

# HUMAN TRAFFICKING: MODERN-DAY SLAVERY IN NEED OF A MODERN-DAY SOLUTION

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## **Abstract**

Awareness of trafficking in persons has recently grown as a result of activists' efforts, increased media attention and legislative action from governments. Despite the increased awareness, human trafficking remains an issue that scholars, activists, politicians and the media agree has not been solved. This thesis examines various policy responses to the growing problem of human trafficking and the political barriers that have prevented these policies from adequately addressing the problem.

The first chapter explores trafficking policy in the U.S. and why it has failed to keep pace with the problem. This chapter examines the current human trafficking policy framework in the United States, the history of that policy, and how it has changed over time. This case study reveals that partisan politics have played a prominent role in preventing human trafficking policy from focusing on the root causes and solutions to trafficking in the U.S.

Human trafficking is not a problem unique to the United States, so it is necessary to examine how another country addresses trafficking from a legislative standpoint. The second chapter explores what role the international community and the media have played in potentially restricting Canadian human trafficking policy. A review of media sources is conducted that reveals Canadian media has had a role in inflating the issue of trafficking and causing moral panics that lead to inadequate policy responses. This paper also examines the role that international pressures have played in the creation of Canada's anti-trafficking legislation, revealing that pressures from the U.S. have caused Canada to emphasize aspects of the human trafficking problem that were not important

to Canada. This has led to legislation that does not properly address the trafficking issue within Canada's own borders.

The third chapter examines the leadership on human trafficking policy and why the U.S. has come to lead the international community in addressing the problem, despite its political barriers. This chapter suggests what the most appropriate role for the U.S. might be in the international efforts to combat trafficking, and how the country can overcome the barriers that have prevented it from fully addressing the issue at both a national and international level.

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## Introduction

Society continues to struggle with a plethora of ills such as poverty, hunger, a fragile environment, wide spread discrimination, and war. Whether in government, communities or homes, fundamental human rights are too often denied by those in control. The list of these human rights violations is long, but one of the most monstrous crimes has recently recaptured our attention: the buying and selling of people for profit, otherwise known as human trafficking.

Trafficking is commonly understood to involve a variety of crimes and abuses associated with the recruitment, movement and sale of people into a range of exploitative conditions around the world.<sup>1</sup> Human trafficking comes in many forms; forced labor, sex trafficking, bonded labor, migrant workers' debt bondage, and forced child labor. Forced labor is also known as involuntary servitude. In this form, workers become the object of exploitation of unscrupulous employers due to "high rates of unemployment, poverty, crime, discrimination, corruption and political conflict."<sup>2</sup> In 2013, the National Human Trafficking Resource Center hotline, operated by Polaris, received reports of 929 labor trafficking cases inside the United States alone.<sup>3</sup> Another prevalent form of trafficking, sex trafficking, occurs when a victim is forced or deceived into prostitution by a trafficker. Sex traffickers use violence, threats, lies, debt bondage, and other forms of coercion to force women, men and children to engage in commercial sex against their will. Sex traffickers may lure their victims with the false promise of a

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<sup>1</sup> Alexis Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Westport: Praeger, 2009), 1-3.

<sup>2</sup> Ibid, 96.

<sup>3</sup> "Labor Trafficking in the U.S.," Polaris, Online: <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us>



high-paying job. Others promise a romantic relationship, where they first establish an initial period of false love and feigned affection.<sup>4</sup> During this period they offer gifts, compliments, and sexual and physical intimacy, while making elaborate promises of a better life, fast money, and future luxuries. However, the trafficker eventually employs a variety of control tactics, including physical and emotional abuse, sexual assault, confiscation of identification and money, isolation from friends and family, and even renaming victims. U.S. citizens, foreign nationals, women, men, children, and LGBT individuals can be victims of sex trafficking. Runaway and homeless youth, victims of domestic violence, sexual assault, war or conflict, or social discrimination are frequently targeted by traffickers. In 2013, the National Human Trafficking Resource Center hotline, operated by Polaris, received reports of 3,609 sex trafficking cases just inside the United States.<sup>5</sup> Bonded labor is a form of forced labor for debt redemption. Migrant worker debt bondage occurs when a migrant's labor is demanded as a means of repayment for a loan, often to cover the cost of transportation to the destination country. Once in debt, the migrant loses all control over work conditions and is forced to work long hours, for very little or no pay. The debt becomes inflated through charges for food, transportation, and interest on loans, making it impossible to repay and trapping the worker in a cycle of debt. Forced child labor refers to the sale and trafficking of trapped children into debt bondage, or forced labor. These various forms of trafficking occur across many different industries and in many nations around the world.

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<sup>4</sup> "Sex Trafficking in the U.S.," Polaris, Online: <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us>

<sup>5</sup> Ibid.

While the trafficking of human beings has attracted considerable public and political concern in recent years, this phenomenon is nothing new. It has been described as a diverse form of trade that is “as old as trade itself,” even though there is great diversity in what is trafficked, what trade is prohibited, and by whom over time.<sup>6</sup> More than 140 years after slavery was legally abolished, concern about a new form of slavery has emerged on the world stage. This modern form of slavery is the fastest growing organized crime and considered to be the third most profitable trafficking activity in the world after drug and gun trafficking.<sup>7</sup>

In recent years, human trafficking has become the subject for much research, academic debate and advocacy in diverse disciplines and fields such as criminology, politics, law, human rights, gender, public health, and sociologies of migration. As we will see, trafficking has been framed as the new “white slave trade,” an illegal immigration problem, a threat to national security, a labor issue, a women’s rights issue, a human rights violation, or some combination of the above. Global and national responses to the problem have grown, so much so that trafficking has arguably been transformed from a poorly funded NGO issue in the early 1980s, into the global agenda of high politics of the United States Congress, the European Union, and the United Nations.<sup>8</sup>

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<sup>6</sup> P. Andreas, “Smuggling Wars: Law Enforcement and Law Evasion in a Changing World.” *Transnational Organized Crime* 4 (1998): 75-90

<sup>7</sup> Sun Pinghua and Yan Xie, “Human Trafficking and Sex Slavery in the Modern World,” *Albany Government Law Review* 7, no. 1 (2014): 93.

<sup>8</sup> Diana Wong, “The Rumor of Trafficking,” in *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. eds. Willem van Schendel and Itty Abraham. 69, Bloomington: Indiana University Press, 2005.

Yet, there remain considerable limitations in our knowledge and understanding of human trafficking. The trafficking debate has been criticized for its shoddy research, anecdotal information,<sup>9</sup> and emotive manipulation of inconsistent statistics.<sup>10</sup> This can create problems in defining the dimensions of the trafficking problem and developing policies to deal with it. Researchers Anette Brunovski and Guri Tyldum made this point when they stated that, “uncritically using or publishing findings not based on sound methodologies may result in misinformation and hinder the creation of relevant policies.”<sup>11</sup> For example, in late 1999 a study sponsored by the Central Intelligence Agency estimated that 50,000 trafficking victims entered the United States each year.<sup>12</sup> For years, members of Congress and others in government assumed that estimate was correct and relied on it to shape legislative responses to the problem. However, over time that estimate was cut in half. By 2005, different methods of calculation had dropped the number to about 17,000.<sup>13</sup> Global estimates of the human trafficking

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<sup>9</sup> Sanghera, Jyoti. “Unpacking the Trafficking Discourse,” in *Trafficking and Prostitution Reconsidered: New Perspectives On Migration, Sex Work, and Human Rights*. eds. Kempadoo, Kamala, Jyoti Sanghera, and Bandana Pattanaik. 3-24, Boulder, CO: Paradigm Publishers, 2005.

<sup>10</sup> Murray, Alison. “Debt Bondage and Trafficking: Don’t Believe the Hype.” In *Global Sex Workers: Rights, Resistance, and Redefinition*, eds. Kamala Kempadoo and Jo Doezema, 51-64. New York and London: Routledge, 1998.

<sup>11</sup> Guri Tyldum and Anette Brunovskis, “Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking,” *International Migration* 43, no. 1/2 (2005): 17-34.

<sup>12</sup> Richard, Amy O’Neill. “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime.” *Center for the Study of Intelligence* (1999) <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>

<sup>13</sup> U.S. Library of Congress, Congressional Research Service, *Trafficking in Persons: The U.S. and International Response*, by F.T. Miko, CRS Report RL30545 (Washington, DC, 2006). Online: <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1033&context=humtraffdata>

population also vary widely. Some sources put the number as high as 27 million,<sup>14</sup> while others believe 500,000 is a more accurate number.<sup>15</sup>

Anti-trafficking programs and policies also reflect conflicting agendas and strategic policy goals of advocates, politicians, and nations as a whole. Trafficking has become a political issue because it involves questions of morality and decisions about how the U.S. and the rest of the world address major deprivations of human rights. Since politics and advocacy are intertwined with the subject of human trafficking, any public discourse is bound to be affected by the various arguments and emotions of those who are intimately involved.

Through a review conducted of the current literature on human trafficking, most scholars agree human trafficking policy has not been adequately addressed by any piece of existing legislation, but they rarely explore the initial discourse and development of those policies as a possible explanation. This thesis will begin to address this gap in the existing body of research by examining various policy responses to the growing problem of human trafficking and the political barriers that have prevented these policies from adequately addressing the problem both on a national level within the U.S., and more globally.

The first chapter explores why human trafficking policy in the U.S. has failed to keep pace with the problem. This chapter examines the current human trafficking policy framework in the United States, the history of that policy, and how it has changed over

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<sup>14</sup> Danae Zimmer and Ted Gournelos, "The Lost Victims of Human Trafficking," *Florida Communication Journal* 42, 1 (2014): 11.

<sup>15</sup> "Facts and Figures on Violence Against Women: Trafficking in Women and Girls," 2007, United Nations Development Fund for Women (UNIFEM) Online: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

time. An examination of the policy process, congressional hearings, and debates among politicians and interest groups is conducted. This case study explores the role that ideological partisan politics have played in preventing U.S. human trafficking policy from focusing on the root causes and solutions to the growing problem.

Human trafficking is not a problem unique to the United States, so it is necessary to examine how another country addresses trafficking from a legislative standpoint. Canada was chosen as a case study because of its activity on trafficking policy, its long tenure as a member state of the United Nations, and its role as an origin, transit and destination country for trafficking. Through a review of Canada's legislative history, the second chapter explores what role the media has played in potentially restricting Canadian human trafficking policy. This paper also discussed the role that international pressures have played on the creation of Canada's anti-trafficking legislation.

The third chapter discusses leadership on human trafficking policy and why the U.S. has come to lead the international community in addressing the problem, despite its political barriers. This chapter explores four distinct roles that the U.S. has had in the development of human trafficking policy. This chapter also suggests what the most appropriate role for the U.S. might actually be in the international efforts to combat trafficking, and how the country can deal with the political barriers that have prevented it from fully addressing the issue at both a national and international level.

Much of the reportage on the subject of human trafficking focuses on the terrible cases of trafficked people. However in the process, the more complicated long-term story of how trafficking policy has evolved has been ignored. This thesis aims to

address this gap in the research. By nature, policy stories deal with legislative and government affairs and are less compelling than the case studies of the human problems that they focus on; thus it is not surprising that the evolution of trafficking policy has not been extensively covered. Nevertheless, because the development of U.S. government response to human trafficking has driven much of what has become the global reaction to this particular issue, it is important to examine the evolution of that trafficking policy, and the influence it has had globally, to better understand where the fault lines were first created and if they can be circumvented in the future.

## Chapter One: Human Trafficking Policy in the U.S.

In recent years the problem of trafficking, or modern-day slavery, has exponentially increased due to issues such as globalization, poverty, organized crime, government corruption, and the growth of the global commercial sex industry.<sup>16</sup> Not only has the problem itself increased, but awareness of human trafficking is also at an all-time high. In the last two decades alone, trafficking has become a major concern for government, international organizations, and non-governmental organizations (NGOs).<sup>17</sup> There has been a sudden increase of anti-trafficking policy activity in the United States, and a multitude of anti-trafficking initiatives created to encourage international cooperation in addressing the issue and bringing even more attention to the problem on a global scale; the most comprehensive being the Trafficking Victims Protection Act (TVPA).

As we will see in more detail, the TVPA is currently the most comprehensive piece of U.S. legislation designed to deter trafficking, punish offenders, and protect victims. Enacted in October 2000, the TVPA was the first law designed to criminalize trafficking in persons. The TVPA seeks to regulate “severe forms of trafficking in persons,” including a separate provision on sex trafficking, and another provision on involuntary servitude for labor or services.<sup>18</sup>

The TVPA’s anti-trafficking strategy has three primary purposes, commonly known as the “three P’s;” to punish traffickers; to support countries in preventing

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<sup>16</sup> Kathryn Cullen-DuPont, *Human Trafficking* (New York: Infobase Publishing, 2009), 3-9.

<sup>17</sup> Girish J. Gulati, “New Frames and Story Triggers in the Media’s Coverage of Human Trafficking,” *Human Rights Review* 12 (2011): 363.

<sup>18</sup> *Trafficking Victims Protection Act, 2000* (Pub. L. No. 106-386, 106<sup>th</sup> Congress, October 28, 2000).

trafficking; and to provide restorative services to victims of trafficking. However, despite its stated mission, there remains a disconnect between the three goals of the TVPA, as policymakers, law enforcement agencies, and NGOs that provide services to victims try to prioritize these goals and achieve their own individual missions.

Of particular concern are the lack of federal prosecutions under the TVPA, a lack of state and local involvement in the anti-trafficking movement, and an insufficient focus on rehabilitating victims. Critics of the TVPA generally fall into one of two camps; those who are concerned about the law enforcement and prosecution success rate and those who are attuned primarily to victims' rights. One side argues that the TVPA falls short on provisions of the law that criminalize trafficking activities, and should focus more on enhancing law enforcement training and specialization in trafficking.<sup>19</sup> The other side argues that the law should adopt a more victim-centered model for addressing trafficking that would protect those who have been trafficked.<sup>20</sup> Despite the differing views on why, most scholars<sup>21</sup> agree that the problem of human trafficking still far exceeds the laws created to help combat it. This poses an important substantive and theoretical question: Why has human trafficking policy increasingly failed to keep pace with the problem? In order to answer this question, this chapter examines the current policy framework in the United States, the history of that policy, and how it has changed

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<sup>19</sup> Deborah Grubb and Katherine Bennett, "The Readiness of Local Law Enforcement to Engage in US Anti-Trafficking Efforts: An Assessment of Human Trafficking Training and Awareness of Local, County, and State Law Enforcement Agencies in the State of Georgia," *Police Practice & Research* 13, 6 (2012): 487-500.

<sup>20</sup> Jennifer Chacón, "Misery and Myopia: Understanding the Failures of U.S. Efforts To Stop Human Trafficking," *Fordham Law Review* 74, 6 (2006): 2977-3040.

<sup>21</sup> Desyllas, "A Critique of the Global Trafficking Discourse and U.S. Policy"; Fahy and Farrell, "The Problem of Human Trafficking in the U.S."



over time. While most scholars analyze the shortcomings of either the law enforcement<sup>22</sup> or the victim-centered approach to the U.S. law,<sup>23</sup> none seem to examine the nature of the political arena as a possible explanation for the lacking policies. This chapter argues that politics are largest contributing factor to the problem. This paper will explore what role ideological partisan politics have played in keeping the policy from its intended purpose of effectively combating the human trafficking problem.

### **U.S Trafficking Policy**

#### *Theoretical Framework*

Political scholar, John Kingdon developed a model depicting agenda setting in the U.S. federal government. Kingdon's model can be applied to the way in which human trafficking policy emerged within Congress. According to Kingdon, the agenda is defined as "the list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying some serious attention at any given time."<sup>24</sup> The agenda-setting and alternative selection framework articulated by Kingdon considers the pre-decision aspects of the policy process; how an idea's time comes, what problems attract attention and how policy agendas are set, by whom, and what alternative solutions are being seriously considered. Kingdon argues that there are three separate and partially independent streams each with its own

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<sup>22</sup> Deborah Grubb and Katherine Bennett, 487-500.

<sup>23</sup> Jennifer Chacón, 2977-3040.

<sup>24</sup> John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown, 1984), 5.

dynamics and rules in the policy and agenda setting process: problems, policies, and politics.<sup>25</sup>

Agenda setting is enabled through the interaction of these three different streams. The first is the problem stream, where problems rise and fall on the attention of decision makers either through systematic indicators, focusing events, or feedback. Next is the policy options stream, where the specification of alternative solutions is advanced by hidden specialists, such as academics and career bureaucrats who have the detailed knowledge of and proximity to solutions, ideas, and re-combinations of previous ideas. Lastly, the political stream, where elections, public mood swings, interest group demands, and personnel or jurisdiction changes in an administration can all contribute to an issue rising in prominence on the agenda. The successful coupling of these stream elements is facilitated by the presence of policy entrepreneurs, those elected and appointed officials and private sector leaders, who champion the issue or a particular solution. As we will discuss, policy entrepreneurs played a significant role in the development and passage of human trafficking policy. Kingdon asserts that people recognize problems, generate proposals for public policy changes, and engage in political activities, such as pressure group lobbying and partisan politics (as will be demonstrated in this paper) to effectively block or promote legislation. Kingdon's multiple-streams framework provides a useful lens with which to examine the complexity and dynamics of the human trafficking policymaking process.

Another political scholar, Jack Walker, focuses his theory on agenda setting in the

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<sup>25</sup>Ibid, 92.

U.S. Senate.<sup>26</sup> As we will see, Walker's theory can easily be applied to the development of human trafficking legislation in the U.S. Walker asserts that Senators are a prominent source of new proposals for government actions, which proves to be true with regards to human trafficking policy. He states that once a breakthrough occurs in a policy area formerly ignored by the Senate, an increase in legislative activity often occurs, lasting several years.<sup>27</sup> Like Kingdon's theory, Walker suggests that some members of Congress are "legislative activists" who introduce new issues and help expand the discretionary agenda within the Senate. He states that "activist senators" are joined by lobbyists, agency chiefs, crusading journalists and policy professionals of all kinds in a rush to exploit the newly discovered "political pay dirt."<sup>28</sup> Walker's theory suggests that the burst of activity that follows an initial political breakthrough may bring proposals onto the Senate's agenda that do not necessarily have broad appeal, where little evidence of a problem exists and where no feasible solutions are anywhere in sight. Walker concludes that legislation of this kind may not only be debated, but may be passed into law because the pressure on the Congress to act in such circumstances is overwhelming. As we will see, this is the precise course of events that led to the passage of the Trafficking Victims Protection Act (TVPA) in 2000.

Additionally, Ronald Weitzer's "social constructionist perspective," can be used to explain how the issue of human trafficking first emerged as an issue of concern within

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<sup>26</sup> Jack Walker, "Setting the Agenda in the U.S. Senate: A Theory of Problem Selection," *British Journal of Political Science* 7 (1977).

<sup>27</sup> Ibid, 431.

<sup>28</sup> Ibid.

the U.S.<sup>29</sup> Weitzer asserts that social conditions become problems only as a result of claims made by interested parties, which may or may not reflect actual social arrangements.<sup>30</sup> Weitzer states that moral crusades are one of the forces responsible for transforming such conditions into so-called “problems.” Activists attempt to cause widespread public concern about a problem and lobby legislators by advancing claims about both the gravity and nature of a particular problem. Weitzer suggests that moral crusades rely on horror stories about victims in which the most shocking examples of victimization are described.<sup>31</sup> These dramatic stories are used to alarm the public and policy makers and justify heavy-handed laws and initiatives to be created. These laws are usually ineffective due to the political noise that drowns out the real issues that need legislating.<sup>32</sup> In addition to using atrocity tales, activists rely on inflated claims made about the magnitude of the problem. A key feature of many moral crusades, including human trafficking, is that the supposed scale of a problem far exceeds the available evidence. Weitzer’s theory is indicative of the “white slavery” problem that surged at the beginning of the twentieth century. As we will see, this same social constructionist perspective can also be applied to the attention that emerged surrounding human trafficking again in the 1990s.

This chapter will explore multiple pieces of U.S. human trafficking legislation and the role that politics played in each. The table that follows is a full list of the U.S. human trafficking legislation that will be explored:

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<sup>29</sup> Ronald Weitzer, “The Social Construction of Sex Trafficking,” *Politics and Society* 35 (2007).

<sup>30</sup> Ibid, 448.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

Legislation	Sponsor	Date Introduced	Date Passed	Purpose
Mann Act (or White Slave Traffic Act)	Representative James Robert Mann (R-IL)	Data unavailable	Enacted: June 25, 1910	Made it a felony to take a woman across state lines “for the purpose of prostitution or debauchery, or for any other immoral purpose.”
S. 600-- International Trafficking of Women and Children Victim Protection Act of 1999	Senator Paul Wellstone (D-MN)	Introduced: March 11, 1999	N/A, Bill died in Committee	Created an interagency task force to evaluate how governments were responding to trafficking. U.S. immigration officials would have been required to give trafficking victims special consideration so they could seek asylum or redress in court. Defined "trafficking" as the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport within or across borders, purchase, sell, transfer, receive, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, slavery, or slavery-like conditions or in forced, bonded, or coerced labor.
H.R. 1238-- International Trafficking of Women and Children Victim Protection Act of 1999	Representative Louise Slaughter (D-NY)	Introduced: March 23, 1999	N/A, Bill died in Committee	Identical to Senate version of the bill, S.600.
H.R. 1356-- Freedom from Sexual Trafficking Act of 1999	Representative Chris Smith (R-NJ)	Introduced: March 25, 1999	N/A, Bill died in Committee	Emphasized sexual trafficking and prostitution, providing for new and increased criminal penalties for sex trafficking only.
H.R. 3244-- Trafficking Victims Protection Act of 1999	Representative Chris Smith (R-NJ)	Introduced: November 8, 1999	Enacted: October 28, 2000	Bill called for an interagency task force to study international “sex tourism,” and list countries that were the origin, transit, or destination points for “severe forms of trafficking.” Defined “severe trafficking” as sex trafficking involving a person under 18. In conference, the bill was combined with the Violence against Women Act of 2000. The Conference Report (H. Rept. 106-939) was agreed to by the House on October 6, 2000 and Senate on October 11, 2000.
H.R. 2620-- Trafficking Victims Protection Reauthorization Act of 2003	Representative Chris Smith (R-NJ)	Introduced: June 26, 2003	Enacted: December 19, 2003	Authorized appropriations of 106 million dollars in 2004 and again in 2005. Also, according to Section 7 of the new law, unless an organization agreed formally that it refused to “promote, support or advocate the legalization or practice of prostitution,” it would receive no funding for anti-trafficking work.
H.R. 972-- Trafficking Victims Protection Reauthorization Act of 2005	Representative Chris Smith (R-NJ)	Introduced: February 17, 2005	Enacted: January 10, 2006	Included provisions targeting domestic sex traffickers and customers of sex trafficking. Included appropriations and other measures to reduce the demand for commercial sex acts and participation in international sex tourism, and created additional activities to monitor and combat child labor. Enhanced penalties against trafficking within the U.S. For the first time, the reauthorization also focused on domestic trafficking, requiring HHS to implement a program to address the demand for commercial sex acts. It also established grants for the benefit of domestic victims of sexual exploitation

Table 1: Relevant Federal Trafficking Legislation in the U.S.

Legislation	Sponsor	Date Introduced	Date Passed	Purpose
H.R. 7311-- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008	Representative Howard Berman (D-CA)	Introduced: December 9, 2008	Enacted: December 23, 2008	Prosecutors now had the authority to indict a person who benefited from trafficking. Congress also amended the restitution provision to grant prosecutors broad authority to seize the property of human traffickers. It also added strict liability for trafficking minors, eliminating the need to show force, fraud, or coercion.
S. 47-- Violence Against Women Act of 2013	Senator Patrick Leahy (D-VT)	Introduced: January 22, 2013	Enacted: March 7, 2013	TVPRA 2013 passed as an amendment, Title XII, of the VAWA 2013. Established and strengthened programs to ensure that U.S. "citizens do not do not use any item, product, or material produced or extracted with the use and labor from victims of trafficking. Reauthorized appropriations for various programs that assist victims of trafficking and imposes additional reporting and accountability measures on government agencies involved in anti-trafficking programs. Amends the TVPA of 2000 to prevent against child marriages.

