

INVISIBLE: HUMAN TRAFFICKING IN THE UNITED STATES

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## **INTRODUCTION**

### **HUMAN BONDAGE FOR A NEW CENTURY**

Human trafficking is not a new phenomenon. From the beginning of time groups of people have invaded other groups of people, taking captives and forcing them to work against their will. This has occurred repeatedly, moving through history from tribal camps to slave ships, and, most recent in American minds, to southern plantations. When slavery was abolished in the United States, we turned our collective attention away from the distasteful topic of human enslavement, thankful that we had rooted out the evil and cast it from our shores forever more. This was wishful thinking however. We may have failed to acknowledge it, but forced human conscription has continued into the new millennium. Despite international attempts to stem the tide of trafficked persons, the sale of human beings remains big business, and the United States has risen to become one of the main importers of trafficked persons.

It is difficult to get an actual head count of trafficked persons in the United States. Trafficking relies on secrecy for its existence and even when trafficked persons do escape their situations, they may not report their traffickers. Nevertheless, the website, [HumanTrafficking.org](http://HumanTrafficking.org) estimates that between 14,500 and 17,500 people are trafficked into the United States yearly. Though estimates can never be taken as fact, this serves to show that modern day forced labor could be occurring in the house next door. Forced

laborers could work in the kitchen of your favorite restaurant; they could have picked the oranges served with your complimentary hotel breakfast. It is not easy to identify a trafficked person. They are taught to blend in and taught the right things to say when questioned. They are men, they are children, they are young women and they are middleaged women. They come from many different countries. They are also found in all fifty states.

Human trafficking is a human rights violation. That seems clear enough. There are laws against human trafficking. These laws are apparently upheld. In 2004, then-President Bush stated, “Since 2001 we’ve charged 110 traffickers. That’s triple the number charged in the previous three years. We’re beginning to make good, substantial progress. The message is getting out: We’re serious. And when we catch you, you’ll find out we’re serious. We’re staying on the hunt” (Bales and Soodalter 7). In his statement, however, we can begin to see the problem with relying on laws alone to combat trafficking. 110 traffickers arrested in three years. 98 of those convicted. 14,500 to 17,500 newly trafficked people per year. With less than 1 percent of traffickers caught and prosecuted, the message seems muted.

One of the aims of this project is to look at the legislation associated with trafficking and expose its limitations. Part of the problem lies in the fact that we have yet to form a precise definition of trafficking that includes trafficking in domestic and farm labor AND differentiates between consenting to being trafficked and being coerced. It may seem strange to imagine someone consenting to being trafficked, but imagine a situation in which a young widow and her three children are starving due to her inability to obtain employment outside the home. She contacts a marriage broker and agrees to be



married to a man in the United States who will then send money back to her children who will remain with the widow's relatives in her home country. This meets the legal definition of trafficking, but was clearly consensual. Ignoring consent runs the risk of taking a paternalistic stance toward individuals who find themselves in abusive working conditions and ignores the circumstances that have allowed the worker to become trafficked in the first place. As I will show, taking a solely punitive stance fails to recognize the full complexities of the trafficking phenomenon.

The second aim of this project is to examine a human rights based response to trafficking that is based on Kantian principles. Human trafficking violates basic human rights. Kant's Formula of the End in Itself states that we must "always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end" (Kant 513). The underlying idea is that it is right to treat people with respect for their humanity, for their ability to pursue their own ends. This is not to say that it is immoral to use a person's talents and/or abilities as a means to achieving a specific goal; that is done all the time in a variety of professions. The difference is that we cannot use a person solely as a means, without the person's consent and understanding. This factor also raises the possibility that not all trafficking is immoral if the individual knows exactly where he/she is going and exactly what he/she will be doing. This is different, though, than forcing someone to work against his or her will, for little or no pay and in abusive situations. The second violates a person's dignity by ignoring the person's intrinsic worth. To illustrate this, I will use Martha Nussbaum's discussion of what it means to treat a person as an object and will show how it can be transposed onto trafficking. I will also discuss what rights a person may be given by

virtue of the person's humanity. Some of these rights include the right to food, shelter and clothing, but other rights have been offered as candidates as well. Among those famously offered by John Locke (and borrowed by Jefferson) are life, liberty and the pursuit of happiness. The 1948 U.N Declaration of Human Rights adds basic security to its list of basic human rights, and adds that these rights cannot be denied based on one's color, gender or country of origin (Mackinnon 113). While one may argue that the individuals quoted within this project have been given food, shelter and clothing of a sort, they have been denied basic security and liberty.

If we accept that it is wrong deny a person's intrinsic worth, Kantianism will also ask what obligations we, as fellow humans, have to contribute to the fight against forced labor. Some activists have taken their message to social networking sites and YouTube, making the plight of forced laborer more visible. Once we become aware that our consumer practices aid in the continuation of worker abuse, do we then have a moral responsibility to those workers?

The individuals mentioned in this project all have one thing in common. They all wished to leave their home country to pursue a better life, to take control of the position in which life has placed them. The people who have abused and exploited these workers also have something in common. Suzanne Tomatore, director of the Immigrant Women and Children Project of the New York City Bar Association asks, "Who would do this to another human being? All kinds of people. Doctors, lawyers, professionals, business people, diplomats – the only thing the employers have in common as a group is that they all have the resources to pay someone a fair wage, but they choose not to" (From Stand in Long Island).

This raises a serious question. Is trafficking an issue that can be “solved”? With our consumer driven society and its mantra of “willing seller, willing buyer”, there is the illusion that everything is legitimately for sale if only you know the price. It may be that with this notion comes the idea that money is the ultimate justification. When profit is the moral compass, everything and everyone is relegated to commodity status, traffickers become facilitators and slaves are nothing more than a product.

## CHAPTER 1

### HUMAN TRAFFICKING 101

Human trafficking violates our natural human rights. Nearly every organization concerned with human rights including the United Nations, Amnesty International, Human Rights Watch and Human Rights First mentions trafficking in their documents listing human rights violations. But what exactly does this mean? Basic human rights include food, shelter and clothing. These are typically provided to trafficked individuals in some form. Natural human rights go beyond these basic necessities, however. The Universal Declaration of Human Rights developed by the United Nations states that the “inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world” (<http://www.un.org/en/documents/udhr/index.shtml>). A 1997 UN press kit document celebrating the 50<sup>th</sup> anniversary of the Declaration spells this out as the fundamental right humans have for the right to life, liberty and security of person, “the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment, among others” ([www.un.org/rights/50/carta.htm](http://www.un.org/rights/50/carta.htm)).

Clearly human trafficking violates these rights, most specifically, liberty, security of person and the right to freedom from torture and degrading treatment. I believe the central violation in trafficking however is not found in these individual abuses. The modern notion of human rights and especially Human Rights theory owes a considerable debt to the moral thought of Immanuel Kant. I believe that the fundamental problem in trafficking is found in the violation of Kant's Formula of the End in Itself, treating a person only according to the person's instrumental value, that is, treating the person as a means, not also as an end in herself. Trafficking violates a person's right to be treated as a human with inherent rights and not as an object. By objectifying the individual, traffickers, and employers of trafficked persons remove the human status of the person and see the person as little more than a tool to be used. In this way, any and every abuse seems permissible.

But what does it mean to treat a person as an object, and is it always wrong to do so? First, objectification involves treating what is not a thing, in this case, a human, as a thing. Martha Nussbaum gives us seven ways to treat a person as a thing in her *Sex and Social Justice*. This is helpful to my claim that objectification is the core violation of trafficking since we can compare these notions with behavior associated with the relationship between trafficker and/or purchaser and trafficked, as well as the relationship between the employer and trafficked worker.

Nussbaum believes that there are at least seven notions involved in the idea of treating a person as an object:

1. *Instrumentality*. The objectifier treats the object as a tool of his or her purposes.
  2. *Denial of autonomy*. The objectifier treats the object as lacking autonomy and self-determination.
  3. *Inertness*. The objectifier treats the object as lacking in agency, and perhaps also in activity.
  4. *Fungibility*. The objectifier treats the object as interchangeable (a) with other objects of the same type and/or (b) with objects of types.
  5. *Violability*. The objectifier treats the object as lacking in boundary integrity, as something that it is permissible to break up, smash, break into.
  6. *Ownership*. The objectifier treats the objects as something that is owned by another, can be bought or sold, etc.
  7. *Denial of subjectivity*. The objectifier treats the object as something whose experiences and feelings (if any) need not be taken into account.
- (Nussbaum 218).

