

# Blinded by Red Lights:

## *Why Trafficking Discourse Should Shift Away from Sex and the “Perfect Victim” Paradigm*

Robert Uy<sup>†</sup>

INTRODUCTION .....	204
I. PROSTITUTION DOES NOT EQUAL TRAFFICKING. ....	207
A. The Marginalization of Labor Trafficking Victims in the Media .....	208
B. The focus on sex-trafficking often has racist, sexist, and imperialistic overtones. ....	210
C. The legal definitions of prostitution and trafficking are not in congruence .....	211
II. WHY SHOULD WE CARE ABOUT LABOR TRAFFICKING? .....	212
A. Hardships faced by victims of labor trafficking .....	214
III. CREATING WORKABLE SOLUTIONS ON THE GROUND TO HELP VICTIMS AND TO PREVENT FURTHER TRAFFICKING .....	215
CONCLUSION .....	218

### INTRODUCTION

Race, class, and gender often play a large part in the construction of the “sympathetic” or “perfect” victim.<sup>1</sup> When sex crimes occur, often it is the upper-middle class, educated, and attractive who receive the most focus.<sup>2</sup> In contrast,

<sup>†</sup> Robert Uy is a Staff Attorney at Asian Pacific Islander Legal Outreach, practicing immigration law, domestic violence law, and trafficking law. Robert Uy currently is the lead attorney in API Legal Outreach’s immigration project and serves as its Legal Internship Coordinator and Legal Clinics Coordinator. Robert Uy is the Secretary of the Alliance for Community Empowerment domestic violence outreach group. Robert is also the Community Services Co-Chair of the Asian American Bar Association and the Legal Clinics Director of the Filipino Bar Association of Northern California. I would like to thank my research assistant, Stephanie Kang. The contents and the opinions expressed in this article does not necessarily reflect the opinions of API Legal Outreach. The views expressed herein are solely my own.

1. Sam Sommers, *Searching for the Perfect Victim*, PSYCHOLOGY TODAY, (October 28, 2009), <http://www.psychologytoday.com/blog/science-small-talk/200910/searching-the-perfect-victim>.

2. *Id.*

when people think of human trafficking, they often envision a “third world,” if not primarily Asian, woman or a child in deplorable conditions, being brought across borders, and being forced into commercial sex acts. This image of the “perfect victim” of human trafficking is one which elicits strong feelings from the Religious Right to the progressive left. For the Religious Right, human trafficking is a “clear cut, uncontroversial, terrible thing going on in the world.”<sup>3</sup> For the feminists in the progressive left, trafficking is simply an extension of women’s inequality, which is a “product of domination of women by men— inequality is presented as political and sexual in nature.”<sup>4</sup> Both interests, in combination, have resulted in an “unusual alliance” that has resulted in sex-trafficking being the primary focus of human trafficking discourse in the media and popular culture.<sup>5</sup> As a result, popular discourse on human trafficking is often focused on the idea of the “sex slave” and the need to “rescue and restore” sex slaves to their normal lives.<sup>6</sup> Without question, forced commercial sexual exploitation is human trafficking; however, the popular perception of trafficking as only encompassing “sex trafficking” does a disservice to the overall movement and to the victims of human trafficking who were not forced into the sex trade.

In recent years, community organizations and coalitions have tried to reframe the idea of human trafficking from the overly simplistic view that traffick- ing only involves the sex trade into the view that trafficking encompasses the sex trade *and* forced labor, debt bondage, and involuntary servitude.

The American legal system itself has attempted to shift towards this direc- tion through the crafting of laws that give equivalent weight to the victims of in- voluntary labor and commercial sexual exploitation. The legislative intent and purpose of the Trafficking Victims Protection Act (TVPA) of 2000, was to “pro- tect victims and punish traffickers.”<sup>7</sup> Under this version of the TVPA, it became a crime to knowingly provide or obtain the labor of a person by means of: 1) force, threats of force, physical restraint, or threats of physical restraint; 2) seri- ous harm or threats of serious harm; 3) abuse or threatened abuse of the law; or 4) any scheme, plan, or pattern intended to cause persons to believe that if they did not perform the labor service, they would suffer serious harm or physical re- straint.<sup>8</sup> However, a clear distinction was made between children and adults in terms of sex trafficking. An adult is a victim of sex trafficking if he or she is sub-

- 
3. Jerry Markon, *Human Trafficking Evokes Outrage, Little Evidence*, WASH. POST (Sept. 23, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401.html?sid=ST2007092300066>.
  4. HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 42 (2000).
  5. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664 (2010).
  6. *Id.* at 1703 (quoting Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 DIFFERENCES 128, 139 (2007)).
  7. Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451, 470 (2005) (referencing H.R. 3154, 106th Cong. § 6(c)(2) (1999)).
  8. 22 U.S.C. § 7102 (2006).

jected to commercial sex acts by force, fraud, or coercion.<sup>9</sup> A child under the age of eighteen is a victim simply if he or she is subjected to commercial sex acts.<sup>10</sup> Thus, as a practical matter, forced labor and commercial sexual exploitation were made prosecutable criminal offenses as forms of trafficking.<sup>11</sup>

