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## THE THIRTEENTH AMENDMENT AND HUMAN TRAFFICKING: LESSONS & LIMITATIONS<sup>†</sup>

Kathleen Kim\*

### INTRODUCTION

Understanding the significance of the Thirteenth Amendment for current antihuman trafficking policies and efforts requires scrutiny of the white supremacist roots that forced the chattel slavery of Africans in the United States.<sup>1</sup> Passage of the Thirteenth Amendment in 1865 federalized the abolition of slavery and involuntary servitude and promised a new beginning for the United States and the possibility of its redemption.<sup>2</sup> Yet, decades of systemic antiblack suppression, segregation, and discrimination plainly show that the Thirteenth Amendment did not accomplish all that it set out to do, namely, to also eliminate the “badges and incidents of slavery.”<sup>3</sup>

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<sup>†</sup> This Article is part of a larger project exploring the relationship between the Thirteenth Amendment, human trafficking law and policy, and the Equal Rights Amendment, to propose an intersectional antisubordination framework to more effectively advance the rights of trafficked women and girls of color.

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1. See James Stewart, “Using History to Make Slavery History”: *The African American Past and the Challenge of Contemporary Slavery*, SOC. INCLUSION, no. 1, 2015, at 125, 125; Alexander Tsesis, *Furthering American Freedom: Civil Rights & the Thirteenth Amendment*, 45 B.C. L. REV. 307, 308 (2004). Tsesis writes, “The judiciary’s interpretation [of the Thirteenth Amendment] must be partially historical, because it cannot be made without reference to the United States’ experience with slavery, and partially theoretical, because it must chart the course for civil liberties.” Tsesis, *supra*, at 310.

2. See generally ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877 (Henry Steele Commager & Richard B. Morris eds., Harper Perennial Modern Classics 2014) (1988).

3. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968) (quoting *The Civil Rights Cases*, 109 U.S. 3, 20 (1883)); see MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 224 (2012); William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. DAVIS L. REV. 1311, 1318 (2007); William M. Carter, Jr., *The Thirteenth Amendment, Interest Convergence, and the Badges and Incidents of Slavery*, 71 MD. L. REV. 21, 21 (2011).

For the last twenty years, human trafficking, often called “modern-day slavery,” has been the primary site of Thirteenth Amendment-related legislation and litigation.<sup>4</sup> In addition to the Trafficking Victims Protection Act (TVPA) of 2000, which Congress passed pursuant to the Thirteenth Amendment’s Section Two enforcement provision, Section One’s self-executing prohibition against slavery and involuntary servitude has been raised on behalf of a diverse range of forced workers in both criminal and civil proceedings.<sup>5</sup> Beyond these policy and legal functions, the Thirteenth Amendment propounds significant rhetorical value for the antitrafficking movement. Many antitrafficking advocates purport an equivalency between present-day human trafficking and antebellum slavery.<sup>6</sup> This analogy seizes upon the moral outrage demanded by 250 years of government-backed slaveholder ownership.<sup>7</sup> Though such comparison may inspire support for present-day antitrafficking efforts, it leaves out the important lessons taught by antebellum slavery and the Thirteenth Amendment’s attempt to eliminate it.<sup>8</sup> Slave status in the antebellum era derived explicitly from race. The Thirteenth Amendment meant to wipe out this race-based form of economic subordination. The Thirteenth Amendment also had the prescient objective to overcome slavery’s “vestiges,” those practices that would perpetuate race-based economic subordination by denying people of color equal access to rights, resources, and mobility.<sup>9</sup>

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4. See ALEXANDER TESIS, *THE THIRTEENTH AMENDMENT AND AMERICAN FREEDOM: A LEGAL HISTORY* 157–60 (2004); Jane Nady Sigmon, *Combating Modern-Day Slavery: Issues in Identifying and Assisting Victims of Human Trafficking Worldwide*, 3 *VICTIMS & OFFENDERS* 245, 245 (2008).

5. ALEXANDRA F. LEVY, *FEDERAL HUMAN TRAFFICKING CIVIL LITIGATION: 15 YEARS OF THE PRIVATE RIGHT OF ACTION 8* (Martina E. Vandenberg & Andrew B. Cherry eds., 2018); Kathleen Kim, *The Trafficked Worker as Private Attorney General: A Model for Enforcing the Civil Rights of Undocumented Workers*, 1 *U. CHI. LEGAL F.* 247, 251 (2009) [hereinafter Kim, *The Trafficked Worker*].

6. Tabitha Bonilla & Cecilia Hyunjung Mo, *The Evolution of Human Trafficking Messaging in the United States and Its Effect on Public Opinion*, 39 *J. PUB. POL’Y* 201, 201 (2019).

7. Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 *AM. J. INT’L L.* 609, 611 (2014).

8. *Id.*

9. Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges*, 76 *CORNELL L. REV.* 1, 34 (1990).

