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Wilberforce's Work is Not Done: Ending Human Trafficking and Modern Day Slavery

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Abstract

Since slavery has been made illegal in nearly all countries in the world, and as modern advances allow more attention to be focused on other social improvements to make the lives of people better, there is a dark and hidden underbelly around the world that most people do not want to hear about. The fact is, that while the battle over the legal status of slavery has been won, as have many of the cultural battles regarding the wrongfulness of enslaving another human being, more slaves exist in the world at this moment than were trafficked in over 350 years of trans-Atlantic slavery combined—by almost a 2-to-1 margin. The author seeks to refocus the 21st century reader on what Wilberforce called the "wickedness" that is the slave trade by examining the historical challenges and successes in abolition and then discussing the modern manifestation of slavery and the forms in which it emerges. The author then discusses modern legal attempts to attack the underground markets on both the supply and demand side, both of which extend throughout the globe, complicating this issue immensely. The author tells several true stories of trafficking victims' experiences to give a human face to the injustices that are perpetrated and to give the reader a sense of the diversity of victim types, methods of enslavement, and motivations of slaveholders. The author concludes that given the modern complexities and the already illegal nature of slavery and trafficking in persons a multi-faceted response is needed at the international, national, NGO, and personal levels to detect slavery, rescue the weak from injustice and oppression, prosecute offenders, and rehabilitate and provide stability for victims.

I. Introduction

William Wilberforce declared: "So enormous, so dreadful, so irremediable did the [slave] trade's wickedness appear that my own mind was completely made up for abolition. Let the consequences be what they would: I from this time determined that I would never rest until I had effected its abolition." Approximately180 years after his death Wilberforce's life's work is not yet done. There are more slaves today than in any time in history,[1] and yet unlike during Wilberforce's time most of these slaves are invisible to the public. In modern society we do not see slaves tending fields tethered with chains, but they exist below the surface, existing only in the shadows of normal life. However, as put by modern abolitionist E. Benjamin Skinner if you go through the looking glass the problem of slavery will emerge. Slaves labor in silence all around us, yet we do not notice because these slaves do not fit the archetype of slavery that is familiar to us. Slavery in all its forms is morally wrong, and it can be argued effectively that it violates a tenet of natural law, yet it still exists. Slavery continues to exist due to human nature and its ability to sense vulnerability in others and to exploit. Although the issues of modern-day slavery are perhaps more complex than issues facing abolitionists at other times, through various strategies slavery can be ended in our generation. When truth is revealed it is only a matter of time before it will triumph over evil, as long as there remain individuals who, like Wilberforce, will sacrifice themselves to stand up for it.

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[11] Currently it is estimated that there are 27 million slaves worldwide. KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY'S SLAVES (2007); s*ee infra* Part V and accompanying notes. Rodney Starks estimates that between 1510 and 1868 "approximate 10 million African Slaves reached the New World slave markets." RODNEY STARK, FOR THE GLORY OF GOD: HOW MONOTHEISM LED TO THE REFORMATIONS, SCIENCE, WITCH-HUNTS, AND THE END OF SLAVERY 307 (2003). He then explains that given the high mortality on the slave ships that probably 15 million slaves began the journey to the New World. *Id*. at 307-08 It should be noted that some of this increase can be accounted for because of the dramatic increase in the world's population. KEVIN BALES, NEW SLAVERY 5 (2000). From 1945 to 2000 the population has increased from 2 billion people to over 6 million people. *Id.* at 5.

One illustrative story is found in *Enslaved*, a book of modern day slave narratives. However, it did not come from one of the former slaves, but rather it was the account of a former slaveholder. Mauritania[2] has the distinction of being one of the few countries in the world where chattel slavery still exists and thrives. Although the Arab population makes up only about 30 percent of the population, it routinely suppresses the black majority. This is the story of one man who was born into a society where slavery was just a fact of life. Yessa recounts that when he received his slave he was seven years old and he was given his best friend Yebawwa. Yebawwa was also his "milk brother"[3] as a present for this important birthday. Yessa thought that slave ownership was not only a right but also an obligation because if the masters, who are in the highest castes, did not own the slaves they would just go out and die in the desert. This was so culturally ingrained that it was not questioned by anyone including Yessa. Through a set of circumstances Yessa became a voracious reader, and one day stumbled upon *The Anthology of French Constitutions*. This was the day that changed his life. He opened it up and read Article One which stated, "Men are born and remain free and equal in rights."[4] Yessa explained that that was the most interesting sentence he had ever read, and it was difficult to believe that he had read the words on the page (he said at times that night he thought maybe it read all men are *not* equal). Once he realized that this was true, he realized his entire life had been based on a lie.[5] The truth can at times literally set someone free, but there needs to be a safe environment for its presentation.

This paper will deal with several different issues in order to show how one person can work as an individual and through the state to free the modern-day slaves and to stop the trafficking of persons in order to prevent victims' enslavement. Part II of this paper briefly discusses slavery as it was revealed in history. Part III of this paper examines how Wilberforce began his abolitionist movement, and some of the tactics that he used to free the slaves. Some of the tactics explained will be discussed later as ways that modern day slavery can be eradicated today. Next in Part IV will discuss the problems that occurred after slavery was ended in the United States. Part V of this paper will discuss the illegitimacy of slavery from a natural law perspective. Next modern day slavery and human trafficking will be defined and discussed. This paper concludes that in order to end modern slavery we should be guided by the successes and failures of past abolitionist movements to determine proper techniques to implement toward ending slavery without harming the slaves in the process. Next, using the explicit three-prong policy endorsed in the U.S. law entitled the Victims of Trafficking and Violence Protection Act—prevention, protection, and prosecution—this paper will analyze how to fight and prevent modern day slavery in all its manifestations. Finally, although the governmental options for ending slavery are important, the NGO's and observant and diligent individuals are just as important to ending slavery.

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[2] "Over 1,000 years ago, Arab raiders from Morocco journeyed south and invaded Mauritania, overpowering the indigenous Africans and forcibly converting them to Islam." Abdel Nasser Ould Yessa, Amazing Grace: A Slave Owner's Awakening in Mauritania, in CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE 178 (Chuck Stetson ed., 2007).

[3] "Milk brother" is a term used to signify that the two boys were nursed by the same maidservant.

[4] YESSA, *supra* note 2, at 200.

[5] Yessa became more informed, and began to spread his knowledge although it was not always well received. His slave had gone to live with his aunt when Yessa began his studies. When Yessa explained the truism he found to his slave, his slave's response was telling he states, " My master's funny. I was born a slave, I'll always be a slave, If my master doesn't want me, I must've done something wrong." He further stated that "my master was created for poetry, for beautiful thing. God forgot to refine us; he was too busy to finish us." *Id*. at 202-203.

II. Slavery in the Past

Slavery has been a blemish on humanity throughout history. John Locke in his Second Treatise of Government defined a slave as a person who is "under the absolute, arbitrary power of another, to take away his life, when he pleases."[6]

Although it was just another in the list of people groups enslaving other people groups, the slavery in the 19th century or the Trans-Atlantic slave trade had a profound impact on our society up until modern times. This is because the "African slave trade was begun and resourced through kidnapping."[7] The slave trade displaced a large portion of an ethnic people group to a completely different region, and since this is not a normal migration pattern for those in Africa such a large relocation of people would probably not have occurred naturally over time. The kidnapping of the African people decimated the villages in Africa that lost a valuable human resource, and many of the individuals that were kidnapped died before they ever made it to the auction block.[8] Those that did make it through the passage were summarily sold into bondage and deprived of their liberty and autonomy. In this chattel form of slavery, the slaveholder had legal ownership of the slave, and this would continue through the slave's lineage. Slavery during the 19th century was legal, open, and notorious in society. Because the slave was worth a substantial amount of money, the ownership of the slaves actually was prestigious for the slaveholder. Slavery became so ingrained in the society that the citizens could not imagine life without the slaves.

III. Trans-Atlantic Slavery Abolition

A. William Wilberforce

"God Almighty has set before me two great objects: the suppression of the Slave Trade and the reformation of manners."[9] These are the words William Wilberforce penned in his personal journal on October 28, 1787 as his life's mission statement. Wilberforce studied the slave trade in detail and was deeply disturbed by the conditions of the slaves in the West Indies.[10] Additionally, he was appalled at the conditions that the slaves endured in the slave ships during the long journey from Africa.[11] He saw that the African people were not treated as people that

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[6] JOHN LOCKE, THE SECOND TREATISE OF GOVERNMENT 13 (Barnes & Noble, 2004) (1690).

[7] TIMOTHY KELLER, THE REASON FOR GOD: BELIEF IN AN AGE OF SKEPTICISM 111 (2008).

[8] Many died on the ship due to disease and poor conditions. In addition, according to the research that William Wilberforce and Thomas Clarkson completed, the ships had to put up nets to prevent the slaves from jumping overboard and sometimes had to force feed them so they would not died of starvation. Chuck Stetson, *The Birth of Issue Campaigning, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE 92 (Chuck Stetson ed., 2007). This also led to the shackling of the prisoners so that they would be easier to manage, however, in these positions in the hot belly of the ship for long periods of time would also sometimes cause death. Some argued that that as many as half of those who were put on the ship perished on the ship. *Id*.

[9] Kevin Belmonte & Chuck Stetson, *A Man of Character, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (Chuck Stetson ed., 2007) (citing Robert Isaac Wilberforce &Samuel Wilberforce, The Life of William Wilberforce 4 (London, John Murray 1838); CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (forward) (Chuck Stetson ed., 2007). When Wilberforce used the term "reformation in manners" he was referring to a reformation in morals and virtues of the society.

[10] In the West Indies the slaves suffered horrific abuses, and many of them did not live past late teens to early twenties.

[11] Alexander Falconbridge, a ships surgeon on slave ships, writes about the disgusting and inhuman conditions that were inflicted upon slaves during transport to the West Indies. He describes the cramped spaces, heat levels, and common illnesses which served to exacerbate the intolerably harsh environment to include vomitus, blood, and excrement. ERIC METAXAS, AMAZING GRACE: WILLIAM WILBERFORCE AND THE HEROIC CAMPAIGN TO END SLAVERY 97-101 (2007).

bear the image of God, but as inanimate cargo.[12] Wilberforce during his studies took counsel from Thomas Clarkson, an ordained Cambridge graduate, who researched the slave trade exhaustively and traveled the country holding abolitionist meetings. Clarkson's research was impeccable; he boarded countless slave ships, and documented witnesses to the abuse of the slaves.[13] Clarkson was able to show that not only were the African men and women dying during the trips across the Atlantic, but the English seaman also had an unusually high mortality rate as well.[14] Unquestionably, Wilberforce's spiritual mentor John Newton also influenced Wilberforce's quest to free the slaves.[15] John Newton, who for years was the captain of a slave trading ship, elucidated the brutality that occurred on the ships during those long passages. After Newton's conversion to Christianity,[16] he realized the innate evils of the slave trade and he worked with Wilberforce to end it. Wilberforce as a great man of faith then spent rest of his life tirelessly working to abolish slavery in England. When Wilberforce set out to end slavery, the economics of England were deeply entangled in the slave trade; thus, most of the citizens of England thought his goals were impossible.[17] Wilberforce however understood that slavery was an act against the very laws of nature stating in a 1788 speech in Parliament:

> "Sir, the nature and all the circumstances of this Trade are now laid open to us. We can no longer plead ignorance. We cannot evade it. We may spurn it. We may kick it out of the way. But we cannot turn aside so as to avoid seeing it. For it is brought now so directly before our eyes that this House must decide and must justify to all the world and to its own conscience, the rectitude of the grounds of its decision…Let not Parliament be the only body that is insensible to the principles of natural justice."[18]

Thus as he worked to abolish it he saw this higher purpose in what he was doing which spurred him on even when he was close to death.

Practically speaking, in order to bring an awakening of the evil of slavery to the citizens the citizens needed to be informed as to exactly what was involved in the slave trade and in the slave labor in the West Indies. In order to inform the citizenry, Thomas Clarkson led the first real

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[12] John Pollock, *William Wilberforce, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE 4-5 (Chuck Stetson ed., 2007).

[13] ERIC METAXAS, AMAZING GRACE: WILLIAM WILBERFORCE AND THE HEROIC CAMPAIGN TO END SLAVERY 97-101 (2007); Clifford Hill, *Wilberforce & the Clapham Circle, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (Chuck Stetson ed., 2007).

[14] STETSON, *supra* note 8, at 91. Clarkson used ship logs to show that 20% of the seamen died at sea, and then another 30% never returned to England. This he found was significantly higher mortality rate as compared to the other trips the English seamen were making at the time.

[15] Newton also helped guide Wilberforce to stay in politics because Wilberforce was thinking of leaving the political arena to go full time into service to the church. Newton told Wilberforce "I hoped and believed that the Lord raised you up for the good of His church *and* the good of the nation." John Pollock, *William Wilberforce, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE 6 (Chuck Stetson ed., 2007). (emphasis added).

[16] Newton is most known for writing the famous hymn *Amazing Grace*.

[17] CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (Chuck Stetson ed., 2007). *See also* Pollock, *supra* note 15, at 6. Some historians have argued that in order to rid itself of the "barbaric treatment of human beings in slavery" in effect Britain committed "econocide"—a killing of their economy—for over a generation. The cost of ending slavery came in three major forms first the lost of financial input of the slave trade to the West Indies, the "restitution" of money to the slave holders, and then they were forced to pay higher costs for sugar and other goods to the West Indies. CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE preface (Chuck Stetson ed., 2007) (citing historian Seymour Drescher who says they cost is estimated at about 20 million pounds). However, most modern countries will actually see an economic benefit from eradicating slavery within their borders. *See infra* section of this paper.

[18] William Wilberforce May 12, 1789, introducing a motion to Parliament to consider the Privy Council report.

grassroots movement, by holding the town meetings, handing out brochures, organizing boycotts of slave-made goods, and securing the citizens' names to petitions.[19] Once the citizens began to understand the issues, most understood that slavery was an abomination to humanity. This effective strategy will be discussed as being valuable in the modern fight against slavery. Additionally, the abolitionists had a symbol created so that they could use fashion to focus people's attention on the problem.[20] Clarkson asked his friend, Josiah Wedgewood, to create this symbol. The symbol that ended up being the physical manifestation for the cause was the Wedgewood Cameo, which depicted a slave kneeling with his shackles around his legs, and around the cameo it states "Am I not a Man and a Brother?"[21] This medallion became a powerful symbol of human dignity and it adorned everything from snuffboxes to brooches.

Through the grassroots focus, Wilberforce was able to peaceably change the rule of law in Britain, and additionally he was able to change the attitudes of the citizens towards the slavery issue. These movements started in Britain with Wilberforce and his circle of friends,[22] and as a powerful leader in the world Great Britain emerged as a powerful advocate for those still in bondage.

B. Abolition in the United States

America recognized Wilberforce as a hero to humanity. Abraham Lincoln noted that Wilberforce was someone that in 1856 "every school boy" in America knew.[23] Frederick Douglass stated that Wilberforce "finally thawed the British heart into sympathy for the slave, and moved the strong arm of government in mercy to put an end to this bondage. Let no American, especially no colored American, withhold generous recognition of his stupendous achievement—triumph of right over wrong of good over evil and a victory for the human race."[24]

Although the scope of this paper does not allow a full recitation of the United States' tortured past with slavery there are a few highlights that will help with the current discussion concerning the abolition of modern day slavery including the use of the Underground Railroad, the civil war, and the Emancipation Proclamation.

The United States also used a form of a "grassroots movement"; however, it was not used to try to change the law or the minds of the citizens, rather it was used to smuggle slaves out of the slaveholding South and into the free North or to Canada. In the United States, the

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[19] STETSON, *supra* note 8, at 88.

[20] Josiah Wedgewood was seen as " instrumental in turning popular feeling in favour of the [abolitionist] movement. " By 1791 thousands of the medallion had been distributed and adapted to adorn snuff boxes, hat pins and brooches. Thomas Clarkson remarked on the impact of the Wedgewood cameo stating: 'Fashion, which usually confines itself to worthless things was seen for once in the honourable office of promoting the cause of justice, humanity and freedom', and it is evident that through the success of the medallion. Wedgewood had achieved, at least in part, the desire to make known the suffering of the slave, for he believed that knowledge of the evils of the slave trade would inspire universal detestation of its cruelty and conviction of its injustice." *When Fashion Promoted the Cause of Humanity*, WEDGWOOD REVIEW, *available at* http://www.thepotteries.org/did_you/005.htm.

[21] STETSON, *supra* note 8, at 94.

[22] Some refer to his core group of advocates as the Clapham Circle, named for the community where they meet or lived. However, this was not a term that Wilberforce or his circle of friends would have historically used, rather it was a term made up later to classify the group. Clifford Hill, *Wilberforce & the Clapham Circle, in* CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE 21 (Chuck Stetson ed., 2007).

[23] CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (Chuck Stetson ed., 2007). Today Wilberforce is not as well taught in the history books; however, with the introduction of the film Amazing Grace there appears to be a renewed interest in the important historical figure.

[24] *Id*.

abolitionists started the Underground Railroad. Individual citizens who saw the indignations of slavery did what they could to help the slaves.