Table 1 (Con't): Relevant Federal Trafficking Legislation in the U.S.

### **Early Human Trafficking Policy: Legislating Morality**

The trafficking and smuggling of human beings has existed since the beginning of civilization. Ancient civilizations were partially based on chattel slavery.<sup>33</sup> Chattel slavery, the legal ownership of persons on the same basis as other property, "existed in all the ancient civilizations of Asia, Africa, Europe and pre-Columbian America."<sup>34</sup> Slaves were an important source of these societies' economic output. As a result many slaves were prizes of wars and conquests.<sup>35</sup> Moral considerations at the time were built almost exclusively around the category of power, so that the exploitation of people from

<sup>33</sup> Cullen-DuPont, *Human Trafficking*, 6.

<sup>34</sup> Ibid.

<sup>35</sup> Bernard Lewis, *Race and Slavery in the Middle East: A Historical Inquiry* (New York: Oxford University Press, 1992), 3.

defeated nations seemed legitimate because they had proven weaker in battle.<sup>36</sup> During the colonial era, the slave trade was made possible by social, and specifically racial, motives. Indigenous populations that were unable to withstand European subjugation caused colonizers to distinguish between them as “white” and “non-white” races. Religious factors were also taken into account when determining candidates for enslavement.<sup>37</sup> Thus, moral barriers to the slave trade were generally removed.

In the economic context, the need for colonial powers to perpetuate slave labor significantly subsided by the early nineteenth century. The emerging European industrial revolution, along with expanded production on the continent, made European-wide trade in goods produced more profitable than the exploitation of colonies by the means of slave labor.<sup>38</sup> Concurrently, Europe’s Enlightenment in the second half of the eighteenth century prompted moral sentiments that invoked among many prominent European politicians and intellectuals the question of whether it was right to tolerate the enslavement and exploitation of non-white races. On March 25<sup>th</sup>, 1807 Britain’s Parliament prohibited the transatlantic slave trade and continued to actively pursue policies aimed at eradicating the practice of slavery.<sup>39</sup> In light of this, colonial powers began to abandon the slave trade as well. Yet, the practice of slavery continued and was officially recognized and exercised in the U.S., predominantly in the south, where slave labor remained highly profitable in the production of cotton and other crops. Only the U.S. Civil War in the 1860s, and the ratification of the Thirteenth Amendment to the

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<sup>36</sup> Maggy Lee, ed. *Human Trafficking* (Portland: Willan Publishing, 2007), 26.

<sup>37</sup> Ibid, 28.

<sup>38</sup> Ibid, 29.

<sup>39</sup> Alison Brysk and Austin Choi-Fitzpatrick, eds. *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*. (Philadelphia: University of Pennsylvania Press, 2012), 27.

Constitution in 1865, would abolish slavery in the U.S. and any place subject to its jurisdiction.<sup>40</sup>

A new form of human trade, very distinct from the traditional perception of human trade or slavery, emerged during the Progressive Era in early twentieth century. The new form slavery was linked to sexual and labor exploitation of white people. The main difference between the colonial-era slave trade and the “white slave” lay in the fact that under colonialism a person could become a slave and be born as such, while in the new environment a white person could become a slave only as a result of being trafficked.

Between 1907 and 1914, Americans were highly concerned about prostitution.<sup>41</sup> Like Weitzer’s theory suggests, journalists and conservative religious groups only fueled the issue with sensationalized stories of innocent girls kidnapped by foreigners, drugged, and smuggled across the country and forced to work in brothels.<sup>42</sup> As a result “white slavery” was a major topic of concern in the public eye. Although “white slavery” was popularly considered one of the era’s most pressing social problems, stories of its prevalence were greatly exaggerated.<sup>43</sup> Politicians jumped on this “crisis” for political gain. Edwin W. Sims, the U.S. district attorney in Chicago, claimed to have proof of a nationwide white slavery ring, but was never able to produce the evidence he spoke

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<sup>40</sup> Cullen-DuPont, *Human Trafficking*, 54.

<sup>41</sup> David Langum, *Crossing Over the Line: Legislating Morality and the Mann Act*. (Chicago: University of Chicago Press, 1994).

<sup>42</sup> Eric Weiner, “The Long, Colorful History of The Mann Act,” *National Public Radio*, March 11, 2008, <http://www.npr.org/templates/story/story.php?storyId=88104308>

<sup>43</sup> David Langum, *Crossing Over the Line: Legislating Morality and the Mann Act*, 1994.



of.<sup>44</sup> The newspaper articles, movies and commentary from men like Sims led to further hysteria over the issue. Sims' friend, James Robert Mann, the chairman of the House Committee on Interstate and Foreign Commerce, drafted legislation that would show the public that Congress was stepping up to do something about the problem. As a result Congress passed the Mann Act in 1910, also known as the White Slave Traffic Act.<sup>45</sup> Congress was just as concerned about the issue as the general public, and not surprisingly the bill passed and received no opposition in Congress.<sup>46</sup> The Act made it a felony to take a woman across state lines "for the purpose of prostitution or debauchery, or for any other immoral purpose."<sup>47</sup> Although the Mann Act was supposedly designed to combat sex trafficking in women, it quickly became a way of regulating sexuality. This was the first piece of U.S. policy that addressed human trafficking and the first piece of legislation that heavily politicized it.

Despite its outward intentions to end forced prostitution in women, the ambiguity of the "or for any other immoral purpose" clause of the Mann Act, and the fact that the newly established Federal Bureau of Investigation was unable to find evidence of a widespread "white slavery" network, led prosecutors to begin using it against other forms of sexual conduct that did not deal with trafficking whatsoever. This was the first indication that the issue of human trafficking would be difficult to combat and even more difficult to legislate because it was an issue that spoke directly to

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<sup>44</sup> Ibid.

<sup>45</sup> Moshoula Desyllas. "A Critique of the Global Trafficking Discourse and U.S. Policy." *Journal of Sociology & Social Welfare* 34 (2007): 61.

<sup>46</sup> Langum, 43.

<sup>47</sup> The Mann Act (1910): legislative language accessed through:  
[http://www.hawaii.edu/hivandaids/The%20Mann%20Act%20\(1910\).pdf](http://www.hawaii.edu/hivandaids/The%20Mann%20Act%20(1910).pdf)

people's moral agendas. Langum suggests that the growth of the FBI is one explanation for why the Mann Act was used to regulate morals rather than only to prevent forced prostitution.<sup>48</sup> When created in 1908, the Bureau had only twenty-three agents and limited responsibilities, but the Mann Act created a need for a federal police force, which in turn pushed resources into the FBI, making it crucial for the FBI to find other cases in order to continue its existence.<sup>49</sup>

The growth of the FBI helped encourage the extreme enforcement of the Mann Act, but was not the only reason for it. The Mann Act limited the mobility of the people who seemed to pose the greatest threat to the middle-class ideal of social order; the male and female laborers who migrated in large numbers throughout the West. Progressives had a deep concern with prostitution, however this shrouded even deeper concerns about immigration, urbanization and changing sexual mores.<sup>50</sup> Desyllas asserts that historical patterns in the levels of public concern in the U.S. over the trafficking of women and children are linked to periods of increased immigration.<sup>51</sup> Middle class citizens and interest groups concerned about a myriad of these issues encouraged their legislators to do away with "white slavery."

White slavery was described as being a euphemism for prostitution under the Mann Act.<sup>52</sup> Non-commercial violations of the Mann Act, which were originally only technical violations, were heavily prosecuted after it was realized that white slavery was not as prevalent as society, legislators, and the media had made it out to be. Langum

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<sup>48</sup> Langum, 48-50.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, 46.

<sup>51</sup> Desyllas, 61.

<sup>52</sup> Langum, 159.

acknowledges that public sentiment tended to favor noncommercial prosecutions, and that Congress declined to amend the Act because of pressure from citizens and church groups.<sup>53</sup> Despite the deviation from its original outward intentions to combat trafficking, Congress continued to succumb to the political pressures put on them by interest groups and other politicians and did not repeal or amend the Act until 1978. In 1978, Congress amended the definition of "transportation" in the act and added protection for male and female minors against sexual exploitation.<sup>54</sup> A 1986 amendment added further protection for minors and replaced "debauchery" and "any other immoral purpose" with "any sexual activity for which any person can be charged with a criminal offense."<sup>55</sup> Over 76 years after its initial passage, the Mann Act finally shifted from legislating morality to attempting to combat human trafficking. However, the original trends that emerged during the creation of the Mann Act are still echoed even in today's legislation; a focus on the politics of human trafficking and moral stances on sex trafficking, which pushes effective legislation off the political agenda.

In spite of the active efforts of the Mann Act in the U.S. and various international initiatives that took place in the first half of the twentieth century, the problem of human trafficking did not subside. However, major powers' political will to tackle this problem did. The U.S. and the Soviet Union, along with their respective allies, shifted their focus away from human trafficking during the Cold War from 1947 to 1989.<sup>56</sup> In

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<sup>53</sup> Ibid, 57, 70-71.

<sup>54</sup> Weiner, "The Long, Colorful History of The Mann Act."

<sup>55</sup> Ibid.

<sup>56</sup> Maggy Lee, *Human Trafficking*, 26; Kamala Kempadoo, Jyoti Sanghera, and Bandana Pattanaik, *Trafficking and Prostitution Reconsidered: New Perspectives On Migration, Sex Work, and Human Rights* (Boulder, CO: Paradigm Publishers, 2005).

that strategic climate, the fight against human trafficking receded for decades into the background as the government instead focused on defense and budgetary issues more heavily.<sup>57</sup> Moreover, with the borders between the U.S. and Soviet Union tightly closed, there were hardly any significant flows of people between them prior to 1989.<sup>58</sup> It is likely for this reason, that human trafficking did not pick back up as a matter of great concern on a global scale until the mid-1990s.

### **Modern-day Surge: Interest Groups Dominate**

In the late 80s and early 90s the issue of human trafficking was fairly unfamiliar and rarely reported on in the media.<sup>59</sup> However as political elites concerned with women's issues gained power in the mid-90s, public attention towards human rights abuses grew. At the United Nations Conference on Human Rights in 1993, the Global Campaign for Women's Human Rights, made up of more than 950 women's organizations emerged as "easily the strongest and most effective lobby," for trafficking issues.<sup>60</sup> By the 1990s, women from Eastern and Central Europe had become the new focus, and trafficking in women for work in the sex industry loomed as an issue of increasing concern as it was gaining attention and media coverage.

This renewed interest in trafficking that emerged in the 1990s was rooted in anxieties over globalization, migration, organized crime and women's sexuality, much

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<sup>57</sup> Ibid.

<sup>58</sup> Cameron, Sally, and Edward Newman eds, *Trafficking in Human\$: Social, Cultural, and Political Dimensions* (New York: United Nations University Press, 2008) 126.

<sup>59</sup> Stephanie Fahy and Amy Farrell, "The Problem of Human Trafficking in the U.S.," *Journal of Criminal Justice* 37 (2009): 619.

<sup>60</sup> Alan Riding, "Women Seize Focus at Rights Forum," *New York Times*, June 16, 1993. <http://www.nytimes.com/1993/06/16/world/women-seize-focus-at-rights-forum.html>

like the issues of concern during the “white slavery” hysteria. Also mirroring that period, horror stories about trafficking victims continued to appear in the news and capture the attention of the public and authorities alike.<sup>61</sup> During this time news coverage of human trafficking was almost always focused on the trafficking of women and girls for commercial sex; mention of labor trafficking or the trafficking in men and boys was essentially nonexistent.<sup>62</sup> With the increasing news reports of women trafficked from Eastern Europe to Western Europe and the United States, the latest wave of trafficking quickly became a political and social issue. At first, service providers and NGOs simply provided assistance and help to individual victims, but later they began to develop comprehensive programs and policies. However, it is unlikely that this issue would have become as important as quickly as it did with governments and NGOs, if it had not first captured the attention of the public. Jahic and Finckenauer assert that this wave of interest in trafficking was an issue of low priority until it was possible to portray trafficking victims as “one of our own.”<sup>63</sup> These were not women of color from Asia or Africa, but instead they were portrayed as the girl next door who had been deceived and victimized. “The old image of white slaves was invoked, and this resonated with the developed countries of the West.”<sup>64</sup> The media portrayed the victims in this way and special interest groups used it to their advantage. Like Weitzer’s “social construction perspective” theory suggests, these interest groups framed an emotionally charged trafficking problem and generated public sympathy and attention from government

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<sup>61</sup> Fahy and Farrell, 620.

<sup>62</sup> Ibid.

<sup>63</sup> Galma Jahic and James O. Finckenauer, “Representations and Misrepresentations of Human Trafficking,” *Trends In Organized Crime* 8 (2005): 24-40.

<sup>64</sup> Ibid, 26.

officials to support their cause. This was an indication that the problem, from its initial modern-day realization, was influenced by interest groups who appealed to their like-minded counterparts in Congress.

While the media helped garner more attention, many critics of the anti-trafficking movement have suggested that, much like the “white slavery” campaigns, the surge of attention toward sex trafficking that came to be in the 1990s was really set in motion by groups who were opposed to prostitution and pornography.<sup>65</sup> These groups emerged during the Reagan Administration. During Reagan's time in office, a coalition of the religious right and some radical feminists started a campaign against pornography. These groups played a predominant role in campaigns to ban pornography on a national level in the Reagan Administration's commission on pornography.<sup>66</sup> Crusade members included groups such as, Focus on the Family, National Association of Evangelicals, Catholic Bishops Conference, Traditional Values Coalition, Concerned Women for America, Salvation Army, International Justice Mission, Shared Hope International, Religious Freedom Coalition, and numerous other conservative activists. The abolitionist feminist organizations were the Coalition Against Trafficking in Women (CATW), Equality Now, the Protection Project, and Standing Against Global Exploitation (SAGE).<sup>67</sup> Much of the debate on trafficking was fed by the reports of these women's groups and organizations and picked up by the government, which in turn allowed for an impact on the direction of research and policy on the issue. In some cases, recommendations

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<sup>65</sup> Fahy and Farrell, 617.

<sup>66</sup> Weitzer, 449.

<sup>67</sup> Ibid.

made by these groups were used as the basis from which to develop programs and policies. As we will learn, some members of Congress also allowed the reports and debates of these groups to dictate the development of legislation. This continued to turn the focus away from comprehensive legislation to politically charged legislation that focused on a moral agenda concerned mostly with sex trafficking issues.

Reflecting the historical trend that occurred during the “white slavery” problem in the first half of the twentieth century, public attention surrounding the problem of human trafficking gained institutional legitimacy by the late 90s as prominent political figures began to take active roles in combating the issue. Sheila Wellstone, a passionate human rights activist, encouraged her husband, Senator Paul Wellstone, a liberal Democrat from Minnesota, to do something about this growing issue she had learned about when traveling overseas.<sup>68</sup> It was not long before Senator Wellstone began encouraging his colleagues in Congress to take action on the issue. On March 10, 1998 Wellstone introduced a resolution on the Senate floor denouncing international sex trafficking.<sup>69</sup> This was the first significant congressional recognition of the issue (since the Mann Act). “This resolution will effectively put Congress on record as opposing trafficking for forced prostitution and domestic servitude, and acting to check it before the lives of more women and girls are shattered,” he said on the Senate floor that day.<sup>70</sup> His resolution, as well as a companion measure introduced in the House, called on the U.S. government to report on the issue to Congress. The measures did not propose any

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<sup>68</sup> Anthony DeStefano, *The War on Human Trafficking* (New Brunswick, NJ: Rutgers University Press, (2007), 13-15.

<sup>69</sup> Ibid, 13-15.

<sup>70</sup> Ibid, 14.

legislative action, but asked federal officials to continue working internationally to spread awareness of trafficking. The resolutions passed in both the Senate and House and signaled that human trafficking was now on the government's radar and could potentially garner political consensus when the time came to legislate. However, as we will see, politics began to take over and the real issue of how best to address human trafficking was drowned out in a fog of political bargaining and gamesmanship.

### **The Political Battle: Partisan Issues Divide**

After Senator Wellstone's resolutions passed in 1998, he did not wait long before introducing a more ambitious effort. In March of 1999 he proposed the "International Trafficking of Women and Children Victim Protection Act."<sup>71</sup> This act however, did not fare as well due to the more politically charged issues it raised. The measure called for the creation of an interagency task force to evaluate how governments were responding to trafficking and helping victims. Under the Act, U.S. immigration officials would have been required to give trafficking victims special consideration so they could seek asylum or redress in court.<sup>72</sup> The bill died in committee. It was clear that this issue had become too polarized to introduce legislation and expect it to pass without any political debate. Human trafficking policy would require a compromise from both sides of the aisle.

By April 2000, things began to change. A report by Amy O'Neill Richards, "International Trafficking in Women to the United States: A Contemporary

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<sup>71</sup> DeStefano, 32.

<sup>72</sup> Ibid.



Manifestation of Slavery and Organized Crime,” began to receive publicity.<sup>73</sup> The report revealed that trafficking in persons was significant and the United States had become a destination for trafficking.<sup>74</sup> The report also concluded that several measures, including new legislation, needed to be implemented. This report served as what Kingdon refers to as a “focusing event.”<sup>75</sup> As a focusing event, the Richards report set the stage for more concerted congressional action to come. Against this backdrop, both the Clinton Administration and Congress concluded that legislation was needed and began to respond. The debates that occurred leading up to the passage of the Trafficking Victims Protection Act (TVPA) set the stage for current misconceptions of trafficking and are essential to understanding the continuing disagreements surrounding the law’s impact. The biggest and most controversial issues surrounding the trafficking legislation emerged during these debates and proved how politicized the issue had become.

At the political moment during the drafting of the TVPA, a specific type of feminism focused on sexual victimization prevailed in the media.<sup>76</sup> The United Nations was also drafting its own anti-trafficking initiative at the same time, the “UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,” which also focused on sexual victimization. The TVPA negotiations reflected this political context. Multiple controversial issues were debated during the drafting of the TVPA. Victim benefits, immigration remedies, labor protections, and sanctions against

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<sup>73</sup> Ibid.

<sup>74</sup> Richard, Amy O’Neill. “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime.” *Center for the Study of Intelligence* (1999) <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>

<sup>75</sup> Kingdon, 92.

<sup>76</sup> Alicia Peters, “Things that Involve Sex are Just Different,” *Anthropological Quarterly* 86 (2013): 228.

countries not making efforts to address trafficking problems in their own countries, were among the most divisive issues discussed. However, by far the most controversial topic was that of sex trafficking.<sup>77</sup> This issue traced back to the Mann Act, which had put a major focus on sex trafficking. This time around, tensions revolved around whether the new law should focus solely on trafficking into forced prostitution or trafficking into all work sectors, domestic and agricultural labor included. Two broad coalitions formed around the contentious issue, both advocating for different ways of framing the issue.

One side of the coalition was made up of human rights, public health, labor and migration advocates.<sup>78</sup> This group believed that force, fraud, and coercion were central to the trafficking of individuals into any labor sector. This side of the coalition viewed the specific focus on “sex trafficking” as a distraction to the overall purpose of the legislation. The other side of the coalition was comprised of abolitionists including conservative, faith-based, and anti-prostitution feminist organizations.<sup>79</sup> These abolitionists believed that commercial sex, whether forced or not, should be separated out as its own unique form of exploitation. This group believed “sex trafficking” should in fact be the centerpiece of the human trafficking legislation. These interest groups on both sides of the issue typically sought to meet with those members of Congress and their staffs who held similar views. Feminist groups reached out to members who were

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<sup>77</sup> Peters, 228.

<sup>78</sup> Weitzer, 449.

<sup>79</sup> Ibid.

politically liberal, while groups from the religious right sought out conservative members.<sup>80</sup>

Within Congress the contestation regarding trafficking into forced commercial sex versus trafficking into all labor sectors was split along party lines, with most Republicans favoring a bill focused solely on sex trafficking and Democrats backing a law covering trafficking into all sectors.<sup>81</sup>

Two members of Congress led the effort when it came to drafting anti-trafficking legislation. These members are what Kingdon describes as “policy entrepreneurs,” who champion a specific issue or solution. The first key legislator on the issue was Senator Wellstone. As previously mentioned, he had introduced the resolution in 1998 which peaked Congress’ interest in human trafficking. Wellstone is what political scholar Jack Walker would describe as a “legislative activist,” who introduces new issues to help expand the discretionary agenda. In March of 1999 he introduced a more aggressive piece of legislation aimed at combating human trafficking in all labor sectors and with regards to both males and females, but the bill never made it out of committee likely because it covered more than just sex trafficking and most Republican’s did not back the bill. The other key player was Republican Representative Chris Smith from New Jersey. As the co-chair of the House’s Pro-Life Caucus, Smith was best known for championing the rights of religious minorities.<sup>82</sup> He introduced the Freedom from Sexual Trafficking Act of 1999 in March of that year, just several weeks after Wellstone had introduced his

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<sup>80</sup> Barbara Stolz, “Educating Policymakers and Setting the Criminal Justice Policymaking Agenda,” *Criminal Justice* 5 (2005): 416.

<sup>81</sup> Peters, 229.

<sup>82</sup> Ibid.

bill. The bill emphasized sexual trafficking and prostitution, providing for new and increased criminal penalties for sex trafficking only. Democrats were strongly opposed to the main focus of Smith's bill, which as a result, like Wellstone's earlier bill, died in committee. Smith repeatedly referred to sex trafficking as "uniquely brutal," claiming that it "cries out for its own comprehensive solution."<sup>83</sup> It was the nature of sex trafficking as Smith and the conservative interest groups had depicted it that caused most Republicans to focus solely on that issue. Republicans viewed the idea of "sex trafficking" in women as more horrific than any other form of trafficking into the labor sector and worse than any harm that would be experienced by any men. Democrats however focused on an expanded view of trafficking that emphasized the conditions rather than the specific type of work performed by victims of trafficking. This caused both sides to continually disagree on the main focus of the proposed pieces of legislation that dealt with human trafficking during that time.

Congressman Smith introduced another piece of legislation in November of 1999. This proposed legislation, the Trafficking Victims Protection Act of 1999, explicitly condemned sex trafficking, which most Republicans had come to equate with the trafficking phenomenon in general. Despite some key differences between Wellstone's earlier legislation and a heavy focus on sex trafficking, this proposed bill laid out the framework for the country's first comprehensive trafficking legislation and foreshadowed the bill that Wellstone would introduce in the Senate five months later. An examination of both Wellstone and Smith's proposed bills allows for a better

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<sup>83</sup> Ibid.

understanding of which issues were the most heavily debated and split along party lines, and how the final version of the current legislation took shape from these issues.

Wellstone's International Trafficking of Women and Children Victim Protection Act of 1999 proposed an interagency task force of U.S. government officials who would evaluate progress in the United States and abroad in the areas of trafficking prevention, protection of victims, and prosecution of traffickers.<sup>84</sup> The president would be authorized, but was not obligated, to withhold police assistance and other forms of foreign aid from countries that were making little or no progress in improving the status of trafficking in their countries. Wellstone's bill would have modified immigration laws to help trafficking victims by granting them temporary resident status through the "T-visa," or trafficking visa, program. Wellstone's bill made T-visas available to victims that were physically present in the U.S. as a result of trafficking and that would suffer extreme hardship if deported. In exchange, the victims were asked comply with the requests of law enforcement to help them prosecute trafficking conspiracies.<sup>85</sup> The bill also proposed a revision of the federal criminal code, meaning that for the first time, human trafficking would be defined within the code.<sup>86</sup>

Smith's Trafficking Victims Protection Act of 1999 followed the same general format. His bill also called for an interagency task force. However, unlike Wellstone's bill, Smith wanted the task force to study international "sex tourism," and list countries

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<sup>84</sup> United States Senate, "International Trafficking of Women and Children Victim Protection Act of 1999," S.600, 106<sup>th</sup> Cong., March 11, 1999 <http://www.gpo.gov/fdsys/pkg/BILLS-106s600is/html/BILLS-106s600is.htm>

<sup>85</sup> Jennifer Sheldon-Sherman, "The Missing 'P': Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act," *Penn State Law Review* 117, 2 (2012): 443-501.

