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Mary Graw Leary

The Catholic University of America, Columbus School of Law

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“Modern Day Slavery”—Implications of a Label
Mary Graw Leary*

Slavery is a “cruel war against human nature itself, violating [its] most sacred rights of life [and] liberty”¹

Introduction

“Human trafficking is Modern Day Slavery.” That is a provocative statement. The implications and repercussions of that analogy are profound. It is not a statement reserved for the most zealous of fringe activists. Rather it is the observation of many significant figures including two American Presidents,² the Department of Justice,³ the United States Congress,⁴ Caritas International,⁵ the United Nations,⁶ the United States State Department,⁷ Federal courts;⁸ and Pope Francis⁹ to name a few.

* Professor, The Catholic University of America, Columbus School of Law. This article arises from a keynote presentation delivered at the Human Trafficking Symposium hosted by Saint Louis University Law School in 2015. Special thanks to Prof. Chad Flanders and St. Louis University Law Review for hosting an important conference and their patience in producing this volume; to Steve Young for outstanding support in research, and for Kimberly Ulan for tremendous work. Particular thanks to all survivors of human trafficking and their profound example of strength and fortitude.

¹ JULIAN P. BOYD, *THE PAPERS OF THOMAS JEFFERSON VOL. 1 1760-1776 243-47* (PRINCETON UNIV. PRESS, 1950) <http://www.loc.gov/exhibits/declara/ruffdrft.html> [<http://perma.cc/NHB7-3W2F>].

² President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012) (transcript available at <https://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>) [<https://perma.cc/KE95-A8RP>]; President George W. Bush, Statement by His Excellency Mr. George W. Bush, President of the United States of America Address to the United Nations General Assembly (Sept. 23, 2003) (transcript available at <http://www.un.org/webcast/ga/58/statements/usaeng030923.htm>) [<http://perma.cc/6PU8-7BQ7>]; President Barack Obama, Presidential Proclamation--National Slavery and Human Trafficking Prevention Month, 2013 (Dec. 31, 2012), <https://www.whitehouse.gov/the-press-office/2012/12/31/presidential-proclamation-national-slavery-and-human-trafficking-prevent> [<https://perma.cc/VYY2-KCK6>]; Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 34 (2008).

³ *Att’y Gen. Alberto R. Gonzales Announces Creation of Human Trafficking Prosecution Unit Within the Civil Rights Div.*, UNITED STATES DEP’T OF JUST. (Jan. 31, 2007), http://www.justice.gov/archive/opa/pr/2007/January/07_crt_060.html [<http://perma.cc/RH99-BAUB>].

⁴ 22 U.S.C. § 7101(a); 22 U.S.C § 7101(b)(1).

⁵ “*Created in the Image of God, Treated Like Slaves....*,” CARITAS INTERNATIONALIS (Oct. 2005), <http://www.osce.org/odihr/20955?download=true> [<http://perma.cc/5J4P-4LF4>].

⁶ Ban Ki-Moon, *Secretary-General’s Message on the International Day for the Abolition of Slavery*, UNITED NATIONS (Dec. 2, 2013), <http://www.un.org/sg/statements/?nid=7321> [<http://perma.cc/6ATD-D7MJ>].

⁷ John Kerry, Sec’y of State, Remarks at the Annual Trafficking in Persons Report (TIP) Release, (June 19, 2013) (transcript available at <http://m.state.gov/md210911.htm>) [<http://perma.cc/L64A-QN5U>]; Hillary Rodham Clinton, Sec’y of State, Remarks at Release of the Ninth Annual Trafficking in Persons Report, (June 16, 2009) (transcript available at <http://m.state.gov/md124872.htm>) [<http://perma.cc/2G32-VHTG>].

It began as a tentative yet bold statement, endorsed after President Bush addressed the UN General Assembly in 2003 and asserted that, “the trade in human beings for any purpose must not be allowed to thrive in our time.”¹⁰ While repeated by Non-Governmental Organizations (NGO’s) and scholars, the label and analogy gained a more full acceptance with its use by President Obama in September 2012 when he described “the injustice, the outrage, of human trafficking which *must* be called by its true name -- *modern slavery*.”¹¹

Must it be called that? While some activists celebrated the President sanctioning this label, other scholars, journalists, feminists, apologists, and service providers questioned it.¹² It is not without controversy. President Obama acknowledged as much with his next sentence:

Now, I do not use that word, “slavery” lightly. It evokes obviously one of the most painful chapters in our nation’s history. But around the world, there’s no denying the awful reality. When a man, desperate for work, finds himself in a factory or on a fishing boat or in a field, working, toiling, for little or no pay, and beaten if he tries to escape -- that is slavery. When a woman is locked in a sweatshop, or trapped in a home as a domestic servant, alone and abused and incapable of leaving -- that’s slavery.¹³

The reality is that this analogy, while a seductive oratory device, is controversial and the propriety of its use must be considered.

It is provocative to state that something is akin to or the same as an institution from the very worst chapters in American history. These are chapters unable to be adequately explained to today’s children due to both the complexity of slavery and well as the moral abhorrence evoked

⁸ *E.g.*, *Osley v. United States*, 751 F.3d 1214, 1228 (11th Cir. 2014) (quoting the district court judge’s remarks at the sentencing hearing).

⁹ Philip Pullella, *Pope Urges United Fight Against Slavery, Human Trafficking*, REUTERS (Jan. 1, 2015) <http://www.reuters.com/article/2015/01/01/us-pope-peace-idUSKBN0KA1IS20150101> [<http://perma.cc/ZBZ4-L572>].

¹⁰ Bush, *supra* note 2.

¹¹ Obama, *supra* note 2 (emphasis added).

¹² *E.g.*, Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. INT’L L. 609, 610–11 (2014) (arguing against the use of the label modern day slavery but acknowledging some positive aspects); David M. Smolin, *The Civil War as a War of Religion: A Cautionary Tale of Enslavement and Emancipation*, 39 CUMB. L. REV. 187, 232–33 (2008–2009) (arguing that slavery is too broad a term).

¹³ Obama, *supra* note 2.

by the social structure that was mainstream only a few generations ago. For the modern American, it is impossible to fully comprehend the social acceptability of the ownership of other people and the resultant treatment of them as property. These are chapters that, at their most basic level, cannot be explained but only acknowledged as terrible dark times in American history when many people, both individually and collectively, acted wrongly and reflected views that seem alien to contemporary Americans.

Therefore, when one makes the statement that suggests America is experiencing this same institution in the present day, one is saying that future grandchildren will ask the same questions of today's children: how was it possible that twenty-first century Americans allowed it to occur? How could we have possibly justified intellectually or morally the institution of modern slavery as a mainstream concept? Similar to adults today when asked about eighteenth and nineteenth century slavery, these very children will not be able to explain it. Rather, they will only be able to shake their heads and inadequately describe it as a mystifying, dark, and terrible time in history.

Yet, that is what is being said when one labels human trafficking as modern day slavery. This article will examine the use of this label to refer to sex and labor trafficking, its propriety, and the implications of its use. The article analyzes whether the label will assist in moving the discussion of human trafficking forward, or derail it from the target of eliminating the trafficking of persons.

This article argues in support of the position that modern day slavery is an apt label to use as analogy to human trafficking. Acknowledging its costs and imperfections, of which there are several, the label fulfills the goals of analogy because it is an accurate description of the practice of human trafficking and, most importantly the *experience of so many victims*. This is

particularly true when one defines slavery beyond antebellum slavery to include the period of de facto slavery after the Civil War, in which peonage and debt bondage were the dominant exploitive institutions. Therefore, this article asserts that the label only can be embraced when slavery is defined in this way and when specifically focused on the victim¹⁴ experience.

However, this article also advances the argument that it is an analogy that has not fulfilled its promise to assist in explaining or characterizing the realities of human trafficking. It has failed to do so because its use so often stops there, with a simple sensational label that is unanalyzed, uncritiqued, and unrefined. Therefore, this article examines the implications of that label of modern day slavery to each of the stakeholders in the institution of human trafficking. By doing so, the true potential of this powerful but appropriate label is unlocked.

This article will first examine some threshold issues surrounding the term such as why it is used, how key terms such as slavery are defined, and what major critiques of the label exist. The article will then defend its use, but will do so through a particular lens that highlights the victim experience. By examining it through the implications it has for the stakeholders of human trafficking: victims, traffickers, owners, and the bystanders, the article underscores the propriety of the label. Only when the label is fully embraced within this framework can its power be mastered to assist in transforming society from one that endorses and profits from ownership of people to one that rejects it in all its forms.

I. Threshold Point Number One: Why It Matters

¹⁴ See, e.g., *Survivor Stories*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/client-services/survivor-stories> (last visited Aug. 29, 2015) [<http://perma.cc/4EQ5-K7LD>]. The use of the word “victim” is typically not preferred when discussing a person affected by human trafficking. Survivor is the preferred term. However, the focus of this article when discussing such people primarily references those in a current state of victimization. As such, much of this article utilizes the term victim in addition to survivor. Such is consistent with the National Human Trafficking Resource Center. *Service Providers*, NATIONAL HUMAN TRAFFICKING RESOURCE CENTER, <http://www.traffickingresourcecenter.org/audience/service-providers> (last visited Aug. 29, 2015) [<http://perma.cc/2MKU-PK3M>]. The use of the term victim in this article is not meant to diminish the strength or dignity of those affected by human trafficking.