IV. Abolitionists Succeed in Ridding the World of Slavery…or Do They?

"What, to the American slave, is your Fourth of July? I answer: a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim," Frederick Douglass declared of America's Independence Day. [25] However, even after the Emancipation Proclamation in 1863 freed the Southern slaves, the injustice was not erased. In 1865, the Thirteenth Amendment was passed, declaring slavery unconstitutional, but it did not end all vestiges of this institution. The federal government unfortunately began to intervene and to insert itself directly into the process of denying rights. Several southern states enacted laws that were created to attempt to solve the "Negro question" and to recapture some of the work force of the freed slaves.[26] One South Carolinian plantation owner wrote, "There must . . . be stringent laws to control the negroes, and require them to fulfill their contract of labour on the farm."[27] One way that the government did this was by requiring "apprenticeships" for orphans or children of freed slaves whose parents were deemed incompetent.[28] Additionally, in 1865 the Thirteenth Amendment allowed for involuntary servitude for duly convicted criminals. In the Pulitzer Prize winning book *Slavery by Another Name*, Douglas Blackmon describes the disturbing circumstances under which young black men were arrested and put in jail in the early 1900s.[29] When looking at the original records of the county jails Blackmon found that thousands of black men were arrested, convicted, and received jail time for minor offenses such as "changing employers without permission, vagrancy,[30] riding a freight train without a ticket, engaging in sexual activity, or loud talk with a white woman."[31] In the book Blackmon tries to give a voice to one of these men, Green Cottenham, who was arrested for not producing his work papers when asked. Cottenham was sentenced to 30 days of hard labor, but because he could not pay the court fees, his sentence was extended to one year. This prisoner was then "leased" to the U.S. Steel Corporation for his sentence. There he spent all day digging and removing coal from the mine under dangerous conditions, and he was subjected to physical torture if he did not complete the necessary work.[32] Cottenham, like hundreds of others, did not survive his "lease" time. These men were then buried in mass graves on hilltops that were just recently rediscovered.[33] For many, their families never knew what had become of their loved ones. Blackmon uncovered hundreds of thousands of pages of original public documents in Alabama alone, and over thirty-thousand pages in the Department of Justice Archives relating to this

[25] Fredrick Douglass, Fourth of July Speech (presented July 4, 1852), *available at* http://www.historyplace.com/speeches/douglass.htm (*last visited* on September 1, 2009).
[26] DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME 53 (2008).
[27] *Id*. at 53 (citing the 1865 private journals of Henry William Ravenel).
[28] *Id*. at 53 (discussing the Alabama legislation).
[29] *Id*.
[30] Vagrancy was so broadly defined beginning in 1865 that any freed slave who did not have a contract of employment was subject to arrest, and in four states an African American could not legally be hired without discharge papers from his or her previous employer. Other states made it illegal for a Black man to change employers without permission. BLACKMON, *supra* note 26, at 53-54. If a man did not have valid work papers on his person when asked by a police officer then he was guilty of vagrancy.
[31] *Id*. at 7.
[32] *Id*. at 2. Some of this Blackmon extrapolates by piecing together the stories of others who survived the "leasing" to try to give Green Cottenham a voice.
[33] *Id*. at 4-6.

forced labor. Blackmon explains that in the "crude graveyards, the final chapter of American slavery had been buried. It was a form of bondage distinctly different from the antebellum South …[b]ut it was nonetheless slavery—a system in which armies of free men, guilty of no crimes and entitled to law to freedom, were compelled to labor without compensation were repeatedly bought and sold, and were forced to do the bidding of white masters through the regular application of extraordinary physical coercion."

Besides this obvious blemish on the freedom movement there were also the issues of continued sharecropping and debt bondage, which were sometimes used in order to keep the freed slaves on the plantations where they worked before. Frederick Douglass' definition of freedom clearly revolved around the ability to choose freely one's vocation. In his speech to the Anti-Slavery Society of Massachusetts in April of 1865, he defined freedom as "the right to choose one's own employment," arguing that "when any individual or combination of individuals…undertakes to decide for any man when he shall work, where he shall work, at what he shall work, and for what he shall work, he or they practically reduce him to slavery."[34] It is interesting to note that Douglass did not want the government to intervene to give him more but rather he thought that freedom was truly fulfilled when one can work free from encumbrances for his earnings.

In hindsight, history does reveal things that can assist the ardent observer in making better choices when faced with a similar situation. In the case of ending the trans-Atlantic slave trade and abolishing slavery especially in the U.S. Southern states, there were significant setbacks that led to generational consequences for the freed African slaves. Kevin Bales, the leading researcher and scholar in the area of modern day slavery and human trafficking, has stated, If the path to freedom is not as smooth as we can make it, if it leads only to lives of continued exploitation, then the problem is not solved; it is merely postponed."[35] Bales explains that one of the problems is that after the American civil war freedom finally came to all slaves but that was the problem, it was only freedom, and more was needed.[36] Slavery is theft—theft of work, service, and even children. The federal government had originally set up a Freedmen's Bureau that was responsible for setting up educational programs, and the formula of "forty acres and a mule." The Bureau was quickly dissipated. Bales explains that it is just this type of mixture of education and skills that can bring stable freedom to ex-slaves.[37] However, the newly freed slaves in the United States did not receive needed support to help them establish their new lives.[38]

We cannot repeat these same mistakes as we attempt to free the 27 million slaves throughout the world. It does not matter if we are freeing a brothel of women who have been trafficked, or a village who has been enslaved to work in the quarries for generations; there needs to be a safety net set up so that they do not become enslaved again.

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[34] Jonathan J. Bean, *The Party of Lincoln, and of Douglass: Rediscovering Frederick Douglass in the Age of Obama*, NATIONAL REVIEW ONLINE, July 4, 2009, http://article.nationalreview.com/?q=ZmUxY2MxZGMyMjQ4Zjk5NTg0YTJlOGVlZDBlOTM2NWU=&w=MA.

[35] KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY: A READER 5 (2005).

[36] *Id*. at 5.

[37] *Id*.

[38] Bales discusses the importance a society has in making sure that one gives support to newly freed slaves stating that "Helping freed slaves achieve full lives is one of the best investments a government or society can make. We know the alternative: that way lies Jim Crow and a horrible waste of human potential. It also gives birth to anger, retribution, vengeance, hatred, and violence." *Id*. at 6.

V. Natural Law and Slavery—A Brief Look

Ownership of slaves was considered prestigious, freeing slaves would violate the sacred right to private property, and Wilberforce was vilified for trying to end the slave trade because as some slaveholders stated "the happiest days of an Africans life was when he was shipped away from the barbarities of his home life." Statements like this are unheard of in today's society because civilization has recognized that the act of owning another human being is morally repugnant to what it means to be human; however, as was mentioned earlier these were some of the oppositions to ending the Trans-Atlantic slave trade.[39] Slavery is clearly against the "laws of nature and of nature's God"[40]—this would seem to be a truism understood by all; however, this is actually a controversial assertion.

This author submits that many slaveholders and citizens have known this truth even if it was not always accepted. For example, stating that the African people would be happier in the West was a justification the slaveholder held up to the world to defend his behavior. Since the refined Englishmen did not understand the village ways of the African tribes they could disconnect it as something other, and in their own minds think no one would want to live in those types of villages, because they themselves would not want to live in them. It was just a way to disassociate the humanity of the African people because if slaveholders recognized that the slaves enjoyed their life in Africa, then there could be no justification for purchasing kidnapped slaves, transporting them, and then and selling them to the highest bidder – all for economic gain.

Slavery was considered socially acceptable and even philosophers developed explanations to try to understand how this socially acceptable practice fit together with the other truths they knew to be correct. In short, although some of the great philosophers of the past may appear to be advocating for slavery, their writings are more justifying a current social trend than making a pronouncement of absolute truth.

John Locke explained that slavery must be understood in the context of man's nature as the image bearer of his Creator. He explains that the state of nature has a law of nature that governs it, and for Locke this law of nature is the law of God.[41] He further states that man in the state of nature is equally independent, but no one can harm others in life, liberty, or health because all "men being the workmanship of one omnipotent and infinitely wise maker, . . . they are His property."[42] Locke further states that a man must preserve himself, and should not willfully quit his station in life.[43] Therefore, a man cannot sell himself into slavery. In the *Of Slavery* section of the *Second Treatise on Government* Locke explains,

> "This freedom from absolute, arbitrary power is so necessary to, and closely joined with, a man's preservation, that he cannot part with it but by what forfeits his preservation and life together. For a man, not having the power of his own life, cannot by compact or his own consent enslave himself to anyone, nor put himself under the absolute, arbitrary power of another to take away his life

[39] *See supra* sections above. Admiral Lord Nelson exclaiming that he would not let allow any infringement on the rights of the slaveholding plantation owners wrote "while I have an arm to fight in their defense or a tongue to launch my voice against the damnable doctrine of Wilberforce and his hypocritical allies." Pollock, *supra* note 15, at 7.

[40] United States Declaration of Independence (1776). This phrase refers to both natural law and revealed or divine law.

[41] JOHN LOCKE, THE SECOND TREATISE OF GOVERNMENT 4 (Barnes & Noble, 2004) (1690).

[42] *Id*. at 4.

[43] *Id*.

> when he pleases. Nobody can give more power than he has himself, and he that cannot take away his own life cannot give another power over it."[44]

Some have argued that slavery cannot be against natural law because it was allowed for in the Bible. Locke in addition to explaining why the law of God forbids a people selling themselves or another into slavery further demonstrates the differences between the slavery discussed in the Bible and true slavery. Locke admits:

> "I confess, we find among the Jews, as well as other nations, that men did sell themselves; but, it is plain, this was only to drudgery, not to slavery: for, it is evident, the person sold was not under an absolute, arbitrary, despotical power: for the master could not have power to kill him, at any time, whom, at a certain time, he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life, that he could not, at pleasure, so much as maim him, but the loss of an eye, or tooth, set him free, Exod. xxi."[45]

Thus according to Locke a slave must by definition be "under the absolute, arbitrary power of another, to take away his life, when he pleases;" and in scriptures the "slavery" institution that a person could sell himself into the person was not to be"under an absolute, arbitrary, despotical power."[46] Additionally, the Bible specifically forbids kidnapping someone and selling him or her into slavery (termed "man stealing").

Although slavery still exists, very few slaveholders base their ownership claim on their slave on a natural right. Rather, most slaveholders will have elaborate reasons to justify their keeping of slaves, not based on the correctness of the institution but based on extrinsic, pragmatic features of the system. Modern slave owners provide justification for utilizing slave labor including: 1) my loan helped people in emergency; 2) they asked for the advance; 3) if it weren't for me these people would be homeless; 4) If I release these people they will be jobless; 5) If I am not repaid I would lose money; 6) the industry would fail if it could not use forced labor; 7) the workers would be free if they paid off the loans; 8) you are just picking on my operation or industry; 9) brokers brought me these people and I didn't know how they were paid for or what freedoms they had; 10) even if the law says that the loan is canceled the workers still have a moral obligation to repay the debt.[47]

If slavery does not violate a natural law principle or if it is not a matter of absolute truth, then how do we combat a culture that says that it is our tradition that one caste should serve another? If the only way to define truth is a post-modern or cultural relativism, then there is no standing for an outsider to step in to say that this behavior or practice is wrong. Additionally, these traditions can be imported to other countries. Multiculturalism can be a principle that brings us beautiful traditions from many other cultures; however, some of these traditions include having slaves as housemaids such as the *restaveks* in Haitian culture. The child slavery problem in Haiti is deeply rooted in the traditional culture of Haitian community.[48]

The restavek system was exposed in E. Benjamin Skinner's book, *A Crime So Monstrous*, where he demonstrated how one could go from sitting in an apartment in the U.S. to buying a

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[44] *Id*. at 13-14.
[45] *Id*. at 14.
[46] *Id*.
[47] DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE—AND HOW WE CAN FIGHT IT 95-97(2007) (quoting from IJM's factsheet).
[48] . BENJAMIN SKINNER, A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY 40 (2008). Children are also sold to the Dominican Republic to work their sugar plantations.

Haitian child (in Haiti) for $50 in about 5 hours. In the market place they sell leather whips which are for the children who are considered "little animals" and there is a saying that "It is the whip which makes the little guy walk."[49] Skinner explains how you can always spot the slave children because they are much shorter and lighter than the average child is, they have no shoes or outsized shoes, they often have burns on their body, and they do not make eye contact. They are forced to work from dawn to night for no pay and the girls are often sexually abused (they are "for this and that" as the owners will say). These slaves are beaten almost daily.[50] These child slaves are called restaveks or "stay with's." [51] This cultural tradition is so strong that Haitian families will occasionally bring their restaveks to the United States as well. [52] The traffickers will describe their work in humanitarian terms explaining that they place the children for their own good. From a multicultural perspective, it is difficult to justify intervention of the outside community to say that this is wrong.

In the United States both former Ambassador John Miller[53] and former President Bush have explained that there is a moral law that stands above men and above nations and this law can be called upon to call slavery the abomination it is in any context. Additionally, the founding documents of the United States extol the virtues of freedom and liberty. Some discount this because there was slavery at the time these great documents were written; however, at the time these documents represented hope. In his "Fourth of July 1852 Oration" Frederick Douglass did not refer to the U.S. Constitution as a compromise document as so many at the time were doing, but rather he called our Constitution the "Glorious Liberty Document." Douglass further concluded,"I do not despair of this country…'The arm of the Lord is not shortened,' and the doom of slavery is certain."[54]

A careful discussion of the truth will help show slaves like Yebawwa, discussed in the introduction, that they are worthy of freedom. Without changing the mindset of the slaveholders and the slaves the cycle of abuse will not be broken—it will merely be postponed as alluded to by Bales. Before discussing how to end slavery a discussion of what modern day slavery looks like is beneficial.

VI. Modern Day Slavery

"They are livestock with brains and motor skills to do factory work or they can be your sex toy, care for your children, or run your shop." When E. Benjamin Skinner, a well-documented researcher in this area, first began his research, he had been told that it was "one of the greatest human rights challenges of [his] generation."[55] However, when he first visited any new country his greatest challenge was finding a single slave. Then he explains that after immersing himself in the culture "I went through the looking glass. Then the slaves were everywhere."[56] He explains that once you recognize that there is one slave you will see that there are millions.

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[49] *Id*. at 5.
[50] Haiti has the highest rate of corporal punishment. SKINNER, *supra* note 48, at 34.
[51] SKINNER, *supra* note 48, at 5-6.
[52]Skinner discusses one troubling cases, Willy and Marie Pompee, where a young girl was raped, worked hard and forced to eat garbage in Miami, Florida. *Id*. at 9.
[53] The first Ambassador of the Office to Monitor and Combat in Trafficking in Persons.
[54] Jonathan J. Bean, *The Party of Lincoln, and of Douglass: Rediscovering Frederick Douglass in the Age of Obama*, NATIONAL REVIEW ONLINE, July 4, 2009, http://article.nationalreview.com/?q=ZmUxY2MxZGMyMjQ4Zjk5NTg0YTJlOGVlZDBlOTM2NWU=&w=MA.
[55] SKINNER, *supra* note 48, at xvii. This comment was told to Mr. Skinner by Ambassador John Miller.
[56] *Id*. at xvii.

Modern day slavery sometimes is labeled with the term "invisible," but in reality, many slaves toil out in the open in respectable businesses. David Batstone, Founder of the organization NotforSale, and author of the book by the same title, recounts how he found out that one of his favorite Indian restaurants was actually operating utilizing slave labor.[57] The Indian restaurant was exposed when a seventeen-year-old girl was found and a fifteen-year-old girl were poisoned by carbon monoxide in the apartment where they were being held by their slaveholder. The slaveholder (who ran several restaurants and owned several apartment buildings) refused to take the girls to the hospital, and instead rolled them up in a carpet to dispose of them. During a struggle to get them into the van, a passerby saw the scene, and called 911. The slaveholder was prosecuted and it was found that he had secured several false visas and identities to traffic hundreds of adults and children from India to the United States.[58] These children worked in a restaurant that was open to the public. However, many slaves do work behind the secure walls of individual homes where there is little to no contact with the outside world. These slaves may aptly be labeled invisible, but to help end injustice, they must be found. This invisibility exacerbates the issues in dealing with modern-slavery.

Although the statistics are difficult, if not impossible to verify, most researchers have estimated 27 million people are currently enslaved in one or another form of slavery,[59] and between 600,000 and 800,000 (some have it as high as 2 million victims) are trafficked internationally, with as many as 17,500 people trafficked into the United States each year.[60] It is estimated that there are at least 15 million bonded slaves in India, Pakistan, Bangladesh, and Nepal alone.[61] Most agree that more women are victims then men with some estimates as high as three out of every four slaves being women, and about half of slaves are children.[62] As Ambassador John Miller explains, the victims do not stand in a line and wait to be counted.[63] Therefore, it is almost impossible to get an accurate count on how many slaves exist right now. As one abolitionist put it whatever the number it is big, and to him is meaningless, because as Stalin pontificated, "The death of one man is a tragedy. The death of a million men is a statistic."[64] According to the organization Underground Railroad Freedom Center, "We are living in the midst of a tragic paradox: no longer is there an underground network to guide slaves to freedom, but rather, there is an underground criminal network to entrap people and sell them into slavery."[65] The practice of slavery has now been accepted as a crime against humanity, and in a report to the United Nations the International Law Commission acknowledged that the

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[57] BATSTONE, *supra* note 47, at 1-3, 7.

[58] The slave attempted to use the RICO Act to secure a private cause of action against LaKireddy Reddy. Doe I v. Reddy, No. C 02-05570 WHA, 2003 U.S. Dist. LEXIS 26120 (N.D. Cal. Aug. 4, 2003).

[59] SKINNER, *supra* note 48, at xv (citing KEVIN BALES, DISPOSABLE PEOPLE (1999)); at BATSTONE, *supra* note 47, at 11. In the year of 1861 there were about 3.8 slaves in the United States which was a very high number during that time, and that rivals the umbers today.

