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# Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking

Jonathan Todres

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# MOVING UPSTREAM: THE MERITS OF A PUBLIC HEALTH LAW APPROACH TO HUMAN TRAFFICKING\*

JONATHAN TODRES\*\*

*Human trafficking, a gross violation of human rights and human dignity, has been identified by numerous government leaders as one of the priority issues of our time. Legislative efforts over the past decade have produced a patchwork of criminal laws and some assistance programs for victims. There is no evidence, however, that these efforts have reduced the incidence of trafficking. This lack of meaningful progress prompts questions as to what the best framework is for addressing human trafficking. This Article begins with a discussion of the limitations inherent in the current law-enforcement-centric approach to the problem. It then explores the merits of a public health approach to human trafficking. As evidenced with governmental and community responses to issues such as road safety and smoking, public health strategies have proven successful in reducing harm by focusing on prevention and addressing underlying causes. Ultimately, this Article concludes that, although a public health approach alone is not sufficient, public health methodologies can advance anti-trafficking efforts in ways currently underutilized or not contemplated by a criminal law model, and reveal deep-seated structural challenges impeding the success of current legislative and policy initiatives designed to combat human trafficking.*

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\*\* Associate Professor of Law at Georgia State University College of Law. I am grateful to Paul Lombardo, Nathan Cortez, Andi Curcio, Pratheepan Gulasekaram, Caren Morrison, Nirej Sekhon, Alison M. Laing, Maya Grosz, and Wendy Hensel for their helpful thoughts and comments on earlier drafts. I also would like to thank my many health law colleagues who provided valuable feedback when I presented an early version of this paper at the American Society of Law, Medicine & Ethics' 32nd Annual Health Law Professors Conference in 2009. Thank you also to Michael Baumrind and Nichole DeVries for their outstanding research assistance.

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## INTRODUCTION

Mary, a seventeen-year-old girl from Mexico, was lured by a man with the promise of a better life in the United States. Once he took her across the border, she was forced to work in a vegetable packing factory, severely abused, not allowed to see a doctor for her injuries, and confined to her apartment except when made to work.<sup>1</sup>

Anita was trafficked from Nigeria to Italy, where she was forced to have sex with more than twenty-five men every day. Whenever she tried to resist, her “madam” physically abused her, deprived her of food, or threatened to deport her.<sup>2</sup> She was subjected to physical and psychological abuse, raped numerous times, and forced to undergo several unsafe abortions.<sup>3</sup>

With the hope of finding a good job, a Salvadoran man paid thousands of dollars for safe passage to the United States. Instead, he was beaten, raped, and forced to pick vegetables at gunpoint on a secluded Texas farm. He managed to escape after five months, only to spend several more months waiting to be certified as a human trafficking victim.<sup>4</sup>

At fifteen, Debbie was abducted from her suburban Phoenix driveway. For forty days she was threatened, raped, and crammed into a small dog crate. Her captors forced her to work as a prostitute. Finally, local police followed a tip and found Debbie, shaking, locked in a drawer under a bed.<sup>5</sup>

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1. *Trafficking Stories*, STOP THE TRAFFICK, 2–3, [http://www.stopthetraffik.org/downloads/trafficking\\_stories.pdf](http://www.stopthetraffik.org/downloads/trafficking_stories.pdf) (last visited Dec. 31, 2010).

2. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 41* (2009) [hereinafter TIP REPORT 2009], available at <http://www.state.gov/documents/organization/123357.pdf>.

3. *Id.*

4. Susan Carroll, *Officials Say Men Are Being Targeted More as Cases of Forced Labor Increase: Rise in Male Trafficking Victims Seen*, HOUS. CHRON., July 6, 2009, at A1.

5. *Teen Girls’ Stories of Sex Trafficking in U.S.*, ABC NEWS (Feb. 9, 2006), <http://abcnews.go.com/Primetime/story?id=1596778&page=1>.

These horrific circumstances repeat themselves millions of times each year;<sup>6</sup> the settings and victims change, but the gross violations of human rights and human dignity are constant. Human trafficking, a modern form of slavery,<sup>7</sup> persists on a global scale—an estimated two to four million persons are trafficked annually,<sup>8</sup> with 600,000 to 800,000 people trafficked transnationally.<sup>9</sup> The nature and scale of human trafficking demand not only outrage but also a concerted effort to stop these abuses.

The response of governments and civil society has grown in recent years. In the United States and many other countries,

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6. INT'L LABOUR OFFICE, ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 1 (2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_090356.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf) ("According to ILO estimates there are at least 2.4 million trafficked persons at any given point in time.").

7. I refer to human trafficking as a modern form of slavery because, although parallels between the two exist, trafficking does not map precisely onto the nineteenth-century slave trade (e.g., states openly sanctioned slavery, whereas today, law prohibits human trafficking). See 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, 270–71 (2007). For victims of human trafficking, however, the experience equates to enslavement. For a comparison, see *id.* at 265–93.

8. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004) [hereinafter TIP REPORT 2004], available at <http://www.state.gov/documents/organization/34158.pdf>.

9. E.g., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 19 (2005), available at <http://www.state.gov/documents/organization/47255.pdf> ("Of the estimated 600,000 to 800,000 people trafficked across international borders annually, 80 percent of victims are female, and up to 50 percent are children."). But see U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-825, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 2–3, 10 (2006), available at <http://www.gao.gov/new.items/d06825.pdf> (questioning the methodology of the U.S. government estimates). Moreover, there are significant concerns about underreporting of the incidence of human trafficking. U.N. Global Initiative to Fight Human Trafficking, U.N. Office on Drugs and Crime, 024 Workshop: *Quantifying Human Trafficking, Its Impact and the Responses to It*, Background Paper for 2008 Vienna Forum to Fight Human Trafficking, at 6–7, 14 (2008), <http://www.unodc.org/documents/human-trafficking/Marika-Misc/BP024QuantifyingHumanTrafficking.pdf> (discussing reasons for underreporting, including victims' vulnerability and fear that traffickers will seek retribution if they report them).

Figures on the number of trafficking victims are estimates, as there is a lack of reliable data on the incidence of human trafficking. See ELZBIETA M. GOŹDZIAK & MICAH N. BUMP, INST. FOR THE STUDY OF INT'L MIGRATION, GEORGETOWN UNIV., DATA AND RESEARCH ON HUMAN TRAFFICKING: BIBLIOGRAPHY OF RESEARCH-BASED LITERATURE 4 (2008), available at [http://www12.georgetown.edu/sfs/isim/Publications/ElzPubs/NIJ\\_BIB\\_FINAL\\_REPORT-1.pdf](http://www12.georgetown.edu/sfs/isim/Publications/ElzPubs/NIJ_BIB_FINAL_REPORT-1.pdf) ("[T]here is little systematic and reliable data on the scale of [human trafficking]."); UNICEF INNOCENTI RESEARCH CENTRE, CHILD TRAFFICKING IN EUROPE: A BROAD VISION TO PUT CHILDREN FIRST, at iv (2008), available at [http://www.unicef-irc.org/publications/pdf/ct\\_in\\_europe\\_full.pdf](http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf) ("[T]here is a dramatic absence of harmonized and systematic data collection, analysis and dissemination at all levels—international, regional and national. Few reliable estimates exist of the magnitude of the phenomenon.").

government leaders have identified human trafficking as one of the priority issues of our time.<sup>10</sup> Although the issue is now on the agendas of most governments and international organizations,<sup>11</sup> this rhetoric on human trafficking leaves unanswered whether such proclamations represent a commitment to working on human trafficking until the problem is resolved. If governments intend to undertake such a commitment, they must fundamentally change their approach to human trafficking.

In the past decade, numerous governments, including the United States, have taken significant steps to combat human trafficking.<sup>12</sup> Their approach has been driven largely by a criminal law framework,<sup>13</sup> and the cumulative result of their efforts is a patchwork

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10. See, e.g., Ursula Plassnik, Austrian Fed. Minister for European & Int'l Affairs, Opening Statement at the Vienna Forum to Fight Human Trafficking (Feb. 13, 2008), available at <http://www.ungift.org/ungift/vf/speeches/plassnik.html> ("Human Trafficking has many cruel faces. It is one of the most serious violations of fundamental human rights and human dignity. In the 21st century, we cannot tolerate human beings to be bought, sold and hired like commodities."); see also Proclamation No. 8471, 75 Fed. Reg. 1267 (Jan. 4, 2010) (presidential proclamation by Barack Obama declaring January 2010 as National Slavery and Human Trafficking Prevention Month and calling on all Americans to join together in the effort to end human trafficking).

11. See, e.g., Address Before a Joint Session of the Congress on the State of the Union, 42 WEEKLY COMP. PRES. DOC. 145, 148 (Jan. 31, 2006) (President George W. Bush); Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls, 1 PUB. PAPERS 358, 359 (Mar. 11, 1998) (President William J. Clinton); EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005 O.J. (C 311) 1, 2, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:311:0001:0012:EN:PDF> (establishing a human rights and victims-centered approach to combating human trafficking); *Secretary-General Calls for 'Bold Action' to End Human Trafficking*, UN NEWS CENTRE (May 13, 2009), <http://un.org/apps/news/story.asp?NewsID=30783&Cr=human+trafficking&Cr1=> ("[U.N. Secretary-General Ban Ki-moon] underscored the need for collective action to criminalize human trafficking, prevent victimization by teaching people about their rights, reduce demand, end impunity and protect the victims."); see also Judy Putt, *Human Trafficking to Australia: A Research Challenge*, in TRENDS & ISSUES IN CRIME AND CRIMINAL JUSTICE 5 (Australian Inst. of Criminology, Australian Gov't No. 338, 2007) (discussing Australian efforts to combat human trafficking).

12. For a brief summary of major legislation adopted by the U.S. government, see U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2008, at 1-4 (2009) [hereinafter ATTORNEY GENERAL'S ANNUAL REPORT], available at <http://www.justice.gov/archive/ag/annualreports/tr2008/agreport/humantrafficking2008.pdf>. See also *infra* note 33. For steps taken by other governments, see, for example, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 28 (2010) [hereinafter TIP REPORT 2010], available at <http://www.state.gov/documents/organization/142979.pdf> (evaluating 175 countries' efforts to combat human trafficking).

13. See Mike Dottridge, *Introduction* to COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 1, 1 (Global

of criminal laws and some assistance programs for victims, but almost no measures addressing the root causes of the problem.<sup>14</sup> More important, although measuring the success of interventions to date is challenging given the clandestine nature of human trafficking and other constraints, there is no evidence to suggest that human trafficking is declining.<sup>15</sup> This lack of meaningful progress prompts questions as to what the best framework would be for addressing this issue.

This Article asserts that the prevailing law-enforcement-centric strategies for combating human trafficking are not working and, thus, we need fresh perspectives on the problem. More than a decade of concerted efforts by governments, international organizations, and civil society has produced little real progress in terms of reducing the incidence of human trafficking. Those initiatives, while important in many respects, have not brought us closer to the end goal of preventing human trafficking. Therefore, we desperately need new

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Alliance Against Traffic in Women ed., 2007), available at [http://www.gaatw.org/Collateral%20Damage\\_Final/singlefile\\_CollateralDamagefinal.pdf](http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf) (“[T]he priority for governments around the world in their efforts to stop human trafficking has been to arrest, prosecute and punish traffickers, rather than to protect the human rights of people who have been trafficked.”). In addition, the primary international treaty on human trafficking is a supplement to the U.N. Convention on Transnational Organized Crime. See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, arts. 5–6, 9, U.N. Doc. A/RES/45/49 (Nov. 15, 2000) [hereinafter Trafficking Protocol].

14. See Hillary Rodham Clinton, *Secretary's Introductory Letter* to TIP REPORT 2009, *supra* note 2, at 1; Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT'L L. 1, 4–5 (2010).

15. Some assert that it is increasing. See Cindy Braspenning, *Human Trafficking in the Netherlands: The Protection of and Assistance to Victims in Light of Domestic and International Law and Policy*, 1 INTERCULTURAL HUM. RTS. L. REV. 329, 355–56 (2006) (arguing that a “tremendous increase in the number of victims of human trafficking” led to the 2003 Organization for Security and Co-operation in Europe Action Plan to Combat Trafficking in Human Beings); Nancie Caraway, *Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse*, 14 TUL. J. INT'L & COMP. L. 295, 295 (2006) (reporting a nearly fifty percent increase in the incidence of trafficking from 1995 to 2000); Robin H. Kobayashi, *Hawai'i Immigrant Justice Center: Equality Opportunity Hope*, HAW. B.J., June 2009, at 13, 13 (reporting a significant increase in domestic violence and human trafficking cases in Hawaii); Bradley Myles, Deputy Dir. of the Polaris Project, Address at the Conference of Western Attorneys General (Aug. 4, 2008), quoted in John Iwasaki, *Human Trafficking Increasing Worldwide: Crimes Are Rarely Prosecuted, Legal Conference Is Told*, SEATTLE POST-INTELLIGENCER, Aug. 5, 2008, at B1, available at [http://www.seattlepi.com/local/373510\\_trafficking05.html](http://www.seattlepi.com/local/373510_trafficking05.html) (attributing human trafficking's status as “the third-largest and fastest-growing crime worldwide” to its “high profit and low risk”).

perspectives and innovative approaches to the problem of human trafficking.<sup>16</sup>

This Article explores the problem of human trafficking through a different lens—public health. It assesses the merits of applying public health perspectives and methodologies in the area of human trafficking. At its roots, public health aims to identify potential harms to populations and “move upstream”<sup>17</sup> to identify the causes of these harms and prevent the harms from occurring in the first place. Although a public health approach alone is not sufficient, public health methodologies can advance anti-trafficking efforts in ways currently underutilized or overlooked, and also reveal deep-seated structural challenges impeding the success of anti-trafficking legislative and policy initiatives.