Many a law review article has been written as a theoretical and academic exercise bearing little relationship to a contemporary issue. One could easily assert that any examination of language around human trafficking is a similar academic exercise with little relevance to this pressing international problem. However, such an argument ignores the reality that human trafficking is a social institution. It is an industry, in many ways woven into the fabric of everyday life. In order for it to be recognized as a social ill, the language around it must reflect that reality. Like smoking, climate change, drinking and driving, racism, or any other once socially acceptable practice which is now largely condemned, a paradigm shift is required. Central to that shift is language.

Language matters. As Angela Carter noted, “language is power, life, and the instrument of culture, the instrument of domination and liberation.”¹⁵ Language and labels convey meaning, value, societal importance, and perspective. For example, as the author has argued elsewhere, the use of the phrase “kiddie porn” states a great deal about one’s view of child exploitation for sexual purposes.¹⁶ Not until the success of the utilization of the term “images of child sexual abuse” did mainstream culture begin to understand the detrimental content of these images.¹⁷ Similarly, as Ambassador Luis CdeBaca has remarked, in some ways it may be regrettable that

¹⁵ Angela Carter, *Notes from the Front Line*, in *ON GENDER AND WRITING* 69, 77 (Michelene Wandor ed., 1983).

¹⁶ Mary Graw Leary, *Worth a Few Appalled Words: Child Pornography Must Not be Flippantly Downplayed as Pictures of ‘Kiddie Porn,’* *LEGAL TIMES*, Dec. 17, 2007, at 62.

¹⁷ Mary Graw Leary, *The Language of Child Sexual Abuse and Exploitation*, in *Child Pornography: Emerging Issues in Definition, Enforcement, and Punishment*, University of Michigan Press (Book Chapter) (forthcoming Spring 2016); The term “child pornography” has been recognized as highly inadequate. *See, e.g.*, Dr. Ethel Quayle, *The Impact of Viewing on Offending Behavior*, in *CHILD SEXUAL ABUSE AND THE INTERNET: TACKLING THE NEW FRONTIER* 25, 26 (Martin C. Calder ed., 2004) (“Many professionals working in this area have expressed the belief that such terminology is problematic and allows us to distance ourselves from the true nature of the material. A preferred term is abuse images”); JANIS WOLAK ET AL., *CHILD-PORNOGRAPHY POSSESSORS ARRESTED IN INTERNET-RELATED CRIMES: FINDINGS FROM THE NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY*, vii n.1 (2005) (“The term ‘child pornography,’ because it implies simply conventional pornography with child subjects, is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims.”).

“human trafficking” became the label for this form of victimization. The term results in confusion as it incorrectly suggests movement as a necessary element of the crime.¹⁸

The human trafficking movement is at a crossroads. On some level the movement has been mainstreamed as manifested by the existence of a Human Trafficking Unit within the Department of Justice, many law school clinics dedicated to human trafficking work, and the advent of several NGOs dedicated to serving such victims and ending human trafficking. Within this mainstreaming, media coverage has co-opted “modern day slavery” to attract the public’s attention and sensationalize the coverage.¹⁹ With this increased social awareness comes the need to be accurate in representations. This social movement, like so many, challenges social norms as well as powerful political, economic, and government institutions and social forces seeking to stop it.

In the wake of the mainstreaming of this term, the time has come to examine it, review some of the critiques, and determine if it is accurate and will assist the cause of anti-human trafficking or is a sensational label that fails to do justice to the victims.

II. Threshold Point Number Two: What Is Trying to Be Accomplished

The effectiveness of slavery as a label or analogy to human trafficking cannot be measured without first discussing the purpose of utilizing such language. That is to say, one cannot determine if a goal is met until one identifies the intended goal. Therefore, an exploration of how the term is being utilized is necessary.

A. Label and Analogy

¹⁸ National State Attorneys General Program Hosts Forum on Human Trafficking, COLUM. L. SCH. (Oct. 27, 2011), https://www.law.columbia.edu/media_inquiries/news_events/2011/october2011/Attorneys-General-Conference [<https://perma.cc/7KDN-6P3B>].

¹⁹ PETER ANDREAS & ETHAN NADELMANN, POLICING THE GLOBE: CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS 20 (2006); *The CNN Freedom Project*, CNN, <http://www.cnn.com/specials/world/freedom-project> (last visited Sept. 3, 2015) [<http://perma.cc/PD6R-77AG>].

There seem to be two purposes in utilizing the term modern day slavery. In the United States, the term is used to connect human trafficking (severe forms of which are broadly defined under the Trafficking Victims Protection Act [TVPA] as sex or labor trafficking by force, fraud, or coercion, or sex trafficking of a minor)²⁰ to slavery as understood in a historical sense. Hence, the label carries the modifier “modern day.” That connection is sometimes meant as an analogy to associate it with an understood historical event and system.

However, when the President says “that is slavery,” he is clear and unambiguous.²¹ In that address to the Global Initiative, he did not implement it as an analogy, but a label. Even when used as a label, it is critical to understand that to do so is not to say human trafficking is identical to the trans-Atlantic slave trade, but, rather, that it is a form of slavery writ large. However, by adding the modifier “modern day,” one suggests that today’s human trafficking can be better understood by analogizing to the American historical experience with slavery. Therefore, it functions as both a label and an analogy, but not a synonym.

A synonym is a word or phrase that has the same or nearly the same meaning as another word or phrase in the same language.²² The use of the term modern day slavery, particularly with the descriptor of modern day, is not intended to make the experiences synonymous. When that is understood, many of the critiques of the term are weakened. Here, the old adage, “history repeats itself” is apt. This saying is not suggesting that the same historical events with their same institutional factors repeatedly occur. Rather, it recognizes that societies, economies, and social structures do evolve. However, if basic human and societal flaws such as greed, selfishness, corruption, vulnerability, desire for security, etc. are left unchecked, the necessarily negative outcomes recur. Therefore, when human trafficking is labeled modern day slavery, it does not

²⁰ 22 U.S.C. § 7102 (2012).

²¹ Obama, *supra* note **Error! Bookmark not defined.**

²² WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 1929 (2003).

seem to suggest that human trafficking is exactly the same as antebellum slavery. Rather, the label, modified by the phrase “modern day,” is used to suggest today’s trafficking is a form of slavery writ large to be understood as not less than slavery, although not indistinct from a certain form of slavery in the 19th century.

A. Definition of Modern Day Slavery

Accepting that the term is used both as a label and an analogy, but not a synonym, the next step is to examine the definition of slavery when being utilized in this construct. Scholars and historians have offered many definitions of slavery. Only when understanding which definition or combination of definitions is intended can one effectively evaluate the success of that label or analogy.

Individual scholars and activists have defined slavery differently. Professor Bravo, who has written extensively on this topic, discusses “chattel slavery” as “the ownership, recognized and enforced by the legal system, of one human being by another.”²³ Kevin Bales, a renowned activist against human trafficking discusses slavery as “a social and economic relationship marked by the loss of free will, in which a person is forced through violence or the threat of violence to give up the ability to sell freely his or her own labor power.”²⁴

Institutions charged with addressing slavery on a global level also vary in exact definitions. The League of Nation’s 1926 Convention on Slavery, Forced Labor, and Similar Institutions defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²⁵ American law is arguably

²³ Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L.J. 207, 261 (2007).

²⁴ KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY 91 (2005); Bravo, *supra* note 23, at 262.

²⁵ *Slavery Convention*, UNITED NATIONS HUMAN RIGHTS (Sept. 25, 1926), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx> [<http://perma.cc/WXG9-5SUV>].

ambiguous regarding a definition in the Constitution or current statutes.²⁶ However, the United States Court of Appeals for the Second Circuit offered a 1964 definition which is commonly accepted: “slavery . . . gives to one person the control and ownership of the involuntary and compulsory *services* of another against his will and consent.”²⁷

While other definitions abound in scholarship, law, and civil society, any discussion of whether human trafficking is appropriately connected to the term modern day slavery turns fundamentally on what one means by “slavery.” From the many definitions of slavery available, it is fair to refer to it as a practice with the characteristics of: (1) ownership of a person as chattel; (2) loss of free will and control over many aspects of self, but particularly one’s labor power; and (3) control being asserted through violence or degradation or the threat thereof. With this as a working definition of what is meant by slavery, the connection between it and human trafficking is a connection between human trafficking and the ownership of another as chattel in which that person loses control of self (or at least one’s labor power) through violence and degradation. The label signifies that human trafficking is slavery writ large, but by adding “modern day” to the title, one is analogizing to the previous historical experience of slavery.²⁸

Noticeably absent from the definition, however, is the requirement, which was present in antebellum slavery, that the institution be legally sanctioned.²⁹ An objection to the connection between human trafficking and slavery is to point to the absence of this critical feature of

²⁶ Susan H. Bitensky, *An Analytical Ode to Personhood: The Unconstitutionality of Corporal Punishment of Children Under the Thirteenth Amendment*, 53 SANTA CLARA L. REV. 1, 14 (2013) (“There is a dearth of U.S. Supreme Court rulings or even dicta defining the term ‘slavery’ under Section 1 of the Thirteenth Amendment.”). Of course, the 13th Amendment statutes regarding involuntary servitude, peonage, debt bondage, vessels for slavery, etc. provide some context. 18 U.S.C. §§ 1581–1585 (2012). Implicit within them is the clear sense that labor is taken from a person involuntarily. *Id.* The Supreme Court has limited the understanding of “involuntary servitude” to include only “compulsion of services through the use or threatened use of physical or legal coercion.” *United States v. Kozminski*, 487 U.S. 931, 945 (1988). Precursors to the current law, the *Padrone Statute* and the *Slavery Act*, frame what is meant by the term “slavery” to include services or labor forced upon a person by physical or legal coercion. *See, e.g.*, 35 Stat. 1139 (1909); 2 Stat. 426 (1807); 3 Stat. 450–51 (1818).