<sup>86</sup> DeStefano, 34.

that were the origin, transit, or destination points for “severe forms of trafficking.”<sup>87</sup>

Smith had defined “severe trafficking” as sex trafficking involving a person under the age of eighteen. Smith also envisioned revisions to the criminal code, but specifically dealing with sex trafficking of children only. Unlike Wellstone, he wanted other countries to meet minimum standards for eliminating child sex trafficking. Under Smith’s bill, failure to meet these standards would result in mandatory sanctions, allowing the U.S. to withhold non-humanitarian aid. The Clinton administration had reservations with Smith’s bill, mostly with regards to the broad sanction provision and to the section that would have put a cap on the T-visas, thereby limiting victims’ immigration benefits.

Members of Congress differed on the issue of T-visas. Reports of some sex workers using their “victim status” to take advantage of immigration authorities had emerged.<sup>88</sup> The possibility that migrants might abuse immigration laws became a major point of contention in congressional debates. Some believed the number of visas given to trafficking victims should be unlimited, while others believed it should be capped at a certain level. The Senate bill had no T-visa limit. In the House, Smith’s legislation had set a 5,000-person limit on T-visas. This prompted further debate about what level was most appropriate. Democrats took one side on this issue, and Republican’s took the other. House Democrats thought that the 5,000-person number was arbitrary and the House should follow the no-cap policy that the Senate had proposed. Congressman

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<sup>87</sup> U.S. House of Representatives, “Trafficking Victims Protection Act of 1999,” H.R. 3244, 106<sup>th</sup> Cong., 1st session, Nov 8, 1999 <http://www.gpo.gov/fdsys/pkg/BILLS-106hr3244ih/pdf/BILLS-106hr3244ih.pdf>

<sup>88</sup> Emma Grant and Gretchen Soderlund, “Girls (Forced to) Dance Naked! The Politics and Presumptions of Anti-trafficking Laws,” *Bad Subjects* 40 (1998).

Melvin Watt, a Democrat from North Carolina, said “We have no arbitrary limit on the number of refugees who can enter this country. We have no arbitrary limit on the number of asylum seekers who can enter this country, and in my judgment, it is beneath our dignity as a nation to use an arbitrary cap to shut our doors to the victims of slavery and trafficking.”<sup>89</sup> Republicans thought that the 5,000-person cap was reasonable based on the estimates of the potential numbers of trafficking victims who would be eligible to take advantage of the T-visa program.

While both Wellstone and Smith were eager to fight human trafficking, their key philosophical differences revolved around the issue of how sex trafficking would be spelled out within the final piece of legislation. This conversation began to overwhelm the overall goal which was to prevent trafficking, protect victims and prosecute offenders. Wellstone was disturbed by the conservative Republican’s seeming preoccupation with sex trafficking. Wellstone “saw trafficking as slavery and thought that the ‘sex as sin’ angle pervading the debate was misplaced.”<sup>90</sup> After 10 months of debate across the aisle and multiple congressional hearings, House members voted in mid-September 2000 to have its eight conferees, including Smith, meet with six senators, including Wellstone, to come up with a compromise that addressed the sanctions, T-visa cap issue, and other inconsistencies in the two versions of the trafficking bills.<sup>91</sup> Over a month later the committee spelled out the final form of what would become the federal trafficking statute. The statement printed in the

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<sup>89</sup> DeStefano, 41.

<sup>90</sup> Ibid, 37.

<sup>91</sup> Ibid, 42.

Congressional Record detailed the sections of the bill and an explanation for why either the House or Senate version of each section had prevailed.<sup>92</sup>

The law makes a symbolic distinction between sex trafficking and non-sex trafficking. The distinction holds no legal meaning, but marks “sex-trafficking” as a special category. While the bill did cover trafficking into all labor sectors, sex trafficking was symbolically privileged.<sup>93</sup> This was added as part of the legislation to ease the concerns of feminist abolitionists hoping to diminish the boundary between forced and voluntary prostitution. This set the stage for even further political battles and inefficiencies within the law.

With regards to the T-visas, the House’s 5,000-person cap was adopted, but a provision was added that required U.S. immigration officials to report each year if any legitimate applicants had been denied T-visas as a result of the cap, and if necessary Congress would consider raising the limit.<sup>94</sup> An exception to the cap was added for victims of “severe trafficking,” which was defined as the sex trafficking of a person under the age of eighteen. This was a point the House Republicans had been heavily backing and succeeding in passing.

The House and Senate bills had also differed on the sanctions that would be used against other countries. The Clinton Administration encouraged legislation that did not impose mandatory sanctions, like the Senate bill. State department officials were wary

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<sup>92</sup> U.S. House of Representatives, “Joint Explanatory Statement of the Committee of Conference,” H.R. 3244, 106<sup>th</sup> Cong., 2<sup>nd</sup> session, October 5, 2000, *Congressional Record*, H8877.

<sup>93</sup> Peters, 233

<sup>94</sup> Ibid.



of mandatory sanctions and expressed their concern to Wellstone and other senators.<sup>95</sup> The House bill however, did propose mandatory sanctions. The conference report adopted the Senate version of the sanctions section which gave the president the freedom to take no action against countries that had not been doing enough to combat trafficking, but were making significant efforts. In the case of highly offending nations, the president had the ability to withhold non-humanitarian and non-trade related aid.<sup>96</sup> The conference report stated that they did not want to hurt countries' ability to meet their citizens' basic needs because it could backfire on the U.S. by forcing even further economic migration and human trafficking.<sup>97</sup> The Democrats had prevailed on this issue.

Now that the conferees had settled on a compromise, their report needed to pass both houses. The bill needed unanimous consent to pass the report, or else the "majority leader would pull the bill from the floor [...] and there was very little time left in the session and [the leader] needed the floor open for other legislation."<sup>98</sup> Senator Tom Harkin said he would not let any other bills move in the Senate until the Senate had voted on the nomination of a candidate for the U.S. Court of Appeals. Playing the political game, Wellstone appealed to his close friend, Harkin, and convinced him to let the trafficking measure be heard first. Senator John McCain was upset about a move to block another measure he was backing and attempted to prevent any unanimous-consent agreement. Wellstone played the friend card once again and convinced McCain

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<sup>95</sup> Frank Loy, prepared remarks at hearings before the Subcommittee on Near Eastern and South Asian Affairs concerning international trafficking in women and children, 106th Cong., 2<sup>nd</sup> session. February 22, 2000.

<sup>96</sup> U.S. House of Representatives, "Joint Explanatory Statement of the Committee of Conference," H.R. 3244, 106<sup>th</sup> Cong., 2<sup>nd</sup> session, October 5, 2000, *Congressional Record*, H8877.

<sup>97</sup> Ibid.

<sup>98</sup> DeStefano, 43.

to let the trafficking legislation be heard. “If Tom Harkin and John McCain had not helped a friend, the trafficking legislation would not have passed,” Wellstone said.<sup>99</sup> Despite the fact that Harkin and McCain were not opposed to the legislation and both eventually voted for the bill, they could have very well stopped the legislation due to agenda-setting political games.

On October 6, 2000 the House took up the bill. Knowing he had to act when the political time was right, one of the conferees, Congressman Benjamin Gilman, a Republican from New York, added a bill he had been working on into the miscellaneous section of the TVPA bill. His bill, the Teen Suicide Prevention Act of 2000 was added into the language just one hour before the final House vote.<sup>100</sup> The addition of this bill, which did not concern any aspect of human trafficking, undermined the importance of the real issue that the TVPA sought to address. Some members found the addition of this unrelated bill to be annoying, but nonetheless voted 371-1 to pass the TVPA.<sup>101</sup> Gilman, a member of the Subcommittee on Criminal Justice, Drug Policy and Human Resources, knew his bill likely would not have passed if not introduced during that legislative session, so he used TVPA to move his own bill along. He also knew that he could not propose the addition during the conference or else it would not have been included. Several days later the Senate passed the recent version of the bill by a 95-0 vote. President Clinton signed the bill into law on October 28, 2000.

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<sup>99</sup> Ibid.

<sup>100</sup> U.S. House of Representatives, H.R. 3244, 106<sup>th</sup> Cong., 2<sup>nd</sup> session, October 6, 2000, *Congressional Record*, H12904.

<sup>101</sup> Ibid.

### **Beyond TVPA: More of the Same**

In the years following September 11, 2001, public concern about terrorism overshadowed much of the domestic criminal justice policy agenda. In November 2001, President Bush announced the allocation of nearly forty billion dollars to strengthen homeland security and reorganize the responsibilities and structures of the federal government to better respond to terrorism.<sup>102</sup> While the federal government's focus on homeland security did overshadow many domestic crime programs, human trafficking did not lose any attention. The Bush administration and anti-trafficking advocates drew connections between efforts to combat terrorism and crimes with transnational characteristics such as human trafficking.<sup>103</sup> The Administration and its political base framed human trafficking under the guise of homeland security, which elevated the importance of the anti-trafficking efforts and kept it on the agenda. As a result, in 2003 members of Congress introduced new legislation aimed at refining the law, extending appropriations, and strengthening the government's ability to combat trafficking domestically and globally. Many of these changes contained the seeds for further politicization of the human trafficking problem.

Initially the TVPA of 2000 contained a three-year funding authorization amounting to around 60 million dollars.<sup>104</sup> In June 2003 Representative Chris Smith introduced the reauthorization bill in the House and authorized appropriations of 106 million dollars in

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<sup>102</sup> Fahy and Farrell, 622.

<sup>103</sup> Ibid.

<sup>104</sup> DeStefano, 102.

2004 and again in 2005.<sup>105</sup> The bulk of the money, 61 million, was earmarked for overseas assistance in combating human trafficking.<sup>106</sup> This increased amount of money for overseas assistance indicated that the U.S. realized the trafficking problem was closely tied to developments abroad. Victims of trafficking in the U.S. also needed help and for that reason the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) authorized the Department of Health and Human Services to appropriate 15 million dollars to refugee assistance.<sup>107</sup> This number was up from the previously allocated 10 million dollars. Money was a necessary part of ensuring the existence of anti-trafficking programs, but policymakers also wanted to strengthen the protective and prosecutorial components of the legislation. Smith again wanted to focus on forms of sex trafficking, more specifically, the issue of sex tourism, which had become heavily discussed since the passage of the TVPA. In previous years, Smith and other conservatives that backed him received substantial push-back from the Clinton Administration. However, in 2003, Smith gained momentum under the new president. In September 2003, President Bush delivered a speech at the U.N. General Assembly that further propelled Smith's agenda. In that speech Bush referred to "hundreds of thousands of teenage girls, and others as young as five, who fall victim to the sex trade."<sup>108</sup> The president's U.N. address was the direct result of lobbying by evangelical leaders. Charles Colson, founder of Prison Fellowship Ministries, and Richard Land, of

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<sup>105</sup> U.S. House of Representatives, "Trafficking Victims Protection Reauthorization Act of 2003," H.R. 2620, 108<sup>th</sup> Cong., 1st session, Jan 01, 2004, <http://www.gpo.gov/fdsys/pkg/BILLS-108hr2620enr/html/BILLS-108hr2620enr.htm>

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> George W. Bush, "President Bush Addresses United Nations General Assembly," White House Press Release (September 23, 2003).

the Southern Baptist Convention, had lobbied the White House for months to condemn the sex industry.<sup>109</sup> Land stated, “We certainly encouraged the White House to make it a prominent issue” and the UN address “was one place we suggested it could be done.”<sup>110</sup> Bush’s remarks during the U.N. address made political sense because the issue had become important to evangelical Christians who were part of the political base that Bush was trying to harness in his quest for reelection in 2004.

The Bush administration skewed enforcement of the TVPA toward eliminating severe forms of sex trafficking as well as prostitution. The TVPRA made yet another important change that provoked controversy and illustrated how politicized trafficking policy was. According to Section 7 of the new law, unless an organization agreed formally that it refused to “promote, support or advocate the legalization or practice of prostitution,” it would receive no funding for anti-trafficking work.<sup>111</sup> The provision further encapsulated the developing tensions between activists who believe that women have the right to choose to perform sex work and those who wanted to abolish prostitution altogether, namely evangelical Christians. The views of the latter group were gaining traction with the Bush administration, largely because Bush wanted their political support. Movement claims and the very language used by activists regarding prostitution and sex trafficking in particular are abundantly evident in official declarations and legislation during the Bush administration, especially the reauthorization bills of 2003, 2005 and 2008. The Bush Administration believed that

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<sup>109</sup> Weitzer, 462.

<sup>110</sup> Ibid.

<sup>111</sup> U.S. House of Representatives, “Trafficking Victims Protection Reauthorization Act of 2003,” H.R. 2620, 108<sup>th</sup> Cong., 1st session, Jan 01, 2004, <http://www.gpo.gov/fdsys/pkg/BILLS-108hr2620enr/html/BILLS-108hr2620enr.htm>

eradicating prostitution would stop sex trafficking, though it would have no effect on other forms of trafficking. They succeed in making this stance the law of the land with the 2005 reauthorization. This made the policy that existed completely ineffective in combating other forms of trafficking and did not approach the issue from the comprehensive standpoint it needed to be successful.

In 2005, TVPA was again reauthorized, as required. The 2005 reauthorization fit the same general mold as the 2003 legislation. The 2005 reauthorization incorporated certain elements of the “End Demand for Sex Trafficking” bill. The End Demand for Sex Trafficking bill was originally introduced by Republican member, Deborah Pryce in the House and died in committee. However aspects of the bill reappeared in the 2005 TVPRA, including its provisions targeting domestic sex traffickers and customers of sex trafficking. The rest of the legislation included appropriations, and other measures to reduce the demand for commercial sex acts and participation in international sex tourism, and created additional activities to monitor and combat child labor.<sup>112</sup> The stated purpose of the amended provisions in this new bill was to enhance penalties against trafficking within the United States. For the first time, the reauthorization also focused on domestic trafficking, requiring the U.S. Department of Health and Human Services to implement a program to address the demand for commercial sex acts. It also established grants for the benefit of domestic victims of sexual exploitation.<sup>113</sup> Again, this authorization signed into law under President Bush, further emphasized the

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<sup>112</sup> U.S. House of Representatives, “Trafficking Victims Protection Reauthorization Act of 2005,” H.R. 972, 109<sup>th</sup> Cong., 1st session, Dec 30, 2005 <http://www.gpo.gov/fdsys/pkg/BILLS-109hr972enr/html/BILLS-109hr972enr.htm>

<sup>113</sup> Ibid.

position of the conservative groups that were influencing his political agenda and reframing the issue of human trafficking to be an issue instead of sex trafficking and prostitution only.

In 2008, Congress amended the TVPA again with The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. Still under the Bush Administration, the reauthorization continued to focus mostly on sex trafficking. Congress recognized the subtle and myriad ways in which a person might be coerced into sex trafficking, and sought to expand the scope of prosecution. Prosecutors now had the authority to indict a person who benefited from trafficking. Congress also amended the restitution provision to grant prosecutors broad authority to seize the property of human traffickers.<sup>114</sup> It also added strict liability for trafficking minors, eliminating the need to show force, fraud, or coercion. Like the two previous reauthorizations, the 2008 legislation focused less on combating the problem and helping the victims of all forms of trafficking and more on commercial sex trafficking. This sustained focus on sex trafficking over the course of three different reauthorizations of the original bill, and the constant politicization of the issue, continued to render all of the previous legislation ineffective in dealing with the larger scope of the problem. The conservative coalitions had dominated the issue and labor trafficking in both genders was all but forgotten.

On March 7, 2013, President Obama signed the Violence Against Women Act

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<sup>114</sup> U.S. House of Representatives, "The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008," H.R. 7311, 110<sup>th</sup> Cong., 2nd session, Dec 10, 2008 <http://www.gpo.gov/fdsys/pkg/BILLS-110hr7311enr/html/BILLS-110hr7311enr.htm>

(VAWA), which reauthorized the Trafficking Victims Protection Reauthorization Act that had expired in 2011. The TVPRA 2013 was passed as an amendment to the VAWA. While the most recent legislation is just over a year old, it is already somewhat apparent that the conservative coalition that once thrived under President Bush was far less influential in the trafficking legislation that passed under the Obama Administration. The 2013 TVPRA established and strengthened programs to ensure that U.S. “citizens do not do not use any item, product, or material produced or extracted with the use and labor from victims of trafficking.”<sup>115</sup> The 2013 legislation reauthorized appropriations for various programs that assist victims of trafficking and imposes additional reporting and accountability measures on government agencies involved in anti-trafficking programs. It also amends the TVPA of 2000 to prevent against child marriages.<sup>116</sup> It is worth noting that the conservative groups and their allies in Congress were still very present in the most recent reauthorization of the TVPA, however they were less successful under this new Administration. Representative Chris Smith, who had sponsored or co-sponsored all three previous reauthorizations under Bush, introduced his version of the 2013 TVPRA in February of 2013. The bill did not make it out of committee; however it did spark extensive moral debates and led both sides of the issue to again, divert their attention from the larger issues creating and affecting human trafficking, and focus their attention on contentious political issues that do little to protect victims and combat trafficking.

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<sup>115</sup> United States Senate, “Violence Against Women Reauthorization Act of 2013,” S. 47, 113<sup>th</sup> Cong., March 7, 2013. <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/html/PLAW-113publ4.htm>

<sup>116</sup> Ibid.



## **Conclusion**

As was evident from the early stages of trafficking policy in the early 1900s with the surge in concern over “white slavery” and the consequent Mann Act, human trafficking has seemingly been a battleground for different political positions on prostitution, immigration, and the position and status of women. Increasingly, the focus has seemed to depart from the realities of the human trafficking problem and moved into the sphere of political conflict.

Through a historical analysis of human trafficking policy over time, this chapter has illustrated that politics and moral agendas have consistently prevented the policy from encompassing many of the most important issues that still have yet to be addressed. Human trafficking is an area that encompasses many of the different issues previously discussed, namely, sex labor, agricultural labor, immigration, and child labor. Jahic and Finckenauer assert that, “zealously adhering to a particular perspective as the ‘only’ acceptable view [...] and attacking and undermining all others is harmful.”<sup>117</sup> This is the current nature of human trafficking policy. It is this environment that breeds further partisan divides and further politicization of an issue that most politicians, interest groups, and citizens agree that they want to see eradicated. It is clear from this analysis that interest groups, the media, and partisan legislators had an effective role in framing the issue of sex trafficking which resulted in patchwork legislation that appeased certain coalition’s political views but does not comprehensively and effectively address human trafficking or properly protect victims.

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<sup>117</sup> Jahic and Finckenauer, 38.

Effective policymaking will require legislators to compromise by abandoning their politically charged views of the issues encompassed within human trafficking. The adoption of an unbending stance, specifically that of “sex trafficking,” has not lead to sound policies and programs that help solve the problem. Politics need to be avoided or better navigated in order to develop effective policies, maybe then human trafficking policy will finally keep pace with the problem.

## Chapter Two: A Global Perspective on Trafficking

Human trafficking is a global issue that requires cooperation and consensus from many countries for prevention. It is impossible to combat and fully address trafficking without looking at the issue from a global perspective. Scholars agree that it is important to examine trafficking as an international problem.<sup>118</sup>

The Trafficking Victims Protection Act (TVPA), enacted in the U.S. in 2000 (P.L. 106-386), was designed in large part as an incentive for other nations. The U.S. government used its bully pulpit to encourage other nations' efforts to combat trafficking.<sup>119</sup> The American legislation put in place an interrelated system of minimum standards, reviews of compliance, and a framework of possible sanctions for any nation that did not meet the minimum standards. Section 110 of the bill, required the Secretary of State to prepare and distribute an annual report to Congress that listed whether other countries were complying with the minimum standards set forward in the TVPA. Countries were ranked according to a tier system. Tier 1 countries had fully complied with the TVPA's minimum standards for eliminating trafficking.<sup>120</sup> Tier 2 nations did not fully meet the minimum standards but were making significant efforts to bring themselves into compliance.<sup>121</sup> Tier 3 countries were not in compliance and were not making any effort to comply.<sup>122</sup> With one exception,<sup>123</sup> Canada has ranked as a Tier

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<sup>118</sup> Ibid.

<sup>119</sup> Anthony DeStefano, *The War on Human Trafficking* New Brunswick, NJ: Rutgers University Press, (2007) 13-15.

<sup>120</sup> Nadra Qadeer, "Canada Take Note: A Comparative Perspective on Trafficking," *Canadian Woman Studies* 22 (2003): 76.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

1 country since the first Trafficking in Persons (TIP) report was compiled in 2001.<sup>124</sup> This consistent ranking signifies that Canada is a leader in compliance with the U.S. standards.

There has been some scholarship dedicated to the occurrence of human trafficking within Canada's borders.<sup>125</sup> Most of these authors agree that Canadian policy falls short of its intended purpose to combat these occurrences.<sup>126</sup> This poses an important substantive and theoretical question: Why has Canada, another country with a consistent Tier 1 ranking, also not been able to create sound policy that combats the issue of trafficking? This chapter explores the Canadian policy and what role the international community and the media have played in potentially restricting Canadian policy from combatting trafficking and protecting victims.

### **Human Trafficking in Canada**

Prior to 2005, Canada used provisions in its *Criminal Code* or Immigration and Refugee Protection Act (IRPA) to combat trafficking. The *Criminal Code* contained sections that targeted criminal organizations. However, the section of the *Criminal Code* that specifically addressed trafficking pertained only to prostitution.<sup>127</sup> This section

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<sup>123</sup> In the 2003 TIP Report, the U.S. Department of State ranked Canada as a Tier 2 country, in contrast to the usual Tier 1 standing.

<sup>124</sup> U.S. Department of State. *Trafficking in Persons Report 2013*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>125</sup> Julie Kaye, John Winterdyk, and Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada," *Canadian Journal of Criminology & Criminal Justice* 56, no. 1 (January 2014): 23-48.

<sup>126</sup> Constance MacIntosh, "Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights," *Intercultural Human Rights Law Review* 1 (2006): 407-435.

<sup>127</sup> Canada Criminal Code (R.S.C., 1985, c. C-46), Online: <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-212.html>

criminalized any individual who “procures a person to enter or leave Canada, for the purpose of prostitution.”<sup>128</sup> The IRPA did not specifically address trafficking, but instead focused on smuggling of persons. Both the *Criminal Code* and the IRPA did nothing to protect victims of trafficking or criminalize trafficking outright.<sup>129</sup>

In June 2002, the IRPA was updated to include a section pertaining specifically to human smuggling and human trafficking. As we will see, the IRPA was updated in 2002 to reflect the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The 2002 version of the IRPA criminalized smuggling and trafficking with a maximum penalty of life imprisonment and/or a fine of up to one million dollars, but still did not put in place any provisions to protect victims.<sup>130</sup>

It was not until 2005 that Canada implemented its first domestic human trafficking-specific legislation under sections 279.01 through 279.04 of the *Criminal Code*. Under section 279.01 of the new provision in the criminal code, trafficking in persons is defined as, “every person who recruits, transports, transfers, receives, holds, conceals or harbors a person, or who exercises control or influence over the movements of a person, for the purposes of exploiting them or facilitating their exploitation, commits an indictable offence.”<sup>131</sup> Further, sections 279.02 and 279.03 criminalize the material benefit gained from trafficking in persons and withholding or destroying

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<sup>128</sup> Ibid.

<sup>129</sup> Jacqueline Oxman-Martinez, Jill Hanley, and Fanny Gomez, “Canadian Policy on Human Trafficking: A Four-year Analysis,” *International Migration* 43, 4 (September 2005): 7-27.

<sup>130</sup> Ibid.