[60] As John Miller put it slaves do not line up to be counted. It is very difficult to ascertain the number of victims out there. In 1999 the Central Intelligence Agency (CIA) estimated that 50,000 trafficking victims entered the U.S. each year, but that estimate has been decreased to current estimates of about 17,000. ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED xvii (2008).

[61] BATSTONE, *supra* note 47, at 11 (citing Kevin Bales' Free the Slave organizational estimates).

[62] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

[63] SKINNER, *supra* note 48, at xvi.

[64] *Id*. at xvi.

[65] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

"prohibition against slavery is one of the oldest and best settled rules of *jus cogens*." Therefore, no nation would openly sanctify slavery, yet slavery persists.

C. Why use the term Modern Day Slavery?

Slavery has been known by a number of names such as "the peculiar institution", the social system" and the "impediment" said Frederick Douglass, but whatever one calls it is nothing but a "new skin" on an old snake."[66] Some bureaucrats were worried about using the term slavery to describe the atrocities of today.[67] This is why there is some confusion of terms. Some use the term trafficking to mean slavery as a sort of euphemism. Newspapers will call behavior *slave-like*, for fear of offending someone by calling it *slavery*. Finally, there was a compromise in the U.S. State Department and the term modern-day slavery was approved.[68] Slavery is about more than occasions of cruelty; as Wilberforce exclaimed it is about the "abitual immorality and degradation and often grinding suffering of poor victims of this wicked system…the systematic misery of their situation."[69] Although chattel slavery is very rare today, found only in Sudan and Mauritania,[70] modern slavery is no less degrading. The definition of slavery is often disputed among those who make the laws and policies; for example, some think that all prostitution is slavery, and others define organ-selling as slavery.[71] Slavery can be defined using the following three prongs: the slave holder must exercise control over the slave based on fraud, violence or the threat of violence; the slave does not receive any payment for his/her work beyond subsistence; and the slave's labor or other qualities are exploited for the slaveholder's economic gain.[72] The key component of slavery is the control of one person by another,[73] so if the worker is free to leave work and go home to his family or free to pick another employer then he cannot be a slave. In short, a slave must be "compelled to work, through force or fraud, for no pay beyond subsistence."[74]

There are many atrocities in the world that some call slavery including "sweatshops" when children or women have to work in factories for very little pay, or migrant workers who are paid very little "by the piece" of fruit picked. Even though this is indeed tragic, it is difficult for us to assess these circumstances using our sensitivities as an outside observer without more information. For instance, it might be summer time for the children that are working or the small amount the migrant worker is paid by the piece might be considered very good money in their native country, or these might both be cases of reductions of human dignity. However, as long as

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[66] SKINNER, *supra* note 48, at 107.

[67] They worried it was a loaded term that might offend countries where the U.S. never formally apologized for its part in the trans-Atlantic slave trade. SKINNER, *supra* note 48, at 107. On July 8, 2003, while on a visit to Africa George W. Bush offered the first presidential apology for "one of the greatest crimes in history" stating "Christian men and women beame blind to the clearest commands of their faith and added hypocrisy to injustice. A republic founded on equality for all became a prison for millions." *Id*. at 110.

[68] *Id*. at 107. Throughout this paper the term modern-day slavery and slavery will be used interchangeably.

[69] POLLOCK, *supra* note 15, at 13.

[70] BALES, *supra* note 35, at 52.

[71] SKINNER, *supra* note 48, at xi (this is from the forward written by Richard Holbrooke). The lack of consensus over the definition of who is considered a slave has been called one of the "the deepest flaws in American strategy [which] began with ambiguity on some of the most fundamental question. Foremost among these what is a slave?" *Id*. at 289.

[72] BALES, *supra* note 35, at 9 paraphrased. *See Also Id.* at 53 (There are interesting questions from there).

[73] BALES, *supra* note 35, at 9.

[74] CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE xvii (Chuck Stetson ed., 2007). (summing up Bale's three prong test which he also utilized in order to determine if s person was a slave or not).

the workers are free to leave the workplace then these are not considered cases of slavery. However, it would be difficult to deny that it is slavery when a child as young as 7-years-old is beaten, malnourished, and forced to be a camel jockey in Dubai;[75] when a girl is forced into a brothel to be raped by men old enough to be her grandfather; or when children is forced into domestic servitude in Haiti.

This paper only deals with people that are compelled to work through force, fraud, or coercion, are not free to leave their situation, and are not paid for their labor, and thus meet the definition of slavery.

D. Types of Modern Day Slavery

Due to the sensational aspects of sexual slavery, the media coverage of this type of story is greater than other forms of slavery. Moreover, forced prostitution dominates the political agenda, thus the public can get a skewed perception that this is the only form of slavery that society is dealing with in modern times. However, the slaveholders have realized that slaves can be a commodity in any business and in any occupation, so really the only limit to where you may find slaves is the economic imagination of the slaveholder. There are many forms of modern day slavery, the most common include debt bondage, forced labor, forced prostitution, and child prostitution. Even prison labor can at times be considered a form of slavery.

i. DEBT BONDAGE

There are two basic forms of debt bondage and are both considered slavery. In the first form of debt bondage the person and the labor the person can produce becomes collateral for the debt.[76] This is the form normally found in India, although it has been outlawed in India by very strong laws. An example of this form of debt bondage is the quarries in Uttar Pradesh Village in India.[77] The entire Kols tribe (in one of the lowest castes) are under the rule of a series of slave-owners, and they are forced to create *handmade* sand from stone quarries. Generations of families are held in debt bondage. Children are not exempt from the forced work in the quarry. Children as young as five hauled rocks, and worked in the pits making sand by smashing rocks with a hammer.[78] Although the debts that put the families in the stone quarries are illegal, there is no enforcement of the law. There is a complete breakdown of the rule of law, so slaveholders are able to hold the families in the quarries and to inflict violence on them with impunity.[79] Although the debt is technically illegal (therefore they are technically free), the families see themselves as slaves because that is all they ever have known.[80]

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[75] There was an HBO documentary on this problem in fall 2004 which ended up being quite embarrassing for the U.S. since it had recently upgraded the United Arab Emirates from Tier Three to Tier One when it happened. SKINNER, *supra* note 48, at 45.

[76] BALES, *supra* note 35, at 58-59.

[77] Two of the leading abolitionist Kevin Bales, and E. Benjamin Skinner, have both visited these quarries and have reported on the great atrocities that have occurred here.

[78] BALES, *supra* note 35, at 1-2.

[79] SKINNER, *supra* note 48, at 205, 210, 217-18, 220-21, 223-24. One person's loan started out at 62 cents when his grandfather borrowed it in 1958.

[80] Eventually these slaves were freed using a system where the slaves pooled their resources to buy one slave out of debt. That slave worked with Sankalp, an abolitionist organization, to grow the money she earned in order to buy other slaves' freedom. Eventually, this caused a revolution in the quarries, where the slaves asserted their freedom. BALES, *supra* note 35, at 2.

The second type of debt bondage is when the labor could be applied to the debt, but for various reasons the debt can never be paid off.[81] The slaveholder will utilize false accounting or very high non-negotiated changeable interest rates.[82] Recently, this has been happening to migrant workers and to coerced or defrauded women who are brought from their homes to work in the sex trade. After the slaveholder induces or coerces the victims into slavery, the slaveholder then tells them that they must repay exorbitant travel costs under threat of violence. The slaveholder will feed and house the slave (many times in a fashion that is less then desirable and at times is dangerous), and the slave's labor goes to paying for basic living not towards debt. The debt is consistently increased for minor "living expenses." Normally the only way for any slave in debt bondage to get out of debt is for someone from the outside to pay the debt and if not the debt is passed onto children.

A slaveholder can use small loans to enslave an entire village. This is what happened to slaves in a small village in Southeast Asia who were forced to work in a rice mill for up to 18 hours a day, and were prohibited from leaving the walled complex. As happens in many slave situations, some of the slaves in the village committed suicide because they saw no way out of the relentless oppression. When a slave tried to flee from the bondage he was captured and beaten almost to death, and then to set an example, he was chained to his bed each night for the rest of his time at the mill. In this case, the slaves eventually had reason for hope because after a long investigation International Justice Mission, an American based anti-slavery NGO, assisted the local police task force in a raid of the rice mill that freed the bonded slaves.[83]

ii. FORCED LABOR

Forced labor occurs when the slaveholder forces the slave to work for him for no pay. Sometimes this is because the slaveholder has taken the slave as pillage while raiding the slave's village. Other times the slaveholder may promise either the slave or the slave's family that the slave with be given some sort of career or education opportunity, and then when the slave is transported, the slave is then forced to work and receive no benefit except perhaps housing and food. In many of these cases, the slaves have reported that they have been forced to sleep on the floor or in the basement or even outside and that was considered housing. The food is many times scraps from the family's dinner, and many slaves have recounted eating out of the garbage to try to get enough to eat.[84] Hunger is a recurrent theme in most slaves' narratives. The types of jobs the slaves are forced to do can range from a domestic worker in a home, to a child forced to be a soldier in a war against his own family.

First, the domestic slave is someone who will clean the house and/or take care of the children of the home. Domestic servitude is very common in some cultures. In the United

[81] A person could negotiate to work off a debt and it not be slavery if the terms were well defined up front.

[82] In the case of one slaveholder who held a loan for a group of relatives. He claimed that they would pay $4.50 for every thousand bricks, but after 6 months of laboring one young women asked how much her debt was and was shocked to find that her debt had doubled due to interest and money that he charged for their meager food and shelter. They were locked in and no one was allowed to leave unless to run errands for the slaveholder (and those were told if they did not come back that the remaining families would pay). After months of labor, the sexual abuse began. After a particularly horrific incident where the women of the family were raped in front of their husbands, they planned an escape. The slaveholder then tracked down three of their family members and tortured them to try to induce his slaves to return. The slaveholder was eventually arrested after a raid by IJM in coordination with local authorities. The slaveholder was released on bail. BATSTONE, *supra* note 47, at 75-83, 90-95, 97-100, 102, 105-09.

[83] BATSTONE, *supra* note 47, at 12.

[84] AMERICAN ANTI-SLAVERY GROUP, ENSLAVED: TRUE STORIES OF MODERN DAY SLAVERY (Jesse Sage & Liora Kasten eds., 2008).

States, some of the cases that are reported center around people who are from a culture where slavery is accepted as part of the culture and having a domestic slave, while not legal, is something that the law does not prosecute. [85] Each of the slave to slaveholder relationships even in the context of domestic servitude is marked by an attempt to belittle the slave so that she is more submissive. This is done in numerous ways normally through harsh punishments for small infractions of house rules. Additionally, the slaveholder will keep the slave isolated as much as possible, and will keep all of the slave's travel documents locked away. The females who are forced into domestic servitude are also many times raped by their "owners." In some cases, a domestic worker is kept primarily for the sexual desires of the slave holder. One such case involved a 16-year-old girl from Tibet whose family was living in a refugee camp in southern India.[86] A minister from the U.S. visited the refugee camp and told the young girl's parents that he could offer her an education and better opportunities in the United States. Her brother-in-law lobbied her parents to let her go, and made a financial deal with the minister who trafficked her. When she came to the United States she was forced to do all of the housework, and she was sexually abused by the "minister" at night. What is different about this case is that the minister did send her to school, but threatened to have her family back in India harmed if she told any one of her treatment. Later two of her cousins were trafficked in a similar manner, so she mustered up the courage to go to the local police. The minister was arrested, convicted, and sent to prison.[87] This is not typical of how these cases turn out since most of the domestic servants toil and suffer in silence for years with no end in sight.

The second form of forced labor is the agricultural worker. Some of the slaves who work in the agriculture fields are migrant workers and are moved to different areas to harvest crops. These workers are forced to pick fruit and vegetables, and sometimes to prepare fields for planting. Typically, these workers come to the United States or to other countries with the promise that they will be able to make a living doing this work and send money they make back home to support their families. However, once they arrive in the destination country their travel documents are seized, they do not know the language, and they are forced to live in horrid conditions in trailers packed with many other migrant workers. They are told if they run away they will be jailed for being in a foreign country without papers, and they are threatened with violence against themselves and their family.

There becomes a fine line between human smuggling and human trafficking in these cases. In short, human smuggling is when both parties are willing participants in a transaction that gets a non-citizen over the border.[88] Smuggling is a voluntary transaction, and once the smuggler and the person being smuggled get to the destination country, they will go their separate ways.[89] Human smuggling is a crime and both parties could receive criminal penalties.[90] The problem is that sometimes during this arrangement the smuggled individual may become a victim of trafficking. Human trafficking will be discussed later, but for purposes here, it is when the smuggled victim, through force, fraud, or coercion, will not be free to leave once in the

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[85] United States v. Paulin, No. 08-13124, 2009 U.S. App. LEXIS 11155 (11th Cir. May 27, 2009) (unpublished) (ruling that prosecuting Paulin did not violate the prohibition on ex post facto laws because she held a 14-year-old Haitian girl for three years after the TVPA was passed).
[86] BATSTONE, *supra* note 47.
[87] *Id.* at 8.
[88] U.S. Dep't of State, Distinctions Between Human Smuggling and Human Trafficking, http://www.state.gov/m/ds/hstcenter/90434.htm (last visited August 31, 2009).
[89] *Id.*
[90] Immigration and Nationalization Act, § 274 (a)(1).

destination country and will be forced to labor. When dealing with migrant workers, this difference between smuggling and trafficking becomes blurred. Individuals who are desperate to find work in a different country become vulnerable. They may pay the smuggler substantial amounts of money to get them across the border only to be forced into slavery once across the border.[91]

As a side note, these categories (forced labor and debt bondage) are fungible as most of the time the "coyote"[92] or human smuggler who traffics the agricultural worker (or even the sex worker for that matter) into the country will actually charge the now slave for his/her voyage and for forge documentation to get into the country of choice; thus, the slave owes a debt that he/she must work off.

Third, child soldiers are the young children that are found in or sought out from enemy villages and then taken to be used soldiers against their own village or family members.[93] Some do not classify these children as slaves; however, they meet the definition proffered above for slavery. These children are taken from their families, and forced by violence or the threat of violence to take up arms and to fight with a rebel army. Finally, the actions these children are performing give the rebel armies a significant advantage in battle. These children, mostly very young boys, are severely traumatized. Their captors force these children to kill at an early age, and many have witnessed their family brutally slain in front of their eyes by those that now hold them captive.[94] The psychological and spiritual damage that is inflicted on these children is immense. While this type of slavery and human trafficking is not normally dealt with inside the borders of most Western countries, many NGO's have recognized the need for these children to have assistance during the liberation process and then to have treatment options available after they are freed.[95] These children are especially vulnerable to the problems associated with an inability to love and to bond, which occurs when one is taken from the family unit during certain formative years (discussed below).

Fourth is hard labor like construction, landscaping, and mining.[96] This has been the basis for several cases in the United States including the famous "granite quarry case". Fifth, slave labor can be used in the hospitality industries such as hotels or restaurants.[97] This is especially true with restaurants that focus on ethnic foods; however, even in this case many times the slaves are relegated to working in the "back of the house" cooking or doing dishes.

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[91] *Distinctions Between Human Smuggling and Human Trafficking,* (April 1, 2006) http://www.state.gov/m/ds/hstcenter/90434.htm (last visited August 31, 2009).

[92] This is a slang term used in the United States for someone who sneaks another across the U.S. border.

[93] One modern example is the Lord's Resistance Army (LRA) who stole children as young as 7 years old from the northern region of Uganda. Child abductees compromise as many as 80% of the LRA. The boys are forced to kill and fight for the LRA. A young girls who is abducted is forced to do the domestic duties, and is then sexual abused when she is given as a "wife" to one of the LRA senior ranks. Village families go to extreme lengths to try to prevent their children from being stolen including having them sleep in the woods near the village. In other places hundreds of children make a journey , some walk for 5-10 miles, each night to a larger town to sleep and then come back to the village in the morning—these children have been coined the Night commuters. BATSTONE, *supra* note 47, at 111-123.

[94] BATSTONE, *supra* note 47, at 111-55.

[95] *Id*. at 111-55.

[96] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

[97] *Id*.

