

2016

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Recommended Citation

60 N.Y. L. Sch. L. Rev. 567 (2015-2016)

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Advocacy at the Leading Edge of Social Change: The Importance of Front Line Innovators

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I. INTRODUCTION

Human trafficking in the United States became an important political issue in the 1990s, when the American public first learned about growing numbers of international migrants desperate for work and the criminal networks that preyed upon them. Lawyers for human trafficking victims encountered many barriers to justice, including inadequate laws and a complex terrain extending across national boundaries and multiple law enforcement, social service, and human rights organizations. Advocates for reform argued among themselves about priorities, debating the vexing question of whether their efforts should be directed primarily toward suppressing human trafficking for prostitution or toward protecting all victims, including women who choose sex work, from abusive labor conditions. Congress responded to escalating human trafficking by adopting the first comprehensive federal legislation, the Trafficking Victims Protection Act of 2000 (TVPA).¹ The TVPA established an innovative framework to coordinate agencies and advocates at all levels, paralleling key provisions of a UN anti-trafficking protocol adopted in the same year.² Although the TVPA drew on similar sources of domestic and international experience,³ it went much further than the protocol by establishing demanding standards for domestic and foreign intervention and sanctions for failing to meet them. But the TVPA's entanglement with domestic and international politics also created complications for advocates putting its provisions to use.

Since the TVPA's adoption, numerous law review symposia have presented the views of scholars and practitioners about the problem of human trafficking and the provisions of the TVPA. But few have focused specifically on innovations developed at the front lines of enforcement and advocacy. At an all-day conference at New York Law School in 2014, leading national advocates, who rarely have an opportunity to meet to discuss each other's work, presented new strategies and engaged other advocates about practitioner-led innovations. This issue of the *New York Law School Law Review*, based on that symposium, *Innovations in the Fight Against Human Trafficking: Perspectives and Proposals*, presents essays by those innovators about important new strategies and lessons learned in applying them.

This essay reviews developments in the law addressing human trafficking and their relationship with the work of practitioners and advocates. I describe the contributions of front line advocates to the development of modern law and argue that

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1. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) [hereinafter TVPA]. The TVPA is supplemented by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003), the Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006), and the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 22 U.S.C.).
 2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol]; see also *infra* Part II.
 3. For an excellent discussion of increasing awareness of the problem of trafficking both in the United States and internationally, see Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 441-56 (2006).

practitioners and advocates are key players in reforming the law and extending its reach to serve a vision of a more just society for victims of human trafficking. At every stage of the law's recent development, advocates in the field have provided templates for change. After winning reforms, advocates implement and frequently supplement a new law's requirements with innovations beyond the letter of the law. Front line advocates have been not only initiators and innovators, but also a moral voice arguing for more comprehensive, more effective justice—justice beyond law. Part II of the essay describes the relationship between the UN Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Palermo Protocol”), and the TVPA. Part III describes innovative provisions of the TVPA, while Part IV describes two current controversies that have disrupted the work of advocates. Part V previews innovations described in greater detail in the symposium articles that follow, drawing lessons about the importance of the work of advocates as defenders of victims of human trafficking and the democratic rule of law.

The story of practitioners making creative use of law, and thereby adding to its substance and purpose through interpretation of the law's meaning, is not new. In American society, lawyers and courts are a powerful creative force, using spaces of uncertainty created by federalism and separation among branches of government to broker power and introduce new ideas about legal rights. But few legislated changes in the name of greater protection for human rights have created a framework for front line innovation as fertile as the TVPA.

The journey from understanding the sources of injustice to finding remedies has not been smooth or easy. The International Labour Organization (ILO), established shortly after the end of World War I, has long recognized that human trafficking is only one kind of forced labor that takes many different forms, including slavery, debt bondage, labor under intimidation or threats, and, more generally, involuntary labor exacted “under the menace of any penalty.”⁴ The ILO employs the term “continuum” to describe the abusive labor practices arising from poverty and oppression.⁵ Forced labor, in all its forms, has long been a central concern of international human rights protection,⁶ but until recently neither human trafficking nor closely related forms of forced labor received the attention it deserved in the United States.⁷

4. International Labour Organization, Convention Concerning Forced or Compulsory Labour, art. 2(1), June 28, 1930, No. 29, 39 U.N.T.S. 55 [hereinafter Forced Labour Convention, 1930]. For further description of the ILO's founding purpose, see *Origins and History*, INT'L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm> (last visited Apr. 20, 2016).

5. See INT'L LABOUR ORG., *THE COST OF COERCION* 8 (2009).

6. See, e.g., International Labour Organization, Convention Concerning the Abolition of Forced Labour, June 25, 1957, No. 105, 320 U.N.T.S. 291 [hereinafter Abolition of Forced Labour Convention, 1957]; Forced Labour Convention, 1930, *supra* note 4; Slavery Convention, Sept. 25, 1926, 60 L.N.T.S. 254.

7. The United States did not join the Abolition of Forced Labour Convention until 1991. *Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105)*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO (last visited Apr. 20, 2016); see also JUDITH BLAU & ALBERTO MONCADA, *JUSTICE IN THE UNITED STATES: HUMAN RIGHTS AND THE U.S. CONSTITUTION* 125 (2006). The United States also has not yet ratified a number of conventions that focus on protecting the human rights of women and children, such as the UN

Two sources of resistance to more comprehensive, effective reform have impeded the work of advocates in the United States. First, the risk of exploitation through forced labor and human trafficking rises when workers have little power. Over the last forty years, American capitalism has won the battle of ideologies, turning Americans against unions and welfare state benefits.⁸ Congress and the courts progressively undermined the power of unions, reduced low-wage labor protections, and diminished the safety net for the lowest paid and unemployed workers.⁹ Immigration policies are hostile to employment of undocumented immigrants, and in practice the burden of legal sanctions is often borne by the immigrant work force, not their willing employers.¹⁰ For example, immigration law offers special visas benefiting companies that hire temporary immigrant contract labor on oppressive terms that come close to human trafficking and in practice frequently cross the line.¹¹ America's political leaders and lawmakers are unwilling to address the desperate conditions of the most disadvantaged domestic and immigrant workers, leading them to risky choices which make them potential victims of forced labor.

