potential far outnumbers the capacity of those countries to absorb them. Thus, many countries enact strict immigration policies, desiring to accept more high-skilled, educated workers than low-skilled workers who have greater potential to be a burden on the State in the future. Because government immigration policies then tend to aim at restricting the entrance of low-skilled immigrants, this is the group most likely to try to migrate illegally, making them prime targets for traffickers who capitalize on the opportunity to make a profit.⁴⁷ Traffickers take advantage of these individuals' typically low education levels and hopes for higher wages and better lives by facilitating illegal border crossings and providing the funds and papers needed for relocation.⁴⁸ Upon arrival in the United States, the individuals then find themselves living as indentured servants, often spending years working off the debts they incurred traveling to the United States, subject to their employer's abuse and exploitation.

Additionally, it is important to note that, despite the factors discussed above, profit is the key motivating factor driving human trafficking. As with other trades, traffickers receive a price for their goods based on the availability and characteristics of the desired product.⁴⁹ When fewer desirable products are available, it is more expensive for traffickers to move their victims around the world. In return, however, traffickers can attach a higher price tag to the individuals to account for scarcity and those transportation costs. Inversely, when more individuals with the desired characteristics are available, it will be cheaper to move them, but the trafficker will secure a lower price from the buyer.

At very low prices, where costs exceed revenue and there is no profit, traffickers will be unwilling to supply trafficked individuals.⁵⁰ Similarly, employers will be unwilling to utilize trafficked labor at a price above that at which they are able to employ legal laborers. In this instance, when costs exceed revenue, there is no benefit to taking the risk of employing trafficked individuals.⁵¹ Where employers are able to employ a trafficked individual cheaper than by using some other legitimate source of labor, however, they may be more likely to do so. The market thus works out a price for the individual product that falls somewhere below the cost of a legitimate worker and above the price of

⁴⁷ *Trafficking and Human Smuggling: A European Perspective*, 38 INT'L MIGRATION 31-54 (2000).

⁴⁸ *Id.*

⁴⁹ See Wheaton, *supra* note 25, at 119.

⁵⁰ *Id.*

⁵¹ See *id.*

trafficking the vulnerable individual. In this way, costs are depressed and revenue is maximized for the employer, and profits are increased for the trafficker, both of which continue to fuel the market and motivate both buyers and sellers to stay in the trade.

Furthermore, poor economic conditions at home and the dream of a new, better life continue to motivate individuals to take the risk of pursuing whatever work they can find abroad, and ensure there is a product available to drive the market.⁵² As an increasing number of people in today's global economy search for better lives abroad and countries continue to tighten immigration policies, the profits for traffickers rise proportionately, continuing the trafficking cycle by maintaining incentives for traffickers to continue entering the market. The combination of incentives offered by the market to all involved parties thus makes this market difficult, though not impossible, to interrupt.

3. *Addressing the Problem: Current Efforts to Combat Trafficking in the United States*

The United States has not completely turned a blind eye to the cause of human trafficking; rather, it has taken some concrete steps to combat human trafficking within its own borders. Starting after the Civil War, Congress passed legislation that prohibited all forms of trafficking in persons.⁵³ Violations of the Thirteenth Amendment have not been prosecuted since 1947 when the Court in *United States v. Ingalls* defined a slave as "a person in a state of enforced or extorted servitude to another," and included psychological coercion within the definition of slavery.⁵⁴ Then, in 1988, the Supreme Court limited the Thirteenth Amendment's prohibitions to physical or legal coercion, ruling that the Thirteenth Amendment did not prohibit psychological coercion.⁵⁵ These definitions controlled modern day slavery until 2000 when Congress updated these laws with the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), which includes psychological coercion as a form of slavery, even when there is no physical coercion.⁵⁶ Thus, if a person comes to the United States willingly, but under false pretenses, today that individual may still be considered trafficked, provided that the individual can provide proof of such psychological coercion. Although this is a vast improvement from defini-

⁵² See *Trafficking and Human Smuggling: A European Perspective*, *supra* note 47, at 47-48 (2000).

⁵³ *2011 Trafficking in Persons Report*, *supra* note 2, at 372; 18 U.S.C.A. § 1583; U.S. CONST. amend. XIII.

⁵⁴ See *United States v. Ingalls*, 73 F. Supp. 76, 79 (S.D. Cal. 1947).

⁵⁵ See *United States v. Kozminski*, 487 U.S. 931, 951 (1988).

⁵⁶ *Trafficking Victims Protection Act of 2000*, P.L. No. 106-386, 114 Stat. 1464 (2000).

tions used in the past, this burden of proof is almost insurmountable for many victims in many cases, so although the language is included in the Act, in practice the burden placed on the workers operates to limit protection for trafficking victims.