<sup>131</sup> *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*].

documents for the purpose of human trafficking. Finally, section 279.04 defines the concept of exploitation in human trafficking cases as

“cause[ing] them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or cause[ing] them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.”<sup>132</sup>

The table below outlines the major legislative actions Canada has taken with regards to human trafficking and serves as a guide for further analysis throughout this chapter:

Legislation/ Action	Date	Purpose
Immigration and Refugee Protection Act 1976	Used from 1978-2002	Did not specifically address trafficking, but instead focused on smuggling of persons. Did nothing to protect victims of trafficking or criminalize trafficking outright
Canada Criminal Code 1985 (C-46)	Used from 1985-2005	Contained sections that targeted criminal organizations. However, the section that specifically addressed trafficking pertained only to prostitution. Criminalized any individual who “procures a person to enter or leave Canada, for the purpose of prostitution.” Did nothing to protect victims of trafficking.
Anti-Terrorism Act, Canadian Bill C-36	December 18, 2001	The bill defined terrorism and supported the international community’s war on terror by extending the powers of government and institutions within the Canadian security establishment to respond to the threat of terrorism.
Immigration and Refugee Protection Act (IRPA)	June 28, 2002	Criminalized smuggling and trafficking with a maximum penalty of life imprisonment and/or a fine of up to \$1 million, but still did not put in place any provisions to protect victims.
Tier 2 Ranking on 2003 U.S. Trafficking in Persons Report	June 1, 2003	Canada demoted from Tier 1 ranking to Tier 2 ranking in the U.S. Trafficking in Persons report conducted by the State Department.
Canada Criminal Code 2005 (Sections 279.01 through 279.04)	November 25, 2005	Under the Criminal Code, trafficking in persons is defined as, “every person who recruits, transports, transfers, receives, holds, conceals or harbors a person, or who exercises control or influence over the movements of a person, for the purposes of exploiting them or facilitating their exploitation, commits an indictable offence.” Criminalize the material benefit gained from trafficking in persons and withholding or destroying documents for the purpose of human trafficking. Defined the concept of exploitation in human trafficking.

Table 2: Relevant Trafficking Action in Canada

<sup>132</sup> Ibid.

Some scholars assert that Canada's definition of trafficking and exploitation are not adequate because they do little to punish traffickers.<sup>133</sup> These authors assert that Canada's concept of exploitation has made it very difficult to obtain trafficking convictions. For example, there were only five convictions in the first six years of the law's implementation.<sup>134</sup> The current definition of exploitation requires the victim to demonstrate their belief that their safety was threatened. Often times, victims do not want to cooperate with law enforcement for fear of backlash or emotional trauma. They argue that this creates a substantial roadblock in preventing trafficking and protecting victims within Canada and makes the policy inadequate in fulfilling its intended purpose.<sup>135</sup>

Other authors conclude that Canada's definition of "trafficking in persons" is flawed.<sup>136</sup> Canada's definition of trafficking is not dependent on the use of fraud, deception, or force in recruiting, transporting, transferring, or controlling the victim's movements.<sup>137</sup> According to the *Criminal Code's* definition of human trafficking, the victim can be aware of the reasons for their recruitment, transport, and exploitation.<sup>138</sup> This contradicts a fundamental aspect of the definition of human trafficking, consent, since the victim's lack of consent is central in defining the crime of human trafficking. It

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<sup>133</sup> Julie Kaye, John Winterdyk, and Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada," *Canadian Journal of Criminology & Criminal Justice* 56, no. 1 (January 2014): 27.

<sup>134</sup> Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and its Implications," *Canadian Journal of Law & Society* 28 (2013): 21-41.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> *Criminal Code*, R.S.C. 1985, c. C-46 [*Criminal Code*].

<sup>138</sup> Ibid.

is also an important factor contributing to the resemblance between human trafficking and procurement offences in Canada, such as pimping for prostitution.

Despite the general consensus among scholars that the Canadian human trafficking policy is not adequate, there is little consensus on why. The literature presents many possible explanations for why Canadian policy has failed. As mentioned, some scholars argue that the lack of a clear legal definition of human trafficking within Canada is what causes the policy to fail.<sup>139</sup> Other critics argue that Canada's current policy is too heavily focused on the criminal elements of trafficking, which leaves victims vulnerable.<sup>140</sup> A newly conducted body of research by Benjamin Perrin suggests that Canada has a difficult time combating human trafficking because, unlike the U.S., it is considered a transit country. Perrin suggests that transit countries, like Canada, face unique challenges in combating international trafficking because they are situated in the middle of the trafficking chain.<sup>141</sup>

Perrin explains that one of the most significant difficulties for transit countries is distinguishing between trafficking persons and smuggled migrants. Clarifying this distinction is important because trafficking and smuggling cases give rise to different international legal obligations.<sup>142</sup> Yet other authors assert that while Canada is considered a transit country, more attention should be focused on fixing trafficking

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<sup>139</sup> Elzbieta Gozdzia and Elizabeth A. Collett, "Research on Human Trafficking in North America: A Review of Literature," *International Migration* 43 (2005): 106.

<sup>140</sup> Constance MacIntosh, "Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights," 407-435.

<sup>141</sup> Benjamin Perrin, "Trafficking in Persons & Transit Countries," *Trends In Organized Crime* 14 (2011): 235-264.

<sup>142</sup> Ibid.



within Canada's borders first.<sup>143</sup> While most of the existing research differs in the reasons for Canada's lacking policy, it consistently mentions that the media and pressure from the international community adds confusion to the issue. These factors are important to the creation and adoption of policy. This chapter argues that the media framing of human trafficking and international pressures have largely contributed to Canada's inadequate policies. These factors create problems at the very root of the human trafficking debate and need further exploration.

### *Human Trafficking and the Media*

Some scholarship has been dedicated to the way that the media frames human trafficking in the United States,<sup>144</sup> but even less research exists that addresses the effects that media framing has on Canadian policy. Scholars agree that the media does have an effect on the policy process. Jeff Gulati asserts, "The media, particularly on foreign policy issues where there is consensus, mostly reflect the government agenda and frame news stories in ways that echo the arguments of the major participations in the policymaking process."<sup>145</sup> Kingdon agrees that media can also play a role in shaping public opinion and thus policy. He says that, "Media's indirect impacts include affecting public opinion, which affects politicians, and magnifying events."<sup>146</sup> Killingbeck writes that the media does not simply reflect communal meanings, but has a more ideological

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<sup>143</sup> Stephanie Hepburn and Rita J. Simon, *Human Trafficking Around the World: Hidden In Plain Sight*, New York: Columbia University Press, (2013) 157-171.

<sup>144</sup> Stephanie Fahy and Amy Farrell, "The Problem of Human Trafficking in the U.S.," *Journal of Criminal Justice* 37 (2009): 617-626.

<sup>145</sup> Girish Gulati, "News Frames and Story Triggers in the Media's Coverage of Human Trafficking," *Human Rights Review* 12 (2011): 364.

<sup>146</sup> John Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Longman, 2003), 68.

role by attributing exaggerated attention to an issue, thus causing social anxiety.<sup>147</sup>

Examining the media's role can provide a window into the way that the public perceives the problem and a more complete picture of anti-trafficking policy.

"White slavery" was an issue that emerged on the U.S. agenda at the beginning of the twentieth century. Canada has mirrored the way that the media, the general public, and legislators first framed the issue of white slavery. According to Ronald Weitzer's "social constructionist perspective," moral crusades rely on horror stories about victims in which the most shocking examples of victimization are described.<sup>148</sup> This speaks to the nature of problems as Kingdon describes them. Kingdon recognizes that problems often need a focusing event like a crisis or powerful symbol that calls attention to an issue.<sup>149</sup> Through undocumented claims of prevalence and horror stories depicting victims suffering, Canada has constructed a crisis or "moral panic" surrounding human trafficking.

Moral panic is a term coined by Stanley Cohen in 1972, which describes a period of focus on an issue deemed as a threat to societal values and interests.<sup>150</sup> Moral panic can have lasting effects, especially if it is accepted as the truth and thus dictates the policy process. According to Weitzer, "institutionalization" of an issue occurs if the concern has been "accepted by authorities as a bona fide problem."<sup>151</sup> The degree of institutionalization may range from "consultation of activists, inclusion of leaders in

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<sup>147</sup> Donna Killingbeck, "The Role of Television News in the Construction of School Violence as a Moral Panic," *Journal of Criminal Justice and Popular Culture* 8 (2001): 187.

<sup>148</sup> Ronald Weitzer, "The Social Construction of Sex Trafficking," *Politics and Society* 35 (2007): 448.

<sup>149</sup> Kingdon, *Agendas, Alternatives, and Public Policies*, 95.

<sup>150</sup> Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (New York: St. Martin's Press, 1980).

<sup>151</sup> Weitzer, 2007, 458.

policy processes, material support for crusade organizations, official endorsements of the ideology, resource mobilization, and the creation of legislation and new agencies to address the problem.”<sup>152</sup> It is likely that the framing of the human trafficking issue led to a moral panic that inflated the nature of the problem, which further contributed to the creation of inadequate legislation. Canada has a media system structurally similar to the one in the U.S.<sup>153</sup> Studies have concluded that Canada relies on the same values of journalistic professionalism as the U.S., and thus Canadian news consumers view the media in both countries as a reliable source of information.<sup>154</sup> Through a study of Canadian media this chapter examines the way that human trafficking has been framed over time and what affect that had on the creation of policy.

### *Human Trafficking and Political Pressures*

There is also very little research that addresses why Canada decided to act on the issue of human trafficking when it did and how the issue initially appeared on the policy agenda. Some literature hints at international pressure but does not further explore its role in pressuring Canadian policy.<sup>155</sup> As we will see, this chapter also explores international pressure and how it was a contributing factor to Canada’s anti-trafficking legislation. It is likely that these pressures have caused legislation to be adopted in a way and at a time that further contributed to inadequate policies.

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<sup>152</sup> Ibid.

<sup>153</sup> Girish Gulati, "Representing Trafficking: Media in the United States, Great Britain, and Canada," in *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*, eds. Alison Brysk and Austin Choi-Fitzpatrick, (Philadelphia: University of Pennsylvania Press, 2012), 54.

<sup>154</sup> Ibid.

<sup>155</sup> Paul Knepper, "History Matters: Canada's Contribution to the First Worldwide Study of Human Trafficking," *Canadian Journal Of Criminology & Criminal Justice* 55 (2013): 46.

Knepper argues that international campaigns have led human trafficking to be “Americanized.”<sup>156</sup> He describes the first human trafficking study conducted in Canada in the 1920s and how heavily America influenced other countries during the study.<sup>157</sup> He writes that the Americanization of this study in the 1920s had profound consequences on future Canadian policy in this arena.<sup>158</sup> Roots agrees that American events and policies have had a role in determining when and how other countries would act with regards to human trafficking.<sup>159</sup> This chapter explores when and if Canadian anti-trafficking legislation was modeled after U.S. legislation, and if this is the cause for inadequate policy.

Other scholars write that the political pressures came from the international community as a whole, not just the U.S. At the beginning of the twenty-first century, human trafficking was identified by the United Nations as a transnational crime, and was cast by political leaders from countries around the world as one of the “three biggest evils” haunting the globe.<sup>160</sup> From a review of the literature it is evident that scholars agree Canada received some level of pressure from the international community to act on human trafficking policy. However, what is not clearly explored is the effect that pressure had on the implementation of the current lacking policies. This chapter aims to address these gaps in the current research.

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Katrin Roots, “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications,” 21-41.

<sup>160</sup> Kamala Kempadoo, Jyoti Sanghera, and Bandana Pattanaik, *Trafficking and Prostitution Reconsidered: New Perspectives On Migration, Sex Work, and Human Rights* (Boulder, CO: Paradigm Publishers, 2005).

This chapter examines the Canadian policy framework surrounding trafficking and how it has been shaped over time. This chapter argues that pressures from the international community and media framing of the issue have been two of the largest contributing factors to the problem of adequately addressing human trafficking from a Canadian policy standpoint.

### **Methodology**

Case studies of both the media and international pressures effectively illustrate the role that these factors have played in the development of Canadian anti-trafficking legislation. Determining the extent to which each factor has shaped Canadian legislation and how it has done so will help explain why critics agree that the current policy does not measure up.

It is important to study the media's role in the human trafficking discourse because the media is a critical aspect of how the general public and influencers give and receive information. It is valuable to examine the way that human trafficking has been constructed in the past, in order to help detect patterns and place the issue in a historical context. It is also important to understand how the media is currently framing the issue of trafficking.

In order to understand how the Canadian media is currently framing human trafficking, a standardized, thorough examination of the news stories in Canada is required. Canada's anti-trafficking law was adopted in 2005, but was not successfully used until 2008. As a result, a news search of Canadian-only newspapers was conducted

using the LexisNexis search database. The range of data was limited from 2008 to 2013. To further simplify the search, parameters were set to examine articles that appeared in Canadian newspapers, Canadian magazines, and Canadian journals only. The decision to only focus on print or online news articles was made because there are no sufficient radio or television story databases readily available that would match the thoroughness of LexisNexis. Additionally, the primary search term used was “human trafficking,” as “sex trafficking,” “child trafficking,” or “human smuggling,” often produce results pertaining to different topics. This initial search yielded 884 distinct, individual news pieces about human trafficking as covered by Canadian media.

After stories were removed from the results for repetition, miscoding, and other factors that would otherwise disqualify it from the scope of this analysis, the remaining sources were examined for relevance. Many of the articles found in this search are mentioned when further discussing the way the media currently frames human trafficking discourse.

It is equally important to assess the pressures that Canada felt from the international community. International pressure could have caused legislation to be adopted before processes were put in place to adequately address trafficking, or legislation that is not tailored specifically for Canada, but copied from another country. This case study also focuses on instances in Canada’s legislative history that involve human trafficking and to what extent international pressures were involved.

## Canadian Media

### *Theoretical Framework*

Despite common beliefs that human trafficking is a recent addition to the international community's global concerns, the issue has been at the forefront of the international agenda since the end of the transatlantic slave trade.<sup>161</sup> The level of attention that trafficking has received has varied greatly, however, largely based on the public's perception of the problem. Public perception, in turn, is dictated by the way the media has portrayed the issue over time. Richard Pride writes, "There are a number of potential social problems; some rise to prominence and affect public policy, others are discussed and receded from attention, and others make no splash at all."<sup>162</sup> He states that the fate of each problem is decided mostly by the competitive nature of the claims-making process.<sup>163</sup>

There are many factors that affect whether contending claims capture enough attention to become full blown social problems; among these are the way a problem is framed so as to attract media and public interest.<sup>164</sup> Tuchman asserts that within the realm of political communication, framing has to be defined on the basis of this social constructivism. "Mass media actively set the frames of reference that readers or viewers use to interpret and discuss public events."<sup>165</sup> In the "social constructionist perspective," social conditions become problems only as a result of claims made by

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<sup>161</sup> Ibid.

<sup>162</sup> Richard Pride, "How Activists and Media Frame Social Problems: Critical Events Versus Performance Trends for Schools," *Political Communication* 12 (1995): 5.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Gaye Tuchman, *Making News: A Study In the Construction of Reality* (New York: Free Press, 1978).

interested parties, which may or may not reflect actual social arrangements.<sup>166</sup> Moral panics caused by moral crusades are one of the forces responsible for transforming such conditions into so-called “problems.”

Several studies have indicated that the media play a major role in producing these moral panics.<sup>167</sup> The media, interest groups, or politicians sensationalize the problem and present it as a threat to the social order, causing the public to have an exaggerated fear of the nature of the problem.<sup>168</sup> Rather than providing the public with a clear understanding of the issue, the media play a primary role in increasing irrational fear with inflammatory writing.<sup>169</sup> This moral panic, which has been escalated by the media, can be seen as a “crisis” or “focusing event.” A crisis calls attention to the problem, and as a result, often encourages legislation and affects the policy agenda.

The policy agenda, according to Kingdon, “is the list of subjects or problems to which government officials, and people outside of government closely associated with those officials, are paying some serious attention.”<sup>170</sup> The literature describes the agenda setting process as being affected by many factors.<sup>171</sup> One of those factors is largely focused on public and media debates.<sup>172</sup> The way in which social problems are framed and perceived in public and media debates does shape government’s policy

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<sup>166</sup> Ronald Weitzer, “The Social Construction of Sex Trafficking,” *Politics and Society* 35 (2007): 448.

<sup>167</sup> Ron Brunton, “Down to earth,” *IPA Review* 45 (1992): 45, 59-60.

<sup>168</sup> Ibid.

<sup>169</sup> Arnold Hunt, “Moral panic and moral language in the media,” *British Journal of Sociology*, 48 (1997): 629–647.

<sup>170</sup> John Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Longman, 2003), 68.

<sup>171</sup> Tom Entwistle and Gareth Enticott, “Who or What Sets the Agenda?,” *Policy Studies* 28, (2007): 193-208.

<sup>172</sup> S.N. Soroka, *Agenda-setting Dynamics in Canada* (Vancouver, BC: University of British Columbia Press, 2002).



response.<sup>173</sup> This is especially true if a “triggering” or “focusing” event can help bring attention to the problem.<sup>174</sup> The representation of a crisis, particularly through the mass media, inclines large numbers of people to perceive a particular condition as a social problem requiring an official response. This is the formula that human trafficking has followed to gain attention and be placed on the policy agenda in Canada.

### *Moral Panic Surrounding Trafficking*

The concept of human trafficking first entered the Canadian consciousness in the late 1800s when a moral panic broke out over immigrant men holding white women in sexual slavery.<sup>175</sup> The media had a big role in contributing to this moral panic. Historians have found that the media overestimated and overstated the extent of the “white slave trade.”<sup>176</sup> In the late nineteenth and early twentieth century anti-trafficking discourse in Canada, the media portrayed traffickers as individual immigrants or foreign men.<sup>177</sup> This happened during a period of strong anti-Chinese sentiment in Canada. During that time, Chinese men were often called, “John Chinaman” or “the almond-eyed son of the flowery kingdom.”<sup>178</sup> These racial prejudices were prominent in the press.<sup>179</sup> When the moral panic over white slavery ensued, it did not require much effort to spin the story to

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<sup>173</sup> E. Rogers and J. Dearing, “Agenda Setting Research: Where has it Been? Where is it Going?,” *Communication Yearbook* 11 (1988): 555-594.

<sup>174</sup> Kingdon, *Agendas, Alternatives, and Public Policies*, 94-95.

<sup>175</sup> Nandita Sharma, “Anti-trafficking Rhetoric and the Making of a Global Apartheid,” *National Women’s Studies Association Journal* 17 (2005): 98.

<sup>176</sup> Jo Doezema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” *Gender Issues* 18, 1 (2000): 25.

<sup>177</sup> Deborah Brock, Kara Gillies, Chantelle Oliver, and Mook Sutdhibhasilp, “Migrant Sex Work: A Roundtable Analysis,” *Canadian Woman Studies* 20, 2 (2000): 84-91.

<sup>178</sup> Peter Ward, *White Canada Forever* (Kingston, ON: Queen’s University Press, 1972), 3.

<sup>179</sup> Ibid.

portray these Chinese men as sexual predators seeking to deceive and exploit white females.<sup>180</sup> The media helped fuel stories of the anti-trafficking moral crusade campaigns of this period aimed at “keeping Canada white.”<sup>181</sup> Media accounts from 1911 entitled “Canada’s War on the White Slave Trade” and “Canada is the Slaver’s Golden Opportunity,” further contributed to the moral panic.<sup>182</sup> This idea of white slavery received extensive coverage in the world’s media, and was the subject of “numerous novels, plays, and films” aimed at capturing the public’s attention.<sup>183</sup>

In addition to the anti-Chinese sentiment, the portrayal of the white slave trade was also in response to the Canadian “social purity movement.” The social purity movement was aimed at raising the moral nature of the country by combating issues such as prostitution, divorce, and the migration of foreigners.<sup>184</sup> The social purity movement used the issue of human trafficking as a symbol of other moral issues. For example, cross-border migration by women emerged in the late nineteenth and early twentieth century. Historians attribute the large-scale international relocations and displacements to the abolition of slavery in the nineteenth century, which accompanied the internationalization of waged labor embedded in the period of globalization between 1850 and 1914.<sup>185</sup> These migrations led to women independently moving across borders to obtain new freedoms through work, which often included

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<sup>180</sup> Nandita Sharma, “Anti-trafficking Rhetoric and the Making of a Global Apartheid,” 98.

<sup>181</sup> Peter Ward, *White Canada Forever*.

<sup>182</sup> Deborah Brock, *Making Work, Making Trouble: Prostitution as a ‘Social Problem’* (Toronto: University of Toronto Press, 1998), 122.

<sup>183</sup> Jo Doezeema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” 25.

<sup>184</sup> Mariana Valverde, “Moral Reform in English Canada, 1885-1925: Introduction,” in *Crime and Deviance in Canada: Historical Perspective*, (Toronto: Canadian Scholar’s Press, 2005).

<sup>185</sup> Kempadoo et al., 2005.

prostitution.<sup>186</sup> Media narratives emerged portraying these women as coerced, deceived, lured, and forced into prostitution because of the uncivilized character of their migrant communities.<sup>187</sup> The framing of these news stories was a direct result of the social purity movement advocates who were interested in eliminating prostitution and the migration of foreigners.

These moral reform organizations successfully used the media to promote the use of international mechanisms to regulate migration.<sup>188</sup> These moral panics led to legislation. As a result of the media rhetoric surrounding the anti-Chinese movement, the first Canadian anti-Chinese bill passed in 1885. The bill first imposed a \$50 head tax on most migrants from China.<sup>189</sup> This was raised to \$100 in 1900 and to \$500 in 1903.<sup>190</sup> Finally, in 1923 the Chinese Exclusion Act was enacted, effectively cutting off all legal migration of people from China to Canada until 1947.

Campaigns against the white slave trade had tremendous influence on Canadian attitudes regarding immigration, and as a result increased cross-border regulations were demanded.<sup>191</sup> The UK and French governments signed two international agreements, one in 1904 and the other in 1910, both called The International Agreement for the Suppression of White Slave Traffic. The international agreement was initially formulated to stop the “procuring of women or girls for immoral purposes abroad.”<sup>192</sup> However, the agreements gave rise to law enforcement and policing efforts aimed at eradicating

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<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Peter Ward, *White Canada Forever*.

<sup>189</sup> Nandita Sharma, “Anti-trafficking Rhetoric and the Making of a Global Apartheid,” 98.

<sup>190</sup> B. Singh Bolaria and Peter S. Li, *Racial Oppression in Canada* (Toronto: Garamond Press, 1988).

<sup>191</sup> Nandita Sharma, 98.

<sup>192</sup> Kempadoo et al., 2005.

prostitution. From its inception, the first piece of trafficking related legislation in Canada did nothing to prevent trafficking. Instead, moral reformers used the media to tell the story of trafficking, while masking the real issues of prostitution and migration that they were trying to combat.

In the aftermath of World War I, trafficking made only brief appearances on the international agenda. In 1921, the League of Nations adopted “The International Convention to Combat the Traffic in Women and Children,” and then later “The International Convention for the Suppression of the Traffic in Women of Full Age” in 1933. In 1949, the United Nations (UN) enacted the “Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others” to supersede all previous international agreements.<sup>193</sup> However, the Convention’s doctrine on prostitution is largely why it never became the final word on trafficking. The document’s generalized stance on prostitution as exploitation would have required many countries to make legal changes that were incompatible with their legal codes and Constitutions.<sup>194</sup> This document set the precedent for further UN resolutions on trafficking that largely emphasized prostitution but did not define or address human trafficking clearly.

Anti-trafficking campaigns were fairly dormant in the years between World War II and the 1980s, with very little media attention. This was perhaps as a result of the U.S.’ dormant role on the issue, which as we will see, Canada (and other countries) were

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<sup>193</sup> Kamala Kempadoo, “Introduction,” in *Global Sex Workers: Rights, Resistance, and Redefinition*, eds. Kamala Kempadoo and Jo Doezema, (New York and London: Routledge, 1998), 1–28.

<sup>194</sup> Penelope Saunders and Gretchen Soderlund, “Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse,” *Canadian Woman Studies*, 22 (2003): 19.

largely influenced by. Human trafficking issues resurfaced during a time when anti-immigrant discourses and practices were growing in Canada in the 1990s.<sup>195</sup> The late 1980s and early 1990s saw the end of the Cold War and the perceived defeat of communism as a viable alternative to capitalist economies. The newly democratized states of Eastern Europe came to be viewed as equal part threat and opportunity.<sup>196</sup> Narratives of Eastern European lawlessness and social disruption flooded the media.<sup>197</sup> In particular, Canadian and U.S. media outlets were consumed with stories of women now reduced to be individual workers in the global economies.<sup>198</sup> Public and media attention was once again re-captured by the human trafficking dialogue at this time.<sup>199</sup> Increased anxiety with regards to trafficking can be linked to the rise in transnational migrant labor during this time, similar to the migration influx at the beginning of the twentieth century.

