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## Catholic Social Teaching and Neo-Abolitionism: Tearing Down the House of the Rising Sun

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# CATHOLIC SOCIAL TEACHING AND NEO-ABOLITIONISM: TEARING DOWN THE HOUSE OF THE RISING SUN

ELIZABETH M. DONOVAN\*

## ABSTRACT

Catholic Social Teaching (“CST”) is the body of literature written in the modern era by papal and episcopal teachers in response to current political, economic, and social issues. CST views individuals in the sex trade as victims, however they arrived in the trade. Prostitution abolitionists, called neo-abolitionists, because their current efforts to wipe out sex trafficking and prostitution mirror similar efforts by reformers in the early twentieth century, also view individuals in the sex trade as victims. A coalition of feminists and Christians developed neo-abolitionist social policy during the late twentieth and early twenty-first century. CST and neo-abolitionist social policy share many of the same goals and beliefs, particularly with respect to reducing demand for sexual access and providing social and welfare supports for individuals leaving the sex trade. By working together to apply pressure to lawmakers and policy-makers on these issues, Catholics and neo-abolitionists can help to reduce demand, provide support to victims, and flip the stigma of the sex trade from the victims of the trade to the buyers who fuel it, and the pimps, madams, facilitators, and other investors who control it.

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## I. INTRODUCTION

*There is a house in New Orleans,  
it's called the Rising Sun.  
It's been the ruin of many a poor girl  
Great God, and I for one!*<sup>1</sup>

Blessing Okoedion escaped from sex traffickers four years ago and found refuge with a community of nuns.<sup>2</sup> Troubled by the high demand for prostitutes by Catholic men in Rome, she asked Pope Francis in March 2018 whether the Catholic Church is “able to question itself truthfully about this high demand by clients?”<sup>3</sup> Of prostitution, Pope Francis said, “I ask for forgiveness for all the Catholics who commit this criminal act. It’s slavery.”<sup>4</sup> He added, “This is torturing a woman. Let’s not confuse terms. This is criminal, a sick mentality.”<sup>5</sup>

Pope Francis’s stand is not new for the Catholic Church. In 1964, the Second Vatican Council stated that “slavery, prostitution, the selling of women and children . . . All these things and others of their like are infamies indeed. They poison human society.”<sup>6</sup> They “are a supreme dishonor to the Creator.”<sup>7</sup> In Pope John Paul II’s 2002 letter to Archbishop Jean-Louis Tauran, he declared “the trade in human persons constitutes a shocking offence against human dignity and a grave violation of fundamental human rights.”<sup>8</sup> He wrote that sex trafficking is “an affront to

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<sup>1</sup> “The House of the Rising Sun” is a traditional folk ballad, telling of a girl’s life gone wrong. The oldest written lyrics appeared in a 1925 column by Robert Winslow Gordon entitled “Old Songs That Men Have Sung” in *Adventure Magazine*. STEVE SULLIVAN, *ENCYCLOPEDIA OF GREAT POPULAR SONG RECORDINGS* 98 (2013). Curiously, in the version recorded by the English rhythm and blues band The Animals in 1964, the “poor girl” led into a life of degradation is transposed to a “poor boy,” now a drunkard and a gambler, who cautions against spending life “in sin and misery in the House of the Rising Sun.” *The House of the Rising Sun*, GENIUS, <https://genius.com/The-animals-the-house-of-the-rising-sun-lyrics> (last visited Feb. 10, 2019).

<sup>2</sup> Inés San Martín, *Pope Says Prostitution Tortures Women, Apologizes for Catholic ‘Clients’*, CRUXNOW (Mar. 19, 2018), <https://cruxnow.com/vatican/2018/03/19/pope-says-prostitution-tortures-women-apologizes-for-catholic-clients/>.

<sup>3</sup> Philip Pullella, *Exploiting Women for Prostitution a Crime Against Humanity: Pope*, REUTERS (Mar. 19, 2018), <https://www.reuters.com/article/us-pope-synod-women/exploiting-women-for-prostitution-a-crime-against-humanity-pope-idUSKBN1GV21H>.

<sup>4</sup> San Martín, *supra* note 2.

<sup>5</sup> Pullella, *supra* note 3.

<sup>6</sup> Pope Paul VI, *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World*, § 27 (Dec. 7, 1965), [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html) [hereinafter *Gaudium et Spes*].

<sup>7</sup> *Id.*

<sup>8</sup> Letter from Pope John Paul II to Archbishop Jean-Louis Tauran, on the Occasion of the International Conference Twenty-First Century Slavery—the Human Rights Dimension to

fundamental values which are shared by all cultures and peoples, values rooted in the very nature of the human person.”<sup>9</sup>

Similarly, abolitionists view prostitution as violence against women, a human rights violation.<sup>10</sup> Commonly called neo-abolitionists, because their current efforts to abolish prostitution mirror efforts by late nineteenth century and early twentieth century reformers to wipe out sex trafficking and prostitution, they generally see no difference between forced and consensual prostitution.<sup>11</sup> Neo-abolitionists view prostitutes as victims.<sup>12</sup> They contend that past attempts to end prostitution failed because they punished prostitutes, not pimps, procurers, and customers.<sup>13</sup> Throughout the late twentieth century and early twenty-first century, neo-abolitionists have battled sex-worker rights advocates, also known as non-abolitionists, to shape United Nations (“U.N.”) and United States (“U.S.”) sex trafficking and prostitution policy.<sup>14</sup>

This article considers overlap between Catholic Social Teaching (“CST”) and neo-abolitionist doctrine, focusing on two key components of U.N. and U.S. sex trafficking policy: (1) reducing demand for prostitutes and (2) resettling survivors. First, I show that abolitionist social policy and current CST share similar views on the role and value of the sex trade in society. Second, I review U.N. and U.S. sex trafficking policy with respect to demand and resettlement, as reflected in the U.N. Trafficking Protocol<sup>15</sup> and the Trafficking Victims Protection Act of 2000.<sup>16</sup> Third, I explore why

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Trafficking in Human Beings (May 15, 2002), [http://w2.vatican.va/content/john-paul-ii/en/letters/2002/documents/hf\\_jp-ii\\_let\\_20020515\\_tauran.html](http://w2.vatican.va/content/john-paul-ii/en/letters/2002/documents/hf_jp-ii_let_20020515_tauran.html).

<sup>9</sup> *Id.*

<sup>10</sup> See Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 WOMEN’S STUD. INT’L F. 1, 9 (1998).

<sup>11</sup> See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664–65 (2010); Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT’L & COMP. L. 269, 279–80 (2006).

<sup>12</sup> See Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 13 (1993) (“In prostitution, women are tortured through repeated rape . . .”); see also SHEILA JEFFREYS, *THE IDEA OF PROSTITUTION* 128–60 (1997) (arguing that the only “choice” in prostitution is the choice of a man to abuse a woman).

<sup>13</sup> Raymond, *supra* note 10, at 4.

<sup>14</sup> Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1730–32 (2010); Chuang, *supra* note 11, at 1656–60.

<sup>15</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2237 U.N.T.S. 319 (Nov. 15, 2000) (entered into force Dec. 25, 2003) [hereinafter 2000 U.N. Trafficking Protocol]; see also G.A. Res. 55/25, United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000).

<sup>16</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended throughout various sections within titles 8, 18 and 22 of the United States Code) [hereinafter TVPA], amended by Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) [hereinafter 2003 TVPRA], Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat 3558 (2005) [hereinafter 2005 TVPRA], William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008) [hereinafter

CST and neo-abolitionist doctrine view reducing demand, and reshaping cultural norms, as critical. Fourth, I consider the duty society owes to resettle and re-integrate victims of sex trafficking and prostitution under CST and neo-abolitionist doctrine. Finally, having mapped the overlap between CST and neo-abolitionist doctrine with respect to reducing demand and resettling and re-integrating survivors, I conclude by identifying sex trafficking reforms on which CST and neo-abolitionist doctrine concur.

## II. NEO-ABOLITIONIST DOCTRINE AND CATHOLIC SOCIAL TEACHING SUPPORT ABOLISHING SEX TRAFFICKING AND PROSTITUTION

Neo-abolitionist doctrine and CST share the belief that the sex trade harms the women whose bodies buyers purchase for sexual access,<sup>17</sup> and holds no value to society. Both agree that society should put the stigma of sex trafficking and prostitution on traffickers, pimps, madams, other facilitators, investors, and buyers by promoting social policy and government structures that help women to avoid sex commerce in the first place and, if ensnared in it, to help them escape. Both neo-abolitionists and Catholics support efforts to reduce demand for buying sexual access by creating greater legal hurdles and penalties for the third parties whose deeds facilitate the sale, and for the buyers that fuel the trade. Both also back creating paths out of the sex trade for women that lead to social and welfare supports that give women a fair chance to remain out of the trade. Although the reasoning driving these conclusions follows different routes, and stems, in part, from different concerns, the policy derived is the same.

### A. Feminists, Christians, and Neo-Abolitionist Social Policy

Current neo-abolitionist social policy developed primarily through the work of two interest groups: feminists and Christians.<sup>18</sup> “Concern about human trafficking crossed ideological lines; it was not a liberal or conservative, Democrat or Republican issue.”<sup>19</sup> The two groups worked in tandem to push for policies that treat sex trafficking as a crime and trafficked women as victims, rather than as partners in a criminal enterprise.<sup>20</sup> The policies they pursued stemmed from the concerns their respective members held. Together, they formed a powerful political force.<sup>21</sup>

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2008 TVPRA], Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) [hereinafter 2013 TVPRA], Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat 227 (2015) [hereinafter JVTA].

<sup>17</sup> This analysis focuses on trafficked women and girls, while recognizing that others also fall victim to sex traffickers. The reforms advanced apply equally to all victims of the sex trade.

<sup>18</sup> See Barbara Stolz, *Educating Policymakers and Setting the Criminal Justice Policymaking Agenda: Interest Groups and the “Victims of Trafficking and Violence Act of 2000,”* 5 CRIM. JUST. 407, 413–20 (2005).

<sup>19</sup> *Id.* at 420.

<sup>20</sup> See *id.* at 424.