²⁷ *United States v. Shackney*, 333 F.2d 475, 484–85 (2d Cir. 1964).

²⁸ Smolin, *supra* note 12, at 232.

²⁹ *Id.* at 217.

antebellum slavery, arguing that, as terrible as human trafficking may be, it is substantively different from slavery. Although a valid observation, two responses are offered to this critique of this proposed definition.

First, when viewed from the victim experience, these distinctions do not matter. Being owned as chattel - possessing neither free will nor control over one's service due to violence - one is still harmed whether or not the victimization is legally sanctioned. Surely the harm is different when the state allows, endorses, and even enforces it. However, the converse is not true: that one is unharmed when the state does not participate. Second, even if one required government sanction of human trafficking as necessary, the analogy still is apt when it references the actual experience of American slavery which includes not only *de jure* slavery but *de facto* slavery as well.

It is well understood that slavery, using the definition above, did not end with either the Emancipation Proclamation or the Thirteenth Amendment. Rather, through the practice of peonage, *de facto* slavery continued. Peonage is legally enforced debt bondage that relied upon compliance of local law enforcement and judicial officials, sometimes officially and other times informally.³⁰ Debt bondage occurs “when a debtor pledges his personal labor or services to a lender in payment of his debt, but the reasonable value of his services is not applied to the liquidation of the debt, or the length and nature of the services is not defined.”³¹

Therefore, limiting the definition of slavery to a pre-emancipation definition of state sanctioned slavery fictionally limits the experience of slavery victims. The American experience of slavery continued beyond emancipation and the antebellum period to a time of peonage and

³⁰ DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 6 (2008).

³¹ BRIDGET CARR ET AL., *HUMAN TRAFFICKING LAW AND POLICY* xii, 17 (2014).

debt bondage.³² While technically not state sanctioned, in practice, the state did enforce the practice in many parts of the nation.³³ As such, the proposed definition of slavery, references the victim experience of slavery, which includes both de facto and de jure slavery of the pre and post emancipation period.³⁴

B. Purpose of Analogy

Having outlined the importance of language and labels, as well as discussed what is meant by the term “slavery” when used in this context, this article now turns to discussing the purpose of using the term modern day “slavery” at all. Before the validity of this analogy or label can be assessed, one must understand why scholars, activists, politicians, and organizations are using it.

Obviously when analogies are utilized it is not always with the same purpose. Scholars have, however, outlined the components of an effective analogy and the normative practical use of them. Professor Bravo, who has written on this specific issue, argues that such an analogy should “create a mechanism for understanding, interpreting, and explaining a phenomenon.”³⁵ In so doing, she effectively builds on the work of Dr. Yu’en Foong Khong who asserts that “[a]nalogies are cognitive devices that ‘help’ decision-makers perform six diagnostic tasks central to political decision-making. Analogies (1) help define the nature of the situation confronting the policymaker, (2) help assess the stakes, and (3) provide prescriptions. They help evaluate alternative options”³⁶

³² KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY 8–9 (2009).

³³ *Id.* at 9.

³⁴ Smolin, *supra* note 12, at 222, 230.

³⁵ Bravo, *supra* note 23, at 223.

³⁶ *Id.* at 243.

While such is the ideal, analogies often fall short of this. In her critique of the use of this analogy, Bravo notes the reality that policy makers tend to rely upon those analogies that come most easily to mind, predisposing them to certain options, and, therefore, misdirecting response efforts. Dr. Curtis and Dr. Reigeluth confirm that analogies are used to explain or clarify but can be limited to ensure they succeed in that goal.³⁷

Building on these concepts, this article suggests that the analogy is used in this context to provide a framework for the public and policy makers to understand, interpret, and explain the nature of human trafficking and motivate them to form an appropriate response. This identifies a dual audience of policymakers and the general public (as both are necessary for social change). It also focuses on an actual human trafficking effort to educate and motivate an informed societal response.

Therefore, this article turns to examining whether this label and analogy of modern day slavery serves the function outlined above. That can be answered by examining whether the analogy is factually accurate and whether calling human trafficking modern day slavery provides the public and policy makers a framework to understand, interpret, and explain human trafficking and then help motivate them to an appropriate response.

³⁷ Ruth V. Curtis & Charles M. Reigeluth, *The Use of Analogies in Written Text*, INSTRUCTIONAL SCI. 99, 100 (1984).

This article proposes that the term modern day slavery does fulfill the purpose of analogy because it meets these criteria. Although the label is imperfect and not without a cost, it can be an effective analogy. This is most effectively demonstrated by examining the implications of this analogy on the four major stakeholders of the institutions of slavery and human trafficking: the victims, the traders, the owners, and bystanders. When the analogy is examined through their lens, it is apparent that the label and analogy is both accurate and compelling.

C. Critiques

With this definition of slavery and stated purpose of the label and analogy, the assessment now must turn to determining if it is appropriate. This process should be decided by starting with the critiques.

This article will discuss three possible critiques of the label. One complaint regarding the utilization of the label modern day slavery focuses on the differences between antebellum slavery and human trafficking. This criticism highlights these differences in scope and structure, arguing that they make the analogy inept. This critique also can manifest itself within the context of arguing that the comparison diminishes the suffering experience of the slave. A second critique argues that the causes of the two institutions are so different that the analogy is misplaced. The final critique has been that the analogy creates an image of human trafficking in the minds of policy makers and the public that is over dramatic, and, when confronted with the reality of human trafficking, the public either does not recognize it or is disillusioned.

A. Differences in Structure

The most obvious difference between eighteenth and nineteenth century slavery and present day human trafficking is that the former was state sanctioned and the latter is not

formally sanctioned.³⁸ This is an important distinction to be sure. On a societal level, there is a difference when the representative government approves of the victimization of a group of people, finding it not only acceptable, but also enshrined in the Constitution. Criminal law is designed in part to communicate the moral condemnation of the community.³⁹ As such, when society sanctions victimization, it is particularly devastating. On a more social level, it affects people's daily lives. As Kevin Bales notes, state sanctioned antebellum slavery afforded slave owners not only wealth, but social status and social power; meanwhile, the modern trafficker must be hidden in his criminal exploits.⁴⁰

That being said, the analogy is accurate when approached with clarity. First, for the analogy to achieve its full meaning, it must refer to more than antebellum slavery and include de facto slavery. In so doing, the legality/illegality distinction is less important.

After the Civil War, a desperate need for cheap and available labor to fill the gap previously filled by slave labor emerged. Peonage, although outlawed in 1867, was and continued to be the dominant method used by businesses to fill this void.⁴¹ Business and farm owners would have African Americans unjustly arrested, awarded a fine that they could not pay, and then have the local government lease them out and force them to work to pay off this supposed "debt."⁴² This practice was not limited to African American victims in the South. Wealthy businessmen elsewhere United States also engaged in it among immigrants and other vulnerable people.⁴³

³⁸ Smolin, *supra* note 12, at 217.

³⁹ Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROBS. 401, 405 (1958).

⁴⁰ KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 5 (1999).

⁴¹ CARR ET AL., *supra* note 31, at 21; 42 U.S.C. § 1994 (2012).

⁴² Cynthia A. Bailey, *Workfare and Involuntary Servitude—What You Wanted to Know but Were Afraid to Ask*, 15 B.C. THIRD WORLD L.J. 285, 291–92 (1995); Justin Guay, *The Economic Foundations of Contemporary Slavery*, TOPICAL RES. DIG.: HUM. RTS. & CONTEMP. SLAVERY, 2008, at 72, 73.

⁴³ Bailey, *supra* note 42, at 292 n.46.

Furthermore, other forms of de facto slavery occurred, even if technically illegal. This includes the ongoing sexual slavery documented by the Ninth Circuit explicitly in cases such as *United States v. Ah Sou*.⁴⁴ Here, the court discusses the rather open practice of the sale of women into lives of sexual servitude.

This state of exploitation continued well after slavery was “officially ended.” Due to the harsh conditions of labor it became a period of de facto slavery. Indeed, some have argued it was worse.⁴⁵ While not an endorsement of slavery, some have noted that when a person is a slave, he is regarded strictly as property and an investment by the owner. In the regime of de facto slavery, however, conditions for the victim in some ways grew even worse because the slaves were not an investment, but disposable.⁴⁶

While today the United States government does not actively and publicly support human trafficking, the argument can easily be made that both in the United States and abroad, people live in an era of, or one close to, de facto slavery. Contemporary human trafficking is replete with many examples of state sanctioned human trafficking through collusive state actors.

The most obvious example of state collusion is abroad where corruption is a significant factor in human trafficking. In some nations, particularly those singled out by the United Nations Office on Drug and Crime (UNODC) in South Asia, Eastern Europe, and Central America, the role of corruption has been identified as “central to the success” of a thriving human trafficking trade.⁴⁷ The UNODC noted in its position paper that corruption plays “an important role in

⁴⁴ *United States v. Ah Sou*, 138 F. 775, 776 (9th Cir. 1905) (“She was not the daughter of [a human trafficker], but was [a] slave . . . Ah Bun, her master, compelled her to enter upon a life of prostitution.”).