According to a report by the Library of Parliament, Canada began to deal directly with the problem of modern-day trafficking in persons after 152 Sri Lankan migrants were rescued off of Canada's East coast in 1986 and Canada was identified by the United States as a source, destination, and transit country for human trafficking.<sup>200</sup> The UN responded to the international uptick of the problem in 2000 with the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,"

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<sup>195</sup> Nandita Sharma, "Anti-trafficking Rhetoric and the Making of a Global Apartheid," 98.

<sup>196</sup> Penelope Saunders and Gretchen Soderlund, "Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse," 19.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Library of Parliament, Parliamentary Information and Research Service, *Trafficking in Persons* by L. Barnett, PRB-06-24E (Canada, 2008).

also known as the Palermo Protocol, which Canada signed. Following international efforts, Canada did not ratify the Protocol until 2002 through an update to the aforementioned Immigration and Refugee Protection Act. In order to meet the minimum standards set by the international community, Canada enacted legislation in 2005 specifically criminalizing “trafficking in persons” as a punishable offense. The provision was Canada’s first ever legislation aimed at combating trafficking into and within Canada. The effectiveness of Canada’s law has been scrutinized due to the few number of charges and even fewer convictions obtained since the law’s implementation.<sup>201</sup>

### *Current Framing of Human Trafficking*

While it is necessary to examine the way the media has influenced human trafficking legislation in the past, it is also important to examine how the media is currently framing the trafficking discourse. Exploring the current framing of the issue allows for a better understanding of the patterns and tendencies that have emerged or re-emerged in the media and how they can be avoided in the policy process going forward. Several themes emerged from analysis of the current news search. These include prevalence of human trafficking, the framing of the issue with regards to race and ethnicity, and the discourse of victimization.

Canadian news reports emphasize the prevalence of human trafficking in the country. Of the articles reviewed in this case study, over 50 percent discussed how

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<sup>201</sup> Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and its Implications," 21-41.

prevalent the issue of trafficking was within Canada, despite the lacking concrete statistics to back up such claims. For example an article in the *Ottawa Citizen* states, “There are hundreds, perhaps thousands of victims being exploited every year in our country.”<sup>202</sup> Some of the articles did not even require reading the content of the article in order to understand the prevalence emphasis. Several articles made the point in the title alone. For example, the *Globe and Mail* ran an article in 2010 entitled “Human trafficking rampant in Canada: RCMP”<sup>203</sup> and *North Shore News* had another article entitled, “It Happens in Canada: Human Trafficking is Not Just a ‘Poor Country’ Problem.”<sup>204</sup> A *Toronto Sun* article entitled “Human Trafficking Lurks in Canada,” said, “the one thing experts can agree on is that it’s only the tip of the iceberg. How big that iceberg is and whether we’ve even scratched the surface of it, is a whole other story.”<sup>205</sup> The more recent news articles from 2012 and 2013 seem to focus mostly on specific cases of human trafficking in Canada. Even if there was no confirmation of trafficking, many of the news outlets included human trafficking as a “suspected act.”<sup>206</sup> Mentioning human trafficking even in cases where trafficking was not involved further leads to the prevalence and moral panic surrounding the issue.

Many of the articles reviewed also focused on the “victims.” The discourse of victimization was found in almost 20 percent of the articles reviewed. In articles where

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<sup>202</sup> “National Provinces Criticized On Human Trafficking,” *Ottawa Citizen*, October 13, 2010, Accessed March 3, 2014, [www.lexisnexis.com/hottopics/lnacademic](http://www.lexisnexis.com/hottopics/lnacademic).

<sup>203</sup> Colin Freeze, “Human Trafficking Rampant in Canada, RCMP Reports,” *The Globe and Mail*, September 13, 2010.

<sup>204</sup> Lara Howsam, “It Happens in Canada: Human Trafficking is Not Just a ‘Poor Country’ Problem,” *North Shore News*, August 8, 2010.

<sup>205</sup> Tamara Cherry, “Human Trafficking Lurks in Canada,” *Toronto Sun*, January 20, 2008.

<sup>206</sup> Jason Van Rassel, “Three men charged with human trafficking,” *The Calgary Herald*, June 11, 2013.

victims were discussed they were framed as vulnerable, young, and innocent. A *Toronto Sun* Article writes that there are thousands of trafficking victims who are, “weeping, waiting for the despair to end, living lives filled with drugs, sedatives, physical and sexual abuse.”<sup>207</sup> This same article also discussed the need for tougher laws for the protection of women. A recent *Calgary Herald* article from June 2013, depicts an “underage” girl who “immediately broke down and cried for help” before being “rescued” from an alleged human trafficking operation.<sup>208</sup> Depicting the human trafficking problem as one that involves underage, innocent, victims further contributes to the moral panic.

The last common theme among the articles was the ethnicity of those involved in trafficking. The media’s focus on trafficking as a crime of foreign nationals contributes to an “us” versus “them” mentality.<sup>209</sup> This framing of the issue accounted for about 20 percent of the articles reviewed. For example, a *Toronto Sun* article suggests that women are being brought into Canada from Eastern Europe, Romania, Ukraine, Russia, Moldova, and Asia to work in the sex trade industry.<sup>210</sup> Another article in *CBC News* claims that there are thousands of foreign nationals in the sex trade in Canada.

An examination of these news articles indicates that the way the Canadian media currently frames human trafficking is not very different from the way the media framed human trafficking when it first arrived on the international agenda. The media has

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<sup>207</sup> Andrea Mrozek, “Strict Laws Protect Women,” *Toronto Sun*, September 29, 2010.

<sup>208</sup> Ibid.

<sup>209</sup> Kempadoo et al., 2005.

<sup>210</sup> Tamara Cherry, “Human Trafficking Lurks in Canada,” 2008.



overinflated the issue and created moral panics. This can help explain why Canada's policy response to human trafficking has not been adequate.

### **International Pressures and Human Trafficking**

As previously mentioned, Canada's policy response to human trafficking has been criticized as mediocre by the international community and especially by the United States. These criticisms from the U.S. and international community have put pressure on Canada and caused a change in policy initiatives over time.

The United States has become a self-appointed leader of the international anti-trafficking campaign, which allows for a significant amount of influence over international politics.<sup>211</sup> As the monitor of the global anti-trafficking campaign, the United States evaluates the efforts of individual countries in their fight against trafficking. This evaluation is based on a three-tier ranking system. As previously mentioned, Tier 1 status is awarded to countries who have fully complied with U.S. anti-trafficking recommendations. Tier 2 countries are not in compliance but are making an effort to comply, while Tier 3 status signifies countries with poor compliance and no effort to change.<sup>212</sup> While the U.S. evaluation of anti-trafficking efforts should be based

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<sup>211</sup> Sally Cameron, "Trafficking of Women for Prostitution," in *Trafficking in Humans: Social, Cultural and Political Dimension*, eds. S. Cameron and E. Newman (New York: United Nations University Press, 2008), 89.

<sup>212</sup> U.S. Department of State. *Trafficking in Persons Report 2013*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

on international standards, in reality U.S. perceptions, events, moral views, and legislation have had a significant impact on the yearly evaluations.<sup>213</sup>

The events of September 11, 2001 had a significant influence on reshaping the landscape of the anti-trafficking approach, exacerbating its use by combining it with the “war on terrorism” and a focus on national security.<sup>214</sup> Since the September 11<sup>th</sup> attacks, the U.S. has focused its criticisms on Canada’s immigration and border security policies. The U.S. accused Canada of being a “jumping-off point” for terrorists and of being too lenient in its acceptance of immigrants and refugees.<sup>215</sup> In light of these criticisms, Canada felt notable U.S. pressure to join the fight against terrorism. In December 2001, the then Liberal-Canadian government passed Bill C-36, the Anti-Terrorism Act. The bill defined terrorism and supported the international community’s “war on terror.”<sup>216</sup> While the U.S. initiated the major policy changes, its pressure on Canada to enact legislation in this regard was very effective. A journal article written by Canadian scholar, Martin Collacott, outlined the level of pressure Canada was receiving from the U.S. with regards to border security and immigration policy. Collacott writes,

“Canada is, of course, a fully sovereign nation and free to choose whatever measures it thinks are necessary to ensure the security of its people, but so is the United States and, if it concludes that closing the border for a period of time is necessary

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<sup>213</sup> Anne Gallagher, “Human Rights and Human Trafficking in Thailand: A Shadow TIP Report,” in *Trafficking and the Global Sex Industry*, eds. K. Beeks and D. Amir (Oxford, UK: Lexington Books, 2006), 139–163.

<sup>214</sup> Stephanie Fahy and Amy Farrell, “The Problem of Human Trafficking in the U.S.” *Journal of Criminal Justice* 37 (2009): 622.

<sup>215</sup> Department of Justice Canada, Research and Statistics Division, *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector*, by Jacqueline Oxman-Martinez, Andrea Martinez, and Jill Hanley, (Canada, 2005): 12.

<sup>216</sup> Erin Gibbs Van Brunschot and Alison Sherley, “Communicating Threat: The Canadian State and Terrorism,” *The Sociological Quarterly* 46, 4 (2005): 645-669.

because of new terrorist attacks combined with doubts about the state of security in Canada, we should not be overly surprised.”

He states in the article that while closing the borders would be disruptive for some American industries and for border states, “this would fall far short of the impact it would have on [Canada’s] economy.”<sup>217</sup>

In addition to border security issues, it was suggested that Canadian immigration policies facilitated human trafficking. According to the United States, Canada's "lax immigration laws" make the country "a destination and a transit point to the United States for women, children, and men trafficked for purposes of sexual exploitation, labor, and the drug trade.”<sup>218</sup> According to Collacott, “the State Department Trafficking in Persons annual report suggest that, if anything, the United States was becoming somewhat frustrated by the lack of Canadian action in this area.”<sup>219</sup> Criticisms of Canada’s policies are also evident in the annual Trafficking in Persons (TIP) Reports, which demonstrate pressures on Canada to tighten its approach to human trafficking.<sup>220</sup> Most of the earlier reports, despite the Tier 1 ranking, recommend that Canada intensify efforts to investigate and prosecute trafficking offenses and improve cooperation between local, national, and international law enforcement efforts.<sup>221</sup>

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<sup>217</sup> Martin Collacott, "Canada Must Remain Vigilant Against Terrorism." *Fraser Forum* (2006): 11.

<sup>218</sup> U.S. State Department, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, (Washington, DC, 2003) <http://www.state.gov/g/drl/rls/hrrpt/2003/>.

<sup>219</sup> Martin Collacott, “Canada’s Inadequate Response to Terrorism: The Need for Policy Reform,” *Fraser Institute Digital Publication* (2006): 21. <http://www.fraserinstitute.org/research-news/display.aspx?id=12868>.

<sup>220</sup> Leslie Ann Jeffrey, “Canada and Migrant Sex-Work: Challenging the ‘Foreign’ in Foreign Policy,” *Canadian Foreign Policy* 12, 1 (2005): 33–48.

<sup>221</sup> Ibid.

In the 2003 TIP Report, the U.S. Department of State ranked Canada as a Tier 2 country, in contrast to the usual Tier 1 standing.<sup>222</sup> This signified that Canada was not meeting the minimum standards the U.S. put in place. The U.S. indicated that Canada relied on provincial government agencies for protection and services.<sup>223</sup> The report stated that there were “no specific efforts to work with and rehabilitate trafficking victims.”<sup>224</sup> Canada’s border control strategy was further criticized in the 2003 Department of State Report on Human Rights.<sup>225</sup> The report claimed that a number of Canadian cities served as hubs for criminal organizations involved in human trafficking.<sup>226</sup> According to the report, Canada is a target country for various criminal organizations as a result of lenient immigration laws, benefits available to immigrants, and the proximity to the U.S. border.

It is likely that Canada’s demotion mattered more because of the active role that the media was playing in the human trafficking discourse. Further covering Canada’s lowered ranking in the media spurred more attention around the issue, and thus more reactive measures.<sup>227</sup> The lowered ranking was a message from the U.S. for Canada to respond more effectively, which meant pressure to expand stronger anti-trafficking

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<sup>222</sup> U.S. Department of State. *Trafficking in Persons Report 2003*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2003/index.htm>.

<sup>223</sup> Nadra Qadeer, "Canada Take Note: A Comparative Perspective on Trafficking," *Canadian Woman Studies* 22 (2003): 72-77.

<sup>224</sup> U.S. Department of State. *Trafficking in Persons Report 2003*

<sup>225</sup> Collacott, "Canada’s Inadequate Response to Terrorism."

<sup>226</sup> Ibid.

<sup>227</sup> "U.S. Report Blasts our 'Lax' Laws," *The Vancouver Province*, February 24, 2004; Sheldon Alberts, "Ottawa to Crack Down on Human Smuggling: Review Comes on Heels of US Criticism," *Calgary Herald*, March 8, 2004; Elizabeth Thompson, "Cotler Plans Crackdown on Human Trafficking," *The Gazette*, October 12, 2004; Sheldon Alberts, "Law on Human Smuggling to get Tougher: Follows U.S. Pressure," *National Post Canada*, March 8, 2004.

measures at the border and not to decriminalize the trade.<sup>228</sup> In response to its demoted Tier 2 status, Canada responded with policy changes and new initiatives.<sup>229</sup>

Canada placed a greater emphasis on security and renegotiated a number of border control measures with the U.S.<sup>230</sup> These measures included increased security checks for refugee determination processes, extended detention of migrants unable to prove their identity, intensification of deportation, and harsher penalties for using false documents.<sup>231</sup> Canada also pointed to initiatives that had just begun, such as the Inter-Departmental Working Group on Trafficking in Persons, composed of seventeen federal departments and agencies, including the Departments of Justice, Foreign Affairs, Immigration, and Status of Women, as well as the Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service (CSIS), and Border Agency.<sup>232</sup> The then Minister of Justice, Irwin Cotler, also announced an expansion of RCMP operations on trafficking, in cooperation with CSIS and local police forces, and continued cooperation with the U.S. on trafficking issues.<sup>233</sup> Since then, Canada enacted human trafficking legislation in their Criminal Code in 2005. It also established the National Human Trafficking Coordination Centre, and increased funding for anti-trafficking measures. In 2005 the TIP ranking in Canada was once again raised to a Tier 1 status and has consistently remained as such since then. However, despite the Tier 1 ranking, each year

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<sup>228</sup>Sheldon Alberts, "Ottawa to Crack Down on Human Smuggling: Review Comes on Heels of US Criticism." *Calgary Herald*, March 8, 2008.

<sup>229</sup> Global Alliance Against Trafficking in Women, n.d. *Trafficking in Persons in North America*. Accessed March 6, 2014, [http://gaatw.org/working\\_papers/N%20America/United%20States%20Report.pdf](http://gaatw.org/working_papers/N%20America/United%20States%20Report.pdf)

<sup>230</sup> Oxman-Martinez et al., "Victims of Trafficking in Persons," 13.

<sup>231</sup> Ibid.

<sup>232</sup> Global Alliance Against Trafficking in Women, n.d. *Trafficking in Persons in North America*.

<sup>233</sup> Cotler, Irwin, *Speech to the Forum on Human Trafficking*, Ottawa, Ontario March, 30, 2004. Online: [www.justice.gc.ca/en/news/sp/2004.doc](http://www.justice.gc.ca/en/news/sp/2004.doc).

the TIP report continues to recommend that Canada intensify their focus on the criminal elements of trafficking.<sup>234</sup>

### **Analysis**

Since the late 1800s the media has played an important role in framing the human trafficking problem in Canada. During the era of the white slave trade, the media exaggerated the issue, used charged language, and created a moral panic that enabled Canada to adopt legislation, despite any real understanding of the scope of the problem. This happened again in the early 1990s. Brock writes, “The media was not simply a vehicle for expressing public outrage; it served to mobilize a moral panic.”<sup>235</sup> As was demonstrated by a search of current news sources in Canada, the same pattern is currently being repeated. The current media trends are focusing on the same themes from decades past that originally caused these moral panics.

Canada’s news reports place tremendous emphasis on the prevalence of human trafficking in the country. An absence of concrete numbers on the extent of an issue, as is the case with human trafficking, is used to offer vague and inflated estimates. One of the key factors in the creation of a moral panic is exaggerating the extent of the problem. The media has constructed human trafficking as an issue of such enormity that the scope is entirely unknown. This same pattern was seen in early human trafficking accounts during the white slave trade. Human trafficking in Canada is a prime example

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<sup>234</sup> U.S. Department of State. *Trafficking in Persons Report 2013*. 121. Online: <http://www.state.gov/documents/organization/210738.pdf>.

<sup>235</sup> Deborah Brock, *Making Work, Making Trouble: Prostitution as a ‘Social Problem’* (Toronto: University of Toronto Press, 1998), 37.

of how the media inflates an issue through unverified claims and brings the issue to the forefront of public concern. The media coverage and claims of “crime waves” have created public fear,<sup>236</sup> which in turn have allowed for the intensification of government control through toughening existing laws or the creation of new laws and initiatives.<sup>237</sup> This has led to policy responses that are not well equipped to address the issue of human trafficking in Canada.

The Canadian media has also framed human trafficking in a way that has focused on victimization. This has been a media tactic since human trafficking first appeared on policy agenda in Canada in the late 1800s. Over time the victims have been portrayed as young, innocent, and helpless. Makau Mutua states, “without a victim there can be no savior.”<sup>238</sup> The victimization construction is meant to evoke emotion and create public outrage, which causes the need for an official government response.

Keeping up with trends established in the nineteenth century, Canadian human trafficking news reports have featured race and ethnicity. Kempadoo suggests that individuals involved in the human trafficking trade are constructed as foreigners from uncivilized nations who pose a threat to other more civilized nations.<sup>239</sup> These ideas are used as scare tactics to increase nationalism and create an “us” versus “them” division.<sup>240</sup> This leads to public concern over immigration and border security aimed at

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<sup>236</sup> Donna Killingbeck, “The Role of Television News in the Construction of School Violence as a Moral Panic,” *Journal of Criminal Justice and Popular Culture* 8 (2001): 187.

<sup>237</sup> Robert White and Santina Perrone, *Crime and Social Control: An Introduction* (Melbourne: Oxford University Press, 1997).

<sup>238</sup> Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42, 1 (2001): 201-245.

<sup>239</sup> Kempadoo et al., 2005.

<sup>240</sup> Ibid.

keeping foreigners out, as opposed to protecting victims of trafficking and combating its root causes.

By seeking to disseminate information that people want, need, and should know, news organizations both circulate and shape knowledge.<sup>241</sup> Moral panics come into effect when “anxiety and traditionalism connect with the public definition of crime by the media and are mobilized.”<sup>242</sup> As studies have indicated, the media play an important role in the news consumers setting of a political agenda.<sup>243</sup> The Canadian media has framed human trafficking as a social problem despite the lack of definitional consensus, theoretical frameworks, or solid empirical research in support of underlying assumptions.<sup>244</sup> Notwithstanding, Canada has established policies in an attempt to address the issue. This moral panic, as created by the media, has led to an exaggerated understanding of the problem, which has caused the adoption of policies that are not specific enough to truly combat the human trafficking problem.

Additionally, international pressures have led to Canadian policies that reflect other countries agendas and are not well-suited for Canada. This was seen with regards to U.S. influence on border security after the September 11<sup>th</sup> attacks. Increased pressure from the U.S. caused Canada to respond by tightening borders and approaching human trafficking from an immigration standpoint. Human trafficking has more elements than

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<sup>241</sup> Gaye Tuchman, *Making News: A Study In the Construction of Reality* (New York: Free Press, 1978).

<sup>242</sup> Deborah Brock, *Making Work, Making Trouble: Prostitution as a 'Social Problem'* (Toronto: University of Toronto Press, 1998), 122

<sup>243</sup> Tuchman, 1978.

<sup>244</sup> Royal Canadian Mounted Police, Research and Evaluation Branch, *Trafficking in Human Beings and Organized Crime: A Literature Review* by Christine Bruckert and Colette Parent, Canada, 2003, Online: <http://www.rcmp-grc.gc.ca/pubs/ccaps-spcca/pdf/traffick-eng.pdf>



just crossing borders. The emphasis on immigration and border security has turned the focus away from protecting and helping victims. It is clear that the pressures from other countries, namely the U.S., have caused Canada to focus on some elements of human trafficking, but not others. This has led Canada to adopt policies that are not comprehensive and do not fully address the many elements of trafficking.

### **Conclusion**

As was evident from the early stages of human trafficking in the late 1800s, Canadian media has always had a role in inflating the issue and causing moral panics. These panics have been expansive and prominent and as a result have served as a focusing event. These focusing events lead to the need for an official policy response. However, the policy responses stem from a problem with little known facts and as a result are usually lacking. It is clear that the Canadian media had a role in shaping public opinion and then as a result, also influencing the policy agenda, with regards to trafficking. While this is not the only reason for the failed policy, the media has largely been a contributing factor. As is evident from conducting the search of the current news articles, the media will continue to remain a contributing factor.

This chapter also discussed the role that international pressures have played on the creation of Canada's anti-trafficking legislation. It is clear that pressures from the U.S. have caused Canada to emphasize aspects of the human trafficking problem that were of great concern to the U.S., but not necessarily to Canada. As a result, Canada put legislation and initiatives in place to help ease the concerns that the U.S. had with

regards to border security and immigration. Focusing on satisfying the U.S.'s policy concerns has prevented Canadian legislation from being targeted specifically for Canada's needs. This has led to legislation that does not properly address the human trafficking issue within Canada's own borders.

Effective policy will require a better understanding of the factors that contribute to the human trafficking problem. Inflated numbers and speculations will continue to cause moral panics. In order to avoid this, better statistics and more studies are needed in Canada. Additionally, international pressures to legislate certain agendas have caused Canadian legislation to be more "American-centric," which does not necessarily work best for Canada's policy agenda. A more specific focus on the trafficking problem from within Canada is necessary to help adequately address the root causes of the problem and how Canada can best address the issue moving forward.

### Chapter Three: Human Trafficking Policy Leadership

Once an issue relegated to the sidelines of international human rights discourse, human trafficking has rapidly become a mainstream political concern. While many nations have begun to act on human trafficking within their own borders, scholars agree that no other nation has stepped up to lead the fight against trafficking on an international scale like the United States.<sup>245</sup> The U.S.' leadership and influence was displayed in propelling Canadian policy change following the events of September 11, 2001 and after the country's demotion to a Tier 2 TIP ranking. The U.S. has positioned itself as the world's most influential leader in anti-trafficking policy.<sup>246</sup>

The primary tool that the United States has used to deter trafficking, punish offenders, and protect victims is the Trafficking Victims Protection Act (TVPA). Passed by Congress and signed into law by President Bill Clinton in 2000, the TVPA's anti-trafficking strategy has three primary purposes, commonly referred to as the "three P's," prevention, protection, and prosecution. This chapter highlights the first "P," prevention, which the U.S. has come to define as supporting other countries in their efforts to prevent trafficking. Recognizing that the U.S. cannot prevent trafficking alone, the TVPA includes provisions to encourage countries of origin, transit, and destination of trafficking victims to adopt standards to prevent its continuation.<sup>247</sup> While the U.S.

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<sup>245</sup> Gallagher, 396; Chuang, "The United States as Global Sheriff," 466; Shoaps, 971.

<sup>246</sup> Anthony DeStefano, *The War on Human Trafficking* (New Brunswick, NJ: Rutgers University Press, 2007), 118.