This Article supports a Thirteenth Amendment framework for human trafficking, but one consistent with the amendment's purpose to prohibit involuntary servitude and its evolving forms with a race-conscious lens.<sup>10</sup> Such an approach legitimizes the TVPA as an appropriate exercise of Congress's Section Two power to enforce the Thirteenth Amendment.<sup>11</sup> It also encourages a structural analysis of human trafficking that highlights populations particularly vulnerable to race-based economic subordination and identifies deficiencies in antitrafficking policies and practices that fail to reach them. Importantly, this approach cautions against antitrafficking measures, which exceed the Thirteenth Amendment's still unfulfilled yet intended scope, to eliminate involuntary servitude and the systems that maintain race-based economic subordination.<sup>12</sup> Such scrutiny would discourage the rush to policies that conflate human trafficking with an ever-expanding range of sexually exploitive conduct, which results in over-criminalization and diverts attention away from the forced labor and services of people of color.<sup>13</sup> It also helps to preserve the integrity of the Thirteenth Amendment as the constitutional paradigm by which to address race-based economic subordination.<sup>14</sup> A Thirteenth Amendment approach to antitrafficking efforts is race-conscious—the through line from chattel slavery to human trafficking—neglect of

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10. See William M. Carter, Jr., *The Abolition of Slavery in the United States: Historical Context and Its Contemporary Application*, in *THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY* 177, 177 (Jean Allain ed., 2012); Carter, Jr., *The Thirteenth Amendment*, *supra* note 3; Darrell A. H. Miller, *The Thirteenth Amendment, Disparate Impact, and Empathy Deficits*, 39 SEATTLE U. L. REV. 847, 848 (2016).

11. Jennifer Mason McAward, *The Thirteenth Amendment, Human Trafficking, and Hate Crimes*, 39 SEATTLE U. L. REV. 829, 829 (2016).

12. Jack M. Balkin & Sanford Levinson, *The Dangerous Thirteenth Amendment*, 112 COLUM. L. REV. 1459, 1460 (2012); Jamal Greene, *Thirteenth Amendment Optimism*, 112 COLUM. L. REV. 1733, 1733–35 (2012); Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. PA. J. CONST. L. 561, 561 (2012).

13. See Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) of 2017, 18 U.S.C. §§ 1591, 1595, 2421A, 47 U.S.C. § 230 (2018) (allowing online platforms to be held criminally and civilly liable for facilitating trafficking). Texas and Pennsylvania state legislation provides for civil liability of hotels that facilitate sex trafficking. TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2019); 18 PA. CONS. STAT. § 3051 (2016).

14. Rebecca E. Zietlow, *James Ashley's Thirteenth Amendment*, 112 COLUM. L. REV. 1697, 1697 (2012).

which impedes the unfinished work of both. Through this analysis, this Article also finds a critical need for a robust constitutional framework to address gender inequality and sexual exploitation.<sup>15</sup> The addition of the Equal Rights Amendment, for example, might present the possibility of an intersectional constitutional framework to protect the rights of exploited and trafficked women of color.

Part I of this Article contextualizes human trafficking within the doctrinal development of the Thirteenth Amendment and Section Two legislation enacted to address subsequent forms of unfree labor. This part describes the origins of a race-conscious Thirteenth Amendment framework and explains its relevance in guiding antitrafficking policy. The overwhelming focus of antitrafficking efforts on sexual exploitation strains the normative foundation of the Thirteenth Amendment. Part II examines the TVPA and the California Trafficking Victims Protection Act and identifies their most significant contributions to Thirteenth Amendment doctrine. Yet, this part finds that the absence of a Thirteenth Amendment framework to guide the execution of antitrafficking laws has resulted in an overemphasis on the criminal enforcement of sex trafficking at the expense of both labor and sex trafficked persons of color. Part III recommends an antitrafficking approach grounded in the Thirteenth Amendment's aim to not only prohibit slavery, involuntary servitude, and other forms of unfree labor but to also overcome the structural forces that maintain race-based economic subordination. Informed by these Thirteenth Amendment concerns, antitrafficking measures and strategies may yield more effective strategies to prevent trafficking and assist trafficking survivors.

### *I. From the Thirteenth Amendment to Human Trafficking*

Chattel slavery, peonage, involuntary servitude, and human trafficking are forms of unfree labor prohibited by the Thirteenth

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15. Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304, 304 (1995).

Amendment.<sup>16</sup> Each emerged along a historic timeline that included dramatic social change and growth in industry that, if left unregulated, would subject workers to unconscionable labor conditions.<sup>17</sup> Further, each form of unfree labor occurred in a highly racialized context.<sup>18</sup> When outright state-sanctioned slavery was abolished, plantation owners and other industries took advantage of Black Codes and peonage contracts to coerce the labor of newly freed slaves and recently arriving Mexican and Chinese “coolie” workers.<sup>19</sup> Courts and Congress utilized the Thirteenth Amendment to defend the freedom of workers by invalidating Black Codes and peonage contracts, and by passing the Civil Rights Act of 1866 and the Anti-Peonage Act.<sup>20</sup> These advancements, however, were short-lived. In a stark reversal, the end of Reconstruction coincided with the federalization of immigration laws targeting the Chinese and other “Orientals” for exclusion and removal, based on their perceived exploitability as “coolies” and coerced prostitutes.<sup>21</sup> Post-Reconstruction antislavery efforts turned to “white slavery,” a puritanical and essentialized view of white women who required protection from sexual predation.<sup>22</sup> Meanwhile, the expansion of criminal and immigration enforcement regimes facilitated the persistent vulnerability of African-Americans

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16. James Gray Pope, *Contract, Race, and Freedom of Labor in the Constitutional Law of “Involuntary Servitude,”* 119 YALE L.J. 1474, 1517 (2010).

17. See Catherine Armstrong, *Concepts of Slavery in the United States 1865-1914*, in THE PALGRAVE INTERNATIONAL HANDBOOK OF HUMAN TRAFFICKING 35–51 (John Winterdyk & Jackie Jones eds., 2020).

18. See WILLIAM S. KISER, *BORDERLANDS OF SLAVERY: THE STRUGGLE OVER CAPTIVITY AND PEONAGE IN THE AMERICAN SOUTHWEST* (2017) for a fascinating historical account of racialized unfree labor outside of the more well-known systems that developed in the American South.

19. Armstrong, *supra* note 17, at 43.

20. Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27 (1866); *Clyatt v. United States*, 197 U.S. 207, 218 (1905).