Finally, slaves are used to peddle or beg, as in the deaf Mexicans case discussed below, [98] or in any industry that is not regulated well. One example of an unregulated business is church choirs, and one enterprising criminal thought of a way to exploit young boys to make a profit using his position as a pastor in a church. Pastor Grimes recruited young boys from Zambia to sing in a traveling choir all over the United States. He promised the parents of the boys that they would receive a U.S. education, and that they would be able to send money back to help support their family. However, none of this materialized, and the boys were forced to work long hours and were not paid. The boys also endured difficult living conditions, and they were not provided with proper nutritious food (what they were given they had to cook themselves and it was deducted from their "pay").[99] In essence, slaveholders are often savvy criminals and inventive businesspersons and will look for opportunities to exploit their new cheap human commodity to make a profit in many different businesses.

iii. FORCED PROSTITUTION & CHILD PROSTITUTION

While theoretically forced prostitution and child prostitution are technically forms of forced labor, they are broken out because there are so many unique aspects to this type of modern day slavery. Children are forced into prostitutions all throughout the world. In many areas, especially Southeast Asia, the most valuable prostitute is a child. One abolitionist launched a project to reach the street kids in Northern Thailand, and found that many if not most of those children did not come from Thailand but rather came from Burma with some coming from Vietnam, Cambodia, and Laos.[100] The sex industry in Thailand does not discriminate on the basis of gender of children, and most of the children this abolitionist worked with were boys who had been conned into traveling to Thailand by a trafficker who used another 14-year-old boy to entice the boys' parents with scholarships to good schools in Thailand. Of course, once the boys arrived in Thailand they were forced to act as sex slaves and to sell themselves repeatedly in sex bars.[101]

Since a child can never consent to being prostituted then it is always considered slavery and/or trafficking; however, for adult women prostitution has been the most discussed and the most controversial form of slavery. There is a segment of scholars that contend that all prostitution is slavery because it always puts women in a subservient position to a man, and they contend that slavery should always be outlawed.[102] There are others who believe that prostitution is only slavery if through force or coercion the women is made to engage in sex for money, and the women herself does not make the money and she is not free to leave the business.[103] Even if one agrees that only the latter should be considered slavery that does not end this debate. Countries and activist groups have argued about which is the best way to safeguard the human rights of women in the community. [104] The community needed to determine a way to dissuade

[98] *Id*.
[99] BATSTONE, *supra* note 47, at 232-235, 254-257.
[100] BATSTONE, *supra* note 47, at 13.
[101] BALES, *supra* note 35, at 14. At first Kru Nam, the abolitionist, would work with the street kids when she realized that these boys had all escaped from the local sex bars. Then Kru Nam, would actually walk into the sex bars and rescue the boys. Once the slave holders realized what she was doing she was threatened with violence, and so she began to try to intercept the boys before they arrived in the sex bars. She set up a shelter to house the young boys she saves, and now houses and rehabilitates several young boys. *Id*. at 13-15.
[102] Catherine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 24–25 (1993).
[103] Jane E. Larson, *Prostitution, Labor, and Human Rights*, 37 U.C. DAVIS L. REV. 673, 681 (Feb. 2004).
[104] Sarah Thompson, Note, *Prostitution – A Choice Ignored*, 21 WOMEN'S RIGHTS L. REP. 217 (Summer 2000).

criminals from forcing women into the sex industry, and provide a safe environment for those who are already held captive to be able to get the help they need to get out of slavery. The question is how a country achieves these goals.

One model is legalization of all prostitution.[105] The argument proceeds that if it is legalized then there would be a greater supply in the market for prostitution. This would make it less profitable for traffickers. Since there would be legal brothels the consumers would not risk going to a non-legal brothel, and there would be government oversight of the brothels and red light districts. This, as the theory goes, would make it more difficult for a trafficker to force someone into prostitution. This model is used in parts of Australia, Netherlands, Germany, and one state in the United States.[106]

A second model, referred to as the Swedish Model, argues that since the act of prostitution still does put women in a position of gross inequality in terms of bargaining rights that society should not criminalize the women's behavior for trying to make a living. [107] Therefore, the customers ("Johns") can still be held guilty of a criminal offense of buying sex, but the act of selling sex will no longer be criminal.

Finally, there is the criminalization model that, as the name implies, states that since prostitution is morally wrong and degrading to women no matter if they consent or not, even if they are in control of their own money, it should be criminalized. [108] Under this model prostitution is illegal and as such the prostitute, the John, and anyone else involved in the process can all be found criminally guilty of prostitution. As many researchers have pointed out there has not been any systematic quantitative research to determine what effect these models have on the number of forced prostitution victims in a particular state or area.[109] However, there is evidence that forced prostitution is still found in each of these systems which leads to the conclusion that the legality of prostitution although it might change the profit structure slightly for the trafficker is not dramatic enough to deter the incidences all together.[110] The legalization of prostitution debate is important; however, it does not appear to have that much bearing on the issue of forced prostitution, and in some cases, it is a red herring that detracts advocates from the broader picture.[111]

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[105] Jackie West, *Prostitution: Collectives and the Politics of Regulation*, 7 GENDER, WORK & ORG. 106 (Apr. 2000). *See Also* Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution*, 2 J. Trauma Practice 315 (2003); Svitlana Batsyuoka, *Prostitution and Human Trafficking for Sexual Exploitation*, 24 GENDER ISSUES 46 (June 2007).

[106] These countries determined that exploitation will thrive in the black market when criminals take advantage of illegality, decided to make the sex trade legal. Sex workers are given legal protection, but these protections do not extend past in country native workers. There has been at least one study that notes that there is a thriving underground sex trade in both Germany and the Netherlands with as many as 65% of the of the sex market coming from foreign born women. BATSTONE, *supra* note 47, at 181.

[107] Norma Ramos, *Addressing Domestic Human Trafficking*, 6 U. ST. THOMAS L.J. 21, 26 (Fall 2008). *See Also* Lord McColl, *Human Trafficking . . . A Global Problem*, 60 MERCER L. REV. 791, 805 (Winter 2009); Karl Ritter, *Sweden Prostitution Law Attracts World Interest*, USA Today, Mar. 16, 2008, *available at* http://www.usatoday.com/news/world/2008-03-16-sweden-prostitution_N.htm.

[108] Jackie West, *Prostitution: Collectives and the Politics of Regulation*, 7 GENDER, WORK, AND ORGANIZATION 106 (Apr. 2000). *See also* Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution*, 2 J. Trauma Practice 315 (2003); Svitlana Batsyuoka, *Prostitution and Human Trafficking for Sexual Exploitation*, 24 GENDER ISSUES 46 (June 2007).

[109] BALES, *supra* note 35, at 14-15.

[110] SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY (2009); *See Also* Jackie West, *Prostitution: Collectives and the Politics of Regulation*, 7 GENDER, WORK, AND ORGANIZATION 106 (Apr. 2000).

[111] *See supra* the discussion on NGO funding linked to a discussion that the NGO will not support prostitution.

iv. PRISON LABOR (SOMETIMES CONSIDERED MODERN-DAY SLAVERY)

In Nazi Germany slave prison labor became an integral part of satisfying the great labor demands of the Nazi war machine, and he prison labor proved to be a valuable way for the Nazis to neutralize threats to their power.[112] The intention of the leaders in Nazi Germany was to make sure that the labor continued in Germany at all costs. During a speech delivered to a group of SS Generals on October 4, 1943 at Posen, Himmler stated, "What happens to a Russian, to a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur: otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished." [113] The "prisons" or labor camps were filled with people who were prisoners of war, or who allegedly spoke out against the government, or whom the government deemed unfit for freedom. The government had lost all semblance of a rule of law, so since the fundamental guarantees (such as due process of law, a right to defend yourself in court, etc.) that one should be afforded before being incarcerated were not provided in Nazi Germany this would distinguish this situation from many other prison labor systems.

There is a debate in modern times whether a person can be enslaved while in a state run prison system because most of the time someone is in prison because he or she did something that was unlawful and through the prison system the prisoner is being rehabilitated from or being punished[114] for that unlawful deed. Once it is determined that the prisoner is indeed working to produce a good while in prison this does not always signify that there is a problem in the system. There is a fine line between when a situation is a case of a prison abusing its authority, an unfair labor practice, or when it is a true act of slavery. Trying to determine if prison labor is indeed slave labor is a "thorny" issue to Bales, since it "depends primarily on the legitimacy of the government control and the fairness of the justice system."[115]

This is an area that is just starting to garner more interest in the United States as it is once again using prisoners to make more goods.[116] As mentioned at the beginning of this paper, prison labor in the U.S. had its roots in the continuation of slavery. However, since then the U.S. has used the prison population to make a variety of things from license plates to their own food. Normally this was an opt-in program, and it was considered a privilege to be able to work and to earn at least some money while incarcerated. More recently there have been reports of U.S. companies using prisoners as outsourced laborers.[117] They are paid very little, and of course, they cannot leave. In some reports, the work is voluntary and in some there is some compulsion

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[112] I NAZI CONSPIRACY & AGGRESSION: THE SLAVE LABOR PROGRAM FROM THE CHIEF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY 875-76 (U.S. Gov't Printing Office 1946), *available at* http://fcit.usf.edu/HOLOCAUST/RESOURCE/document/document.htm#docslav. For more information on slavery see generally Nazi Conspiracy & Aggression Volume I Chapter X: The Slave Labor Program.

[113] *Id*. at 877.

[114] What you think depends largely on your view of criminology and the proper role of the penal system.

[115] BALES, *supra* note 35, at 58. Bales uses the example of Burma, where some people are held without due process, threatened or coerced with violence, and robbed of their labor power. This might be considered state sponsored slavery. Contrast this, Bales writes, with the British system where a prisoner is voluntarily enrolled to work on a project and is remunerated, which of course can hardly be considered slavery.

[116] Tracy Chang & Douglas E. Thompkins, *Corporations Go to Prisons: The Expansion of Corporate Power in the Correctional Industry*, 27 LABOR STUDIES J. 45 (Spring 2002).

[117] *Id*.

like loss of "good time" days if a prisoner chooses not to work. There needs to be more research done on these cases in the U.S. because at first blush they do not appear to be slavery cases because the prisoner is in the prison for a lawful reason. He has been afforded his constitutional due process rights, and except in rare situations, the person has committed the crime he was convicted of committing.

Less well known than the Nazi version, "Arbeit Macht Frei" on the gates of Auschwitz, the prisons in China use the slogan *Laogai*, which means "reform through labor."[118] On the prison gates in China the motto "reform first, production second" appears, and inside the prisoners have to tolerate forced labor, political indoctrination, and physical abuse. Many of the prisoners are imprisoned for things like suspicion that they spoke out against the government or for holding rallies on democracy. One Chinese prisoner who escaped to the United States to speak about these appalling conditions is Harry Wu. He first brought the *Laogai* system to the attention of the world in his book entitled LAOGAI: THE CHINESE GULAG[119] where he detailed his time in the brutal labor prison system in China.[120] Mr. Wu was imprisoned for political criticism when he was a young adult, and he was force to endure 19 years of hard labor as his sentence.

While Western civilization enjoys many safeguards in our trial advocacy system, in China "the *Laojiao* (reeducation through labor) component of the Laogai system, which reappeared in the early 1980s and allows for the arrest and detention of petty criminals for up to three years without formal charge or trial, is not even considered by the Chinese government to qualify as a prison. Rather, it is regarded as a form of administrative detention and is often employed against political and religious dissidents."[121] In these *Laogai* prisons, the inmates would make products that had little cost for the labor because the government provided insufficient food (for some it was not enough to keep them alive), the workdays were long, and the living conditions in the prison were hazardous.[122] If the prisoners failed to work hard enough they were met with severe physical punishment.

E. Analogy Between Modern Slavery and Trans-Atlantic Slavery

Although the slaveholders have thought of many different ways to use and humiliate their fellow human beings, modern day slavery although packaged differently provides the same destruction to human dignity that the Trans-Atlantic Slave trade did years ago. It is important to

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[118] LAOGAI RESEARCH FOUNDATION, LAOGAI HANDBOOK 1-2 (2008), *available at* http://www.laogai.org/handbook2008-all.pdf. "Although the term Laogai (reform through labor) was replaced in official use with jianyu (prison) in 1994, so as to suggest to Western countries that the Chinese penal system was not so different than theirs, the true nature of the Laogai has not changed."

[119] His comparison to the Soviet *Gulag* was particularly troublesome to many as it brought back memories of the images that Aleksandr Solzhenitsyn wrote about in his book GULAG ARCHIPELAGO. As is discussed in the Laogai Research Foundation manual, the Soviets entered into an agreement to help the Chinese to develop certain basic institutions and it is through a blend of the tenets of Chinese and Soviet philosophies of reform by labor that we have the system in place that we do today. Specifically "Marxism-Leninism holds that the state is a machine of violence, made up of the army, police, courts, prisons, and other compulsory facilities, for one class to rule another. Mao Zedong integrated this ideology into the Communist Party and made the Laogai a key component of the state machine" LAOGAI RESEARCH FOUNDATION, LAOGAI HANDBOOK 9 (2008), *available at* http://www.laogai.org/handbook2008-all.pdf.

[120] He has since written several books and has been instrumental in getting the U.S. to enter into an agreement with China that it will not import goods made in labor prisons. However these agreements have been difficult to enforce.

[121] LAOGAI RESEARCH FOUNDATION, LAOGAI HANDBOOK 1-2 (2008), *available at* http://www.laogai.org/handbook2008-all.pdf.

[122] *Id*.

look at the similarities between the two, and that people call immorality "immorality." According to the National Underground Railroad Freedom Center, slavery in modern times is comparable to the slavery that has existed for centuries in that these characteristics are found: "Control through violence or threat of violence; Exploitation for profit and Loss of free will."[123]

It is equally important to consider the differences between the two trades so that an action plan to deal with modern-day slavery can be well crafted taking into account the unique circumstances facing the modern cultural and legal environments. Finally, as noted above it is important to learn from past mistakes and successes in freeing the slaves to learn from history so, as George Santayana warns, we are not condemned to make the same mistakes.

First, the most important difference from an abolitionist standpoint is that slavery is not technically legal anywhere (although there are still places that it is tolerated); thus, all slavery is underground (akin to terrorism). In some countries, the tradition of slavery is so strong that many still believe slavery is legal in that country. One example is Mauritania, which technically outlawed slavery 20 years ago and then outlawed it again in 2007 because there were still so many slaves. However, merely passing a law has done nothing to stop the deep tradition of taking and keeping slaves in the country. The citizens have complained that the laws are not being enforced, and that the slaves are tied economically so tight to their masters that they would not know what to do with their freedom.[124] Slavery is not legal in modern times; however, some slave owners try to justify their action based on several reasons. A common reason that slavery is justified in modern times is based on religion or culture. In Ghana, priests take young girls known as "Trokosi" slaves and make these girls fulfill the sexual fetishes of the priest. Many Trokosi slaves are forced to bear children for the priest.[125] Likewise, in the caste system even the slaves believe that serving those in a higher caste is the best way for them to have a better life when they get to heaven. Another reason that slavery is justified is that the slave willingly signed a contract of debt. However, in many of these debt contracts the debtor is illiterate and will end up with terms that change and are impossible to meet. In some situations, the product of the slave's labor is the slave owner's, and the slave is given no more than food to eat and shelter so it is impossible to get out of the debt without intervention. Another way that the debt contract could be biased is if the slave is being "paid" a small sum but then there are deductions for food, shelter etc., and then high interest fees are added—the slave never sees the money nor do they really know what amount is going against their debt. There are numerous cases of generational debts over very small amounts of money. The slaveholders in these situations have a warped way of seeing their role in this scenario, and see themselves as doing something good by providing housing and food. Slaveholders have justified the abuse of slaves as the same as the discipline that a parent gives to a child. A final way that modern day slaveholders justify their behavior even though it is clearly illegal is consent—especially when a parent is willing to give up or sell their child to a trafficker. This will be discussed in more detail below, but in short, the slaveholder justifies any further action that they take against the slave based on previous consent by the slave or the slave's proxy.

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[123] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

[124] Mohamed Yahya Ould Abdel Wedoud in Nouakchott & Jamel Arfaoui in Tunis, *Slavery still weighs heavily on Mauritanian society despite ban*, Magharebia (2/3/09) http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/02/03/feature-02

[125] Before these slaves can be freed, many times substantial rehabilitation is needed. If a girl leaves the shrine to her family it means she no longer will atone for the offenses of her family, and this can lead to significant guilt.

Second, the slaves today are relatively cheap in comparison to the slaves in the Trans-Atlantic slave trade.[126] Although this was not historically always the case,[127] during the time of the slave trade in the U.S. and England, slaves were expensive and were considered large purchases. So principally on the cotton plantations in the South, the slave owners sought to take care of their slaves to ensure that they could get the maximum amount of labor from them. They sought to ensure that the slave was fed enough to work hard and had decent shelter. It was not unusual for the slaveholder to encourage slaves to have families and to give them small homes. This is because any child conceived would also be the owner's property and he could increase his "human capital" without the addition of much cost. Since the modern slaves are relatively cheap the owners do not seem to care if they work them to death or if they contract a disease they just turn them out. However, it is argued that because slaves are relatively cheap and plentiful that the slaveholder will not take the effort to try to find one that runs away. However, there are countless stories that the slaveholder seems to have a personal psychosis almost in desiring to control the slave victim. This means that many of them will go after the slave even though from an economic standpoint it seems irrational. Additionally, although it might be the case that once the slave was in his/her final destination he/she was treated better in the 19th century, during the actual trip in the slave boats the conditions were appalling and those slaves, even though they would be worth a small fortune, were just as disposable as today's slaves.

Another point of comparison between Trans-Atlantic slavery and the modern slave trade is scope. Modern slavery is global and secret so it cannot be eliminated by a one entity or a few separate.[128] Trans-Atlantic slavery was also wide in scope, but it was more notorious and open. England first focused on stopping the slave trading boats, and this dramatically decreased slavery in England.[129] Without legal protection of the trading boats the profits found in slavery significantly diminished.[130] When there are no longer sufficient profits to make a business economically viable the business owner will move onto a new venture. The elimination of the slave trade created a path, although a long and arduous path, for the elimination of this form of slavery entirely.[131] In the United States it took a slightly different path, but through the Civil War and the Emancipation Proclamation, and finally the Thirteenth Amendment slavery was deemed illegal. As mentioned above, waiving a magic "this is illegal" wand did not, as some would contend, end slavery. However, it did decrease slavery, and if countries like the United States, had planned for the release of the slaves in a more diligent fashion, the deep-seeded roots of racism still present in the United States today may have already withered and died. The difference between slavery in the past and that in the modern day is that before the leaders knew where the slaves where coming from and where they were going; therefore, the citizens could

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[126] "People caught up in slavery today can be purchased and sold for as little as $100 (compared to 10 times that much in the 1850s). As a result, people become "disposable;" i.e., easily replaceable." National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009). Skinner actually discusses a transaction he negotiated to buy a slave in Haiti for $50. SKINNER, *supra* note 48.