<sup>247</sup> Anne Gallagher, "Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports," *Human Rights Review* 12 (2011): 381-400.

designed the TVPA in large part as an incentive for other nations,<sup>248</sup> many scholars agree the TVPA and other U.S. efforts to combat trafficking are doing little to help the international community eradicate the root causes of trafficking.<sup>249</sup>

However, despite its widely accepted downfalls,<sup>250</sup> the U.S. still remains at the forefront of the global stage on the issue, and other countries around the world still look to the U.S. for guidance in creating policies and initiatives to combat trafficking.<sup>251</sup> This poses several important substantive and theoretical questions: Why is the U.S., with clear policy challenges of its own, considered the leader in combating human trafficking, and not another country like Canada? What role *should* the U.S. take in addressing trafficking, and how can it overcome the current obstacles in order to effectively address the issue? This chapter explores the leadership on human trafficking policy and why the U.S. has come to lead the international community in addressing the problem. This chapter also suggests what the most appropriate role for the U.S. might actually be in the international efforts to combat trafficking, and how the country can deal with the political barriers that have prevented it from fully addressing the issue at both a national and international level.

There has been extensive scholarship dedicated to examining trafficking within different countries around the world.<sup>252</sup> However, as we have explored, entirely all of the scholarship that analyzes human trafficking policies in the United States and Canada

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<sup>248</sup> Janie Chuang, "The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking," *Michigan Journal International* 27 (2006):449.

<sup>249</sup> Gallagher, 396; Chuang, "The United States as Global Sheriff," 466; Shoaps, 971.

<sup>250</sup> Gallagher, 396.

<sup>251</sup> Sara Birkenthal, "Human Trafficking," *Interdisciplinary Journal of Human Rights Law* 6 (2011): 32.

<sup>252</sup> Stephanie Hepburn and Rita J. Simon, *Human Trafficking Around the World: Hidden In Plain Sight*, New York: Columbia University Press, (2013) 157-171.

concludes that the current laws fall short of their intended purpose to combat trafficking.<sup>253</sup> Despite the general consensus among scholars that these two North American countries have flawed policies, there is little agreement on why that is, and even less scholarship on what affect these flawed policies have on combatting the issue on a global scale, and not just domestically. Despite the lack of research in this area, many scholars still assert that the U.S. has taken the lead in addressing trafficking within its own borders and elsewhere,<sup>254</sup> and as a result is commonly considered to be the global leader on trafficking policy.<sup>255</sup> These same scholars attribute the U.S. leadership role to the country's general hegemonic power.<sup>256</sup> From a review of existing literature, scholars have not conducted an in-depth analysis on *why* the U.S. has been considered the "leader" on human trafficking issues, and not another country that has also taken substantive action on trafficking, such as Canada, or even an Intergovernmental Organization (IGO), like the United Nations (UN). This chapter addresses this gap in existing research by suggesting several explanations for why the U.S. remains at the forefront of the fight against human trafficking and serves as the first sustained consideration of the U.S.' problematic role as a world leader on human trafficking.

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<sup>253</sup> Constance MacIntosh, "Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights," *Intercultural Human Rights Law Review* 1 (2006): 407-435

<sup>254</sup> Birkenthal, 31.

<sup>255</sup> Alese Wooditch, M.A. DuPont-Morales, and Don Hummer, "Traffick Jam: A Policy Review of the United States' Trafficking Victims Protection Act of 2000." *Trends In Organized Crime* 12 (2009): 235-250.

<sup>256</sup> Birkenthal, 31.

## **Leadership on Trafficking**

Besides hinting toward the U.S.' hegemonic power, none of the existing literature explores other possible reasons for why the U.S. has been given this leadership title. In order to address this gap in the research, it is most helpful to view the U.S. in four different and distinct "leadership" roles in the fight on trafficking; initiator, influencer, overseer, and enforcer.

One of the primary reasons that the United States has been accepted as the leader in the fight against trafficking is largely due to its timing on the issue. The U.S. has played the role of "initiator" by establishing the first national anti-trafficking policy and taking an active role on the issue. We have seen this same initiator position play out in other policy areas. The United States played the key role in defining, coordinating and strengthening policy surrounding the "War on Drugs," which as a result, has been prosecuted internationally over the course of the last three decades.<sup>257</sup> In the war on drugs, the U.S. led the charge by first enacting policy around a growing global issue, and then encouraging other nations to adhere to those policies, and using force to act when countries did not adopt a similar policy stance.<sup>258</sup> We are seeing the same course of events play out in relation to trafficking, making the "initiator" position a critical leadership role. Because the U.S. initiated trafficking policy other countries look to the U.S. for guidance in developing similar frameworks. This puts the U.S. in a unique position that allows the U.S. to set a certain precedent that other countries will adhere

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<sup>257</sup> Patrice McSherry, "Preserving Hegemony: National Security Doctrine in the Post Cold-War Era," *NACLA Report On The Americas* 34, 3 (2000): 26-34.

<sup>258</sup> Jeremy Kuzmarov, "Internationalizing American Criminal Justice: The War on Drugs and its Pitfalls," *Diplomatic History* 36, 5 (2012): 947-949.

to. As we will see, the way that the U.S. frames its policy can have lasting impacts on the way other countries frame their policies.

The U.S. has also exercised considerable influence over other countries in developing anti-trafficking policy. International pressure is pervasive in foreign affairs. “From military force to the subtle raising of a diplomatic eyebrow, from occupation to conditional aid, international relations is all about how states attempt to influence one another’s policies in ways they believe will contribute to their security and welfare.”<sup>259</sup> As nations have become increasingly interdependent, the range of issues on which they have attempted to exert influence has expanded. The integration of markets and the interconnectedness of societies have created new reasons for states to try to influence the conditions in and policies of their neighbors.<sup>260</sup>

Countries around the world have begun to establish their own domestic anti-trafficking laws; however the U.S. policy goes further than most countries. The TVPA reaches beyond U.S. borders to influence anti-trafficking policy abroad. The U.S. not only puts pressure on other countries to create anti-trafficking policies, but influences them to use the U.S. policy model and definition. This is something that no other individual government has built into their domestic law, and uniquely positions the U.S. as an “influencer” of international anti-trafficking policy.

The U.S. effectively influences other nation’s anti-trafficking policy using several tools. One method the U.S. uses is what Joseph Nye calls, “soft power,” or “soft

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<sup>259</sup> Judith Kelley and Beth Simmons, “From Scrutiny to Shame: Social Pressure in US Anti- Human Trafficking Policy.” Presented at the Georgetown University International Theory and Research Seminar, Washington, DC, February 4, 2013.

<sup>260</sup> Beth Simmons, Frank Dobbin, and Geoffrey Garrett, *The Global Diffusion of Markets and Democracy*, (Cambridge: Cambridge University Press, 2008).

coercion,” which is the application of various forms of scrutiny and social pressure.<sup>261</sup> Soft coercion tends to be more effective when imposed by a socially important actor, such as the United States government.<sup>262</sup> Scholars of social impact theory emphasize the importance to the target of the actor or group of actors engaging in pressure, the nature and extent of the target’s exposure to the group, and, to some extent, the size of the group attempting to enforce conformity.<sup>263</sup> Scholars conclude that it is common in international relations for social pressures to be exercised by highly respected or “hegemonic” state actors, like the United States.<sup>264</sup> Some scholars argue that such pressures matter because states care about their international reputation, which in turn facilitates their ability to cooperate with other states.<sup>265</sup> Others point out simply that government elites seek social acceptance among the world’s state leaders.<sup>266</sup> As we will see, in its role as “overseer,” the U.S. has used soft coercion through the annual *Trafficking in Persons (TIP) Reports* to influence other nations that the U.S. policy and definition is “a model to be emulated.”<sup>267</sup>

The U.S. also acts as an “enforcer” on trafficking policy through the use of sanctions. The TVPA authorizes the president to deny non-humanitarian, non-trade related assistance to any country that consistently ranks poorly on the U.S. Trafficking in

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<sup>261</sup> Joseph Nye, *The Powers to Lead* (New York: Oxford University Press, 2008), 29-32.

<sup>262</sup> Kelley and Simmons, “From Scrutiny to Shame: Social Pressure in US Anti- Human Trafficking Policy,” 6.

<sup>263</sup> Bibb Latané, “The Psychology of Social Impact,” *American Psychologist* 36 (1981): 343-356.

<sup>264</sup> Alastair Johnston, “Treating International Institutions as Social Environments,” *International Studies Quarterly* 45, 4 (2001): 487-516.

<sup>265</sup> Andrew T Guzman, “A Compliance-Based Theory of International Law,” *California Law Review* 90, 6 (2002): 18-23.

<sup>266</sup> Johnston, 500.

<sup>267</sup> Cynthia H. Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives*. (Berkeley, CA: University of California Press, 2000).



Persons reports and is not bringing itself into compliance with the U.S. defined minimum standards. The sanctions regime allows the U.S. to enforce its own policy expectations on other nations.

These four categories (initiator, influencer, overseer, and enforcer) encompass the different roles that the U.S. has taken in leading the global fight against trafficking and exploring them separately will allow for a better understanding of why the U.S. is situated as the world's leader on human trafficking and if it should continue to play these various leadership roles.

### **Examination of U.S. Leadership**

#### *U.S. as Initiator*

The U.S. government was at the front line when trafficking reemerged as an issue of global concern in the mid-1990s.<sup>268</sup> At that point, international and domestic U.S. attention was focused squarely on cross-border trafficking for sexual exploitation, particularly of women and girls from central and Eastern Europe and Southeast Asia to wealthy destination countries of Western Europe and North America.<sup>269</sup> These border-security concerns and the potential involvement of organized crime gave the U.S. the political will to address trafficking that may not have existed if it had only been framed as a human rights issue.<sup>270</sup> Major media outlets began to report on the emerging issue, and the U.S. became more eager to address the problem. President Bill Clinton issued a

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<sup>268</sup> Alison Brysk and Austin Choi-Fitzpatrick, eds, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*, Philadelphia: University of Pennsylvania Press, (2012) 175.

<sup>269</sup> Ibid.

<sup>270</sup> Chuang, "Rescuing Trafficking from Ideological Capture," 1663.

Presidential Directive in March 1998 outlining a comprehensive and integrated policy framework to guide the United States' anti-trafficking initiatives both at home and abroad.<sup>271</sup> The directive was organized around the aforementioned “three P’s,” prevention, protection, and prosecution. To effectuate these goals internationally, the Clinton Administration positioned itself at the forefront of global efforts to combat trafficking. It established bilateral working relationships and anti-trafficking initiatives with numerous countries,<sup>272</sup> and spearheaded drafting of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol.

In January 1999, the United States introduced the first draft of the UN’s trafficking specific protocol. In 2000 the UN Member States finalized the Palermo Protocol, the first international treaty that focused on various forms of trafficking. The Protocol reflects a fragile international consensus, born from hard-wrought compromise on complex and highly contested issues over legal definitions and frameworks for addressing this transnational problem, including addressing the issue from a criminal justice standpoint or a human rights perspective.<sup>273</sup> The drafting sessions at the UN, known as the Vienna debates, quickly became a platform for heated debates over global anti-trafficking policy and were an indication that this issue would become increasingly political. Many of these concerns were identical to the concerns that played out earlier

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<sup>271</sup> Chuang, “The United States as Global Sheriff,” 449.

<sup>272</sup> Frank Loy, prepared remarks at hearings before the before the *Senate Foreign Relations Committee Subcommittee on Near Eastern and South Asian Affairs*, concerning international trafficking in women and children, 106th Cong., 2<sup>nd</sup> session.

<sup>273</sup> Chuang, “The United States as Global Sheriff,” 438.

on a national level in the U.S. debates during the drafting and passage of the Trafficking Victims Protection Act (TVPA).

UN member states argued over whether the international legal definition for trafficking should include “voluntary” prostitution, and how to balance concerns over irregular migration and criminal activity against obligations to protect the rights of trafficked persons.<sup>274</sup> These discussions were rooted in conflicting views about gender roles, sexuality, and the proper role of criminal law in responding to societal harms.<sup>275</sup> The negotiations in Vienna were quickly overtaken by factions battling over whether the trafficking definition should encompass voluntary prostitution. One side of the debate, the neo-abolitionists, included an alliance of feminists, neoconservatives and evangelical Christians that believed prostitution should be abolished and criminalized on an international scale and were using sex trafficking as a vehicle for that message.<sup>276</sup> The opposing view, non-abolitionists, disagreed with the neo-abolitionists agenda for a wide range of political, moral or pragmatic reasons.<sup>277</sup> After much political debate and interest group intervention, the neo-abolitionist groups were unsuccessful in their efforts to criminalize prostitution as a matter of international law.<sup>278</sup> Representative of the priority placed on fostering international cooperation to combat this growing problem, the Member States ultimately agreed to leave resolution of the more contested issues, such as the sex trafficking definition, to individual nation-states discretion. Additionally, while the Protocol was adopted in 2000, it did not enter into

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<sup>274</sup> Birkenthal, 31.

<sup>275</sup> Chuang, “Rescuing Trafficking from Ideological Capture,” 1664.

<sup>276</sup> Ibid, 1664.

<sup>277</sup> Ibid, 1672.

<sup>278</sup> Ibid, 1677.

effect until December 2003, giving the U.S. more time to make its TVPA policy the law of the land. In its role as “initiator,” the U.S. had already played an integral role in creating the first draft of the Palermo Protocol. Additionally, the U.S. enacted domestic policy before the rest of the international community, further legitimizing its role as initiator.

Several months before the UN acted on the Palermo Protocol, the United States stepped forward to pass its own comprehensive anti-trafficking legislation. As mentioned above, the U.S. set the precedent for the difficult topics that arose around the trafficking debate. After much political back-and-forth, the United States Congress passed the TVPA, which was signed into law on October 11, 2000. Unlike the UN the United States did not leave the contested issues up to the different nations. The U.S. established its own definition of sex-trafficking and its own set of “minimum standards” that it would require other nations to adhere to. The U.S. legislation was the first of its kind on both a national and international scale. The TVPA, even today, is one of the most comprehensive pieces of anti-trafficking legislation worldwide. Creating the first national policy to address trafficking was just one way that the U.S. put pressure on other countries to follow its lead.

### *U.S. Influence*

Throughout its history the United States has not been shy about behaving like a moral leader, and using its clout to set an agenda for the rest of the world.<sup>279</sup> The concept of “humanitarian imperialism,” as developed by Noam Chomsky, can be applied

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<sup>279</sup> DeStefano, 118.

directly to human trafficking. Humanitarian imperialism is a form of humanitarian intervention that emerged post-Cold War, in which developed countries export their moral values and forms of governance on less developed countries.<sup>280</sup> As Andrew Ma states, the U.S. has had a “notable presence on the human rights front, and has been given the autonomy to run [its] characteristically liberal government because of this legitimacy.”<sup>281</sup> The U.S. built its moral leadership role directly into its domestic anti-trafficking legislation, and by doing so effectively influenced other countries to focus on a similar policy structure. This is most notable in the TVPA’s emphasis on sex trafficking.

The UN trafficking protocol was the first international instrument to define trafficking. The Protocol established a global definition in order to avoid competing definitions between countries. Under the Protocol, Article 3 defines trafficking as:

“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>282</sup>

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<sup>280</sup> Noam Chomsky, “Humanitarian Imperialism: The New Doctrine of Imperial Right,” *Monthly Review: An Independent Socialist Magazine* 60, 4 (2008): 22-50.

<sup>281</sup> Andrew Ma, “Indigenous Rights in Western Countries,” *Harvard International Review* 35, 3 (2014): 44-47.

<sup>282</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. 2000. Online: [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)

As of August 2014, 161 nations had ratified the UN Protocol.<sup>283</sup> With the ratification of the Protocol, most countries agree to adopt the broader definition of human trafficking put forth by the UN. While the United States did ratify the UN Protocol in 2005, it never adopted the UN definition of trafficking. Instead, the U.S. applied its own definition as agreed upon in the TVPA and has imposed that definition and model on other countries through the use of coercion and oversight.

As previously mentioned, neo-abolitionist and non-abolitionist factions played a big role in shaping the sex trafficking debates during the drafting of the Palermo Protocol. While the neo-abolitionist groups, which were largely U.S.-based, were unsuccessful in criminalizing prostitution through the UN, they were more successful on U.S. soil. The neo-abolitionists worked closely with Representative Christopher Smith (R-NJ) to sponsor an anti-trafficking bill that was later enacted as the TVPA. Consistent with the neo-abolitionist preferences, Representative Smith's initial bill focused on the trafficking of women and children into the sex industry.<sup>284</sup> A competing bill favored by the Clinton Administration incorporated a broader definition of trafficking that addressed trafficking of men, women and children into both sex and non-sex sectors, more consistent with the UN Protocol.<sup>285</sup> The final version of Smith's bill did adopt a slightly more expanded definition of trafficking, but still with a special emphasis on sex-trafficking. Unlike the UN Protocol, the TVPA included a separate definition of sex

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<sup>283</sup> "United Nations Treaty Collection," United Nations, Online:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12a&chapter=18&lang=en)

<sup>284</sup> Freedom from Sexual Trafficking Act of 1999, H.R. 1356, 106th Cong. (1999). Online:

<http://www.gpo.gov/fdsys/pkg/BILLS-106hr1356ih/pdf/BILLS-106hr1356ih.pdf>

<sup>285</sup> The Comprehensive Anti-trafficking in Persons Act of 1999, H.R. 3154, 106<sup>th</sup> Cong. (1999), online:

<http://www.gpo.gov/fdsys/pkg/BILLS-106hr3154ih/pdf/BILLS-106hr3154ih.pdf>

trafficking, as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."<sup>286</sup> This definition excludes the "coercion requirement" contained in the Protocol trafficking definition and thus would encompass consensual migrant prostitution. The United States included "commercial sexual exploitation," in its language, which was purposefully left out of the Palermo Protocol so that the trafficking definition could be applied more universally without hinging upon how state parties addressed prostitution domestically.<sup>287</sup> The inclusion of "sex-trafficking" in the TVPA definition was a symbolic victory for the neo-abolitionists.<sup>288</sup> As one journalist wrote, the separate definition of sex trafficking "pleased conservative feminists but more significantly enabled the broader social agenda of the Christian right. If trafficking is prostitution per se, then evangelicals can fight all prostitution, throughout the world, in the name of trafficking."<sup>289</sup> By including this separate definition in its domestic legislation, the United States is able to influence other nations to adhere to its definition of trafficking, rather than the international standard for trafficking.

While the TVPA includes "sex-trafficking" as a defined term, it limits the application of its operational terms to "severe forms of trafficking in persons," such as "trafficking involving force, fraud, or coercion in the inducement of a commercial sex act

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<sup>286</sup> Chuang, "The United States as Global Sheriff," 450.

<sup>287</sup> Shoaps, 964.

<sup>288</sup> Chuang, "Rescuing Trafficking from Ideological Capture," 1677.

<sup>289</sup> Jennifer Block, "Sex Trafficking: Why the Faith Trade Is Interested in the Sex Trade." *Conscience*, 2004. Accessed July 10, 2014.

[http://www.catholicsforchoice.org/conscience/archives/c2004sum\\_sextrafficking.asp](http://www.catholicsforchoice.org/conscience/archives/c2004sum_sextrafficking.asp).

or other end purpose of the trafficking."<sup>290</sup> The TVPA enhances the tools available to prosecute traffickers by explicitly criminalizing trafficking and certain trafficking-related acts, such as prostitution. Unlike the TVPA, international law does not require nations to criminalize prostitution. In addition, the U.S. transforms some of the victim protections that were merely aspirational in the Palermo Protocol into hard obligations under the TVPA. These competing definitions between the U.S. and the UN deter cooperation among nations that the Palermo Protocol initially attempted to foster. Even in situations where differences between the TVPA standards and international law do not have a great practical impact, the very fact of such differences serves to underline the reality that states are being judged, not with reference to the international rules that they developed and freely accepted, but against criteria established unilaterally by the U.S. government.<sup>291</sup>

The UN protocol included certain mandatory provisions that it required signatory countries to adopt, however some provisions were not mandatory and had weaker language, such as "in appropriate cases," or "to the extent possible."<sup>292</sup> The American legislation was created largely to encourage international anti-trafficking legislation, and as a result, included stricter minimum standards that it imposed on other countries. Section 108 of the TVPA, outlined its minimum standards and applied specific terms to international countries of origin, transit, and destination with a "significant number of

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<sup>290</sup> Ibid.

<sup>291</sup> Gallagher, 382.

<sup>292</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. 2000.



victims of severe forms of trafficking.”<sup>293</sup> The TVPA’s minimum standards had three key expectations: countries should prohibit severe forms of trafficking; such acts should be appropriately punished under the law; and countries should make serious, sustained efforts to eliminate severe forms of trafficking.<sup>294</sup> Section 108 also listed a number of indicators for the U.S. government to use when determining whether or not a country was doing enough to eliminate trafficking. Among the criteria were vigorous prosecution of offenders, extradition of suspects when appropriate, protection of victims, education of the public and potential victims, cooperation with international efforts to stop trafficking, and prosecution of public officials who participate or facilitate trafficking.<sup>295</sup>

To further its influence, under the TVPA the U.S. created the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons, made up of multiple U.S. cabinet officials. The Interagency Task Force was created to provide assistance to foreign countries to help meet the minimum standards set out in the TVPA.<sup>296</sup> This assistance included the drafting of laws to prohibit and punish acts of trafficking; the investigation and prosecution of traffickers; the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and the expansion of exchange programs and international visitor programs for governmental and non-governmental personnel to combat trafficking.<sup>297</sup> The Task Force was required to give various House and Senate oversight committees information about

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<sup>293</sup> DeStefano, 118.

<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid.

<sup>297</sup> 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,” *Utah Law Review* 107 (2002): 107-176.

ongoing international trafficking programs and initiatives. The Task Force was yet another way in which the U.S. extended its influence on the larger international community. The U.S. used international pressures to impose its own standards and definitions on other countries, different from what those countries had helped develop and knowingly signed onto when ratifying the UN's Palermo Protocol. In creating and passing the TVPA, the U.S. government used its bully pulpit to influence other nations' efforts on trafficking and continues to monitor these efforts through the annual *Trafficking in Persons Reports*.

#### *U.S. as Overseer*

Congressional sponsors of the TVPA believed that the success of the efforts to prevent trafficking into the United States depended heavily on the actions of other countries. Accordingly, the TVPA established a system whereby the efforts of other countries to address trafficking were to be examined and assessed, effectively positioning the U.S. as an "overseer" of international trafficking policy, a mechanism that no other country or IGO had put in place. Section 110 of the TVPA called for the creation of a special U.S. State Department office, known as the Office to Monitor and Combat Trafficking, commonly referred to as the Trafficking in Persons (TIP) Office. The TIP Office was required to issue annual reports describing the nature and extent of severe forms of trafficking in persons and assessing governmental efforts across the world to combat such trafficking against the criteria established by the U.S. law, not the UN Protocol. The TIP Reports, did not emerge in a legal or policy vacuum but form part

of an established tradition of U.S. Congressional oversight of the actions of other countries with respect to issues considered to be of particular significance.<sup>298</sup> The U.S. has previously issued similar reports in the “War on Drugs” with the Narcotics Control Reports (NCR).<sup>299</sup> Like the NCR’s these TIP reports promulgate the United States’ extraterritorial reach, and further solidify the country’s role as a “global sheriff” on trafficking policy.<sup>300</sup>

As previously mentioned, the TVPA established minimum standards for the elimination of trafficking, as well as criteria for evaluating the performance of other countries efforts. The State Department used the compliance levels of the TVPA to create a system of rankings based on three tiers. Tier 1 countries are in full compliance with the U.S. minimum standards, Tier 2 countries are making efforts, but are not fully compliant, and Tier 3 countries are failing on both accounts. Subsequent TVPA amendments added an additional category, Tier 2 Watch List, which applies to countries at the lower edge of Tier 2 classification. The watch list rank was meant to be a signal, reminding countries that they were in danger of slipping down to Tier 3 if they did not show progress in meeting the U.S. minimum standards.<sup>301</sup> The U.S. determined that after two years on the watch list a country would be automatically downgraded to a Tier 3.

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<sup>298</sup> Chuang, “The United States as Global Sheriff,” 438.

<sup>299</sup> Gallagher, 383.

<sup>300</sup> Chuang, “The United States as Global Sheriff,” 439.