<sup>21</sup> Berman, *supra* note 11, at 271–72; see also Phyllis Chesler & Donna M. Hughes, *Feminism in the 21st Century*, WASH. POST (Feb. 22, 2004), [https://www.washingtonpost.com/archive/opinions/2004/02/22/feminism-in-the-21st-century/e6bd1a98-ce85-4e8a-9d6f-2c2f681416/?utm\\_term=.70b241e13b39](https://www.washingtonpost.com/archive/opinions/2004/02/22/feminism-in-the-21st-century/e6bd1a98-ce85-4e8a-9d6f-2c2f681416/?utm_term=.70b241e13b39) (Feminists

Today's neo-abolitionist feminists trace their roots to an internal feminist clash that began in the last decades of the twentieth century over whether to view prostitution as a human right, the right of a woman to do what she wants with her body, or as a human rights violation—violence committed against women.<sup>22</sup> Those who view prostitution as a human right, known as non-abolitionists or sex-worker rights advocates, support efforts to grant sex worker rights to persons wishing to sell sexual access to their own bodies. They see prostitution as an international labor issue, prostitutes as migrant workers facing sometimes unsafe working conditions.<sup>23</sup> They ask society to respect and honor sex workers “because they facilitate the gratification of erotic needs that would otherwise go unmet, just as health care professionals and teachers should be honored because they meet the population’s health and educational needs.”<sup>24</sup> They support making prostitution legal, with health and safety regulation for sex workers.<sup>25</sup>

Those feminists who view prostitution as violence were influenced by so-called “radical feminists,” such as: Kathleen Barry, the author of *Female Sexual Slavery*<sup>26</sup> and *The Prostitution of Sexuality*;<sup>27</sup> Andrea Dworkin, who said that “[p]rostitution in and of itself is an abuse of a woman’s body;”<sup>28</sup> Catharine A. MacKinnon, who argues that “[i]n prostitution, women are tortured through repeated rape;”<sup>29</sup> and Sheila Jeffreys, the author of *The Idea of Prostitution*, in which she argues that the only “choice” in prostitution is the choice of a man to abuse a woman.<sup>30</sup> They have little difficulty gathering evidence to support their view that prostitution harms women who sell sexual access, however they arrive in the sex industry.<sup>31</sup> Indeed, even non-

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“should stop demonizing the conservative and faith-based groups that could be better allies on some issues than the liberal left has been.”).

<sup>22</sup> Raymond, *supra* note 10, at 4.

<sup>23</sup> See MELISSA DITMORE, TRAFFICKING IN LIVES: HOW IDEOLOGY SHAPES POLICY, IN TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS 107–26 (Kamala Kempadoo et al. eds., 2d ed. 2012).

<sup>24</sup> Julia O’Connell Davidson, *The Rights and Wrongs of Prostitution*, 17 HYPATIA 84, 88, 92 (2002).

<sup>25</sup> See DITMORE, *supra* note 23, at 110–11.

<sup>26</sup> KATHLEEN BARRY, FEMALE SEXUAL SLAVERY (1970).

<sup>27</sup> KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY (1995).

<sup>28</sup> Andrea Dworkin, *Prostitution and Male Supremacy*, 1 MICH. J. GENDER & L. 1, 3 (1993).

<sup>29</sup> MacKinnon, *supra* note 12, at 13.

<sup>30</sup> JEFFREYS, *supra* note 12, at 128–60.

<sup>31</sup> See Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 HEALTH POL’Y & L. REV. LOY. 61, 68–76 (2014); Arun Kumar Acharya, *Sexual Violence and Proximate Risks: A Study on Trafficked Women in Mexico City*, 12 GENDER, TECH. & DEV. 77 (2008); Donna M. Hughes, *Best Practices to Address the Demand Side of Sex Trafficking* 10–12 (Aug. 2004), [https://popcenter.asu.edu/sites/default/files/problems/trafficked\\_women/PDFs/Hughes\\_2004a.pdf](https://popcenter.asu.edu/sites/default/files/problems/trafficked_women/PDFs/Hughes_2004a.pdf) [hereinafter Hughes, *Best Practices*]; Melissa Farley & Howard Barkan, *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, 27 WOMEN & HEALTH 37, 40–41 (1998).

abolitionists often must concede this truth.<sup>32</sup> Trafficked women, women choosing to “work” in sex commerce, and women who do not fit neatly into either of these categories, sustain physical, psychological, and social injuries.<sup>33</sup>

At about the same time feminists began taking sides in the battle between neo-abolitionists and sex worker rights defenders, evangelical Christians’ interest in international human rights began to gather steam, propelling them into policy-making struggles with other non-governmental organizations (“NGOs”).<sup>34</sup> This resulted in part from the U.N.’s heavy reliance on NGOs in crafting international policy.<sup>35</sup> Michael Horowitz, a senior fellow and director at the Hudson Institute in Washington D.C., had already begun piecing together a coalition of evangelical Christian groups and Catholics to lobby for human rights protections for persecuted Christians worldwide.<sup>36</sup> This Christian coalition worked with Representative Christopher Smith (R-N.J.), a conservative Catholic, to pass the International Religious Freedom Act of 1998, establishing within the Department of State an Office on International Religious Freedom to assess religious freedom around the world and recommend appropriate responses, including economic sanctions.<sup>37</sup>

The Christian coalition next set its sights on sex trafficking.<sup>38</sup> Other leading figures in the coalition included: former Nixon White House Counsel Charles Colson, who founded the evangelical Prison Fellowship; Richard Land of the Southern Baptist Convention; Bill Bright of Campus Crusade for Christ; William Bennett, former Education Secretary under President Ronald Reagan and prominent Catholic; Kay Cole James of the Heritage Foundation; Diane Knippers of the Institute on Religion and Democracy; David Saperstein, a lawyer and rabbi, who served as first Chair of the Commission on International Religious Freedom; Alan Hertzke, a religion and political science scholar from the University of Oklahoma; Lisa Thompson, a trafficking specialist with the Salvation Army; and Laura Lederer, an influential feminist leader and editor of *Take Back the Night: Women on Pornography*.<sup>39</sup>

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<sup>32</sup> See, e.g., Ronald Weitzer, *Human Trafficking and Contemporary Slavery*, 41 ANN. REV. SOC. 223, 232–38 (2015).

<sup>33</sup> See Elizabeth M. Donovan, *Same as It Ever Was: In Support of the Rights of Sex Trafficking Victims*, 36 QUINNIPIAC L. REV. 489, 592–612 (2018).

<sup>34</sup> See Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 J. WOMEN CULTURE & SOC’Y 45, 50–51 (2010).

<sup>35</sup> *Id.* at 51.

<sup>36</sup> ALLEN D. HERTZKE, *FREEING GOD’S CHILDREN: THE UNLIKELY ALLIANCE FOR GLOBAL HUMAN RIGHTS* 195–96 (2004); Melissa Gira Grant, *Beyond Strange Bedfellows*, THE PRIVATE EYE (2018), <http://feature.politicalresearch.org/beyond-strange-bedfellows>.

<sup>37</sup> International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (1998); Michael Cromartie, *The Jew Who Is Saving Christians*, CHRISTIANITY TODAY (1999), <https://www.christianitytoday.com/ct/1999/march1/9t3050.html>.

<sup>38</sup> See Grant, *supra* note 36.

<sup>39</sup> *Id.*; LAURA J. LEDERER, *TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY* (1980); Elizabeth Bewley, Comment, *A New Form of “Ideological Capture”: Abortion Politics and the Trafficking Victims Protection Act*, 8 HARV. L. & POL’Y REV. 229, 236–37 (2014); Tara

Lederer founded The Protection Project, working for years to show the reach of sex trafficking by documenting worldwide trafficking routes, laws from nearly 200 countries, and survivor stories.<sup>40</sup> She revealed the vast amounts of money made by sex traffickers, remarking that “unlike drugs, which are sold only once, a human being can be sold over and over again.”<sup>41</sup> Horowitz relied primarily on Lederer to bring feminists into the coalition, and she delivered, drawing in: Jessica Neuwirth, founder of Equality Now, an international women’s rights organization; Gloria Steinem, feminist spokesperson and founder of *Ms. Magazine*; Patricia Ireland, president of the National Organization for Women, also known as NOW; Gloria Feldt, president of Planned Parenthood; and Eleanor Smeal, president of The Feminist Majority.<sup>42</sup>

Representative Christopher Smith (R-N.J.), who sponsored the House version of the TVPA, and Senator Samuel Brownback (R-KS.), who co-sponsored the Senate version with Senator Paul Wellstone (D-MN.), reached out to the coalition Horowitz had formed.<sup>43</sup> Smith and Brownback, both Catholics,<sup>44</sup> cited government’s duty to protect basic human rights. In a hearing before the Commission on Security and Cooperation in Europe on the sex trade, Smith stated that sex trafficking denies a victim her most basic human rights—“namely, her rights to liberty and security of person, her right not to be held in slavery or servitude, and her right to be free from cruel or inhumane treatment. In the worst cases, she is denied her right to life.”<sup>45</sup> Brownback later told Nicholas Kristof of the *New York Times* that he threw himself into human rights issues because “I had a health issue a few years back, and it really

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McKelvey, *Of Human Bondage*, THE AMERICAN PROSPECT (2004), <http://prospect.org/article/human-bondage>.

<sup>40</sup> HERTZKE, *supra* note 36, at 317–19; *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Comm. on Security and Cooperation in Europe*, 106th Cong. 1, 56–58 (1999) [hereinafter *Smith/Lederer, Sex Trade Hearing*] (testimony of Laura J. Lederer).

<sup>41</sup> HERTZKE, *supra* note 36, at 317; *Smith/Lederer Sex Trade Hearing, supra* note 40, at 56.

<sup>42</sup> HERTZKE, *supra* note 36, at 315–30; Grant, *supra* note 36; Tom Strode, *Land, Others Ask White House to Reverse Itself on Sex Trafficking*, BAPTIST PRESS (Jan. 10, 2000), <http://www.bpnews.net/5083/land-others-ask-white-house-to-reverser-itself-on-sex-trafficking>.

<sup>43</sup> Stolz, *supra* note 18, at 415–16.

<sup>44</sup> Although Smith, Brownback, and William Bennett brought their own Catholicism to the coalition, the Catholic Church did not play a large initial role. By 2007, however, the coalition included the Catholic Bishops Conference. See Ronald Weitzer, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. & SOC’Y 447, 449 (2007) (listing the Catholic Bishops Conference among coalition members); see also Pontifical Academy of Social Sciences, *Human Trafficking: Issues Beyond Criminalization, Accompanying Recommendations*, [http://www.pass.va/content/scienze-sociali/en/events/2014-18/humantrafficking/recommendation\\_annex.html](http://www.pass.va/content/scienze-sociali/en/events/2014-18/humantrafficking/recommendation_annex.html) [hereinafter *Pontifical Academy Recommendations*] (“Since Catholic Social Doctrine, from Vatican II, is always addressed to ‘All people of goodwill,’ collaboration in causes such as the abolition of Human Trafficking is welcomed from those of other faiths and of none. It follows that the social movement now unfolding is both ecumenical and broadly humanistic in its supporters.”).

