Women and Children Last: The Prosecution of Sex Traffickers as Sex Offenders and the Need for a Sex Trafficker Registry

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WOMEN AND CHILDREN LAST: THE PROSECUTION OF SEX TRAFFICKERS AS SEX OFFENDERS AND THE NEED FOR A SEX TRAFFICKER REGISTRY

Geneva Brown*

Abstract: Sex trafficking is a moral and legal tragedy that affects thousands in the United States and abroad. The U.S. State Department estimates that human traffickers bring between 14,500 and 17,500 persons annually into the United States for various avenues of exploitation, including involuntary servitude and forced prostitution. Human traffickers are highly organized into criminal syndicates that reap exponential profits exploiting vulnerable women and children. Individual states struggle to prosecute traffickers and must rely on federal prosecution of trafficking enterprises. International cooperation with local law enforcement is essential in combating trafficking, especially in the sex trade. This Article proposes that an international database be maintained to track the whereabouts of prosecuted traffickers, similar to the sex offender registry in the United States. Like the U.S. sex offender laws, which seek to dramatically decrease recidivism among sex offenders, an international registry could have a deterrent effect on trafficking. Limiting and monitoring the travel of convicted traffickers would be a new avenue that international law enforcement and governing bodies could use to contain the pernicious practice of trafficking.

INTRODUCTION

Human sex trafficking is a moral and legal tragedy that affects thousands in the United States and abroad. The International Labour Organization estimates that 1.39 million domestic and transnational victims of forced labor are also victims of commercial sex servitude. As

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many as 17,500 people are trafficked into the United States every year.\(^\text{3}\) Inside the United States, trafficking victims are subjected to various forms of exploitation including involuntary servitude and forced prostitution.\(^\text{4}\) The difficulty in quantifying the number of trafficking victims is just one example of the complexity and mystery behind human trafficking.\(^\text{5}\) In addition, human traffickers are part of highly organized criminal syndicates that profit from the exploitation of vulnerable women and children.\(^\text{6}\) To date, law enforcement is unable to combat human trafficking effectively and is failing to keep pace with its growth.\(^\text{7}\) Many states struggle to prosecute traffickers and must rely on federal prosecution of trafficking enterprises.\(^\text{8}\) To better address hu-

\(^{3}\) See Trafficking in Persons Report, supra note 1, at 23. The United States is one of the three largest markets for human sex trafficking. See Green, supra note 1, at 312; see also Susan Tiefenbrun, The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women; the Victims of Trafficking and Violence Protection Act of 2000, 2002 Utah L. Rev. 107, 128 (“[T]he United States is one of the primary destination points for trafficked women . . . .”).


\(^{5}\) See Tiefenbrun, supra note 3, at 126 (“Statistics on trafficking are unreliable and difficult to verify because of the secrecy of the sex trafficking industry and the social stigma attached to the activity.”); Trafficking in Persons Report, supra note 1, at 23 (“Estimates of the number of trafficking victims found throughout the world are inherently difficult to produce. Trafficking in persons, like drug trafficking and arms smuggling, is a clandestine activity made even harder to quantify by its numerous forms.”).

\(^{6}\) See Trafficking in Persons Report, supra note 1, at 6, 14; see also Nidhi Kumar, Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-First Century: How to Punish Today’s Masters and Compensate Their Immigrant Slaves, 58 Rutgers L. Rev. 303, 304–07 (2005) (“The ‘trafficking industry has become . . . one of the . . . most lucrative and fastest growing criminal enterprises.’”) (quoting Baher Azmy, Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda, 71 Fordham L. Rev. 981, 992 (2002)); Louise Shelley, Trafficking in Women: The Business Model Approach, 10 Brown J. World Aff. 119, 121 (2003) (“Smuggling and trafficking are undeniably part of organized crime activities. The high profits, low risk of detection, and minor penalties involved have made the human trade attractive to crime groups . . . .”).

\(^{7}\) See Miko & Park, supra note 4, at 8; Kumar, supra note 6, at 305–06; Tiefenbrun, supra note 3, at 130.

\(^{8}\) See Moira Heiges, Note, From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad, 94 Minn. L. Rev. 428, 439–42 (2009).
man sex trafficking, a greater level of cooperation among international, federal, and state enforcement agencies is needed.\textsuperscript{9}

In order to improve the international response to trafficking, it is necessary to devote additional attention to the plight of women and children being trafficked across borders for sexual exploitation.\textsuperscript{10} With greater public awareness of the problematic nature of sex trafficking, the public will to prosecute offenders should coalesce with law enforcement efforts to combat trafficking.\textsuperscript{11} U.S. sex offender laws provide a model for the creation of an international trafficking registry that would both increase public support for the prosecution of trafficking offenders and potentially deter sex trafficking on a global scale. U.S. sex offender laws seek to dramatically decrease recidivism of sex offenders and their application to sex traffickers could have the same deterrent effect.\textsuperscript{12} The utility of sex offender laws is already evident in the United States, where sex offender registration requirements are extended to convicted sex traffickers.\textsuperscript{13} Yet, the application of a sex offender registry alone is not sufficient. Although traffickers in the United States who specialize in the exploitation of children are being treated as sex offenders, it has not curtailed the trafficking of children.\textsuperscript{14} It is evident that U.S. laws need to go further in treating sex traffickers as sex offenders and restrict civil liberties such as travel and occupation.\textsuperscript{15} In addition, an international registration requirement would help the international community track the whereabouts of sex traffickers.


\textsuperscript{11} See id.


\textsuperscript{14} See Green, supra note 1, at 312 (noting that the United States must initiate exceptional measures to eradicate harm of child sex trafficking).

\textsuperscript{15} See 42 U.S.C. § 16921(b). The community notification provision requires that, immediately after a sex offender registers or updates a local registration, a local official must provide the information in the registry to the Attorney General; local law enforcement agencies; jurisdictions where the sex offender resides, works, or is a student; social services entities; volunteer organizations; and persons who request such notification pursuant to procedures established by the jurisdiction. Id.
traffickers and is a strong step towards treating human traffickers as sex offenders. A trafficking registry will liken traffickers to sex offenders and cause traffickers to suffer the same stigma that sex offenders do, which will garner much needed public awareness of the problem and help law enforcement agencies prevent and prosecute sex trafficking.16

This Article will provide a review of the current, growing problem of human sex trafficking and survey the landscape of law enforcement responses. It will also explore U.S. sex offender laws and suggest that sex offender laws be applied to sex trafficking. This Article is divided into five sections. Part I provides an overview of human trafficking and its impact on women and children. Part II identifies the different perspectives that influence government responses. Part III provides an overview of international legal responses, focusing on Europe and Asia. Part IV looks at U.S. trafficking laws and problems that law enforcement agencies face in prosecuting traffickers. This section also reviews U.S. sex offender laws and the use of a national registry. Finally, Part V suggests that the creation of an international sex trafficker registry will aid the global response to human trafficking.

I. THE PROBLEM OF HUMAN TRAFFICKING

Various governmental and non-governmental entities have wrestled with the definition of human trafficking.17 The United Nations initially focused on prostitution when drafting the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.18 Although the 1949 Convention did not define trafficking, it included an agreement to punish any person who “pro- cures, entices or leads away, for purposes of prostitution, another per- son.”19 The United Nations later provided a more detailed definition of human trafficking with the Convention Against Transnational Crimes in 2000. The 2000 Convention defined “trafficking in persons” as:

[T]he recruitment, transportation, transfer, harbouring or re- ceipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the

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16 See id.
18 Convention on the Suppression of the Traffic in Persons, supra note 17, art. I.
19 Id.
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 . . . .  

Meanwhile, the U.S. government, in the Trafficking Victims Protection Act, defines “severe forms of trafficking in persons” as “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.” The Act also differentiates sex trafficking from human trafficking, defining sex trafficking as a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained eighteen years of age.

The trafficking of women and children for prostitution is one of the fastest growing areas of international criminal activity. This growing phenomenon is a cause for alarm to the United States and the international community. More than 700,000 people are trafficked worldwide each year, with 50,000 people trafficked to the United States. Seventy percent of people trafficked across international borders are female and fifty percent are children. At least 100,000 female illegal immigrants work in the United States as prostitutes.

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22 Id.
23 Miko & Park, supra note 4, at 1.
24 See id.
25 Id.
26 Trafficking in Persons Report, supra note 1, at 15; see also Tiefenbrun, supra note 3, at 113–14 (discussing ways to eradicate sex trafficking in women, incorporating economic theory).
Women are most at risk for being trafficked. According to statistics compiled by the U.S. Department of Justice (DOJ), between January 1, 2007 and September 30, 2008, ninety-four percent of all human trafficking victims were female. More astoundingly, ninety-nine percent of all sex trafficking victims were female. Most women who are trafficked are done so as part of the sex trade. Sex trafficking accounted for eighty-three percent of all reported trafficking incidents, due in part to the fact that sex trafficking is the most lucrative type of human trafficking.

Trafficked women often have backgrounds of poverty, illiteracy, civil strife, and low social and political status. Traffickers exploit these conditions by luring women into traveling to unknown regions with the promise of high wages and civilized working conditions. Then, after arriving at their destination, women may be subjected to slave-like wages, inhumane working conditions, and debt bondage. Women who are trafficked for the sex industry fare worse than other trafficking victims.

28 Tracey Kyckelhahn et al., U.S. Dep’t of Justice, Characteristics of Suspected Human Trafficking Incidents, 2007–08, at 8 (2009). The DOJ Human Trafficking Reporting System provides data on human trafficking incidents investigated between January 1, 2007 and September 30, 2008. Id. Data in the report represents a snapshot of the investigations opened by thirty-eight federally funded human trafficking task forces. Id. Further, the age of sex trafficking victims reveals their vulnerability. See id. An overwhelming majority of human trafficking victims were under twenty-five years of age. Id. Over one-quarter of such victims were under the age of seventeen. Id.

