

Human trafficking and the tvpa



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Falling in a Gray Area: Human Trafficking Victims and When to Treat Them as Human Beings Though slavery has continuously existed in some form throughout history, it has only been in the past century and a half or so that humanity has legally acknowledged that the idea of owning another person is unjust. This relatively new legal conscience has become apparent in the various laws banning the validity that a person can be property, an object.

However, these laws have not eradicated slavery, as is seen by the scores of young men and women rescued from this particular brand of evil each year.

In 2000, Congress attempted to address a modernized version of slavery, human trafficking, by creating a new act, called the Trafficking Victims Protection Act, also known as the TVPA. “ Unfortunately, there is almost universal consensus that the Trafficking Act, while well-intentioned, has thus far failed to make sufficient strides in addressing the problem of human trafficking, either internationally or domestically” (Chacon: 2006, 2978).

Though catching the perpetrators responsible for creating completely broken trafficking victims is of the highest importance, that justice should not come at the cost of further punishing those victims, as happens sometimes as a result of the TVPA. This paper examines the TVPA, highlighting which groups are left unacknowledged, how victims are left unprotected, and offers possible solutions for changes so these young men and women have a chance to make a better life than that which has been given them. In this realm of international organized crime, perception is everything, and that is emphasized throughout these explanations.

Before delving into laws dealing with human trafficking, effective or ineffective, and the issues surrounding it, one must first get an overview of sex trafficking, and how this is related to immigration. Human trafficking is the “recruitment and transportation of a person for the purpose of exploitation” (Raffaelli), any kind of movement of people where there is a victim who feels helpless and is manipulated, and an offender profits from the victim feeling this way, to a degree that the victim feels going to authorities will not solve anything.

A subset of human trafficking is sex trafficking. Sex trafficking is human trafficking, with the added component that the victim is “trafficked for the purpose of sexual exploitation,” (Raffaelli) overwhelmingly against the victim’s will. Another subset of human trafficking is slave labor, where the victim is used as a slave to make goods or to provide services not of a sexual nature. “In each case [of human trafficking] the victim perceives himself or herself as defenseless, perceives a lack of support from U. S. authorities and, thus, never attempts to report the abuse to law enforcement” (McCabe 2). Perception is already important because the victim perceives that law enforcement will not help them, and that resistance is useless. The TVPA of 2000 focuses mainly on sex trafficking rather than human trafficking as a whole, due to the fact that this form of trafficking leaves a victim completely broken because of the tactics used by traffickers. Traffickers promise their victims, usually young women, a good life in America.

Once in America, all forms, papers, and visas to show a legal presence are taken away from the victims, and the traffickers begin the slow process of breaking the victims down by a vicious cycle of rape, threats, and physical

and verbal abuse. Before the Trafficking Victims Protection Act of 2000, most US Legislation dealing with human and sex trafficking focused on curtailing immigration, and punishing trafficking victims as prostitutes. Trafficking victims had no protection, only fear, persecution, dislocation, and the high chance of criminal charges and deportation.

Because traffickers take away all forms of identification, papers, and visas, victims would be viewed as illegal immigrants, and treated as such. At that time, the only legislative body fighting for the victims was the United Nations (UN). The UN was the driving force behind global reform for trafficking, acknowledging that human trafficking was and is a global problem, and a country like the United States viewing trafficking as a domestic problem would only create loopholes for the traffickers. Within the first couple pages, the TVPA has already, despite how unknowing, excluded a portion of the victims of sex trafficking.

The act has a second, smaller bill written in, called the Violence Against Women Act of 2000. Portraying only women as victims is not only sexist and simple minded, but dangerous as well. “ Traffickers primarily target women and girls” (22 USC Sec. 102(b)(1)). If young men do not entertain the possibility that they themselves could become victims, their arrogance could be what ensures their victimization. “ Men and boys who are sexually exploited must come to terms with not only the physical and emotional trauma of repeated rape and abuse, but their own conflicted sexuality and masculinity afterwards.

Amanda Kloer, anti-trafficking activist, writes that this added stigma prevents them from coming forward and seeking assistance, which further compounds the problem of a lack of information regarding the exploitation of men” (Clymer). Though going into the stigma of lacking masculinity is off topic, it is worth stating that these ideals have only perpetuated the violence, and therefore victimization, against both men and women. Certain men believe that to be masculine, he must show strength, which sometimes includes beating his wife.