⁴⁵ Charles W. Chesnutt, *Peonage, or the New Slavery* (Sept. 1904), <http://www.chesnuttarchive.org/Works/Essays/peonage.html> [<http://perma.cc/3HCY-YRKQ>].

⁴⁶ BALES, *supra* note 40, at 14.

⁴⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *THE ROLE OF CORRUPTION IN TRAFFICKING IN PERSONS* 8 (2011).

facilitating and fostering the crime of trafficking in persons.”⁴⁸ The UNODC further explained that its data indicated “unequivocally that the corrupt behavior of law enforcers may help traffickers to recruit, transport and exploit their victims; corrupt criminal justice authorities may obstruct the investigation and prosecution of cases, and/or impede the adequate protection of victims of the crime.”⁴⁹

Therefore, to say that human trafficking is not state sanctioned may be an overstatement in many countries. The role of corruption in these areas underscores a deep relationship between traffickers and the government. This is a relationship that victims and bystanders experience in everyday life. Similarly, when one examines the number of criminal prosecutions, the argument can also be furthered that today’s human trafficking is a state of de facto slavery and is state sanctioned. The 2015 Trafficking in Persons Report (TIP Report) placed twenty-three countries on Tier 3 status.⁵⁰ This means that the State Department found they did not comply with minimum standards, and they are not making significant efforts to do so.⁵¹ Not only does this mean that twelve percent of the world’s nations are on Tier 3, but the report notes that the level of prosecution is dismal.⁵²

Although there is widespread disagreement regarding the numbers of victims, two aspects of trafficking victimizations are clear. First, that they number in the millions.⁵³ Second, that nations are not prosecuting traffickers in numbers that come anywhere close to the number of victims. The 2015 TIP Report recorded only 10,051 prosecutions and only 811 in the entire

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*; See also M. Bashir Uddin, *Human Trafficking in South Asia: Issues of Corruption and Human Security*, INT’L J. OF SOC. WORK & HUM. SERVICES PRAC., Feb. 2014, at 18, 21 (“Bribes to police, courts and relevant public officers cause state institutions to turn a blind eye to traffickers or even to engage in the trafficking process.”).

⁵⁰ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 54 (2015).

⁵¹ *Id.* at 53.

⁵² *Id.* at 49, 54.

⁵³ Smolin, *supra* note 12, at 217.

continent of Africa.⁵⁴ Similarly, the UNODC Global Report on Trafficking in Persons found that 60 percent of countries had ten or fewer annual convictions, fifteen percent had none at all, while the numbers of victims are increasing.⁵⁵ Certainly many reasons exist for this disparity that extend beyond corruption. These include lack of resources, lack of capacity, other priorities, etc. Yet, if that were the only cause, then prosecutions would be adequate in other nations not facing such complex social challenges.

Even within the United States with a more robust awareness and increasing prosecution record, there are signs that state compliance with the status quo is real.

Researchers from the Urban Institute's Justice Policy Center . . . and Northeastern University's Institute on Race and Justice . . . found that police officers, prosecutors, judges, juries, and officials from all levels of government, especially the state, lack awareness of human trafficking law and don't consider such cases a priority. The result is that many human trafficking cases are being passed over by state and federal legal systems.⁵⁶

Polaris Project also noted that while that every state has now adopted some form of human trafficking law, each statute varies greatly. Twelve states are considered inadequate and should take steps to draft better laws and actually implement them.⁵⁷ Federally, with an immigration policy that ties domestic workers' and some temporary workers legal status to their employer, the US government is arguably facilitating the coercion and control an employer has over a victim by being able to subject him or her to slave like conditions.⁵⁸ In Europe, recent EU research concluded that legalization of prostitution in several nations has actually facilitated an

⁵⁴ U.S. DEP'T OF STATE, *supra* note 50, at 48, 55.

⁵⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 13 (2014).

⁵⁶ Urban Inst., *Human Trafficking Cases Slipping Through the Cracks in Federal and State Legal Systems*, TEX. NONPROFITS (July 2012), <http://www.txnp.org/Article/?ArticleID=15019> [<http://perma.cc/QM7B-A723>].

⁵⁷ *2014 State Ratings on Human Trafficking Laws*, POLARIS (2014), http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf [<http://perma.cc/5ALU-TT6V>].

⁵⁸ Luis CdeBaca, Release of the Ninth Annual Trafficking in Persons Report (June 16, 2009) (statement of Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Special Briefing) (“[G]uest worker programs both here in the United States and abroad far too often have been used [in trafficking].”); ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 10 (2010) (recommending a review of guest worker programs).

increase in human trafficking by eighteen percent, but a decrease in convictions by thirteen percent.⁵⁹ Similarly, the International Labor Organization (I.L.O.) noted that “[t]olerance of prostitution at community or national level” is a risk factor for commercial sexual exploitation of children.⁶⁰

Therefore, it seems that when one understands it to be an analogy between the institution of de facto slavery and human trafficking today the analogy is accurate. As Professor Bravo noted “trafficker’s ownership and domination rests on physical and psychological control that is buttressed by the (in)direct complicity of states whose legal systems perpetuate the dominance and control of the trafficker”⁶¹ Human trafficking rests on government support. That de facto support or at least facilitation is present throughout the world in very much the same way as some forms of slavery.

B. Differences in Causes

Another argument asserts that one cannot compare the Atlantic Triangular Trade of antebellum slavery with the human trafficking of today because what caused each of them is so distinct. This critique is misplaced.

Without question, the method of obtaining slaves from Africa and transporting them forcibly to the Americas was terrible and somewhat different than the fraud and coercion often used in recruitment today. The practice of importing slaves from Africa solely for the purpose of cheap labor began after poor treatment and disease decimated the enslaved Native American’s population. By the mid 1500s through the 1800s almost nine million slaves were shipped from

⁵⁹ Aïssata Maïga & Sol Torres, *Legal Prostitution in Europe: The Shady Façade of Human Trafficking*, VANCOUVER RAPE RELIEF & WOMEN’S SHELTER (2015), http://www.rapereliefshelter.bc.ca/sites/default/files/imce/opendemocracy%20net-Legal_prostitution_in_Europe_the_shady_facade_of_human_trafficking-libre.pdf [<http://perma.cc/VMK9-TF5H>].

⁶⁰ INT’L LABOR ORG., COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS: THE ILO’S RESPONSE 3 (2008).

⁶¹ Bravo, *supra* note **Error! Bookmark not defined.**, at 270–71.

Africa to the Americas, with about five percent of them coming to the United States.⁶² Their location was largely in the southern colonies with the harvesting of cash crops, but also on farms and docks of Massachusetts and New York.⁶³ In the late eighteenth century, the cotton gin coincided with Britain's textile mills demanding massive amounts of cotton—making the cotton crop vastly profitable.⁶⁴ Hence, a new demand for slave labor arose. The supply side of slavery was a vulnerable people in the African continent. The demand side included Americans who wished to purchase people to meet their own perceived needs. While there are many reasons behind this, slavery was clearly an economically driven institution.⁶⁵

The economic parallels between antebellum slavery and human trafficking are inescapable. Just as slavery was an economic industry, so too is human trafficking. While estimates vary as to the size of the human trafficking industry, no one advocates that it is small. The ILO estimates 20.9 million people are in forced labor, trafficked for labor and sexual exploitation or held in slavery like conditions.⁶⁶ This results in \$8 billion in profits from domestic workers, \$99 billion from those forced into sexual exploitation, and \$43.4 billion in non-domestic forced labor.⁶⁷ So-called source countries or regions today in human trafficking are similarly characterized by poverty, unemployment, war, and political and economic instability.⁶⁸ The *Congressional Quarterly* reported that “[t]he poorest and most chaotic parts of the developing world supply most trafficking victims”⁶⁹ “The vast majority of slaves and

⁶² *Id.* at 213.

⁶³ BALES & SOODALTER, *supra* note **Error! Bookmark not defined.**, at 8.

⁶⁴ Ronald Bailey, *The Other Side of Slavery: Black Labor, Cotton, and Textile Industrialization in Great Britain and the United States*, 68 *AGRIC. HIST.* 36, 39 (1994).

⁶⁵ CANDICE GOUCHER, CHARLES LEGUIN & LINDA WALTON, *Commerce and Change: The Creation of a Global Economy and the Expansion of Europe*, in *IN THE BALANCE: THEMES IN GLOBAL HISTORY* 482, 491 (1998).

⁶⁶ INT'L LABOUR ORG., *PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR* 7 (2014).

⁶⁷ *Id.* at 15, 21, 27.

⁶⁸ JANICE G. RAYMOND & DONNA M. HUGHES, *SEX TRAFFICKING OF WOMEN IN THE UNITED STATES* 19, 51 (2001); INT'L LABOR ORG., *supra* note 60, at 3.