A public health perspective can focus anti-trafficking initiatives on many of the fundamental issues underlying this modern form of slavery and foster progress on the issue. Viewing this issue through the lens of public health, with its focus on the health and well-being of populations, suggests a number of different steps. For example, as witnessed with other public health issues—e.g., road safety and youth smoking—a public health approach frequently de-emphasizes criminal sanctions and focuses on reshaping societal views and social

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16. See also ALBERT EINSTEIN & LEOPOLD INFELD, *THE EVOLUTION OF PHYSICS: THE GROWTH OF IDEAS FROM EARLY CONCEPTS TO RELATIVITY AND QUANTA* 95 (1938) (“The formulation of a problem is often more essential than its solution, which may be merely a matter of mathematical or experimental skill. To raise new questions, new possibilities, to regard old problems from a new angle, requires creative imagination and marks real advance . . .”).

17. The idea of “moving upstream” is an old story in the annals of public health. The story, of which there are several slightly different versions, is as follows:

While walking along the banks of a river, a passerby notices that someone in the water is drowning. After pulling the person ashore, the rescuer notices another person in the river in need of help. Before long, the river is filled with drowning people, and more rescuers are required to assist the initial rescuer. Unfortunately, some people are not saved, and some victims fall back into the river after they have been pulled ashore. At this time, one of the rescuers starts walking upstream. “Where are you going?” the other rescuers ask, disconcerted. The upstream rescuer replies, “I’m going upstream to see why so many people keep falling into the river.” As it turns out, the bridge leading across the river upstream has a hole through which people are falling. The upstream rescuer realizes that fixing the hole in the bridge will prevent many people from ever falling into the river in the first place.

Larry Cohen & Sana Chehimi, *Beyond Brochures: The Imperative for Primary Prevention*, in *PREVENTION IS PRIMARY: STRATEGIES FOR COMMUNITY WELL-BEING* 3, 4–5 (Larry Cohen et al. eds., 2007).

behaviors.<sup>18</sup> Law remains a critical tool,<sup>19</sup> but its value is not limited to serving as a vehicle for punishment, and criminal law, while still necessary, is no longer the primary tool for preventing harm.<sup>20</sup> A public health approach also seeks to identify and address the underlying causes of the particular public health issue confronting a population, with the goal of harm prevention or harm reduction. Therefore, approaching human trafficking from a public health perspective offers the prospect of addressing fundamental aspects of the problem, including its root causes. For example, public health's focus on identifying risk factors can help identify vulnerability and facilitate earlier interventions that reach at-risk individuals before traffickers do.<sup>21</sup> A public health approach also goes beyond criminal law's narrow focus on the state-perpetrator dynamic to address community- and population-based impacts.<sup>22</sup> In contrast to today's law-enforcement-centered government responses, a public health perspective reveals that there are other strategies that might be more effective in eliminating human trafficking.

In the next section, Part I, this Article reviews the current U.S. approach to human trafficking. Although human trafficking is a global phenomenon and differences exist across countries (in terms of both characteristics of the trafficking and state responses),<sup>23</sup> this Article focuses primarily on the United States, as its reaction to the

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18. See *infra* Part III.C.

19. See, e.g., Richard Coker & Robyn Martin, *Introduction: The Importance of Law for Public Health Policy and Practice*, 120 PUB. HEALTH (SUPP. 1) 2, 3 (2006) (noting that "the importance of law as a tool for the protection of the public health" has been recognized for centuries).

20. See, e.g., William S. Duffey, Jr., *Public Health and Law Enforcement: Intersecting Interests, Collegiality and Cooperation*, 32 J.L. MED. & ETHICS (SPECIAL SUPP. TO NO. 4) 19–20 (2004) (identifying examples of criminal law being introduced in campaigns to combat issues such as bioterrorism and gun violence, and urging the equal importance of a public health response to prevent harm).

21. See *infra* notes 127–30 and accompanying text for a discussion of the value of public health's focus on risk factors.

22. Restorative justice scholars have critiqued traditional criminal law's narrow retributive justice model, which defines crime primarily as "an act against the state." Carrie J. Niebur Eisnagle, *An International "Truth Commission": Utilizing Restorative Justice as an Alternative to Retribution*, 36 VAND. J. TRANSNAT'L L. 209, 213 (2003) (quoting Daniel W. Van Ness, *Restorative Justice and International Human Rights*, in RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES 17, 23 (Burt Galaway & Joe Hudson eds., 1996)); see also Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217, 233 (2003) (criticizing criminal law's "myopic focus" on individual incidents in the area of domestic violence).

23. See generally TIP REPORT 2009, *supra* note 2 (detailing the scope of human trafficking and varying responses by country).



problem in many ways typifies current efforts to combat human trafficking. Part I's review of the U.S. response reveals that efforts have concentrated on strengthening criminal law, seeking to prosecute suspected traffickers and relying primarily on the threat of criminal sanctions as a deterrent. Available data reveal that this tactic has produced limited results, and more general criminal law research suggests that is not going to change.<sup>24</sup> This limitation of the criminal law framework calls for new approaches, because continuing on this current path dooms us to an endless cycle of chasing perpetrators and seeking to help individuals after they have been exploited.

Given the limitations of a criminal-law-centered response, Part II takes a fresh look at the problem by examining human trafficking's health implications. In detailing the numerous health consequences of human trafficking, Part II simultaneously reveals both criminal law's inadequacies and the range of other disciplines implicated by human trafficking. The fact that an issue has health implications, however, does not necessarily make it a public health issue, and thus Part II briefly addresses this question. Ultimately, this Article's argument does not depend on whether one accepts that human trafficking is a public health issue. The aim of this Article is to demonstrate the potential value of public health methodologies and perspectives in the context of human trafficking.

Part III then explores how we might approach human trafficking if it were framed as a public health issue or if public health methodologies were utilized to address the problem. The section discusses how a public health perspective could help prevent human trafficking. To begin, Part III discusses the importance of evidence-based research serving as the foundation upon which responses are built. Research should precede legislative and programmatic initiatives to ensure such efforts are well tailored to address the actual problem.<sup>25</sup> Evidence-based research is a central tenet of public health,<sup>26</sup> and this section details its importance to anti-trafficking campaigns. Adopting an evidence-based research orientation might increase the likelihood that trafficking prevention programs and services for survivors of human trafficking are successful by mandating that they be based on proven practices. Next, Part III discusses how a public health perspective can reorient anti-trafficking

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24. See *infra* notes 44–61 and accompanying text.

25. See Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 303, 316 (1997).

26. See *infra* note 98 and accompanying text.

efforts toward preventing the harm from occurring in the first place. It then discusses how a public health approach could ensure that anti-trafficking initiatives address the root causes of the problem through its emphasis on changing unhealthy or high-risk attitudes and behaviors. Finally, it discusses the potential impact of another public health practice: engaging all essential community partners in developing and implementing programs to combat the problem. Engaging all relevant stakeholders is likely to result in greater success in combating human trafficking than current strategies, which typically have relied almost exclusively on law enforcement and social services to address human trafficking.

Although public health methodologies have much to offer, every approach has its limitations. Some initially might question whether campaigns to address road safety or tobacco use are analogous to the human trafficking setting. There are important differences, and therefore this Article draws primarily upon the literature and research on public health approaches to violence.<sup>27</sup> The dynamics of community violence and efforts aimed at violence prevention map more closely on to the situation of human trafficking, and public health methodologies used to prevent violence can readily be applied in the human trafficking context. Even with more analogous models from public health campaigns against violence, some limitations exist. Thus, Part IV begins by discussing challenges that have arisen in other public health programs that might present in public health campaigns against human trafficking. Awareness of these issues can help prevent them from impairing anti-trafficking efforts. Next, and arguably more important, using a public health lens to examine human trafficking also increases our understanding of structural aspects of the problem. As noted above and examined in Part IV, there are important differences between human trafficking and other traditional public health issues in terms of the nature of the problem, the relationship among actors involved, and other issues. The

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27. See, e.g., Linda L. Dahlberg & James A. Mercy, *History of Violence as a Public Health Problem*, 11 VIRTUAL MENTOR 167 (2009), <http://virtualmentor.ama-assn.org/2009/02/pdf/mhst1-0902.pdf> (detailing the evolution of public health's work on violence prevention). In fact, over fifteen years ago, the *Yale Law Journal* published an essay on public health's utility in the area of youth violence. Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*, 103 YALE L.J. 1885, 1911–12 (1994) (finding that public health can help reduce the lethality of violent behavior but that a reduction in the incidence of violence will require a commitment to addressing the underlying systemic causes of violence). In this Article, I suggest that time is long overdue to recognize the value of public health methodologies to anti-trafficking efforts.

dynamics of human trafficking demand greater attention, and a public health perspective brings them to the forefront. By examining limitations inherent in public health methodologies, this Article advances our understanding of the systemic issues entrenched in human trafficking, and that deeper understanding will be instrumental in developing effective responses to the problem.

Overall, public health methodologies have a considerable amount to offer anti-trafficking law, policy, and advocacy, both in terms of deepening our understanding of the issue and in terms of facilitating the development of effective responses that can reduce the incidence of this gross human rights violation.

### I. THE CURRENT CRIMINAL LAW FRAMEWORK FOR HUMAN TRAFFICKING

As noted in the Introduction, human trafficking is a global phenomenon. With as many as four million victims annually,<sup>28</sup> no country or culture is immune to this abusive practice. In the United States, it is estimated that 14,500 to 17,500 individuals are trafficked into the country annually<sup>29</sup> and that a significantly larger number of persons are trafficked within U.S. borders.<sup>30</sup>

In response, the United States and many other countries have agreed upon a comprehensive, three-pronged response to human trafficking, which mandates (1) punishment for perpetrators of these crimes, (2) protection of and assistance for victims, and (3) prevention measures.<sup>31</sup> The United States has been a leader in responding to

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28. See TIP REPORT 2004, *supra* note 8, at 23.

29. *Id.*; *What Is Human Trafficking?*, POLARIS PROJECT, <http://www.polarisproject.org/content/view/26/47/> (last visited Dec. 31, 2010).

30. See HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 4-5 (2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf>. While the number of U.S. citizens and legal residents trafficked within the United States is unknown, estimates of children at risk for sexual exploitation alone suggest that the actual number of domestic trafficking victims, including both children and adults and spanning all sectors, is significantly larger than 17,500. *Id.*

31. The major international conventions aimed at combating human trafficking and related abuses have adopted this three-pronged approach. See, e.g., Trafficking Protocol, *supra* note 13, arts. 5-6 & 9 (mandating criminalization of trafficking, assistance to victims, and prevention measures); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, arts. 3, 8-9, U.N. Doc. A/RES/54/263 (May 25, 2000) (mandating criminal liability for acts of trafficking, prostitution, and pornography involving children and directing States Parties to adopt appropriate victim assistance and prevention measures); see also TIP REPORT 2009, *supra* note 2, at 25-32.

human trafficking, and its response typifies the approach taken by most countries to date.<sup>32</sup>

In the United States, recent legislation—foremost, the Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations in 2003, 2005, and 2008<sup>33</sup>—has strengthened criminal law provisions related to human trafficking, increased sentences for convicted traffickers, and allocated limited resources for victim assistance programs.<sup>34</sup> In other words, it has focused on the first prong (law enforcement), with some attention given also to the second prong (victim assistance). Prevention, the third prong and the end goal, has been largely overlooked.<sup>35</sup>

Although the U.S. government, state legislatures, and non-governmental organizations have worked to develop law-enforcement and victim-assistance measures, progress on combating human trafficking has been slow and inconsistent, if present at all.<sup>36</sup> More

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32. See TIP REPORT 2009, *supra* note 2, at 57–317 (assessing international efforts to combat human trafficking based on the three-pronged approach championed by the United States and followed by numerous countries). The U.S. Department of State categorizes most countries as at least Tier 2, meaning their governments “are making significant efforts to bring themselves into compliance with those standards” set by the United States in the Trafficking Victims Protection Act (TVPA), which incorporates the three-pronged approach to human trafficking. *Id.* at 49–50.

33. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. § 7101 (2006)); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered titles of the U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered titles of the U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered titles of the U.S.C.A. (West 2010)); see also Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered titles of the U.S.C.).

34. See ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 12, at 1–4. More recently, state legislatures have followed suit, adopting anti-trafficking legislation. “As of April 2009, 42 states had passed criminal anti-trafficking legislation.” TIP REPORT 2009, *supra* note 2, at 57. State laws are largely law enforcement focused. See, e.g., GA. CODE ANN. § 16-5-46 (2007) (establishing the crimes of sex trafficking and labor trafficking).

35. See Todres, *supra* note 14, at 4. See generally UNODC Launches Global Initiative to Fight Human Trafficking, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/newsletter/en/perspectives/no03/page009.html> (last visited Sept. 18, 2010) (“The ultimate goal of [anti-trafficking initiatives] is to end human trafficking.”).