29 Id. at 2.


31 Kelly E. Hyland, Protecting Victims of Human Trafficking: An American Framework, 16 Berkeley Women’s L.J. 29, 35 (2001); see also Miko & Park, supra note 4, at 2 (noting that economic hardships following the collapse of Communism in the former Soviet Union and Eastern Europe hampered opportunities for a better life abroad and made “many women and girls especially vulnerable to entrapment by traffickers”).

32 See Fara Gold, Comment, Redefining the Sex Trade: Current Trends in International Trafficking of Women, 11 U. Miami Int’l & Comp. L. Rev. 99, 110 (2003); see also Tiefenbrun, supra note 3, at 118. Tiefenbrun explains that trafficking is accomplished by various means, including enticement, kidnapping, selling a loved one, the illegal use of legitimate travel documents, the use of imposter passports, and entry without inspection. Id. “They recruit women abroad through advertisements and employment, travel, model, or match-making agencies. Recruiters also target beauty contest winners and entice them with phony work offers.” Id.

33 Tiefenbrun, supra note 3, at 118; Gold, supra note 34, at 110.

34 See Farley, supra note 4, at 114–17.

Posttraumatic stress disorder (PTSD) commonly occurs among prostituted women, and is indicative of their extreme emotional distress. PTSD is characterized by anxiety, depression, insomnia, irritability, flashbacks, emotional numbing, and hyperalertness. In nine countries, sixty-eight percent of those in prostitution met criteria for a diagnosis of PTSD, a prevalence that was
For example, the large smuggling fees associated with the sex trade keep trafficked women indebted to their traffickers.\footnote{Gold, supra note 34, at 119.} In the United States, for instance, Asian prostitutes are sold for as much as $20,000 each.\footnote{New Global Treaty, supra note 27, at 2.} Trafficked women are reluctant to seek help from law enforcement officials because they fear retaliation from their traffickers.\footnote{Hyland, supra note 33, at 45.} Returning home is not a safe option for trafficked women either, as they may face retribution from organized crime groups or from their native country’s law enforcement.\footnote{Id. at 43.}

Child sex trafficking, in particular, is a growing concern for law enforcement.\footnote{See generally Silvia Scarpa, Child Trafficking: International Instruments to Protect the Most Vulnerable Victims, 44 Fam. Cr. Rev. 429 (2006) (explaining that children compose a large percentage of trafficking in persons, the fastest growing form of organized crime).} First, the trafficking industry has a direct association with child pornography.\footnote{Id. at 431.} Second, the sexual exploitation of children is a lucrative business that has ties to organized crime and local profiteers.\footnote{Estes & Weiner, supra note 43, at 8.} Child traffickers can earn as much as $30,000 per trafficked child.\footnote{O’Briain et al., supra note 9, at 8–9.} Sex tourists travel globally to gain access to young girls and boys and are willing to pay premium prices for access to them.\footnote{Estes & Weiner, supra, at 8.} The thriving child sex industry is based on several factors including poverty and the comparable to battered women seeking shelter, rape survivors seeking treatment, and survivors of state-sponsored torture. Across widely varying cultures on five continents, the traumatic consequences of prostitution were similar.\footnote{Scarpa, supra note 41, at 116–17 (footnotes omitted).}
use of “runaway” and “throwaway” children. Like trafficked women, children trafficked into and out of the United States are financially beholden to their traffickers. Often, they are required to pay their traffickers for the services received such as transportation, shelter, employment, and false identity papers. Additionally, children in the sex industry suffer exposure to HIV/AIDS and other sexually transmitted diseases. Indeed, younger children are targeted and procured to protect clients from HIV exposure. Human Rights Watch reports that “[p]rostituted children can be raped, beaten, sodomized, emotionally abused, tortured, and even killed by pimps, brothel owners, and customers.” According to UNICEF, one million children enter the global sex trade each year.

II. PERSPECTIVES ON SEX TRAFFICKING

There is no uniform global approach to combating sex trafficking. The ideological paradigms of governments, non-governmental organizations (NGOs), and legal and human rights communities influence the choice of how to view and combat sex trafficking. Groups develop different strategies to reduce or eliminate sex trafficking enterprises that are aligned with their understanding of the issues and actors involved.

Regardless of how different nations approach the problem, it is important for all law enforcement agencies to recognize the growing presence of organized crime groups involved in human trafficking. High profits of sex trafficking, combined with inadequate law enforcement responses, are increasingly attracting organized enterprises to the sex trade. The vast profits of sex trafficking have attracted “crime groups that previously trafficked in other commodities and . . . new

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47 Id. at 8.
48 Id.
50 Id.
51 Id.
53 Id. at 16.
54 See id. at 14–16.
55 See id.
56 See Shelley, supra note 6, at 121.
57 See id.
groups which have developed recently.

Behind the instances of human trafficking "lie intricate enterprises, each with business characteristics that influence the severity of the human rights violations." Trafficking enterprises often operate "with the complicity of professionals in receiving countries that knowingly provide services to the human smugglers and traffickers." Indeed, "[t]he vast profits of this business allow them to develop high-level expertise just as the drug trafficking organizations have done in recent decades.

Professor Louise Shelley stated, "The trade in human beings is not a uniform business and operates very differently in diverse cultural and political contexts." Shelley has identified six different business models of trafficking. The first model is the "natural resources" model. For example, post-Soviet organized crime groups "sell women as if they were a readily available natural resource," focusing their business on "the recruitment of women and their sale to intermediaries who deliver them to the markets where they will 'serve clients.'" The second model is the "trade and development model" used by Chinese and Thai traffickers.

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58 See id.
59 Id. at 119; see also Luz Estella Nagle, Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude, 26 Wis. Int'l L.J. 131, 132 (2008) (exploring "how the reticence by some governments to balance economic development and integration with combating human trafficking impedes the international resolve to deter this phenomenon").
60 Shelley, supra note 6, at 121. The business of human trafficking necessarily implicates the involvement of government actors in the trafficking trade. See Nagle, supra note 59, at 161. Trafficking enterprises could not exist without corrupt law enforcement, consular officials, and cooperative lawyers involved in the trade. See Shelley, supra note 6, at 129.
61 Shelley, supra note 6, at 121; see also Sheldon Zhang & Ko-Lin Chin, The Declining Significance of Triad Societies in Transnational Illegal Activities, 43 Brit. J. Criminology 469, 469 (2003) (presenting a conceptual framework to argue that "the entrenched culture and patterns of organization, which have served them well for centuries, are incompatible with conditions necessary for entering into present-day transnational criminal activities").
62 Shelley, supra note 6, at 122.
63 See id. at 123. Shelley’s findings are based on research by scholars in Russia and Ukraine under the sponsorship of the Transnational Crime and Corruption Center and published in the volumes of Torgovye Liudmi [Trade in People]. This growing business of trafficking is fueled by “traffickers from poor and violence-ridden societies” and their “high-paid facilitators in the west.” Id. at 121. For instance, during the post-socialist transition in Eastern Europe and the former Soviet Union, where women were displayed as part of the worldwide feminization of poverty, crime groups largely targeted women for trafficking. See id. at 122.
64 See id. at 123.
65 Id.
66 See id. at 124 (“[Shelley’s] analysis of Chinese organized crime is based on a variety of law enforcement sources apart from the academic sources and the case materials of prosecuted cases,” including “[m]aterials of actual investigations of the business side of Chinese organized crime . . . .”).
In this model, traffickers organize and “control the smuggling at all stages—from recruitment through debt bondage and eventually to an assignment in a brothel,” which generates significant profits.\(^{67}\) The third model is the “supermarket model,” based on a low cost and high volume model of human trafficking.\(^{68}\) This approach is seen in the trafficking trade between the United States and Mexico.\(^{69}\) There, “trade in women is part of a much larger trade that involves moving large numbers of people across the border at low cost.”\(^{70}\) The trade “may require multiple attempts” and “significant profit sharing with local Mexican border officials.”\(^{71}\) The fourth model is a “violent entrepreneur model” utilized by Balkan crime groups.\(^{72}\) This model “involves large numbers of women from the Balkans and those sold off to Balkan traders by crime groups from the former Soviet Union and Eastern Europe.”\(^{73}\) In addition, “Balkan groups take over existing markets in continental Europe and Great Britain by use of force against already established organized crime groups.”\(^{74}\) The fifth model combines “traditional slavery and modern technology” and is used by traffickers moving women out of Nigeria and West Africa.\(^{75}\) Women are trafficked as part of Nigerian organized crime groups, “in which the trade of women is only one part of their criminal activities,” and where “[c]hildren are abandoned in re-

\(^{67}\) See Shelly, supra note 6, at 124; see also Louise I. Shelley, Post-Communist Transitions and the Illegal Movement of People: Chinese Smuggling and Russian Trafficking in Women, 14 AN-

nals of Scholarship 71, 80 (2000).

\(^{68}\) See Shelley, supra note 6, at 125.

\(^{69}\) See id.; see also Joseph Nevins, The Remaking of the California-Mexico Boundary in the Age of NAFTA, in WALL AROUND THE WEST: STATE BORDERS AND IMMIGRATION CONTROLS IN NORTH AMERICA AND EUROPE 99, 99–107 (Peter Andreas & Timothy Snyder, eds. 2000).

\(^{70}\) Shelley, supra note 6, at 125; see also Louise Shelley, Corruption and Organized Crime in Mexico in the Post-PRI Transition, 17 J. CONTEMP. CRIM. JUST. 213, 226 (2001).

\(^{71}\) See Shelley, supra note 6, at 125.


\(^{75}\) See Shelley, supra note 6, at 126; see also Obi N. I. Ebbé, The Political-Criminal Nexus: The Nigerian Case, 4 TRENDS IN ORGANIZED CRIME 29, 36 (1999).
cient countries and women are pressured to work in . . . the lowest end of the prostitution market.”