21. See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 643 (2005); Gabriel J. Chin, *Regulating Race: Asian Exclusion and the Administrative State*, 37 HARV. C.R.-C.L. L. REV. 1, 1–2 (2002); Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 3, 26 (1998).

22. Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L.J. 207, 215 (2007); see BRIAN DONOVAN, *WHITE SLAVE CRUSADES: RACE, GENDER, AND ANTI-VICE ACTIVISM, 1887-1917*, at 1 (2006).

and other people of color to labor exploitation.<sup>23</sup> By the latter half of the twentieth century, the forces of global labor migration had met the United States' demand for an exploitable workforce.<sup>24</sup> Without access to resources that could ensure safe passage to legitimate workplaces, migrant workers of color from impoverished and unstable foreign regions often found themselves in forced labor situations.<sup>25</sup>

The TVPA was enacted to address this latest form of unfree labor by criminalizing forced labor and sex trafficking and providing certain benefits and protections to victims.<sup>26</sup> It expanded the meaning of involuntary servitude to include labor or commercial sex services exacted through not only direct or threatened physical force or legal penalty but also nonviolent, psychological coercion.<sup>27</sup> However, like the efforts of the Thirteenth Amendment doctrine before it, the TVPA has fallen short of its potential to protect trafficked workers of color.<sup>28</sup> For example, the vast majority of youth who are sex trafficked are African-American and Latina.<sup>29</sup> They experience marginalization as a result of poverty and educational inequity that place them at a higher risk of victimization.<sup>30</sup> Also, racial bias in the criminal justice system makes it more likely that Black and Latina girls will be treated as delinquents rather than victims.<sup>31</sup> In addition, reports on the human

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23. Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. DAVIS L. REV. 171, 190 (2018); Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 966 (2019).

24. GORDON H. HANSON, *THE ECONOMICS AND POLICY OF ILLEGAL IMMIGRATION IN THE UNITED STATES* 7 (2009); Douglas S. Massey & Kristin E. Espinosa, *What's Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis*, 102 AM. J. SOC. 939, 962 (1997).

25. HANSON, *supra* note 24.

26. Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 14 (2004).

27. Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. REV. 409, 438 (2011).

28. DUREN BANKS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010*, at 6-7 (2011).

29. Lisa Fedina et al., *Risk Factors for Domestic Child Sex Trafficking in the United States*, 34 J. INTERPERSONAL VIOLENCE 2653, 2668 (2019).

30. *Id.* One study found that 68.7% of child sex trafficking victims were either Black or Latino. Seventy percent had an annual household income of less than \$10,000. *Id.*

31. "African-American girls and women are disproportionately arrested for prostitution relative to their numbers in the population." HEATHER J. CLAWSON ET AL., *STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS FINAL REPORT 3* (2009); Priscilla A. Ocen, (*e*)*racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually*

trafficking of adults in the United States indicate that the majority of cases involve the forced labor of foreign nationals of color.<sup>32</sup> Most trafficked workers originate from regions in the global south and lack stable immigration status in the United States.<sup>33</sup> Their desperate circumstances coupled with a draconian immigration enforcement system, which perceives undocumented workers as criminals, heightens their susceptibility to being trafficked.<sup>34</sup>

Meanwhile, new federal and state antitrafficking laws gain bipartisan approval with ease and avoid scrutiny, but have altered the meaning of human trafficking to include a wide range of sex crimes including sexual assault, sexual harassment, and third party liability for facilitating such acts, including internet advertisement platforms.<sup>35</sup> These new laws conflate human trafficking with a broad range of sexually exploitive activities. At first glance, this trend might suggest the potent reach of neo-abolitionism, an ideology that regards all prostitution as inherently forced or coerced, and therefore synonymous with human trafficking. This approach justifies antitrafficking measures focused solely on abolishing all prostitution through increased criminal enforcement.<sup>36</sup> However, the recent trend in antitrafficking policies to include a variety of sex-based violations also appears ad hoc and ill-informed. The culmination of these measures indicates a departure from the federal TVPA, which defines human trafficking as forced labor or commercial sex activity by force, fraud, or coercion. The TVPA's definition follows previous Thirteenth

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*Exploited Minors*, 62 UCLA L. REV. 1586, 1591 (2015).

32. PHILIP GNAEDIG ET AL., LABOR TRAFFICKING CASES 2008-2018: DATA ANALYSIS REPORT 5 (2019).

33. COLLEEN OWENS ET AL., UNDERSTANDING THE ORGANIZATION, OPERATION, AND VICTIMIZATION PROCESS LABOR TRAFFICKING IN THE UNITED STATES 47-48 (2014).

34. One commentator has stated that "trafficked persons who are deported are themselves prone to re-trafficking." Jennifer K. Lobasz, *Beyond Border Security: Feminist Approaches to Human Trafficking*, 18 SECURITY STUD. 319, 322 (2009); see Jayne Huckerby, *Unpacking the Trafficking-Terror Nexus*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM ROUTLEDGE 119 (2013).

35. See TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2019); 18 PA. CONS. STAT. § 3051 (2016).

36. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1669 (2010). "[T]he exploitation of prostitution and trafficking cannot be separated." JANICE G. RAYMOND, GUIDE TO THE NEW U.N. TRAFFICKING PROTOCOL 6 (2001).



Amendment enforcement legislation intended to prevent perpetrators from extracting labor or services from others through unlawful means.