36. See, e.g., ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 12, at 76 (citing GOŹDZIAK & BUMP, *supra* note 9) (highlighting the lack of vital information necessary to develop effective policies, design culturally appropriate programs, and fully support law enforcement); Ruth Teichroeb, *State’s Human Trafficking Law Fails to Snag a Conviction: After Five Years on Books, Only One Charge Filed*, SEATTLE POST-INTELLIGENCER, July 22, 2008, at A1, available at [http://www.seattlepi.com/local/371716\\_law22.html](http://www.seattlepi.com/local/371716_law22.html) (revealing

recently, there is growing recognition in the United States that a law-enforcement-centered approach is not optimal.<sup>37</sup> In turn, anti-trafficking advocates have pressed the U.S. government to move toward a victim-centered approach, address gaps in data, and improve coordination among federal, state, and local agencies, as well as non-profit organizations, working on this issue.<sup>38</sup> These efforts focus primarily on supplementing law enforcement with greater attention to victims, as opposed to taking a different perspective on how to prevent the harm from occurring. The U.S. government has responded by increasing efforts to collect reliable information and improve coordination among the many agencies and entities involved in combating human trafficking and providing services to victims.<sup>39</sup> For example, from 2004 to 2006 the U.S. Department of Justice (DOJ) funded forty-two inter-agency human trafficking task forces that facilitated coordination, though their focus has been primarily law enforcement and victim identification (the DOJ continues to fund forty task forces).<sup>40</sup> In 2008, Congress passed the PROTECT Our

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the lack of convictions under state anti-trafficking laws, most notably in Washington, which was the first state to enact such a measure).

37. See, e.g., ECPAT-USA, ALTERNATIVE REPORT TO THE INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY 1 (2007), available at [http://ecpatusa.org/EcpatUSA\\_PDF/Alternative%20Report%20USA%20Final%202007.pdf](http://ecpatusa.org/EcpatUSA_PDF/Alternative%20Report%20USA%20Final%202007.pdf) (identifying the U.S. government's "[o]ver emphasis on law-enforcement" as a problem); Jayne Huckerby, *United States of America, in COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD*, *supra* note 13, at 230, 247 (describing how the U.S. government's "prosecutorial focus often runs counter to the rights of trafficked persons").

38. ECPAT-USA, *supra* note 37, at 1 (recognizing several failures in U.S. efforts to combat child sexual victimization and trafficking, including its failure to adequately coordinate among varying agencies, its "[o]ver emphasis on law-enforcement at the expense of a victim centered approach," and its "[i]nadequate collection and analysis of the necessary data"); Dina Francesca Haynes, (*Not*) *Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345–52 (2007) (urging a victims-centered approach to combating human trafficking); Ivy C. Lee & Mie Lewis, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT'L L. & POL'Y 169, 195 (2003) ("[T]he U.S. government and non-governmental agencies must address the very real and immediate needs of trafficking survivors in a victim-focused manner . . .").

39. See, e.g., ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 12, at 5–6 (detailing U.S. efforts to increase inter-agency coordination); *id.* at 23–28 (detailing the collaboration between the Bureau of Justice Assistance (BJA) and the Office for Victims of Crimes (OVC) to better identify and provide services for human trafficking victims—including task forces, trainings, and grants to non-profit victim service providers).

40. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-915, HUMAN TRAFFICKING: A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY

Children Act, which aims to improve coordination and fund efforts to combat child trafficking and commercial sexual exploitation, and includes a mandate to create a national plan of action.<sup>41</sup> An examination of the Act reveals, however, that although it advances anti-trafficking efforts to some extent, the U.S. focus remains limited largely to law enforcement measures.<sup>42</sup>

Law enforcement, while necessary, is not sufficient. Criminal law plays an important role in addressing harms such as human trafficking: law has an expressive function, and criminal law on human trafficking expresses a societal view that such acts are deplorable and unacceptable.<sup>43</sup> Apprehending traffickers is important. A law-enforcement-centered approach, however, has been subject to increased criticism, including from victim advocates.<sup>44</sup> Not only does a law-enforcement-centered approach run the risk of failing to address victims' needs, but criminal law appears to fall short of achieving even its own primary goals—holding accountable those who violate the law and deterring those who contemplate breaking the law.<sup>45</sup> On those two fronts, anti-trafficking criminal law has made limited progress—a small percentage of traffickers are apprehended

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COLLABORATION NEEDED TO EFFECTIVELY COMBAT TRAFFICKING CRIMES 29–33 (2007), available at <http://www.gao.gov/new.items/d07915.pdf> (highlighting federally funded task forces' goal of enhancing state and local law enforcement); see also *BJA Programs: Anti-Human Trafficking Task Force Initiative*, BUREAU OF JUSTICE ASSISTANCE, <http://www.ojp.usdoj.gov/BJA/grant/httf.html> (last visited Dec. 31, 2010) (reporting on current initiatives, including the funding of forty task forces).

41. Providing Resources, Officers, and Technology to Eradicate Cyber Threats to (PROTECT) Our Children Act of 2008, Pub. L. No. 110-401, 122 Stat. 4229 (codified at 42 U.S.C. § 17611 (Supp. II 2009)) [hereinafter PROTECT Our Children Act]; see also Debbie Wasserman Schultz, Foreword, *Our Space: Protecting Children in the Internet Age*, 13 J. TECH. L. & POL'Y, at xi, xiv–xv (2008) (providing a personal account of the PROTECT Our Children Act's passage).

42. See, e.g., PROTECT Our Children Act, 42 U.S.C. § 17611(a)–(c) (Supp. II 2009) (housing the national Internet Crimes Against Children Task Force Program in the Department of Justice and charging the attorney general, America's chief law enforcement officer, with the task of “creat[ing] and implement[ing] a National Strategy for Child Exploitation Prevention and Interdiction”).

43. See Cass R. Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779, 822 (1994) (law serves to “affect social valuations in general”); see also Meredith Johnson Harbach, *Is the Family a Federal Question?*, 66 WASH. & LEE L. REV. 131, 197–98 (2009) (discussing law's expressive function).

44. See, e.g., Haynes, *supra* note 38, at 345–52 (describing the detrimental effects of a law enforcement perspective to human trafficking, including the inefficiency of prosecution and government officials' inability to recognize victims); Lee & Lewis, *supra* note 38, at 183 (criticizing the requirement that T- and U-visa applicants “cooperate with law enforcement to receive . . . relief”).

45. See Haynes, *supra* note 38, at 347–49.

by law enforcement, and the incidence of human trafficking does not appear to have declined.<sup>46</sup>

According to U.S. government figures, for the five-year period from 2001 to 2005, U.S. attorneys opened 555 investigations of suspects in matters involving human trafficking,<sup>47</sup> meaning the federal government identified only an average of 111 possible trafficking suspects annually. During this five-year period, U.S. attorneys closed 377 matters in which human trafficking was the lead charge, resulting in prosecution of 146 suspects.<sup>48</sup> Thus, the federal government prosecuted, on average, fewer than thirty individuals each year. Moreover, the Administrative Office of the United States Courts reported that seventy-five defendants were convicted under human trafficking statutes during that five-year period.<sup>49</sup> In other words, on average, fifteen individuals were convicted in federal courts each year for human trafficking.

One might posit that the low number of convictions was due in part to the time lag generally associated with adoption of a new law—it takes time for law enforcement and prosecutors to learn of any new law, be trained to use it, and build investigations and cases against perpetrators.<sup>50</sup> Since 2005, human trafficking investigations, prosecutions and convictions have increased, but the numbers are still low compared to the incidence of human trafficking. For example, in 2008, the Department of Justice's Civil Rights Division and the U.S. Attorneys' Offices reported a record number of human trafficking cases.<sup>51</sup> They initiated 183 investigations, charging eighty-two

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46. See TIP REPORT 2010, *supra* note 12, at 7 (reporting that although human trafficking victims globally are in the millions, in 2009 there were fewer than 50,000 victims identified and only 4,166 prosecutions).

47. MARK MOTIVANS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DATA BRIEF: FEDERAL PROSECUTION OF HUMAN TRAFFICKING, 2001–2005, at 1 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpht05.pdf>.

48. *Id.*

49. *Id.* at 2.

50. See, e.g., Teichroeb, *supra* note 36 (attributing the slow progress in prosecuting human trafficking cases in part to law enforcement's lack of training and understanding, and its apprehension to file charges under an untested law); see also Todd Richmond, *Human Trafficking Too Often Unnoticed in State, Report Says: Senate to Vote Tuesday on Bill Outlawing Practice*, ST. PAUL PIONEER PRESS, Feb. 24, 2008, at B2 (reporting a lack of training in and understanding of human trafficking cases among state law enforcement agencies).

51. ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 12, at 41.

defendants and obtaining seventy-seven convictions.<sup>52</sup> These seventy-seven convictions were from a total of forty human trafficking cases.<sup>53</sup>

In light of the fact that conservative estimates suggest 14,500 to 17,500 persons are trafficked into the United States annually<sup>54</sup> and many more are trafficked within the United States, one would be hard pressed to suggest that seventy-seven convictions in forty human trafficking cases each year can stem the tide of exploitation or serve as a viable deterrent. When compared to the incidence of human trafficking, arrests, prosecutions, and convictions continue to be very low.<sup>55</sup> The low number of convictions is not so much an indictment of law enforcement efforts (these cases are challenging for many reasons),<sup>56</sup> as it is evidence that a law-enforcement-centered approach by itself simply will not eliminate, or even significantly reduce, the incidence of human trafficking.

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52. *Id.* The number of convictions based on FBI information appears to be higher, purportedly experiencing a 600% jump from fifteen convictions in 2001 to ninety-four in 2008. *Id.* at 36.

53. *Id.* at 41.

54. See TIP REPORT 2004, *supra* note 8, at 23.

55. See Haynes, *supra* note 38, at 347–48 (underscoring a relatively small number of prosecutions compared to extensive victim estimates in the United States). States prosecute and convict at even lower rates. See, e.g., Iwasaki, *supra* note 15 (stating that as of 2008 none of the twenty-nine states with laws prosecuting human trafficking had produced a conviction); Teichroeb, *supra* note 36 (finding that the first state to pass an anti-human-trafficking law had no convictions in its first five years). The scene is similar internationally. See, e.g., ‘No Success’ in Trafficking Cases, BBC NEWS (Apr. 1, 2009), [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/7976336.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/7976336.stm) (reporting that almost eighty victims of human trafficking had been identified in Scotland but that there had not been a single successful criminal prosecution).

56. See, e.g., U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 40, at 2 (“[V]ictims are often hidden from view, employed in legal or illegal enterprises, do not view themselves as victims, or are considered to be criminals or accessories to crimes . . . . Moreover, trafficking in persons cases are difficult to pursue because they are multifaceted, complex, and resource intensive.”); HEATHER J. CLAWSON ET AL., ICF INT’L, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES 20 (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf> (“Most of the respondents [of a survey of prosecutors in ten federal jurisdictions] indicated that TVPA cases are more resource intensive, time consuming, emotionally draining, reactive, and victim-oriented and victim-focused.”); U.S. DEP’T OF JUSTICE, FACTS ABOUT THE DEPARTMENT OF JUSTICE’S ANTI-TRAFFICKING EFFORTS 4 (2008), <http://www.justice.gov/olp/pdf/myths-and-facts.pdf> (“Child sex tourism cases are very resource-intensive, requiring gathering evidence abroad, bringing victims to the United States to testify, and coordination with foreign law enforcement agencies.”); Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 398–406 (2005) (explaining how a human trafficking victim’s trauma contributes to her lack of willing cooperation with law enforcement).



One expert's assessment of U.S. efforts to address sexual abuse, an issue with some parallels, is relevant in this context:

Despite the continuing increase in sexual abuse crimes in the United States, the American response has been to enact tougher laws with stiffer sanctions. In quelling our fears, we have not taken the time to look at the fact that our laws have not worked nor have our more stringent penalties served as a deterrent.<sup>57</sup>

The prevailing response to human trafficking has been strikingly similar: the U.S. government and other governments have enacted tough criminal laws without examining whether those laws are moving us closer to our end goal of preventing human trafficking.<sup>58</sup>

That a law-enforcement-centered approach has limited success will not surprise most public health scholars and professionals. In the public health arena, criminal sanctions have had relatively minimal impact in terms of reshaping behavior and reducing harm.<sup>59</sup> Equally important, public health campaigns rarely use criminal sanctions in isolation.<sup>60</sup> Even if convictions increase significantly, questions still remain as to the effectiveness of a law-enforcement-centered approach: although the existence of a criminal justice system has a

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57. Freeman-Longo, *supra* note 25, at 304–05.

58. See Dottridge, *supra* note 13, at 1 (“[T]he priority for governments around the world in their efforts to stop human trafficking has been to arrest, prosecute and punish traffickers . . . .”); Haynes, *supra* note 38, at 341–52 (discussing the problems with the U.S. law enforcement approach to combating human trafficking); Todres, *supra* note 14, at 30 (“[T]he prevailing approach at the international, regional, and national levels to trafficking and commercial sexual exploitation of children has remained primarily a law enforcement framework.”).

59. See, e.g., Scott Burris et al., *Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial*, 39 ARIZ. ST. L.J. 467, 468 (2007) (“Our data do not support the proposition that passing a law prohibiting unsafe sex or requiring disclosure of infection influences people’s normative beliefs about risky sex.”); see also Brandon C. Welsh, *Public Health and the Prevention of Juvenile Criminal Violence*, 3 YOUTH VIOLENCE & JUV. JUST. 23, 23 (2005) (finding that an “increasingly punitive response to juvenile criminal violence in the United States represents an unsustainable approach to the problem”).

