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Human Trafficking: Global and National Responses to the Cries for Freedom

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FOREWORD

HUMAN TRAFFICKING: GLOBAL AND NATIONAL RESPONSES TO THE CRIES FOR FREEDOM

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In recent years, much has been written and much discourse has taken place on the topic of human trafficking as the United States government, non-governmental organizations (NGOs), academics, service organizations, and international bodies such as the United Nations grapple with how best to respond to this modern-day slavery. The scourge of human trafficking transcends national borders, inflicts suffering of the worst kind on its victims, and is often impossible to detect—making its abolition a seemingly insurmountable undertaking. This symposium and publication produced by the *University of St. Thomas Law Journal* offers a new and distinct voice to the discussion on human trafficking by focusing on and offering unique solutions to the most current obstacles in the fight against international trafficking, particularly in the United States.

The timing of this symposium and publication is not a coincidence. This symposium took place in Minneapolis, Minnesota during the fall of 2008, in the midst of heated debate in Washington D.C. over the re-authorization of the Trafficking Victims Protection Act (TVPA).³ One of the most controversial aspects of the House version of the William Wilberforce Trafficking Victims Protection Reauthorization Act (H.R. 3887) was the provision expanding the definition of trafficking to include separate charges of “sex trafficking” and “aggravated sex trafficking.”⁴ Under H.R. 3887, simple sex trafficking would be a federal crime when one “persuades, induces

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3. Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1464, 22 U.S.C. §§ 7101–7112 (2006).

4. H.R. 3887, 110th Cong. § 221 (2007) (amending 18 U.S.C. §§ 2429, 2430).

or entices" another individual into prostitution.⁵ Aggravated sex trafficking requires—as did the old TVPA—the heightened standard of “force, fraud, or coercion.”⁶ A coalition of non-governmental liberal women’s organizations and conservative religious organizations (“the coalition”) fought for this change, seeking to expand the definition of sex trafficking to include trafficked *prostitution*. This bill passed overwhelmingly in the House of Representatives—405 to 2.⁷ At the time of this symposium, however, H.R. 3887 and the coalition were facing considerable opposition in the Senate, led by the Department of Justice (DOJ).⁸

In the midst of this intense debate, this symposium and publication first bring together a DOJ official, a leader of the coalition, and two academics to provide their respective views on the proposed changes to the TVPA with regards to the “force, fraud, or coercion” requirement. Next, academics and the executive director of a service organization address other perceived deficiencies in federal and state trafficking laws that are limiting victims’ access to much needed services. Finally, the symposium and publication conclude with academics and a practitioner taking a global look at obstacles to combating the human trafficking epidemic.

The title of this symposium and publication is *Human Trafficking: Global and National Responses to the Cries for Freedom*. The key word in the title is “responses.” The symposium sparked spirited discussions about the current gaps in domestic human trafficking laws and international trafficking initiatives, and the symposium participants propose *responses* and *solutions* in this publication. The goal of this symposium and publication is to empower government, NGO, law enforcement and service provider leaders to reflect on the current failings of human trafficking laws and initiatives, and move forward with renewed energy to address the needs of human trafficking victims in our state, nation, and world.

In his opening keynote address, DOJ official Mark Kappelhoff, Chief of the Criminal Section of the Civil Rights Division, sets the stage for the symposium’s impassioned debate on the effectiveness of current federal human trafficking laws.⁹ Kappelhoff provides an overview of the nature of human trafficking crimes in the United States and highlights the DOJ’s suc-

5. *Id.*

6. *Id.*; cf. Trafficking Victims Protection Act § 108(a)(2), 22 U.S.C. § 7106(a)(2).

7. H.R. 3887, see Govtrack.us, *H.R. 3887: William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007*, <http://www.govtrack.us/congress/bill.xpd?bill=H110-3887> (last visited May 11, 2009).

8. Ultimately, the coalition was successful in achieving many significant changes to the TVPA. However, with regards to “force, fraud, or coercion,” the Department of Justice and its allies prevailed. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 retains the “force, fraud, or coercion” requirement of the earlier TVPA. Pub. L. No. 110-457, 122 Stat. 5044 (2008), 22 U.S.C. §§ 7101–7112 (Supp. I 2009).