The final business model applies to the host country rather than to a trafficking group. The “rational actor model” applies where prostitution is legalized and government-regulated, such as in the Netherlands, and “presumes that the brothel owner is a rational businessman and seeks to maximize his profits.” State regulations require certain conditions to be met for a brothel owner to continue operating, such as legal workers and decent conditions. In case of violations, “the license can be withdrawn, the brothel closes, and prosecution ensues,” which incentivizes compliance with state regulations.

International, national, and local law enforcement must grasp the multi-tiered, cross-border complexity of sex trafficking and coordinate efforts to successfully prosecute traffickers. As Shelley notes, “High levels of human rights violations are associated with segmented businesses in which women are passed from one set of owners to another repeatedly.” Government efforts to combat the increasingly complex prob-

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71 See Shelley, supra note 6, at 127.
72 See id.
73 An important spin-off of the policy is that it prevents human trafficking, which is characterized by exploitation, coercion and violence. The lifting of the ban on brothels makes prostitution a legitimate occupation and gives prostitutes the same rights and protections as other professionals. The labor laws offer the most effective protection against the exploitation, violence and coercion. The policy is based on the conviction that strengthening the position of women is the best way to combat sexual violence. Moreover, abuses are easier to detect when prostitutes operate publicly and legally rather than in a clandestine subculture.

The introduction of a municipal licensing system enables the police and other law enforcement agencies to conduct inspections of brothels, subject to the mayor’s consent. Through regular inspections to ensure that brothels conform to the licensing conditions, the police are in a position to pick up signs of human trafficking. They obtain invaluable information that can be used immediately to trace and prosecute offenders in both the regulated and unregulated sectors.

74 See Shelley, supra note 6, at 127.
75 Id. at 128.
76 See id. at 129 (“The isolation and prosecution of the facilitators of trafficking both at home and abroad is as necessary as targeting the crime groups themselves.”).
lem of trafficking fall into one of two models. The models are determined by components such as whether the trafficking victims are seen as offenders in the sex trade or as duped victims. Although the dominant model treats trafficking victims as co-conspirators, a more nuanced approach to sex trafficking is emerging that focuses instead on a rights-based discourse in developing a law enforcement response.

A. The Migrant Model

The Migrant Model is a law and order approach that does not fully recognize trafficked persons as victims. Currently, government and NGO responses are “embedded in morality” and “marked by class, gender, ethnic, nationality concerns, and restrictive and punitive strategies that violate human rights.” For instance, the United Nations distinguishes between the voluntary smuggling of persons and the involuntary trafficking of persons across borders. This delineation between those who are trafficked and those who are smuggled, however, “masks the reality in which the experience of exploitation resides within a rather more complex range of coercion and choice.” Indeed, there exists an “overlap between irregular migration, smuggling, and trafficking.” Often, “migrants’ experiences actually involve a degree of de-

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84 See Jordan, supra note 83, at 29–30; D’Cunha, supra note 83, at 5.
85 See Jordan, supra note 83, at 29–30; D’Cunha, supra note 83, at 5.
86 See Jordan, supra note 83, at 29–30.
87 D’Cunha, supra note 83, at 4; see also Jordan, supra note 83, at 28 (“A unique opportunity for non-governmental organizations (NGOs) and advocates to contribute to the development of a human rights-based response to the trafficking of human beings now exists. Many governments have signed a new international treaty on trafficking and are in the process of adopting domestic anti-trafficking laws.”). Such enforcement strategies are “largely reactive, focusing mostly on immediate post-trafficking assistance, and less on prevention.” D’Cunha, supra note 83, at 4; see also Mohamed Y. Mattar, Incorporating Five Basic Elements of Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention, 14 Tul. J. Int’l & Comp. L. 357, 360 (2006) (listing a number of nations that codified anti-trafficking in human beings).
90 Id. at 207.
ception, coercion, abuse of vulnerability, or exploitation . . . .”91 “Most typically, a person can initially consent to being assisted to migrate irregularly (or even to being smuggled), but become instead ‘trafficked’ if upon arrival to the country of destination, debt bondage, threats, or violence are used to coerce this person into forced labor . . . .”92

The migrant model fails properly to address the role of trafficked people as victims of the sex trade.93 For example, the European Union has adopted two legal instruments to combat human trafficking.94 Article 5(3) of the Charter of Fundamental Rights of the European Union prohibits and criminalizes trafficking, but it does not address the plight of trafficking victims.95 The European Commission eventually addressed the problem by drafting the Directive on Short-Term Residency Permits for Trafficking Victims.96 The Directive attempts to protect victims of trafficking and smuggling by offering short-term residency in the destination country in exchange for cooperation with competent authorities.97 The granting of residence permits is subject to three considerations: (1) the necessity of having the victim present for investigation or judicial proceedings; (2) the victim’s clear intention to cooperate; and (3) the extent to which the victim has severed relations with suspected traffickers.98 Once the conditions are met, residence permits are granted and renewed based on the same three considerations.99

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91 Id. at 206–07.
92 Id. at 207.
93 See id.
95 See Charter of Fundamental Rights of the European Union, supra note 94, art. 5. Article 5 is the “Prohibition of Slavery and Forced Labor” and states: “1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. Trafficking in human beings is prohibited.” Id.
96 See Directive on Short-Term Residency Permits for Trafficking Victims, supra note 94, art. 2.
99 See id.
residence permit guarantees a minimum standard of living, including medical treatment and legal assistance.\textsuperscript{100}

Nonetheless, requiring trafficked persons to meet these conditions of cooperation places a substantial burden upon them to prove that they are victims and not complicit members of the sex trade.\textsuperscript{101} Residence permits can be withdrawn or denied renewal depending upon the continued cooperation of the trafficking victim, leaving the victim in legally tenuous circumstances.\textsuperscript{102} This approach wrongly views sex trafficking victims as co-conspirators and illegal immigrants.\textsuperscript{103} Thus, trafficking victims face deportation unless they cooperate with law enforcement.\textsuperscript{104}

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

(a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or
(b) if the competent authority believes that the victim’s cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
(c) for reasons relating to public policy and to the protection of national security; or
(d) when the victim ceases to cooperate; or
(e) when the competent authorities decide to discontinue the proceedings.

\textit{Id.} art. 14.
\textsuperscript{100} See \textit{id.} art. 7.

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

\textit{Id.; see id.} art. 9.
\textsuperscript{100} See \textit{id.} art. 8.
\textsuperscript{101} See \textit{id.} art. 14.
\textsuperscript{103} See \textit{id.}
B. Gender and Rights Model

A gender and rights perspective on trafficking seeks to reconfigure the current dominant discourse on human sex trafficking, which is largely focused on a national security and law and order approach.\(^{105}\) The gender and rights approach acknowledges that women’s and children’s human rights are violated as a result of trafficking and focuses on protection and not criminalization.\(^{106}\) United Nations advisor Jean D’Cunha notes that the key elements of a gender and rights perspective on trafficking include: (1) universality of rights; (2) nondiscrimination, equality, and equity; (3) attention to vulnerable groups; (4) recognizing and guaranteeing new woman-specific rights and special rights for children; and (5) rights as empowering.\(^{107}\)

The final element underscores the relationship between rights and empowerment.\(^{108}\) Empowerment contains two different aspects.\(^{109}\) First, there is a structural dimension where legal, policy, and institutional environments generate a pervasive gender-and-rights-based culture.\(^{110}\) This

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\(^{105}\) D’Cunha, supra note 83, at 4.

\(^{106}\) Id. at 9.

\(^{107}\) Id. at 9–11. Jean D’Cunha defines the gender and rights perspective as distinguishing between concepts of sex and gender and their different social roles. Id. at 6. The gender and rights perspective recognizes that appropriate conduct for men and women is socially constructed and that the relationship status between men and women leaves women more disadvantaged. Id. She also notes that the prevailing gender stereotypes place less value on the social role of women and marginalize them from “ownership and control over the material (income, land) and non-material resources (time, political participation).” Id. Lastly, the gender and rights perspective holds that inequalities are socially conditioned and can be transformed in the direction of justice, equality, and fair participation between men and women. Id. at 6–7. “[A] gender and rights-based approach to development ensures fundamental human entitlements—social, economic and political—to expand choices, promote human well-being and empowerment in equitable and sustainable ways.” Id. at 30.

\(^{108}\) Id. at 11.

\(^{109}\) Id.

\(^{110}\) D’Cunha, supra note 83, at 11; see also Mattar, supra note 87, at 366. States are being held accountable through international instruments. Mattar, supra note 87, at 366. Mattar’s article outlines these international instruments, including:

The 1994 Inter-American Convention on International Traffic in Minors, which mandates that “[t]he States Parties undertake to adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention.” The Joint Action To Combat Trafficking in Human Beings and Sexual Exploitation of Children adopted by the European Council “mandates that Member States ‘review existing law and practice’ to classify trafficking as a criminal offense, provide the appropriate penalties for such offense and take the necessary measures that . . . ‘ensure . . . appropriate assistance for victims.’” The European Parliament, in a May 19, 2000, resolution, called for “legislative action against trafficking
includes codifying the rights of trafficking victims and then developing appropriate enforcement strategies to give legal effect to those rights. It also includes using international human rights law to hold states accountable for ensuring that such rights are realized through appropriate anti-trafficking laws and policies. States would then be obliged to ensure that private persons and institutions respect, protect, and promote the practical realization of human rights. Second, there is an individual empowerment dimension, where knowledge and participation empower victims to “access remedies and claim rights” for themselves. Ultimately, such a rights-based approach will ensure that appropriate

in human beings, including common definition, incriminations and sanctions.” The Economic Community of West African States (ECOWAS) Declaration of December 2001 on the Fight Against Trafficking in Persons calls upon Member States to “Adopt, as quickly as possibly, such legislative and other measures . . . that are necessary to establish as criminal offences the trafficking in persons . . . .” The January 2002 South Asian Association for Regional Cooperation (SAARC) Convention on Prevention and Combating Trafficking in Women and Children for Prostitution mandates that “[t]he State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.” The European Council Framework Decision of July 19, 2002, mandates that member states must take the necessary measures, no later than August 1, 2004, to criminalize trafficking in persons and provide the appropriate penalties, in addition to assisting victims of trafficking. The Organization for Cooperation and Security in Europe (OSCE) Declaration on Trafficking in Human Beings of December 2002 states, “We will consider adopting legislative or other measures that permit victims of trafficking to remain in our territory, temporarily or permanently, in appropriate cases, and giving consideration to humanitarian and compassionate factors.”