<sup>45</sup> *Smith/Lederer Sex Trade Hearings, supra* note 40, at 1 (opening statement of Representative Smith).



made my faith real. It made me think, the things that the Lord would want done, let's do. His heart is with the downtrodden, so let's help them."<sup>46</sup>

During the time that Smith and Brownback were working with Congressional committees, conducting hearings that led to bills that led to the TVPA, the United States had taken a primary role in defining human trafficking on the international stage, an effort that led to the 2000 U.N. Trafficking Protocol.<sup>47</sup> In 1998, President William Jefferson Clinton directed the President's Interagency Council on Women ("PICW") to develop and coordinate U.S. domestic and international policy on trafficking. Secretary of State Madeleine Albright served as PICW Chair; and President Clinton appointed First Lady Hillary Rodham Clinton as honorary co-Chair.<sup>48</sup> The United States appeared to take the side of non-abolitionists during U.N. negotiations,<sup>49</sup> arguing that sex trafficking requires force, fraud, or coercion.<sup>50</sup> In an editorial in the Wall Street Journal, Christian coalition leaders Bennett and Colson blistered the Clinton administration:

The White House position, should it prevail, would effectively ensure that prostitution and pornography would be treated as legitimate career options for women, as long as women "consent" to it and no force is involved. In defining the term sexual exploitation, the administration has supported using the phrase forced prostitution rather than simply prostitution. In this instance the adjective forced makes all the difference. If the administration's position is accepted, the focus of attention would shift from the profiteers who traffic in women to the supposed state of mind of the victimized women. It would create loopholes long sought by perpetrators, insulating them from criminal prosecution.

Even if it were practical to distinguish between consent and force in such cases, the administration's position would still contradict common sense and decency. Prostitution and pornography inevitably exploit women . . .

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<sup>46</sup> Nicholas D. Kristof, *When the Right Is Right*, N.Y. TIMES (Dec. 22, 2004), <https://www.nytimes.com/2004/12/22/opinion/when-the-right-is-right.html>; cf. *Matthew* 25:40 ("Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me.").

<sup>47</sup> 2000 U.N. Trafficking Protocol, *supra* note 15.

<sup>48</sup> U.S. DEPT. OF STATE, *Welcome to the President's Interagency Council on Women*, <https://1997-2001.state.gov/picw/index.html> (last visited Feb. 10, 2019).

<sup>49</sup> State Department officials denied that the PICW supported legal prostitution, arguing that any effort to abolish all prostitution had no chance of success, and that its efforts were geared to obtaining a strong, law and order document. Philip Shenon, *Feminist Coalition Protests U.S. Stance on Sex Trafficking Treaty*, N.Y. TIMES (Jan. 13, 2000), <https://www.nytimes.com/2000/01/13/world/feminist-coalition-protests-us-stance-on-sex-trafficking-treaty.html>.

<sup>50</sup> Chuang, *supra* note 11, at 1677–78 n.87.

<sup>51</sup> William J. Bennett & Charles W. Colson, *The Clintons Shrug at Sex Trafficking*, WALL ST. J. (Jan. 10, 2000), <https://www.wsj.com/articles/SB947439830524262160>.

Although they agreed with the articulated policy, coalition feminists, mostly loyal to the Clinton Administration, perceived Bennett's and Colson's editorial as a betrayal, a "cynical exploitation of the serious issue of sex trafficking," and a "political ploy."<sup>52</sup> Indeed, just days before the Wall Street Journal published the editorial, a group of nine feminists had sent a similar letter to the White House protesting the U.S. position on sex trafficking in the U.N., portraying it as pro-prostitution, but not laying the blame at the First Lady's feet.<sup>53</sup> The group included Patricia Ireland (NOW), Gloria Feldt (Planned Parenthood), Dorchen Leidholdt (Coalition Against Trafficking in Women), Julia Scott (National Black Women's Health Project), Frances Kissling (Catholics for a Free Choice),<sup>54</sup> and Gloria Steinem.<sup>55</sup> The letter accused the PICW and the Clinton Administration of taking a position "extremely detrimental to women" in the U.N. by defining "forced prostitution" as "sexual exploitation," but not including prostitution involving something less than force as "sexual exploitation."<sup>56</sup> Although the editorial strained the coalition, it held firm, united by the shared belief that the sex trade harms women and harms society.<sup>57</sup>

In 2002, President George W. Bush issued National Security Presidential Directive 22 ("NSPD-22"), making sex trafficking a national security priority, and declaring war on it.<sup>58</sup> NSPD-22 proclaimed that U.S. policy toward sex trafficking is based on an abolitionist approach.<sup>59</sup> The U.S. government "opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The [U.S.] Government's position is that these activities should not be regulated as a legitimate form of work for any human being."<sup>60</sup> Neo-abolitionist feminist Donna Hughes credited Lederer with convincing the Bush Administration to

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<sup>52</sup> Tony Carnes, *Washington: "Odd Couple" Politics*, CHRISTIANITY TODAY (Mar. 6, 2000), <https://www.christianitytoday.com/ct/2000/march6/14.24.html>; HERTZKE, *supra* note 36, at 327.

<sup>53</sup> HERTZKE, *supra* note 36, at 327; Brian Blomquist, "Hooker" Panel Puts First Lady on the Spot, N.Y. POST (Jan. 8, 2000), <https://nypost.com/2000/01/08/hooker-panel-puts-first-lady-on-the-spot/>.

<sup>54</sup> The Catholic Church does not consider Catholics for a Free Choice a Catholic organization. United States Conf. of Cath. Bishops, *NCCB/USCC President Issues Statement on Catholics for a Free Choice* (May 10, 2000), <http://www.usccb.org/news/2000/00-123.cfm> ("On a number of occasions the National Conference of Catholic Bishops (NCCB) has stated publicly that [Catholics for a Free Choice] is not a Catholic organization, does not speak for the Catholic Church, and in fact promotes positions contrary to the teaching of the Church as articulated by the Holy See and the NCCB.").

<sup>55</sup> Grant, *supra* note 36, at 418; Stolz, *supra* note 18.

<sup>56</sup> Shenon, *supra* note 49.

<sup>57</sup> HERTZKE, *supra* note 36, at 327–29.

<sup>58</sup> THE WHITE HOUSE, *National Security Presidential Directive/NSPD-22 1* (Dec. 16, 2002), <https://ctip.defense.gov/Portals/12/Documents/NSPD-22.pdf>.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.* at 3–4.

make sex trafficking a national security issue.<sup>61</sup> Remarking on this accomplishment of the Christian/feminist coalition, Hughes wrote: “It was historic and unprecedented. A conservative Republican president of the United States had issued a policy consistent with both radical feminist theory on prostitution and sexual exploitation and conservative, religious philosophy of protecting human dignity.”<sup>62</sup>

Both Christians and feminists in the coalition conceive the issue in ways that inspire their members to act.<sup>63</sup> Christians view sex trafficking and prostitution as human rights violations. Representative Smith calls sex trafficking “‘a sinister trade’ that violates ‘the God-given dignity and integrity of each individual.’”<sup>64</sup> Neo-abolitionist feminists see sex trafficking and prostitution as women’s issues.<sup>65</sup> In 2005, Lederer, then serving in President George W. Bush’s Administration as Senior Advisor on Trafficking in the State Department’s Office of Global Affairs, said this about the Bush Administration’s response to sex trafficking:

Unlike those who wanted to clean up prostitution and include it in the GNP, we saw it as a particularly pernicious social problem, linked to criminal behavior. We saw it as a degradation of the most intimate act between a man and a woman. We saw it as encouraging exploitation and abuse of females and contributing to dysfunctional families. We felt it was linked to public and private health crises, and, last but not least, we believed it fueled human trafficking.<sup>66</sup>

Although Christians and neo-abolitionist feminists do not necessarily share the same reasons for supporting neo-abolitionist social policy, though certainly some number do, they agreed on a set of principles they could jointly advance. Both groups lobby for policy and legal responses to sex trafficking and prostitution that embrace social-welfare policies that help women to leave the sex trade, with enough support to avoid returning to it.<sup>67</sup> They favor public education programs designed to cast light on the harms women suffer in the sex trade and to change social norms, turning the stigma

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<sup>61</sup> *The New Abolitionist Movement*, NATIONAL REV. (Jan. 26, 2006), <https://www.nationalreview.com/2006/01/new-abolitionist-movement-interview/> (interview of Donna Hughes).

<sup>62</sup> Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 34–35 (2008).

<sup>63</sup> See Stolz, *supra* note 18, at 424.

<sup>64</sup> Tony Carnes, *Alliance Targets Sex Trafficking*, CHRISTIANITY TODAY (Aug. 9, 1999), <https://www.christianitytoday.com/ct/1999/august9/9t918a.html>.

<sup>65</sup> JEFFREYS, *supra* note 12, at vii (“*The Idea of Prostitution* shows how . . . defences of prostitution arose and counters them with the view—which has a very long history in feminist activism on prostitution from the nineteenth century onwards—that this harmful cultural practice is one aspect of the oppression of women and a form of men’s violence that has to be brought to an end.”) (footnote omitted).

<sup>66</sup> Laura J. Lederer, *Remarks at NGO Briefing on U.S. Government International Response to Trafficking*, U.S. DEPT. OF STATE (March 8, 2005), <https://2001-2009.state.gov/g/tip/rls/rm/2005/46562.htm>.

<sup>67</sup> Dempsey, *supra* note 14, at 1730.

of prostitution on buyers instead of sellers.<sup>68</sup> They argue for criminal law reforms that make buying sexual access criminal and that train the eyes of law enforcement on the traffickers, pimps and madams, investors, and buyers, rather than on the women offering, or forced to offer, sexual access.<sup>69</sup>

### B. Catholic Social Teaching

Catholic Social Teaching (“CST”) is the body of literature written in the modern era by papal and episcopal teachers in response to the political, economic, and social issues of our time. Though the Catholic Church’s mission is religious, its mission spills over into political, economic, and social issues to defend human dignity, protect human rights, foster unity among all people, and help people to find value and meaning in their work and activity.<sup>70</sup> The tenets of CST embrace a human rights framework for society that sets limits within which a good society functions. This framework abhors the sex trade, both sex trafficking and prostitution, because it attacks human dignity, offends human rights, depresses solidarity and community, and drains value and meaning from the acts of all those involved.

CST never loses sight of two essential Catholic beliefs: (1) that God is transcendent, that He is without earthly limits; and (2) that God imbues all humans with dignity.<sup>71</sup> These beliefs stem from the religious belief that God created humans in His image.<sup>72</sup> Yet, God is the Holy Trinity—the Father, the Son, and the Holy Spirit; He is each of these, together.<sup>73</sup> Hence, every person reflects the Holy Trinity: “For each person not only reflects God, but is the expression of God’s creative work and the meaning of Christ’s redemptive ministry.”<sup>74</sup> The Compendium of the Social Doctrine of the Church, explains what it means that God created human persons in His image:

The human person is created in the image of God in the sense that he or she is capable of knowing and of loving their Creator in freedom. Human beings are the only creatures on earth that God has willed for their own sake and has called to share, through knowledge and love, in his own divine life. All human beings, in as much as they are created in the image of God, have the dignity of a person. A person is not something but someone, capable of

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<sup>68</sup> *Id.* at 1730–31.