[127] There has been some research that indicates that humans were not very expensive (adjusting for the times) at other times in history

[128] "And it's not limited to one specific region of the world—it respects no borders. Hence, modern slavery cannot be limited by a stroke of the pen like Abraham Lincoln achieved when he signed the Emancipation Proclamation." BATSTONE, *supra* note 47, at 5. As noted before the end of slavery in the US was not as easy as a stroke of a pen either; however, slavery could be made illegal that easily and then it was a matter of enforcement.

[129] CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (Chuck Stetson ed., 2007.

[130] *Id*.

[131] *Id*.

rely on them to ferret out problem. In that time there was a democratic solution to slavery. Now because the trade is illegal so much of the slave trade is found only underground, so like the war on drugs or the war against terrorism, the modern slave trade cannot be discovered and treated using traditional methods. Additionally, modern slavery is not based on racial divides but rather it is an equal opportunity destroyer cutting "across nationality, race, ethnicity, gender, age, class, education-level, and other demographic features."[132] This is one of the reasons why this paper deals with Wilberforce because the government has already deemed this behavior to be illegal (this paper will discuss ways the government can improve what they are doing below). What is needed is for there to be many diligent people around the world to be watchdogs for this deprivation of human rights. If, as Wilberforce did in his life, individual citizens today each assert that it is morally repugnant to keep another human being as a slave, and then use the tools and platforms each individual is given to unearth these exploitations then modern day slavery may be abolished.

In order to free today's slaves the anti-slavery laws of the past are only one of the tools used; moreover, the United States and several other countries have added human trafficking laws to supplement these laws and try to deal with the uniqueness of the modern day slave trade.

VII. Human Trafficking Laws

In modern times most countries have laws against slavery, and forced labor, and they even have laws against smuggling of persons. However, these laws do not cover all evilness that the minds of modern day slaveholders have thought up to inflict tortures on their victims. The commerce related to human trafficking now rivals the multi-billion dollar criminal business involved in trafficking of illegal guns and drugs.[133] The estimated profit that criminals generate from the sale of humans each year can range from $9 billion each year to $32 billion.[134] The first Ambassador of the Office to Monitor and Combat in Trafficking in Persons, John explained, "This is one of the great moral struggles of our day. We need to bring the same passion and commitment to this struggle that the abolitionist of this country brought to the struggle against slavery based upon color 160 years ago."[135]

A. Human Trafficking Defined

The United States Trafficking Victims and Protection Act defines trafficking in persons as the "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."[136] According to the United Nations trafficking in

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[132] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

[133] BATSTONE, *supra* note 47, at 3.

[134] *Id*. at 3-4. It depends on the organizations that conducts the study the Federal Bureau of Investigations (FBI) puts the slaved trade at $9.5 billion in revenue each year; where as the International Labor Office estimates that the actual revenue is probably closer to $32 billion. However, according to Barry Tang, an Immigration Enforcement attaché with U..S. Homeland Security, " In terms of profits, it's on the path to overtake drugs and arms trafficking." BATSTONE, *supra* note 47, at 4.

[135] *Id*. at 4.

[136] Trafficking Victims Protection Act of 2000, 22 U.S.C.S. § 7102 (2000); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457,§1(a), 122 Stat. 5044 (codified at 22 U.S.C.S.§ 7102 (2008)).

persons is "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."[137] Some would say human trafficking is another word for the "trading part" of the slave trade from years past. Actually the term trafficking has been used in the past to describe the slave trade. Wilberforce in 1792 in Parliament states, "Never, never will we desist, until we have wiped away this scandal from the Christian name, released ourselves from the load of guilt, under which we at present labour, and extinguished every trace of this bloody traffic,' of which our posterity, looking back to the history of those enlightened times, will scarce believe that it has been suffered to exist so long a disgrace and dishonor to this country."[138]

Although sometimes slaves are enslaved in their own community, most of the time slaves are transported to a new location. Sometimes victims are merely moved to a different village and sometimes they are moved to a new country. Slaves are sometimes exchanged between two countries. Moving a victim to a new location is one of the ways the trafficker and the slaveholder can disorient the victim to make him/her easier to control. However, the trafficking laws today deal with cases in which the "transport" or "trading" portion is not present (or was present so long ago that it would be difficult to prove evidentiary in court).[139] Trafficking is present when someone is held captive by threats of violence against themselves or family members.

U.S. Senator Sam Brownback, who has been an ardent supporter of Anti-Trafficking legislation, explains that many different paths lead unsuspecting victims into slavery; "The [slavery] supply side of the equation is particularly bleak. While there are one hundred thousand places in the developed world for refugee resettlement per year, 50 million refugees and displaced persons exist worldwide today. This ready reservoir of the stateless persons presents an opportunity rife for exploitation by human traffickers." [140]

There are many different ways that victims are ensnared in the net cast by the traffickers, and end up as victims with the final destination becoming modern day slaves. The first, and the most common, way for a trafficker to entice a victim is by *deceit or fraud*.[141] The trafficker offers vulnerable people, especially women, a chance at a job in a different country. Many times the victim will actually sign a contract to work as a nanny or a waitress in another country, but once they get to the destination country the trafficker takes the victim's passport and identification for "safe keeping." Then the victim is told that there is no job and that she will be working as a prostitute in a brothel. [142] Another common way that a trafficker will defraud a victim is by telling them that they will make a certain amount of money for doing a job such as picking fruit in the United States, but upon arrival the job is much more difficult, they do not receive any of the money promised, they are subject to poor living conditions and they are not permitted to leave the job site—in other words they become enslaved. In all of these situations,

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[137] United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, Art. III (2000).
[138] Belmonte & Stetson, *supra* note 9, at 50-51.
[139] Trafficking Victims Protection Act of 2000, 22 U.S.C.S. § 7102 (2000); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457,§1(a), 122 Stat. 5044 (codified at 22 U.S.C.S.§ 7102 (2008)).
[140] BATSTONE, *supra* note 47, at 10.
[141] SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 7-8 (2009).
[142] *Id*. Sometimes a woman is even given a false marriage proposal. In countries where it is difficult for a single woman to operate because of the bias against her, this tactic has been employed effectively to recruit new slaves. *Id*.

the victim starts out as a willing participant, but there was no meeting of the minds[143] between the victim and the trafficker because of the fraud or deception. At some point, the situation goes from a case of smuggling to a case of trafficking when the smuggling "contract"[144] between the victim and the traffickers is breached when the traffickers force the victim to participate in "employment" against his/her will. The key ingredient is that the trafficker or slaveholder will use violence or the threat of violence to keep the victim a prisoner and force him/her into the "employment." This is a distinction that local law enforcement agents need to understand.[145] Additionally, in the United States many local police officers view this as a purely federal problem. Local officers are more likely to encounter traffickers, so they should understand what the signs are. One problem is identification of trafficking cases at the border, as sometimes the victim may not even know at the time that they are in danger. Once they are in the country, the victim that is lured her by trick or deceit is no less a victim just because they may have agreed to some aspects of the initial transport.

Another way that a trafficking victim can be lured away from her home is by the *Lover boy* routine.[146] There are several variations on this but the basic idea is that an attractive man will act as though he loves a young woman. At some point he will ask the young women to go out of the country with him (either for a romantic get-away or he will promise her a job as a waitress or a model), and once they leave the country he will ask for her passport for safekeeping. Then he will sell her to a trafficker that is waiting to take her in the destination country. Many women refuse to believe that their boyfriend is trying to harm them even when they are warned. One young women from Eastern Europe, Tatiana (her name has been changed), was dating a young man for 6 months before he mentioned an au pair position in Amsterdam, and offered to escort her there. Tatiana's mother had seen the U.S. sponsored billboards warning of human trafficking, and even gave her daughter a brochure about the "loverboy phenomenon" which described in detail about men tricking their girlfriends out of the country, and then selling them into prostitution. Despite her mother's worries, Tatiana left with her boyfriend, and once she was in Amsterdam her boyfriend took her documents and as she put it "I was sold like a piece of meat."[147]

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[143] As one of the key components to the formation of a contract, the ideal of meeting of the minds cannot occur when there is deception or fraud. So from a technical standpoint the victim never was a willing participate of what the trafficker had in mind only in what was vocalized. Many victims are racked with guilt over going with the trafficker willingly, but they made an agreement with someone out of trust that they would hold up their end of the bargain. This is something that happens all of the time in business, and typically because of the idea that a promise is something important and something that should be fulfilled (and the fact that this is protected by the law). One has a reason to rely upon a bargain or a promise that someone offers to you. The victims need to understand that they are not unintelligent for entering into the bargaining arena. They may have been uninformed or were a bit naïve given the fact that many of these deceptions are well known. This is one of the areas that NGO's can help in the victims' origination countries to raise awareness .

[144] Technically the smuggling contract is not a legally binding contract since the subject matter of the contract is itself illegal; however, the principles of contract law are a good analogy in this circumstance.

[145] In short smuggling is a crime when an individual helps" migrants cross the border without the proper documentation," and human trafficking is a crime in which individuals "are coerced or deceived into entering the United States and the then forced to work against their will." BATSTONE, *supra* note 47, at 253. *See supra* Part V.

[146] SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 9 (2009). This is carried out using seduction or romance. Most of the time the loverboy will leave as soon as the transaction is complete, but sometimes the loverboy makes a significant commitment to his crime even marrying the victim before selling her to the slaveholder or trafficker. *Id*.

[147] SKINNER, *supra* note 48, 135-136. After she was sold the trafficker told her that she owed $3,000 for the transport, and that if she tried to run her family would suffer the consequences.

Another way that a victim is placed in the stream of human trafficking is by being *sold by a family member*.[148] This is very common, especially in certain areas of the world where parents are particularly vulnerable themselves. The family member is sometimes a member of the extended family, or someone close to the family as explained in the example above. However, parents in poverty or in great social inequality because of antiquated caste systems may be desperate enough to sell their children or be susceptible to swindles that will allow a trafficker to take over the lives of their children.[149] Sometimes the parents are not even given any money for their children, but rather they willingly give over their children because they believe the lies told to them by the traffickers that their children will have more opportunities for a better life. When asked why they sold their children one Haitian man exclaimed, "We are not capable of helping our children, and this man came and we thought he was going to treat our children well!" [150] Many times the parents would send off their best and brightest children with the hopes of giving them the chance of getting the education.[151] Additionally, sometimes in the grip of extreme poverty a parent will not be able to feed or care for their child and will see the traffickers offer as a way to save not only that child but also the rest of their family.

Finally, *abduction* is another way that trafficking victims end up becoming prey in the slaveholder's trap.[152] Abduction is publicized by Hollywood and the news media; therefore, the public commonly thinks this is the only, or at least the most common way that a victim is taken by a trafficker. For example in the recent blockbuster movie Taken, two teenage girls go alone on a trip to Paris following high school. They share a taxi ride from the airport with a man whom one of the girls is attracted to, and he invites the girls to a party. Once the girls leave exit the taxi at their hotel, the man calls his boss to plan the abduction. The gang abducts the girls a short time later to sell them into forced prostitution. Additionally, there are countless media accounts that discuss how young women abroad are commonly abducted, and forced into the sex network. However, most traffickers do not abduct the majority of their victims because someone who is a willing participant, at least in the beginning, is a lot easier to control then someone who is abducted. The one exception to this is small children because they tend to be easy to control with little force. Most truly "taken" victims are transported only within their own countries, so as not to arouse suspicion.

A. Human Trafficking Laws

The year 2000 was an important year for combating trafficking and modern day slavery. The United Nations created the Protocol on Trafficking, and the United States passed unprecedented legislation with the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).

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[148] SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 8 (2009). One slave said she felt like a "slot machine for her family." *Id*.
[149] BATSTONE, *supra* note 47, at 10.
[150] SKINNER, *supra* note 48, at 31.
[151] *Id*.
[152] SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 8 (2009). Although it is not the preferred method for acquiring slaves, abduction is the method most feared by women throughout the world. This can account for the media's focus on this seemingly random act of violence.

i. UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS, PUNISH TRAFFICKING IN WOMEN AND CHILDREN

In 1998, U.S. officials outlined the trafficking protocol to help guide the U.N. deliberations.[153] Through several compromises and rewrites in 2000 the *United Nations Protocol to Prevent, Suppress, Punish Trafficking in Women and Children* became part of the Transnational Organized Crime Convention. There was some contention as to how to define a trafficking victim, for example would victims be defined "persons" or as "women and children?"[154] The U.S. was most concerned with making sure that nations made these grave offenses a crime, but then attention needed to shift to determine how to assist the victims after they were found. The U.S. had already had issues where victims were jailed and held as material witnesses, and times when they were deported after the trial or before there could be a trial.[155] Once in their home country, the victims were subject to the same circumstances that caused them to be vulnerable to the traffickers in the first place.[156]

ii. UNITED STATES TRAFFICKING LAW

The Victims of Trafficking and Violence Protection Act of 2000 has been reauthorized and strengthened twice.[157] TVPA was enacted because trafficked people, especially women who are frequently moved between brothels, are often moved around and do not know the language or anyone else in the country so they feel completely isolated. The laws that were currently on the books although they were adequate to address many of the problems that trafficking brings up, such as kidnapping, rape, and slavery, did not deal with all of the nuances that occur in a typically trafficking case.

There were several cases that led up to the U.S. enacting TVPA. In one case, the Cadena family trafficker focused her attention on a poor neighborhood in Mexico known as Barrio El Pilar. The trafficker promised to smuggle girls into the United States were they would be able to work in the restaurant business and earn a good living, instead they were ushered into the life of a prostitute where up to 30 Johns per day would each pay $20 to rape them.[158] In 1997, the so-called "deaf Mexican case" stirred the legislature in the U.S. In this case, over 50 hearing impaired Mexicans were smuggled into the U.S. and forced to beg and sell trinkets in New York City. It was difficult for the prosecutors to deal with the case because technically the Mexican migrants were illegal, and there were no laws against trafficking. Additionally, the law did not specifically deal with follow-up care for the victims in this case. The traffickers were charged with several crimes, but it prompted the legislature into action. Also in 1997, Shelia Wellstone, the wife to U.S. Senator Paul Wellstone, was troubled by a case in Maryland in which a brothel owner had trafficked women from Ukraine and Russia, and because of the laws the brothel owner received a relatively light sentence and the girls were all sent back to their home countries. The now deceased Senator became a strong advocate for the victims of human trafficking and was instrumental in the passage of TVPA.

The victims of trafficking are the driving force behind the U.S. legislation. Trafficking victims are often treated as criminals, especially in case of prostitution, and the young women

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[153] ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED 19 (2008).
[154] There were two draft proposals one from the United States and one from Argentina.
[155] DESTEFANO, *supra* note 154, at 21.
[156] *Id*.
[157] In 2003 the U.S. legislatures created the Trafficking Victims Protection Reauthorization Act of 2003, and then in 2006 there was a revision of the act to try to reduce the customer demand for prostitution.
[158] DESTEFANO, *supra* note 154, at 1-4.

many times ended up jailed as a criminal or at least held as a material witness. [159] The deportation of victims is also a problem because so many times when they end up back in their home countries the victim is subject to the same condition that causes the vulnerability to become a trafficking victim in the first place. Wellstone explains, "trafficking in human beings is not just some problem over there—it's a problem over here." Since this is a problem in the U.S. as well as abroad, the TVPA provides for shelters and services for trafficking victims (this will also provide law enforcement officers with invaluable witnesses for criminal cases), as well as advocating for specialized training for law enforcement officers to identify and victims. Providing services to victims "will exemplify the humanitarian ideals of respect and dignity for the individual on which U.S. is based."[160]

By 2005, there was an understanding that domestic citizens could also be victims of trafficking and many U.S. citizens were vulnerable to being trafficked. Prosecutors began using the TVPA to protect domestic victims as well as foreign victims.[161]

In 2006, the TVPA was reauthorized and in the re-authorization several anti-prostitution provisions were added including providing grants to local law enforcement agencies to help them decrease the demand side of prostitution i.e. arrest the consumers of sex or Johns.[162] As part of TVPA the Office to Monitor and Combat Trafficking in Persons was established—the first director, who was later elevated to ambassador at large, publishes the Trafficking in Persons Report published annually since 2001. This report card grades the countries of the world to determine how well they are doing combating trafficking in their borders.

TVPA and its subsequent reauthorizations focused on a multipronged approach to ending trafficking and by extension slavery. The three foci that were specifically stated are prosecution, protection, and prevention. The rest of this article will utilize this structure to analyze U.S. policy and to offer suggestions as to how to improve or supplement these policies.

VIII. Prevention of the Trafficking in Humans

The best way to stop slavery or human trafficking is to prevent it. As Padre Cesare, who runs a shelter for girls who are rescued from sex trafficking, states "I could no longer accept our position; essentially, we were waiting for girls to become victims." [163] Prevention is stopping the crime before it is committed which is the ultimate goal of the entire modern abolitionist movement. The other prongs of this movement and of the TVPA are in place to manage the problem of slavery and trafficking until we succeed on the prevention front. According to Rachel Sparks-Graser, Founder of the SOLD Project, "Human trafficking is, first and foremost, a business. There is the supply side (women, men, children being sold into prostitution, forced labor, soldiers, etc.) there is the demand side (the john's who purchase sex from trafficked persons, us as consumers wanting to purchase cheap clothing, etc.) then there is the people who run the business, the traffickers. Human trafficking, the buying and selling of human beings, is a

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[159] *Id*. at 21.

[160] AMY O'NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME (2000), *available at* https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf.

[161] DESTEFANO, *supra* note 154, at 12.

[162] *Id*. at xxii.