⁶⁹ David Masci, *Human Trafficking and Slavery*, 14 *CONG. Q.* 273, 287 (2004).

victims of human trafficking come from the poorest parts of Africa, Asia, Latin America, and Eastern Europe, where smooth-talking traffickers often easily deceive desperate victims or their parents into believing that they are being offered a ‘better life.’”⁷⁰ Interpol identifies demand and the existence of poor, desperate people for cheap labor and commercial sex as significant causes of human trafficking.⁷¹ “[E]conomic desperation and disadvantage, lack of a sustainable income, and poverty—all of which are preyed on by. . . traffickers.”⁷²

Domestic trafficking is similar. Dorchen Leidholdt in *Making the Harm Visible*, documents that, most women in prostitution “endured situations of enslavement as children, in thrall to sexually abusive adults, or as adolescents or young women subjected to the violent subjugation of abusive husbands or boyfriends.”⁷³ “Recruitment can take many forms, including kidnapping; solicitation by other women or girls recruiting on behalf of the sex trafficker; and the “loverboy” approach of appearing genuinely interested in a romantic relationship while gradually coercing the victim into prostitution.”⁷⁴

Whether it is fraudulent recruitment techniques of labor contractors, the use of social networking sites to recruit women and girls into sex trafficking, the use of online advertising to then sell them, or the “cybersex dens” of the Philippines, modern technologies and globalization are playing a major and increasing role in facilitating human trafficking similar to the way the cotton gin did in the nineteenth century.⁷⁵

⁷⁰ *Id.* at 275–76.

⁷¹ EUROPOL, TRAFFICKING IN HUMAN BEINGS IN THE EUROPEAN UNION 4–5 (Sept. 1, 2011).

⁷² RAYMOND & HUGHES, *supra* note 68, at 10; Maïga & Torres, *supra* note 59 (Noting that traffickers often recruit from the poorest countries).

⁷³ Dorchen Leidholdt, *Prostitution—A Modern Form of Slavery, Making the Harm Visible* (1999), <http://www.uri.edu/artsci/wms/hughes/mhvslave.htm> [<http://perma.cc/3HFG-4343>].

⁷⁴ BALES & SOODALTER, *supra* note **Error! Bookmark not defined.**, at 164.

⁷⁵ Mark Latonero, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, USC ANNENBERG SCH. FOR COMM’N AND JOURNALISM, CTR. ON COMM’N LEADERSHIP & POL. (2011); Mark Latonero, *The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking*, USC ANNENBERG CTR. ON COMM’N LEADERSHIP & POL. (2012); Abigail M. Judge & Mary Graw Leary, *From the Streets to Cyberspace:*

Furthermore, just as the cotton gin provided an engine for the demand of cheap labor, the Internet and modern communication technology provide a mode of recruitment and marketing which expands the reach of human trafficking. Whether it is fraudulent recruitment techniques of labor contractors, the use of social networking sites to recruit women and girls into sex trafficking, the use of online advertising to then sell them, or the “cybersex dens” of the Philippines, modern technologies and globalization are playing a major increasing role in facilitating human trafficking similar to the way the cotton gin did in the nineteenth century.⁷⁶

It is certainly true that the role of race was a unique and particularly pernicious one within de facto slavery. Some scholars have highlighted the role race also plays in contemporary trafficking. Professor Bravo notes that today there continues a global racial hierarchy within human trafficking.⁷⁷ The U.N. has also acknowledged the “critical link” between trafficking and racial discrimination.⁷⁸ It is also true that economics played a significant role in antebellum and de facto slavery.⁷⁹ In addition to the racial realities, the story of de facto slavery was also a story of the strong exploiting the vulnerable. That story repeats itself today.

The Effects of Technology on the Commercial Sexual Exploitation of Children and Adolescents in the United States, in ADOLESCENT SEXUAL BEHAVIOR IN THE DIGITAL AGE 206 (Fabian M. Saleh et al. eds., 2014).

⁷⁶ *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, *supra* note 76; *The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking*, *supra* 76; Judge & Leary, *supra* note 76.

⁷⁷ Bravo, *supra* note **Error! Bookmark not defined.**, at 278.

⁷⁸ U.N. Dep’t of Pub. Info., *World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance: The Race Dimensions of Trafficking in Persons—Especially Women and Children* (2001).

⁷⁹ GOUCHER, LEGUIN & WALTON, *supra* note 65, at 494.

Nineteenth century slavery was based upon vulnerability: creating it, sustaining it, and utilizing it to control others absolutely. Trafficking is the same. It is no wonder that UNODC reports that approximately seventy percent of identified victims are women and girls, some of the most vulnerable in the world. Moreover, the victims are often poor and desperate and traffickers take advantage of that vulnerability to lure them into lives of slavery.

C. Confusion

Some argue that this label actually confuses and misleads the public, heightening the public's expectations of gruesomeness surrounding human trafficking. While this effect may seem attractive to activists seeking to awaken an ignorant public, this is, in fact, detrimental for a number of reasons. First, it is inaccurate, and scholars and activists alike should have no interest in presenting an obfuscated depiction of the realities of human trafficking. Human trafficking is gruesome enough and there is no need to hyperbolize the violence and exploitation associated with it. Second, no social ill can be effectively combatted if it is not fully understood and recognizable to the public. When the public comes face to face with the reality of human trafficking and it is not what it imagined, people will miss it in their community or assume what is before them is not human trafficking.

This is a valid concern, as Drs. Curtis and Reigeluth discuss in their scholarship on the use and purpose of analogies. They note that one danger in using analogies occurs “when the analogy is carried too far, that is, beyond the point of similarity, it becomes invalid and misleading for the learner.”⁸⁰ This can lead to specific problems when dealing with a social ill impacted by the criminal law.

⁸⁰ Curtis & Reigeluth, *supra* note 37, at 100.

While the image of an antebellum slave may seem an easy method through which to convey to decision makers or the public the reality of human trafficking, this actually can cause specific harm. Jurors expecting to see chains instead find compliant victims who themselves do not self-identify as victims. Labor inspectors expecting escape attempts instead find coercion and fraud. Police who expect to find grateful women “rescued” by them find women experiencing traumatic bonding and post-traumatic stress. When these expectations are not met, victims are not identified and they fail to receive the services needed.

Having recognized that pitfalls exist in the analogy, however, does not lead to the conclusion it should not be utilized. Rather, it should be utilized correctly. First, as discussed, to make an analogy is not to say the two subjects of the analogy are identical. There was more than one way to enslave a person in the nineteenth century and there is more than one way to do so now. It is unnecessary to prove that a victim of human trafficking was chained, whipped, or auctioned in the public square to prove she was a slave. All that must be established is that she was purchased as chattel and controlled to engage in labor or commercial sex due to that coercion, force or fraud.⁸¹

In many ways, the anti-trafficking movement sits in a similar position today as the anti-sexual assault movement or anti-domestic violence movement did decades ago. Many assumed years ago that sexual assault meant a stranger committing a forceful and violent rape. Through education and public awareness, society was awakened to the reality that acquaintance rape, unconsented sexual contact, or sexual contact while incapacitated also constitutes sexual assault. Society did not stop calling it sexual assault because there were many ways in which it could

⁸¹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, ANTI-HUMAN TRAFFICKING MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS 1–2 (2009).

occur. To the contrary, it engaged in a long term education with the public about the realities of sexual assault such that people could recognize it when it emerged in many different forms.

The same must be done in the realm of human trafficking. While the critique of the analogy unartfully applied is indeed a valid one, that is not an argument to cease using it. Rather, it is an argument to utilize it more precisely and effectively. As John Cotton Richmond has pointed out, posters and public awareness campaigns, which depict victims in chains or cages do a disservice to the cause by setting the bar very high for potential jurors and decision makers who come face to face with human trafficking.⁸² When they do so, they failed to respond adequately because they do not recognize victims. In some ways, such campaigns do exactly what Professor Bravo warned against: take emotional and evocative images of slavery and used them to appeal to emotion and the least common denominator.⁸³

When this is done, a disservice to the survivors of human trafficking occurs as well. As will be discussed *infra*, the actual horrors of human trafficking are bad enough and if the analogy were accurately communicated it would act to educate, explain, and motivate the public. Therefore, while the critique of this base use of the analogy is not misplaced, the correct use of the analogy can actually unleash the power of the analogy to slavery most effectively. The next part of this article discusses how to do exactly that. It proposes that instead of focusing on chains to educate the public, the public should be educated on the implications of human trafficking as slavery for the respective stakeholders. When those are brought to the fore, the power of the analogy to educate and motivate the public is unleashed in an effective and accurate way.

III. Connecting the Analogy to the Stakeholders

⁸² John Cotton Richmond, *Human Trafficking: Understanding the Law and Deconstructing Myths*, 60 ST. LOUIS U. L.J. (forthcoming **January 2016**).

⁸³ Bravo, *supra* note **Error! Bookmark not defined.**, at 252–53.

Of the critiques discussed supra, the one of most concern is the criticism that the analogy has been misused. The analogy can be a powerful tool to educate the public and policy makers, but only if framed correctly. Where the analogy has its most profound effect is when analyzed through the lenses of four significant stakeholders in human trafficking. These include the victims, the traffickers, the owners, and the bystanders. Each of these actors has a parallel actor in the de facto slavery of the seventeenth to early twentieth century. The victims and survivors of trafficking today parallel with the slaves of earlier generations, the human traffickers are akin to the slave traders, the business owners or sex purchasers are parallel to the slave owners, and each system functioned with the complicity of the bystanders. By examining the analogy through the lenses of these actors, one can test the validity of the analogy. When looking at the implication of calling human trafficking modern day slavery for each of these stakeholders, one can see that the analogy not only possesses legitimacy, but has untapped power to educate and motive social change.

A. Victims

Central to the human tragedies of slavery and human trafficking are the victims. De facto slavery includes the people enslaved through antebellum slavery, as well as those who continued to work in slave like conditions through debt bondage, peonage and other mechanisms. The modern day parallel includes victims of labor and sex trafficking who, through force, fraud or coercion, work or engage in commercial sex acts.⁸⁴ This also includes minors who are engaged in the commercial sex trade.⁸⁵ This article has previously identified the main aspects of slavery to include chattel and control. A review of the presence of these aspects in both victim groups demonstrates the applicability of the analogy.