Id. at n.29 (citations omitted).

111 D’Cunha, supra note 83, at 11; see also Carole Angel, Immigration Relief for Human Trafficking Victims: Focusing the Lens on the Human Rights of Victims, 7 MD L.J. RACE, RELIGION, GENDER & CLASS 23 (2007) (“To effectively address the trafficking phenomenon, policymakers must use a victim-centered approach that focuses on human rights, rather than ones that focus solely on narrowing of immigration laws or prosecution.”). Anti-trafficking laws promoting human rights would prevent violations and encourage anti-trafficking policies and programs. See Angel, supra, at 23–24. Once codified and defined, the rights would create a gender and rights-based culture which would then have the ability to hold states accountable. See id.


113 D’Cunha, supra note 83, at 11.

114 D’Cunha, supra note 83, at 11.
actions are taken to punish violators of trafficking laws and to provide easily accessible remedies and reparations to trafficking victims.\textsuperscript{115}

III. INTERNATIONAL LEGAL RESPONSES TO SEX TRAFFICKING

The rise of globalization has led to an unanticipated boom in human trafficking that international governments are struggling to combat.\textsuperscript{116} The increase in cross-border trade, the demand for cheap, low-skilled labor, and an influx of mass-produced imports into developing countries is creating labor demands in foreign markets.\textsuperscript{117} Companies have taken advantage of this globalization by relocating or outsourcing operations to “low-wage economies” abroad.\textsuperscript{118} In turn, low-skilled laborers are traveling to foreign markets to fulfill the new labor demands.\textsuperscript{119} A major consequence of this labor migration is human trafficking.\textsuperscript{120} As Lorraine Corner has observed:

Economically marginalized people, particularly women, in developing countries are unable to realize their human right to a decent livelihood in their own country partly due to global inequities in trade. . . . The result is strong pressures in poor countries to migrate to industrialized economies in search of the means of livelihood [with people] often becoming victims of trafficking in the process.\textsuperscript{121}

Sex trafficking is on the rise as the labor demands for migrant women—who are less skilled and educated—leave them vulnerable to trafficking and the commercial sex trade.\textsuperscript{122} The growth of the commercial sex trade and sex tourism is increasing prevalence of sex traf-

\textsuperscript{115} Id. at 1.
\textsuperscript{116} Sally Cameron & Edward Newman, \textit{Trafficking in Humans: Structural Factors, in Trafficking in Humans: Social, Cultural and Political Dimensions} 21, 25 (2008); see Kumar, \textit{supra} note 6, at 304–05.
\textsuperscript{117} Cameron & Newman, \textit{supra} note 116, at 25.
\textsuperscript{118} Id. at 26.
\textsuperscript{119} Id. at 25.
\textsuperscript{120} Id. at 25–29.
\textsuperscript{121} Id. at 27–28 (quoting Lorraine Corner, A Gender Perspective to Combating Human Trafficking—An Integrated Approach to Livelihood Options for Women and Adolescent Girls 13 (2002) (unpublished paper)).
ficking. In response, international governments have begun to enact statutes and create other instruments to combat the rising scourge of sex trafficking.

A. Europe

The European Union began to develop policies on human trafficking in 1996 when the European Commission acknowledged the pervasive problem of trafficking in women for sexual exploitation. Then, in 2002, the International Organization on Migrations, European Parliament, and the European Commission drafted the Brussels Declaration, detailing operations and mechanisms to curtail and prevent human trafficking. Two European Union law enforcement agencies, Europol and Eurojust, have had some success in combating trafficking. Europol handles criminal intelligence and supports member states as they combat human trafficking. Eurojust, meanwhile, establishes uniform immigration and asylum policy and combats trans-border crime by consolidating cooperation among authorities. As a whole, the European Union approach to human trafficking adopts the migration model that treats sex trafficking victims as illegal immigrants. Individual European nations, however, have adopted divergent approaches in their attempts to prevent and prosecute sex trafficking.

Sweden, for example, adheres to the gender and rights model of human trafficking. The Swedish code criminalizes traffickers, procurers, and purchasers of sex. Sweden recognizes prostitution as a

123 Id. at 22.
124 Id. at 23–24.
125 Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, at 1, COM (96) 567 final (Nov. 20, 1996).
128 Frequently Asked Questions, supra note 127.
129 See The History of Eurojust, supra note 127.
130 See Askola, supra note 89, at 212.
131 See Ekberg, supra note 10, at 1189.
132 See id.
133 Brottsbalken [BrB] [Criminal Code] 6:8 (Swed.).
“form of male sexual violence against women and children.” It also recognizes that prostitution and human trafficking for sex purposes are harmful practices that are intrinsically linked and therefore should not be treated as separate entities. Sweden’s policy of prosecuting merchants and customers of prostitution, rather than the prostitutes, has reduced the number of women in prostitution by thirty to fifty percent and has shown a corresponding decreased in the number of men purchasing sex. As a result, Sweden is no longer an attractive market for sex traffickers.

Denmark also uses a gender and rights model. As part of a rights-based approach, the commercial sex trade operates legally in Denmark with restrictions on pimping, coercion into prostitution, soliciting a minor, and trafficking. There are between 5000 and 6000 prostitutes working in the country. Nearly half of the prostitutes are foreign nationals and potential trafficking victims, but Denmark assists sex trafficking victims instead of criminalizing their actions.

A person who promotes or improperly financially exploits the casual sexual relations for payment of another person shall be sentenced for procuring to imprisonment for at most four years.

A person who, holding the right to the use of premises, grants the right to use them to another in the knowledge that the premises are wholly or to a substantial extent used for casual sexual relations for payment and omits to do what can reasonably be expected to terminate the granted right, he or she shall, if the activity continues or is resumed at the premises, be considered to have promoted the activity and shall be sentenced in accordance with the first paragraph.

Id.

134 Ekberg, supra note 10, at 1189.
135 Id.
136 Id. at 1193–94, 1210.
137 See id. at 1209. Another effective component of Sweden’s law enforcement response is the existence of extraterritorial laws that allow Swedes to be charged, prosecuted, and convicted under Swedish laws for crimes committed in another country. Id. at 1196–97. Thus, Swedes traveling abroad for sex tourism face the same penalty for purchasing sex abroad as they would if they purchased sex in their home country. Id.; see also Roger Boyes, Sweden-Denmark Link Boosts Red Light Trade, TIMES (London), June 21, 2008, available at http://www.timesonline.co.uk/tol/news/world/europe/article4183265.ece (detailing the aggressive methods of the Swedish law enforcement in combating the sex trade, including wire tapping and video surveillance, against Swedes who travel fifteen minutes to Denmark to purchase sex legally).

Dutch government helps trafficking victims return to their countries of origin and provides social, medical, and legal aid.\textsuperscript{142}

Despite the assistance and rights-based approach to trafficking victims, the trafficking of children persists in Denmark.\textsuperscript{143} In addition, Denmark is both a destination country and a transit point for women trafficked from the Baltic countries, Eastern Europe, Southeast Asia, West Africa, and Latin America.\textsuperscript{144} The Copenhagen police have documented instances of women being lured to migrate with the promise of higher wages and a better quality of life, only to be coerced into a life of prostitution.\textsuperscript{145} Indeed, Denmark did not recognize human trafficking as an offense until the European Council Framework decision on combating trafficking influenced Danish legislation as well.\textsuperscript{146} Now, the Denmark penal code establishes a maximum eight year sentence for trafficking offenses, but police prosecuted only twenty-three trafficking cases in 2007.\textsuperscript{147}

Germany, in contrast, focuses on criminal prosecutions.\textsuperscript{148} Though prostitution is legal in Germany, the government has an aggressive approach to combating trafficking and the German criminal code prohibits all forms of human trafficking.\textsuperscript{149} The largest number of sex trafficking victims are German nationals trafficked within the country.\textsuperscript{150} Germany is not a destination for child sex tourism.\textsuperscript{151}

German laws recognize that human traffickers are part of business enterprises and heavily penalize those involved in trafficking groups.\textsuperscript{152} Law enforcement uses an integrated approach that leads to a large number of investigations and convictions.\textsuperscript{153} In 2006, for example,

\begin{itemize}
\item[\textsuperscript{142}] Id.
\item[\textsuperscript{143}] Trafficking in Children to Denmark, Save the Children Denmark, 19 (2003), http://www.childcentre.info/projects/traffickin/denmark/dbaFile11026.pdf [hereinafter Trafficking in Children to Denmark]. A 2003 study of the Denmark child sex trade found that young girls are trafficked into Denmark and kept under wraps by their foreign pimps. Id. When Danish police encounter these minors, they are supplied with false identification. Id. The study also found that children are procured for sex via cell phone or the internet. Id.
\item[\textsuperscript{144}] Human Rights Report: Denmark, supra note 138.
\item[\textsuperscript{145}] Id.
\item[\textsuperscript{146}] Trafficking in Children to Denmark, supra note 143, at 23–24.
\item[\textsuperscript{147}] Human Rights Report: Denmark, supra note 138.
\item[\textsuperscript{149}] Id.
\item[\textsuperscript{150}] Id.
\item[\textsuperscript{151}] Id.
\item[\textsuperscript{152}] Id.
\item[\textsuperscript{153}] See Human Rights Report: Germany, supra note 148.
\end{itemize}
Germany convicted 150 persons of trafficking.\textsuperscript{154} Traffickers face as many as ten years imprisonment and German courts have imprisoned nearly one third of those convicted of trafficking.\textsuperscript{155} The federal ministries coordinate anti-trafficking initiatives on the local, national, and international levels.\textsuperscript{156} In addition, federal states have cooperation agreements with law enforcement, state welfare agencies, and NGOs to assist trafficking victims.\textsuperscript{157} German law enforcement also shares intelligence information with Europol and Interpol.\textsuperscript{158}