<sup>69</sup> *Id.* at 1731.

<sup>70</sup> *Gaudium et Spes*, *supra* note 6, §§ 40–43.

<sup>71</sup> Nat’l Conf. of Catholic Bishops, *The Challenge of Peace: God’s Promise and Our Response, A Pastoral Letter on War and Peace*, para. 15 (1983) [hereinafter *God’s Promise*].

<sup>72</sup> *Id.*; see also *Genesis* 1:26–27.

<sup>73</sup> *Catechism of the Catholic Church*, § 266 (1992), [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p1s2c1p2.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p1s2c1p2.htm) (“Now this is the Catholic faith: We worship one God in the Trinity and the Trinity in unity, without either confusing the persons or dividing the substance; for the person of the Father is one, the Son’s is another, the Holy Spirit’s is another; but the Godhead of the Father, Son and Holy Spirit is one, their glory equal, their majesty coeternal” (Athanasian Creed: DS 75; ND 16)).

<sup>74</sup> *God’s Promise*, *supra* note 71, at para. 15.

self-knowledge and of freely giving himself and entering into communion with God and with other persons.<sup>75</sup>

Thus, by creating human persons in His image, God offers everyone the capacity to know and love God, his or her self, and other persons. This is the dignity of the human person.

A corollary is that by creating human persons in the image of the Holy Trinity, God created social beings, meant to live in community with each other. “For by his innermost nature man is a social being, and unless he relates himself to others he can neither live nor develop his potential.”<sup>76</sup> Inherent in the dignity of the human person is the duty to promote the common good.<sup>77</sup> CST holds that the principle of the common good stems from the dignity, unity, and equality of every human person.<sup>78</sup> The common good is “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment . . . .”<sup>79</sup> The common good belongs to everyone; it is shared, attained, increased, and safeguarded by the community.<sup>80</sup> “[E]veryone must consider his every neighbor without exception as another self, taking into account first of all his life and the means necessary to living it with dignity, so as not to imitate the rich man who had no concern for the poor man Lazurus.”<sup>81</sup>

The Catholic Church teaches that “the common good is best safeguarded when personal rights and duties are guaranteed.”<sup>82</sup> Although the duty to safeguard the common good falls on everyone, it is likewise the role of the state to defend and promote it.<sup>83</sup> “[I]t is the government’s role to guarantee the minimum conditions that make this rich social activity possible, namely, human rights and justice.”<sup>84</sup> Indeed, Pope John XXIII declared that the only reason civil authorities exist is to attain the

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<sup>75</sup> *Compendium of the Social Doctrine of the Church*, § 66 (2004), [http://www.vatican.va/archive/compendium\\_ccc/documents/archive\\_2005\\_compendium-ccc\\_en.html](http://www.vatican.va/archive/compendium_ccc/documents/archive_2005_compendium-ccc_en.html) [hereinafter *Compendium*].

<sup>76</sup> *Gaudium et Spes*, *supra* note 6, § 12; *see also Compendium*, *supra* note 75, § 149 (“The human person is essentially a social being because God, who created humanity, willed it so. . . . [The human being is] a free and responsible being who recognizes the necessity of integrating himself in cooperation with his fellow human beings, and who is capable of communion with them on the level of knowledge and love”); *Catechism of the Catholic Church*, *supra* note 73, § 1879 (“The human person needs to live in society. Society is not for him an extraneous addition but a requirement of his nature.”).

<sup>77</sup> *Catechism of the Catholic Church*, *supra* note 73, § 1913.

<sup>78</sup> *Compendium*, *supra* note 75, § 164.

<sup>79</sup> *Gaudium et Spes*, *supra* note 6, § 26.

<sup>80</sup> *Compendium*, *supra* note 75, § 164.

<sup>81</sup> *Gaudium et Spes*, *supra* note 6, § 27.

<sup>82</sup> Pope John XXIII, *Pacem In Terris*, § 60 (1963) [hereinafter *Pacem in Terris*].

<sup>83</sup> *Catechism of the Catholic Church*, *supra* note 73, § 1927; *see also Pacem in Terris*, *supra* note 82, §§ 60–72 (detailing the principal duties of the state).

<sup>84</sup> United States Conf. of Cath. Bishops, *Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, para. 122 (1986).

common good.<sup>85</sup> He launched a list of human rights endorsed by the Catholic Church that continues to grow.<sup>86</sup> The list began: “But first We must speak of man’s rights. Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services.”<sup>87</sup>

Human persons have the right to work,<sup>88</sup> and to do so in conditions that do not “weaken his physical or moral fibre.”<sup>89</sup> Pope John Paul II grounds the right to work, and the duty to work, in the Book of Genesis.<sup>90</sup> After creating humankind, “God said to them, ‘Be fruitful and multiply, and fill the earth and subdue it . . . .’”<sup>91</sup> Pope John Paul II writes that “though these words do not refer directly and explicitly to work, beyond any doubt they indirectly indicate it as an activity for man to carry out in the world.”<sup>92</sup> Made in the image of God the Creator, man, too, must create through his labor. Although *Laborem Exercens* concedes that different jobs have greater or lesser objective value to society, it teaches that the value of each job “is judged above all by the measure of the dignity of the subject of work, that is to say the person, the individual who carries it out.”<sup>93</sup> Yet, the purpose of work must remain moored to the common good. “Man must work out of regard for others, especially his own family, but also for the society he belongs to, the country of which he is a child, and the whole human family . . . since he is the heir to the work of generations and . . . a sharer in building the future . . . .”<sup>94</sup>

CST takes a straightforward approach to sex trafficking brought about through force, fraud, or coercion, or involving a child. To the extent sex trafficking is “the forcible violation of the sexual intimacy of another person [rape]<sup>95</sup> . . . [it] deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. It is always an

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<sup>85</sup> *Pacem in Terris*, *supra* note 82, § 54.

<sup>86</sup> *Id.* §§ 11–27.

<sup>87</sup> *Id.* § 11; see also Pope John Paul II, *Address to the 34th General Assembly of the United Nations* (1979) (listing the most important human rights).

<sup>88</sup> *Pacem in Terris*, *supra* note 82, § 18.

<sup>89</sup> *Id.* § 19.

<sup>90</sup> Pope John Paul II, *On Human Work: Encyclical Laborem Exercens*, § 4 (1981) [hereinafter *Laborem Exercens*]; see also *id.* § 16 (teaching that work is man’s duty).

<sup>91</sup> *Genesis* 1:27–28.

<sup>92</sup> *Laborem Exercens*, *supra* note 90, § 4.

<sup>93</sup> *Id.* § 6.

<sup>94</sup> *Id.* § 16.

<sup>95</sup> Cf. MODEL PENAL CODE § 213.1 note on Rape and Related Offenses (AM. LAW INST., 1962) (The explanatory note states that “[t]he most serious forms of the offense include cases where the actor compels the victim to submit by force or by certain specified threats, where the actor has impaired the victim’s capacity to control or appraise her conduct by administering drugs or other intoxicants, where the victim is unconscious, or where the victim is less than 10 years old.”).

intrinsically evil act.”<sup>96</sup> Yet, despite Pope Francis’s recent comments condemning buyers of sexual access as “criminal” for “torturing a woman,”<sup>97</sup> the *Catechism of the Catholic Church* takes a contrasting approach to prostitution that does not involve force, fraud, or coercion, or a child. The seller, doubtless conceived as a willing prostitute freely choosing to sell sexual access, does injury to the dignity God gave her; and the buyer, for sharing in the seller’s grave sin, debases the body that God gave him.<sup>98</sup> The buyer’s sin is untethered to any harm he might do to the seller—either directly, by causing her physical or psychological harm, or indirectly, by fueling the market for sexual access.

The *Catechism of the Catholic Church* does allow, however, that the seller’s “offense can be attenuated by destitution, blackmail, or social pressure.”<sup>99</sup> This highlights the tension in CST between consent and coercion in the sex trade. The Second Vatican Council listed prostitution as an insult to human dignity along with “subhuman living conditions,” “arbitrary imprisonment,” “slavery,” and “the selling of women and children.”<sup>100</sup> In each of these other “infamies,” the subject of the infamy is the victim. Considered together, it is at least ambiguous whether the subject of the infamy of prostitution is the woman whose body is used for sexual access, or the buyer who defiles the body God gave him.

Indeed, more recent CST declares prostitution “modern day slavery,”<sup>101</sup> and the seller the victim.<sup>102</sup> The buyer “needs more than social condemnation and having to face the full rigours of the law. He must also be helped to face his deeper problems . . . .”<sup>103</sup> CST has begun to perceive that there is a spectrum that stretches from truly free consent to varying degrees of coercion, and that the sex trade makes victims of the women caught in it.<sup>104</sup> “She is a human being, in many cases crying for

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<sup>96</sup> *Catechism of the Catholic Church*, *supra* note 73, § 2356; *see also* Letter from Pope John Paul II to Archbishop Jean-Louis Tauran, *supra* note 8 (“The trade in human persons constitutes a shocking offence against human dignity and a grave violation of fundamental human rights.”).

<sup>97</sup> Pullella, *supra* note 3.

<sup>98</sup> *Catechism of the Catholic Church*, *supra* note 73, § 2354 (“Do you know that your bodies are members of Christ? Should I therefore take the members of Christ and make them members of a prostitute? Never! Do you not know that whoever is united to a prostitute become one body with her?”) (citing 1 *Cor* 6:15–20).

<sup>99</sup> *Catechism of the Catholic Church*, *supra* note 73, § 2354.

<sup>100</sup> *Gaudium et Spes*, *supra* note 6, § 27.

<sup>101</sup> Pontifical Council for the Pastoral Care of the Migrants and Itinerant People, *1st International Meeting of Pastoral Care for the Liberation of Women of the Street*, § 1 (2005) [hereinafter *Liberation of Women of the Street*] (“It is important to recognize that sexual exploitation, prostitution and trafficking of human beings are all acts of violence against women and as such constitute an offence to the dignity of women and are a grave violation of basic human rights”).

<sup>102</sup> *Id.* § 4.

<sup>103</sup> *Id.* § 5; *see also* Letter from Pope John Paul II to Archbishop Tauran, *supra* note 8 (“The disturbing tendency to treat prostitution as a business or industry not only contributes to the trade in human beings, but is itself evidence of a growing tendency to detach freedom from the moral law and to reduce the rich mystery of human sexuality to a mere commodity.”).