Since several of these notions play into each other, it may be helpful to examine them in light of a specific example.

Maria was twelve when Sandra Bearden came to her village across the border from Laredo, TX and made an offer to her parents to send Maria to school in Texas, to pay her and to teach her English in exchange for Maria's help with housework and child care. Her parents agreed and Maria was taken to Sandra's home. At that point, all

promises made to the girl's parents were broken. Maria was worked from early morning until late afternoon. If she didn't work hard or fast enough, Sandra would shoot her with pepper spray, or hit her, breaking brooms and once, a bottle, over her head (Bales and Soodalter 4). When she wasn't working, Sandra chained Maria to a pole in her backyard, her arms chained behind her back and her legs chained together so she couldn't move. She was rarely fed and never paid or sent to school (4).

Returning to Nussbaum's list, we can see that Sandra objectified Maria in nearly all of the ways outlined by Nussbaum. In her abuse of Maria, Sandra violated the girl's boundary integrity, as well as denied her subjectivity. The girl's feelings were not taken into account, only the amount of work she completed. Sandra's interest in the girl's productivity also shows how Sandra emphasized Maria's instrumentality. As long as the girl served Sandra's interests, all was well. When Sandra felt Maria was failing in her usefulness, the more active abuse began. There is also the notion of ownership here, since Sandra clearly felt she could do whatever she chose to Maria. By chaining the girl up when she was not working, Sandra denied Maria degrees of both her agency and autonomy.

I say degrees, because the notions of agency and autonomy are tricky when it comes to trafficking. Sandra Bearden employed intense psychological abuse against Maria to keep her compliant. However, it still remained possible that Maria could have run out the door while working during the day and not chained. As well, while chained, she could have screamed until the neighbors finally took notice (Sandra had high concrete walls screening Maria from view, yet one day a neighbor working on his roof finally spotted her, leading to her freedom). In other cases of trafficking, though, the

trafficked individuals have a considerable degree of autonomy and agency; the workers aren't chained when not working. Some of them, such as the trafficked farm workers, are taken into town every two weeks or so to buy supplies. Some domestic workers make frequent trips to stores for their employers. While these workers are still treated as tools to a purpose, as lacking in boundary integrity, and certainly as fungible and owned, the argument can be made that there is still partial autonomy. This also shows that it is possible to be objectified in some ways mentioned by Nussbaum, but not others, and that objectification might be partial and variable within any of the seven categories she describes. Autonomy and agency may be present while other freedoms are not. And, as we have discussed, autonomy might be granted in some respects but not others. This raises the question, how many of the features on Nussbaum's list must be present if a person is to be seen as being objectified? Nussbaum comments that the term "objectification" is a "relatively loose cluster term, for whose application we sometimes treat any one of these features as sufficient, though more often a plurality of features is present" (219). I agree with this, especially in light of the fact that Kant himself is rather vague on this point. He remarks that it is wrong to use a person as a tool to achieve a purpose since doing so ignores the person's right to be treated with respect and dignity, but is not especially clear what those terms actually mean. If we agree to the aforementioned examples of violations of dignity set out by the Universal Declaration of Human Rights, then it would appear the Kant's instructions to treat a person according to the person's intrinsic worth creates an umbrella of sorts in which a variety of violations and abuses can be covered. Further, it seems that the absence of all seven of Nussbaum's



violations is necessary if a person is to be accorded proper dignity and recognition, and that the presence of any one, is, as Nussbaum suggests, sufficient for objectification.

This problem also manifests itself in the terms used to describe trafficking and trafficked individuals. Trafficked individuals are often also referred to as “slaves,” “victims,” “smuggled,” “debt-laborers,” and “forced laborers,” among other terms. Likewise, trafficking can also be known as “kidnapping,” “human smuggling,” “debt-bondage,” “labor bondage,” “peonage,” and sometimes even “marriage brokers.” The interchangeability of these terms makes the discussion of trafficking that much more complicated. It also complicates legislation that is intended to provide an accurate definition of trafficking, and for law enforcement agents who are already unclear as to what constitutes trafficking.

In this project I refer to trafficked individuals as “workers,” “forced laborers” and “forced domestic workers,” and I refer to trafficking as “debt-bondage” and “forced labor” because I think these terms more accurately capture the true nature of the situation. A quick explanation of terms will help explain why I have chosen these terms in addition to “trafficked persons” and “trafficking.”

### Definition Review

The first distinction it is important to make is between “smuggling” and “trafficking.” Trolling the internet for common understanding of the two terms I came across this, “You pay me money, I hide you in the trunk of my car and smuggle you across the border. That is human smuggling. I make a few bucks and you become an illegal alien. I snatch you off the street, I gag and tie you up, I hide you in my car and

smuggle you across the border, I SELL you to other thugs who basically enslave you.

That is human trafficking” (answers.yahoo.com). This colorful description is not entirely accurate, though it does represent the impression many people have of trafficking. Note that in this description, trafficking is synonymous with kidnapping. Though at times it is the case that a person is kidnapped and taken by force, this is not always the case.

Kidnapping is usually found in the sex trade, when women or children are taken and forced to work in brothels, but kidnapping rarely takes place in domestic labor or field labor contracts. Therefore kidnapping is an aspect of trafficking, but it is not synonymous with trafficking.

The answer from the yahoo! website closely resembles the distinction offered by the International Centre for Migration Policy Development as well. Their website, anti-trafficking.net, states that the difference between smuggling and trafficking is that in smuggling, there is a crime against the state, but not against the individual. The crime of smuggling does not require the violations of the rights of the smuggled individual. It goes on to state that smuggling is a commercial relationship between the individual and the smuggler which ends when the illegal border crossing is made and the payment has been received. It is an illegal border crossing made with the consent of the individual, and finally, it is an “organized movement of persons for profit” (anti-trafficking.net).

Trafficking is defined by the Centre as a crime against a person, a violation of the rights of the “victim of trafficking by definition (violation of person’s human rights; victim of coercion and exploitation that give rise to duties by the State to treat the individual as a victim of a crime and human rights violation” (anti-trafficking.net). It is described as an exploitative relationship that continues even after the border crossing in

order to maximize profit. It is an organized movement and exploitation of victims for profit, with the purpose of exploitation, not border crossing. Consent is either lacking altogether, or is irrelevant due to coercion and/or force (anti-trafficking.net).

Exploring this difference further, we see that if one is forced and/or coerced, one is trafficked. If one consents, one is smuggled. The main problem here is that the distinction between a smuggled person and a trafficked person is perhaps not as clear as it appears, and smuggled persons are viewed as guilty of crimes against the state. Smuggling is fought, according to the site, to “protect the sovereignty of the state”, while trafficked persons are victims to be protected “against human rights violations” (anti-trafficking.net). I will discuss the issues surrounding the use of the term “victim” in a later chapter, but here the important thing to note is that in many of the cases I examine in this project, the trip into the United States more closely resembles smuggling than trafficking. In many cases field workers were offered a job in the United States, or made arrangements with facilitators (or coyotes), to enter the United States illegally. They were aware they were entering illegally, and they paid their fee to do so. Once in the country, however, they were sold by the facilitators to labor contractors, such as the Cuello brothers in Florida, who then abused and exploited the workers. This is a problem for law enforcement officers who are trained to treat smuggled migrant workers, especially those from Latin America as criminals to be prosecuted and deported. This ends up working in the favor of the labor contractors, growers and farmers who exploit the workers, since if a worker does escape and attempt to report his employer, the worker is more apt to be ignored and deported, leaving the employer free to simply buy more workers.

Another complication is that many forced domestic laborers are actually here legally. As I will discuss later, foreign diplomats and employees of multinational corporations can simply list any household workers as members of their households and obtain visas for the workers without the worker ever coming into face to face contact with any government official. Often these workers have agreed to come as part of the employer's household in exchange for education they will never receive, or a salary that will never be paid. The abuse begins once the worker is here in the United States, but these people have not been smuggled or trafficked according to the definition above.

I believe a new definition of trafficking, one that is morally sound and legally subtle and robust, is needed that relies more on the actual abuses the workers suffer at the hands of the employers than on the circumstances of the workers' arrival in the country. To do that we would certainly need to re-conceptualize what is meant by terms such as "trafficking" and "smuggling," and perhaps even discard these terms altogether in favor of terms that more accurately describe the violations these workers experience.

Some of the terms that I offer include "debt-bondage" and "forced labor." It may be helpful to explain what is meant by these terms, since it is my contention that they more accurately represent the conditions these individuals find themselves in.