B. Asia

Corruption, lenient law enforcement, and the lucrative nature of the sex trade comport to make Asia one of the most difficult regions in the world in which to combat sex trafficking.\textsuperscript{159} China and Thailand are two of the most egregious regions of sex trafficking.\textsuperscript{160} In China, criminal groups traffic thousands of Chinese women from their points of origin into the global sex trade market.\textsuperscript{161} Chinese criminal networks regularly transport women abroad and coerce them into prostitution.\textsuperscript{162} The U.S. State Department reports that Chinese criminal organizations traffic between 10,000 and 20,000 women and children annually.\textsuperscript{163} Although prostitution is illegal, it is estimated that between 1.7 and 6 million women are involved in the sex trade.\textsuperscript{164} Chinese government poli-

\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Human Rights Report: Germany, supra note 148. Germany also assists victims with repatriation. Id.
\textsuperscript{160} See Human Rights Report: China, supra note 159; Human Rights Report: Thailand, supra note 159.
\textsuperscript{161} Human Rights Report: China, supra note 159.
\textsuperscript{162} See Shelley, supra note 6, at 124. Sex trafficking generates significant capital for Chinese organized crime because of the integrated business model. See id.
\textsuperscript{163} See Human Rights Report: China, supra note 159. The U.S. State Department has tracked Chinese women held captive and forced into prostitution in Ghana. See Trafficking in Persons Report, supra note 1, at 142.
\textsuperscript{164} See Human Rights Report: China, supra note 159.
cies only exacerbate the tenuous plight of women. The one child policy, for instance, is zealously enforced by local government officials and belies a culture that does not value women. Discrimination, poverty, and violence contribute to the secondary status of women in Chinese society and lead to high rates of suicide. As a result, trafficking has become an extension of the diminished value of women in a society, where women are “bought, sold and murdered.”

Although China has enacted laws to curtail human trafficking, enforcement remains a serious problem. The U.S. State Department has placed China on its watch list because of the government’s inability to combat trafficking. China has failed to enforce trafficking laws that protect both Chinese and foreign trafficking victims and has failed to improve victim assistance programs.

Thailand is a global sex tourism destination. Although prostitution is illegal in Thailand, the commercial sex trade operates with little to no interference from law enforcement. In addition, the opportunity to engage in sex with underage girls is publicly advertised.

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165 See id. According to the World Bank and the World Health Organization, there are approximately five hundred female suicides per day. Id.

The Beijing Psychological Crisis Study and Prevention Center reported that the suicide rate for females was three times higher than for males. Many observers believe that violence against women and girls, discrimination in education and employment, the traditional preference for male children, the country’s birth limitation policies, and other societal factors contribute to the high female suicide rate. Women in rural areas, where the suicide rate for women is three to four times higher than for men, are especially vulnerable.


167 See id.

168 Id. at 732.

169 See id. at 743. China enacted the “Decision Relating to the Severe Punishment of Criminal Elements Who Abduct and Kidnap Women and Children,” providing that “the abduction and the sale of women and children [are] separate offenses.” Id. China further permits those who purchase women for sex to “be tried for the crime of rape under the Chinese Criminal Code.” Id. at 743–44. “Article 236 of the Chinese Criminal Code provides a three to ten year sentence for rape. . . . ” Id. at 744. The “sexual exploitation of girls under the age of fourteen, however, can carry a sentence of life imprisonment or the death penalty.” Id.

170 Trafficking in Persons Report, supra note 1, at 105.

171 Id. China must “closely examine its policy of returning North Korean migrants and refugees to ensure that trafficking victims are protected rather than subjected to the harsh treatment migrants receive on their return to North Korea.” Id. at 92.


173 See id.

174 Id.
tution is practiced openly with local officials complicit in its allowance.\footnote{Id.} A Thailand government survey found that there are between 76,000 and 77,000 registered prostitutes in the country.\footnote{Id.} NGOs, however, estimate the number to be between 200,000 and 300,000 prostitutes.\footnote{Human Rights Report: Thailand, supra note 159.} Sex trafficking in children is especially pernicious, and in 2007 the Thai government as well as university researchers and NGOs “estimated that there were as many as 60,000 prostitutes under age 18.”\footnote{Id.}

Despite the prevalence of sex tourism, Thailand criminalizes prostitution, sex trafficking, and child sex trafficking.\footnote{See id.} Thailand has also entered into memorandums of understanding with Laos and Cambodia to combat the tide of women and children crossing the border for sex trafficking, but enforcement remains questionable.\footnote{See Memorandum of Understanding on Cooperation to Combat Trafficking in Persons, Especially Women and Children, Laos-Thai., July 13, 2005, available at http://notrafficking.org/content/pdf/thailao_mou_on_cooperation_to_combat_human_trafficking_eng.pdf; Memorandum of Understanding on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, Thai.-Cambodia, May 31, 2005, available at http://www.notrafficking.org/resources_laws_thailand.html (follow “English” hyperlink under “Agreements” heading).} Despite the efforts of the Thai government, sex tourism remains a significant portion of the economy.\footnote{Trafficking of Women and Children in East Asia and Beyond: A Review of U.S. Policy: Hearing Before the Subcomm. on E. Asian and Pac. Affairs of the S. Comm. on Foreign Relations, 108th Cong. 25 (2003) (testimony of Donna M. Hughes, Professor and Carlson Endowed Chair in Women’s Studies, University of Rhode Island).} Thailand’s estimated income from prostitution in the last decade of the twentieth century was between twenty-two billion and twenty-seven billion dollars.\footnote{See The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia 137 (Lin Lean Lim ed. 1998).}

IV. U.S. Legal Responses

The United States is one of the largest receiving markets for sex trafficking.\footnote{See Trafficking in Persons Report, supra note 1, at 57.} Victims come from diverse areas of Asia, South America, and Eastern Europe.\footnote{Id.} Mexico, however, is the primary source of U.S. sex trafficking victims.\footnote{Id.} The United States has a complex interaction with Mexico regarding sex trafficking: American tourists travel to Mex-
ico to engage in child sex tourism; at the same time, organized criminal networks traffic Mexican women and girls into the United States for sexual exploitation. More than 20,000 children are victims of sex trafficking in Mexico, especially in tourist areas and border towns.

A. Current Approach

Similar to the European Union, the United States uses the migrant model in combating human trafficking. In 2000, Congress passed the Trafficking Victims Protection Act (TVPA) to combat the crisis of international trafficking of women to the United States. The TVPA acknowledges the pervasive problem of trafficking and focuses both on prosecuting traffickers and aiding victims. It also focuses on preventive measures and includes creative initiatives to educate women and girls on economic empowerment and the risks of human trafficking.

The TVPA mandates that trafficking victims are given assistance. It provides financial aid to local in-country NGOs for hotlines, protective shelters, and the creation of networks and databases to combat trafficking. Repatriations are also available to trafficking victims. U.S. victims of trafficking are eligible for benefits and services if they are victims of a severe form of trafficking. Victims who cooperate with law enforcement also garner benefits from the Department of Health and Human Services.

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186 Id. at 206.
187 Id.
188 See Jordan, supra note 83, at 29, 30.
191 Id. § 7104.
192 Id. § 7105(b)(1).
193 Id. § 7105(a)(1)(A).
194 Id. § 7105(a)(1)(E).
195 22 U.S.C. § 7105(b)(1)(B). The term “victim of a severe form of trafficking in persons” is defined as a person who has been subjected to a commercial sex act induced by force, fraud, or coercion and who is either under eighteen years of age or the subject of a certification under section 7105(b)(1)(E). Id. §§ 7102(8), 7105(b)(1)(C).
196 Id. §§ 7102(8), 7105(b)(1)(C); see also Wyler & Siskin, supra note 27, at 35. Between 2001 and 2008, the Department of Health and Human Services certified 1696 people, 162 of whom were minors. Wyler & Siskin, supra note 27, at 35. The Office of Refugee Resettlement also funds and facilitates several programs “to help refugees’ economic
Individual victims of trafficking in other countries receive assistance as well. The TVPA provides financial support to NGOs that assist victims in other countries through social services and legal aid. It also entitles victims to receive assistance in repatriation or reintegration through treatment, education, and training.

Finally, the TVPA has a provision for the certification of trafficking victims who are in the country illegally and cooperate in the prosecution of traffickers. Trafficking victims who choose to testify and who are deemed “victim[s] of a severe form of trafficking in persons” are allowed to remain in the United States during the prosecution of the trafficker under a T-visa or upon the determination of the Department of Homeland Security.

Although the TVPA is a positive step for the United States in assisting trafficking victims, it fails to take a gender and rights approach to the problem. Instead, the legislation maintains the migrant model that requires that trafficking victims provide legal cooperation before being granted protection and assistance. A panoply of federally funded programs and services are available only after cooperation is established. The lure of receiving a T-visa and aid puts trafficked women in precarious and dangerous predicaments. Trafficked women who choose to cooperate with U.S. law enforcement risk violent reprisals. Trafficked

and social self-sufficiency in their new homes in the United States," including temporary housing, independent living skills, cultural orientation, transportation needs, education programs, and legal assistance to the certified trafficked persons. Id. (internal quotation marks omitted).