<sup>301</sup> U.S. Department of State. *Trafficking in Persons Report 2004*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2004/index.htm>

In July 2001 the first ever TIP report was released.<sup>302</sup> Twenty-three nations were listed in Tier 3.<sup>303</sup> The report was controversial because more than half a dozen of the Tier 3 countries were U.S. allies and protested their characterization. South Korea, Israel and Saudi Arabia complained publicly about their poor ranking.<sup>304</sup> Yet, despite the controversial feedback, the report's existence showed that the United States was committed to overseeing trafficking policy on a global scale and making its leadership position known.

By the second TIP Report it was evident that these reports were serving their intended purpose of influencing international action. In the 2002 report, South Korea moved from a Tier 3 to a Tier 1 ranking.<sup>305</sup> Over the course of the year, South Korea set up a trafficking task force, coordinated more than 1,000 prosecutions of traffickers, took active steps to protect victims and carried out a wide public education campaign.<sup>306</sup> The significant elevation in South Korea's status showed that the U.S. TIP report had been an incentive for action, and U.S. pressure was working to mobilize international efforts.

Although the TIP Reports did spur governments to take action, some experts assert that those actions were hastily conceived and poorly executed in order to satisfy the U.S. and prevent a poor tier ranking.<sup>307</sup> Critics were also concerned that foreign

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<sup>302</sup> U.S. Department of State. *Trafficking in Persons Report 2001*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2001/index.htm>

<sup>303</sup> Ibid.

<sup>304</sup> DeStefano, 120.

<sup>305</sup> U.S. Department of State. *Trafficking in Persons Report 2002*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2002/index.htm>

<sup>306</sup> DeStefano, 120.

<sup>307</sup> Jyoti Sanghera, remarks Symposium on Human Trafficking, Council on Foreign Relations, New York, May 3, 2006, transcript by Council on Foreign Relations. Online: <http://www.cfr.org/human-trafficking/symposium-human-trafficking-session-1-human-trafficking-overview-rush-transcript-federal-news-service-inc/p10653>

governments, in response to the tier system, were focusing on law enforcement and the criminalization of trafficking, especially sex trafficking, rather than the needs of victims.<sup>308</sup> Some countries, such as Indonesia, Pakistan and Malaysia indicated that the U.S. tier system forces them to initiate programs that they cannot afford or implement.<sup>309</sup> Additionally, some countries who want to meet the U.S. standards lack the political will or legislative mechanisms to do so.<sup>310</sup> The very existence of the TIP Reports continues to anger those who object to the United States appointing itself overseer and arbiter of a complex international issue that remains both contested and controversial.<sup>311</sup> However, these reports have served an important carrot-and-stick role in U.S. foreign policy on trafficking: positive reinforcement for countries whose anti-trafficking efforts met U.S. standards and a source of embarrassment for those who did not measure up. While the U.S. used soft power to influence other nations through the TIP Reports, it also imposed hard power through the use of economic sanctions and financial assistance.

#### *U.S. as Enforcer*

The TIP reports do more than just expose any violations or successes in combating trafficking, these reports put pressure on the countries to act for aid-related

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<sup>308</sup> Ibid.

<sup>309</sup> DeStefano, 126.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

reasons. The annual reports are used as a basis for determining whether, and to what extent, U.S. sanctions are to be imposed or assistance provided.<sup>312</sup>

Under the TVPA and its various amendments, the president is authorized to deny the provision of non-humanitarian, non-trade related assistance to any Tier 3 country, which is, any country that does not comply with the U.S. minimum standards and is not making significant efforts to bring itself into compliance. After receiving a Tier 3 ranking, that country has a 90-day grace period to bring itself into compliance in order to avoid sanctions. In addition to sanctions, Tier 3 countries will risk U.S. opposition to their seeking and obtaining funds from multilateral financial institutions, including the World Bank and the International Monetary Fund.<sup>313</sup> This is a position of power that is unique to the U.S. because of the country's involvement and high voting power in each of these institutions which no other country comes close to matching. Tier 3 countries are also forbidden from receiving funding for government employees' participation in education and cultural exchange programs.<sup>314</sup>

The initial creation of the sanctions regime reveals how much political ideology shaped the formation of the U.S.' role and where some of the most significant problems in the international trafficking policy framework originally stem from. The United States' role in global anti-trafficking efforts provoked substantial debate between the Clinton Administration and the TVPA's congressional sponsors. While these debates often focused on important strategic questions regarding the best use of U.S. resources and

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<sup>312</sup> Gallagher, 383.

<sup>313</sup> Ibid.

<sup>314</sup> Shoaps, 962.

political capital, they also raised deeper and more difficult questions over how best to characterize the "massive and complex global problem" of trafficking and to devise appropriate strategies to address it.<sup>315</sup>

As previously mentioned, President Clinton initiated international U.S. action on human trafficking policy. The Clinton Administration was committed to developing an international cooperation framework in Vienna through the Palermo Protocol. However, the task of drafting U.S. domestic anti-trafficking legislation fell to the Republican-controlled Congress, which had a different view of the United States' role in global anti-trafficking efforts. Congress sought to induce international compliance with the U.S. minimum standards by threat of unilateral sanctions. By giving U.S.-defined norms global reach, the sanctions regime created a ready means for the U.S. government to reinvent and unilaterally define a set of anti-trafficking standards with international purchase.

The inclusion of a sanctions regime in the TVPA flew in the face of the Clinton Administration's newly revised sanctions policy, which limited the use of sanctions in recognition of the fact that the United States had been using sanctions with increasing frequency, especially during the 1990s, but with little success.<sup>316</sup> The newly revised sanctions policy required that economic sanctions be used only as a last resort, after aggressive pursuit of all other available diplomatic options. The policy also stated that multilateral support for sanctions should be pursued before resorting to unilateral

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<sup>315</sup> Hongju Koh, prepared remarks, *Trafficking of Women and Children in the International Sex Trade: Hearing* before the Subcommittee on International Operations and Human Rights of the House Committee on International Relations, 106th Cong. 60-72 (1999).

<sup>316</sup> Jeffrey Schott, prepared remarks, *U.S. Economic Sanctions: Good Intentions, Bad Execution: Hearing Before the House Committee on International Relations*, 105th Cong. (1998).

measures.<sup>317</sup> The Clinton Administration believed that using unilateral sanctions to combat trafficking would be ineffective and "profoundly counterproductive."<sup>318</sup> The Administration thought that a sanctions strategy would compromise U.S. efforts to seek international agreement on the Palermo Protocol and undermine the collaborative ethic the Protocol was intended to foster in at least two critical respects. First, sanctions would negatively impact international cooperation because governments would downplay the seriousness of their trafficking problems in order to avoid the direct or political consequences of sanctions.<sup>319</sup> As Bill Yeomans, Chief of Staff at the Department of Justice Civil Rights Division explained, "As soon as we impose sanctions or try to make an international pariah out of one of these [offender] countries, cooperation tends to shut down."<sup>320</sup> Second, the threat of sanctions would undermine international cooperation because governments and local populations would view the important work of local NGOs to raise the profile of trafficking as a threat. When the U.S. first developed the TVPA and the sanctions regime, countries' efforts to address trafficking were still in the early stages and fragile, and the Clinton Administration believed that instead of sanctioning noncompliance with U.S. norms, "the United States should assist and encourage countries to expand their own anti-trafficking programs."<sup>321</sup> While Congress

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<sup>317</sup> Stuart E. Eizenstat, prepared remarks, *Sanctions and U.S. Policy Interests: Hearing Before the House International Relations Committee*, 105th Cong. (1998).

<sup>318</sup> Frank Loy, prepared remarks at hearings before the before the *Senate Foreign Relations Committee Subcommittee on Near Eastern and South Asian Affairs*, concerning international trafficking in women and children, 106th Cong., 2<sup>nd</sup> session.

<sup>319</sup> Bill Yeoman, prepared remarks, *Trafficking of Women and Children: Hearing Before the Senate Foreign Relations Committee Subcommittee on Near Eastern and South Asian Affairs*, 106th Cong. (2000)

<sup>320</sup> Ibid.

<sup>321</sup> Frank Loy, prepared remarks at hearings before the before the *Senate Foreign Relations Committee Subcommittee on Near Eastern and South Asian Affairs*, concerning international trafficking in women and children, 106th Cong., 2<sup>nd</sup> session.



and the Administration had differing views about the U.S.' role in enforcing international trafficking policy, ultimately Congress succeeded in passing the TVPA with the sanctions model included.

Disputes over the sanctions regime also exposed deep differences within the U.S. government over how best to conceptualize the problem of trafficking. These differences mirrored the tensions in the Vienna debates between the criminal justice and human rights approaches to trafficking and were echoed in arguments that then-Assistant Secretary of State for Democracy, Human Rights, and Labor (DHRL), Harold Koh, made against the TVPA's proposed "new offices, new reporting, and new sanctions mechanisms."<sup>322</sup> Koh fought to keep the trafficking issue within the mandate of the human rights bureau, arguing that trafficking is a complex transnational human rights issue, as opposed to a "faceless criminal problem, economic problem, or immigration problem."<sup>323</sup> Koh argued, that the U.S. government should "do everything in its power to break the vicious cycle of human rights violations" that perpetuates trafficking.<sup>324</sup> He believed that rather than creating a new bureaucracy, the U.S. government should focus on consolidating and strengthening its existing human rights response mechanisms. He proposed that the DHRL could use its global mandate, its already "well-established and widely-respected" Department of State Human Rights Reports (which were already reporting on trafficking), and the diplomatic tools already at its disposal to encourage

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<sup>322</sup> Hongju Koh, prepared remarks, *Trafficking of Women and Children in the International Sex Trade: Hearing* before the Subcommittee on International Operations and Human Rights of the House Committee on International Relations, 106th Cong. 60-72 (1999).

<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

other countries to step up the fight against trafficking.<sup>325</sup> Koh's view was ultimately overruled, and as previously mentioned; the U.S. government promptly established its new offices, new reporting, and new sanctions to combat trafficking.

Under the sanctions regime of the TVPA, countries listed in the Tier 3 category in the 2003 TIP Report were the first to risk being denied certain non-humanitarian aid in fiscal year 2004. Thus the 2003 report was the Administration's source of information when deciding which nations might lose U.S. aid. Fifteen countries had ranked as a Tier 3 in the 2003 report and all qualified for U.S.-imposed sanctions.<sup>326</sup> However, the U.S. government gave several last minute reprieves that raised questions about whether Washington was, again, playing politics. On September 9, 2003, about three months after the TIP Reports' release, President George W. Bush released a memorandum justifying sanctions against certain Tier 3 nations, and rationalizing his decisions to avoid sanctions against other nations.<sup>327</sup> According to the memo, five nations would not receive U.S. non-humanitarian funding; Burma, Cuba, Liberia, North Korea and Sudan. However, the other ten Tier 3 countries would continue to qualify for aid because those countries had made "last minute adjustments in their trafficking policies."<sup>328</sup> Of the five sanctioned countries, Cuba, North Korea and Burma were not receiving any direct U.S. aid anyway, so the sanctions did not affect them. The U.S. allowed the flow of money to

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<sup>325</sup> Ibid.

<sup>326</sup> U.S. Department of State. *Trafficking in Persons Report 2003*. Online: <http://www.state.gov/j/tip/rls/tiprpt/2003/index.htm>

<sup>327</sup> U.S. Department of State, "Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons," September 9, 2003, Online: <http://2001-2009.state.gov/g/tip/rls/rpt/25017.htm>

<sup>328</sup> Ibid.

NGOs to continue in those countries.<sup>329</sup> In the case of Sudan and Liberia, the U.S. concerns stemmed from ongoing civil wars in both countries, and less about their anti-trafficking policies and practices. However, peace negotiations in both countries gave the U.S. grounds for optimism that responsible governments might emerge.<sup>330</sup> While sanctions would prevent both countries from participating in U.S.-funded educational and cultural exchange programs, the U.S. would still support programs intended to implement effective governments in these countries.<sup>331</sup>

Some scholars assert that the decision to issue sanctions is purely political.<sup>332</sup> These same scholars have noted that sanctions are rarely imposed,<sup>333</sup> stating that “Washington would always find a way to keep Tier 3 nations from suffering aid cuts, as long as the countries were not otherwise considered outlaw nations.”<sup>334</sup> Shoaps highlights that between 2003 and 2009, 45 countries were categorized as Tier 3 nations, and 12 were subject to sanctions.<sup>335</sup> Eight of these nations were already subject to U.S. sanctions, so the TVPA-imposed sanctions had no monetary effect. Nineteen nations took steps following their designation as Tier 3 to avoid sanctions. While the remaining 14 countries received U.S. waivers of sanctions on the basis of “U.S. national interests.”<sup>336</sup> This discretionary basis for imposing sanctions further emphasizes the

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<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

<sup>332</sup> Chuang, “The United States as Global Sheriff,” 481.

<sup>333</sup> Chuang, “The United States as Global Sheriff,” 481; DeStefano, 125; Shoaps, 963.

<sup>334</sup> DeStefano, 125.

<sup>335</sup> Shoaps, 963.

<sup>336</sup> Ibid.

politically charged nature of the issue and the United States' power in enforcing its own trafficking policies worldwide.

In addition to imposing sanctions, the U.S. spends more money to help combat trafficking than any other country in the world.<sup>337</sup> Initially, the TVPA contained a three-year funding authorization amounting to slightly less than 60 million dollars.<sup>338</sup> In June 2003, the reauthorization bill approved the appropriation of 106 million dollars in 2004 and again in 2005. The bulk of that money, 61 million, was earmarked for overseas assistance to help foreign states meet the minimum standards monitored by the TIP reports. That number has increased. In fiscal year 2009, five United States government agencies, the State Department, Department of Labor, Department of Justice, Health and Human Services, and the United States Agency for International Development collectively allocated over 83 million dollars to international anti-trafficking programs.<sup>339</sup> Each department has a great deal of discretion in choosing which NGO programs receive funding, and most requests for funding are denied. The United States funding of international anti-trafficking programs allows federal agencies to pick and choose which programs receive funding.<sup>340</sup> Selective funding allows the U.S. to shape the substance of international NGO policies to align with United States policy. NGOs must adopt policies that conform to those of the United States in order to receive federal aid. This was an issue that came to a head in the 2003 reauthorization of the TVPA under President Bush.

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<sup>337</sup> Ibid.

<sup>338</sup> DeStefano, 102.

<sup>339</sup> Joseph L. Dunne, "Hijackers: How Efforts to Redefine the International Definition of Human Trafficking Threatens its Purpose," *Willamette Law Review* 48, 3 (2012): 403-426.

<sup>340</sup> Ibid.

The end of the Clinton Administration provided an opportunity for neo-abolitionist groups to step in and reassert themselves in U.S. anti-trafficking policy. The neo-abolitionist lobby found a powerful ally in President Bush, who helped champion the anti-prostitution cause at home and abroad.<sup>341</sup> The Bush Administration took on anti-trafficking as a key humanitarian initiative. In National Security Presidential Directive 22 (NSPD-22), issued on December 16, 2002, President Bush made the neo-abolitionist position official U.S. policy. NSPD-22 states that U.S. anti-trafficking policy

“is based on an abolitionist approach to trafficking in persons, and our efforts must involve a comprehensive attack on such trafficking, which is a modern day form of slavery. In this regard, the United States Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The United States Government's position is that these activities should not be regulated as a legitimate form of work for any human being.”<sup>342</sup>

In the service of the neo-abolitionist cause, law and policy initiatives during the Bush Administration waged war on prostitution at home and abroad. The U.S. government's aim to eradicate prostitution writ large under the banner of anti-trafficking measures soon manifested in explicit laws and regulations that were introduced and adopted in reauthorizations of the TVPA.

The 2003 Trafficking Victims Reauthorization Act (TVPRA) made an important change that illustrated how political trafficking policy had become, and further solidified the U.S. as a power of enforcement on a global scale. According to Section 7 of the new law, unless an organization agreed formally in a grant application or grant agreement,

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<sup>341</sup> Chuang 1677

<sup>342</sup> National Security Presidential Directive 22, December 16, 2002, Online: <http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf>

that it refused to “promote, support or advocate” the legalization or practice of prostitution, it would receive no funding for anti-trafficking work.<sup>343</sup> The intent of the provision, as explained in the House Committee on International Relations report, was to apply the restriction to organizations and NGOs working with prostitutes under the control of traffickers.<sup>344</sup> The U.S. began advancing the position, both domestically and internationally, that prostitution was not a legitimate form of employment for any human being. By early 2005, the Bush Administration began requiring U.S. groups seeking federal funding for their overseas AIDS programs to sign a pledge opposing prostitution.<sup>345</sup> The Administration defended that Congress could impose restrictions designed to advance the overall policy goals of the United States, particularly in connection with attempts to fight the HIV/AIDS pandemic. Since Congress had concluded that prostitution and sex trafficking are “causes of and factors in the spread of the HIV/AIDS epidemic,” eradication of those practices was necessary to fight those diseases.<sup>346</sup> The U.S. imposed its stance on prostitution (under the veil of sex trafficking) on every NGO that applied for U.S. funding, further enforcing its own policies. It was not until 2013 that this anti-prostitution pledge was overturned by the Supreme Court in *Agency for International Development v. Alliance for Open Society International (USAID v. AOSI)*. In this case, the Supreme Court found that the pledge violated the First Amendment, as the government may not leverage funding to regulate grant recipient’s

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<sup>343</sup> *Trafficking Victims Protection Reauthorization Act of 2003*, HR 2620, 108th Cong. Online: <http://www.gpo.gov/fdsys/pkg/BILLS-108hr2620enr/pdf/BILLS-108hr2620enr.pdf>

<sup>344</sup> DeStefano, 107.

<sup>345</sup> Ibid.

<sup>346</sup> Ibid.

speech outside of the funded program.<sup>347</sup> It is clear that the U.S. neo-abolitionist stance had a significant impact in the development of international trafficking policy, especially under President Bush. The standards applied in the sanctions regime and the qualifications for federal funding motivated other countries to take the U.S.' lead and address the problem of trafficking with a particular focus on sex-trafficking, like the U.S. encouraged.

### **What Role Should the U.S. Play?**

As demonstrated, the U.S. has played several key roles in the human trafficking policy framework which have allowed the nation to fill this "global leader" position. However, one main theme permeates the U.S.' policy model and has prevented the U.S. from succeeding in this position; ideological partisan politics. Party politics have been the primary obstacle at every stage of U.S. involvement in the human trafficking debate. As political scholar Barbara Sinclair argues, political conservatism became respectable from the 1960s through the 1980s.<sup>348</sup> The Republican Party at this time became more ideological, more hardline and uncompromising.<sup>349</sup> Over the course of the 1980s and 1990s, religious constituents, who tend to be the most conservative on cultural issues, became increasingly Republican in party identification. The religious right then, became a core Republican constituency, and an important part of the base that no candidate

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<sup>347</sup> "Supreme Court Decision Striking Down 'Anti-Prostitution Pledge' for HIV and AIDS Workers," *Washington Post*, June 20, 2013, <http://apps.washingtonpost.com/g/page/politics/supreme-court-decision-striking-down-anti-prostitution-pledge-for-hiv-and-aids-workers/243/>

<sup>348</sup> Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (Norman: University of Oklahoma Press, 2006), 37.

<sup>349</sup> Ibid.

could alienate.<sup>350</sup> Sinclair concludes that the movement of observant evangelicals into the Republican Party has led the parties to become increasingly polarized in terms of both religious orthodoxy and cultural conservatism. She states that “slowly from the mid-1960s through the mid-1980s, and then more steeply in the 1990s, Republicans and Democrats diverged on measures of religious orthodoxy [...] and on issues such as women’s role in society,” and undoubtedly moral issues such as prostitution.<sup>351</sup> This same ideological takeover played out in relation to human trafficking policy. Increasingly, the focus has seemed to depart from the realities of the human trafficking problem and moved into the sphere of political conflict with a prominent emphasis on a moral agenda. As a result of this skewed focus, the U.S. should not continue to take on all four of these leadership roles that it currently holds. The U.S. should abandon its attempt to influence and enforce trafficking; however it should continue to help initiate policy and oversight, with some ideological changes.

The U.S. cannot play the role of influencer if human trafficking will ever be addressed cohesively by the international community. With the U.S. pushing its own policy model and trafficking definition on other nations, the root causes of trafficking and victim protections will never be addressed. Interest group pressure from neo-abolitionist groups and the political agenda of the U.S. legislative and executive branches has resulted in uneven enforcement of U.S. trafficking laws, with an emphasis on law enforcement activity, resource allocation, and service provision targeted mostly at sex-sector trafficking and prostitution. As a result, other countries have followed suit,

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<sup>350</sup> Ibid.

<sup>351</sup> Ibid, 52.



and have been more likely to adopt domestic laws on sex-sector trafficking than on non-sex-sector trafficking, and often passing anti-prostitution laws under the guise of “trafficking” laws.<sup>352</sup> Furthermore, neo-abolitionist pressure led the U.S. sanctions regime to encourage uneven legislative responses to the different forms of trafficking on an international scale. The focus on sex-trafficking undermines the international legal definitions of trafficking and the UN Trafficking Protocol’s goal of ensuring a consistent definition of trafficking from country to country in order to facilitate more effective international cooperation. A uniform definition is necessary to foster coordinated transnational responses to trafficking cases and to facilitate data collection. Statistics in the trafficking field are notoriously unreliable.<sup>353</sup> One of the key obstacles to data collection has been the fact that countries and organizations define trafficking differently, some conflating trafficking with other phenomena, including smuggling, illegal migration, and prostitution.<sup>354</sup> Neo-abolitionist pressure on states to conflate sex trafficking and prostitution perpetuates this confusion and inconsistency. Uniformity in the definition of trafficking will facilitate prosecution and place a greater emphasis on victim protection, factors that the United States dismisses as it rigorously holds fast to its definition for political reasons.

The U.S. must also step away from its role as an enforcer of trafficking prevention policies and practices in order to help the international community better

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<sup>352</sup> Penelope Saunders and Gretchen Soderlund, "Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse," *Canadian Woman Studies*, 22 (2003): 16-24

<sup>353</sup> D.A. Feingold, "Trafficking in Numbers: The Social Construction of Human Trafficking Data," In *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, eds. P. Andreas and K.M. Greenhill, 46-74. Ithaca: Cornell University Press, 2010.

<sup>354</sup> Bridget Anderson and Rutvica Andrijasevic, "Sex, Slaves and Citizens: The Politics of Anti-Trafficking," *Soundings*, 40 (2008): 135-145.

address the problem. A powerful but blunt weapon for influencing the behavior of other states, unilateral sanctions have long been criticized as inconsistent with international law and ineffective in practice.<sup>355</sup> The TVPA sanctions regime invites more of the same criticism. By injecting U.S. norms into the international arena, the sanctions regime risks undermining the fragile international cooperation framework created by the Palermo Protocol. The sanctions threat elevates U.S. norms over international norms by giving the former the teeth the latter lack. In doing so, the sanctions regime presents a ready opportunity for the United States to impose, by the threat of sanctions, its own anti-trafficking paradigm on other states. Commentators criticize U.S. economic unilateralism as the hypocritical, "hegemonic actions of a hyperpower," especially when wielded in the name of promoting international human rights standards.<sup>356</sup> Human rights advocates criticize U.S. unilateralism for employing what Peter Danchin terms as a "new realist" approach to enforcing international norms; invoking international human rights norms to justify the use of sanctions against target states, but using entirely domestic norms and predominantly unilateral means to promote and protect those standards.<sup>357</sup> Using unilateral sanctions to combat trafficking is also problematic because it undermines the multilateral definition and enforcement of international human rights law. As Danchin explains, "persistent resort to unilateral sanctions instead of existing multilateral enforcement mechanisms creates a self-perpetuating cycle that ultimately

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<sup>355</sup> Sarah H Cleveland, "Norm Internalization and U.S. Economic Sanctions," *Yale Journal of International Law* 26 (2001): 1-102.

<sup>356</sup> Cleveland, 48-49, 74-75.