A second barrier to protection for the victims of forced labor arises, ironically, from divisions within the community of advocates against human trafficking. Advocacy at all levels has been crippled at times by bitter conflict between advocates giving priority to a rights-based, victim-centered approach and those for whom ending prostitution has become the defining issue in the fight against human trafficking. Moral, religious, or feminist opposition to prostitution is a defining element of "abolitionist" movements that call for criminalization of prostitution as a means of suppressing trafficking.¹² To abolitionist anti-trafficking advocates, prostitution is inherently "evil," and never "voluntary,"¹³ and to some modern feminists, is a form of gender oppression that must be outlawed.¹⁴

Convention on the Rights of the Child and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. *Status of Ratification Interactive Dashboard*, OFF. HIGH COMMISSIONER FOR HUM. RTS., <http://indicators.ohchr.org> (last visited Apr. 20, 2016).

8. See MICHAEL B. KATZ, *THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE* 17–26 (2001).
9. See generally JACOB S. HACKER & PAUL PIERSON, *WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS* (2010).
10. See, e.g., Candice S. Thomas, "Immemployment" Law: *The Determination of Remedial Measures for Undocumented Workers in the Workplace*, 83 U. CIN. L. REV. 1009, 1009–11 (2015).
11. S. POVERTY LAW CTR., *CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES* (2013), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.
12. See, e.g., Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 122–23 (2002).
13. See IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 68 n.23 (Catharine A. MacKinnon & Andrea Dworkin eds., 1997) (claiming that "[a]t any rate, even when prostitution seems to have been chosen freely, it is actually the result of coercion . . . '[A]ll prostitution is forced prostitution.'").
14. See Sarah Bromberg, *Feminist Issues in Prostitution*, in PROSTITUTION: ON WHORES, HUSTLERS, AND JOHNS 294 (James E. Elias et al. eds., 1998).

Victim-centered anti-trafficking advocacy, with an equally long history, sidesteps this moral issue by giving priority to reduction of social and individual harm from human trafficking. The authors who follow in this issue of the *Law Review* share this second view. They argue that characterizing human trafficking in moral terms distracts the public from the systemic origins of human trafficking in global poverty and the complex circumstances and motivations of those who become victims.¹⁵ As rights-based advocates, some of the authors are particularly critical of human trafficking “pornography”¹⁶—media coverage of horror stories which enflame “trafficking panics” and reinforce abolitionist drives for more effective criminalization of prostitution.¹⁷ Selective reporting of cases combined with abolitionist rhetoric has popular appeal, focusing attention on a few heinous crimes and the “bad apples” who perpetrate them while ignoring the broader international problem of forced labor which remains unresolved after the perpetrator is fined or jailed.¹⁸

This issue of the *New York Law School Law Review* is being published at a critical time for the future of the fight against human trafficking. The TVPA’s aggressive international agenda of creating carrots and sticks for the adoption of standards by other nations has entangled its policies with international politics, in which the TVPA’s sanctions are treated as a bargaining chip in foreign relations,¹⁹ complicating domestic administration of the TVPA. Further, long smoldering conflict between groups of advocates with deep differences in perception of the morality of sex work was heightened by Amnesty International’s recent call for decriminalization of prostitution.²⁰ Notwithstanding the backlash from these and other conflicts on the horizon, front line advocates remain an important source of expertise and capacity in the fight to end human trafficking.

II. ORIGINS OF THE PALERMO PROTOCOL AND THE TVPA

Rising economic and political insecurity at the end of the twentieth century drove international migration and, inevitably, human trafficking.²¹ Between 1995 and 2002, the ILO’s “conservative” annual global estimate of the number of persons

15. Tiffany Williams & Leah Obias, *An Organizing Approach to Human Trafficking in Domestic Work*, 60 N.Y.L. SCH. L. REV. 649 (2016).

16. Florrie Burke, *Innovations in the Fight Against Human Trafficking: Advocates’ Perspectives and Proposals*, 60 N.Y.L. SCH. L. REV. 615 (2016).

17. See Denise Brennan, *Myths Meet Reality: How We Are Not Fighting Trafficking or Supporting Trafficking Survivors*, 60 N.Y.L. SCH. L. REV. 605 (2016).

18. As Brennan suggests, these are ideological claims being passed off to the public as data about a complex underlying problem. *Id.* at 606–07.

19. See *infra* Part IV.

20. Charlotte Alter, *Amnesty International Votes to Recommend Decriminalizing Sex Work*, TIME (Aug. 11, 2015), <http://time.com/3992788/amnesty-international-decriminalizing-sex-work/>.

21. Tiefenbrun, *supra* note 12, at 132–36.

in forced labor averaged more than twelve million.²² By 2012, the ILO's estimate had risen to more than twenty million.²³ The problem existed in all communities of the developed and developing world, exacerbated by massive migration, the rise of international criminal enterprises exploiting newly opened economies and porous borders, and, above all, global economic inequality.²⁴

Human rights advocates in Europe, Asia, and other developing countries drew attention to growing numbers of trafficked men, women, and children from poor societies.²⁵ With support from European foundations and a growing number of international non-governmental organizations (NGOs), anti-human trafficking advocates began developing local projects to manage the complex coordination between government and private efforts to support victims and pursue traffickers.²⁶ ILO reports documented the alarming rise in all forms of forced labor,²⁷ but trafficking of women and children in particular attracted new advocates and political attention. The First World Congress Against the Commercial Exploitation of Children met in Stockholm in 1996 to acknowledge the problem and draw on the experience of advocates in Europe and Asia to form a plan of action.²⁸ A proposal to add a protocol on human trafficking to a new UN convention on transnational organized crime received widespread support.²⁹ Human trafficking quickly rose to the highest levels of political attention in the United States, attracting support of such powerful figures as U.S. Secretary of State Madeleine Albright³⁰ and First Lady