If a man’s strength, aka that which makes him masculine, is seemingly stripped from him, he is to be shunned and his failure is to be made an example to others who would attempt to ignore this rule of society.

Perception is highly important when it comes to stopping human trafficking. When the TVPA starts compounding with U. S. immigration law to mess with the mind picture the average American has of human trafficking, criminal activity that could be stopped is completely missed, with many Americans not realizing what has happened.

Another group of victims not acknowledged under the TVPA are those that entered the country willingly, maybe even legally. This is usually considered human smuggling, and is therefore not seen as equivalent with human trafficking. “ The journey may begin in the same way. Some trafficking victims begin their journey in an act of smuggling, as they freely undertake a decision to pay someone to assist them in crossing the border into the United States...” (Chacon: 2006, 2986).

These people are voluntary migrants who usually, after entering the United States, find themselves in a situation, working under certain conditions for which their consent was never given. Dealing with consent in the TVPA is more like a dance than an outright statement: "...the TVPA makes no specific provisions concerning the role of victim consent. It is an open question under the TVPA whether the consent of the individual to some element of the act of trafficking obviates the conclusion that the individual is a victim of a 'severe form of trafficking'" (Chacon: 2006, 2984-2985).

It would seem as though much of this act would depend upon whether consent was given, but upon closer inspection, that is a ridiculous statement. No one, except possibly a person who is drastically mentally ill, would willingly consent to being a victim of sex trafficking. If you are acknowledged as a victim by the TVPA, the act will then attempt to extend protection to you. If the victims of human trafficking feel safe and cared for, those victims are more likely to become witnesses that have the potential to send away their victimizers for life, or at least the next twenty years.

Foreign victims that qualify for this protection are eligible to 'special services' under the Attorney General Guidelines for Victim and Witness Assistance, 2005. Article IX deals with the extra care and assistance granted to victims of human trafficking. They are usually given necessary medical care, measures to protect them from their victimizers, direction to legal services, translation services, and immigration benefits. The immigration benefits usually end in multiple-year visas, such as the T and U visas.

Of course, just because a victim is officially recognized as such does not mean that person is inherently due protection and relief. “ Much of the literature diagnosing the domestic shortcomings of the TVPA focuses upon the legal barriers to relief that are encountered by trafficking victims in the United States. The proposed solutions focus on improving the identification and assistance of trafficking victims...” (Chacon: 2006, 2979). One of the greatest shortcomings of the TVPA is that assistance to trafficking victims is greatly limited.

There are three basic contingencies as to whether an adult trafficking victim will receive aid from the United States government. These three contingencies apply to foreign adult victims of trafficking. The first is if the victim has been subject to the TVPA’s definition of a severe form of trafficking. “ The services are available to a person who meets the definition of a victim of a severe form of trafficking, without regard to whether an indictment is eventually filed, or whether any indictment that is filed includes trafficking statutes” (Human Smuggling and Trafficking Center 9).

Understanding that requires a look back at the law’s definition of “ severe trafficking. ” Severe trafficking is a form of sex trafficking in which “ a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not yet attained 18 years of age... through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” (22 USC Sec. 103(8)(A-B)). Debt bondage is the most common of these, as it is the easiest to commit.

A smuggler agrees to smuggle a family or individual to America, but once in America, the smuggler explains that the price unexpectedly went up, and the family or individual must now work off their debt. This degree of human trafficking “ automatically includes all persons under eighteen who are forced into sex acts, but the blanket protection of children extends no further” (Chacon: 2006, 2985). The second is connected to the victim’s immigration status, which is a reference to the fact that the vast majority of human trafficking victims in the United States are foreigners that were either brought to the U.

S. against their will, or came willingly under a completely different pretext. If the latter is true, it’s more than likely that all the victim’s papers are in the hands of the perpetrators, and their visa probably expired. The third contingency is the victim’s willingness to assist law enforcement to ensure that human traffickers are properly and swiftly brought to justice. If an adult victim complies with all three criteria, then that person qualifies for the protections previously mentioned. Dealing directly with perception, “...U. S. law and policy actually facilitate the trafficking of human beings into and within the United States” (Misery and Myopia 2979). U. S. immigration policy not only allows this to happen, but compliments human trafficking in such a way that the evil perfection is eerie. Most of the U. S. Immigration policy is based upon the perception that foreigners are bad and evil, while native United States citizens are good and just. Vast oversimplifications such as this are more dangerous than anything else, and will only perpetuate a cycle of violence.