This more inclusive view stems from the government's view that trafficking and anti-trafficking laws are an extension of the Thirteenth Amendment.<sup>12</sup> The Thirteenth Amendment prohibits slavery and involuntary servitude and has been used as the underlying basis for most anti-trafficking legislation.<sup>13</sup> Thus, in these federal laws, we see that the main focus is not so much on the *acts* being undertaken (prostitution, for example), but instead, is on the question of whether a person has the ability to consent or whether a person has had his or her ability to consent to the action taken away.<sup>14</sup> The reason behind this focus is that the crux behind any trafficking case is not the act itself, or the sale of the act, but instead, it is the issue of consent and voluntariness. A person is trafficked because he or she has been forced into some sort of labor against his or her will. Children are automatically considered trafficking victims when they are forced into sexual prostitution because they have the inability to give consent. Adults are considered trafficking victims when they have had their ability to consent taken away from them, through force, fraud, or coercion. Thus, consent and the ability to give consent are central to any trafficking case analysis.

Despite the legislative purpose and history of anti-trafficking laws, as being couched in an anti-forced labor framework, the overwhelming discourse on trafficking still remains focused on sex-trafficking. Consequently, in practice the law is often interpreted in a much narrower view by law enforcement, community members, government, and non-governmental organizations. This narrow view, which focuses too much on the glitz and notoriety of sex has lead to a di-

---

9. 22 U.S.C. § 7102(8)(A) (2006).

10. 18 U.S.C. § 1591 (2006); *see also* 22 U.S.C. § 7105(b)(1)(C)(ii)(I) (2006) (describing a person under the age of 18 who has been trafficked for commercial sex acts as a "victim of severe trafficking").

11. 22 U.S.C. § 7105(b)(1)(C)(i)-(ii) (2006); 22 U.S.C. § 7102(8) (2006). The TVPA has been reauthorized in 2003, 2005, and most recently in 2008 under the William Wilberforce Trafficking Victims Protection Reauthorization Act. *See, e.g.*, William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (to be codified at 22 U.S.C. § 7101 *et seq.*)

12. *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/> (follow "Humanitarian" hyperlink; then follow "Victims of Human Trafficking & Other Crimes" hyperlink; then follow "Victims of Human Trafficking: T Nonimmigrant Status" hyperlink) (last visited Nov. 5, 2010).

13. U.S. CONST. amend. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.").

14. 22 U.S.C. § 7102 (8) (2006) (stating that the definition of a severe form of trafficking indicates that commercial sex acts must be induced by "force, fraud or coercion," in addition, other forms of severe forms of trafficking include "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.").

version of resources from the problem of labor trafficking. Male victims of trafficking and victims of labor trafficking often face grave difficulties in finding shelters, legal assistance, and social services. In addition, this focus has led to an ideological split in the trafficking field, which in many ways has created a chasm between the sex workers movement and anti-human trafficking advocates.

The purpose of this article is to analyze current policy, laws, and theoretical frameworks used to address human trafficking.

In this article, I will argue the following: 1) Prostitution in and of itself is not trafficking; 2) The focus on sex trafficking does a disservice to victims of labor trafficking; 3) A focus on sex trafficking often has racial and sexist implications; 4) Labor trafficking victims have faced difficulty in obtaining assistance due to focus on sex trafficking; 5) There are ways we can ameliorate the problem of human trafficking from a holistic standpoint.

### I. PROSTITUTION DOES NOT EQUAL TRAFFICKING.

It is not surprising that prostitution and trafficking are viewed as synonymous, as both have histories that are similar and have been prevented by some laws that clearly overlap (i.e. Mann Act).<sup>15</sup> What is surprising, however, is that despite current legislation and a clear push by community groups to redefine trafficking in the American collective consciousness as being more than forced labor, most Americans view trafficking as primarily a sex trade issue. Part of the problem is that the American media focuses too much on trafficking as a “sex” issue. This focus is an extension of efforts to address trafficking by significant political interest groups who normally fail to land on the same side, most notably the Religious Right and the Progressive Left.

The practical effect of the focus on trafficking by both the Religious Right and feminists on the left is a paradigm paralysis. Trafficking discourse has largely been viewed through the lens of the Religious Right, who view it as an affront to their religious mores and through the critical human rights lens of progressives/feminists, who view it primarily as an outcome of inequality and oppression. Due to his moral beliefs and pressure from the Religious Right, President Bush made it clear on several occasions that sex trafficking was a “special evil.”<sup>16</sup> Similarly, the U.S. Congress, supported by the Republican Party, decreed in 2003 that organizations that receive governmental funds must declare that they do not promote, support, or advocate for the legalization or practice of prostitution, a statement later echoed in the TVPA of 2003.<sup>17</sup> Further policies by the U.S. Congress led to the funding of faith-based outreach on trafficking issues

---

15. The White-Slave Traffic Act of 1910 (codified as amended in 18 U.S.C. §§ 2421–24 (2006))

16. Jacqueline Berman, *The Left, The Right, and The Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT'L & COMP. L. 269, 269 (2006); see also Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25, 2004, § 6, at 30; Bureau of Pub. Affairs, U.S. Dep't of State, *The Link Between Prostitution and Sex Trafficking*, Nov. 24, 2004, available at <http://www.state.gov/documents/organization/38901.pdf>.