Since the passage of the TVPA, Congress has passed the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and the Trafficking Victims Protection Reauthorization Act of 2008 to rectify the inadequacy of those old laws, and more specifically to address the ineffectiveness of their penalties.⁵⁷ The Acts recognize a broader range of activities within the umbrella term “trafficking,” with the specific aim to criminalize the conduct of sex traffickers and to penalize sex trafficking as a crime equally as serious as rape.⁵⁸ While the original TVPA focused narrowly on sex trafficking, the 2003 amendment added crimes including forced labor, peonage, slavery, and involuntary servitude to the previous provisions.⁵⁹ Later acts also added confiscation of documents, conspiracy, and attempts to violate the Acts to the list.⁶⁰ This broader scope and recognition is important to deterring trafficking within U.S. borders, but the most prominent changes in these recent Acts, greater criminal sentences for pre-existing labor crimes, did not significantly contribute to the fight against human trafficking.⁶¹ Although these new provisions did grant a private right of action for workers who have been trafficked into peonage, slavery, or involuntary servitude, they did not address the lack of adequate legal workplace protections for undocumented migrants, again decreasing the potential and efficacy of these new provisions.⁶² The result has been that although these measures represent a step forward in the fight against human trafficking in the United States, in reality they have proven insufficient to deter traffickers and to effectively combat trafficking within U.S. borders.

Individual states have also taken action to combat human trafficking within their borders, recognizing the important role state and local laws play in enforcing anti-trafficking laws. Most of the state anti-trafficking laws that have been passed follow the same basic for-

⁵⁷ *See id.*

⁵⁸ *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, 115 (2002).

⁵⁹ U.S. Dep’t of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report 23* (2004), available at <http://www.state.gov/documents/organization/34158.pdf>.

⁶⁰ 22 U.S.C. § 7102 (2008).

⁶¹ A conviction under the Acts carries possible penalties ranging from five years to life imprisonment. *Id.*

⁶² 18 U.S.C. § 1595(a) (West Supp. 2005).

mat as the federal law and a model law drafted by the Department of Justice.⁶³ They focus primarily on creating criminal sanctions for traffickers, but a few also grant benefits to victims. Additionally, a few states have developed their own, distinct anti-trafficking statutes that include activities within their provisions that those particular states perceive as important, and that are not included within the federal laws.⁶⁴ These provisions provide additional protections for victims within those states, but contribute to the patchwork of disparate state trafficking laws within the United States. They decrease the uniformity of the country's approach, leaving a victim's protections up to the luck of the draw, rather than a concrete definition or set of standards.

II. SUCCESSES AND FAILURES: LEARNING FROM OTHER APPROACHES TO MORE EFFECTIVELY ADDRESS THE PROBLEM MOVING FORWARD

The effects of current efforts to curtail human trafficking within the United States should not be discounted, as they have successfully made a small dent in the number of individuals being trafficked into the country each year. A brief examination of differing approaches to combating sex and labor exploitation in the United States and abroad, however, reveals that changes must be made to ensure these efforts are more effective.

1. *The U.S. Approach to Combating Trafficking: Why Current Efforts are Insufficient*

Despite current efforts, the number of trafficking victims in the United States is not likely to significantly decrease without some changes to the U.S. approach to combating the sex trade. Federal and state efforts to address the issue thus far have focused primarily on the victims and the traffickers themselves, but because current trafficking laws are weak and rarely enforced, or are enforced primarily to the detriment of the victim, the benefits for traffickers still outweigh the costs of entering the market.⁶⁵

Rather than address the forces that are driving the migration that in turn fuels human trafficking, the TVPA and other legislation take an *ad hoc* approach to deal with one specific effect of global migra-

⁶³ Model State Anti-Trafficking Criminal Statute § XXX.01 (Dep't of Justice 2004), available at http://pdba.georgetown.edu/Security/citizenssecurity/eeuu/documents/model_state_regulation.pdf.

⁶⁴ These activities include pimping or patronizing a prostitute, with or without force, among others. Melynda H. Barnhardt, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 84-90 (2009).

⁶⁵ Tiefenbrun, *supra* note 58, at 116.

tion.⁶⁶ Instead of aiming for the source of the problem, legislators have attempted to use a band-aid to stem a bleeding hemorrhage. It is no wonder then that this legislation has been ineffective in combating trafficking within the United States. Although punishments under the TVPA are double those contained in post-Civil War legislation, penalties are still relatively light for trafficking both in the United States and throughout the world.⁶⁷ To more effectively address human trafficking then, the United States should focus on decreasing the benefits and increasing the costs of human trafficking to both employers and traffickers.