9. Mark Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery*, 6 U. ST. THOMAS L.J. 9 (2008).

cess in identifying, prosecuting, and convicting traffickers since the 2000 enactment of the TVPA. Kappelhoff reflects on the anti-slavery statutes used to prosecute human trafficking offenses prior to 2000, pointing out gross inadequacies. Because these statutes covered only forceful and overt forms of coercion, Kappelhoff says they were an ineffective tool for prosecutors to “reach many of the subtle forms of coercion commonly used by traffickers to control and exploit their victims.”¹⁰ Kappelhoff explains that the revolutionary TVPA of 2000 “represented a welcome sea change in the U.S. government’s approach to addressing the problem of human trafficking” in part because the TVPA defines trafficking as the use of “force, fraud, or coercion,” which includes “threats of *nonphysical* harm as well as threats of harm to *third persons*.”¹¹ Kappelhoff asserts that the DOJ has been tremendously successful in prosecuting trafficking offenses under the TVPA, revealing that between the years 2001 and 2008, the DOJ achieved 518 convictions, representing a 581 percent increase over the previous eight years.¹² The DOJ continues to prosecute record breaking numbers of cases involving trafficking of all types of victims in “agricultural fields, sweatshops, suburban mansions, brothels, escort services, bars, and strip clubs.”¹³ Kappelhoff concludes by noting that although the DOJ has made great strides, as always, there is more work to be done. He calls for continued access to resources for victims, increased cooperation between federal and state law enforcement agencies, and expanded public awareness campaigns and education so that society can identify the signs of human trafficking and alert law enforcement.

In the second keynote address, the symposium shifts from the perspective of the government to that of the first U.S.-based NGO to combat human trafficking internationally, the Coalition Against Trafficking in Women (CATW).¹⁴ Norma Ramos, co-executive director of CATW, challenges the DOJ’s claim that it has been tremendously successful in combating domestic trafficking under the TVPA. Ramos argues that the TVPA falls “significantly short of being the strong prosecutorial instrument Congress intended,” noting that in the eight years since its initial passage, there have been fewer than seventy successful cases prosecuted, though some involved large numbers of defendants.¹⁵ Ramos argues that the criminal provisions in the TVPA requiring prosecutors to show “force, fraud, or coercion” has “rendered the TVPA an ineffective prosecutorial instrument,” because in many cases, “force, fraud, or coercion” cannot be proven, and traffickers go

10. *Id.* at 12.

11. *Id.* at 13 (emphasis added).

12. *Id.* at 16.

13. *Id.* at 17.

14. Norma Ramos, *Addressing Domestic Human Trafficking*, 6 U. ST. THOMAS L.J. 21 (2008).

15. *Id.* at 23.

unpunished.¹⁶ Ramos endorses a more expansive definition of trafficking than the DOJ, based on the belief that prostitution (the demand for commercial sexual exploitation) is undeniably linked to human trafficking. Ramos reflects on CATW's leadership of the left/right coalition, advocating for major revisions to the TVPA, and challenges the DOJ's accusation that the coalition is attempting to "federalize prostitution."¹⁷ Ramos insists that this is not the coalition's intent, maintaining that there is a difference between prostitution and trafficked prostitution. The coalition argues that only the latter should fall under federal anti-trafficking laws. Ramos challenges us to resist the "normalization of prostitution," which gives men permission to purchase sex and thus demand more women and girls for commercial sexual exploitation, ultimately leading to an increase in sex trafficking.¹⁸

The first panel, *U.S. Human Trafficking Laws: Challenges in Interpretation and Application*, continues discussing the effectiveness of the TVPA, exploring further the debate over whether the definition of "sex trafficking" should be expanded to include some forms of prostitution where "force, fraud, or coercion" is not present.

Professor Donna Hughes opens this discussion with a critical analysis of the TVPA's "victim-centered approach," calling attention to the TVPA's failure to focus ample attention on the *perpetrators* of sex trafficking.¹⁹ Professor Hughes argues that the victim-centered approach has negative consequences because it requires "extensive interviews with a suspected victim to determine *if she is a victim*," and the successful prosecution of any case depends too heavily on the cooperation and testimony of the victim.²⁰ Professor Hughes advocates for a new approach called the "perpetrator-focused approach" that will compliment the victim-centered approach in sex trafficking cases. A perpetrator-focused approach would acknowledge that pimping is sex trafficking by expanding the definition of sex trafficking to include crimes that do not require the substantial showing of "force, fraud, or coercion."²¹ The elements of Professor Hughes' perpetrator-focused approach are:

- 1) continue calling for action against the demand for victims;
- 2) broaden the discussion of sex trafficking beyond the narrow definition in the TVPA;
- 3) research, analyze, and investigate the activities and operations of pimps and sex traffickers;
- 4) shift the burden of prosecuting sex traffickers and pimps from the testimony of the victim to the criminal activities of the perpetrators;
- 5) research and analyze men's behavior and motivation to buy sex

16. *Id.*

17. *Id.* at 24.