17. See, e.g., 22 U.S.C. § 7631(e) (2006); 22 U.S.C. § 7110(g) (2006).

which has hampered secular agencies in their attempts to help victims of trafficking. As a result, groups like the US Council of Catholic Bishops and Lutheran Immigration and Relief Services have been given lucrative contracts that allow them to administer human trafficking money from the federal government.<sup>18</sup> These policies, among others, have made it difficult for agencies serving victims of trafficking to obtain funding as they are often beholden to the ideological requirements of the faith-based administrators.<sup>19</sup> These policies have often limited the choices of trafficking victims (in terms of reproductive freedom) and have steered agencies towards serving what the faith-based organizations have viewed as being ideal victims.

Feminists, on the other hand, have sought to address human trafficking because it represents, “patriarchy, male oppression, and the exploitation of women.” The feminist movement’s interest in the abolition of sex trafficking as an extension of the need to prevent the exploitation of women has often left other trafficking victims out in the cold. While unintended, this emphasis on gender and on the interplay between male domination and female oppression has led them to de-emphasize forced labor and other types of non-sexual slavery.

Unfortunately, as feminists and the Religious Right have set their foci on sex trafficking, they inadvertently have set back the fight against labor trafficking.

### **A. The Marginalization of Labor Trafficking Victims in the Media**

Noam Chomsky and Edward Herman are often quoted for commenting on how mass media’s function is often to “amuse, entertain, inform, and to inculcate individuals with the values, beliefs, and codes of behavior that will integrate them into the institutional structures of larger society.”<sup>20</sup> In the trafficking field, the mass media has marginalized victims who do not meet the idea of the “perfect victim.” This behavior created a popular discourse on trafficking that is based on the idea of saving the helpless, beaten, sexually abused, victimized, third world woman and child. By focusing on a discourse of “sexual victimhood” mass media has essentially catered to two polarizing extremes unusually fascinated with sex, the Religious Right and radical feminists. While litigators and policy advocates may have tried to steer international and domestic legislation to include all types of forced labor,<sup>21</sup> the media has injected sex trafficking into the

---

18. *Anti-Trafficking Grants and Programs*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, <http://www.nccbuscc.org/mrs/traffickingweb2.shtml> (last visited Nov. 5, 2010).

19. Amanda Kloer, *Interview: ACLU Sues to Get Trafficking Victims Reproductive Healthcare*, END HUMAN TRAFFICKING (April 26, 2010, 2:00 PM), [http://humantrafficking.change.org/blog/view/interview\\_aclu\\_sues\\_to\\_get\\_trafficking\\_victims\\_reproductive\\_healthcare](http://humantrafficking.change.org/blog/view/interview_aclu_sues_to_get_trafficking_victims_reproductive_healthcare).

20. NOAM CHOMSKY & EDWARD S. HERMAN, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA I* (1988).

21. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25/Annex II (Nov. 15, 2000) [hereinafter Palermo Protocol]. The Palermo Protocol is inclusive of forced labor. It states:

American collective consciousness as *de rigueur*. As such, much of the clamor against trafficking is often geared towards the sex trade, which does not help those in other types of trafficking situations.

Every day, the news media covers trafficking from the perspective that it is primarily a “sex” issue. Salacious and controversial statements about trafficking, which often seem intended more to titillate than to inform, pepper news, news-magazines, and websites. Headlines such as “Illicit Massage Parlors, Prostitution Create New Challenges for Law Enforcement” and “Teen Recounts Horror of Abduction Into Sex Slavery” tend to sensationalize and over-emphasize the sex trafficking issue.<sup>22</sup> Even television newsmagazines, such as *Frontline*, have gotten involved in the process, fielding such controversial documentaries as “Sex Slaves,” which, like many other new media formats, focused primarily on the sex trade as trafficking.<sup>23</sup> In sum, the news media has had a large hand in manufacturing the belief that most if not all trafficking is sex trafficking by always keeping sex in the limelight.

In other types of popular media, the only trafficking that has been visible has been sex trafficking. In 2005, the Lifetime network created a TV movie called “Human Trafficking,” focusing on sex trafficking.<sup>24</sup> In 2006, Darryl Hannah created a human trafficking documentary on sex slaves.<sup>25</sup> The majority of the recently released movies on human trafficking all focus on the sex trade.<sup>26</sup>

---

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

*Id.* at art. 3.