<sup>357</sup> Peter G. Danchin, "U.S. Unilateralism and the International Protection of Religious Freedom: The Multilateral Alternative," *Columbia Journal Of Transnational Law* 41 (2002): 41.

undermines progressive development of multilateral alternatives.”<sup>358</sup> However, a multilateral regime based on law cannot function effectively if one or more of its members choose to act outside of or even alongside that regime while at the same time refusing to submit to those same rules.<sup>359</sup>

While it is clear that the U.S. should not be the “global enforcer” on human trafficking policy, it is also unlikely that the sanctions regime will be overturned any time soon. However there are at least a few modest steps the United States could take to significantly improve the sanctions regime which would limit the political nature of the enforcement and help to better contribute to the global anti-trafficking efforts. It is imperative that the United States implement the TVPA sanctions regime in a manner that is consistent with the Palermo Protocol norms. Using the UN’s standards to impose sanctions would limit the patchwork approach to enforcement that scholars argue occurs for political reasons.<sup>360</sup> If the U.S. imposed sanctions using the international definitions and standards, there would be less of an opportunity for the U.S. to sanction countries based on their ideological or geopolitical differences. Moreover, adopting the Protocol’s agnostic position in the human trafficking discourse helps avoid alienating countries with strongly-held positions on the issue and instead promotes the ethic of international cooperation the Protocol drafters sought to foster. As discussed above, such cooperation in turn encourages broader participation by transnational actors in ongoing international anti-trafficking norm articulation, promulgation, and

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<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Chuang, “The United States as Global Sheriff,” 438.

internalization, a process by which the international community might bridge the knowledge gaps in our understanding of this complex crime and human rights violation.

Additionally, the U.S. should not enforce its sanctions regime on NGOs. These NGOs are an important piece of the puzzle in helping to address some of the biggest issues in the trafficking framework. As discussed, the U.S. does not allow funding to NGOs that do not conform to the U.S. definition of trafficking and prostitution. U.S. funding cannot be linked to religious ideologies allied with conservative views on prostitution and sex-trafficking. The U.S. should adopt a more neutral indicator for awarding funding to NGOs in order for these organizations to help the international community better address the human trafficking problem in a comprehensive manner.

It is clear from the analysis above that the U.S. (for better or worse) has positioned itself as an initiator of human trafficking policy. The U.S. should continue to initiate human trafficking policy, but not without an ideological shift. The fact that the U.S. first had the political will to act on human trafficking policy allowed the issue to be added to the international agenda. What becomes problematic is the perpetuation of problems within the United States' framework applied on a global scale. For purely political reasons, the U.S. minimum standards stress the need to address mostly sex trafficking, while other forms of trafficking fall to the wayside. By taking on a leadership role, the United States assumes additional responsibility to ensure that its own legislation is effective in addressing the broad scope of trafficking before holding other nations accountable to its standards. As discussed with regards to the TIP Reports, other nations are quick to follow the U.S. policy lead. If the U.S. is going to continue to initiate

new human trafficking policies that are applied on a global scale, the policies need to include a more comprehensive picture of the trafficking problem and encourage international cooperation, not just international shaming and blaming. U.S. legislators must compromise by abandoning their politically charged views of the issues encompassed within human trafficking. The adoption of an unbending stance, specifically that of “sex-trafficking,” has not lead to sound policies and programs that help solve the problem. Partisan politics and “moral legislating” need to be avoided or better navigated in order to develop effective policies that will inevitably be imposed on a global scale.

The U.S. also has a legitimate role in the oversight of trafficking policy; however this too will require an ideological shift. The U.S. TIP Reports plugged a gap in enforcement that the Palermo Protocol was unable to fill. The UN Protocol lacked a monitoring body, and as such the capability to ensure compliance was inherently limited. Due to the Protocol's lack of a proper oversight mechanism, the TIP Reports became the standard by which the United States would hold other nations accountable for their actions (or inactions) on trafficking policy. One major problem with the TIP Reports is the standard by which the U.S. ranks other nations. The U.S. uses its own minimum standards based on its own definition, instead of the UN’s international definition. This practice essentially makes the UN Protocol null and void. The U.S. TIP reports should serve as an oversight mechanism based on the ideological neutrality of the Palermo Protocol, particularly with respect to treatment of prostitution and sex

trafficking. This would encourage cooperation, further reporting, and less politically biased evaluations.

The current TIP reports have been heavily criticized for lacking credibility and legitimacy because the assessments have not been conducted in an evenhanded manner.<sup>361</sup> The TIP Reports lack evaluative information in the country assessments.<sup>362</sup> Critics argue that because of this, the Reports can employ selective criticism of country practices, "going light" on U.S. allies and reserving their criticism for countries with which the United States has either a strained relationship or no strategic interests.<sup>363</sup> Moreover, the TIP Reports tend to give greater credit or censure to government efforts to combat sex trafficking than those that target trafficking for non-sexual purposes.<sup>364</sup> To be more effective as a tool of persuasion, the TIP Report must establish and apply clearer guidelines for evaluating country performance. The country assessments must be politically neutral and conducted independently of existing broader geopolitical tensions that might otherwise cast a shadow of bias. TIP Reports should serve as an oversight branch to the UN, by monitoring nations based on the UN standard, instead of the U.S. policy model.

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<sup>361</sup> Gallagher, 381-400.

<sup>362</sup> Ibid.

<sup>363</sup> Alese Wooditch, M.A. DuPont-Morales, and Don Hummer, "Traffick Jam: A Policy Review of the United States' Trafficking Victims Protection Act of 2000." *Trends In Organized Crime* 12 (2009): 247.

<sup>364</sup> "U.S. State Department Trafficking Report a "Mixed Bag," Modified July 12, 2001, Online: <http://www.hrw.org/news/2001/07/11/us-state-department-trafficking-report-mixed-bag>

## **Conclusion**

Barbara Sinclair's theory on conservative political ideology can be directly applied to the U.S. trafficking policy framework. The Republican-controlled Congress that drafted and passed the TVPA in the late 90s was heavily influenced by interest groups and constituents that were ideologically based in conservative views on prostitution and sex-trafficking. Due to the political views of these groups, the TVPA included a separate definition of the sex trafficking, and authorized the use of a sanctions regime to influence other nations to adopt the same stance on the issue. This same conservative model thrived under President Bush who championed the issue of sex-trafficking and prostitution at home and abroad. This increased ideological stance on trafficking has caused the human trafficking debate to become a hot button religious, ideological, party issue, instead of a geopolitical human rights issue that focuses on victims. With the U.S. leading the way, the wider global community has adopted a similar conflated stance on human trafficking with an emphasis on sex-trafficking. In order for the international community to truly succeed in combatting trafficking, the U.S. must reframe the issue of trafficking as a human rights-related issue and put ideological differences and political views aside to help the victims of trafficking in a comprehensive and cooperative manner.

United States' anti-trafficking policy should reflect a narrow definition of human trafficking consistent with the Palermo Protocol and the well-recognized needs of the worldwide anti-trafficking community. Defining trafficking in the United States has a trickledown effect on countries worldwide. If United States policy continues to conflate

human trafficking with other potential forms of exploitation, like prostitution, other countries will also adopt similar laws to the detriment of the worldwide anti-trafficking efforts. The fight against trafficking must be a partnership between many actors, governments, international agencies and NGOs, each with a different area of mandate and expertise. It is important that these roles are clearly defined, with no one government dominating the entire sphere. Central in the effective development of anti-trafficking policy must be a clear and broad understanding of the phenomenon so that all interconnected elements may be effectively designed and synchronized. The fight against trafficking in human beings requires a broad vision and supra-political interests: the main interest being the protection of those who need help.



## **Conclusion**

The first chapter of this thesis addressed why human trafficking policy has failed to keep pace with the growing problem. A case study examined the U.S. policy on trafficking, the history of that policy and the discourse that has affected its evolution. This chapter addressed a gap in existing research on trafficking policy by examining the nature of the political arena and the legislative process. The findings revealed that since the beginning of the human trafficking dialogue in the U.S., trafficking has been used as a political vehicle for many different issues, namely prostitution and immigration. By dissecting the most recent debates during the drafting of the Trafficking Victims Protection Act, it is clear that partisan politics and moral agendas have hijacked the human trafficking policy process. These results are significant in understanding why the policy has seemed to depart from a more comprehensive and realistic view of the problem, and have instead focused on a particular perspective of sex trafficking and immigration. This has led trafficking policy to hyper-focus on these concerns, and has created an even further partisan divide on the larger issue that should be centered around basic human rights.

The second chapter of this portfolio addressed trafficking policy from an international perspective. This case study explored Canada's policies on trafficking and what role the media and international pressures have played in the development of Canadian anti-trafficking policy. This chapter explored how moral panics, created by the media, contributed to the creation of Canada's anti-trafficking response. The second chapter found that these moral panics created a crisis environment that warranted an

official policy response; however that response was rooted in insufficient data and over-exaggerated statistics further contributing to inadequate legislation. To address a gap in the research, this chapter also explored how current Canadian media is framing the trafficking discourse by conducting a standardized examination of news stories. Findings revealed that through undocumented claims of prevalence, exaggeration of victimization, and the embellishment of race and ethnicity, the media has continued to create moral panics around human trafficking. These findings are significant because it reveals that these panics continue to create an exaggerated understanding of the problem, causing the adoption of policies and programs that are not tailored to the actual causes of human trafficking occurring within Canada. This chapter also addressed how international pressures have influenced Canada's anti-trafficking policies. Results found that Canada tailored its policies to address dissatisfaction from the U.S. with regards to immigration and border security practices. International pressures have influenced Canadian trafficking policy to focus more heavily on some issues that are not as important to preventing trafficking within Canada and have derailed the comprehensive approach that is needed to combat this issue from all angles, not just border security and immigration.

The third chapter of this portfolio examined the current leadership on human trafficking policy. This chapter explored why the U.S. has come to be the international leader on trafficking policy and if it should continue to take on this role. Current literature states that the U.S. is the "unofficial leader" on trafficking policy, but only attributes that to the nation's overall hegemonic power and does not explore reasons

for the U.S.' leadership in this arena. The chapter addresses this gap in the literature by evaluating four distinct roles that the U.S. has played in creating trafficking policy; initiator, influencer, overseer, and enforcer.

In the role as initiator, the U.S. was the first nation to create comprehensive domestic policy on trafficking which put the country in a unique leadership position with other countries looking towards the U.S. for help in developing their own policies. The chapter also explored U.S. influence over countries through the use of its TVPA legislation, finding that the U.S. used international pressures to influence other nations to adopt standards and definitions in keeping with the U.S. minimum standards, and not the international standards agreed upon by the UN. In its role as overseer, the U.S. has used annual *Trafficking in Persons Reports* to oversee the anti-trafficking efforts of other nations, ensuring that they meet the U.S. standards. This chapter also examined the role of enforcer, in which the U.S. imposes sanctions on other countries that do not comply with the TVPA minimum standards, further influencing those countries to adopt legislation that mirrors the U.S. After conducting an examination of these distinct leadership roles, it is clear that the U.S.' focus on ideological partisan issues has permeated the global trafficking agenda. In order for the international community to adequately protect victims and fully address the core issues related to trafficking, the U.S. cannot take on the same leadership role it is currently embodying.

The U.S. must abandon its role as an enforcer and limit its hardline influence, however it should continue to initiate and oversee trafficking policy with some ideological changes. The U.S. should be responsible for initiating programs and providing

an oversight branch to the UN, based on the globally accepted international definitions and minimum standards of trafficking approved by the UN Protocol and ratified by the 161 signatory countries. The U.S. should also adopt the UN's definition of trafficking in its domestic legislation, and do away with the current definition that singles out sex trafficking. This will ensure that policy, meant to help combat trafficking and protect victims, will reflect a broader international consensus and not be taken over by the moral agendas of partisan legislators. If this does not happen, it is likely that we will see even more partisan issues emerge around the human trafficking policy debate. This was already the case in the most recent reauthorization of the TVPA.

In late 2011, the nation's anti-trafficking law expired in the midst of partisan controversy, this time involving a new moral issue, abortion.<sup>365</sup> In October 2011, the Department of Health and Human Services refused to renew funding to the U.S. Conference of Catholic Bishops (USCCB), which had overseen social services for trafficking victims nationwide for more than five years, because USCCB would not provide abortion and contraceptive services to trafficking victims.<sup>366</sup> This prompted a firestorm of criticism from faith-based organizations and conservative lawmakers,<sup>367</sup> who called the move "pro-abortion favoritism" and assailed the Obama Administration

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<sup>365</sup> Elizabeth Bewley, "Abortion Issue Slows Action on Trafficking Bill," *Gannett News Washington Bureau*, April 9, 2012, Online: <http://www.wbir.com/news/article/215403/2/Abortion-issue-slows-action-on-trafficking-bill>.

<sup>366</sup> Jerry Markon, "Abortion, Birth Control Access at Issue in Dispute Over Denial of Grant to Catholic Group," *The Washington Post*, November 11, 2011, Online: [http://www.washingtonpost.com/politics/abortion-birth-control-access-at-issue-in-dispute-over-denial-of-grant-to-catholic-group/2011/11/11/gIQA36sYDN\\_story.html](http://www.washingtonpost.com/politics/abortion-birth-control-access-at-issue-in-dispute-over-denial-of-grant-to-catholic-group/2011/11/11/gIQA36sYDN_story.html).

<sup>367</sup> Ibid.

for waging a war against Catholics and religious freedom.<sup>368</sup> Some conservative lawmakers sought to add a “conscience clause” to the newest TVPA reauthorization bill to prevent the Administration from denying funds to any organization based on its moral or religious beliefs.<sup>369</sup> Democratic legislators rejected this idea, arguing that victims of trafficking, many of whom were forced into sex work, desperately needed access to abortion and contraception. The reauthorization that finally passed in February 2013, after more than a year of negotiation, did not include a conscience clause. However, the debate signaled that, the anti-trafficking movement is again at risk of ideological capture by a new partisan movement, abortion politics.

As discussed, trafficking has become an issue centered on women, sexuality, and sexual morality, rather than on coercive labor affecting both sexes. This established ideological spin on, what should be a human rights issue makes it easy for the abortion debate to enter the dialogue since abortion is inextricably tied to female sexuality and moral debates over such issues. Additionally, as we saw in the first and third chapters, the influence of abolitionists placed conservative evangelicals and Catholics at the anti-trafficking movement’s helm, in Congress, in the Bush Administration, and in many advocacy organizations. Abortion is politically powerful, and like prostitution, abortion implicates deeply held beliefs about morality, faith, individual autonomy, women’s rights, and sexuality. This focus on ideology over evidence hurts trafficking victims,

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<sup>368</sup> *HHS and the Catholic Church: Examining the Politicization of Grants: Hearing Before the House Committee on Oversight and Government Reform*, 112<sup>th</sup> Congress. 58 (2001) (statement of Congressman Chris Smith, Rep. of New Jersey) online: <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg73939/pdf/CHRG-112hhrg73939.pdf>

<sup>369</sup> United States House of Representatives, “Trafficking Victims Reauthorization Act of 2011,” H.R. 3589, 112th Cong., December 7, 2011. <https://www.govtrack.us/congress/bills/112/hr3589/text>

because it fails to address the underlying causes of trafficking; gender, race, class discrimination, inadequate migration avenues, and socioeconomic inequality that increase vulnerability to exploitation.<sup>370</sup>

The most recent reauthorization of the bill will expire in 2017, and further legislative gridlock over these same ideological issues may return. Whether abortion and prostitution politics will become a sticking point in negotiations over the next reauthorization may depend in part on factors beyond the control of anti-trafficking advocates; for example, whether Congress remains as deeply partisan as it currently is, or whether lawmakers who are active in both the anti-trafficking and religious-right movements (anti-abortion and anti-prostitution) remain in Congress. Advocates and politicians who want to avoid miring the TVPA in further controversy can take several steps to prevent these issues from re-entering the trafficking sphere by facilitating compromise between the executive branch and religious interest groups, timing the expiration of the trafficking reauthorization bills wisely, and most importantly broadening the concept of trafficking to reach beyond the sexual exploitation of women.

Improving the relationship between the executive branch and faith-based interest groups may help ensure that the TVPA's path to reauthorization is smoother in 2017 and beyond. Conservative politicians and activists are not the only ones who have perceived some tension between the Obama Administration and religious interest

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<sup>370</sup> Janie Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy," *University Of Pennsylvania Law Review* 158, 6 (2010): 1655.

groups; scholars, too, have noted the “increasingly strained relations between the two” that have led to a “political maelstrom.”<sup>371</sup> While there is no simple resolution to this problem, compromise may be possible in the context of trafficking. For example, in the context of abortion politics and trafficking, lawmakers and regulators might consider splitting victim-services grant money into separate pots; one for healthcare and another for non-health-related services, such as housing, job training, and legal assistance. This could help limit the moral debates that arise when legislating trafficking. By proposing compromises and promoting dialogue between faith-based groups and the administration, anti-trafficking advocates may be able to avoid a fight during future TVPA reauthorizations.

Advocates should also push for future reauthorizations of the TVPA to be introduced at the right political time; soon after the presidential election. Introducing the most recent reauthorization in 2011, with an election just a year away, made it possible for Obama’s opponents to use the TVPA as a political tool. Shortly after the 2012 election, roadblocks to the reauthorization cleared. The 2017 reauthorization should be introduced after the 2016 election. As we have seen, pressure from interest groups, especially faith-based groups, plays a key role in putting legislation on the congressional agenda. As a result, anti-trafficking advocates should work together with allies in Congress, to properly time the next reauthorization to avoid further insertion of partisan politics into the nation’s anti-trafficking framework.

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<sup>371</sup> Daniel Rudary, "Drafting a “Sensible” Conscience Clause: A Proposal For Meaningful Conscience Protections for Religious Employers Objecting to the Mandated Coverage of Prescription Contraceptives," *Health Matrix: Journal Of Law-Medicine* 23,1 (2013): 393.

Finally, and perhaps most importantly, a shift toward viewing trafficking as a human rights problem affecting both men and women, rather than as a problem of sex and sexual morality primarily affecting only women, would reduce the power of the sex-trafficking takeover and the most recent anti-abortion movement. Recently, there have been some government-sponsored initiatives created to help trafficking victims and focus on a more human rights centered approach.

Many victims of human trafficking come into contact with the health care system, as a result health care professionals are in an important position to help identify victims of human trafficking. They can effectively respond to a wide-range of physical and psychological health issues stemming from inhumane living conditions, poor sanitation, inadequate nutrition, brutal physical and emotional attacks, dangerous workplace conditions, severe trauma, and general lack of quality health care. In September 2013, the Administration for Children and Families (ACF), with support from the Health and Human Services (HHS) Office on Women's Health (OWH), launched a pilot initiative to enhance the health care system's response to human trafficking. The SOAR to Health and Wellness Training was designed to help health care providers *Stop, Observe, Ask, and Respond* to human trafficking. A national technical working group comprised of medical and health professionals, survivors, and subject matter experts informed the development of the pilot training and evaluation.<sup>372</sup> Trainings for health care providers began in September 2014. While this is not a standardized protocol

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<sup>372</sup> "SOAR National Technical Working Group," Accessed November 29, 2014. Online: <http://www.acf.hhs.gov/programs/endtrafficking/initiatives/soar/technical-working-group>



across the medical industry, screening and training initiatives of this nature could lead to better data and a more victim-centered approach to trafficking.

Additionally, in January 2014, the Department of Health and Human Services, the Department of Justice, the Department of Homeland Security, and several other federal agencies released the Federal Strategic Action Plan on Service for Victims of Human Trafficking in the United States.<sup>373</sup> The plan described the steps that federal agencies will take to ensure that all victims of human trafficking are identified and have access to the services they need to recover and rebuild their lives. This includes taking steps to create a victim services network that is comprehensive, trauma-informed, and responsive to the needs of all victims.<sup>374</sup> The federal strategic plan incorporates feedback from survivors of trafficking and collaborates with public and private organizations to improve the coordination and scope of support received by victims of human trafficking.

Initiatives like this will likely help to move away from the more ideological emphasis on trafficking. Focusing on restoring the human rights of victims in various forms of trafficking will reduce the tunnel vision on women, sex, and sexual morality, and expand the anti-trafficking movement to benefit a wider range of exploited workers across the globe. As we saw in the third chapter, the precedent that the U.S. sets reflects outwards on the rest of the international community. If the U.S. can get its policy right and move away from the abolitionist perspective, it could set in motion a

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<sup>373</sup> President's Interagency Task Force to Monitor and Combat Trafficking in Persons, *Federal Strategic Action Plan on Service for Victims of Human Trafficking in the United States 2013-2017*, (Washington, D.C., 2014). Online: <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>

<sup>374</sup> Ibid.

more comprehensive international approach to human trafficking that would allow policy to keep pace with the growing problem.

There is still a great deal to be learned about human trafficking and how it can most effectively be responded to. Building an understanding of it that is rooted in empirically tested studies and observable facts is ultimately more beneficial than the perpetuation of sensationalized assumptions about its scope and narrow focus on sex-trafficking and prostitution. Partisan politics and over-inflation of the moral issues surrounding the human trafficking debate have only distracted from efforts to better understand the problem and develop worthwhile responses to it.

Measuring the characteristics of victims, traffickers, and the magnitude of problem as a whole has created many research challenges and methodical limitations. Human trafficking by nature is difficult to measure because traffickers, victims and the clients of trafficked victims belong to a so-called “hidden population.”<sup>375</sup> To promote accurate data, scholars should conduct rigorous, standardized, ongoing data collection methods regarding the characteristics of traffickers, their victims, and the effects that policies and programs have had on preventing traffickers and protecting the victims. One possible method with which to estimate trafficking can be based on official information on the number of trafficking victims who come into contact with NGOs or with the police and judicial authorities. If these data are used, it is necessary to determine the ratio between victims who contact the police, judicial authorities or NGOs, and those that do not, and are considered part of the “hidden population” of

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<sup>375</sup> Lee, *Human Trafficking*, 53.

trafficking. For example, a study conducted in the UK in 2000, developed a similar method.<sup>376</sup> A total of 271 women were found to have been trafficked into the UK over a five-year period.<sup>377</sup> This figure was based on official data from the police, and judicial system, as well as known cases identified by the media. From these known cases, and incorporating additional data sources, minimum and maximum estimated multipliers, the research found that the “real scale of trafficking may be between two and twenty times what has been confirmed.”<sup>378</sup> This study concluded that the number of trafficking victims ranges from 142 to 1,420 per year in the UK.<sup>379</sup> Additionally, these studies must go one step further and reveal how the data was collected, in order to avoid contradictory figures that have been quoted and further disseminated among scholars. It would also be beneficial for the U.S. Department of State, where the Trafficking in Persons office is housed, to collect similar data and ensure that long-term data collection methods that consider similar input over time are put in place.

Additionally, it would be valuable to study the effect that NGOs and private corporations have in contributing to the human trafficking policy debate and helping prevent the problem. Private companies and NGOs could use their corporate responsibility and consumer pressure as strategies to broaden the scope of trafficking beyond sex trafficking, to other forms of labor exploitation through the use of consumer boycotts and corporate codes of conduct. The involvement of NGOs and private corporations could lead to a more comprehensive policy debate due to the expansive

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<sup>376</sup> L. Kelly and L. Reagan, “Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in the U.K.” *Police Research Series* 125 (2000): 21-22.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid.

<sup>379</sup> Ibid.

nature of their work and the variety of stakeholders involved. This could help governments move away from partisan debates taken over by conservative legislators, towards a more complete approach to combatting trafficking.

Whatever politics surround the trafficking issue, it is clear that the phenomenon will attract nations' attention and energy for years to come. Human migration occurs on a vast scale globally, and even if only an infinitesimal portion of those migrants involves trafficked persons, the number of victims remains sizable. Legislators, activists, and the media must put politically charged views aside and come together to protect all victims who are caught up in the various aspects of the trafficking business so that they have a chance to live their lives free from this modern-day form of slavery.

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## Curriculum Vitae

*Caitlyn Goodman was born on March 25, 1989 in Miami, Florida. She is currently working as the Federal Government Affairs Coordinator for Chevron covering a variety of energy issues. During her time at Johns Hopkins University she enjoyed the opportunity to write about her current field of work, in the form of a paper on 'Methane Emissions as a Case Study for Federalism' in Professor Feldman and Luckner's State Politics and Policymaking course, as well as her work in several of Professor Drutman's courses on Open Government and Lobbying and Influence. While studying at Johns Hopkins, she was awarded the Bryce Harlow Fellowship for upholding the highest level of integrity in a government relations role.*

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