198 Id. § 7105(a)(1)(B)-(D).
199 Id. § 7105(a)(1)(E).
200 Id. § 7105(b)(1)(E)(i).
201 Id. § 7105 (b)(1)(E)(i). T-visa certification entails cooperation in the investigation which includes: “(I) identification of a person or persons who have committed severe forms of trafficking in persons; (II) location and apprehension of such persons; (III) testimony at proceedings against such persons; or (IV) responding to and cooperating with requests for evidence and information.” Id. § 7105 (b)(1)(E)(iii). “Assistance to investigation” is clarified in section 7105 (b)(1)(E)(iv).
203 See id. § 7105 (b)(1)(E)(i).
204 See Wyler & Siskin, supra note 27, at 34–37. The Department of Justice provides aid to “precertification” trafficked victims with assistance for comprehensive services. Id. at 36. The vocational and legal needs of trafficking victims are addressed as well. Id. at 37. The Legal Services Corporation assists trafficking persons who have legal problems. Id. at 33.
205 See Tiefenbrun, supra note 3, at 161.
206 See id. at 161. The trafficked women who assist in prosecution are vulnerable to government manipulation and risk their lives. See id. Juveniles also are coerced into testifying against potential pimps and traffickers by use of material witness holds. See Geneva O.
women who do not cooperate face detention and deportation, regardless of whether or not they are convicted for working in the illegal sex trade.207 Once deported, they face a ten-year ban on reentering the United States.208 Even trafficked women who attempt to stay in the United States and cooperate with law enforcement may not be granted a T-visa.209 The number of T-visas granted by the U.S. government is limited: as of 2008, the Department of Homeland Security received 394 applications and only granted 247 T-visas.210 The Immigration and Customs Enforcement agency, meanwhile, may only issue up to 5000 special visas.211 In other words, very few trafficked women will ever be able to take advantage of the special immigrant visa or be able to “cooperate” with the Department of Homeland Security within the meaning of the TVPA.212 The harshness of this migrant model leaves trafficked women few choices: either face deportation or cooperate and risk retaliation, both of which frustrate prosecution efforts.213

In contrast to other international migrant approaches that criminalize victims unless they cooperate, the United Nations takes a more progressive stance and recognizes trafficked women as victims and not criminal co-conspirators.214 The United Nations has acknowledged the plight of trafficked women by authoring principles and guidelines and

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208 See 8 U.S.C. § 1101 (2006); see also Daniel Kanstroom, Deportation Nation: Outsiders in American History 10 (2007). Kanstroom notes, “Since 1997, more than 300,000 people have been deported from the United States because of post-entry criminal conduct . . . .” Kanstroom, supra, at 10. See generally Michael O’Connor & Celia Rumann, The Death of Advocacy in Re-Entry After Deportation Cases, CHAMPION MAG., Nov. 1999, http://www.criminaljustice.org/public.nsf/ChampionArticles/99nov03OpenDocument (noting the changes in the law that force quick and problematic guilty pleas for immigrants who have a history of being deported from the United States, reenter the country, and face up to twenty year imprisonment penalties).
210 See id.
212 See id.
213 See Kanstroom, supra note 208, at 10.
establishing a Special Rapporteur on the trafficking of women and children. These guidelines follow the gender and rights model, and emphasize the promotion and protection of the human rights of trafficked women. The principles include decriminalizing the illegal entry into countries as a trafficked person and banning the practice of confining trafficked women in detention facilities.

The United Nations report additionally recommends that trafficked persons be protected from further exploitation and have access to adequate physical and psychological care. Rather than endorse the U.S response that seeks cooperation but does not initially provide a support apparatus, the United Nations recognizes that law enforcement can assist trafficked women by providing shelter, protection from traffickers, and travel assistance to home countries. In addition, the United Nations drafted the Optional Protocol to the Convention on the Rights of the Child in 2000 that addressed the sale of children, child prostitution, and child pornography. The Protocol requests that all state parties take all necessary steps to strengthen international cooperation for the prevention, detection, investigation, prosecution, and punishment of persons involved in those activities. For these reasons, the United Nations aims to shift policy away from the U.S. model

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215 Id.
217 Id. at 3 (“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”). Other principles include:

Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centers, other detention facilities or vagrant houses.

Id. at 10.
218 Id. at 10–11.
219 Id. at 9–10.
221 Id. at 222, 228–29.
that treats trafficked women and children as a “law and order problem” and penalizes victims with prostitution charges.\footnote{See Integration of Human Rights of Women and the Gender Perspective, supra note 214, at 6 (dismissing the sole use of the “law and order problem” in aiding sex-trafficking victims).}

B. Problems with Prosecuting Traffickers

Global law enforcement numbers demonstrate that only a small percentage of traffickers are prosecuted.\footnote{See UNICEF, supra note 52, at 16. UNICEF estimates that nearly one million children are bought and sold each year in the sex trafficking industry. See id. at 20. Yet, in 2008, states initiated only 5212 prosecutions and garnered only 2983 convictions. See Trafficking in Persons Report, supra note 1, at 47.} In the United States, prosecuting human trafficking has become a mandate for law enforcement agencies.\footnote{See Attorney General Report, supra note 209, at 1.} Federal law enforcement has launched numerous trafficking initiatives to battle the mounting problem of human trafficking, with an emphasis on child sex trafficking.\footnote{See id.} In June 2003, the FBI, the DOJ Child Exploitation and Obscenity Section (CEOS), and the National Center for Missing and Exploited Children (NCMEC) launched the Innocence Lost National Initiative.\footnote{See id. at 36.} Innocence Lost addresses the domestic sex trafficking of children by coordinating state and federal law enforcement agencies, prosecutors, and social service providers.\footnote{Id.} The initiative was responsible for the arrest of 356 individuals and the recovery of twenty-one children in 2008.\footnote{See id.} In addition, U.S. Immigration and Customs Enforcement (ICE), the agency in charge of enforcing the TVPA, has the ability to arrest and hold traffickers under immi-

\[\textsuperscript{222}\text{See Integration of Human Rights of Women and the Gender Perspective, supra note 214, at 6 (dismissing the sole use of the “law and order problem” in aiding sex-trafficking victims).}\]
\[\textsuperscript{223}\text{See UNICEF, supra note 52, at 16. UNICEF estimates that nearly one million children are bought and sold each year in the sex trafficking industry. See id. at 20. Yet, in 2008, states initiated only 5212 prosecutions and garnered only 2983 convictions. See Trafficking in Persons Report, supra note 1, at 47.}\]
\[\textsuperscript{224}\text{See Attorney General Report, supra note 209, at 1.}\]
\[\textsuperscript{225}\text{See id.}\]
\[\textsuperscript{226}\text{See id. at 36.}\]
\[\textsuperscript{227}\text{Id.}\]
\[\textsuperscript{228}\text{See id. The FBI also launched its own initiative, the Human Trafficking Initiative, in 2005 to further coordinate local law enforcement, NGO, and community group responses to human trafficking problems. Id. As part of the initiative, FBI field offices determine, via a threat assessment, the existence and scope of the trafficking problem in their region. Id. The field offices also participate in an anti-trafficking task force and establish and maintain relationships with local NGOs and community organizations. Id. The initiative focuses on conducting victim-centered investigations and reporting significant case developments. Id. In 2008, the FBI made 139 human trafficking arrests and garnered ninety-four convictions. Id.}\]
2011

The Need for a Sex Trafficker Registry

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Though federal law enforcement has made strides in identifying and containing this problem, local law enforcement agencies play the primary role in combating human sex trafficking because the majority of arrests for human trafficking are made at the state level. Between 2007 and 2008, the DOJ noted that state law enforcement officials arrested sixty-eight percent of traffickers. Consequently, the training of local law enforcement is critical and is a central component of combating sex trafficking, both nationally and internationally. In recognition of this fact, the TVPA authorizes training for law enforcement to better identify victims of trafficking.

Forty-two states have laws combating human trafficking, yet no uniform approach to prosecution or victim assistance exists. Some states have no laws that identify human trafficking as a crime, whereas other states consider trafficking a felony and have dedicated trafficking task forces. Eleven states have enacted laws providing victim assistance and protection. Five states require asset forfeiture. Even so, the ex-

229 See Attorney General Report, supra note 209, at 38. The goal of ICE is “to disrupt and dismantle domestic and international criminal organizations that engage in human trafficking by utilizing all ICE authorities and resources in a cohesive global enforcement response.” Id. at 37.

230 Id. The DOJ also focuses on prosecuting sex trafficking. In 2008, it investigated 183 trafficking cases, arrested eighty-two persons, and obtained seventy-seven convictions. Id. at 41–42. Fifty of the seventy-seven convictions were for sex trafficking. Id. at 42.

231 See KYCKELHAINN ET AL., supra note 28, at 10.

232 See id. The majority of these arrests involved sex trafficking. Id.

233 See Mike Dottridge, Child Trafficking for Sexual Purposes, ECPAT Int’l, 22–23 (2008), http://www.ecpat.net/WorldCongressIII/PDF/Publications/Trafficking/Thematic_Paper_Trafficking_ENG.pdf. Internationally, education and training initiatives have increased the arrest and prosecution of sex traffickers. Id. at 22.


237 See id. at 7 (CA, CT, FL, ID, IL, IN, IA, MN, MO, NJ, and WA).

238 See id. at 12, 16, 30, 32, 34, 36, 56, 66, 82 (AZ, CA, ID, IL, IN, IA, MO, NJ, and PA).

239 See id. at 32, 52, 66, 82, 100 (IL, MN, NJ, PA, and WA).
istence of trafficking laws does not guarantee enforcement.\textsuperscript{240} States are reluctant to prosecute trafficking crimes because of the resources required to prove the legal requirements of force, fraud, or coercion.\textsuperscript{241} To prosecute traffickers effectively, there must be a more comprehensive and targeted approach that encompasses international, federal, and state legal apparatuses.

C. \textit{U.S. Sex Offender Laws}

In addition to the TVPA, the United States uses sex offender laws to combat sex trafficking.\textsuperscript{242} U.S. sex offender laws seek to decrease recidivism dramatically among sex offenders.\textsuperscript{243} Though the sex offender category is rife with misunderstanding, the application of sex offender laws to sex trafficking could have a deterrent effect.\textsuperscript{244} Sex offender laws apply to individuals who commit sex crimes, including child molestation, incest, exhibitionism, rape, and voyeurism.\textsuperscript{245} Most state and fed-

\begin{footnotesize}
\textsuperscript{240} See Heiges, \textit{supra} note 8, at 437.