According to the International Labor Organization, debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of these services as reasonably assessed is not applied towards the liquidation of the debt of the length and nature of those services are not respectively limited and defined" (Lerche 3).

AntiSlavery.com defines debt bondage as occurring when “labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay, often for seven days a week. The value of their work is invariably greater than the original sum of money borrowed”. “Forced labor”, on the other hand, is defined by AntiSlavery.com as “any work or services which people are forced to do against their will under the threat of some form of punishment”. The ILO echoes this definition: “*all work or service which is exacted from any person under the menace of a penalty and for which the said person has not offered himself voluntarily*” (Lerche 3).

First, these terms are preferable to either “smuggling” or “trafficking”, because they do not rely on the means by which an individual entered the country, but rely more on the relationship between the worker and the employer. “Debt-bondage” more accurately captures the experiences of the field laborer who agrees to pay a fee to the facilitator or labor contractor, but then finds that fee nearly impossible to pay, due to low wages and high cost of living.

An example of debt bondage is offered by Dottie Laster, a social worker who works primarily with trafficked persons. She tells of a young man who agreed to come to work in the United States to earn money to care for his dying father. Though he didn't have the money up front, he agreed to pay a fee of approximately \$1700 in exchange for transport to Texas. Once he crossed the border he was taken to New Braunfels where he lived in a cramped, decrepit trailer with several other men. He was paid a few dollars a day, much less than originally agreed upon, for his work in a restaurant. Rent, food and water were deducted from his pay until there was little left, hardly enough to pay off his debt to the facilitator who had brought him here (Laster).

Forced labor, by comparison, more closely resembles the experiences of domestic workers who initially agree to one set of working conditions, only to find those conditions drastically changed once they arrive. Leticia Moratel agreed to travel to Jamaica, New York under an employment contract with the Nolascos that stated she would be employed as a nanny and would be paid \$800 per month. In reality, Moratel was taken to Florida, where she worked for the couple's daughter; cooking, cleaning, doing yard work, and caring for the daughter's small child. She was worked more than 86 hours per week and was never paid. "She was asked to give a bank account number in the Phillipines so the Nolascos could remit her paycheck directly to her relatives back home, she was never given receipts of the remittances and she never received a single cent for the 10 long years she worked" (Tagala).

What we call something goes a long way to determining how we understand it. As long as our conception of trafficking focuses on how one arrives in the country, we will continue to ignore those who consent to travel and who are abused once here. Though some legislation recognizes this and does include debt bondage and forced labor in its definition of trafficking, the emphasis is still largely punitive, and as such is extremely limiting. As I discuss in future sections, a human rights based response will include a new understanding of trafficking, not just legally, but socially as well, that will focus on the human rights that are violated when individuals are treated as objects to be used in any way the employer sees fit.

## CHAPTER 2

### **BREAKING THE MOLD: RE-CONCEPTUALIZING HUMAN TRAFFICKING**

One of the main hurdles facing anti-trafficking legislation seems to be in deciding exactly what trafficking is. While the common conception of human trafficking is that of misleading or kidnapping young women and children into forced sex work, this is an overly restricted view, and it ignores those trafficked for other types of labor, such as domestic work or field labor, as well as those who travel with some degree of voluntariness. In this chapter I will look at the current concepts and language surrounding the issue of human trafficking and show the danger that such a limited view poses to those who do not fit the common trafficking “mold”. I will do this by examining the wording of anti-trafficking laws as well as the terms used to describe trafficked persons, terms that strip away any agency, and portray a sense of helplessness that is misleading. Throughout the chapter I will work to provide an alternative concept of the trafficking phenomenon that includes trafficking for non-sex work, arriving at a new definition of trafficking that eliminates an exclusive on victim-centered terminology.

#### An Issue of Definition

As Lin Chew points out in her essay, “Global Trafficking in Women: Some Issues and Strategies”, the lack of a precise definition is a fundamental issue in discussing

trafficking (13). The traditional idea centers on the sex trade, specifically prostitution, and the procurement of innocent young women (13). As she discusses, largely ignored is the business of trafficking for domestic workers, or through commercial marriage brokers. The equivalency of “trafficking in women” with “prostitution”, forced or otherwise, is problematic because it invites in issues of morality and ignores trafficking for any labor other than sex work.

Much of our current legal conception of trafficking, including its equation with prostitution, stems from the 1949 “Convention on the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others”. The preamble to the convention states “Prostitution and the accompanying evil of trafficking for the purposes of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community” ([www.humantrafficking.org](http://www.humantrafficking.org)). Notice the wording specifically links prostitution with trafficking; also included in this definition in the subtle message that prostitution harms the family and community, making the prostitute culpable even if she is an unwilling participant.

In 1956, the Geneva Convention on the Abolition of Slavery described trafficking as “the possession of a person and exercise over the same of any or all the powers attributing to the right of ownership” ([www.humantrafficking.org](http://www.humantrafficking.org)). This implies that trafficking is a matter of willing seller, willing buyer, with the trafficked person devoid of all agency. The problem with this concept is that many trafficked persons willingly enter into a contractual labor arrangement. The abuse comes with the conditions the workers find themselves in once they leave their home country and are in a position of reliance on



their trafficker. Under the 1956 convention these people would not be considered trafficked persons if they retained any control whatsoever over their situation. Many governments have recognized the failure of this convention, yet until recently, little has been done to change it, and the wording of the convention continues to influence political thought.

The Europol Convention of 1995 defined trafficking as “Subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children” ([www.humantrafficking.org](http://www.humantrafficking.org)). Again we have a focus on prostitution, equating trafficking with violence against women and children for purposes of sexual exploitation. This ignores trafficking for non sex work and makes it an issue concerning sex (or women in particular).

In America, much protocol surrounding the issue of trafficking is based on the 2000 “Trafficking Victims Protection Act”(TVPA). This act attempts to address crimes against “severely trafficked persons”, meaning “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 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” ([www.stategov.com](http://www.stategov.com)). While this definition allows for men as well as women, and allows for non-sex work, it still relies heavily on previous definitions that are

narrower and by placing sex work first, it conveys the sense that the ultimate goal of trafficking is to force women and children into prostitution.

The TVPA does go a step beyond its predecessors by purporting to help the victims of trafficking regain their lives, either by helping them return to their country of origin, or providing housing and assistance should they be afraid to return home, or simply not be able to. However, many feel that the Act does not do enough to punish traffickers and does little, if anything, to challenge hostile views about migrants, poor women and prostitutes. Such hostile views tend to place some of the blame for their situation on the victims themselves, if indirectly, through inference that their loose morals or desire to exploit American job opportunities have led them to be trafficked in the first place (Chapkis 934).

#### TVPA Limitations

Jennifer Chacon lists several problems with the Trafficking Victims Protection Act in her article, *Misery and Myopia: Understanding the Failures of U.S Efforts to Stop Human Trafficking*. First of all, the TVPA fails to address the question of consent. By leaving consent an open-ended question, it allows for the possibility that one could be eliminated from the protection the Act allows if there was initial consent (3).

As discussed above, consent also plays a part in distinguishing between trafficking and smuggling. While many trafficked persons begin their journey by being smuggled, there is an aspect of choice involved. They are voluntary migrants. This contradicts the notion that trafficked persons are always kidnapped victims, ripped away from their lives for nefarious purposes. Trafficking includes a “subset of voluntary

migrants” (Chacon 4) who willingly, if illegally, enter the country, and then find themselves forced into working conditions they would not have otherwise agreed to. What makes voluntary migrants so problematic when distinguishing between smuggling and trafficking is the fact that many of the migrants are here illegally. There is a sense of criminality that makes it hard for many in law enforcement to recognize the abuse trafficked people have suffered. As well, anti-immigration laws often have the effect of punishing the migrants more harshly than the traffickers themselves (Chacon 6). This is due in no small part to the fact that “some members of Congress were quite vocal in their desire to exclude from the Act’s protections any victim who consented to some aspect of his or her transportation or employment” (Chacon 18). While the aim of the TVPA is to protect the trafficked, the issue of consent must be fully understood if those who are manipulated and coerced after consent are to be taken care of.