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22. PATRICK BELSER, ET AL., INT'L LABOUR ORG., ILO MINIMUM ESTIMATE OF FORCED LABOUR IN THE WORLD 1 (2005), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1006&context=non-discrim>.
 23. INT'L LABOUR ORG., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY 13 (2012).
 24. See INT'L LABOUR ORG., STOPPING FORCED LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (2001).
 25. Chuang, *supra* note 3, at 441–42.
 26. See, e.g., Frank W. Munger, *Trafficking in Law: Cause Lawyer, Bureaucratic State, and Rights of Human Trafficking Victims in Thailand* (N.Y.L. Sch., Legal Studies Research Paper, No. 13/14 #80, 2013) (on file with author). One of the earliest collaborative projects was End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes (ECPAT), created through collaboration between advocates in Thailand and the Netherlands. ECPAT Thailand became a model for international cooperation.
 27. INT'L LABOUR ORG., *supra* note 23, at 11–13.
 28. See *World Congress Against the Commercial Sexual Exploitation of Children*, ECPAT, <http://www.ecpat.net/world-congress-against-commercial-sexual-exploitation-children> (last visited Apr. 20, 2016).
 29. See Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 976 n.8 (2001) (noting the “rapid rate of signature” for three of the proposed protocols, including the Palermo Protocol). NGOs in the United States were among those who responded to this call, playing a leading role in negotiations for the Palermo Protocol. See *id.* at 985 n.63 (recognizing that U.S. NGOs were heavily involved in the debate surrounding the proposed definition of trafficking, particularly whether the definition should include non-coerced sex work).
 30. In September 1999, then-Secretary of State Albright held a dinner for ten foreign ministers, where together they wrote a letter to Secretary-General Kofi Annan. The letter requested that the UN General Assembly agenda address their concerns about “the repulsive trafficking in human beings, predominantly

Hillary Clinton, who called for immediate action by the United States to protect women victimized by trafficking.³¹ In late 2000, with strong support from the United States, the United Nations adopted the Palermo Protocol, as part of the UN Convention Against Transnational Organized Crime.³²

Drafting the Palermo Protocol provoked heated controversy among factions split along familiar lines, between “abolitionist” reformers seeking criminalization of prostitution and “human rights” reformers opposing criminalization of prostitution and seeking protection for all victims.³³ Following the ILO’s lead, the Palermo Protocol defines human trafficking broadly to include trafficking of men, women, or children for any kind of labor and employs an expansive definition of coercion.³⁴ The Protocol rejects abolitionist proscription of sex work, instead leaving that option open to each country.³⁵ The Protocol requires protections for the rights and well-being of victims and measures to prevent human trafficking, presumably (though not expressly) including measures to address the root conditions which drive poor individuals to make risky decisions.³⁶ It established principles and standards to guide and underwrite international cooperation to regulate human trafficking of all types, not only sex work. Above all, the Protocol supports the growing but fragile international network of cooperating NGOs and foundations developing strategies to support victims and to encourage reluctant government officials to act.³⁷

Drafts of anti-human trafficking legislation moved through the U.S. Congress, paralleling the progress of the UN Protocol. The U.S. legislation received support not only from the Clinton Administration,³⁸ but also from members of Congress who saw political capital to be made from mounting public awareness of human

women and children.” Barbara Crossette, *Albright Gathers Top Women to Address Women’s Issues*, N.Y. TIMES (Sept. 26, 1999), <http://www.nytimes.com/1999/09/26/world/albright-gathers-top-women-to-address-women-s-issues.html>.

31. Elisabeth Bumiller, *A First Lady’s Plea for Women’s Rights*, N.Y. TIMES (Mar. 5, 1999), <http://www.nytimes.com/1999/03/05/nyregion/a-first-lady-s-plea-for-women-s-rights.html>. The United Nations has long recognized violence against women and children as a human rights problem under its Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and its Convention on the Rights of the Child, neither of which has been ratified by the United States.

32. Palermo Protocol, *supra* note 2.

33. Chuang, *supra* note 3, at 444–45.

34. Palermo Protocol, *supra* note 2, art. 3.

35. *See id.* art. 9.

36. *Id.*

37. The Protocol establishes a broad, uniform definition of human trafficking, requirements for criminalization and punishment of traffickers, protections for victims of human trafficking, and mandates for international cooperation. Many advocates in both developed and developing countries remain concerned about the consequences of criminalizing prostitution, and by design the Palermo Protocol focuses on punishment and prevention of human trafficking. *Id.*

38. *See* 150 CONG. REC. 15929 (2004).

trafficking.³⁹ Reports by Human Rights Watch⁴⁰ and by UN Special Rapporteurs⁴¹ confirmed what practitioners already knew: that international human trafficking was increasing rapidly. Cases investigated by advocates brought global trafficking to the public's attention through headline-grabbing actions.⁴² Religious conservatives made fighting the rising tide of trafficked women and children a moral cause.⁴³

Experiences conveyed from front line advocates, immigration personnel, and criminal law enforcement officials made a compelling case for action by Congress for three reasons. First, better laws were needed. Federal prosecutors for the Eastern District of New York had won precedent-setting convictions against international labor traffickers in the late 1990s.⁴⁴ Nevertheless, as Federal District Court Judge Pamela Chen, a symposium keynote speaker and former federal prosecutor, observes in her symposium essay, existing laws poorly suited to modern trafficking cases made prosecutions difficult.⁴⁵ The federal involuntary servitude statute required proof of use of physical force or threats of force.⁴⁶ The White-Slave Traffic Act ("Mann Act"), enacted in 1910 to address "white slavery" by criminalizing trafficking women across state lines for immoral purposes,⁴⁷ although amended to cover victims other than women in 1986, was seldom used because of doubts about its application to international trafficking.⁴⁸ Employer sanctions for hiring illegal aliens can be weakened by a statutory defense of a "good faith" effort to ascertain an employee's

39. See Chuang, *supra* note 3, at 448–50.

40. See HUMAN RIGHTS WATCH, MEMORANDUM OF CONCERN: TRAFFICKING IN MIGRANT WOMEN FOR FORCED PROSTITUTION INTO GREECE 2 (2001), https://www.hrw.org/legacy/backgrounder/eca/greece/greece_memo_all.pdf.