Existing law establishes the offenses of slavery and involuntary servitude. Existing law also makes it an offense to entice an unmarried female minor for purposes of prostitution, as specified, or to aid or assist with the same, or to procure by fraudulent means, any female to have illicit carnal connection with any man. Existing law also makes it a crime to take away any minor as specified, for purposes of prostitution. This bill would establish the crime of trafficking of a person for forced labor or services or for effecting or maintaining other specified felonies, and the crime of trafficking of a minor for those purposes, punishable by terms of imprisonment in the state prison for 3, 4, or 5 years, or 4, 6, or 8 years, respectively. The bill would permit a victim of trafficking to bring a civil action for actual damages, provide for restitution and punitive damages, and would establish a victim-caseworker privilege. By creating new crimes, this bill would impose a state-mandated local program.

\textit{Id.}; see also \textit{Report Card on State Action to Combat International Trafficking, supra} note 236, at 7. California leads the nation in trafficking law enforcement and victim assistance. \textit{See id.} The Center for Women Policy Studies, which assesses state responses to trafficking, awarded California a grade of B in the area of “Victim Protection and Assistance.” \textit{Report Card on State Action to Combat International Trafficking, supra} note 236, at 7. Three states received a grade of B (no A grades were achieved) for victim assistance and only seventeen states received a grade of B or above in the category of “Criminalization Statutes.” \textit{Id.}


\textsuperscript{243} See \textit{No Easy Answers, supra} note 12, at 4, 59–61.

\textsuperscript{244} \textit{See id.} at 59–60.

eral laws outline multiple categories of sex offenders, and an offender’s punishment is dictated by the category of the crime.\textsuperscript{246} U.S. sex offender laws provide a model for the creation of an international trafficking registry that would both increase public support for the prosecution of trafficking offenders and potentially deter sex trafficking on a global scale.

1. Sex Offender Registration

Mandatory sex offender registration became a state and federal mandate in 1994 when Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Jacob Wetterling Act).\textsuperscript{247} The Jacob Wetterling Act required states to create a sex offender registry.\textsuperscript{248} Sex offenders who failed to register faced criminal penalties.\textsuperscript{249} In 1996, Congress amended the Act to include a


\textsuperscript{245} See \textit{Encyclopedia of Rape}, supra note 245, at 509 (providing an overview and critique of U.S. federal and state sex offender laws that impose post-incarceration restrictions). For example, the state of New Jersey divides sex offenders into three risk assessment categories: (1) low risk of re-offense; (2) moderate risk of re-offense; and (3) high risk of re-offense. N.J. Stat. Ann. § 2C:7–8 (West 2007). If an offender is deemed a high-risk offender, the local prosecutor must notify law enforcement, community organizations, schools, and the public. \textit{Attorney General Guidelines}, supra note 242, at 25. High-risk sex offenders must also register on a publically accessible internet website. \textit{Id.} For moderate-risk sex offenders, the local prosecutor must notify local law enforcement, local educational institutions, licensed daycare centers, and licensed summer camps. \textit{Id.} at 22. The low-risk sex offenders must register with local law enforcement. \textit{Id.} See generally Chiraag Bains, \textit{Next Generation Sex Offender Statutes: Constitutional Challenges to Residency, Work, and Loitering Restrictions}, 42 HARV. C.R.-C.L. L. REV. 483 (2007) (discussing constitutional challenges to sex offender laws).


\textsuperscript{248} 42 U.S.C. § 14071(a)(1)(A).

\textsuperscript{249} Id. § 14071(d).
public notification system commonly known as Megan’s Law.\textsuperscript{250} In 2005, Congress amended the Act again to include the Dru Sjodin National Sex Offender Public Website, a publicly accessible national sex offender registry.\textsuperscript{251} The national registry provides quicker and easier access to states’ individual sex offender registry websites.\textsuperscript{252}

Sex offender legislation changed again in 2006 with the passage of the Adam Walsh Act (AWA).\textsuperscript{253} The AWA comprehensively restructured sex offender laws.\textsuperscript{254} The AWA increased registration requirements and

\textsuperscript{250} See Emily White, Note, Prosecutions Under the Adam Walsh Act: Is America Keeping Its Promise?, 65 Wash. & Lee L. Rev. 1783, 1788 (2008) (noting that Megan’s law “removed the requirement that states treat registry data as private information” and “mandated that state law enforcement agencies release sex offender registry information necessary to protect the public”). The amended Act also created a national FBI database of registered sex offenders that provided information to the public. \textit{Id.}


\textsuperscript{252} See Dru Sjodin National Sex Offender Public Website, U.S. Department of Justice, http://www.nsopw.gov/Core/Conditions.aspx (last visited Jan. 20, 2011). The Dru Sjodin National Sex Offender Public Website, coordinated by the U.S. Department of Justice, is a cooperative effort between the state agencies hosting public sexual offender registries and the federal government. \textit{Id.} This website is a search tool allowing a user to submit a single national query to obtain information about sex offenders through a number of search options. \textit{Id.}

\textsuperscript{253} 42 U.S.C. § 16901. After being kidnapped from a mall in 1981, Adam Walsh’s remains were found two weeks later. \textit{Adam Walsh Act Becomes Law, America’s Most Wanted} (July 25, 2008), http://www.amw.com/features/feature_story_detail.cfm?id=1206. Adam’s father, John Walsh, became a television show host and advocate for tracking violent criminals. \textit{Id.} On the twenty-fifth anniversary of Adam’s disappearance, President Bush signed the Act into law. \textit{Id.}

\textsuperscript{254} Memorandum from Amy Baron-Evans & Sara Noonan, Nat’l Sentencing & Res. Counsel, to Defenders (Oct. 19, 2006), available at http://www.fd.org/pdf_lib/Adam%20Walsh%20MemoPr%201.pdf. Baron-Evans and Noonan summarized the major legislative changes:

[The AWA] established a complex . . . national sex offender registry law . . . and made significant changes to sexual abuse, exploitation and transportation crimes, including creating new substantive crimes, expanding federal jurisdiction over existing crimes, and increasing (often by a factor of two or greater) statutory minimum and/or maximum sentences. The Act did away with the statute of limitations for most sex crimes, placed . . . restrictions on discovery in child pornography cases, created new barriers to and strict conditions for pretrial release, added searches without probable cause as a discretionary condition of probation and supervised release for persons required to register as sex offenders, expanded the government’s authority to take DNA from persons not convicted of any crime, and added a new provision for civil
sex offender classifications. It places states under a federal mandate to register sex offenders and to maintain updated information on where the offender lives, works, or attends school. Title I of the AWA created the Sex Offender Registration and Notification Act (SORNA). SORNA established new sex offender registration and community notification standards. It allows the public to readily research local sex offenders on the federal database. SORNA’s community notification standards require jurisdictions to inform schools, community organizations, and other entities that work with minors on sex offenders’ whereabouts including their homes, schools, and workplaces. Knowingly failing to register or update under SORNA could lead to a fine or imprisonment of up to ten years.

AWA expanded the classification of a sex crime to include “a criminal offense that has an element involving a sex act or sexual contact with another.” The expansion requires juvenile sex offenders to register as sex offenders if the offense occurred when the offender was fourteen years old or older. It also creates a three-tier registration system where the registration length for offenders is dependent upon the seriousness of their offenses. Finally, the Act extended the sex offender definition to include sex crimes against children, including sex trafficking.

commitment of “sexually dangerous persons.” It also enacted certain victim rights in state prisoner habeas proceedings and a right of sex crime victims to receive damages of $150,000 in civil actions.

Id. at 1.
255 Id. at 12.
256 42 U.S.C. §§ 16912(a), 16913(a).
257 Id. § 16901.
258 Id. § 16918. SORNA requires publicly accessible sex offender information on the internet. Id.
259 Id.
260 Id. § 16921. The community notification provision requires that, “immediately after a sex offender registers or updates a registration, an appropriate official . . . shall provide the information in the registry” to the Attorney General, local law enforcement agencies, jurisdictions where the sex offender resides, works, or is a student, social services entities, volunteer organizations, and persons who request such notification pursuant to procedures established by the jurisdiction. Id. § 16921(b).
263 Id. § 16911(8).
264 Id. § 16911 (including relevant definitions such as the Amie Zyla expansion of sex offender definition and expanded inclusion of child predators).
265 Id. § 16911(3)(A)(1).
2. Legal Challenges to Sex Offender Registries

Researchers and victims' advocates question the efficacy of sex offender categorizations.266 Sex offender registration laws are most commonly challenged as ex post facto laws.267 If a statute is retroactive and makes actions criminal that were not criminal during the commission of the offense, it violates the Ex Post Facto Clause of the Constitution.268 Courts, though, have upheld sex offender registration laws that apply retroactively, holding that state control of future crimes is not a violation of a sex offender’s constitutional rights.269

For a registration law to violate the Ex Post Facto Clause, it must meet the two-part test enunciated by Justice Thurgood Marshall in Weaver v. Graham.270 First, the law “must be retrospective, that is, it must apply to events occurring before its enactment,” by altering the legal consequences of events.271 Second, the law must also disadvantage the offender.272 The new law must assign a more disadvantageous criminal or penal consequence to an act than did the law in place when the act occurred.273 In addition, to violate the Ex Post Facto Clause, the penalizing mechanism established by the law must be criminal and punitive in nature.274 In Kennedy v. Mendoza-Martinez, the U.S. Supreme Court delineated seven criteria in determining whether a statute is punitive and thus potentially unconstitutional.275

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267 See id. at 164.
268 U.S. CONST. art. I, § 9, cl. 3; § 10, cl. 1.
271 Id.
272 Id.
273 Id. at 30 n.13.
274 United States v. Ward, 448 U.S. 242, 248–49 (1980). In United States v. Ward, the Supreme Court announced a two-part test to determine whether a claim is criminal or civil in nature. Id. at 248–49. The court must “determine whether Congress, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.” Id. at 248. Where Congress intended a civil remedy, the court must determine “whether the statutory scheme was so punitive either in purpose or effect as to negate that intention.” Id. at 248–49.
275 Kennedy v. Mendoza-Martinez, 372 U.S. at 168. The Court reviewed the criteria for scrutinizing whether a statute is punitive in nature and therefore unconstitutional:
Courts look to the *Mendoza-Martinez* criteria when determining whether a sex offender registration law violates the offender’s constitutional rights. In *Kansas v. Hendricks*, the U.S. Supreme Court upheld a Kansas civil commitment law under a *Mendoza-Martinez* analysis, finding the law was not punitive in nature. In *Hendricks*, a sex offender who completed his prison sentence, but whom the Kansas courts then committed civilly, challenged the commitment. The Court concluded that the statutory purpose of the commitment law—to treat dangerous sex offenders and protect society—was civil and non-punitive in nature.