60. See, e.g., *Issue in Focus: Substance Abusing Offenders*, BULLETIN (Nat’l Conference of State Legislatures, Denver, Co.), Feb. 2010, at 3, 3, <http://www.ncsl.org/portals/1/Documents/cj/bulletinFeb-2010.pdf> (detailing state efforts to reduce substance abuse, including both criminal sanctions and treatment); see also *Shaken Baby Syndrome Prevention Legislation*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 2009), <http://www.ncsl.org/default.aspx?tabid=17669> (surveying state laws enacted to prevent shaken baby syndrome and to accompany criminal child abuse sanctions); Matthew Gever, *Legislators Hope to Put Drowsy Drivers to Rest*, STATE HEALTH NOTES (Nat’l Conference of State Legislatures, Denver, Co.), Mar. 17, 2008, <http://www.ncsl.org/default.aspx?tabid=14176> (discussing laws meant to deter drowsy driving that include both criminal sanctions and citizen education).

deterrent effect, changing and enhancing criminal sanctions to maximize deterrence tends to be ineffective.<sup>61</sup>

By adopting the above-described three-pronged approach to combating human trafficking (prosecution, victim assistance,<sup>62</sup> and prevention), the international community recognized that criminal law is only one component of a successful response. This approach has been enshrined in legally binding international instruments,<sup>63</sup> yet most governments, including the United States, have focused on criminal law measures, allocated very limited resources to victim assistance programs, and done little, if anything, to develop programs aimed directly at prevention.<sup>64</sup>

In contrast, public health emphasizes the importance of prevention, and thus a public health approach offers new ideas that can reduce human trafficking. Before undertaking such an analysis, this Article briefly outlines the health implications of human trafficking and addresses whether human trafficking should be considered a public health issue.

## II. HUMAN TRAFFICKING'S HEALTH IMPLICATIONS

Human trafficking exacts a significant, sometimes life-threatening, toll on its victims. Trafficked persons experience physical, sexual, and emotional violence at the hands of traffickers, pimps, employers, and others, and are exposed to various workplace, health, and environmental hazards.<sup>65</sup> This Part details the health

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61. Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 173 (2004); Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 977 (2003) (“[T]he ability of doctrinal manipulation to produce an alteration of deterrent effect is highly limited . . . .”); see also James A. Mercy et al., *Public Health Policy for Preventing Violence*, HEALTH AFFAIRS, Winter 1993, at 7, 11 (“Although the average prison time served for a violent crime in the United States tripled between 1975 and 1989, there was no concomitant decrease in the level of violent crimes.”).

62. Though the prevailing description of the three-pronged approach to combating human trafficking refers typically to the second prong as “protection” (conveniently part of the “Three P’s”), this Article uses “victim assistance” in conjunction with or instead of “protection” because the latter term risks denying agency to human trafficking survivors and undervaluing their capacities. See generally Haynes, *supra* note 38, at 349–52 (describing the prevailing stereotypes of the quintessential human trafficking victim as a woman or girl who has been sex trafficked, is totally helpless, and must be saved by law enforcement).

63. See *supra* note 31.

64. See *supra* note 58.

65. See *supra* notes 1–5 and accompanying text; *infra* notes 66–87 and accompanying text.

impacts of sex and labor trafficking. In doing so, this section exposes the limitations of a criminal-law-centered response to human trafficking. Simply put, criminal law by its very nature is not designed to account for the range of harms caused by human trafficking, nor should it be expected to do so. In contrast, a public health approach can more effectively meet many of the needs of individuals and communities affected by human trafficking.

The negative health repercussions of sex trafficking are pervasive and extensive. One study on women trafficked in Europe found that ninety-five percent had experienced physical or sexual violence while in their trafficking situation and seventy-one percent had experienced both.<sup>66</sup> Fifty-seven percent of women in the study suffered between twelve and twenty-three concurrent physical health symptoms when they entered care; the most frequent and severe symptoms included headaches, fatigue, dizzy spells, back pain, stomach/abdominal pain, and memory problems.<sup>67</sup> Over sixty percent of women reported sexual health problems, and the majority reported symptoms consistent with post-traumatic stress disorder.<sup>68</sup>

In another study of trafficked women in Europe, all of the women reported being sexually abused and coerced into involuntary sex acts, and the vast majority reported being harmed intentionally with symptoms including “broken bones, contusions, pain, loss of consciousness, headaches, high fevers, gastrointestinal problems, undiagnosed pelvic pain, complications from abortions, dermatological problems (e.g., rashes, scabies, and lice), unhealthy weight loss, and dental and oral health problems.”<sup>69</sup>

In addition, trafficked individuals experience increased risk of contracting HIV and other sexually transmitted diseases.<sup>70</sup> A Harvard School of Public Health study in Nepal found that among repatriated Nepalese women and girls who were sex trafficking victims, thirty-

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66. CATHY ZIMMERMAN ET AL., *STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE* 10 (2006), available at <http://www.lshtm.ac.uk/php/ghd/docs/stolensmiles.pdf>.

67. *Id.* at 11–12.

68. *Id.* at 13, 20.

69. CATHY ZIMMERMAN, *THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY* 4 (2003), available at <http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>.

70. See, e.g., Jhumka Gupta et al., *HIV Vulnerabilities of Sex-Trafficked Indian Women and Girls*, 107 INT’L J. GYNECOLOGY & OBSTETRICS 30, 33 (2009) (reporting that sex trafficking heightens HIV risk due to several factors experienced by trafficked women and girls, including “extreme sexual violence . . . , the inability to refuse sex or negotiate condom use, and the inability to obtain health care”).

eight percent were HIV-positive.<sup>71</sup> These trafficked women and girls who were infected with HIV also had a higher incidence of other sexually transmitted infections (STIs) (e.g., syphilis and hepatitis B).<sup>72</sup>

Forced to work in filthy conditions and frequently denied the choice to use condoms, sex trafficking victims become vehicles for the further spread of HIV and other STIs, implicating a much broader population at risk (both those who exploit women and children trafficked into the sex sector, and any subsequent partners of theirs).<sup>73</sup> Trafficked women and children frequently serve prostitution rings along trucking routes, which furthers the spread of HIV/AIDS and other STIs from state to state and across international borders.<sup>74</sup> Their squalid, crowded conditions and HIV status also contribute to the spread of tuberculosis.<sup>75</sup>

In short, the health implications of sex trafficking are dramatic for trafficking victims and also potentially for their home communities and the communities in which they are forced to work.

Although most of the research to date has focused on sex trafficking,<sup>76</sup> and thus less data exist on labor trafficking, the adverse health implications of labor trafficking are also severe. There are significant health impacts for victims both while being trafficked and subsequently at the destination. During the journey, trafficked individuals might be hidden among cargo shipments and in danger of injury or death by “drowning, freezing, or suffocating, or by being

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71. Jay G. Silverman et al., *HIV Prevalence and Predictors of Infection in Sex-Trafficked Nepalese Girls and Women*, 298 JAMA 536, 538 (2007).

72. Jay G. Silverman et al., *Syphilis and Hepatitis B Co-infection Among HIV-Infected, Sex-Trafficked Women and Girls, Nepal*, 14 EMERGING INFECTIOUS DISEASES 932, 932–33 (2008), available at <http://www.cdc.gov/eid/content/14/6/pdfs/932.pdf>.

73. See, e.g., A. Bennetts et al., *Differences in Sexual Behaviour Between HIV-Infected Pregnant Women and Their Husbands in Bangkok, Thailand*, 11 AIDS CARE 649, 649–50 (1999) (reporting that wives of men who visit commercial sex workers were at heightened risk of HIV transmission); Leng Bun Hor et al., *The Role of Sex Worker Clients in Transmission of HIV in Cambodia*, 16 INT’L J. STD & AIDS 170, 173 (2005) (discussing the increase of HIV transmission from husbands who visit commercial sex workers to their wives).

74. Sandra Teresa Hyde, *Selling Sex and Sidestepping the State: Prostitutes, Condoms, and HIV/AIDS Prevention in Southwest China*, E. ASIA, Dec. 2000, at 108, 115 (“Many countries have noted that the epidemic spreads along transportation lines and trucker’s routes that are often lined by small brothels.”); see also Heather Clawson, Human Trafficking into and Within the United States, Address at the Executive Policy Forum, National Governor’s Association 10 (July 24, 2006), available at <http://www.nga.org/Files/pdf/0607traffickingclawsonpaper.pdf> (“[I]t is reasonable to assume that areas located along major intersections, like Interstate 95, are vulnerable to human trafficking.”).

75. Ashwin S. Dharmadhikari et al., *Tuberculosis and HIV: A Global Menace Exacerbated Via Sex Trafficking*, 13 INT’L J. INFECTIOUS DISEASES 543, 544 (2009).

76. GOZDZIAK & BUMP, *supra* note 9, at 6–7.

crushed or exposed to toxic materials.”<sup>77</sup> Additionally, overcrowded and unsanitary conditions, shortages of food and water, and environmental extremes worsen their situation, further increasing the risk of illness and injury.<sup>78</sup>

Upon arriving at their destination, individuals trafficked for labor most commonly are placed into “construction, agriculture, mining and quarrying, manufacturing, fishing, and domestic service.”<sup>79</sup> In many jurisdictions, these sectors are subject to little regulation and oversight even though these types of work expose employees to a broad range of risks to their health and safety.<sup>80</sup>

Individuals trafficked for labor purposes report “living and working conditions that are overcrowded, poorly ventilated and lack adequate sanitation. Long working hours and little rest time may be punctuated with poor or inadequate nutrition and prolonged exposure to extremes of heat or cold.”<sup>81</sup> The potential public health risks from overcrowding, inadequate sanitation, and poor nutrition, among other issues, are numerous and often severe.<sup>82</sup> These are settings where infectious diseases flourish.<sup>83</sup>

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77. KEVIN BALES ET AL., FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL-BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 35 (2004), available at [http://hrc.berkeley.edu/pdfs/hiddenslaves\\_report.pdf](http://hrc.berkeley.edu/pdfs/hiddenslaves_report.pdf).

78. *Id.*

79. Sian Oram & Cathy Zimmerman, *The Health of Persons Trafficked for Forced Labour*, GLOBAL EYE ON HUMAN TRAFFICKING (Int'l Org. for Migration, Geneva, Switz.), no. 4, at 4, 4, available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/projects/showcase\\_pdf/global\\_eye\\_fourth\\_issue.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/projects/showcase_pdf/global_eye_fourth_issue.pdf).

80. *Id.*

81. *Id.*

82. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 14 (2006), available at <http://www.state.gov/documents/organization/66086.pdf> (“Unsanitary and crowded living conditions, coupled with poor nutrition, foster a host of adverse health conditions such as scabies, tuberculosis, and other communicable diseases.”); BALES ET AL., *supra* note 77, at 35–41 (detailing the health risks to victims of labor trafficking); see also UN-WATER, FACTSHEET: SANITATION IS VITAL FOR HEALTH 1–2 (2008), available at [http://www.unwater.org/downloads/media/sanitation/iys/Factsheetsall\\_EN\\_2009.pdf](http://www.unwater.org/downloads/media/sanitation/iys/Factsheetsall_EN_2009.pdf) (detailing the public health risks to poor sanitation, including worms, diarrheal diseases, respiratory infections, and mental health problems); Andrew M. Prentice et al., *New Challenges in Studying Nutrition-Disease Interactions in the Developing World*, 118 J. CLINICAL INVESTIGATION 1322, 1322–27 (2008) (discussing the global public health crisis in childhood malnutrition and its associated morbidity and mortality rates); *What Are the Health Risks Related to Overcrowding?*, WORLD HEALTH ORG., [http://www.who.int/water\\_sanitation\\_health/emergencies/qa/emergencies\\_qa9/en/index.html](http://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa9/en/index.html) (last visited Dec. 31, 2010) (stating that overcrowding and poor shelter may contribute to increased risk of the spread of infectious diseases such as “respiratory infections, meningitis, typhus, cholera, scabies, etc.”).

83. See, e.g., Bruce G. Link & Jo C. Phelan, *Fundamental Sources of Health Inequalities*, in POLICY CHALLENGES IN MODERN HEALTH CARE 71, 71 (David Mechanic et al. eds., 2005) (noting that the “strong relationships between health and dire

Trafficked laborers also often suffer physical abuse and are exposed to harm. They “frequently suffer physical injuries, infectious and communicable disease and, not least, post-trauma mental health symptoms including, anxiety, depression, post-traumatic stress disorder, feelings of low self-esteem and isolation.”<sup>84</sup> One study found a high incidence of “[v]iolence-related injuries associated with forced labor includ[ing] bruises, broken bones, head wounds, stab wounds, and mouth and teeth injuries.”<sup>85</sup> With such extreme violence and deprivation, labor trafficking victims are commonly malnourished and suffer numerous physical and mental health issues.<sup>86</sup>

Exposure to environmental hazards in various industries presents another health risk for trafficked laborers. For example, in the construction industry, “[e]xposure to irritants and carcinogens from construction sites is associated with acute and chronic respiratory disease, poisoning, certain cancers, and irritant and allergic dermatitis.”<sup>87</sup> Other industries—e.g., mining, agriculture, and manufacturing—expose trafficked adults and children to similar harms.