Most Americans do not realize that human and sex trafficking is not just a foreign thing that happens in the red light district of Cambodia, or India, or in Eastern European nations. Though human trafficking does happen in those places, it also is taking place in the United States everyday. “ The image of trafficking as a foreign evil perpetrated by minorities and migrants has at least two collateral effects that actually complicate rather than complement antitrafficking efforts” (Chacon: 2010, 1631). One of the many possible solutions to help better these laws is to not only focus on the end result of sex trafficking, i. . a satisfied client and the traffickers being paid, but on how the situation has evolved to that point, i. e. the manipulation and coercion of young men and women into a lifestyle of being victimized. “ To truly address all forms of human trafficking, state criminal laws must shift the focus from what type of labor or services trafficking victims are forced to perform and the relative merits of that work and exploitation to the exploitative actions traffickers use to gain and maintain control over their victims” (Barnhart 130).

Domestically speaking, many perpetrators, or ‘ pimps,’ go through a process of grooming their victims to become unwilling prostitutes. This usually takes several months, and involves emotional manipulation. Though this process is nigh on impossible to catch when dealing with international human trafficking, it is nonetheless an important process. Many human traffickers have specific areas from which they pick their victims. These areas are usually at or below the poverty line, as young men and women with tall dreams and no money are easy to manipulate, and most in the neighborhood would assume the victim ran away.

If local law enforcement officials in those areas are trained to recognize this process of grooming, international human trafficking will suffer. This specifically has been somewhat addressed in an amendment from 2007, where the U. S. Department of State spoke to the other countries of the world to set forth minimum standards to properly eliminate human trafficking around the globe. Though these standards are not nearly as high as they ought to be, the standards are a step in the right direction.

These standards give hope that this paper will be completely proven wrong within the next few years. Though it is interesting that the U. S. Department of State require of other countries something which it has not yet achieved: "...whether the government of the country protects victims of severe forms of trafficking in persons...and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked" (Trafficking in Persons Report).

Another solution is not law-based, but anthropologically based. Most Americans stubbornly refuse to believe that sex trafficking is happening within America, domestic or internationally. If the average American were to look at the average busy street corner in a large city, the average American would not be looking for victims, but instead would be looking for reasons to judge the women parading their bodies. Some of those women, on that street corner, would be trafficking victims.

The more aware the average American is on this issue that immigrants are very likely victims of human and sex trafficking, the faster perceptions will change as to who is ' good' or ' bad' in the issue of immigration.

Criminalization of immigrants, handled spectacularly by current immigration policy, will only serve to further exacerbate the problem with mistreating victims of human trafficking. The problem seems to be not thinking of immigrants as humans. Treatment of migrants is...increasingly dichotomous: either a noncitizen qualifies as a trafficking victim...or the noncitizen is a smuggled migrant...If the individual falls in a gray area—between an outright victim of “severe” trafficking and a smuggled migrant who is subject of everyday forms of labor exploitation—the government’s approach has been to treat the gray-area case as one involving a voluntary migrant who is not eligible for the protections available to trafficking victims” (Chacon: 2010, 1635).

This is simply untrue, and these victims do not deserve such treatment. The vast majority of victimized immigrants fall in this grey area, causing further victimization by a legal system that was designed to protect the innocent, and bring their oppressors to justice. Further legislation must properly provide for the victims in the gray areas, and deliver appropriate protection to ensure the victim’s future well being.

Though the Trafficking Victims Protection Act of 2000 has had improvements in the past twelve years, at its foundation lies an act that fails to adequately acknowledge and protect the victims of sex trafficking. There have been alterations and additions to the TVPA since 2000 which has addressed a few of the issues outlined in this paper. Progress has been made, continues to be made, and there is definite hope that after a short time, human and sex trafficking will no longer be able to hide in the shadows that so greatly inhibits its detection.

However, this act, as well as most law enforcement and legislators, fails to acknowledge that perception is everything when dealing with human trafficking. The right perception is important to keep as many people from becoming victims as possible and to ensure that an anti-immigrant sentiment is not perpetuated unnecessarily. Works Cited Barnhart, Melynda H. " Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislations. " 16 Wm. & Mary J. Women & L. 83 (2009).

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