41. See Sigma Huda (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Integration of the Human Rights of Women and the Gender Perspective*, E/CN.4/2005/71 (Dec. 22, 2004).

42. See Steven Greenhouse & Michael Barbaro, *An Ugly Side of Free Trade: Sweatshops in Jordan*, N.Y. TIMES (May 3, 2006), <http://www.nytimes.com/2006/05/03/business/worldbusiness/03clothing.html>; Julia C. Mead, *A Slow War on Human Trafficking*, N.Y. TIMES (May 28, 2006), http://www.nytimes.com/2006/05/28/nyregion/nyregionspecial2/28litraf.html?_r=0; see also Chuang, *supra* note 3, at 441–42.

43. Ruth Graham, *How Sex Trafficking Became a Christian Cause Célèbre*, SLATE (Mar. 5, 2015, 2:18 AM), http://www.slate.com/articles/double_x/faithbased/2015/03/christians_and_sex_trafficking_how_evangelicals_made_it_a_cause_celebre.single.html. During the Clinton Administration, the TVPA was pushed forward from the start by a coalition of religious conservatives who considered trafficking "a modern form of slavery." The TVPA's language clearly reflects their influence by referring to trafficking as an "evil" in precisely these terms. 22 U.S.C. § 7101(b)(1), (21) (2012).

44. *United States v. Paoletti-Lemus*, No. 1:97-cr-00768-NG-1 (E.D.N.Y. Apr. 7, 1998).

45. Pamela K. Chen, *Innovation at the Front Lines*, 60 N.Y.L. SCH. L. REV. 623, 624–25 (2016).

46. Mark. J. Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery*, 6 U. ST. THOMAS L.J. 9, 12–13 (2008).

47. White Slave Traffic Act, 18 U.S.C. §§ 2421–2424; see also Becki Young, Note, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 85 (1998).

48. Young, *supra* note 47, at 85–87 (1998). The express language of the Act covered such cases, but the statute had seldom been used for international cases and rarely used at all since the mid-twentieth century. *Id.*

status and overall lax enforcement.⁴⁹ Likewise, attempts to use immigration laws to protect victims have encountered the law's many loopholes and frequently ended with deportation of the victim without compensation for work performed or protection from reprisals.⁵⁰ Many trafficking victims are also excluded from Fair Labor Standards Act (FLSA) protection because the statute covers "employees," not contract labor, an ubiquitous vehicle for employing immigrant labor with far fewer legal protections from exploitation.⁵¹

However, in the 1990s, the federal FLSA was utilized successfully in a well-publicized civil suit for back wages owed to Thai clothing workers imprisoned by a contractor for major American manufacturers.⁵² This sweatshop scandal, among others, exposed a second important limitation of existing law, namely the lack of coordination between immigration and criminal law enforcement.⁵³

Arrest and prosecution of women trafficked for sex work exposed a third motive for reform: the inadequate effort of law enforcement authorities to identify, protect, and assist victims.⁵⁴ Adequate assistance for victims required clearer legal mandates and a framework for coordination between government, local advocates, and service providers.⁵⁵ Models for local level coordination were being pioneered elsewhere in

49. *Id.* at 91–93.

50. The immigration laws themselves were not tailored to prosecution of trafficking or forced labor cases or the protection of victims. *See id.* at 88–91.

51. *Id.* at 84–85. Further, the FLSA's coverage of illegal employment such as prostitution is also in doubt. *Id.* Enforcement of federal and state labor protection laws have also been limited by officials' lack of familiarity with the issues of immigrants, weak employer sanctions, and a ruling by the Supreme Court limiting application of the FLSA's remedies to immigrant labor. The effects of the decision, *Hoffman Plastics Compounds, Inc. v. NLRB*, 535 U.S. 137 (2001), barring FLSA remedies for undocumented immigrants, have been mitigated by subsequent decisions by the general counsel of the NLRB which limited the scope of the holding to undocumented workers who were promised employment but never allowed to work. *See* REBECCA SMITH ET AL., NAT'L EMP'T LAW PROJECT, UNDOCUMENTED WORKERS: PRESERVING RIGHTS AND REMEDIES AFTER *HOFFMAN PLASTIC COMPOUNDS V. NLRB* (2007), <http://www.nelp.org/content/uploads/2015/03/wlghoff040303.pdf>.

52. *Bureerong v. Uvawas*, 922 F. Supp. 1450 (C.D. Cal. 1996); *see also* Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998).

53. *See generally* Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041, 1042–44 (2002). Law enforcement officials have acknowledged that this lack of coordination is a problem. *See* Monica Varsanyi et al., *Immigration Federalism: Which Policy Prevails?*, MIGRATION POL'Y INST. (Oct. 9, 2012), <http://www.migrationpolicy.org/article/immigration-federalism-which-policy-prevails>.

54. Victims have been routinely subjected to insensitive, even punitive, treatment as witnesses whose continuing protection was often made contingent on cooperation in spite of the risk of reprisal or the likelihood of being charged with prostitution or trafficking of others. *See, e.g.*, Kate Mogulescu, *The Public Defender as Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking*, 15 CUNY L. REV. 471 (2012).

55. Tiefenbrun, *supra* note 12, at 153–60.

the world, but lacked government support in the United States.⁵⁶ Elements of the TVPA reflect all of these front line concerns.