There is little doubt that the harms inflicted on trafficked individuals are severe and often have long-term health implications. The far-reaching health impacts of human trafficking highlight criminal law’s limited ability to address the issue, suggesting the need for a public health approach that engages the full panoply of affected sectors and communities.

Despite these severe health implications, some policymakers or scholars might still question whether human trafficking should be considered a public health issue.<sup>88</sup> Scholars and practitioners

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housing circumstances, poor sanitation, inadequate nutrition, and horrendous work conditions” have been known since the nineteenth century); John D.H. Porter & Jessica A. Ogden, *Social Inequalities in the Re-emergence of Infectious Disease*, in *HUMAN BIOLOGY AND SOCIAL INEQUALITY: 39TH SYMPOSIUM VOLUME OF THE SOCIETY FOR THE STUDY OF HUMAN BIOLOGY* 96, 97–101 (S.S. Strickland & P.S. Shetty eds., 1998) (detailing many of the risk factors associated with poor socio-economic status that contribute to an increase risk of contagious disease).

84. Oram & Zimmerman, *supra* note 79, at 4.

85. BALES ET AL., *supra* note 77, at 38.

86. *Id.* at 37–39.

87. Oram & Zimmerman, *supra* note 79, at 4.

88. That an issue has health implications does not necessarily make it a public health issue, and scholars have debated the contours of the definition of “public health.” See Wendy K. Mariner, *Review Essay—Public Health and Law: Past and Future*, 28 J. HEALTH POL. POL’Y & LAW 525, 525–29 (2003) (noting the lack of universal agreement on a single definition of public health). For a discussion of this debate, see Roger Detels, *The Scope and Concerns of Public Health*, in 1 OXFORD TEXTBOOK OF PUBLIC HEALTH 3, 3–20 (R. Detels et al. eds., 5th ed. 2009) (laying out a definition of public health to

distinguish medicine and public health broadly by viewing medicine as the discipline focused on the health of individuals and public health as concerned with the health of populations.<sup>89</sup> I submit that there are strong arguments in favor of deeming human trafficking a public health issue<sup>90</sup>: its health implications are severe, and the scale of human trafficking, with possibly millions of victims annually, suggests population-level implications.<sup>91</sup> Moreover, there is growing consensus

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address both historical public health issues and new infectious and non-communicable diseases); Mark A. Rothstein, *Rethinking the Meaning of Public Health*, 30 J.L. MED. & ETHICS 144, 144–49 (2002) (discussing the debate over how to define public health and settling on a narrow definition). See generally KENNETH R. WING ET AL., PUBLIC HEALTH LAW 41–44 (2007) (discussing the definition of public health).

89. See Wendy K. Mariner, *Law and Public Health: Beyond Emergency Preparedness*, 38 J. HEALTH L. 247, 254–58 (2005).

90. In fact, for some, including the U.S. Congress, this issue is settled. In the Trafficking Victims Protection Act, Congress voiced its opinion that human trafficking is a “growing transnational crime [that] also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” 22 U.S.C. § 7101(b)(3) (2006) (emphasis added). A number of widely-used definitions of public health reach human trafficking. See INST. OF MED., THE FUTURE OF PUBLIC HEALTH 1 (1988) (defining public health as “what we, as a society, do collectively to assure the conditions in which people can be healthy”); see also R.F. Heller et al., *Putting the Public Back into Public Health: Part I. A Re-definition of Public Health*, 117 PUB. HEALTH 62, 64 (2003) (using the definition of public health developed by the Acheson Committee on Public Health, recognized as the leading definition in the United Kingdom: “the science and art of preventing disease, prolonging life and promoting health through organised efforts of society”); World Health Assembly, International Health Regulations, WHA Res. 58.3, 58th World Health Assembly, WHA58/2005/REC/1, art. 1 (May 23, 2005) [hereinafter IHR] (defining “public health risk” as “a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger”). Even the IHR, which is concerned primarily with governing infectious disease outbreaks and emergencies of international concern, recognizes that public health risks go beyond disease. *Id.* But see F. Douglas Scutchfield & C. William Keck, *Concepts and Definitions of Public Health Practice*, in PRINCIPLES OF PUBLIC HEALTH PRACTICE 2, 2 (F. Douglas Scutchfield & C. William Keck eds., 2d ed. 2003) (quoting Professor John Last as stating that the goal of public health is “to reduce the amount of disease, premature death, and disease-produced discomfort and disability in the population”).

91. Comparing human trafficking’s health impacts with other public health data further demonstrates that human trafficking’s effects are population based. For example, within the United States in 2007, there were 7 reported cases of cholera, 30 cases of measles, 715 cases of mumps, and 4,864 cases of tuberculosis. WORLD HEALTH ORG., WORLD HEALTH STATISTICS 2009, at 66–67 (2009), available at [http://whqlibdoc.who.int/publications/2009/9789241563819\\_eng.pdf](http://whqlibdoc.who.int/publications/2009/9789241563819_eng.pdf). By contrast, an estimated 14,500 to 17,500 individuals were trafficked into the United States, with perhaps an even higher number trafficked within the country, and nearly all of them suffer adverse health consequences. See *supra* notes 54, 65–87 and accompanying text. Similarly, for the year 2007, the World Health Organization (WHO) reported 177,963 cases of cholera, 280,771 cases of measles, 408,270 cases of mumps, and 2,578,939 cases of tuberculosis. WORLD HEALTH ORG., *supra* at 68–69. The WHO also reported over 6.3 million malaria cases. *Id.* If as many as four million individuals are trafficked globally on an annual basis, the public health

that violence is a public health issue,<sup>92</sup> and trafficking is clearly a severe form of violence.

Ultimately, this Article's central claim is not dependent on whether one believes human trafficking should be considered a public health issue. Rather than assert definitional arguments, this Article aims to demonstrate that public health methodologies can advance efforts to stop human trafficking. Public health offers a different way of thinking about human trafficking, and public health methodologies have much to offer policymakers and anti-trafficking advocates.

### III. A PUBLIC HEALTH APPROACH TO HUMAN TRAFFICKING

A public health approach to human trafficking offers a number of important potential benefits, including not only additional resources but also a "distinctive methodology."<sup>93</sup> In particular, a public health approach would bolster anti-trafficking efforts by its traditional emphasis in four areas. First, a public health approach means relying upon evidence-based research to develop relevant law, policy, and programming.<sup>94</sup> As noted in the Introduction, while governments and non-governmental organizations are making concerted efforts, they are basing very few of these on proven strategies. Second, a public health approach focuses on preventing the harm from occurring.<sup>95</sup> Thus, vaccine or immunization programs aim

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consequences of human trafficking might rival other issues recognized as "public health" concerns.

92. See World Health Assembly, *Prevention of Violence: A Public Health Priority*, WHA Res. 49.25, 49th World Health Assembly (May 25, 1996), available at [http://www.who.int/violence\\_injury\\_prevention/resources/publications/en/WHA4925\\_eng.pdf](http://www.who.int/violence_injury_prevention/resources/publications/en/WHA4925_eng.pdf) ("[V]iolence is a leading worldwide public health problem."); *A Timeline of Violence as a Public Health Issue*, CTDS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/ncipc/dvp/timeline.htm> (last visited Dec. 31, 2010) (noting that in 1983 the CDC established a Violence Epidemiology Branch to address violence as a public health issue); see also KIMBERLY A. SCOTT, INST. OF MED., *Violence Prevention in Low- and Middle-Income Countries: Finding a Place on the Global Agenda* 15–21 (2008), available at [http://books.nap.edu/openbook.php?record\\_id=12016](http://books.nap.edu/openbook.php?record_id=12016) (addressing violence as a public health issue); Mark L. Rosenberg & James A. Mercy, *Introduction*, in *Violence in America: A Public Health Approach* 3, 11–12 (Mark L. Rosenberg & Mary Ann Fenley eds., 1991) (describing public health's important role in combating violence in America); Freeman-Longo, *supra* note 25, at 309 (describing the historical paradigm shift to the recognition of violence as a public health issue); Marsha Garrison, *Reforming Child Protection: A Public Health Perspective*, 12 VA. J. SOC. POL'Y & L. 590, 599 (2005) (noting that child maltreatment is considered a public health issue); Mercy et al., *supra* note 61, at 8 ("[B]y any measure, violence is a major contributor to premature death, disability, and injury.").

93. Garrison, *supra* note 92, at 601.

94. *Id.* at 600.

95. *Id.*



to reach populations before they suffer from disease so they do not have to suffer at all, just as we should aim to reach vulnerable populations before they are trafficked. Third, public health examines and seeks to address behaviors or societal views that increase the risk of disease or harm.<sup>96</sup> Fourth, public health methodologies seek to engage all stakeholders in a target population who can play a role in addressing a particular health issue.<sup>97</sup>

### A. *Developing Evidence-Based Strategies*

Public health emphasizes the importance of evidence-based research.<sup>98</sup> It brought to the field of violence prevention an emphasis on taking a scientific, multidisciplinary approach to the issue to identify what strategies are effective.<sup>99</sup> A public health perspective could bring the same to human trafficking.

In developing a scientific approach to violence prevention, public health experts have identified four important steps, which resonate in the context of human trafficking: (1) defining the problem by not merely counting cases but also collecting “information on the demographic characteristics of the persons involved, the temporal and geographic characteristics of the incident, the victim/perpetrator relationship, and the severity and cost of the injury”; (2) identifying risk factors; (3) developing interventions based on information

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96. See generally WING ET AL., *supra* note 88 (explaining that public health policies typically include a component focused on personal behaviors related to, or public views on, the specific health issue). See also, e.g., U.S. DEP’T OF HEALTH & HUMAN SERVS., SURGEON GENERAL’S CALL TO ACTION TO PREVENT AND DECREASE OVERWEIGHT AND OBESITY 2001, at 1–14, 33–35 (2001), available at <http://www.surgeongeneral.gov/topics/obesity/calltoaction/CalltoAction.pdf> (educating the public about the health risks of overweight and obesity and encouraging behavioral change in diet and exercise); Christine Galavotti et al., *Modeling and Reinforcement to Combat HIV: The MARCH Approach to Behavior Change*, 91 AM. J. PUB. HEALTH 1602, 1602–04 (2001), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446836/pdf/0911602.pdf> (announcing and explaining the MARCH program, a strategy to change behavior and social norms to combat the spread of HIV).

97. Mercy et al., *supra* note 61, at 8.

98. See generally ROSS C. BROWNSON ET AL., EVIDENCE-BASED PUBLIC HEALTH (2003) (detailing the value of evidence-based public health models and explaining how to develop evidence-based approaches to public health issues); *Evidence-Based Practice for Public Health*, UNIV. OF MASS. MED. SCH. LIBRARY, <http://library.umassmed.edu/ebpph/> (last visited Dec. 31, 2010) (providing online access to free evidence-based public health resources). In addition, the American Public Health Association chose as its 2005 annual meeting’s theme “Evidence Based Policy and Practice.” *Past Years Abstracts and Locations*, AM. PUB. HEALTH ASS’N, <http://www.apha.org/meetings/pastfuture/pastannualmeetings.htm> (last visited Dec. 31, 2010).

99. Mercy et al., *supra* note 61, at 13.

collected and testing those interventions; and (4) implementing proven interventions and assessing cost-effectiveness.<sup>100</sup>

Such an approach resembles little of what is happening in the human trafficking context. Although many law enforcement officials and social services personnel work tirelessly to help victims of human trafficking, much of the work to date has emerged from a sporadic trial-and-error approach rather than systematic research and evaluation to determine best practices.<sup>101</sup> Currently, there is a dearth of reliable data on human trafficking, making it difficult to get an accurate picture of the problem, identify risk factors, and design effective prevention strategies. A study by the Georgetown University Institute for the Study of International Migration concluded that

there is little systematic and reliable data on the scale of [human trafficking]; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the *modus operandi* of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking.<sup>102</sup>

The Georgetown University study found that the great majority of research on human trafficking, including research published in peer review journals, is not empirical research.<sup>103</sup> Without an accurate

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100. *Id.* at 14–15; see also *The Public Health Approach to Violence Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/ncipc/dvp/PublicHealthApproachTo\\_ViolencePrevention.htm](http://www.cdc.gov/ncipc/dvp/PublicHealthApproachTo_ViolencePrevention.htm) (last modified Mar. 5, 2008).

101. See GOŹDZIAK & BUMP, *supra* note 9, at 9 (recognizing that “the dominant anti-trafficking discourse is not evidence-based” and encouraging the development of such research). Some efforts exist to develop evidence-based research. See, e.g., CATHERINE CHEN ET AL., ICF INT’L, IMPROVING EFFECTIVENESS OF INTERNATIONAL AID TO COMBAT HUMAN TRAFFICKING 1–2 (2009), available at <http://www.icfi.com/docs/trafficking-international-aid.pdf> (emphasizing the need for an evidence-based approach to U.S. funding of anti-human-trafficking efforts); GOŹDZIAK & BUMP, *supra* note 9, at 4–5; Vanessa E. Munro, *Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution*, 46 BRIT. J. CRIMINOLOGY 318, 322–24 (2006) (applying an evidence-based approach to analyzing European responses to domestic human trafficking).

102. GOŹDZIAK & BUMP, *supra* note 9, at 4.

103. *Id.* at 6. The Georgetown study reported that of 218 journal articles on human trafficking, only thirty-nine (eighteen percent) were empirically based. *Id.*

understanding of the problem, law enforcement initiatives and victim assistance programs will not be well targeted, and prevention efforts might have little or no impact.