The TVPA has three main goals: (1) offer statutory protection to the victims of severe forms of human trafficking, (2) increase criminal penalties for persons who commit such acts of trafficking, and (3) foster international cooperation in efforts to combat human trafficking.⁶⁸ The Act's objective to be tough on traffickers and generous to victims of trafficking is honorable; however, in reality it has failed to sufficiently combat human trafficking both in the United States and abroad. Although there have been many hypotheses as to why this has been the case, they can all be boiled down to this: U.S. law and policy actually facilitates human trafficking in the United States by ignoring the global and domestic forces that drive migration.⁶⁹ Before the United States can significantly curtail human trafficking in the country, it follows that the government must address these issues by, among other efforts, recognizing the fact that its laws and policies generate a viable market for trafficking. First, however, it is important to understand the structure and origins of the TVPA.

The Act was a compromise of three bills introduced during Congress's October 2000 legislative session and was passed with broad bipartisan support.⁷⁰ The language and legislative history of the Act indicate Congress's recognition of the need to change the relationship between trafficking victims and the state by reframing trafficked individuals as victims rather than as criminals, as was their classification before Congress passed the TVPA.⁷¹ That new support for trafficking victims was meant to be complementary to the prosecution of traffickers and other measures aimed at stopping trafficking at its source.⁷² Much of the anti-trafficking rhetoric, however, has been just that – nothing more than the words of legislators. Touted as a breakthrough

⁶⁶ Chacon, *supra* note 10, at 2977.

⁶⁷ *Id.*

⁶⁸ *Id.* at 2978.

⁶⁹ *Id.* at 2979.

⁷⁰ *Id.* at 2989.

⁷¹ *Id.* at 2990.

⁷² Chacon, *supra* note 10, at 2990.

in the fight against human trafficking, the TVPA in practice has actually highlighted significant problems in preexisting legislation rather than make application of the laws more effective.⁷³

One key problem with the TVPA and other subsequent federal legislation is that the federal government rarely prosecutes trafficking cases, leaving criminal enforcement of the laws primarily to state and local governments.⁷⁴ To encourage states to take action, the federal government has pressured state legislators to pass their own anti-trafficking legislation. It has also funded local task forces to handle trafficking cases,⁷⁵ but many local police forces are ill-equipped to handle these cases either because they lack training in recognizing trafficking victims or because they lack the resources to devote to such efforts.⁷⁶ As a result, many trafficking cases fall through the cracks of the legal system, leaving traffickers unpunished and undeterred from staying in the market.

The situation is worse for victims of labor trafficking than those exploited for the sex trade. Since 2001, there have only been a few hundred convictions under the TVPA, making human trafficking far less risky than trafficking illegal drugs or arms.⁷⁷ When agencies have prosecuted traffickers under the TVPA, the majority of those prosecutions have been for sex trafficking,⁷⁸ which has created a presumption among many state agencies that the traffickers to go after are those exploiting women sexually. Agricultural workers and housekeepers are thus more likely to pass under state officials' radars. In practice then the TVPA actually does a disservice to combating trafficking in the United States by limiting itself to a specific subgroup of trafficking victims, and in so doing, ignoring a broad range of labor exploitation.⁷⁹ These limitations, plus harsh penalties for undocumented migrant workers and insufficient labor protections for all

⁷³ *Id.* at 2991; see *United States v. Todd*, 627 F.3d 329, 337 (9th Cir. 2010); *United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007); *United States v. Strevell*, 185 Fed. App'x 841 (11th Cir. 2006); *United States v. Bonestroo*, 2012 U.S. Dist. LEXIS 981 (S.D.S.D. Jan. 4, 2012).

⁷⁴ See *Barnhardt*, *supra* note 64, at 97.

⁷⁵ *Id.*

⁷⁶ See *id.* at 128.

⁷⁷ See *Wheaton*, *supra* note 25, at 126. Compare the conviction rate for human trafficking with that of drug trafficking, where 49 percent of drug trafficking arrests led to incarceration, 28 percent led to a state prison sentence, and 71 percent led to a felony conviction. BUREAU OF JUSTICE, STATE COURT SENTENCING OF CONVICTED FELONS, 2004, STATISTICAL TABLES (2007), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1533>.

⁷⁸ In 2010, 71 convictions in the U.S. were for sex trafficking, while 32 were for labor trafficking. *2011 Trafficking in Persons Report*, *supra* note 2, at 123.