The persistent co-optation of human trafficking to prioritize criminal enforcement measures against sexual exploitation at large disregards the Thirteenth Amendment's aim to liberate work by banning slavery, involuntary servitude, and other forms of unfree labor. Further, the critical yet inferred purpose of the Thirteenth Amendment, to eliminate the "badges and incidents of slavery," has been left unexamined in the context of human trafficking. Thirteenth Amendment scholars who have interpreted the legislative history of the Thirteenth Amendment and its supplemental legislation, the 1866 Civil Rights Act, regard the Thirteenth Amendment's implicit mandate to eliminate the "vestiges" and "badges and incidents of slavery" as fundamental to the dismantling of race-based economic subordination.<sup>37</sup> The Thirteenth Amendment's prohibition on unfree labor is race-conscious, reflecting a structural awareness of the inherent racism of antebellum slavery that seized the labor of African slaves and their descendants and ensured their subordination by depriving them of access to any rights.

A Thirteenth Amendment approach to human trafficking calls attention to the structural racism that increases the vulnerability of most trafficked persons. The dominant antitrafficking strategy focuses solely on sexual exploitation, which overlooks the reality that most trafficking cases involve victims of color. I call this approach *colorblind prohibitionist* because it is race-neutral and seeks to

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37. See *supra* notes 20, 24 and accompanying text. While the Supreme Court has favored narrow readings of "badge or incident" of slavery, *Palmer v. Thompson*, 403 U.S. 217, 226 (1971); see *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 390 (1982), this narrow interpretation stands in sharp contrast to the work of some scholars, for whom the Amendment has become an ever-broadening remedial panacea. For examples of the various social problems scholars have argued Thirteenth Amendment derived policy could address, see Akhil Reed Amar & Daniel Widawsky, *Child Abuse as Slavery: A Thirteenth Amendment Response to Deshaney*, 105 HARV. L. REV. 1359, 1384 (1992); Andrew Koppelman, *Forced Labor: A Thirteenth Amendment Defense of Abortion*, 84 NW. U. L. REV. 480, 483-484 (1990); Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207, 219 (1992); Larry J. Pittman, *Physician-Assisted Suicide in the Dark Ward: The Intersection of the Thirteenth Amendment and Health Care Treatments Having Disproportionate Impacts on Disfavored Groups*, 28 SETON HALL L. REV. 774, 869 (1998).

condemn all sexual exploitation and prostitution, whether consensual or not.<sup>38</sup> Colorblind prohibitionists disregard the role of systemic race subordination in facilitating human trafficking and essentialize women as victims of sexual exploitation.<sup>39</sup> They analogize antebellum slavery with human trafficking to harness its moral opprobrium but avoid consideration of the racism that slavery perpetrated.<sup>40</sup> Such disconnect from the structural conditions that gave rise to slavery and that facilitate human trafficking dilutes the significance of the Thirteenth Amendment and its enforcement statute, the TVPA, which were designed to overcome unfree labor and the conditions of race-based economic subordination that support it.

The next part analyzes human trafficking policy under the TVPA and the California Trafficking Victims Protection Act (CTVPA) to identify where and how their contributions to Thirteenth Amendment doctrine, though significant, nonetheless permitted the overriding criminal enforcement antitrafficking strategy focused almost exclusively on sex trafficking. Part III provides recommendations to correct such misdirection, by reviving a Thirteenth Amendment race-conscious application to antitrafficking efforts. A race-conscious antitrafficking approach highlights the larger phenomenon of the trafficking of immigrant workers of color and recognizes the gendered racism that afflicts trafficked women and girls of color, in particular sex-trafficked women and girls of color who experience racialized fetishization, and are often treated as criminals rather than victims.

## II. *The TVPA and CTVPA vs. Sexual Exploitation*

Human trafficking in the United States occurs when one is compelled to work through force, fraud, or coercion in a wide range of industries, such as domestic work, hospitality (including restaurants

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38. For the dangers inherent to colorblind—i.e., “race-neutral”—social policy, see EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* (2003); Ashley (“Woody”) Doane, *Beyond Color-Blindness: (Re) Theorizing Racial Ideology*, 60 *SOC. PERSP.* 975, 975–91 (2017).

39. For critiques of feminist legal theory that ignore race and racism, see Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990); Marlee Kline, *Race, Racism and Feminist Legal Theory*, 12 *HARV. WOMEN’S L.J.* 115 (1989).

40. Bravo, *supra* note 22, at 245.

and hotels), garment manufacturing, construction, agriculture, day labor, and the commercial sex industry, among others. Labor trafficking afflicts sex workers, just as sexual exploitation afflicts forced laborers. Not only are cases involving trafficking for both traditional low-wage industries and for commercial sex regular occurrences but the legal definition of forced labor also covers forced, defrauded, or coerced work in a wide range of industries, including sex-related work that is not prostitution.

Soon after the TVPA was enacted in 2000, implementation of the law brought together a nascent network of antitrafficking stakeholders. NGO service providers and federal government authorities formed regional task forces to identify strategies to advance the objectives of the TVPA, to protect trafficked workers, and to prosecute their traffickers.<sup>41</sup> The addition of state and local law enforcement urged further interagency cooperation.<sup>42</sup> Yet, effective collaboration among these stakeholders was challenged at times by competing interests and misconceptions of the legal definition of human trafficking promulgated by the TVPA. As a coauthor of the CTVPA, I worked with my counterparts at the Coalition to Abolish Slavery and Trafficking and Asian Pacific Islander Legal Outreach, in consultation with the federal Department of Justice's Human Trafficking Unit, to craft a human trafficking law that overcame what we perceived at the time as definitional ambiguities in the TVPA while ensuring consistency with California's constitution and statutory regime.

In drafting a more precise state definition of human trafficking, we sought to avert two significant ways in which the TVPA was misapplied in the early days of its implementation. First, the federal TVPA had a bifurcated definition of human trafficking that separated

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41. The June 2004 *Trafficking in Persons Report* published by the U.S. State Department describes the various task forces created to advance the TVPA's objectives. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2004).