In recent years, several studies have begun to address human trafficking more systematically.<sup>104</sup> Their findings challenge some conventional wisdom on the issue and demonstrate the value of and need for further evidence-based research in this area. For example, a common belief about human trafficking is that traffickers are men and the vast majority of victims are women and children.<sup>105</sup> However, research examining data from seventy-eight countries found that forty-two percent of trafficking recruiters were women.<sup>106</sup> Similarly, the International Organization for Migration's research in Southeast Europe found that over forty percent of recruiters were women.<sup>107</sup> In certain locales, women may well constitute the majority of traffickers.<sup>108</sup> Thus, a law enforcement initiative or prevention strategy that assumes all traffickers are men will inevitably fall short of achieving its goals. By building upon evidence-based research, police and immigration officers can better tailor their enforcement strategies to account for the realities of the situation on the ground, including the fact that many women play a role in perpetrating these abuses. In addition, with the benefit of this particular evidence-based research, prevention programs can now educate at-risk individuals

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104. *Id.* at 4.

105. Press Release, U.N. Office on Drugs & Crime, UNODC Launches Global Initiative to Fight Human Trafficking (Mar. 26, 2007), <http://www.unodc.org/unodc/en/press/releases/2007-03-26.html> ("Most groups concerned with human trafficking focus on women and sexual exploitation and do not see the males in the fields, mines and construction jobs or even the women and children in sweatshops and domestic servitude."); see also GOŹDZIAK & BUMP, *supra* note 9, at 7 (finding that the "vast majority" of studies on human trafficking focus on women and girls).

106. Kristiina Kangaspunta, Presentation at the Vienna Forum to Fight Human Trafficking: Women Traffickers (Feb. 14, 2008), <http://www.ungift.org/docs/ungift/pdf/vf/traffickerworkshop/women%20traffickers.pdf>.

107. Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD AFF. 179, 188–89 (2003).

108. See, e.g., Kangaspunta, *supra* note 106 (finding that women constitute sixty percent of convicted traffickers in Nigeria); Gulnara Shahinian, *Victims and Traffickers, New Relationship and Gender Roles*, U.N. GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, 1–2, <http://www.ungift.org/docs/ungift/pdf/vf/traffickerworkshop/victims%20and%20traffickers.pdf> (last visited Dec. 31, 2010) (finding that thirty-two of the thirty-nine convicted traffickers in Armenia were women). Given the numerous variables that go into who ends up convicted for a particular crime, one cannot assume that women constitute the same percentage of all traffickers based on convictions. However, recent research suggests women play a more significant role than originally presumed. See Kangaspunta, *supra* note 106; Shahinian, *supra*, at 1–3.

about the fact that women, including women they know, could be the ones who seek to recruit and exploit them.<sup>109</sup>

Similarly, the dominant narrative on trafficking portrays victims as women and girls who are victims of sex trafficking, overlooking other forms of trafficking and other victims.<sup>110</sup> As a result, in the United States, shelters for child victims of commercial sexual exploitation, many of whom have been trafficked, focus primarily on girls.<sup>111</sup> Girls are at risk, and services for girls need to be expanded considerably.<sup>112</sup> But boys also suffer, and currently there is only one shelter for child victims of sex trafficking in the United States that accepts and treats boys.<sup>113</sup>

In fact, though research confirms the view that globally the majority of human trafficking victims are women and girls,<sup>114</sup> it also reveals a more nuanced picture. In certain settings, boys are also at

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109. International Organization for Migration research also found that the majority of trafficked women and children were contacted in person by a “friend” or acquaintance. See Laczko & Gramegna, *supra* note 107, at 189; see also Dianne Scullion, *Gender Perspectives on Child Trafficking: A Case Study of Child Domestic Workers*, in GENDER AND MIGRATION IN 21ST CENTURY EUROPE 45, 55–56 (Helen Stalford et al. eds., 2009) (discussing how more women are playing an active role in child trafficking).

110. See Haynes, *supra* note 38, at 356, 366–67 (discussing the essentialized victim of human trafficking); see also David A. Feingold, *Think Again: Human Trafficking*, FOREIGN POL’Y, Sept.–Oct. 2005, at 26, 26 (stating that trafficking of men is rarer than the trafficking of women and children in the sex industry).

111. E-mail from ECPAT-USA to author (Feb. 1, 2010, 14:28 EST) [hereinafter ECPAT email] (on file with the North Carolina Law Review); see also SHARED HOPE INT’L, REPORT OF THE CANADA-UNITED STATES CONSULTATION IN PREPARATION FOR WORLD CONGRESS III AGAINST SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS 1 (2008), available at [http://www.beyondborders.org/wp/wp-content/uploads/2009/06/report-of-canada-us\\_consult\\_report-congress111.pdf](http://www.beyondborders.org/wp/wp-content/uploads/2009/06/report-of-canada-us_consult_report-congress111.pdf) (stating that the U.S. and Canada devote “[i]nsufficient resources . . . [to] the creation of appropriate specialized services for [victims of child sexual exploitation], including for boys who are victimized by prostitution”).

112. See Rowena Fong & Jodi Berger Cardoso, *Child Human Trafficking Victims: Challenges for the Child Welfare System*, 33 EVALUATION & PROGRAM PLAN. 311, 314 (2010) (noting the scarcity of shelters and treatment programs offering services tailored to sexually exploited children). Only six states currently have even one shelter for child victims of sex trafficking. See ECPAT email, *supra* note 111.

113. ECPAT email, *supra* note 111.

114. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 8 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> (reporting that based on research completed in 2006, “[a]pproximately 80 percent of transnational victims are women and girls”). A recent report of over 1,200 human trafficking incidents in the United States revealed that over ninety percent of the victims were female, and in sex trafficking cases, this number jumped to ninety-nine percent. TRACEY KYCKELHAHN ET AL., U.S. DEP’T OF JUSTICE, SPECIAL REPORT: CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007–08, at 7–9 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>.

significant risk. For instance, the U.S. Federal Bureau of Investigation estimates that “over 50 percent of all child pornography seized in the United States depicts boys.”<sup>115</sup> In Sri Lanka, the majority of the country’s prostituted children are boys.<sup>116</sup> A more nuanced understanding of the problem can lead to improved prevention programs that reach boys and better train law enforcement, health care professionals and others, so that victim identification is more successful regardless of whether the victims are women or men, girls or boys. Similarly, evidence-based research can bolster understanding of the particular risk factors for women, men, girls, and boys, so that governments and non-governmental organizations can implement appropriate prevention strategies targeting each group.

As the issue of human trafficking receives more attention and enters the public consciousness, public demand for action grows. Action is needed urgently. However, it is crucial to ensure that the actions undertaken by governments and other stakeholders are likely to achieve the desired goal—a reduction in, if not an end to, human trafficking. “Passing legislation should follow a process by which legislators research the issue, have some supportive evidence that the law will work, and are willing to allocate funds at state and federal levels to ensure states will carry out and uphold the law.”<sup>117</sup> In other words, it is “crucial that well-designed research take place before major funding initiatives are launched.”<sup>118</sup> Almost no empirical research was undertaken before Congress adopted the Trafficking

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115. UNICEF, PROFITING FROM ABUSE: AN INVESTIGATION INTO THE SEXUAL EXPLOITATION OF OUR CHILDREN 11 (2001), *available at* [http://www.unicef.org/publications/files/pub\\_profiting\\_en.pdf](http://www.unicef.org/publications/files/pub_profiting_en.pdf).

116. *Id.*; see also TIP REPORT 2009, *supra* note 2, at 91 (reporting that in 2008, the government of Burkina Faso identified 691 child trafficking victims in various sectors, 438 of whom (63.3%) were boys); *id.* at 102 (describing a UNICEF study which found that sixty-two percent of child domestic workers in Chad were male); *id.* at 148 (stating that the majority of child trafficking victims in Guinea-Bissau are boys, trafficked into forced begging). *But see* Trafficking and Sexual Exploitation of Boys and Male Adolescents in Central America, U.N. Global Initiative to Fight Human Trafficking (June 4, 2009), <http://www.ungift.org/ungift/en/stories/trafficking-and-sexual-exploitation-of-boys-and-male-adolescents-in-central-america.html> (reporting Casa Alianza, an international NGO with a presence in Central America, reviewed about 1,000 minor victims of child sexual exploitation and found that only four percent were male). Social taboos often prevent identification of sexual exploitation of boys. See, e.g., ECPAT INT’L & INCIDIN BANGL., THE BOYS AND THE BULLIES: A SITUATIONAL ANALYSIS REPORT ON PROSTITUTION OF BOYS IN BANGLADESH 1–2, 10–12, 26–27 (2006), *available at* [http://www.humantrafficking.org/uploads/publications/Bangladesh\\_Part1.pdf](http://www.humantrafficking.org/uploads/publications/Bangladesh_Part1.pdf) (describing the scope of sexual exploitation of boys in Bangladesh while identifying a general lack of data, attributing this in part to social taboos and underreporting).

117. Freeman-Longo, *supra* note 25, at 316.

118. Garrison, *supra* note 92, at 607.

Victims Protection Act, formally launching the U.S. government's effort to combat human trafficking.<sup>119</sup> This needs to be corrected.

Public health methodologies incorporate four epidemiological processes that can help policymakers and advocates adopt and implement effective measures to combat human trafficking: (1) public health surveillance, (2) risk group identification, (3) risk factor exploration, and (4) program implementation/evaluation.<sup>120</sup>

Public health surveillance is a fundamental component of public health, providing the vital data needed to understand fully health risks and properly educate the public.<sup>121</sup> Defined as the "ongoing, systematic collection, analysis, and interpretation of health data essential to the planning, implementation, and evaluation of public health practice, closely integrated with the timely dissemination of these data to those who need to know,"<sup>122</sup> public health surveillance has long been a part of public health. Dating back to the nineteenth century, state laws and regulations have required doctors to track and report contagious diseases in order to prevent major outbreaks.<sup>123</sup> Public health surveillance can identify disease outbreaks and trends in diseases and other health risks.<sup>124</sup> Policymakers can use this information to ensure that they direct sufficient resources—human, financial, and informational—to the areas where the needs are greatest.

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119. See generally GOŹDZIAK & BUMP, *supra* note 9, at 4, 7, 9 (finding that only a small percentage of the literature on human trafficking is based on empirical research, and the vast majority of such empirical work was published after the passage of the Trafficking Victims Protection Act in 2000).

120. See, e.g., Rutenber, *supra* note 27, at 1889–90.

121. Lawrence O. Gostin & Benjamin E. Berkman, *Pandemic Influenza: Ethics, Law, and the Public's Health*, 59 ADMIN. L. REV. 121, 154 (2007).

122. Michael A. Stoto, *Public Health Surveillance in the Twenty-First Century: Achieving Population Health Goals While Protecting Individuals' Privacy and Confidentiality*, 96 GEO. L.J. 703, 703 (2008) (quoting Stephen B. Thacker & Ruth L. Berkman, *Public Health Surveillance in the United States*, 10 EPIDEMIOLOGIC REVIEWS 164, 164 (1988)) (using a long-standing CDC definition); see also Alexander D. Langmuir, *The Surveillance of Communicable Diseases of National Importance*, 268 NEW ENG. J. MED. 182, 182–83 (1963) (defining surveillance as "the continued watchfulness over the distribution and trends of incidence through the systematic collection, consolidation and evaluation of morbidity and mortality reports and other relevant data" together with timely and "regular dissemination" to those "who need to know").

123. Wendy K. Mariner, *Mission Creep: Public Health Surveillance and Medical Privacy*, 87 B.U. L. REV. 347, 349 (2007).

124. Stoto, *supra* note 122, at 704; see also Sue Binder & Lee M. Sanderson, *The Role of the Epidemiologist in Natural Disasters*, 16 ANNALS EMERGENCY MED. 1081, 1081–82 (1987) (discussing how public health surveillance not only measures health impacts in a population but also facilitates strategies for effective delivery of health care services and prevention of adverse health outcomes).

Similarly, case surveillance in the human trafficking context could identify areas with a high incidence of trafficking, so that governments can target these areas for resources and new programs. Building a system of data collection, analysis, and dissemination could also help ensure that prevention strategies identify at-risk individuals before they are exploited. Effective surveillance can help policymakers determine where training is needed to ensure that key personnel working in areas with a high incidence of trafficking have both the capacity to identify trafficking victims or those potentially vulnerable to trafficking and the tools and skill set to intervene effectively. Such a system could also help victim services to be well tailored to meet target populations' specific needs. Legislation plays a key role in all of this by creating the mandate for public health surveillance on this issue and authorizing the funding necessary to provide training to key personnel and support for victim services. In short, public health surveillance can facilitate "early detection of disease and interventions to change behavioral risk factors [which] can prevent severe consequences later in life."<sup>125</sup> If appropriately adapted to assess issues vital to human trafficking, public health surveillance methods can provide important data on human trafficking that could form the basis of more effective anti-trafficking laws, policies, and programs.

After surveillance, the next epidemiological step is risk group identification. As detailed above, there is little disaggregated data.<sup>126</sup> In public health, risk group identification includes not only identification of individuals at heightened risk of disease or injury but also "the places, times, and other circumstances associated with increased risk."<sup>127</sup> Using evidence-based research to identify these types of risk factors for trafficking is an essential step. Risk group identification would provide opportunities for early intervention that

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125. Stoto, *supra* note 122, at 717. Public health surveillance presents some potential challenges, most notably around issues of privacy. For a discussion of these issues, see *infra* notes 247–49 and accompanying text.