⁷⁹ *Chacon*, *supra* note 10, at 2979-80.

workers, work together to actually perpetuate trafficking within the United States rather than reduce it.⁸⁰

2. *The European Approach to Combating Sex Trafficking: Lessons Learned to More Effectively Fight Sex Trafficking in the United States*

Whereas U.S. efforts to curtail human trafficking have focused on the traffickers and victims, other countries have focused on the demand for trafficked individuals, either through legalizing the sex trade or by directly going after the secondary consumers of the product. The United States can and should be informed by the successes of these approaches and, moving forward, should combine these lessons with the application of existing international instruments and the enforcement of current U.S. laws to more effectively combat human trafficking.

Approximately eighty international instruments currently address the issue of slavery, forced labor, and human trafficking. The first, the 1815 Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade, establishes a duty to prohibit, prevent, prosecute, and punish slavery-related offenses.⁸¹ Beginning in 1815 and continuing today, The Hague has also adopted the practice of incorporating protections against enslavement and forced labor into its international conventions.⁸² Other international instruments addressing the issue of slavery and forced labor include the 1926 Slavery Convention,⁸³ the 1930 Forced Labour Convention,⁸⁴ and the 1948 Universal Declaration of Human Rights.⁸⁵ Each of these instruments addresses specific issues that overlap with those found within the umbrella of human trafficking, but none specifically addresses the problem of human trafficking itself.

The first major international treaty specifically addressing human trafficking was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which aimed to prevent and combat trafficking, to protect and assist victims, and to promote international cooperation

⁸⁰ *Id.* at 2979.

⁸¹ 2 Martens Noveuau Recueil 432, reprinted in 63 Parry's T.S. 473 (1969).

⁸² See, e.g., Laws and Customs of War on Land, 32 Stat. 103, T.S. No. 403 (July 29, 1899); Laws and Customs of War on Land, 36 Stat. 2277, T.S. No. 539 (Oct. 18, 1907).

⁸³ See generally Slavery Convention of 1926, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253, 255.

⁸⁴ See generally Int'l Labour Org., Forced Labour Convention, 1930 (June 28, 1930) (explicitly recognizing forced labor as an international crime).

⁸⁵ G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) (recognizing the rights of all persons not to be held in slavery or servitude).

in fighting trafficking.⁸⁶ Unlike U.S. legislation, this protocol primarily focuses on providing protection and assistance to victims of human trafficking, and recognizing the needs of trafficking victims and the importance of victim assistance.⁸⁷ The protocol was adopted both as an end in and of itself, and as a means to secondarily support the prosecution of trafficking crimes. U.S. legislation typically has the opposite focus – prosecute the traffickers and when necessary, support the victims. Today, because of the evolution of these principles in the international community, the act of human trafficking has been deemed to violate general principles of law and is generally accepted as an international crime under both conventional and customary international law, which in turn affects the European legal response to trafficking.

Currently, European efforts to combat trafficking have focused primarily on sex trafficking and have proceeded in two directions. Most countries that have made any affirmative changes in their policies have chosen to legalize prostitution. Sweden has taken a different approach, choosing instead to prosecute the “johns,” or purchasers of the trafficked individuals’ sexual services.⁸⁸ A closer examination of each of these models reveals why the United States should adopt Sweden’s approach to stem the flow of sex trafficking victims into the United States.

In the first model, that followed by the majority of European countries that have taken affirmative steps to combat human trafficking, countries have legalized prostitution based on the assumption that doing so will regulate the trade and make girls less susceptible to being trafficked into the industry. In reality, however, the majority of trafficked women globally have actually ended up in countries and cities where there are large sex industries and where prostitution is legal because legalizing the sex industry actually makes convicting traffickers, and holding them accountable for their activities, more difficult.⁸⁹ A key element in prosecuting traffickers in countries with a legal sex trade is the use of force or physical coercion, an element that raises evidentiary issues⁹⁰ because many women do initially consent to travel or to work as a prostitute, not anticipating the conditions in which they will later be forced to work.⁹¹ Because these men and wo-

⁸⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319.

⁸⁷ *Id.*

⁸⁸ *The Battle Against Sex Trafficking: Sweden vs. Denmark*, CNN PROJECT: ENDING MODERN SLAVERY, Mar. 30, 2011, <http://thecnnfreedomproject.blogs.cnn.com/2011/03/30/sex-trafficking-countries-take-different-approaches-to-same-problem/>.

⁸⁹ Hughes, *supra* note 3, at 10.

⁹⁰ *Id.* at 14.

⁹¹ *See id.*

men then do not qualify as victims of trafficking, traffickers actually benefit from policies legalizing prostitution and are, therefore, attracted to these countries.