Another problematic aspect of the TVPA is that protection is extended only to those who can prove they were trafficked and agree to testify against their traffickers. Again we have the problem of consent. If there is legislative confusion over what, exactly, is trafficking, this is naturally extended to law enforcement. Cases that conform to the pre-determined mold of trafficking, such as those that involve women, children, and sex acts, are much more straightforward than those which involve men coerced into farm or restaurant labor. To prove a case of trafficking, the affected parties must be able to show they were manipulated and coerced into labor, and/or that their living conditions constituted abuse. Many trafficked persons simply want to leave their situation; going through the ordeal of proving their abuse and testifying is anathema. As well, many

traffickers use threat of violence against loved ones to keep their workers submissive. There is a very real fear that if they speak out, their families will be harmed (Laster).

These concerns are reflected in the fact that between 2001 and 2003, the early days of the TVPA, only thirty two trafficking cases were filed. In 2004, fifty-nine traffickers were prosecuted, all of which involved sexual exploitation (Chacon 17).

What the failures of the various legislative acts regarding trafficking show is a distinct conception of trafficking that is severely limiting. Chacon states that “the majority of rhetorical and enforcement efforts have been focused, not on forced labor, but on sex trafficking” (14). This incorrectly positions trafficking as a gendered crime, ignoring men, who make up a large percentage of persons trafficked into the United States. For any legislative act to succeed, a much broader interpretation of trafficking is necessary; one that focuses on the working conditions themselves rather than on whether or not the labor was initially consensual. Failing to address consent brings up questions of innocence and guilt, victims and victimization that can be tricky to navigate.

#### By Any Other Name

A curious feature of trafficking literature is the insistence on victim-based language. Advocate groups, after insisting on analyzing the issue of consent for legal purposes, seem determined to deny agency to trafficked persons and refer to them solely as “victims”. To understand the problem behind this, it is important to unpack the term “victim”. The ideology of the term “victim” includes notions of powerlessness, of being preyed upon, of innocence with respect to the crime perpetrated upon the person. There is also a sense of morality that goes along with this ideology. Leisenring relates that in the

U.S, someone is considered a victim only if that person appears deserving of sympathy. She states several characteristics that accompany this: “people who are not responsible for the harm they experience; (2) people who are evaluated as moral; and (3) people in exceptionally troublesome conditions” (308). This status of victim is rarely self-endowed. Most typically it is put upon one by social processes seeking to assign “interpretive instructions” (Leisenring 308) on how one is to be perceived. Socially speaking, one who is free from blame in their bad or undesirable circumstances is worthy of sympathy. As well, in legal and political arenas, victim-based discourse makes it easy to assign culpability as those who are not victims are typically presumed responsible for their situation.

There is a danger in assigning victim status however. It invites in the tendency to ignore aspects of an individual’s experience that fails to conform to the ideology and creates an illusion of uniformity. The terminology of victim/victimization creates a pattern that one must fit into to be deserving of public sympathy and support. Writing about the identity work of battered women, Amy Leisenring states that “while the label *victim* carries negative connotations of being damaged, passive, and powerless, the term *survivor* is viewed by many to be more positive, as it implies qualities such as agency, coping, resistance, decision making, recovery, and survival” (312). Another difference between the labels “victim” and “survivor” is that while the first is typically conferred upon one, the second is given by others with shared experiences or is self-bestowed. A survivor identity conveys strength where the victim is weak. There is the sense that the survivor is moving beyond the emotional aspect of the experience and is turning to practical acts of re-claiming their lives.

However, while the term “survivor” may be preferable to that of “victim”, it is not without its problems. It is still self-defining in terms of experiences. When does one cease to be a “survivor” for instance, and reclaim one’s life? The “survivor” tag is similar to that of “alcoholic” or “drug addict” in that long after the experiences are over, the identity “survivor” is still seen to be an integral part of the individual self. Identifying as a “survivor” is still limiting in that all future experiences are seen through that particular lens.

As well, there is a significant problem in that not all trafficked persons fit easily as “victims”. First, trafficked persons do not always easily fit the ideology since they are often quite in control of their circumstances in the beginning. Many trafficked persons initiate contact with their trafficker. They are out of options in their home country and work in the United States promises to provide needed income to support their families. Often they fully understand that they must pay a price to their “facilitator” in exchange for passage to the U.S or other countries. They willingly enter into a contract that states they will perform a certain amount of labor in exchange for paying off the debt they owe. The abuse comes when the facilitator changes the rules without the consent of the worker. After arriving in the U.S it is common for money and paperwork to be confiscated. The worker is placed in subhuman living conditions and made to work long hours for much less pay than what was agreed to. The facilitator demands more money than was previously agreed to, or delivers the worker into employment other than that agreed upon. In this way, women who believe they are coming to the U.S to work in restaurants or as secretaries find themselves in brothels instead. Men who agree to come

to work in agricultural farms find themselves paid well below their agreed price and watched continually by armed guards who prevent the workers from leaving.

This is certainly worker exploitation, but is it victimization? It is my belief that by defining the scenarios above as victimization, and the workers as victims, we add to victim-based rhetoric that fails to address the situations the workers find themselves in. Victimization implies a lack of consent and a lack of agency. Typically the workers did consent and do have a fair amount of agency. To insist upon victim terminology leads to the inevitable result of marginalizing those who do not fit the mold. This creates liminal spaces where trafficking can flourish. Terms such as “worker exploitation”, “debt bondage” or “conscriptio” portray the abuse of the situation without bringing in victim ideology. By examining the conditions of the workers, we can focus on the actual abuses rather than deciding whether or not someone deserves to be called “trafficked”.

## CHAPTER 3

### INVISIBLE IN THE FIELDS

Migrant workers in the Southwest Florida town of Immokalee, (rhymes with *Broccoli*) rise before dawn. They walk through the darkness to various parking lots throughout town to wait for the buses that will take them to the fields for the day. Once there, they will spend hours bent over picking tomatoes or oranges for a going rate of \$25 per ton. To fill a ton takes approximately 75 thirty pound buckets. To make the equivalent of minimum wage, the worker must fill nearly two hundred buckets per day. Out of that pay, workers in Immokalee typically pay \$50 per week for a bed in a bedraggled single-wide trailer or tenement that is shared by twelve others. Small grocery stores, knowing the workers have no other options, often charge two and three times more for food and necessities than elsewhere. What money the workers manage to save is sent home to family members in Mexico, Guatemala, and Haiti, among other places (Bowe 8-9).

The days when the worker makes it to the fields and the weather holds are good days. Some days workers arrive at lots only to find there is no work available for that day. If they get to the fields and it rains, they return with nothing. If they get to the fields and the crops aren't ready for picking, they must wait. Average yearly wages for migrant workers run between \$7,000 and \$10,000, well below the poverty level. Nor is there



much hope that this will change. Farm labor, along with domestic help, is excluded from the National Labor Relations Act of 1935, the act that sets wages, health and safety rules and provides protection for workers (Bales and Soodalter 47). If farm workers organize or protest their treatment, they are simply fired. There are a few wage rules that do apply to farm workers, but they are rarely followed. Southwest Florida boasts exactly two wage and hour inspectors for the region. Growers know the chances of being fined for violations are slim, so there is not much incentive to change the situation.

The economic plight of migrant workers does not rest entirely on the heads of the growers however. In days gone by, workers would arrive at small farms where they would work the season in, if not great, at least slightly better conditions. Now those small farms are gone, having been bought up and replaced by mega growers who provide produce for giants in the food industry such as McDonald's, Taco Bell (Yum! Brands, Inc.), Wal-Mart and Cost-Co. These commercial buyers set the prices they are willing to pay, usually demanding the highest volume for the lowest price. On the other side, growers must contend with constantly rising prices for pesticides, gasoline, fertilizer and other production needs supplied by other multinational corporations such as Monsanto and ConAgra, Exxon and John Deere (Bales and Soodalter 48). Before we begin to feel pity for the growers, however, let us keep on mind that there are only a few agribusinesses large enough to meet production needs and weather production costs. These companies, Nobles Collier, the Six L's, and Pacific among them, keep their profits high by passing on their costs to the workers, "squeezed by the buyers of their produce, growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ" (Bales and Soodalter 48). Nor is there much

escape for the farm worker. Since these agribusinesses are constantly expanding, workers can travel to farms in multiple states and still pick for the same grower under the same conditions.

Some growers have found ways to cut costs even further. Since migrant workers are usually undocumented and easy to replace, as well as the low probability of visits from wage inspectors, these growers have simply stopped paying wages at all. Instead they work with labor contractors and use a form of debt-bondage to keep workers in a state of constant servitude. The immorality of this is fully revealed when we examine the treatment of the workers in light of Nussbaum's list. Farm workers are highly objectified, considered mainly for their instrumental worth. They are valued only in the amount of work they can do for their employers. If they fall behind or get sick, they are replaced. They are fungible in that there is always another worker that can be brought/bought to the fields to step in. Once they arrive in the fields, they are considered the property of the employer; attempts to leave are not tolerated. Finally, they are treated as violable and without subjectivity. Any outward complaint about their treatment or refusal to work is answered with violence and sometimes, death. The following example will show how this plays out in the fields.