⁸⁴ 22 U.S.C. § 7102.

⁸⁵ *Id.*

The first framework through which to compare these groups is that of chattel. Whether it is the soccer ball sewer in India, the sex trafficking victim in St. Louis, or the farmer in Florida, the victims' experience of being chattel is universal. As discussed supra, Keven Bales correctly underscores the distinction between the concept of property in the antebellum slavery context and today.⁸⁶ In the antebellum context, the slaves were an investment and, while certainly property, they could represent some form of value to the owner. Today, due to massive supply, many of our slaves are considered disposable and discarded when no longer profitable.

While this is a valid distinction, it does not diminish the notion that victims of trafficking are still regarded as chattel or property.⁸⁷ A criminal can still treat a victim like chattel without asserting outward ownership over her.⁸⁸ In fact, this distinction merely represents the different relationship people today have with their property that they did not a century ago. Today, property is seen as more disposable. Indeed, the criticism that today people live in a "throw away culture" is not misplaced.⁸⁹ While once people invested in property for the long term, today price and convenience rule the day. Objects that were once long term purchase are now disposable items. Indeed, the argument could be made as it was when comparing victims of peonage to those of antebellum slavery, that these victims' disposability is an even more profound illustration of their lack of humanity within the system.

⁸⁶ BALES, *supra* note 40, at 10–11.

⁸⁷ Gergana Danailova-Trainor & Patrick Belser, *Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand* (Int'l Labour Org., Working Paper No. 78, 2006).

⁸⁸ *E.g.*, (Guay, *supra* note 42, at 72–73 ("In contrast to chattel slavery, ownership is now officially avoided...the dominating form of slavery today is debt bondage."))

⁸⁹ Charlie Devereux, *Disposing of Our Throw Away Culture*, CNN (Mar. 17, 2008), <http://edition.cnn.com/2008/WORLD/europe/03/12/throwaway.culture/index.html?iref=newssearch> [<http://perma.cc/NJ44-3PER>]; Ben Cosgrove, 'Throwaway Living': When Tossing Out Everything Was All the Rage, TIME (May 15, 2014), <http://time.com/3879873/throwaway-living-when-tossing-it-all-was-all-the-rage/> [<http://perma.cc/Q56B-WAPQ>]; Gaia Vince, *The High Cost of Our Throwaway Culture*, BBC (Nov. 29, 2012), <http://www.bbc.com/future/story/20121129-the-cost-of-our-throwaway-culture> [<http://perma.cc/NKJ3-UL5A>].

The reality is that both the slave and human trafficking victim are exchanged for currency. Both are denied their humanity by abuse and control. In other words, neither is treated like a person, but both are treated as objects to be used and then thrown away.⁹⁰

The second framework is control. Slaves were controlled by violence, death, physical and psychological constraints.⁹¹ Historical references exist to slaves being “seasoned” or “broken in” in an effort to establish complete dominance over them.⁹² This practice has been widely documented today in both labor and sex trafficking, where such efforts are used to establish absolute power, dehumanize, and subject the victims to psychological subordination.⁹³

The parallels between methods of controlling slaves and human trafficking victims is clearly seen in sex trafficking. The methods utilized to control trafficked women are well documented. In Hughes’ 2008 article on combatting sex trafficking, law enforcement sources described control mechanisms as “extreme violence and slavery-like practices used to control victims and the resulting physical and emotional effects of the trauma.”⁹⁴ Indeed Lisa Thompson, then director of the Initiative Against Sexual Trafficking, while testifying before the House Finance Committee, coined the term “sexual gulag” to describe a global system made up of hundreds of thousands, if not millions, of brothels, bars, strip clubs, massage parlors, escort services, and street corners where people are sold for sex.⁹⁵ “The Sexual Gulag entraps and

⁹⁰ BALES & SOOLDATER, *supra* note **Error! Bookmark not defined.**, at 6; BALES, *supra* note 40, at 14.

⁹¹ BALES & SOOLDATER, *supra* note **Error! Bookmark not defined.**, at 278.

⁹² E.g., Evelyn Wilson, *People as Crops*, 40 U. TOL. L. REV. 695, 695 (2009).

⁹³ Bravo, *supra* note **Error! Bookmark not defined.**, at 279; H.R. REP. NO. 106-939, at 4 (2000) (Conf. Rep.).

⁹⁴ Donna M. Hughes, *Combatting Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOM. L.J. 28, 35 (2008).

⁹⁵ *The Sexual Gulag: Profiteering from the Global Commercial Sexual Exploitation of Women and Children: Hearing Before the H. Comm. on Fin. Serv.*, 109th Cong. (2005) (statement of Lisa L. Thompson, Liaison for the Abolition of Sexual Trafficking).

exploits women and children turning them into sexual commodities.”⁹⁶ Although she quite aptly notes that the Soviet gulags were hidden from view while this sexual gulag operates in the open.

Such methods of control are not uncommon. The Coalition Against Trafficking in Women reports methods of control include lack of freedom, control of money, physical abuse occurring frequently, sometimes daily.⁹⁷ The violence includes physical assaults, sexual assaults, death threats, to the victims or others, threats to send pornography to others, and isolation. Emotional and physical coercion are used to break women’s resistance.⁹⁸ Schwartz, Williams, and Farley assert how sex traffickers, systematically and according to well-known methods, use various aspects of captivity, isolation from others, starvation, sleep deprivation, and unexpected sexual violence to dehumanize victims.⁹⁹ There is even a resurgence of marking one’s property with branding: increased reporting of traffickers, particularly sex traffickers, tattooing victims with their name, dollar signs, or even bar codes to further dehumanize their victim as a commodity.¹⁰⁰

Debt bondage is not a method of the past, but a current mechanism of control implemented with regularity by traffickers.¹⁰¹ This is also apparent in labor trafficking. The debt

⁹⁶ *Id.*

⁹⁷ Siti Ruhaini Dzuhayatin & Hartian Silawati, *Indonesia: Migration and Trafficking in Women*, in A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS 16,19, (2002); Janice G. Raymond, *Patterns, Profiles and Consequences of Sexual Exploitation*, in A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS, *supra* note 97, at 63; Jean D’Cunha, *Thailand Trafficking and Prostitution From a Gender and Human Rights Perspective the Thai Experience*, in A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS, *supra* note 97, at 141.

⁹⁸ Raymond, *supra* note 97, at 66–69; *see also* Masci, *supra* note 70, at 275 (providing examples of the violence and threats experienced); *see also* John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY 778, 781 (2004) (finding the homicide rate among prostitutes was nineteen percent and the average age of death was thirty-four).

⁹⁹ Harvey Schwartz et al., *Pimp Subjugation of Women by Mind Control*, in PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 49 (2007).

¹⁰⁰ *United States v. Davis*, No. 10-20794, 2011 WL 6152946, at *2 (5th Cir. Dec. 12, 2011); *Shanklin v. Dexter*, No. CV 09-3557-SJO (OP), 2010 WL 4137514, at *1 (C.D. Cal. July 20, 2010); Conchita Sarnoff, *Pimps Tattoo Bar Code on Victim’s Neck*, HUFFINGTON POST (May 25, 2012, 1:35 PM), http://www.huffingtonpost.com/conchita-sarnoff/sex-trafficking-new-york_b_1544141.html [<http://perma.cc/G7HU-4NXR>].

¹⁰¹ U.N. Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* 9 (2009), http://www.unodc.org/documents/human-trafficking/TIP_module1_Ebook.pdf [<http://perma.cc/SVH3-KQNW>].

bondage of de facto slavery is a common method of controlling labor trafficking victims, as well as violence and force.¹⁰² The methods of controlling modern day victims of human trafficking, therefore, are eerily similar to those used to control slaves of previous generations.

B. Traffickers and Slave Traders

The implication of the modern day slavery analogy is that human traffickers are the historical counterparts to nineteenth century slave traders. Some traffickers, such as labor contracting companies similar to slave traders, engage in the recruitment, transportation, and harboring of the victims for an eventual buyer. Others, as in the Trade and Development economic model outlined by Dr. Louise Shelly, are completely self-contained, handling all aspects of human trafficking from recruitment to what is regrettably referred to as “disposal” of the victims.¹⁰³ Both act as dealers of people just as slave traders did a century ago.

Human traffickers are driven in part by money and profit just as slave traders of old.¹⁰⁴ The migration of some forms of organized crime from narcotics to human trafficking has been linked to the increase in profitability and the lower risk of detection.¹⁰⁵ The ILO concluded the profit in forced labor is approximately \$150 billion annually.¹⁰⁶ The ILO has also estimated total annual profits for sex trafficking at \$99 billion.¹⁰⁷ Thus these are both highly profitable industries and alluring to traffickers.

The initial slave traders were influenced by profit. Then, when their work became technically illegal, it went underground, but did not vanish. The same is true in modern

¹⁰² Clinton, *supra* note **Error! Bookmark not defined.**, at 1.

¹⁰³ LOUISE SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE 114–15 (2010).

¹⁰⁴ *Domestic Human Trafficking: An Internal Issue*, HUMAN SMUGGLING AND TRAFFICKING CENTER 2 (Dec. 2008), <http://www.state.gov/documents/organization/113612.pdf> [<http://perma.cc/BF69-HHC7>].