Another disadvantage of legalization is that it actually increases the need for trafficking victims to meet the demand created by a legitimized sex industry.⁹² In Denmark, for example, the government decriminalized prostitution in 1999 to make the sex trade easier to regulate.⁹³ In the past 12 years, the red light district there has grown exponentially and the number of foreign sex workers has increased drastically.⁹⁴ No studies reveal exactly how many of these women have been trafficked, but social workers believe the majority of these foreign workers are at least vulnerable to trafficking.⁹⁵ Additionally, many of the women work for pimps who are themselves victims of trafficking and who are attempting to work their way out of the system by recruiting new girls, creating a cyclical demand for trafficked individuals that keeps the market for trafficked women vibrant in Denmark.⁹⁶

The Swedish model, on the other hand, targets the demand for trafficked labor rather than the supply. In Sweden, rather than legalize the trade, the government has focused its efforts on increasing the stigma attached to the sex trade. Men who purchase the product (the victim's sexual services) are prosecuted, rather than the pimps, while the women are still treated as victims.⁹⁷ As a result of these efforts, Sweden has seen a reduced demand for prostitution in the country and thus reduced market prices for girls in the country and reduced profits for traffickers.⁹⁸ In turn, the number of women trafficked into the country has declined as the benefits of trafficking into Sweden have decreased.⁹⁹ Traffickers now view Sweden as a poor market, and those who do enter the market there do so to a significantly smaller degree than they once did, suggesting that going after the fourth market player – the second group of consumers – is an effective means of targeting the sex trade.¹⁰⁰

⁹² *Id.* at 13.

⁹³ *The Battle Against Sex Trafficking: Sweden vs. Denmark*, *supra* note 88.

⁹⁴ *See id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Nicholas Kristof, *Seduction, Slavery and Sex*, N.Y. TIMES, July 14, 2010, <http://www.nytimes.com/2010/07/15/opinion/15kristof.html>.

⁹⁸ *Id.*

⁹⁹ *See id.*

¹⁰⁰ Similarly, efforts to shut down a few prominent brothels in Indonesia led to the closure of many neighboring brothels when clients realized there were repercussions for their activities and thus stopped seeking services, driving those brothels out of business. Beatrice Ask, *Sweden: Why We Criminalized Purchase of Sexual*

3. *Current International Efforts to Combat Labor Exploitation*

As discussed above, many of the anti-trafficking provisions enacted today have been construed primarily to protect victims against sexual, rather than labor, exploitation; however, labor exploitation is prominent in the United States. Although the FBI reports that eight of every ten trafficking arrests fall within the realm of sex trafficking,¹⁰¹ in the United States, foreign victims of trafficking are more often victims of labor trafficking than sex trafficking.¹⁰² Treaties, international conventions, customary international law, and U.S. legislation all protect undocumented workers' right to work and to do so free from discrimination based on race or national origin. As such, these legal mechanisms are applicable to trafficked individuals, many of whom remain undocumented and thus vulnerable to exploitation. To more effectively interrupt the international human trafficking market, therefore, governments should focus on enforcing these laws. By doing so, they will increase the costs and decrease the benefits to traffickers of trafficking individuals into forced labor, and thus more effectively combat the trade.

Among the rights guaranteed to undocumented immigrants within international agreements is a group of rights that relate to fair labor conditions. Addressed primarily in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), States party to the treaty recognize the right to work, which includes the right not only to earn a living through work, but also the right to choose the work a person accepts for him- or herself.¹⁰³ The ICESCR also recognizes the right of every person to just and favorable working conditions, which include fair wages and equal pay for equal work, a decent living, safe and healthy working conditions, equal opportunity to be promoted in one's employment to an appropriate higher level, the reasonable limitation of working hours, and periodic holidays with pay.¹⁰⁴ Additionally, under the ICESCR, States play more than a passive role in allowing a person to work. They have a positive duty to ensure the full realization of these rights through vocational guidance and training programs, policies to achieve steady economic, social, and cultural development, and full and productive employment under conditions

Services, CNN FREEDOM PROJECT: ENDING MODERN-DAY SLAVERY, Mar. 31, 2011, <http://thecnnfreedomproject.blogs.cnn.com/2011/03/31/sweden-why-we-criminalized-purchase-of-sexual-services>.

¹⁰¹ *Human Trafficking – FBI Initiatives*, *supra* note 31.

¹⁰² *2011 Trafficking in Persons Report*, *supra* note 2, at 342.