Antonio Martinez was unable to provide for his five younger siblings after his parents became ill. When a local contractor (better known as a *coyote*) offered him a job on a construction crew in California, he jumped at the chance. He agreed to pay the contractor the equivalent of \$1,700 for transport to America once he began work and received his first pay. Upon crossing the border, Antonio was taken to a house in Tucson where he was told that instead of working in California, he would be taken to the tomato

fields of Florida. He was told he would be paid \$150 per day, so he went along, despite his reservations. Once in Florida, Antonio was taken to the camp of labor contractors Abel and Basilio Cuello. There he was sold for \$350 dollars and his captivity began. For four months Antonio and many others lived in shacks that were locked and guarded at night, and unlocked only so the workers could go to the fields and then come back again. In the fields they were watched by Cuello who promised to kill them if they tried to escape. When workers asked about pay they were told Cuello had deducted for food, housing, water and transportation (Bales and Soodalter). Finally on a trip to buy food, Antonio and a few others took the chance and ran to the nearby highway and escaped. Eventually Cuello was prosecuted in one of Florida's first forced labor cases.

Cuello was just one labor contractor, however, and the threat of prosecution is small compared to the possible benefits of a trafficking operation. Louis Benetiz, of the Coalition for Immokalee Workers, points out that a single trafficking operation can keep hundreds of people in bondage for years. The debt begins when the person is sold to the labor contractor. The labor contractor tells the worker he must work to pay off what the contractor paid for him. Then they charge for rent and food while constantly finding reasons not to pay for work done. The debt gets bigger and bigger and the chance of paying it off becomes smaller and smaller (Bales and Soodalter 51). Garcia Orozco says, "when you're there, you feel like the world is ending. You feel absolutely horrible. Friday comes, and Saturday and you keep working, and you're really tired, and they come and say, 'We're going to take out this, and this'" (Bowe 21).

Often workers are held by more than debt though. Labor contractors frequently inform workers that any attempt to leave or go to authorities will be met with violence or

death. Workers are often beaten for transgressions such as not working fast enough, playing music too loud or asking questions about pay (Bowe 19). As well, workers' families are threatened. Contractors tell workers that if they run, their families will be visited by associates or family members in Central America ready to inflict harm on behalf of the contractor in the States. Knowing these threats to be real, the worker remains under the control of the contractor.

Workers are also kept in isolation. Many of them are unsure of where they are, do not speak English and are frightened by stories of corrupt police who will beat them and return them to the contractors or the border where they would face abuse by authorities on both sides. As well, they fear vigilante groups like the Arizona-based Minutemen, who have chartered twenty or more chapters across the country since 2005 (Bowe 9).

Finally, workers are also kept from escaping by their own sense of honor. Many of the workers come from small communities where personal reputations are extremely important. There is the idea that those who do not pay their debts, even extortion-like debts, are the "lowest of the low" (Bales and Soodalter 52). Also at stake is their sense of their own masculine worth. Most of the workers in Immokalee are there because they must provide for others. Garcia Orozco lives in a one-room house on the Yucatan Peninsula. He shares his home with his wife and six kids, one of whom has cancer and must undergo expensive treatment. Orozco works when he can but jobs are hard to find. He says:

When there are, you work two, three days sometimes. Maybe sometimes fifteen or twenty. But other times there's none, and you have to go around

looking for it wherever it is. You don't want to leave your hometown, but if there's a chance there may be work somewhere else, well, you have to leave. But you end up coming out the same anyway. Because even if you earn a little more in the city, or in whatever town you go to, you have to pay for rent, you have to pay for food. You can't get by, and once again, you end up going home with nothing. (Bowe 15).

This inability to find work to provide for a family is hard in a culture where men are positioned as workers who alone have responsibility for the economic support of their loved ones (Vigoya 249). Yet it is even harder for men who have left their homeland with the promise of work, and then find themselves in debt-bondage. Mara Viveros Vigoya has done work on masculine ideologies in Latin American cultures. Her essay, *Contemporary Latin American Perspectives on Masculinity*, explains how men's self-perceptions have traditionally been based on vague concepts of authority and a series of absolutes: "they never cry, they must be the best, they must always compete, they must be strong, they must not get affectively involved, and they must never retreat" (240). In Mexico, for instance, when asked how they define masculine qualities, men responded with "being a boss, worker or provider, and being strong, risky, brave" (246). All of these perceptions play in to the psychological reasons why workers will remain in debt bondage rather than escape. Running away, especially without being paid, admits weakness. As well, Vigoya mentions, an important dimension of masculinity in Latin societies is its expression in public spaces (248). Therefore how they are viewed by others is not something to be taken lightly. Among the other workers, one must seem strong, capable, unaffected by the situation. This also helps explain why workers who do

escape fail to report their captors. Eventually they will make it home again. How will they face the women and children they failed? To admit to being victimized or abused is to be stripped of their masculinity and placed instead in a feminine role of oppression.

So what's to be done for the forced farm worker? Government regulations offer little help. Nor do the companies who benefit from this labor feel much responsibility. The grower typically denies all knowledge of workers' conditions, claiming that to be the responsibility of the labor contractors. The commercial buyers deny any knowledge of workers' conditions, claiming that to be the responsibility of the growers. Bales and Soodalter make the argument that the commercial buyers are perhaps the most accountable due to their policy of demanding high volume for low cost, "by pushing down the prices at which they buy up the crops, the fast-food and supermarket chains have created an environment where the only predictable saving the grower – and by association, the *coyote* and the contractor – can realize are from squeezing workers or, in the worst cases, enslaving them" (53). Whether or not that argument is sound, the chain of plausible deniability ensures that not much changes in the life of the field worker.

### CIW and the Ethical Response

With nothing but silence from the food industry or the government, what is the ethical responsibility the rest of us have for these workers? We may not employ them directly, but we all benefit from their labor. Tomatoes picked by workers in debt-bondage end up in our shopping baskets at Trader Joe's, Kroger, H.E.B. They are sliced and placed on burgers at McDonald's and Burger King and put in burritos at Chipotle. Our demand keeps the cycle going. Several grassroots organizations have been started with

the idea that ending trafficking in the fields is the responsibility of us all, and it starts with education.

The Coalition for Immokalee Workers (CIW) provides a model for a human rights based response to trafficking. It was founded with the idea that a true change in people's consciousness comes from educating the people themselves (Bowe 26). The basis of this approach comes from a theory known as "*educacion popular*", or, education for the common people, as found in Paulo Freire's *Pedagogy of the Oppressed*. Freire conceived of this as a way of bringing "complex political problems to the attention of impoverished, usually illiterate peasants" (Bowe 25). *Educacion popular* utilizes group discussion with real life examples to help workers understand the social, economic, and political factors at play in their lives (Bowe 25). Along with weekly meetings, the coalition sponsors boycotts against large commercial buyers and travels throughout the southeastern states on outreach trips. The Coalition has brought publicity about the reality of life in the fields in a way many organizations have failed to do. The CIW also investigates cases of worker abuse and has been instrumental in the successful prosecution of several debt bondage organizations for such abuse, including that perpetuated by the Cuello brothers and the Navarrete family, labor contractors who supplied workers in debt bondage to several major growers in Florida, including the Six L's and Pacific Tomato Growers.

Perhaps one of the most important contributions the coalition has made in the fight against trafficking has been information it has given to workers themselves about their rights in the United States. Many of the workers who come to the United States are fed stories of corrupt and vicious police and government officials. No matter how bad things are in the fields, they believe it will be worse if they try to escape and are picked

up by law enforcement. As well, they will surely be deported. At least in the fields they have the hope of earning something. The CIW's weekly meetings go a long way to dispelling those myths, letting the workers know they have an advocate watching out for them, that they must be paid for their labor, and that they cannot be held against their will ([http://www.ciw-online.org/Community\\_Center.html](http://www.ciw-online.org/Community_Center.html)).