The TVPA became law in October 2000 as the United Nations put the finishing touches on the Palermo Protocol.⁵⁷ The TVPA and the Protocol's intertwined origins are apparent from parallel incorporation of a three-pronged approach to intervention requiring prosecution of perpetrators, protection of victims, and efforts to prevent human trafficking.⁵⁸ While these two major legislative statements of support for collaborative international response to human trafficking have common roots, they moved forward on separate tracks after 2000. The Palermo Protocol has an international focus, providing a model for legislation outside the United States and a framework for international cooperation, while administration of the TVPA has responded to U.S. domestic politics. Further, because the TVPA provides standards for human trafficking programs in every country, and powerful sanctions to enforce them, the TVPA and its domestic politics have, to a degree, preempted the Protocol's role in international collaboration.

III. A LEGAL FRAMEWORK FOR FRONT LINE INTERVENTION

Celebrating its sixteenth anniversary in 2016, the TVPA represents an important innovation in U.S. law. The TVPA creates a framework for cooperation and harmonization of anti-trafficking efforts in the United States among agencies, levels of government, and advocates at the front line. The TVPA's definition of human trafficking recognizes the multiple forms of coercion used to traffic victims, foreign and domestic,⁵⁹ and, like the Protocol, the TVPA mandates prevention and protection of victims, as well as punishment of traffickers.⁶⁰ Also like the Protocol, the TVPA has global goals. The TVPA establishes standards for human trafficking intervention⁶¹ and creates mechanisms to pressure other countries to meet them through publication of a detailed annual report and by offering funding to NGOs and governments.⁶²

56. In Thailand, for example, by the mid-1990s, NGOs, with the cooperation of the Thai Government, employed multidisciplinary teams to coordinate interventions with local law enforcement and social service officials. See, e.g., Frank Munger, *When Rights Work: Fragile Networks, Improbable Discourses and Unpredictable Globalizations of Law: A Contemporary Thai Case Study* (N.Y. L. Sch., Legal Studies Research Paper, No. 2576974, 2015) (on file with author); see also Preecha Dechalert, *NGOs, Advocacy and Popular Protest: A Case Study of Thailand* (CVO Int'l Working Paper No. 6, 1999); Gallagher, *supra* note 29, at 1001–03 (describing a vibrant international NGO network that contributed to the crafting of the Palermo Protocol between 1998 and 2000).

57. Luis C. deBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Remarks at the Department of Justice's National Human Trafficking Conference (May 3, 2010), <http://go.usa.gov/3p3v8>.

58. Cooper, *supra* note 53, at 1046–47.

59. 22 U.S.C. § 7102(3) (2012).

60. *Id.* § 7101(a).

61. *Id.* §§ 7104(a)–(b), 7106.

62. *Id.* §§ 7103, 7107. A country's ranking published annually in the Trafficking in Persons [TIP] Report can be a potential embarrassment, and, in addition, a low ranking could jeopardize U.S. foreign aid. *Id.*

Reflecting U.S. domestic politics, the TVPA and supplementary legislation differ from the Protocol by adopting a more restrictive definition of human trafficking⁶³ and by imposing limits on government assistance reflecting ideological preferences of congressional majorities.⁶⁴

The TVPA's innovations begin with establishment of an Interagency Task Force and an Office to Monitor and Combat Trafficking with authority to oversee and coordinate the efforts of government agencies and to consult with officials and NGOs.⁶⁵ Modernization of statutory authority and new mandates directed to particular agencies supplement centralization of federal responsibility while creating new tools for advocates and officials coordinating prosecution, protection, and prevention at all levels. Criminal laws designed for crimes of an earlier era have been updated to apply to any labor obtained through "threats of serious harm . . . or physical constraint" or through a "scheme, plan, or pattern" that induces belief in the existence of such a threat.⁶⁶ Although the TVPA's definition does not contain language equivalent to the Palermo Protocol's broad reference to "abuse of power,"⁶⁷ it clearly prohibits human trafficking resulting from conditions (a "scheme") that render victims vulnerable to threats of physical harm or confinement.

The mandate for prevention of human trafficking requires government initiatives to promote better public understanding of the problem and federal funding for NGOs and to consult with NGOs about appropriate policies.⁶⁸ Prevention is also facilitated by an annual Trafficking in Persons Report (TIP) describing the State Department's assessment of the efforts made by each country toward reduction of

§ 7110; *see also* U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT: JULY 2015* (2015) [hereinafter *TIP REPORT 2015*].

63. In contrast to the TVPA's general requirement of "threats of serious harm . . . or physical restraint" or a "scheme, plan, or pattern" inducing such a belief, the Protocol permits countries to consider, in addition to those factors, a broad range of conditions characterized by "abuse of power." *Compare* 22 U.S.C. §§ 7102(3), *with* Palermo Protocol, *supra* note 2, art. 3(a).

64. *See, e.g.*, SCOTT H. EVERTZ, CTR. FOR AM. PROGRESS & COUNCIL FOR GLOBAL EQUALITY, *HOW IDEOLOGY TRUMPED SCIENCE: WHY PEPFAR HAS FAILED TO MEET ITS POTENTIAL* 2 (2010). The United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Leadership Act), signed into law by President George W. Bush, authorized the President's Emergency Plan for AIDS Relief (PEPFAR). *Id.* at 2. PEPFAR required recipients of funding to endorse abstinence and marriage, and as a last resort use of condoms, according to the "ABC" strategy (Abstain, Be Careful, and correct and consistent use of Condoms). *See id.* at 9. This abstinence-first policy has been widely criticized within activist communities because of its ideological roots. *Id.* The Leadership Act contained a similar policy, requiring organizations to sign an "anti-prostitution" pledge before receiving funding. *Id.* at 13. This provision was later struck down by the Supreme Court as a violation of the First Amendment, but the Court's holding left the provision in place for recipients outside the United States. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2322 (2013).

65. 22 U.S.C. § 7103.