22. Mike Celizic, *Teen Recounts Horror of Abduction Into Sex Slavery*, TODAY (Nov. 11, 2008, 2:37 PM), <http://today.msnbc.msn.com/id/27098993> (recounting the story of a teen who was kidnapped from a sleepover in the suburbs, drugged, gang raped and sold to another man for \$300,000); Erika Jacobson Moore, *Illicit Massage Parlors, Prostitution Create New Challenges For Law Enforcement*, LEESBURG TODAY (August 6, 2010), <http://www.leesburg2day.com/articles/2010/08/10/news/9606enforcement080610.txt> (describing the high prevalence of massage parlors that offer prostitution in Leesburg, VA and the inability of the police to control the problem).
23. *Frontline: Sex Slaves* (PBS television broadcast Feb. 7, 2006).
24. HUMAN TRAFFICKING (LIFETIME 2005).
25. *America’s Most Wanted: Marjan Rroku* (Fox television broadcast Nov. 25, 2006) (featuring a segment by Daryl Hannah titled “Daryl Hannah’s Mission: Ending Sex Slavery”).
26. *See, e.g.*, SISTERS AND DAUGHTERS BETRAYED (Captive Daughters 2005); PROMISED LAND (Agav Hafakot 2004); THE DAY MY GOD DIED (Andrew Levine Productions 2003); TRADING WOMEN (Documentary Educational Resources 2003); THE PEACEKEEPERS AND THE WOMEN (Women Make Movies 2003); LILYA 4-EVER (Memfis 2002); SO GREAT A VIOLENCE: PROSTITUTION, TRAFFICKING AND THE GLOBAL SEX INDUSTRY (Coalition Against Trafficking in Women International 2000).

More recently, the movie *Taken*, focused on sex trafficking.<sup>27</sup> In contrast, only one movie in recent years focused on all aspects of human trafficking in recent year.<sup>28</sup> Clearly, popular media has jumped on the sex trafficking bandwagon.

Unfortunately, this obsession with sex, particularly the salacious and the controversial, often causes significant problems in addressing the problem of human trafficking. Simply put, because “sex sells,” government, foundation, and non-governmental organization resources have been geared primarily towards addressing the problem of sex trafficking as opposed to labor trafficking. Many non-governmental organizations have benefited from the media focus on sex trafficking. Groups such as International Justice Mission and the Polaris Project that focus on sex trafficking policy have been well funded due to the public perception of trafficking as a sex issue. Unfortunately, as an unintended result of the focus on sex trafficking, agencies that focus on trafficking in a more inclusive matter often have received far less interest and funding.

### **B. The focus on sex-trafficking often has racist, sexist, and imperialistic overtones.**

The focus on commercial sexual exploitation in the sex trafficking world is an extension of western society’s focus on the objectification and fetishization of the “other” and the international woman’s rights movement’s construction of the “third world victim.” Edward Said, in his seminal work, *Orientalism*, described Orientalism as the construct of false assumptions by Westerners about the East.<sup>29</sup> In *Orientalism*, he posited, “My contention is that Orientalism is fundamentally a political doctrine willed over the Orient because the Orient was weaker than the West, which elided the Orient’s difference with its weakness. . . . As a cultural apparatus Orientalism is all aggression, activity, judgment, will-to-truth, and knowledge.”<sup>30</sup> The purpose of this discussion is to posit that the western construct of trafficking as “sex trafficking” is a political doctrine that highlights the perceived “otherness” and “weakness” of the victim. The image created in the minds of many that seek to help trafficking victims is often of a barefoot, disheveled, non-English speaking, helpless, Asian woman. The focus on this image seems to be an extension of continued hegemonic oppression. And while without question there are many victims who may fit that model, they represent only a fraction of the millions of trafficking victims.

In addition, the focus on the “female victim” contributes to an overall discourse that essentializes certain characteristics of women.<sup>31</sup> The Religious Right

---

27. TAKEN (Europacorp 2008)

28. CALL + RESPONSE (Fair Trade Pictures 2008).

29. EDWARD SAID, *ORIENTALISM* 5 (1978)

30. *Id.* at 204

31. “Essentialism thus refers to the existence of fixed characteristics, given attributes, and ahistorical functions that limit the possibilities of change and thus social reorganization.” Elizabeth Grosz, *Sexual Difference and the Problem of Essentialism*, in *THE ESSENTIAL DIFFERENCE* 82, 84 (Naomi Schor & Elizabeth Weed, eds., 1994); *see also* Ratna Kapur,

has contributed to the creation of the “perfect victim” archetype since its constituents overwhelmingly believe that victims of trafficking are mainly women and children.<sup>32</sup>

On the other end of the spectrum, the well-meaning international feminist movement has also inadvertently contributed to the creation of the “perfect victim” through its focus on the image of the woman as a “victim.”<sup>33</sup> This focus on the female victim has contributed as well to the construction of the trafficking victim in popular culture. Essentially, “[t]he image that is produced is that of a truncated Third World woman who is sexually constrained, tradition-bound, incarcerated in the home, illiterate, and poor. It is an image that is strikingly reminiscent of the colonial construction of the Eastern woman.”<sup>34</sup> Thus, even feminist discourse has contributed to the creation of the paradigm of the “perfect victim” of human trafficking.

While this emphasis on the “perfect victim” may have had some positive results and may have led to some large cases, especially those involving massage parlors, the overall schema has led law enforcement, NGOs, and the federal government in the wrong direction. The focus on the idea of the “perfect victim” as a disheveled, third-world woman or child fails to take into account personal agency. Often in the popular discourse on trafficking, discussion about personal choice and agency are absent. As such, no distinction can be made between trafficking and voluntary commercial sex acts. This conflation of prostitution with trafficking has poisoned the relationship between many anti-trafficking advocates and sex workers’ rights advocates. In addition, the conflation of the two has led to an unfortunate misallocation of funding with an overemphasis on sex-trafficking.