The CIW also maintains a community center in the town of Immokalee that serves as a needed resource in the town. It houses a co-op grocery store where workers can buy provisions and make phone calls at affordable prices, which has the effect of fighting price gouging elsewhere. It also houses a radio station, 107.9, Consciousness Radio, which provides the town with news, health and emergency reports as well as music and radio programs on a multitude of topics, including forced labor. Since televisions are almost unheard of for impoverished laborers, radio is an important aspect of life and an effective medium for reaching workers. Besides these, the center also has a media room where workers can improve computer and literacy skills, a community garden and children's play area for gatherings, an anti-trafficking office, art center and community multipurpose room. As John Bowe says, "the place serves as a comfortable oasis, providing a relaxed atmosphere somewhere between a college social club and a Third World political-party branch office" (24).

While the center is frequented by workers who do have the ability to move around town for themselves, in other words, those who are not in debt bondage, its effect does extend to these other workers as well. Often bonded workers share the fields with non-bonded workers. The labor contractors guilty of abuse are known to the workers one and all. Word of the center and its efforts to prosecute these contractors gets around. Field



abuses are reported to the coalition, which in turn investigates the claims. As well, workers who do choose to attempt to escape their employers know they have a much better chance of freedom if they can make it to the coalition's center, where there are people to intervene on their behalf; as Orozco says of the coalition, "Thank God. Because if they hadn't done anything, we wouldn't be free right now, and we wouldn't be here" (Bowe 76). Finally, those who do escape can speak with others at the center who have been through what they have experienced. This can be invaluable to an individual suffering from trauma.

While the coalition's efforts are by no means exhaustive, they do provide an example of what a group of people can do when they stop waiting for the government to step in and solve a problem, and take it upon themselves to end human rights abuses and give voices to the "victims" themselves.

## CHAPTER 4

### INVISIBLE IN THE HOME

Ruth works in a large house in a D.C suburb. She begins work long before sunrise, cleaning the home and being careful not to wake her employers; if she does, they will beat her. In a few hours she will begin caring for her employers' five children, making their meals and cleaning well into the evening. At night she sleeps with the youngest children, caring for them if they wake in the night. If the family goes out, she must stand in the apartment building hallway until they return. Though she initially she was promised a car and a house as part of her income working as a housekeeper and nanny for a man who worked for the World Bank, in reality she has never been paid and has been beaten regularly, kept isolated, and terrified with stories of corrupt police, stories easily believed by the West African native (Bales and Soodalter 20).

Lakshmi was a thirty-four year old wife and mother of five in Bangalore, India. When her husband became ill, it was left to her to provide for her family. Unable to find a job at home, she took a job with a Kuwaiti diplomat, caring for their new baby. Though she would be required to travel to New York, she was promised \$2000 a month, enough to keep her family from starving. Upon arrival in New York, her employer took her passport. She was worked fifteen hours a day caring for the

family's two children. She was beaten by the man's wife and raped repeatedly. She was paid nothing and fed little (Bales and Soodalter 21). Rosaline Odine left Cameroon when she was fourteen to work in the home of a wealthy American couple. She left with the understanding that she would be a babysitter for the couple's children and would go to school. Once in America, however, it became apparent that she would not be sent to school. She was forced to work twenty hour days, and was beaten almost every day during her nearly three year captivity. She says:

I can't go like for a whole week without getting hit even once or twice,, when I came, my bed was in the kitchen,, so I was actually sleeping in a kitchen,, that's when the husband,, he started making like approaching to me, um and then he would call me like trying to sleep with me and I'll be fighting like no I can't do that and he'll be like well I'm just trying to make you feel like a woman. (Free the Slaves – In Their Own Words).

After a while Rosaline stopped thinking about going to school or whether or not her parents were receiving the money her captors claimed they were sending. She began to think solely of surviving, "I was just hoping one day it will stop because I tried to do everything is right so I won't get yell or beaten up but it's unfortunate that everything I was doing it wasn't coming up the right way so um either way I still get beaten by her" (Free the Slaves – In Their Own Words). Eventually Rosaline was able to escape and her captors prosecuted. They each received nine years in jail.

These are just a few of hundreds of stories from women who signed on to become nannies, housekeepers, accountants and so on and found themselves instead abused and exploited, forced to work against their will for little or no pay. The most appealing aspect of domestic servitude for “employers” seems to be the ability to work the servant long hours, with no rest and little to no pay. Domestic workers are demeaned and dehumanized to keep them compliant. Human Rights Watch reports that most psychological abuse suffered by domestic workers is aimed at reinforcing “power, control and domination over the domestic workers, making them less likely to resist or seek redress for the abusive employment” (Hidden in the Home). Much emphasis is placed on the idea that the domestic workers are inferior to the “employers.” Workers are often made to wash their clothes separately from the employers and denied proper clothing altogether. Rokeyna Akhatar tells how she, “wasn’t allowed to sit at the same table... I wasn’t allowed to wash my clothes with their clothes. They made me feel different. Sometimes the food I cooked didn’t taste good to them, and they would yell at me. They made me [feel] like ... they were my owner” (Hidden in the Home). As well, food is tightly controlled, with workers receiving either very small amounts of food, or days old, and even rancid, meat and vegetables. Liliana Martinez, a Peruvian worker says, “I wasn’t allowed to eat the things in the refrigerator. When they didn’t want something anymore, they gave it to me.” Akhatar, a Bangladesh worker relates how she was only allowed leftovers for dinner. If there were no leftovers, she was “told to eat bread and instructed not to prepare any additional food for herself because she had to ‘clean up’” (Hidden in the Home).

There is a common Kantian thread running through these accounts however. In every case these women are being used as means to an end. Denied medical attention and proper nutrition, these women are treated as simply another household tool, similar to the oven, or refrigerator, or washer. That in itself constitutes a human rights violation and calls for legislation that would punish the employers and protect the women. However, as I will show, this is not enough. Writing a law does not necessarily stop the activity, especially when there are foreign diplomats or highly placed employees of multinational companies involved.

Calling upon the work of Martha Nussbaum, particularly her theories found in *Sex and Social Justice*, I will show that a true human rights based approach to the problem of forced domestic servitude will look not only at what happens to women who find themselves working against their will in the United States, but will also look at the problems these women face in their home countries. While to some extent these problems will be different based on country, and any good solution will take into account these “circumstances of justice” (Nussbaum 7), it is my belief that by taking into account the basic rights and dignities that each person deserves we can come up with a solution that is not merely punitive, but preventative.

On a side note, as I point out in my later discussion on victim terminology, the term traditionally used to describe the women in these situations, “domestic slave” or “victim” seems to miss the point. I will use the term forced domestic labor, to distinguish it from other types of forced labor that will be examined elsewhere.

### A Punitive Response

In 1997, a report was compiled for the UN Special Rapporteur on Violence Against Women by the Global Alliance and the Foundation Against Trafficking in Women. This report included definitions of trafficking that attempted to more fully address the issue of trafficking in women than had been done previously. In particular, “trafficking in women” is defined as, “All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception, or other forms of coercion” (Chew 14). Furthermore, “forced labor and slavery-like practices” is explained as “the extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion” (Chew 14). “Work or services” includes “all domestic, sexual, reproductive, or other services rendered under the aforementioned conditions of coercion, regardless of whether these services are recognized as work, take place under a work contract, or take place under a marriage contract”. “Appropriation of the legal identity and/or physical person” refers both to claiming ownership of a person, and to confiscating a person’s identity papers, supplying a woman with a false identity, and/or the loss of a person’s legal identity through a marriage contract” (Chew 14).

In forming these definitions, the Alliance called upon the League of Nations Slavery Convention of 1926, and the Supplementary Convention of 1956, which

included debt-bondage and forced marriage. These conventions are widely accepted internationally and allowed the Alliance to develop a definition that integrated sex work with non sex work forced labor, and focused strongly on the issue of coercion. Coercion is a necessary identifier in forming a definition of trafficking, since many women do enter into a contractual agreement for both sex and non-sex labor with full knowledge and consent. Ignoring this issue of consent runs the risk of enacting legislation that would limit female agency.

### Coercion vs. Consent

The problematic idea that some women consent to their trafficking lies at the heart of many discussions regarding punishment and prevention. This discussion primarily deals with sex workers, which is interesting since several of the organizations involved caution against making prostitution synonymous with trafficking. While organizations such as the Human Rights Caucus believe that women have the right to choose sex work as legitimate labor, others, such as the Coalition Against Trafficking in Women (CATW), see all prostitution as a violation of women's basic human rights, and consider consent impossible. For CATW, any motivating factor that would lead a woman to willingly enter into a trafficking agreement, (poverty, lack of options open to women, familial forced marriages) is already a violation of her human rights, rendering her consent to travel to another country to work in the sex trade meaningless. CATW believes that any legal definition of trafficking must include all forms of "recruitment and transportation for prostitution, regardless of whether any force or deception took place" (Doezema 21).