66. *Id.* § 7102(3). There is a long history of debate about the proper definition of coercion, and whether a particular "scheme, plan, or pattern" constitutes coercion. *See* Tiefenbrun, *supra* note 12, at 121–22.

67. *Compare* 22 U.S.C. § 7102, *with* Palermo Protocol, *supra* note 2, art. 3(a).

68. *See* 22 U.S.C. § 7105(a)(1).

human trafficking through compliance with the TVPA's requirements.⁶⁹ The statutory mandate for protection of victims places unprecedented responsibilities on government officers and agencies,⁷⁰ requiring, among other changes, a sweeping overhaul of overlapping criminal and immigration law enforcement.⁷¹ Prosecutors and immigration officials are authorized to take specific protective actions for victims and immigrants⁷² by making special visas available to victims of "severe forms of trafficking,"⁷³ by providing benefits to which a legal immigrant would be entitled,⁷⁴ and by offering other "enhanced benefits" such as shelter.⁷⁵

By expanding the authority of the federal law and providing funding for both interagency coordination and collaborations between government officials, NGO advocates, and service providers,⁷⁶ the statute contributes to a greater sense of purpose and commitment among advocates on the front lines. In turn, grassroots advocacy has become the primary means for putting the TVPA's provisions into effect.⁷⁷ Within this federal framework, advocates at the front lines have enhanced visibility and important roles in both policy implementation and reform.⁷⁸

IV. THE ADVOCATE'S MINEFIELD: TVPA'S MORAL AND POLITICAL BACKLASH

Inevitably, the TVPA's domestic moral implications and global interventions have become sources of conflict, complicating the efforts of practitioner-advocates who must interpret and give effect to its policies. Bipartisan compromises required to enact the TVPA, especially the Act's silence on the critical question of protections for adult sex workers, meant that putting its provisions into effect became a battleground among advocates with different visions of the law's mission. Significantly, many of the TVPA's most revolutionary changes, especially recognition of a continuum of forced labor and mandates for protection and prevention, are consistent with a victim-centered and rights-based approach. At the same time, advocates for the TVPA's moral mission rightly claim to have played a part in shaping and enacting the TVPA,

69. *Id.* §§ 7103(d), 7107(b)(1).

70. *See id.* §§ 7105, 7107.

71. *Id.* § 7105(c)(3), (e)–(f); *see also* Cooper, *supra* note 53 (reviewing new regulations adopted to coordinate immigration and criminal law enforcement).

72. 22 U.S.C. § 7105; *see also* Cooper, *supra* note 53, at 1051.

73. 22 U.S.C. § 7107(c)(3)(A); *see also* Cooper, *supra* note 53, at 1050–51. In addition, immigration officials are required to receive special training. 22 U.S.C. § 7105(c)(4).

74. 22 U.S.C. § 7105(b)(1)(A).

75. *Id.* § 7105(b)(1)(B); Cooper, *supra* note 53, at 1051.

76. 22 U.S.C. §§ 7103, 7105a.

77. *See* Williams & Obias, *supra* note 15; *see also* Brennan, *supra* note 17.

78. For two examples of advocacy organizations who have been instrumental in policy implementation and reform, *see* N.Y. ANTI-TRAFFICKING NETWORK, <http://nyatn.org> (last visited Apr. 20, 2016) and N.Y. STATE ANTI-TRAFFICKING COALITION, <http://www.tvpja.com/the-new-york-state-anti-trafficking-coalition.html> (last visited Apr. 20, 2016).

especially in limiting protections to victims of “involuntary” sex work and minors employed in sex work. The TVPA’s carefully crafted definition of human trafficking strikes a compromise between opposing groups of advocates.⁷⁹ As a consequence, advocates on all sides and at all levels of government continue to battle over the scope of protection for women in sex work.⁸⁰

Conflict peaked in July 2015, shortly after the panelists in the symposium concluded their discussions, in response to Amnesty International’s call for complete decriminalization of sex work and adoption of a harm reduction approach.⁸¹ Even before final approval by Amnesty International’s governing board in August 2015,⁸² the proposal unleashed a firestorm of public opposition, not only from religious abolitionist organizations, but also from groups of high-profile journalists, movie stars, public figures, and human rights advocates who sympathized with the plight of women and children coerced into performing sex work or who objected to the decriminalization of the “sex industry.”⁸³ Other important human rights and civil liberties organizations, such as Human Rights Watch and the American Civil Liberties Union, supported Amnesty International’s position.⁸⁴ The immediate

79. Morally concerned advocates sought abolition—criminalization—of all forms of sex work. Other advocates sought protections, without moral judgment, for the human rights of all persons who are trafficked or victims of forced labor. The TVPA’s restrictive definition of “severe forms of trafficking,” which triggers some of the TVPA’s most important protections for victims, 22 U.S.C. § 7102(9), nevertheless recognizes multiple forms of coercion, *id.* § 7102(3). State legislatures are left to define the legal status of “voluntary” sex work.

80. At the state and local level, mutual antagonism has created barriers to cooperation across the advocate community and sometimes impeded efforts to improve policy and local coordination. *See* Melissa Ditmore, *Trafficking in Lives: How Ideology Shapes Policy*, in *TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS* 107 (Kamala Kempadoo et al. eds., 2d ed. 2012).

81. Amnesty International’s proposal was released in July 2015. Amnesty Int’l, *32nd International Council Meeting Circular No. 18: 2015 ICM Circular: Draft Policy on Sex Work*, AI Index: ORG 50/1940/2015 (July 7, 2015).

82. Doreen Carvajal, *Amnesty International Votes for Policy Calling for Decriminalization of Prostitution*, N.Y. TIMES (Aug. 11, 2015), <http://www.nytimes.com/2015/08/12/world/europe/amnesty-international-votes-for-policy-calling-for-decriminalization-of-prostitution.html>; *see also* *Global Movement Votes to Adopt Policy to Protect Human Rights of Sex Workers*, AMNESTY INT’L (Aug. 11, 2015), <https://www.amnesty.org/en/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers/>.