[163] BATSTONE, *supra* note 47, at 187. Padre Cesare explains "If we create new jobs and stimulate economic development, it will proportionately reduce the risks that girls must take that lead to trafficking." He explains why he made the move make to Eastern Europe instead of waiting in Italy for the young women to be trafficked to the brothels there.

multi-billion dollar industry. Human beings can make major profits off of other human beings."[164] From a prevention standpoint, one must focus on two facets to attack the problem. First is on the demand side that looks at the laws and the consumer mechanisms in the destination countries or those countries that receive a trafficking victim or have a market for modern day slaves. Second, in order to prevent trafficking and modern day slavery focus needs to be placed on the supply side of this equation or on the policies and resources of the source countries.

A. *Demand Side for Trafficked Humans and Modern Day Slaves*

From a demand side we can make it less profitable for the traffickers by increasing the chance of being caught and being convicted, but also by focusing on the destination countries' market for the slaves, especially the sex slaves. When focusing on the market for sex there are two ways to make the market less profitable. The first way to decrease demand is by making it less secure for the consumers of sex (johns) to obtain the product by increasing rate of detection, and prosecution of the johns in areas where prostitution is illegal.[165] This is something that the TVPA reauthorization act tried to do; however, most of prostitution occurs on the local level so the penalties need to occur on the local level. One of the more effective means of decreasing johns is to increase the stigma associated with buying sex, including letting the public know when the johns have been found guilty of a soliciting sex from a prostitute. When dealing with other sex crimes some states have enacted punishments such as yard signs, different color license plates, and names being posted on the TV or in the newspaper. Some of these types of stigma punishments might make a potential consumer of sex think twice before engaging in the act. One particularly disturbing consideration is that educating the "Johns" that the prostitute may not be engaging in sexual acts with them willingly might not have any impact on demand. After a prostitute was murdered in Dubai by two johns who wanted a price break (she charged 40 dirhams or $10), a website of sexual tourists who call themselves *mongers* discussed the news accounts of the story. After making an off-color joke one of the mongers became introspective noting "Considering we all make use of a service which makes its margins on human slavery (let's get realistic, we are not getting with locals here) I'm surprised to see such a backlash on this."[166]

Another way to curb the desire for slaves in the sex industry is to make it less profitable for the slaveholders or the pimps. Another way of doing this besides decreasing the demand for sex is to increase the penalty should they get caught trading sex for money. It is a well-known economic theory of deterrence that the optimal criminal sanction is a fine or punishment that is just sufficient to deter the criminal from engaging in the harmful activity. An efficiently proportioned legal rule would be precise enough to make the crime unprofitable, allowing for the risk of non-detection.[167] For example, if the value of the theft to the criminal is $100 and the probability of detection is 1/3, then the optimal penalty would be a fine of approximately $301, or just enough to make the theft unprofitable. If the sanction is any harsher, then a criminal may

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[164] Interview with Rachel Sparks-Graeser, Founder, The Sold Project, in Lynchburg, VA (July 12, 2009). *See* The Sold Project, http://www.thesoldproject.org (last visited August 30, 2009).

[165] BATSTONE, *supra* note 47, at 180. Since the passage of the 1949 *UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, the United States has focused on the supply side of prostitution much more than the demand side (the Johns). All states except Nevada makes it illegal to be involved in prostitution for all parties including—prostitutes, Johns, pimps, etc.

[166] SKINNER, *supra* note 48, at 175.

[167] RICHARD POSNER, ECONOMIC ANALYSIS OF THE LAW (7th ed., Aspen 2007)..

not be constrained from committing a greater offense. For example, if both robbery and murder were both punishable by death, the robber who had committed the first crime would not be constrained from also committing the second. This certainly could have dramatic effects upon the rational pimp, who would rather kill his "merchandise" than to allow the chance to have her talk to police if the penalty were too high. Instead of making all the penalties very high, another way to get the same deterrent effect is to increase the probability of detection. In order to do this then there would need to be a significant increase in the training for police forces on the local level in all countries[168] because they would be the ones who are most likely to encounter prostitution.

In regards to forced labor slavery, an effective way to affect demand is through grassroots awareness programs. Consumer demands have a powerful effect in the market place. Consumers have been able to move the fishing industry to produce dolphin-friendly canned tuna fish, and recycled just about anything (they even make necklaces out of recycled glass). On the Ivory Coast slave labor is used to grow and harvest the coca beans used to make chocolate. Slave labor has also invested the market for car parts, granite, pig iron, handmade rugs, among many others.[169] The problem is that although only a small amount of the product line is infested with slave labor, it is sometimes impossible to distinguish between slave -made and non-slave made goods.

Consumers should not use their boycott power in this instance because it is virtually impossible to determine which goods are actually made utilizing slave labors and which goods where created using legitimate labor. A boycott can devastate what is already a poor area. According to Anti-Slavery International:

> "In certain situations boycotting specific goods or countries can actually make the situation worse and undermine the economy of an already poor country. A boycott could hurt those in slavery-like conditions as well as those employers who are not exploiting their workers, and worsen the poverty that is one of the root causes of the problem. Support fair and ethical trade initiatives instead and use consumer power to encourage retailers and companies to move to the Fairtrade scheme."[170]

Consumers can use their buying power to put pressure on the companies who are in better positions to find out if the raw products that make their goods are made by slave labor. One way to do that is to buy goods that have the FairTrade mark which certifies that the good has been manufactured according to specified socially and economically sustainable standards.[171] As

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[168] Discussed more fully below

[169] KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY'S SLAVES (2007); KEVIN BALES, DISPOSABLE PEOPLE (1999).

[170] Anti-Slavery International, http://www.antislavery.org (last visited August 30, 2009).

[171] "Fairtrade standards are not simply a set of minimum standards for socially responsible production and trade. The Fairtrade standards go further in seeking to support the development of disadvantaged and marginalized small-scale farmers and plantation workers. Fairtrade standards relate to three areas of sustainable development: social development, economic development and environmental development. In summary the key objectives of the standards are to:

- ensure a guaranteed Fairtrade minimum price which is agreed with producers
- provide an additional Fairtrade premium which can be invested in projects that enhance social, economic and environmental development
- enable pre-financing for producers who require it
- emphasize the idea of partnership between trade partners

explained in *Slave Trade or Fair Trade?* the Fair Trade Mark is the "only guarantee that products, such as chocolate, are 'slave free' and have not been made using forced labour. All fair trade products have to meet strict conditions, including ensuring that no forced or illegal child labour has been used. Fair trade goods also give producers a fair price for their produce, thus helping to challenge the unfair trading systems that keep people in poverty and often force them into slavery."[172]

Additionally, there are a couple different marks that one can look for when buying handmade rugs including Rugmark. Rugmark certifies that no illegal or slave child labor is used in the production of the hand-woven rug.

B. Supply Side for Trafficking Victims for the Origination Countries

Assisting potential victims in their home countries to attempt to diminish the overall number of victims is a difficult task because it involves many different forces in foreign countries of which the U.S. has no direct control. Through the TVPA, the Department of State formed the Office to Monitor and Combat Trafficking Center, through that office the U.S. provides a carrot and a stick in order to get countries to work to end slavery and trafficking. First, if a country does not work within its borders to combat these problems then it will be listed in the Trafficking in Persons Report (TIP).[173] If the country is listed in Tier 2 Watch List or Tier 3, this would put that country in danger of losing their funding from the U.S.[174] Sanctions may even be counterproductive as they would be taking away funding from the more vulnerable countries,

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- facilitate mutually beneficial long-term trading relationships
- set clear minimum and progressive criteria to ensure that the conditions for the production and trade of a product are socially and economically fair and environmentally responsible." The Fairtrade Foundation, Fairtrade Standards, http://www.fairtrade.org.uk/what_is_fairtrade/fairtrade_certification_and_the_fairtrade_mark/fairtrade_standards.aspx (last visited July 15, 2009).

[172] Anti-Slavery International, Slave Trade or Fair Trade: The Problem, the Solution, and How You Can Take Action, http://www.antislavery.org/includes/documents/cm_docs/2009/s/slavetradevfairtrade.pdf (last visited August 30, 2009).

[173] According to the 2009 Trafficking in Persons Report:
"TIER 1: Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards
TIER 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards
TIER 2 WATCH LIST: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:
a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or
b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
c) The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year
TIER 3:Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so"
U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2009), *available at* http://www.state.gov/g/tip/rls/tiprpt/2009/.

[174] It has been argued that the Tier system has not been utilized to its fullest potential because for the most part those countries who are allies with the United States get a pass where the nations who are "not-so-friendly" with the U.S. get relegated to the Third Tier. For example countries like the Netherlands and Germany are in Tier 1 even though they do have a trafficking problem. Additionally, the United States does not provide a way for self monitoring. However, most agree it has been a powerful tool in combating trafficking. BATSTONE, *supra* note 47, at 192-193.

and this could negatively affect the citizens even more. Additionally, the U.S. uses a carrot in the form of funding programs in order to garner compliance with anti-slavery ideals.

Although vulnerability is the key to slavery; nonetheless, not of all the vulnerable people in the world become slaves."[175] Sometimes the vulnerable are members of a certain caste of a society, but sometimes they are merely people who lack personal resources, and social or governmental protections to prevent the enslavement.[176] In addition cartographical imperialism, as occurred on the African continent, can increase the vulnerability of a people group.

Political scientists and economists have identified four factors the convergence of which creates conditions where slavery flourishes. These identified factors that increase vulnerability are "1) devastating poverty; 2) armed conflict; 3) rapid industrialization; and 4) exploding population growth."[177] An example is Cambodia that has been listed as a Tier 2 Watch List Country on U.S. Department of State's Trafficking in Persons Report, because it has experienced difficulty dealing with the issues of slavery and has become known as a source, destination, and transit country for trafficking men, women, and children. However, because the convergence of the four factors that increase vulnerability, Cambodia is not alone and actually Thailand, Vietnam and Burma, have all shown that Southeast Asia is a "recipe for mass vulnerability."[178] Specifically dealing with children sex traffickers rarely abduct a child from a society that is well developed and has a strong community. There are many reasons for this; first, if a child is abducted from a non-vulnerable community, members of the community may mobilize resources to find the traffickers, and to bring them to justice. However, a trafficker can use the destitution and vulnerability of other communities to his advantage to lure the children away with promises of work or education.[179] Once the family realizes that the child is in danger they do not have the resources to combat the trafficker.

Since vulnerability is a significant cause of enslavement unless that vulnerability is replaced by stability there is a considerable chance of re-enslavement-many freed slaves will eventually end up back in slavery either by choice or by circumstances. There are many different reasons why a person might become enslaved again including a lack of other skills sets; a fear of the unknown; psychological mindset that does not allow the trafficked person to see herself or himself as free; or finally because the circumstances that led to the enslavement have not changed. These are the areas that one must focus on to prevent slavery and human trafficking in the first place, and then to prevent the re-victimization.

iii. EDUCATION FOR THE COMMUNITY

Many countries have mandatory education for all citizens on the books, but many do not put it into practice, or it is so expensive that those who are most vulnerable to slavery cannot take advantage of it.[180] Education provided to each child could be a key to changing the equation away from vulnerability. It is difficult to get education for every child, but many organizations,

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[175] BALES, *supra* note 35, at 10.
[176] *Id*.
[177] BATSTONE, *supra* note 47, at 21.
[178] *Id*.
[179] BATSTONE, *supra* note 47, at 208. More ways that traffickers have thought of to lure and to traffick a child can be found at on page 205 of this source.
[180] BALES, *supra* note 35, at 15. Haiti's constitution called for free universal schools to be placed throughout the country side, but the politicians betrayed this constitutional mandate and the school system remains in the hands of the elite. SKINNER, *supra* note 48, at 13, 33.

such as The Sold Project, have seen this as a part of their mission and are actively working towards this goal. In additional to the normal educational goals, education in vulnerable areas should focus on ideas of morality and freedom in order to change the course of their lives from potential enslavement to self-determination.

In western educational experiences, there is a focus on the documents of freedom and equality. These ideals can be taught, even if not in a formal sense, to a community to help them understand principles of freedom. Many of the slaves are gripped in their own understanding of their place in this world. "'Slave mentality' is the inability to think outside the box into which an individual has been forcibly packed."[181] In order to break the cycle of enslavement the victim must see himself or herself as free. In 1942, Gandhi affirmed, "The bond of slavery is snapped the moment [the slave] considers himself a free being." For Gandhi slavery is a mental construct. Further, he explains that the slaveholder provides a measure of security and when you break that bondage, you break the power the slaveholder has over you. Gandhi further explains how a slave's dialogue with his slaveholder would go (even if only in the mind of the slave), stating "I hitherto depended on you instead of on God for food and raiment. God has now inspired me with an urge for freedom and I am today a freeman and will no longer depend on you."[182] Kevin Bales tells the story of Baldev who was a slave based on a debt that was passed on down multiple generations. He was a plowman for his master. He was not paid, but he did receive the basic necessities of food and shelter for his family. A relative of Baldev's wife paid off his debt and he was freed. However, he was not prepared for the freedom and lived in constant fear of not being able to make it. He told Bales: "Since we no longer belonged to the landlord, we didn't get food everyday as before. Finally, I went to the landlord and asked him to take me back. I didn't have to borrow any money, but he agreed to let me be his *halvaha* [bonded plowman] again. Now I don't worry do much, I know what to do." [183] Without seeing themselves as a free person, having a support system, and having the skills to be secure in that freedom many slaves will actual become re-enslaved.

Another area where the population should be educated in is morality. Wilberforce after he ended the slave trade he went about trying to restore "manners" meaning morality and virtues to England because in order for him to work towards his ultimate goal of abolishing slavery altogether he needed to change the moral climate of the country "making goodness fashionable, and restoring respect for the law in all classes."[184]

For some slaves once they realize they are a human with dignity and they are indeed free, they do not need outside training because their time in servitude taught them a skill they can use to build wealth for their family (for example the Kols who freed themselves from the quarry). However, many recently freed slaves became victims when they were young children; thus, they may not have any skill that is marketable.

iv. SKILLS TRAINING PROGRAMS

Without a means to support themselves, emancipation of slaves can often mean "freedom to starve."[185] According to the Chinese proverb, "Give a man a fish; feed him for a day. Teach a man to fish; feed him for a lifetime." In order to give the vulnerable people groups a chance

[181] BATSTONE, *supra* note 47, at 142.
[182] SKINNER, *supra* note 48, at 224-225.
[183] BALES, *supra* note 35, at 3.
[184] POLLOCK, *supra* note 15, at 10.
[185] SKINNER, *supra* note 48, at 97.

towards self-determination it is important that they are not just given a meal for a day, but a way to create wealth for themselves for the long term. July 5, 1852, Frederick Douglass stated, "Personal independence is a virtue." He later added, "…but there can be no independence without a large share of self-dependence, and this virtue cannot be bestowed" by government.[186]

An exemplary organization that helps to build skills for young girls who have been rescued from the sex trade in Thailand is NightLight Design in Bangkok.[187] The founder of NightLight, abolitionist Annie Dieselberg explains, "Women on the streets may look like they are free when you tour Bangkok, but they are not! Trafficked women are often moved around, and many of them do not know the language or the money currency. They feel alone, isolated from friends or family who might give them a helping hand."[188] Many freed slaves were little girls when they were forced into the sex trade, and so when they are freed from being a sex slave they end up re-entering the brothels because they have not developed skills to do anything else. Dieselberg began NightLight as a way for the girls to have a career after they come out of slavery. NightLight teaches the girls how to make jewelry that they sell locally and on the worldwide web. NightLight has a unique business model in that it pays a salary to the girls rather than per the piece, so it is a dependable income for the girls to build their new life on.[189]

Another aftercare facility founded by Pierre Tami named Hagar reintegrates victims into the community as productive citizens. Pierre Tamie explained that he was "frustrated" that although they could give women vocational skills after they left the sex slave market they still would be unemployed and vulnerable. Therefore, he decided that the best way to help the women was to create more jobs. He created a soya milk company and later a catering company.[190]

These are just two of the organizations that are being utilized to teach skills to the vulnerable persons. It would be helpful to have some organization that gave skills to show a village or town how they can profit from their young work force. This way they will not be so apt to allow traffickers to take their youngsters.

v. THE FUNDAMENTAL PROBLEM OF EQUALITY

Slavery and human trafficking thrive in an environment or culture where humans are not seen as fundamentally equal. Some cultures do not see people as being equal by virtue of their humanity, but rather see equality as a political construct set up by government and then enforced onto the citizens. Even in this "forced or created" state of equality slavery can still get a foothold because the slaveholder will still discount the woman and see her as "disposable." Equality creeps into the discussion of slavery in two distinct ways first in many cultures women are considered to be not as worthy of protection as men. Second, in different societies there is a stringent caste system where certain humans are considered to be below others and only worthy of serving the higher castes.

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[186] As reported in the book Jonathan J. Bean, Race and Liberty in America (Univ. of KY Press 2009). Jonathan J. Bean, *The Party of Lincoln, and of Douglass: Rediscovering Frederick Douglass in the Age of Obama*, NATIONAL REVIEW ONLINE, July 4, 2009, http://article.nationalreview.com/?q=ZmUxY2MxZGMyMjQ4Zjk5NTg0YTJlOGVlZDBlOTM2NWU=&w=MA.

[187] BATSTONE, *supra* note 47, at 24.

[188] *Id*. at 25.

[189] *Id*. at 35-36. In order to buy the jewelry and to learn more about the NightLight Ministry visit http://www.nightlightbangkok.com/

[190] BATSTONE, *supra* note 47, at 68-71. Pierre was recognized in 2004 by Secretary of State Colin Powell for his innovation and vision for creating opportunities for former trafficking victims to create wealth for themselves and for their community.