The Human Rights Caucus, on the other hand, argues that force or deception is integral to any definition of trafficking for sex work, or other types of labor. Failing to recognize a woman's right to consent introduces the troubling possibility of "adopting a patronizing stance that reduces women to the level of children, in the name of 'protecting' women. Such a stance historically has 'protected' women from the ability to exercise their rights" (Doezema 21). In addition, the idea that a woman cannot consent to sex work "coincides all too easily with anti-feminist ideas about female sexuality, and particularly with that of the threat of woman's sexual anatomy" (Doezema 21). This has the effect of justifying measures that restrict women's freedom to act under the guise of "protection."

The link between prostitution and trafficking is also problematic because it allows governments to view trafficking as a problem of organized crime and sex work, rather than focusing on the human rights offense and the needs of the forced domestic laborers. The gendering of trafficking that occurs by linking it so inextricably to sex work makes it a "woman's issue." Women forced into prostitution are seen as innocent, vulnerable victims who need to be protected, or as "whores," who are tainted and morally corrupt and need to be rehabilitated. Needless to say, most government and non-government organizations (NGO's) are more than willing to assist the innocents, but not so eager to assist the "whores." This type of objectification "leads to laws and policies depriving young women of their right to leave their countries of citizenship (often with the support of local NGO's) by withholding passports or stopping women at the border" (Jordan 31). This paternalistic approach punishes the domestic laborer more than the traffickers and has little in common with a human



rights based response that would focus on the needs of the person rather than the protection of the “object.”

With such ambiguity with regards to the terminology used in creating legislation, it is no wonder that the laws in place are often ineffectual, especially when dealing with traffickers who double as foreign diplomats.

### A-3's, B-1's and G-5's

When entering the United States, foreign diplomats, employees of international agencies such as the International Monetary Fund (IMF), the United Nations and the World Bank, foreign nationals and other overseas businessmen must register the members of their household, including housekeepers, nannies, gardeners, cooks, drivers, etc. The A-3 Visa is given to household workers of diplomats. The G-5 Visa is given to household workers of employees of international agencies and the B-1 visa is given to household workers of foreign nationals, businesspeople and American citizens living abroad (Bales and Soodalter 33). While these workers are clearly linked to, and dependent on, named individuals, once they enter into the country, they are essentially “lost.” No records are kept for B-1 workers. A-3 and G-5 visa applications require an address, but there is typically no follow up. There are nearly four thousand of these visas given out each year. Out of these, the A-3's have the smallest chance of redress should they find themselves in an abusive situation, since their employers have diplomatic immunity. While the State Department can investigate and ask that immunity be waived, “in every case where this has happened the diplomat has been

whisked out of the country and the domestic worker has been dumped or deported” (Bales and Soodalter 34).

It is important to note that never do these employees meet face-to-face with any official in the United States. “To get the visa, an employer just has to state that he will provide ‘reasonable living and working conditions’” for the worker attached to his/her household (Bales and Soodalter 35). Here is another instance where linking trafficking to prostitution is counter-effective. While anti-trafficking task forces attempt to stem the tide of trafficked sex workers entering the United States, “employers” of forced domestic laborers have found a neat back door within the American government itself.

### The J-1’s

Part of what makes the situation of the B-1’s, A-3’s and G-5’s deplorable is the fact the United States does have another visa program in place that could help to solve many of the aforementioned problems. The J-1 visa is given to young women who are interested in “educational and cultural exchange” (Bales and Soodalter 36), and wish to become an “au pair”. With the J-1 visa, a worker is flown to the United States and attends an orientation session where they meet other nannies who will be employed in the same area. This allows the worker to form a network of contacts. As well, the worker learns about educational opportunities, local support networks and community resource options. Each month the worker and their host family are required by law to meet with a counselor where any disputes or concerns are reported. Finally:

The law stipulates that the host family has to pay the au pair a weekly stipend of at least the minimum wage, topped with another \$500 for academic expenses. Rules state that the au pair is not allowed to work more than forty-five hours a week and must have a private bedroom. Another rule requires a \$500 fee to be paid by employers to cover inspection and enforcement costs. There is also a review of the suitability of the employers and their families and a requirement that “all adults living in the host family must pass a background investigation, including employment and personal character references” (Bales and Soodalter 36).

The difference between the two systems is economic. If you happen to be the child of a middle class European family, you will most likely hold a J-1 visa. If you are poor and disadvantaged and must work to feed your starving family, you will most likely end up with a G-5, A-3 or B-1 visa that privileges the employer and disregards the rights of the worker. Were the government to insist on the same type of monitoring for both types of employees, instances of forced domestic labor would naturally go down.

### Preventative Approach

It would seem as though one way to apply a human rights based response to trafficking would be to require periodic face-to-face interviews with domestic employees of foreign-based workers and diplomats. This would ensure that the workers do not become invisible once they enter the country and that forced labor can be identified. In

addition, requiring orientation sessions where employees learn about forced domestic labor situations and the resources available should the employee find themselves in this situation would go a long way to dispelling the myths many employers tell their domestic workers about the United States (they will be detained and deported if they leave the home, the police are corrupt and abusive, etc.). However, this would solve only part of the problem. We must also look at the reasons why these women enter into domestic labor contracts in the first place.

### Women's Human Rights

Martha Nussbaum writes that human beings have “a dignity that deserves respect from laws and social institutions” (5). This idea of human dignity is generally understood to include the idea of equal worth, which is, in turn, connected to an idea of liberty (5). Each person, regardless of gender, has the right to fair and equal political and legal treatment. Each person also has the right to freedom from sexual violence (including marital rape) and to equal family rights, the right to secure equal employment, as well as the right to travel to and from work (84). It is my aim, in this section, to discuss laws that violate women's basic rights, since it is my contention that it is not enough to create laws against the trafficking of human beings. We must also look at laws that encourage oppression of women and limit their range of choices, as it is these women who are ripe for exploitation through contracts that end in domestic forced labor. While it is true that in many cases women enter into these contracts freely, they do so because it is often the best of a small possible set of options that will allow them to care for themselves and their families. This is tricky,

however, since many of these laws stem from religious discourse that denies equal dignity. It is not my wish to delve into a discussion of the value of religious discourse or religious freedoms. I will instead, follow Martha Nussbaum's example found in *Sex and Social Justice* and focus on religion only when it is entangled with politics and political rhetoric that threatens women's basic human rights.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

(<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>)

This convention has been ratified by many of the nations discussed here and with that ratification, the ratifying nation pledges to include the idea of equality in their legal systems, abolishing laws that discriminate against women. These nations also pledge to create tribunals to ensure protection of women against discrimination and ensure elimination of any act of discrimination against women by individuals or organizations. The text of the convention on the UN website states that it seeks to provide the "basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life --

including the right to vote and to stand for election -- as well as education, health and employment” and that it targets tradition and culture as “influential forces shaping gender roles and family relations”

(<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>). As such it directly engages with religious practices that influence discriminatory laws. The nations that have ratified this convention are required to submit national reports every four years explaining the measures that have been taken to put the Convention’s provisions into practice. With this Convention ratified, and its provisions in place, the factors that lead women to enter into contracts for domestic employment in the United States and other countries, contracts which frequently turn out to be fraudulent leading to forced labor situations, should be eliminated. Sadly, this is not the case, and it is here that we can begin to see the problematic intersection of religion and politics.

In 2001, Saudi Arabia ratified the CEDAW. In May of 2011, Manal al-Sharif was arrested for defying the kingdom’s ban on driving by women. The ban is not a legal one, however, but a *fatwa*, or religious ruling. Therefore, while the local police initially stopped al-Sharif, it was the religious police who were called to the scene and made the arrest. The entire event was filmed by al-Sharif and posted to YouTube to call international attention to the inconveniences the driving ban imposes on women. She was charged with “besmirching the kingdom's reputation abroad and stirring up public opinion” (<http://www.hrw.org/en/news/2011/05/23/saudi-arabia-free-woman-who-dared-drive>). She was later released after promising to refrain from participation in the planned June 17<sup>th</sup> protest by the group women2drive. The ban directly violates CEDAW’s article 2 stated above and article 15 (4) that calls for the Kingdom to

"accord to men and women the same rights with regard to the law relating to the movement of persons" (<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>).