18. *Id.* at 25.

19. Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 29 (2008).

20. *Id.* at 37.

21. *Id.* at 40.

acts; and 6) create ways to challenge the culture that normalizes prostitution and pimping.²²

Professor Marisa Silenzi Cianciarulo also addresses the debate over eliminating the “force, fraud, or coercion” requirement in order to make anti-trafficking legislation more effective.²³ She notes that the proposed changes to the TVPA in H.R. 3887 do not “differentiate between victims who were forced to engage in the sex trade and those who consent to being trafficked for sex work.”²⁴ This raises questions about the “nature of consent, free will and choice.”²⁵ Professor Cianciarulo compares this debate with similar debates on rape and prostitution, concluding that “the debate over expanding the definition of sex trafficking is unlikely to be resolved while rape law is evolving and the prostitution debate continues.”²⁶ Professor Cianciarulo also acknowledges that a resolution of the disagreement over “choice” with regard to sex work is not likely to emerge anytime soon. As a result, defining trafficking and identifying the most effective means of combating it “will remain unresolved.”²⁷

The second panel, *Human Trafficking Victims: A Host of Unresolved Issues*, moves away from the “force, fraud, or coercion” debate and considers other gaps in human trafficking laws that limit the rights and remedies of trafficking victims. Professor Dina Francesca Haynes argues that despite the “powerful legal and victim service tools” provided by the current TVPA, significant problems for victims remain.²⁸ Professor Haynes claims these problems most likely reflect “a lack of effective implementation of the law.”²⁹ She identifies four of the primary ways in which the implementation of the TVPA remains critically flawed: 1) the law enforcement funnel; 2) the victim protection funding mechanism limiting shelter access; 3) the conflation of human trafficking with other law enforcement agendas; and 4) the fear of opening the floodgates to illegal immigration.³⁰

Next, Professor Wendi Adelson, Program Director of the Human Rights and Immigration Law Project at the Center for the Advancement of Human Rights, presents her original research on juvenile prostitution.³¹ Professor Adelson begins by asking, “Is child prostitution a crime commit-

22. *Id.* at 41–42.

23. Marisa Silenzi Cianciarulo, *What is Choice? Examining Sex Trafficking Legislation Through the Lenses of Rape Law and Prostitution*, 6 U. ST. THOMAS L.J. 54 (2008).

24. *Id.* at 55.

25. *Id.* at 57.

26. *Id.* at 56–57.

27. *Id.*

28. Dina Francesca Haynes, *Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act*, 6 U. ST. THOMAS L.J. 77, 78 (2008).

29. *Id.*

30. *Id.* at 78–94.

31. Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96 (2008).

ted by minors, or against them?"³² She explores the inconsistencies between federal and state laws, noting that federal laws treat crimes involving child prostitution as trafficking offenses, while most state prostitution statutes fail to distinguish between adult and child prostitution.³³ Professor Adelson argues it is inconsistent to categorize juveniles as victims under the federal system, but criminals under the state system. She advocates on behalf of state legislation that decriminalizes the actions of prostituted children and aims to "protect and to rehabilitate abused and exploited children."³⁴

Suzanne Koeplinger, executive director of the Minnesota Indian Women's Resource Center (MIWRC), concludes this panel discussion by addressing the unique needs of American Indian women trafficked and prostituted in Minnesota.³⁵ She uses both statistical evidence and her personal experience working with American Indian women to conclude that sex trafficking in American Indian communities is an underreported and significant problem, which requires further study and broad-based intervention. She argues that the scope of victimization of American Indian women and children "is much greater than previously imagined" and that "culturally based interventions must be combined with system changes to stop [it]."³⁶

In the final panel, *Global Dynamics of Human Trafficking*, three professors and one practitioner adjust the focus of the symposium from domestic to international. The panelists each examine today's challenges to combating human trafficking internationally, either focusing on a specific region in the world or focusing more broadly on systems or initiatives that can be applied across borders. Professor Karen Bravo opens the discussion by considering whether certain mechanisms and methodologies of the anti-money laundering model can be adopted to the international fight against human trafficking.³⁷ She points out that in contrasting the levels of international compliance reflected in the respective money laundering and trafficking "lists," "the international fight against money laundering is more successful than . . . international efforts to combat [trafficking]."³⁸ Thus, Professor Bravo asserts that "the dominant conceptual and legal frameworks" used to fight human trafficking are inadequate³⁹ and she considers whether such frameworks could be supplemented and strengthened

32. *Id.*

33. *Id.* at 97.