126. See *supra* note 102 and accompanying text.

127. Ruttenberg, *supra* note 27, at 1890; see also World Health Org., *An Integrated Approach to Communicable Disease Surveillance*, 75 WKLY. EPIDEMIOLOGICAL REC. 1, 1 (2000), <http://who.int/wer/pdf/2000/wer7501.pdf> (detailing the value of an effective, integrated disease surveillance system). Epidemiology curves might be modified to serve as a useful tool in mapping human trafficking patterns. For an explanation of the utility of epidemiology curves, see, for example, *Epidemic Curves Ahead*, U.N.C. CTR. FOR PUB. HEALTH PREPAREDNESS, [http://nccphp.sph.unc.edu/training/HEP\\_FOC05/certificate.php](http://nccphp.sph.unc.edu/training/HEP_FOC05/certificate.php) (last visited Dec. 31, 2010) (discussing the value of epidemiology curves as a public health tool in responding to disease outbreaks).

could minimize, if not prevent entirely, exploitation of at-risk individuals.

Next, risk factor exploration includes “the analytic exploration of potentially causative risk factors for the disease or death as suggested by the nature of the high risk population and other research.”<sup>128</sup> In the context of human trafficking, exploration of risk factors and causality is vital to going beyond laws and policies based on anecdotal evidence. A better understanding of what makes a person vulnerable to being trafficked is essential to developing effective responses.<sup>129</sup>

Risk factor identification and exploration present opportunities for early intervention. For example, evidence-based research has helped expose cyclical aspects of violence and also of trafficking. In the area of violence prevention, research on intra-family violence has revealed that “children who are physically abused or neglected are more likely than others to grow up to abuse their own children. Abused children as well as children who witness parental violence also are more likely to use physical violence against others when they get older.”<sup>130</sup> In the context of trafficking, there is some evidence of parallel patterns, as the formerly abused and exploited become the exploiters.<sup>131</sup> Some trafficked women “move up” to become madams in brothels or recruiters of new younger girls to be trafficked.<sup>132</sup> Such evidence needs to be better understood through further exploration (i.e., is this practice rooted in similar cycles of violence as in the child abuse context, or are there other reasons or factors at play?). The purpose here is not to confirm this or other evidence. To the contrary,

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128. Ruttenberg, *supra* note 27, at 1890.

129. See U.N. INTER-AGENCY ON PROJECT ON HUMAN TRAFFICKING, TARGETING ENDEMIC VULNERABILITY FACTORS TO HUMAN TRAFFICKING 1 (2007), [http://www.no-trafficking.org/reports\\_docs/siren/gms02\\_siren\\_methodology\\_vulnerability.pdf](http://www.no-trafficking.org/reports_docs/siren/gms02_siren_methodology_vulnerability.pdf) (explaining that the issue of vulnerability to being trafficked is complex and “clearly more complicated in many local contexts than simply [a result of] poverty and lack of knowledge”). See generally Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 8 (2008) (“[Vulnerability is] a universal, inevitable, enduring aspect of the human condition that must be at the heart of our concept of social and state responsibility.”).

130. Mercy et al., *supra* note 61, at 20 (footnotes omitted).

131. U.N. Global Initiative to Fight Trafficking, U.N. Office on Drugs and Crime, *016 Workshop: Profiling the Traffickers*, Background Paper for 2008 Vienna Forum to Fight Human Trafficking, at 5 (2008), <http://www.unodc.org/documents/human-trafficking/Marika-Misc/BP016ProfilingtheTraffickers.pdf>.

132. *Id.* (citing EUROPOL, TRAFFICKING OF WOMEN AND CHILDREN FOR EXPLOITATION IN THE EU: THE INVOLVEMENT OF WESTERN BALKANS ORGANISED CRIME 2006, at 29 (2006)) (describing how some trafficked victims become traffickers themselves, often through fear, threats, desperation, and confusion, and detailing such a case study).



this subject requires much more research. Rather, by highlighting select examples, I hope to demonstrate the potential value of engaging in research and data collection that facilitates risk factor identification and exploration. The more governments and communities know about what makes individuals vulnerable, how traffickers operate, and what underlies demand for exploited labor, the better positioned they will be to respond to and prevent such exploitation.

Finally, evidence-based research is vital to designing and implementing effective programs, and a key step in developing effective prevention programs (as well as victim assistance programs) is to undertake monitoring and evaluation of programs. Public health programs typically incorporate monitoring and evaluation.<sup>133</sup> Monitoring and evaluation components enable policymakers and stakeholders to distinguish between whether they are doing *something* about a problem or doing *something effective*. For example, child obesity has received increased attention and is recognized as a significant public health issue with long-term repercussions.<sup>134</sup> School-based measures are a key part of addressing the problem.<sup>135</sup> However, public health research reveals that not all school nutrition programs are created equal. One study compared students in three groups: those attending schools with no nutrition program, those at schools with a nutrition program, and those at a school with a nutrition program that is part of a coordinated program which incorporates the Centers for Disease Control and Prevention (CDC) recommendations for school-based healthy eating programs.<sup>136</sup>

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133. Tara M. Sullivan & Deepa Ramchandran, *Measuring Success of a Continuing-Client Strategy*, INFO REPORTS, Mar. 2007, at 1, 3, available at [http://info.k4health.org/inforeports/continuing\\_client/continuing\\_client.pdf](http://info.k4health.org/inforeports/continuing_client/continuing_client.pdf) ("Monitoring and evaluation is a fundamental component of all health programs."); see also CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., INTRODUCTION TO PROGRAM EVALUATION FOR PUBLIC HEALTH PROGRAMS: A SELF-STUDY GUIDE 1 (2005), available at <http://www.cdc.gov/eval/evalguide.pdf> ("[S]trong program evaluation is essential now more than ever.").

134. See *Child Overweight and Obesity*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/childhood/index.html> (last updated Mar. 31, 2010).

135. See DIV. OF ADOLESCENT & SCH. HEALTH, NAT'L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION, CTRS. FOR DISEASE CONTROL & PREVENTION, SCHOOL-BASED OBESITY PREVENTION STRATEGIES FOR STATE POLICYMAKERS 1, [http://www.cdc.gov/healthyYouth/policy/pdf/obesity\\_prevention\\_strategies.pdf](http://www.cdc.gov/healthyYouth/policy/pdf/obesity_prevention_strategies.pdf) ("Schools play a critical role in preventing childhood obesity.").

136. Paul J. Veugelers & Angela L. Fitzgerald, *Effectiveness of School Programs in Preventing Childhood Obesity: A Multilevel Comparison*, 95 AM. J. PUB. HEALTH 432, 432 (2005).

Students in this last group exhibited significantly lower rates of overweight and obesity.<sup>137</sup> Perhaps surprisingly, students from schools that had other nutrition programs did not have substantially healthier body weights than students from schools without any nutrition programs.<sup>138</sup> In other words, simply having a school nutrition program might not be sufficient, but instead such a program must be based on proven methods.<sup>139</sup>

Similarly, in the context of human trafficking, doing something—for example, passing new criminal laws or providing particular services for trafficking survivors—may or may not produce any real benefit. In most cases, we simply do not know because there has been little or no monitoring and evaluation of the impact of new laws and programs on the incidence of trafficking or on the well-being of survivors over time.<sup>140</sup> In July 2007, the U.S. Government Accountability Office (GAO) reviewed twenty-three U.S. funded international anti-trafficking projects.<sup>141</sup> It found their level of monitoring inadequate, with most projects failing to specify how performance would be measured or to articulate a connection between their activities and their goals.<sup>142</sup> The GAO further explained that questionable data and poor project designs make it exceedingly difficult to monitor these projects.<sup>143</sup> These problems plague domestic

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137. *Id.* at 434 (showing that 4.1% were obese in the schools with CDC-structured nutrition programs versus 10.4% in schools with other nutrition programs and 9.9% in schools with no program).

138. *Id.*

139. The importance of following proven methods is evidenced across a wide range of issues, including initiatives like youth mentoring that can help in the context of trafficking prevention. *See, e.g.,* David L. DuBois et al., *Effectiveness of Mentoring Programs for Youth: A Meta-Analytic Review*, 30 AM. J. COMMUNITY PSYCHOL. 157, 190 (2002) (finding that youth mentoring programs have much greater success when they adhere to established guidelines for effective practice).

140. *See, e.g.,* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-825, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 24 (2006) (finding that as of 2006, the U.S. government had yet to develop a plan to evaluate its efforts to combat trafficking abroad, let alone implement such an evaluation plan). The GAO review of U.S. government anti-trafficking initiatives “found little evidence of the impact of various antitrafficking efforts.” *Id.* at 25.

141. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1034, HUMAN TRAFFICKING: MONITORING AND EVALUATION OF INTERNATIONAL PROJECTS ARE LIMITED, BUT EXPERTS SUGGEST IMPROVEMENTS 18 (2007).

142. *Id.* at 17–18. These anti-trafficking projects were in Indonesia, Thailand, and Mexico. *Id.*

143. *Id.* at 20–24. Issues with questionable data include a lack of a baseline, inability to identify victims who are often hidden, confidentiality concerns leading to an unwillingness to share data, and a lack of consensus on how to define and identify victims of human trafficking. *Id.* at 20–21; *see also* U.N. OFFICE ON DRUGS AND CRIME, TOOLKIT TO

efforts to combat human trafficking as well.<sup>144</sup> In response, the 2008 Trafficking Victims Protection Reauthorization Act calls for improved monitoring and evaluation of federal and state efforts.<sup>145</sup> A public health approach recognizes and helps ensure that monitoring and evaluation is an essential component of developing the evidence-based research needed to design effective anti-trafficking initiatives.

With respect to all aspects of the problem of human trafficking, there is benefit to be gained from deepening our understanding of the problem, its root causes, and the effectiveness of responses. Public health methodologies, with their reliance on evidence-based research, provide a model for advancing our capacity to address human trafficking in this respect.

### *B. Focusing on Prevention*

Public health places prevention at the forefront of its programming.<sup>146</sup> Whether confronting infectious diseases or violence, public health recognizes that prevention must be the primary goal. Approximately eighteen years ago, a team of public health experts examined the U.S. approach to violence prevention and found that “America’s predominant response to violence has been a reactive one—to pour resources into deterring and incapacitating violent offenders by apprehending, arresting, adjudicating, and incarcerating them through the criminal justice system.”<sup>147</sup> We appear to have learned little since then, as the U.S. approach to human trafficking similarly emphasizes a criminal law approach, at the expense of other important strategies.

While a law-enforcement-centric model is built on the assumption that criminal law sanctions provide a deterrent and will prevent further exploitation of certain individuals, research shows that criminal law is not the most effective tool for changing

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COMBAT TRAFFICKING IN PERSONS, at 501–05, U.N. Sales No. E.08.V.14554-557 (2008), available at [http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375\\_Ebook\[1\].pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf) (outlining model practices for monitoring and evaluating anti-trafficking programs and projects).

144. ERIN WILLIAMSON ET AL., ICF INT’L, WHERE IS THE RESEARCH ON HUMAN TRAFFICKING AND THE EVALUATION OF ANTI-TRAFFICKING EFFORTS? 3–5 (2008), available at <http://www.icfi.com/Docs/research-human-trafficking.pdf>.

145. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in various titles of the U.S.C.A. (West 2010)).

146. Mercy et al., *supra* note 61, at 11 (noting public health’s key contributions “include placing prevention at the forefront of our efforts” to prevent violence).

147. *Id.*

behavior.<sup>148</sup> In a best-case scenario, a criminal law approach still deals with human trafficking only after the harm occurs.

A public health perspective sheds light on the shortcomings of the current approach. In the public health arena, few would consider it good policy if, rather than vaccinating individuals to protect them from infectious disease, government simply waited for a major outbreak and then sought to hold the responsible parties accountable for the many lives lost or harmed. Nor would it make sense if, in the bioterrorism context, the government paid scant attention to prevention and preparedness and instead told the public not to worry because, following any bioterrorist attack, it would seek to hold the perpetrators responsible, and that would serve to deter future attacks.

Success from a public health perspective results, for example, from fully immunizing or vaccinating a community so that no one becomes ill, or because a well-prepared and coordinated response team acted quickly to minimize the impact of a bioterrorism attack or to limit the spread of infectious disease, preventing a pandemic. Similar to other public health issues, with human trafficking, prevention must be the goal. The arrest and conviction of a trafficker, or the opening of a new shelter for victims, might garner positive news coverage,<sup>149</sup> but they also signal a collective failure to prevent the victimization of individuals.

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148. See, e.g., William N. Evans et al., *General Deterrence of Drunk Driving: Evaluation of Recent American Policies*, 11 RISK ANALYSIS 279, 287 (1991) (“[W]e find no evidence that any specific type of punitive legislation—with the possible exception of sobriety checkpoints—is a major contributor to the success of the national campaign [against drunk driving].”); see also *supra* notes 59, 61 and accompanying text.