Similarly, the ban on employment for women found in the Brahmin tradition plays a significant role in setting up women to be duped into domestic forced labor. Martha Chen relates the story of Metha Bai, an upper-caste widow with two young sons, living in Rajasthan, India. Before her husband died, she had not been allowed outside the home to work; even outdoor chores were done by her husband. Since his death, she was banned from obtaining outside employment by her in-laws, relying instead on her father, who helped cultivate her land and brought gifts of food and clothing; "I may die, but still I cannot go out. If there is something in the house we eat; otherwise we go to sleep" (Chen 37). In this case, though India has ratified CEDAW and its constitution calls for the equal right to work, religious discourse is used to reinforce traditional views about the proper place for women. This is not to say that women do not work outside the home in India, but this infusion of religious-based ideas of the types of work suitable for women and the circumstances under which women may work leads to a drastically reduced set of options. Employment rights are essential in many cases for survival, particularly in rural areas where women are most often secluded. Lakshmi was left the sole provider for her family after her husband became ill. Unable to find work and given the choice between staying isolated and starving to death, or entering into employment as a domestic worker in a foreign household, she chose to leave her family to save them. Had she more options at home, or had not been severely restricted in her choices, she likely would not have decided to agree to overseas employment that landed her in domestic forced labor.

## **CHAPTER 5**

### **FINAL CONSIDERATIONS**

Our current legal remedies for forced labor and debt bondage are inadequate. That is not to say, however, that the fight is hopeless. While by no means exhaustive, I believe the following recommendations would go a long way toward ending and preventing forced labor in the United States. Some of these recommendations are legal, but some are personal. I believe in the power of the ordinary everyday citizen to raise awareness and fight with our voices and our dollars. A human rights based response to human trafficking will not ask solely what our government can do to solve the problem, but will also ask what our individual obligations might be. While I do not believe we need to put ourselves in harm's way, battering down the door of suspicious massage parlors or storming into Florida tomato farms, our sense of morality blazing, I do believe that once we become aware of the issue, it is obligation to keep the information circulating. My recommendations come out of that spirit.

#### Legal Remedies

As mentioned in Chapter Three, currently there are several visa options for household employees of foreign diplomats and international employees. Each option requires only that the employer list the name and occupation of the employee. At no time



do the employees speak for themselves or even meet any representative of the United States. Naturally this paves the way for abuse and exploitation. With a bit of fine tuning, I believe that replacing this visa system with the J-1 visa system that is already in place for au pairs and other European nannies would drastically cut down on the number of people trafficked in for domestic help. The J-1 visa requires that new holders of the visa attend an orientation session upon arriving in the country, where they meet other nannies who will live in the same area and form a support group. The orientation session also informs the nannies of their employee rights in the United States, lets them know about educational opportunities, and sets up further meetings between the nanny and the host family, or employers. Imagine if this system were extended to all household employees coming into the United States. Not only would the monthly meeting uncover any abuse that was occurring, but letting the workers know their rights in America as well as setting them up with contact numbers and a support network would eliminate the isolation many of the workers find themselves in. It would also keep them from believing tales of corrupt and violent police forces that keep the employees terrified and indoors and out of sight. It would also have the effect of giving the domestic workers the same “voice” enjoyed by nannies and would go a long way toward establishing a sense of autonomy and erasing their “object” status in their working household. Monthly meetings would force employers to see the domestic workers as individuals with feelings and boundaries who are working *for* the employer rather than being owned by the employer. I don’t claim to be aware of the costs associated with extending the J-1 system to other employees, but if we are truly a nation concerned with ending human trafficking, it seems as though it should at least be honestly investigated.

In addition to a restructuring of the visa system, we must also provide more training in trafficking for the over eighteen thousand police forces we have in the United States. These are the people who are most likely to respond if a domestic or field worker does escape. If the police do not recognize the individual as having been forced to work in abusive conditions against his or her, they may actually return the person to the employers rather than help uncover and prosecute the guilty party. While it would be nice to see anti-trafficking forces set up in all police departments, this doesn't necessarily have to be the case. John Birbiglia, a police detective in Long Island was given the task of investigating the human trafficking cases that came through his department. Long Island had recently set up their own Anti-Trafficking Task Force, and Birbiglia attended the orientation sessions to learn what constituted human trafficking and how to recognize potentially trafficked individuals. He decided to share this information with all the officers in his precinct. Finding it difficult to obtain government training videos, he made a short, very amateur film of his own to show what a possible trafficking case may look like. A short while later, one of the officers who had seen the film was called to the scene of a donut shop, where a young woman had run in, terrified and asking for help. Feeling it could be a trafficking case, he called Birbiglia who in turn responded and assisted in freeing two women being held by Mahender and Varsha Sabhnani. The case ended in the successful arrest and prosecution of the couple who are currently serving prison sentences for involuntary servitude (Bales and Soodalter 34). Had the police officer not seen the film, or been otherwise educated in human trafficking, he might have misinterpreted the scene, taken her into custody and called the Sabhnani's to come and bring her home. It

seems that a few hours of training and education for our police forces could go a long way to recognizing and fighting forced labor when it is suspected.

Another potentially effective solution would involve amending the National Labor Relations Act so that it extends to domestic and farm workers, two groups currently excluded. Adding these groups to the act would have the effect of extending the rights, provisions and protections available to workers through the act, which are currently non-existent. This would allow farm workers the right to organize and request investigation into unfair working conditions, investigations which could uncover forced labor operations. As with domestic workers, having a say in their working conditions could also force growers to see the field workers as individuals with their own sense of self-determination and deserving of the right to be treated with respect rather than as something fungible and lacking in subjectivity.

Another possibility would be to increase the number of wage and hour inspectors in the regions such as southwest Florida, where abuses are known to occur. While the two inspectors currently in charge of the region spend more time with the growers than out in the fields (Bales and Soodalter 47), having more investigators increases the chance that growers concerned with fines could become less tolerant of employing workers from labor contractors known to use forced labor, such as the Cuello brothers.

### Personal Action

While legal actions that work toward fighting human trafficking should be supported, it is my belief that this is an issue that will ultimately be decided by the

people. While domestic workers could be effectively served through a change in the visa system that would allow in-home meetings to make sure no abuse was taking place, workers in the fields will most likely be better served through citizen awareness. In Chapter 4 I wrote about the work of the Coalition of Immokalee Workers (CIW) and their efforts to end trafficking in the fields through education. I believe this approach is much more effective than more legislation because it gives the workers a voice.

We come into contact with forced labor daily through our cheap goods made for less by the hands of those forced to work for pennies in sweatshops, to the produce picked by those in debt bondage that we use in our salads and fruit smoothies. The question must be asked, what is our responsibility in all of this?

As I stated in the beginning, I believe our responsibility is to keep the message circulating that human trafficking is not something that happens solely on foreign shores, but exists in stark reality here in America as well. Through their boycotting initiatives of commercial buyers of forced labor produce which targets college campuses across the county, the CIW has become perhaps the most well known of the groups fighting for workers rights in the fields. They have amassed a large base of people working on their behalf and staging demonstrations in local grocery stores such as Publix, Kroger, and Trader Joe's, and restaurants like Chipotle, Burger King, and anywhere else known to have refused the coalition's request to pay a penny more per pound of produce to the grower, an increase that would then be passed on to the workers, according to the agreement (Bowe 74). These demonstrations are posted on YouTube and made available

to a much wider audience than simply the bystanders in those places. This has the effect of informing vast amounts of people of the problems in the fields.

If it remains a question whether people can really have a say in what goes on in the fields, keep in mind that with public pressure, companies like Yum! Brands Inc., parent company of Taco Bell, McDonald's and finally Burger King agreed to the penny more per pound request and have entered into formal agreement with the Coalition since the boycotts began in 2004 (<http://www.ciw-online.org/action.html>). The biggest victory for the Coalition and the penny more per pound program however, came in September 2010, when, facing pressure from buyers who had signed the agreement, Pacific Tomato Growers, one of the largest growing farms in Florida, agreed to work with the Coalition and the Campaign for Fair Food to enact new systems of protection for the workers. These systems include "a joint -- and, when need be, external -- complaint resolution system, a participatory health and safety program, and a worker-to-worker education process aimed at insuring that farm workers themselves are active participants in the social responsibility efforts" ([http://www.ciwonline.org/CIW\\_Pacific\\_joint\\_release.html](http://www.ciwonline.org/CIW_Pacific_joint_release.html)).

Positive effects can be achieved through committed, informed individuals who are dedicated to ending human rights abuses in their backyards. I close with the oft-quoted words of Margaret Mead, "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has".

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