34. *Id.* at 127.

35. Suzanne Koeplinger, *Sex Trafficking of American Indian Women and Girls in Minnesota*, 6 U. ST. THOMAS L.J. 129 (2008).

36. *Id.* at 130.

37. Karen E. Bravo, *Follow the Money? Does the International Fight Against Money Laundering Provide a Model for International Anti-Trafficking Efforts?*, 6 U. ST. THOMAS L.J. 138 (2008).

38. *Id.* at 141.

39. *Id.*

by the international anti-money laundering model. In conclusion, she argues that the mechanisms of the anti-money laundering model could be adopted, but only if there is political will—which she admits is a significant obstacle.

Practitioner Reagan R. Demas next analyzes the effects that corruption and the lack of the rule of law have on the human trafficking epidemic.⁴⁰ Drawing in part on his personal experience working on behalf of trafficking victims in Africa, Demas begins by considering the “effects that corruption has on development in Africa.”⁴¹ He notes that “the rule of law is not simply a Western concept,” arguing that “corruption is not an acceptable part of any culture.”⁴² Next, Demas examines the relationship between corruption and human trafficking, and addresses the “broad-based initiatives necessary to curb corruption in Africa and beyond.” He concludes that corruption is detrimental to efforts to combat trafficking, and that “only global anticorruption initiatives that bring consistent, tangible accountability to those who offer and accept bribes can curb human rights violations.”⁴³

Professor Claude d’Estrée and Ms. Kristi M. Kirby follow, shifting focus to peacekeepers, the military, and human trafficking.⁴⁴ They argue that slavery and human trafficking are a violation of human rights and, “under the international regime that represents human rights, states have the responsibility to prevent the occurrence of human rights violations.”⁴⁵ Kirby and d’Estrée consider the prevalence of peacekeeping and military troops’ participation in human trafficking, finding that troops have individual and cooperative responsibility for upholding UN human rights standards.⁴⁶ Claiming that abuse and human rights violations should never be acceptable elements of peacekeeping missions, Kirby and d’Estrée argue that troops must refuse “to participate in commercial sex patronage that supports human trafficking.”⁴⁷ In conclusion, Kirby and d’Estrée put the onus on each sending state to “address the unique challenges of its own military participation so as to best ensure the safety and dignity of populations being protected.”⁴⁸

Finally, this symposium concludes with Professor Susan Tiefenbrun’s in-depth look at the problem of human trafficking in China.⁴⁹ Professor Tiefenbrun considers the extent of the problem and the root causes of this

40. Reagan R. Demas, *All Hands on Deck: Collaborative Global Strategies in the Battle Against Corruption and Human Trafficking in Africa*, 6 U. ST. THOMAS L.J. 204 (2008).

41. *Id.* at 205.

42. *Id.*

43. *Id.* at 219–220.

44. Kristi M. Kirby, MA & Claude d’Estrée, *Peacekeepers, the Military and Human Trafficking: Protecting Whom?*, 6 U. ST. THOMAS L.J. 221 (2008).

45. *Id.* at 222.

46. *Id.* at 243.

47. *Id.*

48. *Id.*

49. Susan Tiefenbrun, *Human Trafficking in China*, 6 U. ST. THOMAS L.J. 247 (2008).

human rights violation, and then offers suggestions for combating the prevalence of trafficking in China.⁵⁰ In particular, she identifies China's "one-child policy" as producing a "scarcity of women" and a subsequent increase in prostitution and trafficking. Professor Tiefenbrun challenges the Chinese government to enhance its efforts to expand legal protections for women through laws and policies that will overcome "long-standing cultural trends" and traditions that discriminate against women.⁵¹

This compilation of essays and articles provides a deep and reasoned analysis of the current failings of U.S. and international law in addressing human trafficking. But these authors do more than point out the shortcomings—they offer sound, practical, and original solutions. Although some of these authors' views diverge on methods or strategy, all are deeply committed to eradicating modern-day slavery and bringing justice to the perpetrators and victims.

50. *Id.* at 251.

51. *Id.* at 268.