In areas like Southeast Asia, females routinely face discrimination. Girls are often the first to be pulled out of school to bear the burden of family chores, and they are looked to provide for their family. The Buddhist tradition that a girl is expected to devote her life to servitude to her family pay her karmic debt is never passed on, and if she shirks her duties, she risks suffering in the future. Routinely, after being forced into prostitution a girl in Thailand, for instance, will not leave the brothel for fear that she will not properly provide for her family.[191] Furthermore, if a family has a financial problem the sale of a daughter is much more common than the sale of a son.[192] Rachel Sparks-Graeser explains that in her personal experience in villages in Thailand that "there is a pressure put on young girls to provide for their family."[193] She explains when you add that pressure on top of Buddhist merit that is built when they do help their family it is a formula ripe of exploitation.[194] In order to combat the inequality The Sold Project focuses on a multi-pronged holistic approach to remedying the problem of vulnerability of girls to human trafficking. First, it offers scholarships to alleviate financial burdens on the families of keeping their young girls in school. Second, there is a mentorship with leaders in the community. Third, the program in the village in Thailand began offering after-school program to teach English, sports, art, etc. Finally, in order to decrease the ability of the traffickers to trick or coerce the young girls into a life of prostitution the Sold Project added human trafficking awareness programs in the school (similar to drug prevention in the United States). Sparks-Graeser explains how she has seen first-hand the effects of prevention work and how it works. The Sold Project's prevention program "empowers young leaders, gives children a future and an opportunity to be a child."[195]

Another aspect of inequality that undercuts the society of some of those who are vulnerable to trafficking is a society that tolerates violence against women.[196] Even when a country tries to create economic or social programs in some of the more rural areas, if it tolerates violence against women there is still the mindset that it is acceptable to abduct a women and place her into bondage. Her worth as a human has become less than that of her male counterparts.

vi. LEGAL REFORM IN ORIGINATION COUNTRIES

Another measure that will aid in the protecting the victims of trafficking or stopping the supply side of the equation is for there to be legal reforms in the origination and transit countries. In many countries the laws are adequate, but the problem is with the uneven or complete lack of enforcement of the laws. An example of a very strong law against debt bondage is India's, which prohibits debt bondage and provides funds for all freed slaves.[197] Nonetheless, it is difficult for the victims to receive the funds and because of corrupt government officials or lack of cooperation of the government.

One NGO, International Justice Mission (IJM), works with countries to ferret out slavery providing that the trafficked women be treated as victims, and that the traffickers are arrested and

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[191] BATSTONE, *supra* note 47, at 54-55.
[192] *Id*. at 55.
[193] Interview with Rachel Sparks-Graeser, Founder, The Sold Project, in Lynchburg, VA (July 12, 2009). *See* The Sold Project, http://www.thesoldproject.org (last visited August 30, 2009).
[194] *Id*.
[195] Interview with Rachel Sparks-Graeser, Founder, The Sold Project, in Lynchburg, VA (July 12, 2009). *See* The Sold Project, http://www.thesoldproject.org (last visited August 30, 2009).
[196] BATSTONE, *supra* note 47, at 252.
[197] BALES, *supra* note 35, at 16.

prosecuted.[198] They demand that countries uphold their laws, and provide justice for those within their borders. "If you do not have the rule of law, you have the rule of those who wield power at their own whim," IJM President Gary Haugen stated. Police or officials are at times corrupt or apathetic.[199] For example in Haiti, the police officers cannot do anything about the forced unpaid child labor because it is still legal to have unpaid servants between 12 and 15, but they are supposed to be documented which is never enforced. If the officer found the slave had been abused, then the officer might merely scold the slave-owner. If a slave ran away, and the slave is brought to the police station, the slave is put in an adult detention center. One police officer admits when discussing child selling, "If it is a pact between two families we do not intervene. Look, we know the domesticity phenomenon is illegal, but it is not in our capacity to end it by ourselves." Furthermore, this Haitian police officer admits he has his own restavek children working in his home, but he is quick to add that he does not rape them.[200] Corruption is such a problem in most countries that have substantial problems with slavery that IJM has devised a method called the power-actor analysis in order to identify law enforcement agents that are honest.[201] Without the rule of law, the powerful can still work within the system, but the poor will continue to become more repressed.

In Peru's capital city, Lima, many children were abandoned on the streets after they escaped from traffickers or were turned out by traffickers. The police used violence and force against these children, and then after the president decided to "cleanse" the streets of these street children several bodies of the children ended up in the park and others went missing.[202] Lucy Borja explains, "Nothing will change for the street kids until we put justice at the center of our society. At the moment we are ruled by corruption and greed."[203]

In India, Skinner watched as children were forced to make handmade rugs under the poorest of conditions; additionally, he saw the Indian children working in the stone quarries hauling stones and wielding hammers. Therefore, when he went to talk to the Social Secretary of Araria, the official in charge of investigating child labor, Skinner was shocked to hear him completely deny that such slavery exists in India. The Secretary stated, "we have no pens: everyone is free." He explained that at times poor people do sell their children but that is because "poor people are not rational, so I compare them to monkeys." Then according to Skinner, the Secretary recounted the following story to explain why parents sell their children—"…on a hot day a mother monkey will drop her baby to earth in order to climb a tree to keep from burning her own feet."[204]

There are other examples of corruption such as the problem in Eastern Europe with the police officers and other officials taking bribes. Additionally, there is one example of a prisoner running several brothels from his prison cells, while the guards knew that he was receiving large

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[198] BATSTONE, *supra* note 47, at 44.
[199] Cambodia Srey Neang. *Id*. at 36-39.
[200] SKINNER, *supra* note 48, at 24-25.
[201] BATSTONE, *supra* note 47, at 88-89.
[202] Lucy Borja of *Generacion* started a shelter for the street kids of Lima. It started in her office when she offered to allow a few children to stay in her office and she ended up with 600 children sleeping on the floor of her office building. This led to her opening a shelter for these children. BATSTONE, *supra* note 47, at 199-201.
[203] *Id*. at 223. Lucy Borja further explains that they need a police force that is not corrupt and will defend the rights of all citizens. She states "To say that the poor have rights means to accept that street children hold the exact same value as our own children. Our society is not ready to affirm this truth. BATSTONE, *supra* note 47, at 223-224.
[204] SKINNER, *supra* note 48, at 210.

sums of money in jail.[205] These are a few examples of corruption, and of what can happen when a society does not uphold the rule of law. TVPA authorizes the State Department monetarily to support NGO's that assist victims to get justice in the origination country. However, this is one area where the TIP report could make a difference by listing a country in a lower tier and determining an appropriate sanction. It can be argued that removing funding from the corrupt country may not be the most effective sanction because it is taking away money from those in need. However, when the United States threatens removal of non-humanitarian aid it does appear to make a difference.[206] So far this report has not been used to its potential.[207]

vii. SLAVERY WILL LEAD TO DECREASED ECONOMIC PROSPERITY OF THE SOCIETY AS A WHOLE

Extreme poverty is present in most origination countries for victims of human trafficking, and in most areas where there exists an extensive amount of modern-day slavery. Many of the villages where slavery has thrived mentioned above are in the poorest area of their respected countries. Most realistic strategies to end slavery must at some level "target poverty alleviation."[208] As noted above, increases to socioeconomic stability will make the potential victims less likely to fall prey to traffickers because they will not fall for some of the likely schemes and frauds that the traffickers perpetrate. The TVPA has targeted language that allows the U.S. to use credit programs, and NGO's to give the potential victims economic alternatives to poverty. The hope is that this will decrease the vulnerability of at-risk individuals in the origination country.

However, some impoverished countries remain poor despite the fact that the U.S. and other countries have tried to bear the burden of their poverty.[209] There are two reasons why this may be the case. First, there is the classic chicken versus the egg problem. Some of the newer studies have demonstrated that slavery needs to be eradicated to experience true economic growth.[210] There are many reasons why modern-day slavery can actually become a drain on a country's resources including that fact that many times these slaves are trafficked out of the country taking away a country's workforce.[211] In contrast, free slaves can increase economic prosperity of a country. This may seem to be a radical idea given the fact that the Trans-Atlantic slave trade made so much money, and some have said that ending the slave trade cost England greatly in terms of actual profit and the fact that its citizens had to pay a higher price for basic goods. Nevertheless, there are several reasons why ending slavery will increase wealth. First, free slaves will consume goods and services and this will have a positive effect on the economies

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[205] *Id*. at 140.

[206] See the example of the United Arab Emirates did implement many different trafficking measures after the United States threatened sanctions. Evidently, the road was not always smooth and the United Arab Emirates did have some setbacks when it was discovered that they were still using small child slaves as camel jockeys.

[207] The report is not always used to its potentials since most of the countries in Tier 1 are countries friendly to the United States and the West, and those in Tier 3 are those that are renegade nations. It is rare that the U.S will threaten sanctions for one friendly nations even if the trafficking problem is significant. This is a criticism and a limitation of the report because it is still linked to the political process of diplomacy rather than being focused solely victims.

[208] SKINNER, *supra* note 48, at 291.

[209] Corruption or a shift away from rule of law principles may also contribute to a country's poverty since the aid would not reach those in need.

[210] KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY (2009); KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY'S SLAVES (2007).

[211] This is what happened in parts of Moldova where young girls were lured out of the more rural parts of the country.

of developing nations. In some countries, there are millions of bonded laborers. These slaves cannot participate in the normal buying of goods that helps to strengthen an economy. Furthermore, slaves, contrary to slaveholder's assertions, do not increase the goods in the stream of commerce any more then free labor would. Once slaves are freed, they work harder and are more productive. The promise of making their own money, and having pride in their work creates workforce that is produces more goods. Additionally, slaves will be more apt to abide by the law and pay taxes on the goods they produced.

All of these economic benefits to freedom were demonstrated when the Kols won their freedom from the rock quarries in India. Although the quarry work was very difficult, it was a skill that had been passed down and perfected over multiple generations. Now the workers took pride in their work and the dignity of freedom gave them the security to focus on providing for their families. The slaveholders who held the Kols in slavery were doing so in violation of the law, and it appeared this was not the only law they violated.[212] The Kols became law abiding citizens and paid more taxes in 9 months of operating the quarries then the past 5 decades of the previous slaveholders' reign.[213] The Kols used the power of the market (many of the sand manufacturers colluded to keep prices artificially high) and their skills to sell their sand at a slight discount, and thus they were able to get more contracts. [214] After a while some of the village members began to specialize in other areas (one bought a cow, some started a provisional store, etc). Within a year of breaking the bonds of slavery in the six liberated villages the infant mortality rates had declined, there was sanitation, they began growing their own food, and every child was attending schools. Some have argued that socialism is the key to helping the slaves, and that capitalism and the free market are the causes of slavery. [215] The experience of the Kols points to a different answer—"Competition is something which breaks the shackles of bondage. The antidote to slavery, in other words is not communism. It is unfettered capitalism."[216]

The second reason why some of these countries remain poor is because of the control and corruption of the government in charge. At times the government does not overly control or overly regulate an area of the country, to the contrary, by violating the rule of law the government has acquiesced its power to the slaveholder. The slaveholder enforces absolute control over the slaves. In this environment, when freedom to make financial choices cannot prosper, the ensuing state is poverty.[217] The TVPA and its reauthorization helps to provide for the problem of poverty in the origination and transit countries by providing funds for NGO's who can be on the ground to see what is needed to best help those who are most vulnerable to trafficking and enslavement.

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[212] As Bales illuminates slaveholders are not normally law abiding citizens so not only do they violate other laws, but typically they have no regard for laws that protect the environment or our natural resources. He describes the slaveholders who use slave labor to cut down protected mahogany trees, and gut rainforests to set up their industries.
[213] SKINNER, *supra* note 48, at 240.
[214] *Id*. at 240.
[215] *Id*. at 234, 236.
[216] *Id*. at 240 (quoting Samar a member of a Sankalp the organization that helped to free the slaves from their bondage). Sankalp is an organization Sankalp goal is to help improve the socio-economic conditions of the poorer sections of the society in India, and then to support and empower the illiterate and the poor with literacy, so that they can leave their current situation and affect positive changes in their life. Sankalp, Resolve for a Progressive India, http://www.stuorg.iastate.edu/sankalp/homepage.html (last visited August 31, 2009).
[217] An example of this on the governmental level is BOB MCEWEN'S POLITICS: EASY AS PIE.

viii. USE NGO'S (U.S. ACT PROVIDES FOR FUNDING)

Each situation is different; thus, the uniqueness of the trafficking problems in different areas require individual solutions; one way of doing this is by using NGO's that focus on different aspects of this problem. "[Wilberforce] understood that all sectors of society—public, private, and the faith community—must work together in order to defeat major social problems such as the slave trade."[218] Thomas Clarkson who greatly inspired William Wilberforce in essence started the first anti-slavery NGO—The Committee for Effecting the Abolition of the Slave Trade.[219] Clarkson passed out an anti-slavery pamphlet to thousands. The group also used pictures of some of the atrocities of the slave trade in order to bring attention to the problem.

In an interview this author conducted with Rachel Sparks-Graeser of The Sold Project she explains the NGO's and organizations each provide a very specific role in the eradication of human trafficking and that each is needed in order to effectuate the goals of a slave-free existence. Some organizations focus on educating the public on these issues to spread the word on the problems of human trafficking. According to Sparks-Graeser there are 4 different categories of organizations that are all important in this question: 1) organizations focusing on preventing victims from becoming enslaved (e.g., the Sold project); 2) rescue organizations (e.g. International Justice Mission); 3) organizations focused on rehabilitation of the victims (e.g. safe homes that can be found in all countries around the world); 4) organizations that focus on stopping the demand (e.g. Shared Hope International).[220]

International Justice Mission (IJM) confronts slavery wherever it exists using several justice professionals including criminal justice investigators, prosecutors, and political analysts. The staff will gather detailed evidence of slavery in local areas and then will work with local law enforcement agencies in order to free those slaves and to prosecute the slaveholders. Through collaboration with local prosecutors, IJM is able to assist in building a solid case against slaveholders and traffickers in order to result in conviction of the criminals who partake in these crimes. IJM's founder Gary Haugen[221] found that "oppressors use violence to commit acts of injustice and to discourage potential rescues from coming to the aid of victims."[222] An ineffective public justice system lessens the protection of the victims of trafficking and slavery, and it decreases the ability for the poor to move beyond their economic or social status. IJM has adopted four clear objectives to act as organizational strategies: 1) victim relief; 2) perpetrator accountability; 3) victim aftercare; and 4) structural prevention. IJM is well respected among those in the abolitionist movement. When organizations happen upon slave situations that the organization cannot handle they will often times call IJM. One example of this is when a man who had bought his niece out of sexual bondage approached a Thai based NGO, and she recounted the details of the trafficking ring that held her captive as being very large and heavily armed.[223] This case according to IJM "touched every element of human trafficking, fraud, bonded labor, sex slavery, violation of immigration laws, and kidnapping all woven seamlessly

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[218] CREATING THE BETTER HOUR: LESSONS FROM WILLIAM WILBERFORCE (forward) (Chuck Stetson ed., 2007).
[219] BALES, *supra* note 35, at 71.
[220] Interview with Rachel Sparks-Graeser, Founder, The Sold Project, in Lynchburg, VA (July 12, 2009). *See* The Sold Project, http://www.thesoldproject.org (last visited August 30, 2009).
[221] Gary Haugen an attorney who graduated from Harvard University for undergraduate and then earned his law degree from University of Chicago. He worked for the Department of Justice civil rights division, and he directed a high-profile war crimes investigation at the United Nations before founding IJM.
[222] BATSTONE, *supra* note 47, at 84.
[223] *Id*. at 39-40.

into a single network."[224] This criminal organization trafficked women from all throughout Asia including Cambodia, Vietnam, Burma, Laos, Thailand, and China, and the girls were between 16 and 25 years old; furthermore, they scattered them in brothels throughout Southeast Asia. In 2005, IJM worked with police to raid several large brothels under the conditions that 1) the trafficked victims should be treated as victims not criminals and 2) the traffickers must be arrested and prosecuted. After the raids that freed several victims, IJM's attorneys worked with the prosecution in Thailand to secure convictions against the slaveholders.[225]

Polaris Project has started to build a "new underground railroad" in the United States. Polaris works in the United States to find and eradicate slavery. They stay true to their grassroots foundation and they try to get volunteers involved in their work through their extensive internship program. Polaris Project trains law enforcement officers, and works with legislators to assist in passing laws to adequately deal with the problem of trafficking and modern day slavery.

Some issues need to be addressed when giving up so much power to NGO's and other organizations. Overspecialization can be a problem when a group becomes myopically focused on their niche to the exclusion of all others. In order to deal a couple different coalition groups have emerged in order to link the groups so that they can learn from each other and not duplicate efforts. Not all groups are part of a coalition and some are in essence "re-inventing the wheel," and in some cases obstructing others who have already invented the wheel.

Some NGO's and other organizations have tried to focus on victim buybacks.[226] In other words, they raise resources to buy victims out of slavery. In participating in a victim buyback, an organization is implicitly recognizing the legitimate ownership of the slaveholder of the slave. Since the victim is now safe, the authorities are less likely to prosecute the slaveholders. The buybacks also creates an artificially increased market for slaves, since there is no limit to the supply of slaves a buyback can lead to gathering of more victims in order to sell them to organizations willing to buy them back. There have also been cases in which journalists have bought "slaves" who actually were not slaves, but were false slaves that were sold as a fund raising scheme for the Sudanese rebels.[227] There may be an extreme circumstance that requires a buyback—for example in Sudan the Dinka will buy back their own relatives in acts of "redemption"[228]—but this generally should not be the norm for any organization.