<sup>104</sup> *Liberation of Women of the Street*, *supra* note 101, § 1.

help because selling her body on the street is not what she would choose to do voluntarily . . . . Each person has a different story, mainly one of violence, abuse, mistrust, low self-esteem, fear, lack of opportunities.”<sup>105</sup> It seems the *Catechism of the Catholic Church* has not kept pace with current CST.<sup>106</sup>

Just like the neo-abolitionists, CST favors policy and legal responses to sex trafficking and prostitution that endorse social-welfare services, funded by the destination countries whose demand fuels the sex trade, and at least in part by the profits seized from the third parties that build the trade—the traffickers, pimps and madams, and investors.<sup>107</sup> “What all recognize is the range of services needed after the trauma of being trafficked to the country of destination: medical care, counseling, language learning, residence and work permits, legal assistance, life-skills, job training, accommodation and, above all, local social integration.”<sup>108</sup> Also mirroring the neo-abolitionists, CST lobbies for policy and legal responses that reduce demand for prostitution by making the purchase of sexual access a crime, and that puts the social stigma of prostitution on the buyer rather than the seller.<sup>109</sup>

### III. THE BATTLE OVER SEX TRAFFICKING POLICY

The struggle between sex worker rights supporters and abolitionists over U.N. and U.S. sex trafficking policy have led to compromises that fail to take on the demand side of prostitution and sex trafficking with the rigor needed. These compromises leave victims of prostitution and sex trafficking without sufficient human rights protections and social welfare supports to restore their capacity to live their lives fully.

In the late 1990s, the Clinton Administration developed a three-pronged strategy for addressing sex trafficking.<sup>110</sup> The strategy, later dubbed the “Three Ps,” focused on prevention, protection, and prosecution.<sup>111</sup> In efforts to take on sex trafficking in the United Nations and in the United States Congress, this same three-pronged, law and order approach to attacking sex trafficking took root.<sup>112</sup>

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<sup>105</sup> See *id.* § 4; Cf. Weitzer, *supra* note 32, at 223, 232–36. To highlight the usefulness of sociological micro-level studies of “migrant sex workers” [his language] on the broader study of migrant sex workers, Weitzer explains that the migrant sex worker experience falls along a spectrum, with physical coercion on one end and informed consent on the other, and that it is helpful to group the studies into patterns of experience: “extreme or manifold victimization;” “mixed experiences or moderate mistreatment;” and “low or no victimization.” *Id.*

<sup>106</sup> See Cindy Wooden, *Catechism Change Shows ‘True Dogmatic Progress,’ Archbishop Says*, CRUX (Aug. 3, 2018), <https://cruxnow.com/vatican/2018/08/03/catechism-change-shows-true-dogmatic-progress-archbishop-says/>. Just as the Catholic Church recently revised the *Catechism* with respect to capital punishment to reflect a deeper understanding of the tenets of the faith, its more recent insights on consent and coercion might compel revisiting the section on prostitution to bring it in line with current CST.

<sup>107</sup> *Pontifical Academy Recommendations*, *supra* note 44.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Hughes, *supra* note 62, at 36.

<sup>111</sup> *Id.*

<sup>112</sup> Frank W. Munger, *Advocacy at the Leading Edge of Social Change: The Importance of Front Line Innovators*, 60 N.Y.L. SCH. L. REV. 567, 576 (2016) (“The TVPA and the Protocol’s intertwined origins are apparent from parallel incorporation of a three-pronged approach to



*A. United Nations Sex Trafficking Policy*

In a 1996 report, U.N. Secretary-General Boutros Boutros-Gali called for a review of U.N. policy on sex trafficking of women and girls.<sup>113</sup> He sought input from NGOs.<sup>114</sup> Negotiations began in January 1999 and did not conclude until twenty-two months later in October 2000, with the 2000 U.N. Protocol to Protect and Punish Trafficking in Persons, Especially Women and Children (the “2000 U.N. Trafficking Protocol”), a subsidiary treaty to the United Nations Convention on Transnational Organized Crime.<sup>115</sup>

Article 2 of the 2000 U.N. Trafficking Protocol declares three purposes: (1) to prevent and combat trafficking in persons; (2) to protect and assist victims of trafficking; and (3) to promote cooperation among the States Parties to meet the first two purposes.<sup>116</sup> Article 3 defines “trafficking in persons.”<sup>117</sup> Article 4 provides that the Protocol applies to preventing, investigating, and prosecuting traffickers, as well as protecting victims.<sup>118</sup> Article 5 requires State Parties to make trafficking a crime as defined by Article 3.<sup>119</sup> Articles 6 through 8 detail protections for trafficking victims.<sup>120</sup> Articles 9 through 13 address the prevention of trafficking, cooperation between States Parties, and other measures, such as border control and the quality of identification and travel documents.<sup>121</sup>

1. Reducing Demand Through Prosecution and Prevention

When the U.N. adopted a law and order framework to tackling trafficking, neo-abolitionists had their first victory. Yet, the language of Article 3 defining trafficking reflects a compromise between neo-abolitionist and non-abolitionist conceptions of trafficking and prostitution. Knowing that several States Parties had already made prostitution legal, and urged on by sex worker rights advocates seeking respect for willing sex workers, the U.S. led efforts to require force, fraud, or coercion when defining trafficking in persons.<sup>122</sup> As detailed, this drew fierce criticism from the neo-abolitionist coalition.<sup>123</sup> The compromise language did not deliver human rights

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intervention requiring prosecution of perpetrators, protection of victims, and efforts to prevent human trafficking.”).

<sup>113</sup> U.N. Secretary-General, *Advancement of Women: Traffic in Women and Girls*, para. 55, U.N. Doc. A/51/309 (Aug. 27, 1996).

<sup>114</sup> *Id.* para. 56.

<sup>115</sup> JO DOEZEMA, *SEX SLAVES AND DISCOURSE MASTERS: THE CONSTRUCTION OF TRAFFICKING* 113 (2010).

<sup>116</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 2.

<sup>117</sup> *Id.* art. 3.

<sup>118</sup> *Id.* art. 4.

<sup>119</sup> *Id.* art. 5.

<sup>120</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, arts. 6–8.

<sup>121</sup> *Id.* arts. 9–13.

<sup>122</sup> *See Chuang, supra* note 11, at 1677–78 n.87.

<sup>123</sup> *See id.*

protections for sex workers, and did not deliver a prostitution ban for neo-abolitionists. Trafficking is defined as follows:

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

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.<sup>124</sup>

The Protocol made consent relevant, thereby accepting sex-work feminists’ argument that some women choose sex work. Yet, the Parties declined to treat trafficking and migration for sex work as human rights issues. Instead, to sex workers rights advocates’ dismay, Article 3 focused on reducing demand by prosecuting traffickers.<sup>125</sup>

The Protocol also attempts to reduce demand by discouraging buyers. Article 9, entitled “Prevention of trafficking in persons,” reads, in part, as follows:

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

...

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, *to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*<sup>126</sup>

<sup>124</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 3.

<sup>125</sup> Chuang, *supra* note 11, at 1677 (“[T]he biggest losers in the prostitution debates were the human rights advocates who had gone to Vienna with the goal of including in the treaty substantive rights protections for trafficked persons.”).

<sup>126</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 9 (emphasis added).

Although the neo-abolitionist coalition failed to obtain a treaty-based ban on prostitution, the Protocol adopted much of their outlook. It treats a broad range of women in the sex trade as victims of trafficking, not just those who can prove force or the threat of force, but also persons deceived into prostitution, and those brought into it through abuse of their vulnerability. It defines trafficking in terms of the purpose of traffickers to exploit their victims. With respect to consent, its relevance depends on the absence of any type of coercion detailed in Article 3(a).<sup>127</sup> Finally, the Protocol supports efforts to reduce demand, including by discouraging buyers.

## 2. Protecting Victims Through Resettlement and Re-Integration

The 2000 U.N. Trafficking Protocol protects trafficking victims by offering discretionary benefits to resettle and re-integrate into society. These include human rights protections and social welfare services, immigration status protections, and repatriation rights.

Article 6, titled “Assistance to and Protection of Victims of Trafficking in Persons,” details human rights protections, including: protecting the privacy of victims; providing for appropriate housing; counseling regarding their rights, and medical, psychological, and material assistance; providing employment, educational, and training opportunities; and compensation for damage suffered.<sup>128</sup> Yet, the Protocol makes these protections discretionary.<sup>129</sup> “Rather than calling upon States Parties to support and protect trafficked persons as a matter of hard obligations, the U.N. Trafficking Protocol urges States Parties to consider such measures ‘in appropriate cases and to the extent possible under . . . domestic law.’”<sup>130</sup>

Article 7, entitled “Status of Victims of Trafficking in Persons in Receiving States,” requires States Parties “to consider” permitting a trafficked person to stay in the country to which traffickers brought her. Article 7 provides that “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”<sup>131</sup>

Article 8, “Repatriation of Victims of Trafficking in Persons,” details the duties of States Parties to repatriate trafficking victims.<sup>132</sup> The State Party of which a victim was a national or had a right of permanent residence at the time she was trafficked has a duty “to facilitate and accept” her return, “with due regard for [her] safety.”<sup>133</sup> Such State Party shall do so without unreasonable delay, and shall issue necessary travel documents.<sup>134</sup> Finally, “[t]his article shall be without prejudice to any right afforded

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<sup>127</sup> See *id.* art. 3(a).

<sup>128</sup> *Id.* art. 6.

<sup>129</sup> See *id.*

<sup>130</sup> Chuang, *supra* note 11, at 1677 (quoting 2000 U.N. Trafficking Protocol, *supra* note 15, art. 6, § 1).

<sup>131</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 7.

<sup>132</sup> *Id.* art. 8.

<sup>133</sup> *Id.* art. 8, §§ 1–3.

<sup>134</sup> *Id.* art. 8, §§ 1, 3–4.

to victims of trafficking in persons by any domestic law of the receiving State Party.”<sup>135</sup>

The language of Article 3 offers the Protocol’s discretionary benefits found in Articles 6, 7, and 8 of the Protocol, to all persons who find themselves victims of the sex industry, that is, to all but sex workers who enter the industry informed and willing.

### B. United States Sex Trafficking Policy

Neo-abolitionists and non-abolitionists also battled over U.S. human trafficking policy. At the same time negotiations over the 2000 U.N. Trafficking Protocol ended, Representative Christopher Smith (R-N.J.) sponsored an anti-sex-trafficking bill later enacted, as amended, as the Victims of Trafficking and Violence Protection Act, also commonly known as the Trafficking Victims Protection Act of 2000 (the “TVPA”).<sup>136</sup> The TVPA shares a similar approach to sex trafficking as the 2000 U.N. Trafficking Protocol, providing for means to prevent and prosecute traffickers, protect and assist victims, and cooperate internationally.<sup>137</sup>

#### 1. Reducing Demand through Prosecution and Prevention

Like the 2000 U.N. Trafficking Protocol, the TVPA takes a law enforcement approach to stopping sex trafficking. It targets both sellers and buyers. The TVPA defines “sex trafficking” as follows: “The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>138</sup> Yet, the TVPA does not make sex trafficking a crime. Instead, it makes “severe forms of trafficking in persons” a felony, which it defines as follows:

(A) 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 attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>139</sup>

The TVPA defines “coercion” as:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

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<sup>135</sup> *Id.* art. 7, § 5.