¹⁰³ International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

¹⁰⁴ *Id.* at art. 7.

safeguarding fundamental political and economic freedoms to the individual.¹⁰⁵ The International Convention on the Rights of Migrant Workers and their Families (ICRMW) further provides that migrant workers should enjoy treatment equal to that which applies to nationals of the state of employment.¹⁰⁶

International law also protects migrant workers, including trafficked individuals, from racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines “racial discrimination” as

Any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁰⁷

The ICERD requires States Parties to condemn racial discrimination and to pursue a policy of elimination of racial discrimination. States Parties can do this through means such as reviewing government policies and amending or rescinding any policies that have the effect of creating or perpetuating racial discrimination wherever it exists.¹⁰⁸ Along these lines, State Parties have a duty to

guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favorable remuneration. . .¹⁰⁹

The International Covenant on Civil and Political Rights (ICCPR), which was ratified in 1992, similarly provides

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective

¹⁰⁵ *Id.* at art. 6, § 2.

¹⁰⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, art. 18, 25, 27, U.N. Doc. A/Res/45/158 (Dec. 18, 1990).

¹⁰⁷ International Covenant on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX) art. 1, § 1 (Dec. 21, 1965).

¹⁰⁸ *Id.* at art. 2, § 1(c).

¹⁰⁹ *Id.* at art. 5(i).

protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹¹⁰

And the Universal Declaration on Human Rights (UDHR) declares

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. . . All are equal before the law and are entitled without discrimination to equal protection of the law.¹¹¹

The plain language of each of these international documents provides for equal protection and non-discrimination for all persons. Although the United States is not a party to all of these conventions, as a country that sets a standard for the rest of the world to follow in many areas, it would be beneficial for the United States to recognize these standards, which have been recognized by many other countries, and to strive to enforce their principles to effectively help prevent and protect vulnerable laborers from falling into exploitative situations.

Domestic laws in the United States can also be used to directly and indirectly protect vulnerable individuals from traffickers within a labor context. The federal Fair Labor Standards Act (FLSA) is one such piece of legislation that, although not passed to directly combat human trafficking, can be used by state officials to deter traffickers. The Act regulates a broad range of working conditions, including minimum wage and maximum hours, and contains various enforcement provisions, including the right to institute a civil action on behalf of an employee for unpaid wages and overtime pay.¹¹² These provisions make the FLSA a prime candidate for curbing trafficking, as universal enforcement of these provisions would naturally include protections for trafficking victims.

Enforcement of Title VII of the Civil Rights Act (CRA) also holds promise for curbing human trafficking in the United States. The first piece of comprehensive legislation prohibiting discrimination in the workplace based on race and national origin, the CRA's coverage includes employees recruited from abroad to work in the United

¹¹⁰ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 26 (Dec. 16, 1966).

¹¹¹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 2, 7, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹¹² Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (1938).

States.¹¹³ It is often used to protect workers' rights, and its application to migrant workers holds promise for decreasing the benefits of trafficking to traffickers, and thus curtailing the trade in the United States.

For example, in April 2011, in its largest human trafficking case in agriculture to date, the Equal Employment Opportunity Commission filed suit under the CRA against a farm labor contractor, alleging severe abuse of Thai male farmworkers who were recruited to work in the United States.¹¹⁴ In *EEOC v. Global Horizons*, the workers were promised steady, high-paying agricultural jobs and temporary work visas in exchange for high recruitment fees.¹¹⁵ Upon arrival in the United States, however, the workers' passports were revoked and they were threatened with deportation if they reported their subsequent abuse.¹¹⁶ Bound by their debt and lacking identification, the workers had little choice but to accept the conditions of their employment.¹¹⁷

The *Global Horizons* scenario is not uncommon. On the same day the EEOC also filed a complaint against Signal International, alleging abuse similar to that in *Global Horizons*.¹¹⁸ Many of the plaintiffs in that case had taken out high interest loans and put their houses and land up as collateral to pay their recruiters' fees to come to the United States.¹¹⁹ Significantly, the EEOC sought to hold the company, rather than the labor recruiters, responsible for the abuses.¹²⁰

Using international conventions as a model for U.S. laws, enforcing workplace rights, and bringing FLSA and Title VII claims in these types of cases makes participating in this market less appealing. When employers are held accountable for their actions, they have less incentive to use trafficked labor and to subject their workers to these abuses, thus cutting off one key player in the human trafficking market. Without a buyer for the product, sellers will thus have to move to better, more lucrative markets, or else exit the market altogether.

¹¹³ Civil Rights Act of 1964, 78 Stat. § 241 (2006).

¹¹⁴ *EEOC v. Global Horizons*, 860 F. Supp. 2d 1172 (D. Haw. 2012).

¹¹⁵ *Id.* at 1177.