¹⁰⁵ U.N. Global Initiative to Fight Human Trafficking, Human Trafficking a Low-Risk, High-Gain Crime, says UNODC (Sept. 9, 2014), <http://www.ungift.org/knowledgehub/stories/September2014/human-trafficking-a-low-risk--high-gain-crime--says-unodc.html> [<http://perma.cc/3R5B-JA3B>].

¹⁰⁶ INT’L LABOUR ORG., *supra* note 66, at 13.

¹⁰⁷ *Id.* at 27.

trafficking. Again as Shelly notes in her High Volume Low Risk Trafficking economic model, the infrastructure for trafficking was in some cases simply just taken over by pre-existing illegal enterprises when trafficking became illegal.¹⁰⁸ The exploitation did not end. Rather, it became the business of organized groups seeking profit, even if it meant engaging in illegal activity.

Slave traders, like human traffickers, are rational actors. As such, many will remain in the business for the same reasons: they have no alternative means of making as much profit for as little risk.¹⁰⁹ This is no ordinary business, however. A slave trader of the nineteenth century likely did not conceptualize the contents of cargo he shipped and auctioned as actual human beings. Obviously, this must have required some form rationalization to justify the work. Hence the efforts to dehumanize the victims were perhaps also effective methods of not only controlling the victims, but further cementing their sub-human status in the minds of the traders so as to justify their actions. This same frame of mind exists with today's human traffickers who use such levels of torture and violence to control victims that it is impossible that they consider the victims human.¹¹⁰

C. Slave Owners and Human Trafficking Victim “Renters” Analogy

The next actor in human trafficking is the person or organization who uses the labor or services of the victim. In the labor trafficking context this would be the employer who knowingly uses slave labor: the farmer who obtains workers from traffickers;¹¹¹ the “fast fashion” clothing line that subcontracts sewing and stitching;¹¹² or the hotel who hires a cleaning crew from a

¹⁰⁸ SHELLEY, *supra* note 103, at 125–26.

¹⁰⁹ Bravo, *supra* note **Error! Bookmark not defined.**, at 289.

¹¹⁰ Victims of Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464 (codified as amended in scattered section of 8 and 22 U.S.C. (2000)), <http://www.state.gov/j/tip/laws/61124.htm> [<http://perma.cc/H7Y3-62E9>].

¹¹¹ Darci Jenkins & Miguel K. Gutierrez, *While You Were Eating: The Unspoken Human Cost of Putting Food on Our Tables*, 18 PUB. INT. L. REP. 169, 172–73 (2013).

¹¹² Janet B. Beck, *Human Trafficking and the T Visa Process*, 75 TEX. B.J. 770, 771 (2012); Tierney Sneed, *Why Cleaning up the Fashion Industry is so Messy*, U.S. NEWS & WORLD REP. (July 16, 2014 12:01 AM),

contractor.¹¹³ In the sex trafficking context, it is the purchaser of sex who knowingly buys another human being for sex.

Here, of course, there are more distinctions between the labor and sex trafficking contexts. Regarding labor trafficking, the analogy is apt. Thanks to consumer demand for cheap cotton fabric, antebellum and post-Civil War farmers owned slaves.¹¹⁴ Similarly, northern households utilized slaves as house servants and dock or farm hands.¹¹⁵ Today, in response to a consumer demand for low priced tomatoes, the agriculture sector has used trafficked workers.¹¹⁶ Similarly, instances of domestic servitude have been litigated in which the defendants have been motivated by saving money.¹¹⁷ When the owners are the traders as well, they also share similar methods of control: force and deception to recruit followed by violence and force to control.

In sex trafficking, the owner in this context is the sex purchaser. The analogy is provocative, but accurate. In modern day sex trafficking, one goes to the auction square, a.k.a. backpage.com, examines the merchandise, pricing, and physical appearance, and purchases the person often from a third party.¹¹⁸ Like a nineteenth century slave owner, he is not condemned for this activity. As described by Donna Hughes in *A Perpetrator Focused Approach*, “[t]hey are not stigmatized in the same way ‘prostitutes’ are. Yet . . . the buyers of commercial sex acts, are the ultimate consumers of trafficked women and children. They use them for entertainment and

<http://www.usnews.com/news/articles/2014/07/16/efforts-to-clean-up-fast-fashion-supply-chains-face-a-tough-road> [<http://perma.cc/F4UW-3S6P>].

¹¹³ *United States v. Farrell*, 563 F.3d 364, 364 (8th Cir. 2012).

¹¹⁴ Howard Dodson, *How Slavery Helped Build a World Economy*, NAT’L GEOGRAPHIC (Feb. 3, 2003), http://news.nationalgeographic.com/news/2003/01/0131_030203_jubilee2.html [<http://perma.cc/W7BY-V3CX>].

¹¹⁵ EDGAR J. MCMANUS, *BLACK BONDAGE IN THE NORTH* 17 (1973).

¹¹⁶ Michelle Crawford Rickert, *Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level*, *LIBERTY U. L. REV.* 211, 228 (2010).

¹¹⁷ *E.g.* *United States v. Sabhani*, 539 F. Supp. 2d 617, 620 (E.D.N.Y. 2008).

¹¹⁸ *E.g.* *United States v. Wilson*, No. 10-60102-CR, 2010 WL 2991561, at *1 (S.D. Fla. July 27, 2010); Ahiza Garcia, *Visa, MasterCard Drop Backpage.com After Sex Trafficking Claims*, CNN MONEY (July 2, 2015, 2:36 PM), <http://money.cnn.com/2015/07/02/news/visa-mastercard-backpage-prostitution/> [<http://perma.cc/5UGM-D8QU>].

sexual gratification, and often perpetrate acts of violence against them.”¹¹⁹ Such a person buys another human being, albeit for a limited time frame, to use, as he will to meet his purposes. Just like owners of slaves, the sex purchaser has the expectation that his money allows him to use the person in any way he demands. For example, 2009 research by Farley, Bindel, and Golding found that 47% of purchasers interviewed said women did not have certain rights during prostitution and in another study 22% said the payment meant they could “do whatever [they] want[] to the women [they] buy[.]”¹²⁰

The justifications offered for sex purchasers’ violent behavior are very similar to that of the slave owners. Some recognize the exploitation, but excuse their actions by arguing that women in prostitution are different than, i.e. less than, other women.¹²¹ Some claim that they are in fact helping these women.¹²² They claim their payment for these services is a benefit to all. They are either ignorant or willfully ignorant of the reality that most victims of human trafficking do not ever retain the money from the commercial sex act.¹²³

Furthermore this payment comes with significant strings attached. It comes with the idea that the money allows their every demand to be met. Even when these women take steps to protect their health and safety, they are met with violence. Raymond and Hughes note,

Large numbers of women in the sex industry live in a state of constant trauma, vigilance and expectation of violence. Violence, rape, robbery, kidnapping and killings are normal occurrences for women in prostitution. However, violence

¹¹⁹ Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 39 (2008).

¹²⁰ *Men Who Buy Sex: Who They Buy and What They Know*, EAVES 13 (2009), <http://i4.cmsfiles.com/eaves/2012/04/MenWhoBuySex-89396b.pdf> [<http://perma.cc/KYM7-CJF4>]; Melissa Farley et al., *Attitudes and Social Characteristics of Men Who Buy Sex in Scotland*, 3 PSYCHOL. TRAUMA: THEORY, RES., PRAC., & POL’Y 369, 375 (2011).

¹²¹ Melissa Farley et al., *Comparing Sex Buyers with Men Who Don’t Buy Sex*, COAL. AGAINST TRAFFICKING IN WOMEN 5, 24 (July 15, 2011), <http://www.catwinternational.org/Content/Images/Article/212/attachment.pdf> [<http://perma.cc/BX22-RPDP>].

¹²² *Id.* at 21.

¹²³ Marihug Cedeño, *Pimps, Johns and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 CORNELL J.L. & PUB. POL’Y 153, 162 (2012).

does not only come from the pimps and traffickers but also from the buyers as well.¹²⁴

Indeed, the Eighth Circuit in *United States v. Jungers*, as well as other trial courts, have affirmatively found that buyers are human traffickers, hence they have been labeled by some as First Party Traffickers.¹²⁵ The United States Congress reaffirmed this understanding in the 2015 reauthorization of the TVPA when it added “solicits or patronizes” another for commercial sex to the list of acts that constitute human trafficking.¹²⁶ Congress stated that such action was taken to make “absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.”¹²⁷

D. Bystanders

Finally, there remains the bystander. Slavery could not have survived in the nineteenth century, nor could it have ended without bystander support. In the beginning of the triangle, the northern United States and Europe benefitted from the enterprise.¹²⁸ At some point in the early 1800s, the social movement shifted and Europe saw the beginnings of a social objection to slavery.¹²⁹ America and lastly Brazil followed in their own ways, ultimately resulting in war.¹³⁰ Two aspects of the bystander were present in the nineteenth century to allow slavery to exist. They include the financial benefit to the bystander and the normalization of the objectification of

¹²⁴ RAYMOND & HUGHES, *supra* note 68, at 68.

¹²⁵ 702 F.3d 1066 (8th Cir. 2013); *U.S. v. Vanderhorst* (D.S.C.F.Supp.3d 792 (2014)); Leary, *supra* note **Error! Bookmark not defined.**, at 40–41.

¹²⁶ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114–44, § 109, 129 Stat. 227, 239.

¹²⁷ *Id.* at 239.