Alaska’s Sex Offender Registration Act withstood a similar constitutional challenge. The Alaska law required all sex offenders to register, including offenders whose crimes predated the act. The Alaska Department of Public Safety maintained the registry and offenders who failed to register faced criminal prosecution. In *Smith v. Doe*, the U.S. Supreme Court held that the purpose of the legislation was civil and not punitive. The Court further cited *Hendricks* in determining that the law had a legitimate, non-punitive governmental objective. The Court finally reviewed the *Mendoza-Martinez* factors and found that the law required no physical or affirmative restraints, that offenders were

The punitive nature of the sanction here is evident under the tests traditionally applied to determine whether an Act of Congress is penal or regulatory in character, even though in other cases this problem has been extremely difficult and elusive of solution. Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face.

*Id.* (footnotes omitted).

276 See *Smith*, 538 U.S. at 86–87; *Noble*, 829 P.2d at 1221–24; *Alva*, 92 P.3d at 312–17; *Cas-tellanos*, 982 P.2d at 218; see also *Griffin & West*, supra note 266, at 161 (discussing courts’ reliance on *Mendoza-Martinez* criteria).
278 Id. at 350.
279 Id. at 360.
280 See *Griffin & West*, supra note 266, at 161.
281 *Smith*, 538 U.S. at 105–06.
282 Id. at 90–91.
283 Id. at 92.
284 Id. at 93.
free to pursue jobs or change residences, and that the legislation’s deterrent effect did not make it punitive.285

Federal legislation has also been challenged under the Ex Post Facto Clause.286 Courts have determined that the AWA, and SORNA in particular, are not additional punishments inflicted upon sex offenders.287 Even though SORNA’s registration requirements apply to sex offenders whose offenses took place prior to its enactment, it does not violate the Ex Post Facto Clause because registration is not punitive: registration requirements are not historically regarded as punishment, they do “not ‘impose [] an affirmative disability or restraint,’” and they do “not ‘promote[]’ traditional aims of punishments.”288 Rather, courts note that registration “has a ‘rational connection to a nonpunitive purpose;’ and is not ‘excessive with respect to this [nonpunitive] purpose.’”289 Although SORNA requires detailed personal information and requires offenders to appear in person (so that the jurisdiction can take a personal photograph and verify information), SORNA is not a criminal punishment under ex post facto methodology.290

There has been one instance, however, where an individual provision of SORNA was found to be punitive.291 In Michigan, the Attorney General sought to prosecute an offender who failed to register or report his travel, actions that occurred before the enactment of the AWA.292 In the ensuing legal challenge, the Federal District Court for the Southern Division of Michigan held that the ten year penalty for failing to register for travel that fell outside the enforcement period violated the Ex Post Facto Clause.293

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285 Id. at 100, 102.
286 See United States v. Comstock, 130 S.Ct. 1949, 1955 (2010). Although an extensive discussion of civil commitment under the AWA is beyond the scope of this article, the U.S. Supreme Court recently decided Comstock, in which prisoners challenged the federal authority to authorize civil commitments. Id. The Court held that Congress had the constitutional authority to enact 18 U.S.C. § 4248, which allows court-ordered civil commitment by the federal government of (1) “sexually dangerous” persons who are already in the custody of the Bureau of Prisons, but who are coming to the end of their federal prison sentences, and (2) “sexually dangerous” persons who are in the custody of the Attorney General because they have been found mentally incompetent to stand trial. Id. at 1954.
287 United States v. Madera, 474 F. Supp. 2d 1257, 1265 (M.D. Fla. 2007), rev’d, 528 F.3d 852 (11th Cir. 2008).
288 Id. at 1263–64 (citing Smith, 538 U.S. at 97).
292 Id. at 848.
293 Id. at 853–54.
SORNA remains good law even as it continues to be constitutionally challenged. The legal challenges to sex offender registries demonstrate that state legislation and sweeping federal legislation such as the AWA must be crafted with a civil, non-punitive purpose and that enforcement must fall within the statutory guidelines.

V. THE NEED FOR AN INTERNATIONAL SEX TRAFFICKING REGISTRY

Applying sex offender laws to sex traffickers on an international scale will further the international cooperation critical to combating increasingly organized trafficking enterprises. The consequences of sex trafficking penetrate international borders and creating a trafficking registry database will help enforce trafficking laws and control the global flow of exploited women and children.

The use of sex offender registries in the United States has proved effective in deterring repeat offenders. As demonstrated, the registry requirements have withstood constitutional challenges. An international sex trafficker registry based on the U.S. model would be both...
legal and in line with the strategies endorsed by the United Nations.300 There is no doubt that a sex trafficking registry would be part of the stronger and more unified international enforcement effort for which the United Nations is calling.301

The trafficking registry should contain pertinent information regarding known traffickers based on warrants issued by judicial bodies or on previous convictions.302 This information sharing will assist in the worldwide prosecution of traffickers and help states seeking extraterritorial avenues to enforce trafficking laws.303 Thus, a trafficking registry will provide additional information that will aid states attempting to prosecute actions that occur abroad, such as child sex tourism.304

A sex trafficking registry would be another weapon to assist Interpol and national and local agencies with the enforcement of international laws against sex trafficking and child sex tourism.305 Already, Interpol has placed an emphasis on information sharing between law enforcement agencies.

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300 See New Global Treaty, supra note 27.
302 See 42 U.S.C. § 16911 (2006); O’Brien et al., supra note 9, at 40; supra note 252 and accompanying text. Information provided for trafficking registries should meet an evidentiary standard or be reviewed by a judicial body. False allegations and incorrect information could be detrimental not only to the persons accused, but also to the integrity of the registry.
303 See O’Brien et al., supra note 9, at 35–36, 50.
304 Id. at 35–36 (footnotes omitted).
305 Id.
306 See 42 U.S.C. §§ 16920, 14071. See generally Ad Hoc Comm., supra note 20 (convention on the “protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children”); Miko & Park, supra note 4 (studying sex trafficking issues in the United States and international community); Green, supra note 1 (detailing how exceptional measures must be taken to eradicate harm of child sex trafficking); Annual Report 2000: Trafficking in Human Beings, supra note 76 (discussing Europol’s collaborations with member states in combating sex trafficking); New Global Treaty, supra note 27 (discussing ways the United Nations will combat sex trafficking); U.N. Conference Report, supra note 72 (discussing trafficking in persons and peacekeeping operations).
enforcement agencies on sex traffickers.\textsuperscript{306} Interpol works against child sex tourism by identifying and locating perpetrators of crimes against children in the international arena.\textsuperscript{307} With Project Childhood, Interpol addressed sex tourism by seeking partnerships with police authorities in the prosecution of child sex tourists and other abusers.\textsuperscript{308} By disseminating data through a notice and diffusion system, law enforcement agencies are able to exchange information regarding wanted criminals.\textsuperscript{309} This is the type of integrated legal response needed to combat sex trafficking more efficiently on a global scale.\textsuperscript{310}

**Conclusion**

The growing phenomenon of human sex trafficking is a global problem that requires international cooperation and innovation. Current law enforcement responses are disjointed and a more uniform understanding and approach to the issues that underlie sex trafficking is necessary. Criminal trafficking enterprises are increasingly organized and intricate business operations. International and national bodies must implement new ideas and actions that take into account both the presence of organized crime groups and the plight of trafficking victims.

Although some governments, such as Sweden, have embraced the gender and rights model in combating human sex trafficking, other governments, such as the United States, still follow an outdated migrant model that unfairly burdens victims of the sex trade. If implemented uniformly, a rights-based approach—as adopted by the United Nations—will simultaneously serve the needs of trafficking victims and the necessity of prosecuting trafficking offenders.

One important step in improving the international response to sex trafficking is to create public awareness of this pernicious problem. Such awareness should give greater momentum to enacting laws and policies that effectively address trafficking. Developing an international sex trafficker registry is one strategy that will both increase public awareness of the problem and serve as an effective apparatus for law enforcement agencies to prevent and prosecute sex trafficking. Requiring sex traffickers to register in an international database—similar to current U.S. sex offender databases—will help create a social stigma for

\textsuperscript{306} O’Briain et al., supra note 9, at 40.
\textsuperscript{307} Id.
\textsuperscript{308} See Fact Sheet, supra note 9.
\textsuperscript{309} Id.
\textsuperscript{310} See O’Briain et al., supra note 9, at 40, 50.
traffickers and trafficking crimes that will lead to increased public desire to combat trafficking. A sex trafficking registry would also be an additional strategy for law enforcement. Collecting trafficker information and creating a database that is accessible to law enforcement agencies internationally will assist in the prosecutions of traffickers everywhere.

International law enforcement must find innovative approaches in its struggle against human trafficking. The current landscape, where sex trafficking victims are forced to risk their lives in assisting prosecutors as they garner convictions, is insufficient. The onus must be on states to create a new apparatus to combat sex trafficking. A starting point would be the creation of an international sex offender registry.