Another issue with giving money to a group is that the government loses direct oversight. Sometimes awareness programs are not thoroughly thought through for example when billboards are funded in areas where most are illiterate, or there is substantial amounts of money spent on

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[224] *Id*. at 42.
[225] *Id*. at 42-44.
[226] There are several organizations who do this, but one well known redeemer is John Eibner who would sometimes buy over 3,000 slaves in eight days in western Sudan where chattel slavery dates back more than 5,000 years. SKINNER, *supra* note 48, at 66-67. Stories about John Eibner can be found in The Village Voice, Boston Globe, National Review, New York Times, and TV shows such as Touched by and Angel dedicated an episode to his work. It is clear that John Eibner did save several slaves who were in horrific bondage, but of course the problems with the buy backs are the increased markets, etc.
[227] SKINNER, *supra* note 48, at 35. The original articles appeared in the Baltimore Sun in 1996 and it was later found that these were scams. Additionally, one reporter from the New York Times bought the freedom of one slave from a brothel only to find out she had returned to slavery to support her drug addiction.
[228] In Sudan the Dinka villages are raided and the villagers are beaten and taken as slaves. Many times the women and children are chained together and the injured are left to die along the way. The Dinka were taken hundreds of miles from their homes, and forced into submission. SKINNER, *supra* note 48, at70-74, 96-97.

radio or television ads for areas that most of those who need to hear the ads have no electricity.[229]

There is also some infighting between groups dealing with issues such as whether or not all prostitution is slavery or only forced prostitution. In a controversial move, feminists and some conservatives (Michael Horowitz was one government official that pushed for amendments) team up to lobby for a more stringent view of prostitution in the TVPA Reauthorization Act of 2003. These strange bedfellows won their fight and now U.S. funding of NGO's is tied to a statement by the NGO that it would stand against prostitution (even if prostitution is not something that is part of its mission statement). As both a political conservative and a woman, it does not seem to this author that this is the best place to wage this war over the morality of prostitution. Creating another fine print disclaimer that one must put on their brochures does not seem to be a way to combat prostitution. If a person is engaging by their own volition, a disclaimer by an NGO that they do not support the legalization of prostitution will not do anything in that person's mind about whether they should engage in prostitution. It becomes another of those warning labels that corporate attorneys force manufacturers to place on their products; few people if anyone actually read them. If a person needs help they are not going to stop and read the organization's mission statement and then read all of the legalese and fine print that needs to be on the site so that the organization gets funding. In addition, withholding funding from certain organizations, which otherwise are helping in the fight against slavery and human trafficking, will hurt the very people that the government is seeking to protect. It seems as though one of the government's goal is to reduce the incidences of any form of prostitution (force or otherwise), and there are other ways of doing so that may be more effective.[230]

Finally, the issue of emancipation in Nepal shows NGO's at their best but it is also a tale of warning in the abolitionist movement. As noted above we need to learn from earlier movements. One of the first times the NGOs moved into the business of freeing modern day slaves in Nepal the success of the venture was mixed. The slaves were freed which was the ultimate goal. Many suffered devastating human rights abuses, and even death after being freed since the infrastructure of the Nepal was not set up to deal with the influx of new destitute people into an already overly burdened system. Moreover, the humanitarian relief was not adequate to deal with the problem of mass refugees in a short period of time—of course much of the timing was not under the control of the organizations. While many were saved, the situation in Nepal can act as a warning against an abolitionist organization or member of the government from riding in on a white horse like a cowboy to save the day. While this is exciting for western movies, it is oftentimes reckless in this movement. Bales was one of the key abolitionists involved in Nepal's movement toward freeing the slaves. He was in country to see first-hand the aftermath of the "botched" freedom, and he argues that everyone must learn from the mistakes made in Nepal.[231]

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[229] *Id.* at 23.

[230] The government could offer a carrot or a reward to those groups who engage in meaningful anti-prostitution actions rather than a stick to be used against those who do not do so. The money would also be tied to a group doing something meaningful to curb prostitution rather than just adding a standard disclaimer to their mission statement or website. Second, by focusing on organizations that gives women the skills to support themselves in other careers, and then helps them find work in those career (e.g. Nightlight), should decrease the incidences of women who voluntarily engage in prostitution. In generally, it seems as though the issue of prostitution is separate from the issue of trafficking and should not be so intrinsically tied to this issue.

[231] KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY: A READER 82-83 (2005).

IX. Prosecution/Punishment of Criminals Engaged in Human Trafficking & Modern Day Slavery

The TVPA was enacted in response to injustices in many cases where the laws were not adequate to secure justice for the victim. As noted in some of the examples above, before the TVPA prosecutors frequently had to rely upon laws that did not fit the crimes precisely or that provided punishments that were far less than the desired given the trafficking crimes that were committed against the victims. Although the TVPA provides punishment for domestic crimes,

> "Prosecuting a trafficking case demands extraordinary dedication because it is so costly and time-consuming. Many times an investigator needs to travel to a foreign country to check out the original scene of the abduction. Moreover, victims are often slow to cooperate because they have been psychologically terrorized or told not to testify under threat of death. Sex traffickers might videotape a victim being violated and threaten to show the tape to the victim's family and neighbors in the home village is she testifies" [232]

Although the U.S. is making strides in this area, the rates of convictions under TVPA remain relatively low as compared to the number of trafficking victims in the U.S. each year. The sentences given to some of the slaveholders and/ or traffickers is also an area that needs improvement as many times the convicted criminal will receive less time in jail then the amount of time that they stole from the victims that she held in bondage.

An area that the reauthorization sought to strengthen is to increase the punishment for crimes committed abroad, and to decrease the *mens rea* or mental intent needed for these crimes. For example, in the past a person needed to have intent to leave the country to have sex with a minor in order to be prosecuted in the United States. Many men would argue that they did not have the intent when they left the U.S., but once they entered a country like Thailand they decided to pay to have sex with a child. Under the new laws this is also illegal, all the prosecutor needs to prove is that the John committed the act—in essence sex with minors in a foreign country has become a strict liability offense. Additionally, the U.S. has added laws concerning government contractors soliciting sex, and illegally buying humans. Now this is a crime, and the government contractor can lose the contract.

X. Protection of Victims of Human Trafficking and Modern Day Slavery

A. Law Enforcement Training

The police officers in the U.S. (and abroad) specifically on the local levels need more training in order to identify victims of trafficking and slavery. Once an officer has identified a victim, training needs to be in place to teach the officer how to react appropriately to the situation. Additionally, because the U.S. has multiple jurisdictions—within each state, and then federal—there needs to be a way for the law enforcement officers to work together to share information to end trafficking.[233]

During an interview with Rachel Sparks-Graeser she expressed frustration that although the United States has enacted solid anti-trafficking laws many law enforcement officers seem to

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[232] BATSTONE, *supra* note 47, at 264.

[233] There are some networks already set up to help law enforcement generally share information about criminals, but because of the uniqueness of these crimes there might need to be more of a concerted effort to share information nationwide.

be "still in the dark" about what trafficking is. Ms. Sparks-Graeser conducted an informal survey approaching several members of the New York Police Department (NYPD), and she revealed that only 1 out of 4 officers knew what trafficking was or what signs to look for.[234] Sparks-Graeser explains, "That is scary. I think more time, money, and effort HAS to go into educating our law enforcement and government about trafficking so that we can do more."[235]

Because much trafficking and slavery is committed behind closed doors with a servant who is not able to speak freely, police officers need to learn to look beyond the crime at hand. For example, a case of domestic violence may end up being a trafficking case. Therefore, if a victim is from another country, the police need to learn to ask questions such as what country she is from, is she free to leave the house, and how she ended up in this house.[236] The police often need to tread lightly because victims are often scared because of police corruption from home country. Many community anti-slavery workers in the United States have indicated that migrant workers do not trust the law enforcement in their home country, and they also fear being deported if they report their crime.[237]

Another issue for law enforcement officers is that some do not always believe/understand that prostitutes or illegal immigrants or others that are normally considered criminals could really be victims. Sometimes there is a tension between human rights model requiring justice for the victim and law enforcement model, which focuses on trying to combat the criminal enterprise that engages in trafficking the individuals.[238] It is difficult to figure out at first blush which of those arrested during raids are criminals and which are victims. Some of the tension comes into play because of law enforcements ideas concerning illegal immigrants or prostitutes since they are trained that these two groups are violating the law and should be arrested. In this way, the officer is doing his part to uphold the rule of law in the destination country; however, this teaching is turned upside down in trafficking cases when those who the officer is trained to see as criminals are actually victims.

One of the biggest problems of saving the slaves is that it is difficult to find the appropriate place for the victims to be housed. Police sometimes are undecided as to whether the victim is truly a victim, and need to make quick decisions as to what to do with the people they find in a situation, i.e. arresting the prostitutes, etc. Moreover, when dealing with children there sometimes is nowhere to place the victims of slavery in a system that is set up to deal with minor offenses. Sometimes these children end up in juvenile facility; however, this is not suitable shelter for a victim of a crime.[239]

There have been a number of successful training programs sprinkled throughout the United States. One program is the Florida based Coalition Against Human Trafficking founded by Anna Rodriguez, which acts as a liaison between law enforcement, social service agencies,

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[234] This was not a scientific study, but a personal study that only dealt with members of the NYPD that she came in contact with on the street rather than a survey of all NYPD officers. However, this is still very revealing because the police officers on the street are the most likely to come in contact with a trafficking victim, but in order for any contact to be meaningful they must know the signs to look for concerning a trafficking victim.

[235] Interview with Rachel Sparks-Graeser, Founder, The Sold Project, in Lynchburg, VA (July 12, 2009). *See* The Sold Project, http://www.thesoldproject.org (last visited August 30, 2009).

[236] BATSTONE, *supra* note 47, at 254.

[237] *Id*. at 263 (discussing Anna Rodriguez a community action worker who joined the county sheriff's office to act as a bridge to the community).

[238] Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 230-32 (2007).

[239] BATSTONE, *supra* note 47, at 264.

and trafficking victims.[240] The Coalition trains those who have contact with potential victims such as meter readers in residential neighborhoods, home-care nurses. The Coalition tries to inform the public concerning the indicators to look for in a potential trafficking situation, so that more trafficking victims can be saved.[241] Anna Rodriguez explains, "Human trafficking can only work if the victims remain invisible to the public eye. We have to remove the veil of ignorance."

Another success story was a New York Officer who was trained to spot trafficking. He created his own materials, and despite his commanding officers' skepticism of the need for the program, he trained his fellow officers as to the signs to look for in a trafficking victim.[242] After the training, a trafficking victim was saved because another road officer was able to spot the signs of victimization.

Nevertheless, no matter how well trained the police are, they cannot be in every place. Since unlike other crimes the victim is unlikely to report the crime, the modern-day slavery needs to be ferreted out from virtually no prior information. Most cases of a slave finding freedom become known because of a perceptive person who was at the right place at the right time. Thus, the police officers' effectiveness will increase substantially as the awareness of the community increases. According to the National Underground Railroad Freedom Center, "Public awareness is also critical: slavery will remain an invisible scourge unless or until an informed public becomes actively engaged and committed in helping identify situations in which some form of slavery is suspected. An aroused public also can bring public pressure to bear those in power to address those cases."[243]

B. Social Workers Training and Increase of Funding

The slaves have been routinely treated as less than human. Many of them have been forced to literally sleep with animals, so it is difficult for them to leave that circumstance and then to immediately be able to function in society. The fight to free the slaves cannot end as soon as they are freed; for that reason, there must be aftercare of the victims. Victims will risk falling back into slavery if they are not provided with proper care to integrate them into society. Social workers have a unique problem dealing with young girls or boys who have been victims of rape and brutalization in the sex trade.[244] These young people can face shame, and severe emotional trauma. Moreover, it is difficult to ascertain where to place these young people if they are under 18 years old since most have had such adult experiences that they do not fit well with traditional foster care or group homes.

The social workers and aftercare facilities are not always equipped to deal with these unique needs. Some trafficking victims will exhibit symptoms of posttraumatic stress disorder (PSTD). These victims will need extensive care, especially since they may be traumatized more during a trial of the criminals that inflicted the torture on them.

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[240] *Id*. at 264

[241] The Coalitions sees trafficking victims in housecleaning services, landscaping services, domestic workers, casinos, nail salons, domestic violence cases, etc. *Id*. at 265.

[242] One enterprising police officer decided to make his own materials, and began to educate his fellow officers about trafficking and how to identify victims of the crime. After this discussion, one of his fellow officers did identify a women who had run away from her slaveholder and was lost in New York City. KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY (2009).

[243] National Underground Railroad Freedom Center, Slavery Today: Human Trafficking, http://www.freedomcenter.org/slavery-today/ (last visited July 10, 2009).

[244] BATSTONE, *supra* note 47, at 92.

One area that should be developed more is the long-term psychological effect on children who were abducted at very young ages because this may lead to an inability to love. Love is a basic necessity for proper human development.[245] It is programmed into mothers to love and nurture their children. If a child is not shown love at an early age they may lose the cognitive ability to form certain human bonds including love. [246] This inability to love leads to less productivity of the individuals, and may increase the individual's tendency to commit crime.

As stated by Bales, "It is a sad thing to point out that there is no developed field of study or practice that concerns rehabilitation of freed slaves. But different kinds of slaves need different kinds of rehabilitation upon liberation: children, the sexually brutalized, and the tortured are needful of special care."[247] Placing former slaves in secure surroundings is the key to prevent re-enslavement. IJM has found that "93% of the slaves who are put in a supportive environment do not return to bondage."[248] At some point, the victim will go from victim to survivor, but only after they deal with the trauma and self-doubt that is associated with being a trafficking victim.[249]

Therefore, the TVPA has added some victim care for federal victims of trafficking. One of the shortcomings of this approach is that the funding is based on the number of victims the organization finds, which can lead to organizations with no criminal justice investigative experience acting as vigilantes to search for victims. Another shortcoming of the system is that the funding is based on federal prosecution, and many of these cases are being covered by state prosecutor offices.

C. Visa Program

Victims cannot be just sent back because even if the person who originally trafficked the victim is prosecuted the victim can become vulnerable to other traffickers or to others in the industry who may target the victim for street justice.[250] The T-Visa requirements, however, are very strict. The victim must be ready to cooperate with law enforcement against the trafficker, and show that they will suffer "extreme hardship involving unusual and severe harm" if returned to their home countries.

Italy has a system similar to the U.S. system in that it allows victims to stay in Italy after being forced to migrate, as long as they testify against the trafficker who exploited them. The Regina Pacis facility run by Cesare Lo Deserto (called Padre Cesare) tries to help the victims to take advantage of this program; however, as in the U.S. many victims are fearful of the trafficker's threats to harm them or their families if they testify.[251] According to Padre Cesare Italy has become transit and destination spot for transporting girls from eastern Europe, and many times the police officers from a victim's home country, or the border police are somehow complicit in the abduction.[252] Although the country officials in general are not corrupt, some

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[245] SOREN KIERKEGAARD, WORKS OF LOVE (Harper Perennial 1962, 2009).
[246] THOMAS LEWIS, ET. AL., A GENERAL THEORY OF LOVE (2000); ROBERT KAREN, BECOMING ATTACHED: FIRST RELATIONSHIPS AND HOW THEY SHAPE OUR CAPACITY TO LOVE (Oxford Univ. Press 1998); JENNIFER ROBACK MORSE, LOVE AND ECONOMICS: IT TAKES A FAMILY TO RAISE A VILLAGE (2008).

[247] BALES, *supra* note 35, at 67-68.
[248] BATSTONE, *supra* note 47, at 93.
[249] SKINNER, *supra* note 48, at 193.
[250] BATSTONE, *supra* note 47, at 92.
[251] *Id*. at 162.
[252] *Id*. at 162.

individual law enforcement officers are in fact involved in the trafficking crime. There is no indictment against all police officers in one area of the world or another. The problem is that traffickers know which police officers are susceptible to bribes. The victim can only extrapolate that other police officers in the area may also be corrupt. Teaching victims that not all police officers are corrupt is part of the education program discussed above, so that the victims are not as fearful of authority.

XI. Conclusion

The book of Ecclesiastes shows this "desperation of the powerless"[253] when the author eloquently offers "Again I looked and saw all the oppression that was taking place under the sun: I saw the tears of the oppressed--and they have no comforter; power was on the side of their oppressors--and they have no comforter." Ecclesiastes 4:1[254] Many ask what can one person do to combat oppressors like those who enslave another human. Wilberforce was one man who used research to find ways to combat the issues, and then teamed with others to utilize their talents to get the word out to the public, to change the perception of the public, and to change the laws of the land. As almost all modern day abolitionists have stated only if the victims remain invisible can trafficking thrive. When attempting to stop modern-slavery, the power of the individual member of the public is strongest. This is an area where each person must do his or her part and collectively only the power of the individual will change the world.

Skinner used the idea of going through the looking glass to find the "invisible" slaves that surround us, but in order to eradicate the slavery one must turn the looking glass on themselves. As is illuminated in the lyrics of the Michael Jackson song *Man in the Mirror?*

> "I'm starting with the man in the mirror
> I'm asking him to change his ways
> And no message could have been any clearer
> If you wanna make the world a better place
> Take a look at yourself and then make a change"[255]

Through using the three prong approach in the TVPA each aspect of human trafficking and modern-day slavery will be addressed. Now it is for us to find our inner Wilberforce to see what each of us can do to end this criminal endeavor.

[253] *Id*. at 283.
[254] NIV version
[255] Performed by Michal Jackson, *Man in the Mirror* composed by Siedah Garrett and Glen Ballard

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