¹²⁸ GOUCHER, LEQUIN & WALTON, *supra* note 65, at 495.

¹²⁹ *E.g.*, Bravo, *supra* note **Error! Bookmark not defined.**, at 242.

¹³⁰ LAIRD W. BERGAD, *THE COMPARATIVE HISTORIES OF SLAVERY IN BRAZIL, CUBA, AND THE UNITED STATES* 251 (2007).

persons.¹³¹ Both also exist today. In the labor context the bystander benefits from trafficking. For example, with industries such as coffee and chocolate so filled with forced labor, former At Large Ambassador to Combat Human Trafficking Luis CdeBaca asserts that it is impossible to consume such products without the involvement of slavery.¹³² As discussed *infra* it is the demand for cheap goods that drove slavery and drives human trafficking.¹³³ At the center of that demand is the consumers who ignorantly believe they are not part of the problem of human trafficking, without accepting that they are indeed the cause.

Also present is the normalization. Regarding labor trafficking, it has been noted that “some exploitation among [the] marginalized is normalized.”¹³⁴ There seems to be a belief that certain people do not possess the same rights as others because of their status. This is perhaps most clearly seen in the sex trafficking industry. Such a belief rationalized a demand for people to be bought and sold. The supply is created by this marginalization of the poor and vulnerable. The demand is made by society and culture. Many scholars and activists have noted that society in the twenty-first century not only bombards potential sex purchasers and victims with messages, which indicate purchasing people for sex is acceptable, but rather even glorifies it.¹³⁵

Consider the following examples.¹³⁶ At the time it came out, the largest selling videogame in history, *Grand Theft Auto IV* features as its protagonist a former human trafficker

¹³¹ Smolin, *supra* note 12, at 220, 236.

¹³² Luis CdeBaca, Best Practices and Next Steps: A New Decade in the Fight Against Human Trafficking (June 13, 2011) (statement of Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Testimony) (stating that everyone comes into contact with products that are linked to slavery).

¹³³ *E.g.*, GOUCHER, LEGUIN & WALTON, *supra* note 65, at 493–94; Chuang, *supra* note 12, at 614.

¹³⁴ Hilary Chester, Assoc. Dir., Anti-Trafficking Program, Remarks: Navigating Social Services for Foreign National Clients (July 9, 2015).

¹³⁵ *E.g.* Chuang, *supra* note 12, at 628.

¹³⁶ See M. GIGI DURHAM, THE LOLITA EFFECT 12–13 (2008); DIANE E. LEVIN & JEAN KILBOURNE, SO SEXY SO SOON 4–5, 8–9 (2009); *Sexualisation and Objectification of Women Position Statement*, WOMEN’S FORUM AUSTRALIA, <http://www.womensforumaustralia.com/significant-issues/body-image-objectification-and-sexualisation?A=SearchResult&SearchID=58966155&ObjectID=1093054&ObjectType=35> (last visited Aug. 23, 2015) [<http://perma.cc/A2GM-FBMW>]. Also see the work of important feminists such as Rebecca Whisnant

from Serbia. (A Wall Street Journal online article describes that the protagonist as milquetoast).¹³⁷ Similarly, RapeLay is a videogame centering around a male character who stalks and rapes a mother and her two daughters. The game allows the players through their computer devices to engage in numerous sexual positions all of which are violent and degrading. In television and products, there are numerous references to glorified “pimp” lifestyle including *Pimp My Ride* and *Pimp Juice*.¹³⁸ And of course there is music such as 50 Cent’s line “I tell the hoes all the time/Bitch get in my car”¹³⁹ and the Grammy winning “It’s Hard Out Here for a Pimp.”¹⁴⁰

A study described in *Pediatrics* documents the frequency of demeaning music lyrics and the specific messages to children. It notes the message sent to girls is to commoditize themselves and perceive themselves only as object for others’ pleasure and domination. The message delivered to boys is to see the pimp lifestyle as something to be sought after and attained.¹⁴¹

The legalization of prostitution normalizes commercial sex and increases risk of trafficking.¹⁴² Nowhere is normalization of objectifying women more apparent than in Halloween shopping where not only can adults purchase the pimp and prostitute costumes, but children can do so as well. Similarly, in the aftermath of public disclosure of Ray Rice beating his then fiancé on camera, the featured Halloween costume of Ray Rice and his victim appeared:

highlighting human trafficking in social science research studies in much research and works. *E.g.*, NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY (Christine Stark & Rebecca S. Whisnant eds., 2004).

¹³⁷ Junot Díaz, ‘Grand,’ but No ‘Godfather,’ WALL ST. J., June 28, 2008, at W3.

¹³⁸ *Pimp My Ride* (MTV television broadcast 2004); NELLY, *Pump Juice*, on DA DERTY VERSIONS: THE RE-INVENTION (Universal Records 2003).

¹³⁹ 50 CENT, *Get In My Car*, on THE MASSACRE (Aftermath Entertainment/Interscope Records 2005).

¹⁴⁰ THREE 6 MAFIA, *It’s Hard Out Here For a Pimp*, on HUSTLE & FLOW: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE (Atlantic Grand Hustle 2005).

¹⁴¹ See *Policy Statement—Impact of Music Lyrics, and Music Videos on Children and Youth*, 124 PEDIATRICS 1488, 1489, 1491 (2009).

¹⁴² INT’L LABOR ORG., *supra* note 60, at 3.

depicting a man dragging a woman with a black eye.¹⁴³ Such images clearly present women as objects that exist for the domination of men. Furthermore, the blatant racism and slavery theme in pornography is well documented.¹⁴⁴ This normalizes the status of victim as slave.

Research supports the damage of this. The APA report, *The Sexualization of Girls*, defines objectification as “made into a thing for others’ sexual use, rather than seen as a person with the capacity for independent action and decision making.”¹⁴⁵ Their 2007 Report concluded that this media saturated message of sexualization has “negative effects in a variety of domains, including cognitive functioning, physical and mental health, sexuality, and attitudes and beliefs.”¹⁴⁶

These glorifications are inaccurate and society cannot lend support to the institution of slavery by condoning that. Just as in the eighteenth century, the bystander is an economic driver and a social force of normalization and glorification of slavery. The bystander in each of these centuries reinforces the idea that while slavery as a concept may be disfavored, it is apparently not that bad. The consumers of cheap or affordable cotton goods or affordable food must have felt that the plight of the slave was not their concern. Similarly today, as one walks past a slave for sale on the street, on one’s way to buy fast fashion made by slaves, while surfing the net on a cellular phone made by slaves, browsing past a slave for sale on backpage.com, while drinking

¹⁴³ Kelly Wallace, *The Ray Rice Children’s Halloween Costume You Won’t Believe*, CNN (Dec. 12, 2014, 11:18 AM), <http://www.cnn.com/2014/10/27/living/ray-rice-childrens-halloween-costume-inappropriate-kids> [<http://perma.cc/KLU3-QJV6>].

¹⁴⁴ DIANA E.H. RUSSELL, DANGEROUS RELATIONSHIPS: PORNOGRAPHY, MISOGYNY, AND RAPE 24 (1998); Vednita Carter, *Prostitution and the New Slavery*, in NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 85 (Christine Stark & Rebecca Whisnant eds., 2004).

¹⁴⁵ APA TASK FORCE ON THE SEXUALIZATION OF GIRLS, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS: EXECUTIVE SUMMARY 1 (2007), <http://www.apa.org/pi/women/programs/girls/report-summary.pdf> [<http://perma.cc/R6HV-C72A>].

¹⁴⁶ *Id.* at 2.

the coffee whose beans were picked by slaves, the bystander is indifferent to the source of the conveniences in life.

When the analogy is examined through the lens of the stakeholders, it becomes apparent that the analogy is accurate. Victims experience similar plights including their objectification and lack of control. Traffickers and traders engage in similar practices and share a motive of profit. Owners and renters both justify their actions of purchasing other people for their own use with the understanding they are able to use the victims as they please. Finally, bystanders both allow the trade in human beings to thrive because of the benefits they receive and due to the toxic environment in which ownership is normalized.

I. Conclusions - Implications of the Statement

The label of human trafficking as modern day slavery is accurate and can be successful in its stated goal: to educate, inform and motivate the public into an appropriate response. However, it has failed its promise because it has often been utilized by only superficially appealing to emotion and the least common denominator. It has not been utilized to inform but to persuade. Thus, its use risks becoming sensational and anti-trafficking advocates and scholars risk criticisms in areas where the analogy does not completely reflect reality. Similarly, such a loose use of analogy misinforms the public by suggesting kidnappings and chains where none may exist, and losing the opportunity to educate and engage the public through the analogy in the deeper way necessary for reform.

Only by specifically examining the analogy as it relates to specific stakeholders, their actions and inactions, can the label have a profound impact. By illustrating these challenging implications for the public the analogy can achieve its true potential moving the public in a

direction that was necessary in Great Britain to end slavery, in the United States to end antebellum slavery, and in any society to end oppression.

The anti-trafficking movement is in some ways at a cross roads. It can continue to misuse the analogy and fail to advance the efforts to end human trafficking. Thus, descendants of this generation's bystanders will continue to be confused as to how society could accept the concept of disposable people. Or the analogy's power can be unleashed by tying it to the implication of that analogy and label for all actors, but particularly for the majority of people: bystanders and colluders. In so doing, the social shift necessary to accompany the legal shift will occur and hopefully the reality of human trafficking— modern day slavery— will become a vestige of the past.