### C. The legal definitions of prostitution and trafficking are not in congruence

While victims of commercial sexual exploitation may sometimes qualify as victims of prostitution, they do not always qualify as victims of trafficking. For example, the crime of prostitution is defined in California Penal Code Section 647(b) as *engaging* in the act of prostitution and *offering or agreeing* to engage in a sexual act (otherwise known as “solicitation”).<sup>35</sup> In the federal arena, prostitution may be prosecuted when there is a violation of the Mann Act which involves the knowing transportation of individuals for the purpose of prostitution

---

*Post-colonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 COLUM. J. GENDER & L. 333, 374 (2001) (describing cultural essentialism as “a stagnant, exclusive understanding of culture”).

32. See Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 DIFFERENCES 128; Jennifer Block, *Sex Trafficking: Why the Faith Trade Is Interested in the Sex Trade*, CONSCIENCE MAGAZINE, Autumn 2004, [http://www.catholicsforchoice.org/conscience/archives/c2004sum\\_sextrafficking.asp](http://www.catholicsforchoice.org/conscience/archives/c2004sum_sextrafficking.asp).

33. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting The “Native” Subject in International/Post Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 2 (2002).

34. *Id.* at 18.

35. Cal. Pen. Code § 647(b) (West 2010).



or sexual activity in interstate or foreign commerce.<sup>36</sup> The main determination of whether a person is guilty of prostitution is whether they have engaged in offering or agreeing to a sexual act. The main crux off a Mann Act violation, on the other hand, is if a person knowingly transported a person for the purpose of prostitution. Both of these definitions are clearly distinguishable from trafficking.

The TVPA definition of human trafficking is more focused on consent. The definition of human trafficking is distinct. In fact, under the Trafficking Victims Protection Act, there are two types of “severe forms of trafficking:” 1) sex trafficking, in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such an act has not attained 18 years of age;<sup>37</sup> and 2) 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.<sup>38</sup> The crux of a trafficking prosecution depends primarily on whether a person was able to give consent or was otherwise coerced into becoming a prostitute or laborer.<sup>39</sup>

Thus, prostitution law and trafficking law are clearly distinct animals. Under current law, some types of prostitution are clearly human trafficking, such as child sex trafficking, while others may not be. On the converse, some types of trafficking are clearly prostitution, while others are clearly not. Thus, it is important to remember that both are not synonymous with each other and should not be used interchangeably.

## II. WHY SHOULD WE CARE ABOUT LABOR TRAFFICKING?

Imagine for a second a person who was sixteen when she first started working for her employer. At the age of 19, this person was offered a chance to come to the United States with her employer. Then picture that once she arrived, she had her passport taken away, was forced to work seven days a week, sixteen hours a day for nineteen years, was not allowed to leave the home of her employers, faced constant threats, and was barely paid a \$1,000 per year, during that nineteen-year period. Imagine if this person was told that that she had entered the United States illegally, was isolated by language, and had her movement severely constrained. Now stop imagining. This story is real and is what the trafficking survivor in *United States v. Calimlim* faced.<sup>40</sup> This case of labor trafficking is only one example of many that occur throughout the United States.

---

36. “Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.” 18 U.S.C. § 2421 (2006).

37. 22 U.S.C. § 7102(8)(A) (2006).

38. *Id.* at § 7102(8)(B).

39. *See id.* at § 7102(8).

40. *United States v. Calimlim*, 538 F.3d 706, 708-09 (7th Cir. 2008).

While domestic servitude is one form of human trafficking, many others exist, and manifest as debt bondage, involuntary servitude, peonage and slavery. Other notable labor trafficking cases include that of Lakireddy Bali Reddy, in which API Legal Outreach provided immigration representation and case management to many of the victims. In the Lakireddy Bali Reddy case, a South Asian businessman forced his victims, to work in restaurants and apartment buildings in addition to raping them and sexually abusing them.<sup>41</sup> The Kil Sol Lee case involved a large number of sweatshop workers in American Samoa who were placed into debt bondage.<sup>42</sup> More recently, in *David v. Signal International*, over 500 Indian workers alleged that they were trafficked into the United States to do forced labor in work camps and were subjected to psychological abuse, fraud, and deception.<sup>43</sup>

According to the 2010 Trafficking in Persons Report, over 12.3 million “[a]dults and children [are] in forced labor, bonded labor, and forced prostitution.”<sup>44</sup> The International Labour Organization (ILO) estimated 32% of trafficking victims were forced into labor; the United Nations Office on Drugs and Crime (UNODC) estimated 28%; the International Organization for Migration (IOM) estimated 14%.<sup>45</sup> According to data by the Department of Justice, from 2001-2005, over 24% of prosecuted trafficking cases were forced labor cases.<sup>46</sup> Even with conservative estimates, 14% of 12.3 million remains a staggering 1.68 million persons trafficked for forced labor each year.