¹¹⁶ Some workers were forced to live in rat-infested, dilapidated housing where they shared rooms with dozens of men. They were forbidden from leaving the property, endured threats and physical assaults from their supervisors, and were separated from other workers who appeared to be working in better conditions. *Id.*

¹¹⁷ *Id.*

¹¹⁸ Dan Werner, *EEOC Action in Labor Trafficking Case Reinforces SPLC Claims of Abuse*, SOUTHERN POVERTY LAW CENTER (Apr. 20, 2011), <http://www.splc.org/get-informed/news/eoc-action-in-labor-trafficking-case-reinforces-splc-claims-of-abuse>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

III. RECOMMENDATIONS FOR FUTURE ANTI-TRAFFICKING LEGISLATION

As discussed above, effectively combating human trafficking requires governments and societies to increase the costs and decrease the benefits to traffickers of engaging in the activity. Efforts to combat human trafficking thus far have predominately addressed the supply side of the economic model, imposing monetary, physical, psychological, and criminal costs on traffickers for running their businesses; however, the increasing number of individuals being trafficked and low prosecution rates of traffickers throughout the world mean that costs stay low, while profits remain high. Few traffickers are deterred from entering the market, which in turn remains vibrant due to the steady supply of buyers, sellers, vulnerable individuals, and consumers.

As the incentives to enter the market continue to outweigh the costs, individuals remain vulnerable to traffickers. Victims of human trafficking continue to seek better lives following political and economic collapse in their home countries, and are increasingly vulnerable to trafficking because of ever-tightening immigration laws, improvements in technology that allow international financial transactions to be completed with ease, and improvements in transportation that allow people and goods to move from one side of the world to the other in a short amount of time. These conditions remain despite the presence of laws aimed at prosecuting traffickers, protecting victims, and preventing more individuals from becoming victims to trafficking and exploitation, suggesting that more needs to be done to address these factors to effectively stem the flow of trafficking victims into the United States.

Although the escape from poverty is a powerful push factor driving the human trafficking market, it would be unrealistic to expect the United States to ensure higher economic growth, stable political environments, fair competition, transparent state administration, and overall, to promote confidence in the opportunities available in vulnerable individuals' home countries.¹²¹ Instead, the United States should focus its efforts and resources on two distinct areas of human trafficking – sex trafficking and labor trafficking — both of which are driven by demand and profits. In doing so, the United States should specifically target the demand for products in those arenas because it is the demand for slave labor that drives the illegal market in human labor, and the issue cannot be effectively addressed by solely looking at one side of the coin.¹²²

¹²¹ Cf. Gijsbert Van Liemt, *Human Trafficking in Europe: An Economic Perspective* 24-25 (Cornell University ILR School, Working Paper No. 31, 2004).

¹²² *The Battle Against Sex Trafficking*, *supra* note 88.

Traffickers achieve such high levels of success worldwide because they know their business and respond to market changes more quickly than even the most competitive corporations.¹²³ When one country successfully addresses human trafficking within its borders, traffickers move to a new country, as was the case with Sweden. To successfully curtail human trafficking, therefore, the issue needs to be addressed globally; otherwise, effective reductions in instances of trafficking in the United States will only result in shifting the market elsewhere. Although it would be difficult, if not impossible, to slow population growth, end world poverty, eradicate corruption, cancel international debts and ensure complete enforcement of every international and domestic law and policy against trafficking, countries can cooperate with one another to increase the costs and decrease the benefits of human trafficking.¹²⁴ Governments can take steps toward an agreement on one uniform definition of human trafficking that avoids the differences that can be seen, for example, between the U.N. Protocol and the TVPA definitions. In the meantime, however, the United States should focus on the situation within its own country, allowing other countries to retain their sovereignty and address the issue as they see necessary.

At the federal level, Congress should focus on decreasing the demand for trafficked individuals by regulating immigration and updating its immigration policies to address the concerns of so many individuals who feel they need to migrate illegally and thus subject themselves to the whims of traffickers. Doing so would decrease the demand for traffickers to provide the papers and funds for vulnerable individuals to come to the United States and other destination countries. Current restrictions on immigration, which push the trade underground and make trafficking difficult to uncover, have increased the demand and revenue for traffickers, and in turn, have perpetuated the cycle of human trafficking as the benefits of staying in the market continue to exceed the costs.¹²⁵ The federal government should also turn its efforts to prosecuting the clients of individuals trafficked into sexual exploitation, increasing the stigma associated with such crimes, and in turn decreasing the demand for trafficked individuals in the country.