<sup>136</sup> TVPA, *supra* note 16; Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U.L. REV. 157, 168–69 n.62 (2007).

<sup>137</sup> *See* Munger, *supra* note 112, at 576.

<sup>138</sup> TVPA, Pub. L. No. 106-386, § 103(9), 114 Stat. 1466, 1470 (2000) (codified at 22 U.S.C. § 7102).

<sup>139</sup> *Id.* § 103(8).

(C) the abuse or threatened abuse of the legal process.<sup>140</sup>

Non-abolitionists largely won the battle to define criminal human trafficking, because the TVPA requires the government to prove that traffickers induced victims to perform commercial sex acts through force, fraud, or coercion. Sex trafficking without force, fraud, or coercion is not criminal under the TVPA, unless it involves children.<sup>141</sup>

Yet, neo-abolitionists steadily made inroads in the years that followed. In section 204 of the 2005 TVPRA, “Prevention of Domestic Trafficking in Persons,” Congress authorized \$25 million per year for 2006 and 2007 grants to state and local law enforcement to establish, develop, expand, or strengthen programs to investigate and prosecute buyers of commercial sex acts, and to educate them on the harms of prostitution.<sup>142</sup>

In 2008, Congress renamed the TVPA the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the “2008 TVPRA”) after the British politician, philanthropist, evangelical Christian, and slavery abolitionist.<sup>143</sup> Neo-abolitionists made marked legislative gains with the 2008 TVPRA. It expands and clarifies the definition of “coercion” in the crime of sex trafficking of children or by force, fraud, or coercion, a felony under the federal criminal code. It defines “coercion” as “threats of serious harm,” among other things,<sup>144</sup> and then goes on to define “serious harm” as follows:

(4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputation harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.<sup>145</sup>

The 2008 TVPRA moved the statute much closer to the 2000 U.N. Protocol, and neo-abolitionist thinking, by clarifying that harm is not solely physical harm or the threat of it, and by focusing on a person’s background and circumstances. The 2008 TVPRA also lowered the standard of proof in prosecutions from “knowing” to “reckless disregard,” so that traffickers who close their eyes to coercion or abuse cannot claim an ignorance defense.<sup>146</sup> Further, a trafficker can no longer claim ignorance of a

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<sup>140</sup> *Id.* § 103(2).

<sup>141</sup> *Id.* § 112 (codified at 18 U.S.C. § 1591).

<sup>142</sup> 2005 TVPRA, H.R. Res. 972, 109th Cong. § 204 (2005) (enacted).

<sup>143</sup> 2008 TVPRA, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

<sup>144</sup> 2008 TVPRA § 222 (codified at 18 U.S.C. § 1591) (defining coercion as “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of law or the legal process.”).

<sup>145</sup> *Id.* (codified at 18 U.S.C. § 1591(e)(4)).

<sup>146</sup> *Id.* § 222(b)(3) (codified at 18 U.S.C. § 1589(b)).

victim's age as a defense, if the trafficker had a "reasonable opportunity to observe the victim" or recklessly disregarded the victim's age.<sup>147</sup>

In 2015, neo-abolitionists again made legislative progress when Congress passed the Justice for Victims of Trafficking Act of 2015 (the "JVTA").<sup>148</sup> Section 108 of the JVTA, "Reducing Demand for Sex Trafficking," modified the crime of severe forms of trafficking in persons to include customers of victims by adding "patronized" and "solicited" to the modes of commission of an offense under 18 U.S.C. § 1591.<sup>149</sup> Thus, any buyer "knowing, or, . . . in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act" is guilty of a felony.<sup>150</sup> Section 118, "Stop Advertising Victims of Exploitation Act of 2015" or the "SAVE Act of 2015," also added "advertised" to the modes of commission of an offense under 18 U.S.C. § 1591, where there is proof that the advertiser knew that the advertised victim was a minor or that force, fraud, or coercion caused the victim to engage in a commercial sex act.<sup>151</sup>

In sum, in the fifteen years that followed the passage of the TVPA, Congress steadily refined the tools it furnished federal law enforcement to reduce demand for trafficked women through prevention and prosecution. Congress ensured that law enforcement had resources to pursue traffickers, pimps and madams, other facilitators and investors, as well as buyers. Further, it funded grants to state and local law enforcement to establish, develop, expand, and strengthen programs to investigate and prosecute buyers of commercial sex acts, and to educate them on the harms of prostitution.

## 2. Protecting Victims Through Resettlement and Re-Integration

The third prong of the model, after prevention and prosecution, is protecting the victim. Section 7105 of the TVPA, entitled "Protection and assistance for victims of trafficking," details social service benefits Congress offers to victims of sex traffickers.<sup>152</sup> With respect to victims in other countries, and their children, the TVPA provides that "The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking."<sup>153</sup> The TVPA further provides that, "to the maximum extent practicable," such programs shall include: NGO-operated hotlines, culturally appropriate protective shelters, and support for mobile NGO service centers; legal, social, and other services; education and training for trafficked women and girls; safe reintegration; support for developing programs to assist families in locating and

<sup>147</sup> *Id.* § 222 (codified at 18 U.S.C. § 1591(c)).

<sup>148</sup> JVTA, Pub. L. No. 114-22, 129 Stat. 227 (2015).

<sup>149</sup> *Id.* sec. 108, § 1591, 129 Stat. 227, 238 (2015).

<sup>150</sup> 18 U.S.C. § 1591(a) (2018).

<sup>151</sup> JVTA sec. 118, § 1591(a)(1), 129 Stat. 227, 247 (2015).

<sup>152</sup> 22 U.S.C. § 7105 (2018).

<sup>153</sup> *Id.* § 7105(a).

repatriating; and support for increased protections for refugees and internally displaced persons.<sup>154</sup>

For victims of a severe form of trafficking in the United States, subject to the availability of congressional appropriations, the TVPA provides for comprehensive benefits and services through the Secretary of Health and Human Services (“HHS”), the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other federal agencies.<sup>155</sup> This includes providing social service benefits, “making food, shelter, clothing, education, mental and physical health services, job training, and other federally funded social service programs available to trafficking victims.”<sup>156</sup> The TVPA gives victims of severe forms of trafficking “access to information about their rights and translation services. To the extent practicable . . . [they] shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims . . . .”<sup>157</sup>

The TVPA requires the Secretary of HHS and the Attorney General, in consultation with the Secretary of Labor and NGOs, to establish a program to help victims of severe forms of trafficking determine the “most beneficial” assistance they need, as long as they are U.S. citizens or aliens lawfully admitted for permanent residence.<sup>158</sup> Such program shall “facilitate communication and coordination between the providers of assistance to such victims;” “provide a means to identify such providers;” and “provide a means to make referrals to programs for which such victims are already eligible, including programs administered by the Department of Justice and the Department of [HHS].”<sup>159</sup> Moreover, the Secretary of HHS and the Attorney General “may award grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victim service organizations to develop, expand, and strengthen victim service programs authorized under this subsection.”<sup>160</sup> The TVPA also gives victims the right to bring claims for damages and attorneys’ fees in federal court against traffickers.<sup>161</sup>

The TVPA also assures victims of severe forms of trafficking certain protections while in federal custody:

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<sup>154</sup> *Id.* § 7105(a)(1)(A)–(F).

<sup>155</sup> *Id.* §§ 7105(b)(1)(A)–(F), 7105(f); *see also* U.S. DEP’T OF JUST. ET AL., FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013–2017, at 5 (2014), [www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf](http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf) (“Under the TVPA, eligibility for victim services is limited to victims of ‘severe form of trafficking in persons’ . . . .”) (footnote omitted).

<sup>156</sup> Jennifer A.L. Sheldon-Sherman, *The Missing “P”*: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act, 117 PA. ST. L. REV. 443, 456 (2012).

<sup>157</sup> 22 U.S.C. § 7105(c)(2) (2018).

<sup>158</sup> *Id.* § 7105(f)(1).

<sup>159</sup> *Id.* § 7105(f)(2)(A)–(C).

<sup>160</sup> *Id.* § 7105(f)(3)(A).

<sup>161</sup> 18 U.S.C. § 1595 (2018).

(1) PROTECTIONS WHILE IN CUSTODY. Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—

(A) not be detained in facilities inappropriate to their status as crime victims;

(B) receive necessary medical care and other assistance; and

(C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.<sup>162</sup>

Finally, the TVPA provides immigration benefits to victims. It provides short-term “continued presence” non-immigrant status to persons identified by federal law enforcement as victims of a severe form of trafficking.<sup>163</sup> This status allows a victim to remain in the U.S. temporarily during an ongoing investigation of the human trafficking-related crimes committed against them. The TVPA also created the T-Visa, which provides for up to four years of non-immigrant status if the victim: (1) was a victim of a severe form of trafficking; is in the United States “on account of such trafficking;” (2) reasonably complied with the investigation and prosecution of her traffickers, or cannot do so because of trauma, or is a child; (3) and proves that she would suffer “extreme hardship involving unusual and severe harm” if she were forced to leave the United States.<sup>164</sup> Lastly, a victim may seek a lawful permanent residency status, known as a green card, if she meets certain requirements and remains in “good moral character” for three years.<sup>165</sup> Trafficking victims may also seek T nonimmigrant visas and permanent resident status for specific family members.<sup>166</sup>

#### IV. REDUCING DEMAND

Both neo-abolitionist doctrine and CST view reducing demand for sexual access and reshaping cultural norms as critical to accomplishing their goals. Both seek to ban the sex trade because of the harms it causes women to suffer. Both support public education programs designed to shine light on the harms caused. Both support holding buyers criminally responsible, as well as traffickers, pimps and madams, facilitators, and investors. Both give little weight to the principal complaint of sex workers and

<sup>162</sup> 22 U.S.C. § 7105(c)(1) (2018).

<sup>163</sup> *Id.* § 7105(c)(3)(A)(i); 28 C.F.R. § 1100.35 (2018).

<sup>164</sup> 8 U.S.C. § 1101(a)(15)(T), 1184(o).

<sup>165</sup> *Id.* § 1255(l).

<sup>166</sup> *Id.* § 1101(a)(15)(T)(ii).



sex-work feminists that current sex trafficking and prostitution policy is work like any other—and that social policy should regulate it to make it safe, instead of burdening it with criminal penalties.