42. For an overview of antihuman trafficking laws at the state level, see Joseph S. Guzmán, *State Human Trafficking Laws: A New Tool to Fight Sexual Abuse of Farmworkers*, 46 COLUM. HUM. RTS. L. REV. 288 (2015); Stephanie L. Mariconda, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L.J. 151 (2009).

sex trafficking from labor trafficking.<sup>43</sup> This definition, reflected in the TVPA's criminal provisions that set forth the crime of forced labor as distinct from sex trafficking, had disparate effects.<sup>44</sup> Law enforcement prioritized the investigation and prosecution of sex trafficking rather than labor trafficking—often explicitly mandated by departmental policy.<sup>45</sup> The bifurcated legal definition was also inconsistent with sociological understandings of human trafficking, which understood the forced, defrauded, or coerced endpoint, whether labor exploitation or sex services, as a single, albeit complex, phenomenon.<sup>46</sup> Finally, the Thirteenth Amendment, which empowered Congress to pass the TVPA, aims to prevent unfree labor, regardless of type of work. Further, as this Article suggests, adherence to the Thirteenth Amendment as the doctrinal and normative framework for contemporary human trafficking laws and antitrafficking efforts would attend to all human trafficking, and especially those cases that evidence the persistence of systemic race-based economic subordination.

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43. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102 (2006) (amended 2008).

44. Henry Andrés Yoder, *Civil Rights for Victims of Human Trafficking*, 12 U. PA. J.L. & SOC. CHANGE 133, 157 (2009) (explaining that the TVPA's "statutory scheme implicitly makes the condemnation of sex work a priority while ignoring sex workers' legitimate needs, such as the ability to unionize or sue for unpaid wages").

45. Kathleen Kim & Grace Chang, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 325, 335 (2007). See Elizabeth Bernstein, *The Sexual Politics of the "New Abolitionism,"* 18 DIFFERENCES 128 (2007) for an analysis of the ways in which the TVPA shifted law enforcement priorities and incentivized the investigation of sex trafficking over labor trafficking.

46. Kim & Chang, *supra* note 45, at 317. One commentator explains the harm of a bifurcated definition as follows:

While the TVPA "on the books" offers equal protection to victims of "sex" and "non-sex" trafficking, marking "sex trafficking" as a special category within the law created the conditions for those implementing the TVPA to conceptualize trafficking for forced commercial sex as different, special, and uniquely harmful; it allowed them to apply this interpretive frame to their investigative efforts and treatment of victims as they put the law "in action." This marking in turn casts the investigation of "non-sex" trafficking as ordinary and uninteresting and the victims, if not undeserving of protection, then delegated to non-priority status.

Alicia Peters, *"Things That Involve Sex Are Just Different": US Anti-Trafficking Law and Policy on the Books, in Their Minds, and in Action*, 86 ANTHROPOLOGICAL Q. 221, 248 (2013).

Second, the TVPA made clear that it followed a lineage of Thirteenth Amendment related prohibitions on compulsory work (except as punishment for a crime). The Thirteenth Amendment banned slavery and involuntary servitude. When Black Codes forced newly freed slaves to accept peonage contracts, which subjected them to criminal penalties for failure to work, both the Court and Congress invalidated such contracts as unconstitutional under the Thirteenth Amendment. Section Two promulgated the Anti-Peonage Act of 1867 and the Involuntary Servitude Statute of 1949.<sup>47</sup> But courts interpreted these statutes to require evidence of direct or threatened physical force or criminal penalty.<sup>48</sup> By the late twentieth century, congressional action required a comprehensive human trafficking law to combat the forces of global labor migration that preyed upon desperate workers vulnerable to forced labor through nonviolent, psychologically coercive tactics. The TVPA elevated the legal significance of nonphysical psychological coercion by recognizing it as an unlawful means to force a worker's labor or services.<sup>49</sup>

The CTVPA was written to correct the misdirection of the early implementation of the TVPA. The CTVPA set forth a unitary definition of human trafficking, and clearly described the range of conduct defined as coercive:

(a) A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services [including sex], is guilty of human trafficking.

.....

(h) (3) [For purposes of this section, unlawful "[d]eprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under

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47. Jacobus tenBroek, *Thirteenth Amendment to the Constitution of the United States: Consummation to Abolition and Key to the Fourteenth Amendment*, 39 CALIF. L. REV. 171, 186 (1951).

48. A string of decisions culminating in *United States v. Kozminski*, 487 U.S. 931 (1988).

49. See Kim, *The Coercion of Trafficked Workers*, *supra* note 27, at 414.

circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) “Duress” includes . . . knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

(5) “Forced labor or services” means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.<sup>50</sup>

Finally, the federal TVPA was amended in 2008 to clarify its broad coercion standard by codifying the scope of nonphysical coercion in explicit terms under the concept of “serious harm”:

[A]ny harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.<sup>51</sup>

Notably, the range of nonphysical harms legally sufficient to establish forced labor includes “psychological, financial, or reputational harm.”<sup>52</sup> To determine the seriousness of the harm, the statute instructs consideration of “all the surrounding circumstances” and applies the standard of a “reasonable person” with the “same background and in the same circumstances”<sup>53</sup> as the alleged trafficked person, thereby contemplating the trafficked person’s individual

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50. CAL. PENAL CODE § 236.1 (West 2019).

51. 18 U.S.C. § 1589(e)(2) (2018).