At the same time, states should focus on enforcing the criminal provisions they have in place to directly combat human trafficking, and improving training programs to recognize not only victims of sex trafficking, but labor trafficking as well.¹²⁶ States should also focus on

¹²³ *Trafficking and Globalization*, *supra* note 35, at 5.

¹²⁴ Wheaton, *supra* note 25, at 132.

¹²⁵ *Id.* at 135.

¹²⁶ Barnhardt, *supra* note 64, at 96, 132.

enforcing their immigration and labor laws across the board. This would decrease the benefits to employers of using trafficked labor. Enforcement would also indirectly decrease the benefits and increase the costs to traffickers of operating within individual states, and ultimately deter traffickers from entering the market for labor trafficking.

Specifically, to address the sex trade, the government should supplement current efforts by adopting Sweden's approach, and should start prosecuting the purchasers of the product at the federal level to increase the stigma associated with using the product. Studies have shown that crime prevention, rather than crime control and policing, is needed to combat human trafficking. Therefore, the United States should focus its efforts within the sex trade on prosecuting the clients instead of decriminalizing the industry.¹²⁷ As has been seen in the Netherlands and other countries that have legalized prostitution, that approach does not actually eliminate the market for human trafficking. Instead it encourages the establishment of two parallel markets: one for legalized, regulated brothels, and another for underage, trafficked girls.¹²⁸ Instead, focusing on prosecuting the purchasers of the goods attacks demand, which in turn reduces the incentive for traffickers to operate in the United States. With a decrease in client demand for the product, there would be a parallel decrease in employer demand for trafficked individuals. In turn, the cost to traffickers of operating within the United States would increase, making the country a less attractive market to traffickers. Further, with fewer trafficked individuals arriving in the country, there would be more resources available to prosecute traffickers and to address the needs of those individuals who are still trafficked into the country.

To combat labor trafficking, the government should allocate resources to enforcing state and federal labor and anti-discrimination laws in the workplace to increase the costs and decrease the demand for undocumented, and potentially trafficked, workers in the workplace, ensuring more jobs and better working conditions for legal workers. Lax enforcement of labor laws creates optimal conditions for absorbing undocumented immigrant workers into the United States and keeps the market for trafficked individuals alive. These workers are subject to abuse and exploitation by employers who use the workers' irregular status as a threat and a justification for poor and dangerous working conditions. Because undocumented workers are less likely to report workplace abuse, and because capital flows wherever labor is the cheapest, employers have an incentive to employ undocumented migrant workers and to exploit trafficked individuals.¹²⁹ Improving

¹²⁷ Wheaton, *supra* note 25, at 131.

¹²⁸ See *The Battle Against Sex Trafficking*, *supra* note 88.

¹²⁹ Van Liemt, *supra* note 121, at 25.

enforcement of workplace laws and reducing the appeal of employing undocumented migrant workers would thus have a direct impact on human trafficking into the United States.

Current state approaches, like recent anti-immigrant legislation in Arizona and Alabama, are not the appropriate response to combating the increasing number of undocumented immigrants in the country. In theory, these new anti-immigrant laws drive migrant workers out of the state, and back to their country of origin. While these laws could arguably cut down on trafficking into individual states, they also encourage discrimination and racial profiling in violation of the U.S. Constitution and subsequent federal and state legislation. Instead of promoting subjective and individualized assessments of a person's legal status within the United States based on skin color and accent, states should focus on enforcing state labor and employment laws wholesale. By so doing, they would avoid violating individuals' constitutional and statutory rights, and would avoid facing the same identification and enforcement problems they are dealing with under current anti-trafficking laws. Additionally, enforcing labor laws across the board, while not directly targeting undocumented immigrants or trafficking victims, reduces the economic incentive for traffickers to bring vulnerable individuals into the United States because it ensures that all workers' workplace rights are met.¹³⁰ It also has a positive effect on other workers by increasing wages, and allowing citizens and documented workers to compete fairly in the marketplace. Documented workers will no longer be forced to lower their own expectations and standards just to get a job that would otherwise go to an undocumented worker whom the employer could easily exploit with few, if any, repercussions.

CONCLUSION

When a person is trafficked, his or her agency is limited. A majority of the efforts taken to combat human trafficking thus far have focused on restoring that agency. However, those efforts have focused primarily on impacting the supply side of the economic model. It is essential then, following the ineffectiveness of current efforts to curb trafficking in the United States, that complementary efforts be made that focus more specifically on the demand side of the economic model. By addressing both sides of the market, the government will have a greater chance of successfully interrupting the market in human labor and forcing traffickers to exit what is quickly threatening to become the most lucrative illegal business in the world.

¹³⁰ *Id.* at 24-25.