In the United States it is estimated that roughly 14,500 to 17,500 persons are trafficked into the country.<sup>47</sup> According to the Department of Justice, of the reported cases of human trafficking in 2007-2008, 11.9% percent of human trafficking is forced labor. According to a U.S. Government and Accountability Office (GAO) analysis of human trafficking data in 2006, the U.S. government estimated 34% of all trafficking victims were victims of forced labor.<sup>48</sup> By these

---

41. FREE THE SLAVES & HUMAN RIGHTS CENTER, UNIV. OF CAL., BERKLEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 7 (2004), available at <http://www.freetheslaves.net/Document.Doc?id=10>.

42. *Id.* at 7. I worked with several of these victims to help them obtain legal permanent residence.

43. *Case Profile: David, et al. v. Signal International, LLC, et al.*, ACLU (Mar. 25, 2010), <http://www.aclu.org/human-rights/case-profile-david-et-al-v-signal-international-llc-et-al>.

44. UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2010 7 (2010), available at <http://www.state.gov/documents/organization/142979.pdf>.

45. U.S. GOVERNMENT & ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 12 (2006), available at <http://www.gao.gov/new.items/d06825.pdf>.

46. MARK MOTIVANS & TRACY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, FEDERAL PROSECUTION OF TRAFFICKING VICTIMS 2001-2005 1 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpht05.pdf>.

47. U.S. DEPARTMENT OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003 3 (2004), available at <http://www.justice.gov/ag/050104agreporttocongressvprav10.pdf>.

48. U.S. GOVERNMENT & ACCOUNTABILITY OFFICE, *supra* note 45, at 12.

estimates, there are roughly 1800 to 5950 victims of labor trafficking in the United States per year.

Despite these large numbers, the labor trafficking conviction rate in the United States is markedly low. According to the Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2007, only 35 people were charged with trafficking in 2005, 99 in 2006, and 103 in 2007.<sup>49</sup> Of those cases, only 10 were convicted of labor trafficking in 2005, 38 in 2006, and 17 in 2007.<sup>50</sup> These numbers are staggering as they highlight the lack of success in investigating and prosecuting labor trafficking.

Unfortunately while labor trafficking remains a growing issue, it fails to garner the attention it is due as a result of our society's obsession with sex trafficking. Labor trafficking still remains an ancillary issue in the minds of most Americans, which has resulted in a lack of resources and funding to address labor trafficking.

#### A. Hardships faced by victims of labor trafficking

As a result, there are fewer resources available to aid victims of labor trafficking than there are for sex trafficking victims. These problems manifest in a multitude of ways, which include the disinterest of law enforcement, the lack of shelters for male victims of human trafficking, and the overwhelming lack of resources for victims of labor trafficking. In the San Francisco Bay Area, for example, there is currently no shelter space for male victims of human trafficking. Often men who are victims of forced labor are forced to stay in shelters where they are subject to re-victimization. In addition many victims of forced labor are often denied law enforcement interviews by local law enforcement due to the misinterpretation of the definition of human trafficking.

Due to the overwhelming perception that victims of trafficking are in the sex trade, the assumption is that the majority of victims are women and children. As such, the majority of the resources that are allocated to address trafficking are focused on creating programs for women and children. For example, as of 2007, there were only four agencies that provided shelter to victims of trafficking; of those four, none housed males.<sup>51</sup> As of present, even the shelter at CAST LA (Coalition to Abolish Slavery and Trafficking) and the shelters involved with API Legal Outreach's current collaborative, the Asian Anti-Trafficking Collaborative, lack the capacity, funding, and logistics to house male victims of trafficking within their own shelters. As a result, often times, collaboratives and task-

---

49. U.S. DEPARTMENT OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2007 28 (2008), *available at* <http://www.justice.gov/archive/ag/annualreports/tr2007/agreporhumantrafficking2007.pdf>.

50. *Id.*

51. DR. SERI IRAZOLA ET AL., ICF INT'L, TRAFFICKING OF U.S. CITIZENS AND PERMANENT RESIDENTS: THE FORGOTTEN VICTIMS AND SURVIVORS 2 (2008), *available at* <http://www.icfi.com/docs/trafficking-citizens.pdf>.

forces must struggle to find alternative housing for male victims of human trafficking. Many task-forces rely on homeless shelters or on using limited funds from the federal government to place men and teenage boys in alternative temporary housing. Unfortunately, many of these shelters and alternative housing centers are not secure, lack the ability to deal with the unique needs of trafficking victims, and can often expose victims to further victimization.

Many agencies are ill-equipped to address the mental health needs of victims of forced labor. Currently, one popular model that exists is the use of domestic violence counselors and sexual assault counselors as mental health professionals for victims of trafficking. Often, this can lead to unintended problems, particularly when male victims or labor victims of trafficking are in need of care. In some instances, gender specific policies (which may be built into certain programs) can make it tough for male victims to get help geared towards their particular psychological needs.

While federal law enforcement has become very open to labor trafficking, local law enforcement still remains an obstacle for victims of forced labor. As an example, the Human Exploitation and Trafficking or “HEAT” program in Alameda County, California has treated human trafficking as primarily a sex trafficking issue, characterizing trafficking as “those who solicit children under the age of 14 for sex, those who lure children into the commercial sex trade, and those who aid in the exploitation, are all prosecuted as traffickers.”<sup>52</sup> Programs like this, while important to address sex trafficking, have had the unintended consequence of redefining what trafficking means in a community and for local law enforcement. This often makes it difficult for advocates like myself to report labor trafficking cases to counties that focus primarily on sex trafficking.