83. *See* Letter from Magdy Abdel-Hamid, Egyptian Ass’n for Cmty. Participation Enhancement, et. al., to Salil Shetty, Sec’y Gen., Amnesty Int’l; Steven W. Hawkins, Exec. Dir., Amnesty Int’l USA, and Amnesty Int’l Bd. of Dirs. (July 22, 2015), <http://catwinternational.org/Content/Images/Article/617/attachment.pdf>; *see also* Seth Abramovitch, *Lena Dunham, Kate Winslet Face Off With Amnesty International Over Sex-Trade Debate*, HOLLYWOOD REP. (July 27, 2015, 1:57 PM), <http://www.hollywoodreporter.com/news/lena-dunham-kate-winslet-face-811287>.

84. The Amnesty International letter has received the support of many established human rights organizations. *See, e.g.*, Sebastian Kohn, *Why Amnesty International Must Hold Firm in its Support for Sex Workers*, OPEN SOC’Y FOUND. (July 28, 2015), <https://www.opensocietyfoundations.org/voices/why-amnesty-international-must-hold-firm-its-support-sex-workers> (expressing support for Amnesty International’s position on decriminalization of sex work); Catherine Murphy, *Sex Workers’ Rights are Human Rights*, AMNESTY INT’L (Aug. 14, 2015), <https://www.amnesty.org/en/latest/news/2015/08/sex->

surfacing of deep and widespread support for the opposing positions suggests that Amnesty International's statement is likely to increase the stakes for advocates on both sides in local conflicts over policy and shift the focus away from the "continuum of forced labor."

Internationally, the TVPA's global influence has created controversies within Congress and raised questions abroad about the legitimacy of pressure to impose U.S. human trafficking policies on other countries.⁸⁵ The TVPA's global ambitions include requiring the State Department to prepare an annual Trafficking In Persons Report detailing every country's compliance with the legislated standards.⁸⁶ The TVPA provides substantial rewards and penalties in the form of funding for intervention by foreign governments and NGOs, with possible curtailment for the worst performers.⁸⁷ As explained above, funding has been offered with strings attached, which have less to do with solving the problem of trafficking than with domestic political priorities.⁸⁸ The TIP Report's annual ranking is a source of both irritation and anxiety abroad, and the report has been criticized for allegedly flawed evaluations and rankings tainted by political bias favoring close U.S. allies (and the United States itself).⁸⁹

The State Department's 2015 TIP Report became the focus of domestic political controversy.⁹⁰ In June 2015, Congress authorized negotiation of the Trans-Pacific Partnership (TPP) trade pact, stipulating that a country with the lowest TIP ranking

workers-rights-are-human-rights/ ("Other groups . . . support[ing] or . . . calling for the decriminalization of sex work include the World Health Organization . . . the Global Alliance Against Trafficking in Women . . . Human Rights Watch . . . and Anti-Slavery International."); Chase Strangio, *Since When Are Consensual Sexual Relationships a Threat to National Security?*, AM. CIV. LIBERTIES UNION (Sept. 1, 2015, 3:45 PM), <https://www.aclu.org/blog/speak-freely/when-are-consensual-sexual-relationships-threat-national-security> ("We at the ACLU have supported the decriminalization of sex work since 1977.").

85. See Ditmore, *supra* note 80, at 113–14. In addition to the recent controversy, see the broader discussion of criticism of the TIP Report's influence circulated by human trafficking advocates. Melysa Sperber, Dir., All. to End Slavery and Trafficking, Statement from ATEST on Possible Malaysia Upgrade in the 2015 TIP Report (July 9, 2015), <https://endslaveryandtrafficking.org/statement-from-atest-on-malaysia-upgrade-in-the-2015-tip-report/>; see also Ashley Feasley, *Controversy Surrounding the U.S. Trafficking Report*, HUM. TRAFFICKING SEARCH (Aug. 11, 2015), <http://humantraffickingsearch.net/wp/controversy-surrounding-2015-tip-report/>.
86. 22 U.S.C. § 7107(b)(1) (2012).
87. See *id.* §§ 7103–7107; see also TIP REPORT 2015, *supra* note 62, at 48.
88. See Feasley, *supra* note 85.
89. See Anne T. Gallagher, *Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of U.S. Trafficking in Persons Reports*, 12 HUM. RTS. REV. 381 (2010).
90. Specifically, Malaysia's ranking in the latest TIP Report has been elevated from Tier 3 to the Tier 2 watch list without justification in the view of many observers. Jason Szep & Matt Spetalnick, *Special Report: State Department Watered Down Human Rights Report*, REUTERS (Aug. 3, 2015, 10:36 PM), <http://www.reuters.com/article/us-usa-humantrafficking-disputes-special-idUSKCN0Q821Y20150804>; see also Sperber, *supra* note 85.

("Tier 3") should be barred from the treaty.⁹¹ The announcement of the resignation of the Director of the Office to Monitor and Combat Human Trafficking a few weeks before the TIP Report's release in July 2015⁹² drew allegations from NGOs and members of Congress that the State Department had raised the TIP ranking of certain countries because of their positions as key trade partners in the TPP negotiations.⁹³ Members of Congress threatened an investigation by the Senate Foreign Relations Committee.⁹⁴

These controversies illustrate the effects the TVPA's entanglement with politics and foreign policy have on domestic advocacy. Appointment of a credible Director is of critical importance for advocates who look to the office for leadership and support at the federal level. While conflict in Congress over the TIP Report highlights the TVPA's potential to become a foreign policy bargaining chip, it may also increase interest in funding the TVPA at the federal level. In contrast, Amnesty International's announcement favoring the decriminalization of prostitution may lead to new constraints on the use of funding by a conservative Congress. These crosswinds are also likely to influence efforts to move forward new legislation, such as a proposal to require American companies to monitor labor trafficking in their domestic and international supply chains.⁹⁵

V. ENDING SILOS OF ADVOCACY FOR VICTIMS AND ADVANCING A DEMOCRATIC RULE OF LAW

Creative strategies for fighting trafficking take time to develop. During the sixteen years since the TVPA was enacted, human trafficking has moved from the fringes of public awareness and public policy to the mainstream and has become a political issue capable of motivating local, state, and federal government to action. National and local networks of lawyers and other advocates have developed a common understanding about their work—work that forms a starting point for new developments in advocacy.