There is virtually no dispute, even among non-abolitionists, that anyone drawn into the sex trade through force, fraud, or coercion is a victim who suffers serious harms.<sup>167</sup> Likewise, there is little dispute that a sex trafficked child is a victim. Certainly, neo-abolitionist doctrine and CST share that view. Turning then to the spectrum that stretches from the force, fraud, or coercion end to the free and fully-informed choice end, the harms women suffer vary in degree and frequency. On the extreme end, women suffer from different forms of violence and abuse, such as rape and beatings that can result in broken bones, bruises, traumatic brain injuries, mouth and teeth injuries, and other injuries.<sup>168</sup> Women in sex commerce also often suffer from a host of health problems. They risk contracting sexually transmitted diseases, including HIV/AIDS, unwanted pregnancies, abortions, and infertility, because their capacity to negotiate condom use is inversely related to the level of abuse used by the pimp or madam.<sup>169</sup> Common health problems among trafficked women include: fevers; backaches; sleep disorders; burning sensation, pain, or difficulty during urination; lower abdominal pain or pain in the vagina during intercourse or discharge; and vaginal itching or ulcers.<sup>170</sup> Even close to the free and fully-informed choice end of the spectrum, women often suffer from depression and “find it difficult to reconcile working in the sex industry and having stable romantic relationships and that having to lead a double life with their partners, families and friends impacts negatively on their wellbeing.”<sup>171</sup> Neo-abolitionist social policy and CST both seek to abolish prostitution so that no one has to suffer these harms.<sup>172</sup>

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<sup>167</sup> Bernstein, *supra* note 34, at 46 (“[A]s religious scholar Yvonne Zimmerman has noted, no one could plausibly claim to be ‘for’ sex trafficking.” (citing Yvonne Zimmerman, *Deliver Us from Evil: Christian Freedom and Sexual Regulation in the Trafficking Victims Protection Act* (2008) (unpublished Ph.D. dissertation, Univ. of Denver)).

<sup>168</sup> Lederer & Wetzel, *supra* note 31, at 68–76; Weitzer, *supra* note 32, at 233 (citing Maria Laura Di Tommaso et al., *As Bad as It Gets: Well-Being Deprivation of Sexually Exploited Trafficked Women*, 25 EUR. J. POL. ECON. 143, 143–62 (2009)); Acharya, *supra* note 31, at 86–87; JANICE RAYMOND & DONNA HUGHES, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 76–77 (2001); Farley & Barkan, *supra* note 31, at 40–41; Hughes, *Best Practices*, *supra* note 31, at 10–12, 77; Jody Miller, *Gender and Power on the Streets: Street Prostitution in the Era of Crack Cocaine*, 23 J. CONTEMP. ETHNOGRAPHY 427, 449 (1995); Susan Kay Hunter, *Prostitution Is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 92–94 (1993); Mimi H. Silbert & Ayala M. Pines, *Occupational Hazards of Street Prostitutes*, 8 CRIM. JUST. & BEHAV. 395, 397 (1981).

<sup>169</sup> Acharya, *supra* note 31, at 89–90, 96; RAYMOND & HUGHES, *supra* note 168, at 79–80.

<sup>170</sup> See, e.g., Archarya, *supra* note 31, at 90–92; RAYMOND & HUGHES, *supra* note 168, at 76–77.

<sup>171</sup> NICOLA MAI, MIGRANT WORKERS IN THE UK SEX INDUSTRY: FULL RESEARCH REPORT (RES-062-23-0137), at 21 (2009), [www.researchcatalogue.esrc.ac.uk/grants/RES-062-23-0137/outputs/read/969bd499-4954-41ff-8d08-391e1a6c932b](http://www.researchcatalogue.esrc.ac.uk/grants/RES-062-23-0137/outputs/read/969bd499-4954-41ff-8d08-391e1a6c932b); see also RAYMOND & HUGHES, *supra* note 168, at 81–82 (detailing mental and emotional difficulties of women in sex commerce).

<sup>172</sup> Chuang, *supra* note 11, at 1664–65; Berman, *supra* note 11, at 279–80; MacKinnon, *supra* note 12, at 13; JEFFREYS, *supra* note 12, at 128–60; *Catechism of the Catholic Church*,

Neo-abolitionist social policy and CST support public education programs, especially for buyers.<sup>173</sup> In the United States and Canada, neo-abolitionist inspired “John schools” teach men about their role in causing harm to women in the sex trade.<sup>174</sup> The goal of such programs is to teach men that their demand for sexual access leads directly to the harms women suffer. John schools reduce recidivism, especially among first-time offenders.<sup>175</sup> CST likewise seeks to reach buyers, and to flip the historic social stigma of prostitution from the woman who sells sexual access, or who is forced to sell, or who falls somewhere between consent and coercion, to the buyer, who must understand the damage his purchase has wrought. The Pontifical Academy of Social Sciences states that “We need to work on the normative attitudes that normalize ‘demand,’ drawing upon evidence of interventions generating radical changes in normativity that have been successful in many other field: drink-driving [sic], smoking, exercising . . . . [T]he task of a social movement is to harness its cultural resources to promote public censure that overrides [competing interests].”<sup>176</sup>

The structure of both the 2000 U.N. Protocol and the TVPA rests on a law and order foundation. The neo-abolitionist coalition of feminists and Christians performed much of the groundwork, holding off efforts by sex-work feminists to frame a structure on a woman’s right to practice sex work without governmental burdens.<sup>177</sup> The coalition did not overlook the demand side, however, lobbying the architects to build in barriers for buyers, too. Though not entirely successful in their efforts, both laws bear their mark. Article 9 of the 2000 U.N. Protocol requires State Parties to take on the demand side by “adopt[ing] or strengthen[ing] legislative or other measures, such as educational, social or cultural measures . . . to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”<sup>178</sup> Under the TVPA, any buyer who knows or recklessly disregards “that

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*supra* note 73, § 2356; *Liberation of Women of the Street*, *supra* note 101, § 17; *see also Pacem in Terris*, *supra* note 82, § 11.

<sup>173</sup> MICHAEL SHIVELY ET AL., AN OVERVIEW OF JOHN SCHOOLS IN THE UNITED STATES 15 (2012), [http://www.demandforum.net/wp-content/uploads/2012/01/john.school.summary.june\\_.2012.pdf](http://www.demandforum.net/wp-content/uploads/2012/01/john.school.summary.june_.2012.pdf); *Liberation of Women of the Street*, *supra* note 101, § 1; *see also* U.S. DEP’T OF JUST., NAT’L INST. OF JUST., REDUCING DEMAND FOR PROSTITUTION IN SAN FRANCISCO WITH A “JOHN SCHOOL” PROGRAM 1 (2016), <https://www.nij.gov/topics/crime/human-trafficking/Pages/labor-trafficking-in-the-us.aspx> (noting that the San Francisco John school “generated nearly \$1 million for recovery programs for women and girls involved in commercial sex.”).

<sup>174</sup> Hughes, *Best Practices*, *supra* note 31, at 31.

<sup>175</sup> Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 677 (2008) (citing Norma Hotaling & Leslie Levitas-Martin, *Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women*, 13 HASTINGS WOMEN’S L.J. 117, 122 (2002)).

<sup>176</sup> *Human Trafficking: Issues Beyond Criminalization*, PONTIFICAL ACAD. SOC. SCI. (2015), <http://www.pass.va/content/scienze-sociali/en/events/2014-18/humantrafficking.html> [hereinafter *Beyond Criminalization*].

<sup>177</sup> Chuang, *supra* note 11, at 1672–77.

<sup>178</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 9, § 5.

means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause the person to engage in a commercial sex act” is guilty of a felony.<sup>179</sup> CST points to demand as “the motor” driving the sex trade:

We could say that the Criminalization of trafficking concentrates on reducing and ideally eliminating the ‘Supply’ side of the equation, but what about the ‘Demand’, which is the motor sustaining this trade? It is the demand for . . . prostitution . . . where rich people’s wants nullify poor people’s right . . . to protect their own bodies against abuse . . . . This demand is growing, not decreasing and it fuels ‘internal trafficking’ within countries: the ‘grooming’ of young girls . . . .<sup>180</sup>

CST urges lawmakers to put up greater barriers to market demand, praising pioneering legislation that seeks “to penalise the client rather than their prey.”<sup>181</sup>

Finally, essential to the sex-worker rights regulatory model is that government must recognize women’s right to sell sexual access. The corollary to that right is men’s right to buy sexual access. Both neo-abolitionist doctrine and CST reject the belief that government must recognize either the principal or the corollary right. Neo-abolitionists reject the right to sell,<sup>182</sup> in part, because of the third-party harms it causes—that is, if some women choose to sell sexual access, they undermine the interests of other women, who then have less bargaining power to avoid such work.<sup>183</sup> They reject the right to buy because of the first party harm. “In prostitution, women are tortured through repeated rape.”<sup>184</sup> CST holds that freely selling sexual access does injury to the dignity God gave the seller.<sup>185</sup> The *Catechism of the Catholic Church* teaches that the buyer debases his body, too, by sharing in the seller’s grave sin.<sup>186</sup> More recent CST finds that “sexual exploitation, prostitution and trafficking of human beings are all acts of violence against women and as such constitute an offence to the dignity of women and are a grave violation of basic human rights.”<sup>187</sup> Thus, recent CST lines up with neo-abolitionist doctrine condemning buyers.

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<sup>179</sup> 18 U.S.C. § 1591(a) (2018).

<sup>180</sup> *Beyond Criminalization*, *supra* note 176.

<sup>181</sup> *Id.*

<sup>182</sup> Kathy Miriam, *Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex-Trafficking*, 36 J. SOC. PHIL. 1, 2 (2015) (contending that the first question to ask is whether the State should ever grant men a right to a market for sexual services).

<sup>183</sup> Jeffrey A. Gauthier, *Prostitution Law and Paternalism*, in DIMENSIONS OF MORAL AGENCY 194, 199–200 (David Boersma ed., 2014); Martin A. Monto, *Female Prostitution, Customers, and Violence*, 10 VIOLENCE AGAINST WOMEN 160, 177–78 (2004).

<sup>184</sup> MacKinnon, *supra* note 12, at 13.

<sup>185</sup> *Catechism of the Catholic Church*, *supra* note 73, § 2354.

<sup>186</sup> *Id.*

<sup>187</sup> *Liberation of Women of the Street*, *supra* note 101, § 1; Püllella, *supra* note 3 (noting Pope Francis’s view that prostitution “is torturing a woman. . . . This is criminal, a sick mentality.”).