### III. CREATING WORKABLE SOLUTIONS ON THE GROUND TO HELP VICTIMS AND TO PREVENT FURTHER TRAFFICKING

Working in the field of trafficking and focusing on “eliminating” trafficking can be a Sisyphean task. Trafficking, prostitution, and slavery have existed since the beginning of mankind, and while at times have been prohibited, have continued to exist. Thus, instead of positing solutions to eliminate trafficking, I pose that we focus on the practical realities trafficking and on addressing the direct needs of trafficking victims. Thus, we need to focus on a victim-centered model of delivering services and arguing for policy change.

One of the first steps needed to eliminate trafficking is to change the way that we perceive trafficking. By not focusing on sex, and focusing on a gender-neutral and nondiscriminatory approach to human trafficking, we can better help

---

52. Emilie Raguso, *Alameda County DA Unveils Anti-human Trafficking Effort*, OAKLAND LOCAL (Apr. 3, 2010), <http://oaklandlocal.com/blogs/2010/02/alameda-county-da-unveils-anti-human-trafficking-effort>; see also Barbara Grady, *New Heatwatch Program Cracks Down on Human Traffickers, Teen Prostitution*, OAKLAND LOCAL (Feb. 2, 2010), <http://oaklandlocal.com/article/new-heatwatch-program-cracks-down-human-traffickers-teen-prostitution> (discussing HEAT’s focus on teen prostitution as human trafficking).

all victims of human trafficking. One of the main reasons why there is a lack of shelters and appropriate services for male victims of trafficking is because of the focus on victims of sex trafficking, who have largely been women, and a focus on the popular view of what constitutes a trafficking victim, primarily women and children. By re-shifting the focus from a sex-focused, “perfect victim” model into a more holistic view of trafficking as “forced labor,” we can place a larger field of victims into our purview and consequently provide them with more assistance.

Once we are able to change that view, then we need to segue that model and pair it with a victim-centered model, which takes into account the specific needs of each victim, both from a practical, cultural, and linguistic standpoint. A victim-centered model is geared towards providing for the needs of clients over the needs of the agency providing assistance. As such, it is focused on providing comprehensive services: full legal representation, full social service counseling, ongoing mental health services, ongoing housing, and medical care. Services should be given in the native language of the victim by persons familiar with the culture of the victim. Further, the model should focus on empowering the victim. Instead of creating reliance on the advocates or on the attorneys, the purpose is to give victims back their personal agency and give them the tools to move forward with their life so that at the end of the process, they no longer need services and no longer rely on their attorneys, advocates, or counselors.

Often, one of the largest hurdles for victims is for them to recognize that they are in a trafficking situation. Even more difficult is for third parties to realize that persons in the community that they see every day may be victims of human trafficking. The lack of self-identification by trafficking victims is often attributed to varying perceptions of what is acceptable conduct. For example, in many developing countries, it is often common for servants to work for employers for a salary of about one hundred dollars a month with the expectation that they may be subject to at least some abuse.<sup>53</sup> For many immigrants, this con-

---

53. HUMAN RIGHTS WATCH, *BOTTOM OF THE LADDER: EXPLOITATION AND ABUSE OF GIRL DOMESTIC WORKERS IN GUINEA* (2007), available at <http://www.hrw.org/en/reports/2007/06/14/bottom-ladder>; *Indonesia – Girls working domestics face abuse*, HUMAN RIGHTS WATCH (June 20, 2005), <http://www.hrw.org/en/news/2005/06/19/indonesia-girls-working-domestics-face-abuse>; *Indonesia Malaysia End Wage Exploitation of Domestic Workers*, HUMAN RIGHTS WATCH (May 10, 2010), <http://www.hrw.org/en/news/2010/05/10/indonesiamalaysia-end-wage-exploitation-domestic-workers>; *Kuwait- Abused Domestic Workers Nowhere To Turn*, HUMAN RIGHTS WATCH (Oct. 6, 2010), <http://www.hrw.org/en/news/2010/10/06/kuwait-abused-domestic-workers-nowhere-turn>; *Middle East-Asia Partial Reforms Fail Migrant Domestic Workers*, HUMAN RIGHTS WATCH (Apr. 28, 2010), <http://www.hrw.org/en/news/2010/04/28/middle-eastasia-partial-reforms-fail-migrant-domestic-workers>; *Middle East Sri Lankan Domestic Workers Face Abuse*, HUMAN RIGHTS WATCH (Nov. 14, 2007), <http://www.hrw.org/en/news/2007/11/12/middle-east-sri-lankan-domestic-workers-face-abuse>; *Singapore Domestic Workers Face Abuse*, HUMAN RIGHTS WATCH (Dec. 7, 2005), <http://www.hrw.org/en/news/2005/12/06/singapore-domestic-workers-suffer-grave-abuses>. There is widespread abuse of domestic laborers throughout the world. Often times, the abuse is not viewed as abusive behavior in the country where the labor is being conducted. The Human Rights Watch has conducted multiple studies on this is-