52. *Id.*

53. *Id.*

characteristics. Furthermore, with respect to legal coercion, the 2008 TVPA amendments clarify that compelling labor through threats of any legal proceeding, whether “administrative, civil, or criminal,”<sup>54</sup> also constitutes a violation of forced labor. Thus, threats of deportation, an administrative and civil immigration consequence, are sufficient to coerce forced labor. Finally, even in the absence of direct threats, “a scheme, pattern, or plan” designed to cause a worker to believe that they could suffer serious harm is also sufficient to coerce forced labor under the TVPA.

The level of detail added by the 2008 amendments to the TVPA underscored the legal significance of psychological coercion. The simultaneous application of both the TVPA and the CTVPA should have been sufficient to identify and enforce human trafficking crimes, especially labor trafficking. Yet, the most legally significant contributions of the TVPA and CTVPA remain underutilized. Coercion claims are under-investigated, and despite the CTVPA’s initial holistic unitary definition of human trafficking, sex trafficking investigations are prioritized to the neglect of forced labor.<sup>55</sup> For example, in November 2012, California voters enacted Proposition 35, also known as the Californians Against Sexual Exploitation (CASE) Act. Proposition 35 altered the CTVPA to augment focus on sex-related crimes by cross-referencing their California penal code provisions with human trafficking provisions and by increasing criminal penalties for these sex-related crimes to a level much higher than labor trafficking.<sup>56</sup>

In spite of the prevalence of forced labor, these cases remain underenforced.<sup>57</sup> The criminal justice system lacks the nuanced

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54. *Id.* § 1589(c)(1).

55. CAL. PENAL CODE § 236.1. *See generally* Kim, *The Coercion of Trafficked Workers*, *supra* note 27.

56. Kathleen Kim, Kevin Kish & Cindy Liou, *Don’t Undermine Victims’ Rights in Fighting Sex Trafficking*, PAC. STANDARD (Oct. 18, 2012), <https://psmag.com/news/prop-35-case-act-undermines-victims-rights-48314> [<https://perma.cc/H56P-BFCJ>].

57. CAL. ALL. TO COMBAT TRAFFICKING & SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA 33 (2007), [https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/Human\\_Trafficking\\_Final\\_Report.pdf](https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/Human_Trafficking_Final_Report.pdf) [<https://perma.cc/6LW6-PWKP>].

understanding and incentive to pursue coercion cases.<sup>58</sup> Meanwhile, there appears to be a distinct correlation between labor trafficking and the psychologically coercive means that traffickers use to lure and force the compliance of their victims. Although physical injuries and abuse take place in many of these cases, trafficking is most often achieved through nonviolent coercive tactics. These are difficult cases to investigate and even more difficult to prove.

In most local law enforcement agencies, vice officers are detailed to human trafficking investigations. As experts in enforcing sex crimes, vice officers are adept at identifying sex trafficking victims—especially child victims of sex trafficking whose minor status forfeits their legal consent to engage in commercial sex activity and therefore makes them de facto victims in the absence of force, fraud, or coercion.<sup>59</sup> Uncovering labor trafficking operations—which requires difficult-to-obtain evidence of force, fraud, or coercion, whether the victims are adults or children—depends on investigation techniques that may require longer term surveillance and novel intelligence-gathering methods.<sup>60</sup> Even if detectives discover a labor

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58. One of the major challenges to enforcement is the difficulties faced by law enforcement in identifying trafficking victims. As Tyldum and Brunovskis note, “it is impossible to distinguish victims of trafficking based on external observations.” Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, INT’L MIGRATION, Jan. 2005, at 17, 30. Thus, to identify trafficking victims, officers must be trained in the often-subtle signs of psychological coercion. This training is rarely provided. For example, a survey of 163 police departments found that only 7 provided training in human trafficking. Deborah G. Wilson, et al., *Trafficking in Human Beings: Training and Services Among US Law Enforcement Agencies*, 7 POLICE PRAC. & RES. 149, 155 (2006).

59. According to a study funded by the Department of Justice, 85% of trafficking cases identified by law enforcement were sex trafficking cases. AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING CASES 40 (April 2012), <https://www.ncjrs.gov/App/AbstractDB/AbstractDBDetails.aspx?id=260850> [<https://perma.cc/4A35-UBB4>].

60. Amy Farrell, Colleen Owens & Jack McDevitt, *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME L. & SOC. CHANGE 139, 155 (2014). The authors described the results of their research analyzing 140 closed human trafficking cases from a targeted sample of 12 U.S. counties as follows:

Of the few labor trafficking cases that were identified, no prosecutions of labor trafficking used state labor trafficking laws in any study site. Although local prosecutors repeatedly acknowledged that labor trafficking existed in their communities, they said that such cases were not being investigated because the public



trafficking case, prosecutors are skeptical that cases based on nonviolent coercion would succeed in court.<sup>61</sup>

The civil justice system, to some extent, has filled the gap left by nonenforcement in the criminal arena. A growing number of civil lawsuits on behalf of labor trafficked plaintiffs indicate a significant correlation between civil litigation and labor trafficking.<sup>62</sup> Sex trafficking cases, on the other hand, constitute virtually all criminal prosecutions for human trafficking. Between 2016 and 2017, 95% of federal indictments for human trafficking involved sex trafficking.<sup>63</sup> Conversely, between 2003 and 2018, approximately 95% of civil human trafficking cases involved labor trafficking.<sup>64</sup>

The vast majority of labor trafficking victims are also immigrants of color.<sup>65</sup> Immigration restrictions are inextricably connected to labor trafficking. Options for safe migration and stable immigration status empower workers, while restrictions that tie guest workers to their employers or leave noncitizen workers vulnerable to deportation constrain their freedom in the workplace. Needless to say, noncitizen workers of color are among the most vulnerable to workplace exploitation.