91. The Bipartisan Congressional Trade Priorities and Accountability Act of 2015, S. 995, 114th Cong. § 6(b)(6)(A) (2015) bars entry into a trade agreement, such as the Trans-Pacific Partnership, with countries ranked in the TIP Report's lowest ranking, Tier 3.

92. Formal notice of the Director's resignation was delayed until a new ambassador was nominated. The resignation was without explanation. *See* Press Release, White House Office of the Press Sec'y, Presidential Nominations and Withdrawal Sent to the Senate (July 16, 2015), <https://www.whitehouse.gov/the-press-office/2015/07/16/presidential-nominations-and-withdrawal-sent-senate>; *see also* Szep & Spetalnick, *supra* note 90.

93. *US Senators Threaten to Subpoena Global Trafficking Report Over Malaysia Upgrade*, THE GUARDIAN (Aug. 6, 2015), <http://www.theguardian.com/us-news/2015/aug/06/senate-human-trafficking-report-malaysia-subpoena>.

94. *See* Matt Spetalnick & Idrees Ali, *Top Senator Demands State Department Documents on Human Trafficking Report*, REUTERS (Aug. 6, 2015, 4:03 PM), <http://www.reuters.com/article/2015/08/06/us-usa-humantrafficking-hearing-idUSKCN0QB1VC20150806>.

95. Legislation was introduced in the U.S. House of Representatives on July 27, 2015 to monitor global business supply chains. Business Supply Chain Transparency on Trafficking and Slavery Act, H.R. 3226, 114th Cong. § 13(s) (as referred to the House Committee on Financial Services, July 27, 2015).

Throughout discussions during the New York Law School symposium, panelists emphasized the importance of recognizing that human trafficking is often embedded in a “continuum . . . of labor exploitation and abuse”⁹⁶ and their growing awareness of a fundamental shift in the field of advocacy.⁹⁷ Sixteen years ago, the TVPA helped establish new strategies for intervention on behalf of victims of particular types of human trafficking through collaborations among the stakeholders—NGOs, private attorneys, officials, and politicians. A further shift is currently underway, breaking down the “silos” of specialization in which many have worked for their entire careers.⁹⁸ Practitioners in the fields of human trafficking, domestic violence, gender discrimination, justice for immigrants, low wage-worker organizing, and human rights advocacy, among others, are recognizing their shared experiences and mutual interests.⁹⁹ The shift from advocacy in “silos” to comprehensive advocacy signals recognition that the continuum of exploitation results from many overlapping forms of oppression that feed on inequality, power imbalances, and discrimination worldwide.¹⁰⁰ In turn, growth of a broader understanding of the forms and sources of exploitation provide advocates with many allies, more resources, greater leverage to develop effective strategies for changing policies and protecting victims, and a clearer vision of the future need to address the root causes of exploitation.

The TVPA’s framework encourages innovative strategies, but few practitioner-advocates are guided by the letter of the law alone. Advocates employing the TVPA’s authority are making resourceful adaptations and strategic adjustments when they encounter limitations of the law, gaps in government capacity, or barriers created by local politics. These innovations serve a vision of justice for victims and increasingly grow from the advocates’ shared awareness of the inseparability of different forms of forced labor and the origins of forced labor in global conditions of inequality, poverty, and political oppression.¹⁰¹

These advocates have prioritized a rights-based and victim-centered approach to human trafficking intervention that is responsive to a victim’s perspective and, above all, a victim’s desire for restoration of personal agency, a principle fundamental to a

96. The ILO describes the continuum as a range of exploitative and abusive conditions found globally that limit workers’ choices and place individuals at a high risk of experiencing the most severe forms of forced labor, including human trafficking. In a 2009 report, the ILO concluded that it must be accepted “that there is . . . a continuum including both what can be clearly defined as forced labor and other forms of labor exploitation and abuse.” INT’L LABOUR ORG., *supra* note 5, at 8–9. For more information and access to videos of the panels from the symposium, see *Innovations in the Fight Against Human Trafficking: Program*, N.Y.L. SCH. L. REV., <http://www.nylslawreview.com/human-trafficking-program/> (last visited Apr. 20, 2016).

97. See Burke, *supra* note 16, at 619; see also Melynda Barnhart, *The Next Fifteen Years*, 60 N.Y.L. SCH. L. REV. 585 (2016).

98. Barnhart, *supra* note 97, at 603.

99. *Id.*

100. *Id.*

101. See *Addressing Root Causes*, U.S. DEP’T LAB., <http://www.dol.gov/ilab/child-forced-labor/Addressing-Root-Causes.htm> (last visited Apr. 20, 2016).

democratic rule of law. Thus, the most important innovation of the TVPA itself is, perhaps, its potential for a bottom-up understanding of justice for victims of human trafficking. Justice under law, and a truly democratic rule of law, is established only when social practices adapt to the requirements of justice, not when courts or political leaders authorize change. The rule of law in any society is not fundamentally about the enforcement of rules but about governance guided by a society's expectations of relationships between the governed and government, and among groups within society.¹⁰² Front line advocates for legal change in a democracy provide an important channel for these rule of law expectations. Appreciating the role of advocates for justice in an era of retrenchment of legal rights and declining social protection requires better understanding of the ways that advocacy strategies succeed when courts and legislatures no longer lead, and often oppose, legal change benefitting the politically weak.

102. See RACHEL KLEINFELD, *ADVANCING THE RULE OF LAW ABROAD: NEXT GENERATION REFORM* 9–16 (2012).

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