## V. RESETTLING AND RE-INTEGRATING VICTIMS

Neo-abolitionist social policy and CST both embrace wide-ranging social-welfare policies that help women to leave the sex trade with the support needed to avoid returning to it.<sup>188</sup> They agree that the State should provide social service benefits that make available to women leaving the sex industry, among other things, food, shelter, clothing, education, mental and physical health services, counseling, job and life-skills training, legal services, translation and language learning services, and immigration benefits, if needed.<sup>189</sup> They also agree that community involvement is essential to reintegration.<sup>190</sup>

Under CST, affording “the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, and rest, and finally, the social services” is a matter of basic human rights.<sup>191</sup> Everyone has a duty to promote the common good,<sup>192</sup> so that every member of society has “relatively thorough and ready access to their own fulfillment.”<sup>193</sup> This duty also falls on the government, whose role it is to guarantee minimum human rights and justice.<sup>194</sup> Neo-abolitionists began to make headway in their struggle with sex-worker rights feminists when neo-abolitionists embraced the language of human rights.<sup>195</sup> “From the perspective of abolitionist feminist antitrafficking organizations, the shift to the human rights field in the mid-1990s was crucial to relocating a set of internecine political debates among feminists about the meaning of prostitution . . . to a humanitarian terrain in which the abolitionist constituency was more likely to prevail.”<sup>196</sup> This happened at the same time evangelical Christians were forming NGOs and entering the international political struggle over human rights.<sup>197</sup> What is certain is that the neo-abolitionist coalition believes that women leaving the sex trade leave it as victims, and deserve social and social-welfare supports to help them leave successfully.

Both neo-abolitionist social policy and CST see that women trying to break free of the sex trade often return to it. The Pontifical Academy explains that sex trafficking victims, often young, find themselves without good choices when they do break free:

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<sup>188</sup> See RAYMOND & HUGHES, *supra* note 168, at 95–97; Dempsey, *supra* note 14, at 1730; *Pontifical Academy Recommendations*, *supra* note 44.

<sup>189</sup> RAYMOND & HUGHES, *supra* note 168, at 13; *Pontifical Academy Recommendations*, *supra* note 44.

<sup>190</sup> RAYMOND & HUGHES, *supra* note 168, at 12–13; *Pontifical Academy Recommendations*, *supra* note 44 (“[N]o credentials are needed to take someone round a supermarket or introduce them to public transport, but the value of the befriending at least equals that of the practical information acquired.”).

<sup>191</sup> *Pacem in Terris*, *supra* note 82, § 11.

<sup>192</sup> *Catechism of the Catholic Church*, *supra* note 73, § 1913.

<sup>193</sup> *Gaudium et Spes*, *supra* note 6, § 26.

<sup>194</sup> *Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, *supra* note 84, para. 122 (1986).

<sup>195</sup> Bernstein, *supra* note 34, at 50; see, e.g., RAYMOND & HUGHES, *supra* note 168, at 10.

<sup>196</sup> Bernstein, *supra* note 34, at 50.

<sup>197</sup> *Id.*

Even though most forms of ‘forced labour’ and ‘sex working’ take their toll whilst the trafficked are relatively young, meaning that their case value as commodified objects diminishes quite early what can they do with their lives if they do break free? Without documents, without rights, without any legitimate social network, and probably without the language needed, they are defenceless against assimilation into the local ‘black’ economy, its sweatshops, drug rings, and organized street prostitution. In other words, they join the army of ‘illegal migrants’ and face the prospect of extradition.<sup>198</sup>

Without good choices, without social and social-welfare support, the path back to sex commerce is often the one taken. This is so regardless whether the woman trying to leave is a trafficking victim or a woman who freely chose to sell sexual access.<sup>199</sup> Accordingly, both neo-abolitionist social policy and CST contend that society has a duty to provide the social and social-welfare support that victims of prostitution need to keep them from returning.

#### VI. CONCLUSION

The overlap of CST and neo-abolitionist social policy is compelling, pushing supporters toward straightforward reforms that align with their goals. I have laid out the doctrinal underpinnings for each of the following six reforms. Pursuing them is aligned with many of the corresponding values, beliefs, concerns, and sympathies of followers of both CST and neo-abolitionist social teaching. I do not mean to imply that Catholics and neo-abolitionist feminists share the same belief system. No doubt, some do, and some do not. Yet, they agree, or should agree, on the following points.

First, Article 6, Section 3 of the 2000 U.N. Trafficking Protocol details social-welfare benefits that each State Party “shall consider” offering to trafficking victims to help their physical, psychological, and social recovery. These benefits include providing: for appropriate housing; counseling regarding victims’ rights; medical, psychological, and material assistance; and employment, educational, and training opportunities.<sup>200</sup> CST and neo-abolitionist social policy support requiring each State Party to offer these benefits. After all, where the demand of a State Party’s buyers of sexual access drew the victim to that destination, that State Party should shoulder the duty and bear the costs of resettling the victim and restoring proper self-esteem and human dignity.<sup>201</sup>

Second, the Protocol reserves the benefits described in Article 6, Section 3 to victims of sex trafficking.<sup>202</sup> It fails to make them available to willing sex workers who wish to leave the sex industry. Both CST and neo-abolitionist social policy support offering social-welfare benefits to any woman leaving the sex trade, as both view

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<sup>198</sup> *Beyond Criminalization*, *supra* note 176.

<sup>199</sup> RAYMOND & HUGHES, *supra* note 168, at 95–97.

<sup>200</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 6.

<sup>201</sup> *Beyond Criminalization*, *supra* note 176; *Pontifical Academy Recommendations*, *supra* note 44.

<sup>202</sup> 2000 U.N. Trafficking Protocol, *supra* note 15, art. 6.

women in the sex trade as victims.<sup>203</sup> As for funding such benefits, the demand of the State Party that pulled the victim there justifies placing the financial burden on that State Party.<sup>204</sup>

Third, Article 7, Section 1 of the Protocol states that each State Party “shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.” The Protocol should require each State Party to offer sex trafficking victims the choice to remain in the State where traffickers sent them. Repatriating and returning sex trafficking victims to the State Party where traffickers first found them puts the victims in danger. They may find themselves facing those who introduced them to their traffickers or facing the same traffickers yet again. Once again, the demand of the State Party’s buyers that drew the victim into the State warrants placing this duty on that State.<sup>205</sup>

Fourth, just as the Protocol reserves social-welfare benefits to victims of sex trafficking, and not to willing sex workers, the TVPA reserves the social-welfare benefits offered under the TVPA to victims of a severe form of trafficking, but not to a victim of trafficking—that is, the TVPA awards benefits to women who entered the sex trade through force, fraud, or coercion, or as a child, but not to other women who want to leave the trade.<sup>206</sup> For the reasons already cited in the first three recommended reforms, CST and neo-abolitionist policy support lobbying Congress to make eligible for benefits and services any person recruited, harbored, transported, provided, obtained, patronized, or solicited for a commercial sex act.<sup>207</sup>

Fifth, both CST and neo-abolitionist social policy support efforts to arrest, educate, and prosecute buyers.<sup>208</sup> In section 204 of the 2005 TVPRA, “Prevention of Domestic

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<sup>203</sup> RAYMOND & HUGHES, *supra* note 168, at 12; *Liberation of Women of the Street*, *supra* note 101, §§ 1, 4.

<sup>204</sup> See *Beyond Criminalization*, *supra* note 176; *Pontifical Academy Recommendations*, *supra* note 44.

<sup>205</sup> *Pontifical Academy Recommendations*, *supra* note 44.

<sup>206</sup> 22 U.S.C. §§ 7105(b)(1)(A)–(F), 7105(f) (2018).

<sup>207</sup> See *id.* § 7102(10) (defining “sex trafficking”); see also U.S. DEPT. OF JUSTICE ET AL., Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017, at 5 (2014), [www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf](http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf) (“Under the TVPA, eligibility for victim services is limited to victims of ‘severe form of trafficking in persons’”) (footnote omitted).

<sup>208</sup> *Liberation of Women of the Street*, *supra* note 101, § 5 (“The ‘client’ needs more than social condemnation and having to face the full rigours of the law. He must also be helped to face his deeper problems and to find other ways of dealing with his personal needs.”); *id.* § 12 (“The exploiters (generally men) who are ‘clients,’ traffickers, sex tourists, etc., need education in both the hierarchy of human values and in human rights. They also need to hear a clear condemnation of their evil and injustice by the Church if not by the State.”); *id.* § 14 (religious congregations have a role in rehabilitating “‘consumers’ of the sex trade”); *id.* § 16(c) (buyers need education with respect to gender, respect, dignity, inter-personal values and the whole area of relationships and sexuality); *id.* § 17 (detailing specific education and research goals), *id.* §§ 21–22 (discussing education needed in local communities); *id.* § 24 (discussing education in seminaries and for congregations), *id.* § 27 (stressing the need to focus on the buyer); See RAYMOND & HUGHES, *supra* note 168, at 12; *Pontifical Academy Recommendations*, *supra* note 44; Hughes, *Best Practices*, *supra* note 31, at 31–45.

Trafficking in Persons,” Congress authorized \$25 million per year for 2006 and 2007 grants to state and local law enforcement to establish, develop, expand, or strengthen programs to investigate and prosecute buyers of commercial sex acts, and to educate them on the harms of prostitution.<sup>209</sup> More than a decade later, Congress has reduced federal funds for grants to state and local law enforcement programs that target buyers of commercial sex acts. Section 20705 of Title 34 of the United State Code provides that the Attorney General may make such grants to state and local law enforcement agencies up to \$10 million for each of the fiscal years 2014 to 2017.<sup>210</sup> CST and neo-abolitionist policy support asking Congress to increase the level of funding not only to previous levels, but beyond those target amounts.

Sixth, believers in CST and neo-abolitionism support making sex trafficking and buying a sex act federal crimes under the TVPA. The TVPA does not make sex trafficking a federal crime unless the traffickers use force, fraud, or coercion, or the victim is a child.<sup>211</sup> Where traffickers recruit, entice, harbor, transport, provide, obtain, advertise, or maintain a woman for prostitution, absent force, fraud, or coercion, federal law does not hold them criminally responsible.<sup>212</sup> Nor is it a federal crime to patronize or solicit a sex act from a trafficked woman, unless the buyer or potential buyer knew or recklessly disregarded that force, fraud, or coercion caused her to engage in the sex act.<sup>213</sup> CST and neo-abolitionism support asking Congress to change the TVPA to make sex trafficking a federal crime, and to make buying a sex act from a trafficked woman a crime, even in the absence of force, fraud, or coercion.

CST and neo-abolitionist social policy share the goals of reducing demand for buying sexual access to women and providing social and social welfare support to women leaving the sex industry, regardless how the women first arrived in the sex industry. Both CST and neo-abolitionists believe that women in the sex industry suffer an unreasonable risk of harm. Even those women who do not suffer physical harm suffer deep psychological or social harm, including harm to their relationships with those closest to them, those most able to give them support—family and friends. By understanding the issues on which followers of CST and neo-abolitionism agree, and by applying pressure on law-makers and policy-makers on those issues, a partnership between Catholics and neo-abolitionists can reach its highest value. Such a partnership could reduce demand through law enforcement and education, and help victims by providing social and welfare supports and by flipping the stigma of this degrading and loathsome industry on the buyers who fuel it, and the pimps, madams, facilitators, and other investors who control it.

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<sup>209</sup> Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972, 109th Cong. § 204 (2005).

<sup>210</sup> 34 U.S.C. § 20705(e) (2017).

<sup>211</sup> 18 U.S.C. § 1591(a) (2018).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*