Moreover, the benefits of the dominant criminal enforcement approach to sex trafficking for sex trafficking survivors are dubious at best. Many victims of crime have criminal histories themselves. Sex

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did not call to report them and because the police had not identified any cases where there was clear evidence that victims had been coerced, defrauded, or forced to labor.

*Id.*

61. Amy Farrell et al., *Policing Labor Trafficking in the United States*, 23 TRENDS ORGANIZED CRIME 36 (2019). Sharing recent research on U.S. labor trafficking, the authors demonstrated that prosecutors “were cautious about labor trafficking claims. . . . Another federal prosecutor explained that although the broad legal definitions meant prosecutors could be creative in how they applied the new laws, terms like ‘coercion’ made cases of exploitation or extreme labor violations difficult to pursue in criminal court[.]” *Id.* at 42–43. “In each of the four study sites, police and prosecutors lamented that the evidentiary standards to prove labor trafficking were unclear or untested.” *Id.* at 52.

62. See generally Kim, *The Trafficked Worker*, *supra* note 5.

63. HUMAN TRAFFICKING INST., 2018 FEDERAL HUMAN TRAFFICKING REPORT 7 (2019), <https://www.traffickingmatters.com/wp-content/uploads/2019/04/2018-Federal-Human-Trafficking-Report-Low-Res.pdf> [<https://perma.cc/RM64-YF4P>].

64. HUMAN TRAFFICKING LEGAL CTR., FEDERAL HUMAN TRAFFICKING CIVIL LITIGATION: FIFTEEN YEARS OF THE PRIVATE RIGHT OF ACTION 11 (2018), <https://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-1.pdf> [<https://perma.cc/3RED-874E>].

65. *Id.* at 17.

trafficking victims, most of whom are people of color, are rarely represented by their own victims' rights attorneys in the criminal justice system. As discussed previously, the overwhelming majority of sex-trafficked youth are Black and Latina and often end up incarcerated and caught up in the juvenile delinquency system, either because they are not perceived as victims or because they are deprived of access to competent counsel for crimes they may have committed. Noncitizen sex trafficking victims largely come to the United States from countries in Asia and Central America or from Mexico. These women are fetishized and objectified against a background of U.S. policies and practices that presume that women from these countries seek to provide sex services or are easy targets of sexual exploitation. The dominant criminal enforcement approach in these cases promotes these stereotypes by casting these women as either unwitting victims lured by false promises of legitimate work in the United States or as the perpetrators of sex trafficking—madams of brothels whose foreign ties give them easy access to a surplus of exploitable victims. Sex trafficked women and girls of color are, therefore, both victims and criminals under a criminal enforcement approach to trafficking that is ill-equipped to rectify the systemic gendered racism that they experience.

The foregoing analysis of the principle federal and California human trafficking policies and practices suggests three findings: First, serious attempts to define human trafficking as forced or coerced labor in any industry, whether commercial sex or another, have done little to influence the dominance of an antitrafficking approach that prioritizes the criminal enforcement of sex and prostitution crimes. Second, the addition of nonphysical coercion as legally sufficient to establish a forced labor violation to Thirteenth Amendment doctrine has been underutilized, and thereby undermines its significance. Third, the combination of these factors sustains an antitrafficking regime inconsistent with a Thirteenth Amendment framework that would seek to empower workers by dismantling race-based economic subordination.

### *III. A Thirteenth Amendment Race-Conscious Approach to Human Trafficking*

Recalling the Thirteenth Amendment foundation of human trafficking laws urges greater responsiveness to the race-based economic subordination suffered by trafficked persons of color, whether trafficked for labor or sex. Various governmental agencies and nongovernmental organizations regularly collect data on human trafficking, including numbers of victims identified and reported and numbers and types of cases reported, investigated, and prosecuted.<sup>66</sup> This data, however, is skewed by the historical focus of antitrafficking efforts on sex trafficking rather than labor trafficking.<sup>67</sup> As described above, for example, local law enforcement typically engages in antitrafficking efforts through their vice units, which have greater familiarity with the commercial sex industry and are not accustomed to investigating employers in other labor industries. Meanwhile, federal policy has often directed the U.S. Department of Justice and Department of Homeland Security to concentrate on the enforcement of sex trafficking crimes to the neglect of labor trafficking. Governmental and philanthropic resources that fund many antitrafficking services, outreach, and education reflect this emphasis on sex trafficking. As a result, most data on human trafficking disproportionately centers on sex trafficking, especially child sex

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66. See, e.g., *Attorney General's Trafficking in Persons Report*, U.S. DEP'T JUST., <https://www.justice.gov/humantrafficking/attorney-generals-trafficking-persons-report> [https://perma.cc/DXD7-W3KT] (last visited Apr. 20, 2020); *Trafficking in Persons Report*, U.S. DEP'T ST., <https://www.state.gov/trafficking-in-persons-report/> [https://perma.cc/9GB5-8TJ3] (last visited Apr. 20, 2020); *2018 U.S. National Human Trafficking Hotline Statistics*, POLARIS PROJECT, <https://polarisproject.org/2018-us-national-human-trafficking-hotline-statistics/> [https://perma.cc/BLB5-94FZ] (last visited Apr. 20, 2020); *Resources*, HUM. TRAFFICKING INST., <https://www.traffickinginstitute.org/resources/> [https://perma.cc/PMN7-9KJ7] (last visited Apr. 20, 2020).

67. Amy Farrell & Jessica Reichert, *Using U.S. Law-Enforcement Data: Promise and Limits in Measuring Human Trafficking*, 3 J. HUM. TRAFFICKING 39, 45. Further, only thirty-seven states reported human trafficking data for 2018, the most recent year available. And notably, the largest state by population, California, did not report human trafficking data. For more information on human trafficking data collection by the UCR, see *2018 Crime in the United States, Human Trafficking*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/additional-data-collections/human-trafficking> [https://perma.cc/3UTG-JCPC].

trafficking, and therefore underrepresents the frequency of labor trafficking.