struct may be considered acceptable. As a result, when they enter the country, they do not realize that they are being exploited and subjected to human trafficking. Further, in immigrant communities that accept such constructs, the majority of the community members often fail to realize that what may be acceptable back home may be considered trafficking in the United States. This lack of self-realization and recognition of the problem is one that needs to be addressed through education. Targeted educational efforts can increase the number of self-identifying victims, good Samaritans, and for a lack of better word, informants. Educational institutions, government programs, non-governmental agencies, and anti-trafficking agencies must create more effective education and outreach programs to reach impacted communities. These programs must be culturally competent and linguistically appropriate in order to gain any headway into communities.

Often trafficking agencies rely too much on law enforcement to bring them cases. While a good relationship with law enforcement is important, trafficking agencies need to branch out and reach non-governmental organizations that already serve impacted communities. Victims are from countries where they fear law enforcement. As such, it is hard for the majority of victims to go to law enforcement for assistance, and as a result, depending largely on law enforcement to bring in cases can lead to a large gap in addressing the trafficking issue in immigrant communities. Non-governmental agencies who wish to assist trafficking victims must create a presence in the immigrant communities in which they wish to make an impact. For example, API Legal Outreach has forged relationships with the Latino community by entering into coalitions and networks with long-standing community groups, such as La Raza Community Resource Center and People Organizing to Demand Environmental and Economic Rights (PODER) in order to gain trust in within the Latino community. Furthermore, outreach to churches and faith based organizations is often useful to reach a broader audience; as such it makes sense for agencies to connect with the faith community in order to reach the immigrant community. Trust in law enforcement, while important, should not play second to trust within the community. In order to gain any ground in the field of trafficking, organizations that work with trafficking victims need to gain the trust of the impacted immigrant communities.

In order to address the needs of victims of trafficking, we need to increase capacity in law enforcement, non-governmental entities, community organizations, shelters, and social work agencies. As mentioned earlier, there is currently only one shelter that exclusively focuses on trafficking in Southern California and only one shelter that exclusively focuses on trafficking in Northern California. In Northern California, most legal services agencies only allocate staff part-time to address human trafficking. In addition, many organizations and agencies struggle to obtain the funding to provide comprehensive services. As such, one

of the most important goals of the trafficking movement is to try and figure out ways to create sustainable programs and to “staff up” programs in order to create more support for victims of trafficking.

Two of the most successful models of victim-centered non-governmental organization responses to human trafficking exist in California. CAST LA and the Asian Anti-Trafficking Collaborative (AATC) both provide comprehensive, holistic, client-based services. CAST’s approach, involves the creation of a one-stop shop for human trafficking, housed in a single agency, providing social services, shelter, and legal assistance. In contrast, AATC’s approach involves a tight coalition of three agencies, Asian Women’s Shelter, API Legal Outreach, and Narika, with each working together to leverage their particular strengths to provide the previously mentioned services. The replication of either model throughout the United States could help to ameliorate trafficking by providing resources to address the immediate needs of trafficking victims in a short period of time.

### CONCLUSION

The popular discourse on trafficking has focused too much on what constitutes a “perfect victim.” This perfect trafficking victim in the eyes of many from the Religious Right to the Progressives on the left is that of a third world woman or child, hiding in a closet, disheveled, fearful shivering, and sexually abused. The idea of saving this victim is “uncontroversial,” and in many ways accords with Judeo-Christian ideologies as well as feminist views on power and control. Unfortunately, the reality is that while many of these victims do exist, many other victims exist as well: from men laboring in forced labor camps to women and men working in sweatshops to persons working as caregivers, teachers, and domestic servants.<sup>54</sup> Many of these victims do not fit the “perfect victim” archetype. As a consequence, many of these people do not get the help that they need and remain in the shadows.

The view of trafficking as being only “sex trafficking” has had a detrimental effect on the anti-trafficking movement, as it has led to the misallocation of resources and funding and confusion as to the application of the law. Anti-trafficking advocates must struggle daily with the conflation of prostitution and trafficking. They must navigate the politics of sex, violence, gender, and racial issues in order to obtain relief for their clients. Despite the federal government’s best efforts to characterize trafficking as being a forced labor issue, various interest groups aided by the media continue to press on with a sex-obsessed agenda.

In order to better address trafficking, we need to move from an ideology-

---

54. See, e.g., *United States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008); William Branigin, *Sweatshop Instead of Paradise: Thais Lived in Fear as Slaves at L.A. Garment Factories*, WASH. POST., Sept. 10, 1995, at A1; *Case Profile: David, et al. v. Signal International, LLC, et al.*, *supra* note 43.

based agenda, and move towards a victim- or survivor-centered focus. The focus should be on the definition of trafficking as forced labor. Then organizations should focus on empowering victims of trafficking, rather than on rescuing and restoring victims. By providing key services such as education, housing, counseling, social services assistance, and legal assistance via a victim-centered delivery model, as opposed to an ideology-centered delivery model, we can reach more victims and better address the problem.