A criminal enforcement approach to human trafficking suffers from limitations caused by its almost exclusive focus on sex trafficking, which neglects the larger phenomenon of labor trafficking of people of color and often criminalizes sex-trafficked women and girls due, in part, to their minority race.<sup>68</sup> A Thirteenth Amendment framework requires reassessment and alteration of the emphasis on criminal enforcement in antitrafficking strategy. Other agencies may be better situated to employ a race-conscious approach to human trafficking, which attends to the needs of trafficked persons of color and also enacts systemic change to rectify race-based economic inequality. Some federal agencies that come to mind are the U.S. Department of Labor and the Equal Employment Opportunity Commission. In California, the Department of Industrial Relations and the Department of Fair Employment and Housing focus on investigating and remedying violations in the workplace and have the legal authority to enforce human trafficking crimes.

Finally, a Thirteenth Amendment approach to human trafficking calls for a drastic overhaul of the United States immigration system. Ever since Reconstruction, the emergence of immigration laws and restrictions was intended to control and take advantage of immigrant workers of color.<sup>69</sup> Human trafficking is no different. The vast majority of labor trafficked individuals are foreign-born. Though some are undocumented when trafficked into forced labor, many initially migrate to the U.S. with legal visas that tie them to their trafficker. Those visas later expire if the trafficked worker escapes from the

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68. Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the Perfect Victim Paradigm*, 26 BERKELEY J. GENDER L. & JUST. 204, 205–06 (2011). According to Uy, “The focus on sex trafficking does a disservice to victims of labor trafficking; . . . labor trafficking victims have faced difficulty in obtaining assistance due to focus on sex trafficking.” *Id.* at 207. “[This] focus often has racial and sexist implications[.]” *Id.*

69. See generally Richard A. Boswell, *Racism and U.S. Immigration Law: Prospects for Reform After “9/11?”*, 7 J. GENDER, RACE & JUST. 315 (2003); Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995); Herbert Hill, *The Problem of Race in American Labor History*, 24 REVIEWS AM. HIST. 189 (1996).

forced labor situation, which renders that worker highly vulnerable to re-trafficking. Workers who are undocumented or have precarious immigration status are susceptible to forced labor because when they object to unconscionable working conditions, their employer explicitly or implicitly threatens to have them deported. The link between restrictive immigration laws and human trafficking is well documented.<sup>70</sup>

A Thirteenth Amendment approach to human trafficking scrutinizes the systemic subordinating effects of immigration restrictions that keep immigrants vulnerable to trafficking. State legislative attempts to counteract the oppressive effects of increased federal immigration enforcement include California's sanctuary laws that limit information sharing between state actors and the federal government to protect California's noncitizen residents from overbroad immigration enforcement. The Immigrant Worker Protection Act prevents California employers from colluding with immigration authorities to facilitate immigration enforcement actions against their employees. These types of sanctuary protections model a Thirteenth Amendment response to current forces that facilitate the race-based subordination of human trafficking. They should be extended to all public and private facilities that are likely to encounter trafficking victims, including hospitals, schools, jails, and courthouses. Fear of encountering immigration authorities remains a primary factor in the acquiescence of workers to forced labor conditions.<sup>71</sup>

For trafficked women and girls of color, particularly those who are sex trafficked, a Thirteenth Amendment approach calls attention to the gendered racism that they encounter. Such gendered racism has intersectional subordinating effects.<sup>72</sup> Though outside the scope of this Article, gendered racism as it manifests in the trafficking context

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70. See generally Kathleen Kim, *Beyond Coercion*, 62 UCLA L. REV. 1558 (2015).

71. See generally SHELDON ZHANG, LOOKING FOR A HIDDEN POPULATION: TRAFFICKING OF MIGRANT LABORERS IN SAN DIEGO COUNTY (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf> [<https://perma.cc/XX5E-WC8M>].

72. See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

underscores the need for a robust constitutional paradigm that includes both the Thirteenth Amendment's aim to eliminate race-based economic subordination and the addition of the Equal Rights Amendment to advance gender equality.<sup>73</sup> The addition of the Equal Rights Amendment to the Bill of Rights would also elevate the concerns that disproportionately affect women in general, such as pay equity, family leave, and gender-based crimes including sexual assault and sex trafficking that occur without regard to the victim's race.

### CONCLUSION

This Article probes the sociopolitical and legal relationship between the Thirteenth Amendment and contemporary human trafficking policy. The TVPA fits squarely within the Thirteenth Amendment's ban on slavery and involuntary servitude. Yet, the Thirteenth Amendment also sought to eliminate the "vestiges" of slavery. The broader scope of the Thirteenth Amendment's mandate urges an approach to antitrafficking law and policy that not only prohibits forced labor and services but also attends to the systemic subordination experienced by trafficking victims due to their marginalized race and economic status. This Article examines antitrafficking law and policy through a Thirteenth Amendment lens. This examination emphasizes the structural dynamics that make poor people of color vulnerable to trafficking. In doing so it highlights the under-recognized phenomenon of labor trafficking. A Thirteenth Amendment lens also finds the criminal justice system ill-equipped to vindicate the rights of trafficked persons and to hold their perpetrators accountable. This Article concludes with suggestions for race-conscious paths forward on antitrafficking policy, given the lessons explored and learned from the Thirteenth Amendment.

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73. See generally Barbara A. Brown et al., *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 *YALE L.J.* 871 (1971).