149. See, e.g., Kate Howard, *Nashville Woman Sentenced in Sex Trafficking Ring*, TENNESSEAN (Nashville, Tenn.), Dec. 24, 2009, available at WLNR 25907051 (reporting the conviction of a woman involved in a sex trafficking ring); Diane Huber, *Shelter for Trafficking Victims to Open*, OLYMPIAN (Olympia, Wash.), Nov. 5, 2007, available at WLNR 21806706 (announcing the opening of Washington State’s first shelter for human trafficking victims); Rick Rogers, *Arrests Spotlight Problem of Human Trafficking*, SAN DIEGO UNION-TRIB., July 18, 2009, available at <http://www.signonsandiego.com/news/2009/jul/18/1ez18traffic204221-arrests-spotlight-problem-human> (reporting the arrest of suspected human traffickers). By contrast, the greatest victories in public health often go overlooked by the general public, because public health officials have prevented the harm (network news typically does not dedicate airtime to reporting something that did not occur, although that is true success). See, e.g., World Health Assembly, *Smallpox Eradication: Destruction of Variola Virus*, Report by the Secretariat, A52/5 (Apr. 15, 1999) (recognizing the successful public health efforts resulting in the declaration of smallpox eradication on May 8, 1980); DAVID HEMENWAY, *WHILE WE WERE SLEEPING: SUCCESS STORIES IN INJURY AND VIOLENCE PREVENTION* (2009); Press Release, UNICEF, *Measles Campaign a Success in Zambia* (Oct. 31, 2007), [http://www.unicef.org/media/media\\_41595.html](http://www.unicef.org/media/media_41595.html) (recognizing a public health campaign in

A public health approach to human trafficking would prioritize prevention, which, in turn, would compel examination of the root causes of human trafficking. This examination would require a scientific approach to identify why certain individuals are more vulnerable to trafficking and why there is such demand for the services performed by trafficked persons. In short, a public health approach shifts away from “a focus limited to reacting to [a problem] to a focus on changing the social, behavioral, and environmental factors that cause [the problem].”<sup>150</sup>

As public health’s ultimate goal is prevention, to ensure the best prevention model possible, public health methodologies require an evidence-based assessment of both the problem and any prevention strategies (as discussed in the prior subsection). The CDC, for example, “uses a four-level social-ecological model to better understand violence and the effect of potential prevention strategies.”<sup>151</sup> This model contemplates the “complex interplay between individual, relationship, community, and societal factors”<sup>152</sup> and offers one possible methodology for developing trafficking prevention measures. Such a prevention program would look at (1) individual risk factors, (2) relationships that might increase the risk of trafficking, including those with peer groups and partners, (3) the role of community settings, such as schools and neighborhoods, and (4) societal factors, including social and cultural norms.<sup>153</sup>

If the U.S. government or other entities were to employ a public health prevention program like the CDC’s four-level model in its efforts to combat human trafficking, it would need to develop strategies to address each of the four levels—individual, relationship, community, and societal factors. One approach might look as follows. At the individual level, human trafficking prevention strategies might include education and life skills training.<sup>154</sup> Combined with recent research about trafficking victims,<sup>155</sup> this could include programs that

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Zambia that reduced cases of measles—previously one of the top five causes of childhood illness—to zero in 2003).

150. Mercy et al., *supra* note 61, at 8.

151. *Violence Prevention—The Social-Ecological Model: A Framework for Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/ViolencePrevention/overview/social-ecologicalmodel.html> (last updated Sept. 9, 2009) [hereinafter CDC Violence Prevention].

152. *Id.*

153. *Id.*

154. *Id.*

155. See, e.g., KYCKELHAHN ET AL., *supra* note 114, at 1–4, 7–9; CLAWSON ET AL., *supra* note 30, at 7–14.

empower vulnerable individuals to reduce their risk of exploitation, including by providing them with needed information and tools. For example, a study of trafficked children found that most of the children felt they did not have the necessary information to avoid becoming trafficking victims.<sup>156</sup> Thus, schools might offer one venue for both educating vulnerable children on how to minimize risk and intervening early to assist at-risk youth.

At the relationship level, prevention might include mentoring and peer programs.<sup>157</sup> Mentoring programs can help children stay in school, which reduces their risk of being trafficked.<sup>158</sup> Mentoring programs encourage positive relationships and, correspondingly, positive outcomes. One study found that “[y]ouths with a mentor are 53 percent more likely to advance to the next level of education than are youths who do not have a mentor.”<sup>159</sup> Simultaneously, mentoring potentially reduces the risk of exposure to negative relationships and

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156. Mike Dottridge, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe* 13 (UNICEF Innocenti Working Papers, Paper No. IWP-2008-05, 2008), available at [http://www.unicef-irc.org/publications/pdf/iwp\\_2008\\_05.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2008_05.pdf).

157. CDC Violence Prevention, *supra* note 151.

158. See MIKE DOTTRIDGE, KIDS AS COMMODITIES? CHILD TRAFFICKING AND WHAT TO DO ABOUT IT 69 (2004), available at <http://www.terredeshommes.org/pdf/commodities.pdf> (“[A]ttendance at school . . . help[s] ensure that children do not end up in exploitative forms of employment.”); KATHRYN TAAFFE MCLEARN ET AL., MENTORING MAKES A DIFFERENCE: FINDINGS FROM THE COMMONWEALTH FUND 1998 SURVEY OF ADULTS MENTORING YOUNG PEOPLE 4 (1998), available at [http://www.commonwealthfund.org/usr\\_doc/McLearn\\_mentoring.pdf](http://www.commonwealthfund.org/usr_doc/McLearn_mentoring.pdf) (reporting that a majority of mentors believe they have contributed to high school truancy reduction); JOSEPH P. TIERNEY & JEAN BALDWIN GROSSMAN, PUBLIC/PRIVATE VENTURES, MAKING A DIFFERENCE: AN IMPACT STUDY OF BIG BROTHERS BIG SISTERS 24 (2000), available at [http://www.ppv.org/ppv/publications/assets/111\\_publication.pdf](http://www.ppv.org/ppv/publications/assets/111_publication.pdf) (correlating the Big Brothers Big Sisters program with an increase in school attendance); Jay Smink, *Mentoring: An Effective Strategy for Youth Development*, in HELPING STUDENTS GRADUATE: A STRATEGIC APPROACH TO DROPOUT PREVENTION 139, 139–53 (Jay Smink & Franklin P. Schargel eds., 2004) (detailing the benefits of mentorship programs as including reduced dropout rates).

159. Lance D. Erickson et al., *Informal Mentors and Education: Complementary or Compensatory Resources?*, 82 SOC. EDUC. 344, 354 (2009). See generally DuBois et al., *supra* note 139, at 157 (finding that youth from disadvantaged backgrounds are “most likely to benefit from participation in mentoring programs”); Lisa M. Keating et al., *The Effects of a Mentoring Program on At-Risk Youth*, 37 ADOLESCENCE 717, 730 (2002) (finding that mentoring programs produce significant improvement with respect to problematic behaviors); Soroptimist Int’l Americas, *Designing a Club Mentoring Program for Girls*, SOROPTIMIST INT’L OF HANFORD, 3, <http://www.sihanford.org/Designing%20%20Mentoring%20Program%20fir%20Girls.pdf> (last visited Dec. 31, 2010) (reporting study results finding that eighty-seven percent of youth with mentors went on to attend college or planned to attend within two years of graduating from high school).

unhealthy or high-risk behavior, including drug and alcohol use.<sup>160</sup> Mentoring is but one of many possible options for interventions that address relationship dynamics which affect the risk of trafficking.

Third, community-level prevention measures can include programs “designed to impact the climate, processes, and policies in a given system. Social norm and social marketing campaigns are often used to foster community climates that promote healthy relationships.”<sup>161</sup> Anti-trafficking initiatives could benefit from social marketing campaigns to raise awareness about the problem and to counter views, behaviors, and practices that foster demand for exploited persons.<sup>162</sup> This might include targeting messaging to populations that could play more constructive roles in this area. For example, sex trafficking is often common along major trucking routes,<sup>163</sup> and many truckers visit commercial sex workers while on the road.<sup>164</sup> By working together, the government, non-governmental organizations, and the private sector could develop a potentially cost-effective targeted campaign to transform these truckers from a population that contributes to the demand for sex trafficking to one that could offer a safe haven for prostituted runaway and homeless children at truck stops. That is, truckers could be educated on the harm they are inflicting on these children. They also could receive training on how to properly handle a situation in which they see a prostituted child at a rest stop. With training, a trucker might choose to help transport that child to a local police station and/or social service agency where the child could receive assistance. At the very least, the trucker could alert the appropriate authorities so that they

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160. TIERNEY & GROSSMAN, *supra* note 158, at ii–iii (finding that youth with mentors were forty-six percent less likely to start using drugs and twenty-seven percent less likely to start using alcohol, with even stronger effects found with minority youth).

161. CDC Violence Prevention, *supra* note 151.

162. *See infra* notes 181–211 and accompanying text.

163. ECPAT INT’L, STOP SEX TRAFFICKING OF CHILDREN & YOUNG PEOPLE: SEX TRAFFICKING OF YOUNG PEOPLE IN POLAND 2, available at [http://ecpat.net/EI/Publications/Trafficking/Factsheet\\_Poland.pdf](http://ecpat.net/EI/Publications/Trafficking/Factsheet_Poland.pdf) (“[T]rafficking occurs mainly along the major trucking roads between Poland and Germany . . .”).

164. Dale Stratford et al., *Highway Cowboys, Old Hands, and Christian Truckers: Risk Behavior for Human Immunodeficiency Virus Infection Among Long-haul Truckers in Florida*, 50 SOC. SCI. & MED. 737, 746 (2000); *see also* Moni Nag, *Sexual Behaviour in India with Risk of HIV/AIDS Transmission*, 5 HEALTH TRANSITION REV. (SUPP.) 293, 297 (1995), available at <http://dspace-prod1.anu.edu.au/bitstream/1885/41303/1/Nag1.pdf> (“As in many other countries, Indian truck drivers and their helpers who spend the major part of the year on or near highways are generally known to visit many prostitutes during their stopovers.”).

could pick up the child.<sup>165</sup> A public-private partnership among law enforcement, social services, and trucking companies could achieve success in this area. Further consideration is needed to develop effective, targeted messaging that reduces demand for exploitative services and reduces the vulnerability of at-risk individuals.

Finally, societal-level prevention measures include confronting “the health, economic, educational and social policies that help to maintain economic or social inequalities between groups in society.”<sup>166</sup> Addressing the root causes of trafficking—including poverty, lack of economic and social rights, discrimination, and other factors—is essential to making meaningful progress in preventing human trafficking. For example, marginalized individuals, including children, are often at heightened risk of trafficking and other forms of exploitation.<sup>167</sup> Poor children whose births are not registered or who lack access to health care and education are more vulnerable to human trafficking.<sup>168</sup> Unregistered children often encounter obstacles in accessing health care services.<sup>169</sup> In turn, children without a regular source of health care more frequently have unmet health needs,<sup>170</sup> and children with unmet health needs are more likely to miss school, fall behind their classmates, and drop out of school.<sup>171</sup> Youth who do

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165. See, e.g., Sarah Parker, *Truck Driver's 911 Call Stops Trafficking*, CHANGE.ORG (Sept. 6, 2010, 9:00 AM), [http://humantrafficking.change.org/blog/view/truck\\_drivers\\_911\\_call\\_stops\\_trafficking](http://humantrafficking.change.org/blog/view/truck_drivers_911_call_stops_trafficking) (reporting a case in which a trucker notified police after seeing two young girls moving from truck to truck at a rest stop and detailing how that one call ultimately led not only to a rescue of the two girls but also to the rescue of seven other minors and thirty-one convictions). To date, such cases are largely a result of efforts by individuals or small groups. Such efforts need to be implemented in a more systematic manner and on a much larger scale.

166. CDC Violence Prevention, *supra* note 151.

167. DOTTRIDGE, *supra* note 158, at 28.

168. See *id.* at 69; UNICEF, BIRTH REGISTRATION: RIGHT FROM THE START 1, 4–6 (2002), available at <http://www.unicef-irc.org/publications/pdf/digest9e.pdf> (discussing the importance of birth registration).

169. UNICEF, *supra* note 168, at 5.

170. See Paul W. Newacheck et al., *Health Insurance and Access to Primary Care for Children*, 338 NEW ENG. J. MED. 513, 514–16 (1998) (demonstrating that children with no health insurance are consistently less likely to receive adequate medical care).

171. MATTHEW C.H. JUKES ET AL., SCHOOL HEALTH, NUTRITION AND EDUCATION FOR ALL: LEVELLING THE PLAYING FIELD 41 (2008); WORLD HEALTH ORG. ET AL., FOCUSING RESOURCES ON EFFECTIVE SCHOOL HEALTH: A FRESH START TO IMPROVING THE QUALITY AND EQUITY OF EDUCATION 5 (2000), available at <http://www.unicef.org/lifeskills/files/FreshDocument.pdf> (“Poor health and malnutrition are important underlying factors for low school enrollment, absenteeism, poor classroom performance, and early school dropout . . .”); see also JOY MILLER DEL ROSSO & TONIA MAREK, CLASS ACTION: IMPROVING SCHOOL PERFORMANCE IN THE DEVELOPING WORLD THROUGH BETTER HEALTH AND NUTRITION 11 (1996) (“Healthier and better nourished children stay in school longer, learn more, and become healthier and more



not finish school enter the workforce at a younger age with fewer skills, leaving them at heightened risk of a broad array of exploitative practices, including trafficking.<sup>172</sup> Similarly, discrimination, stigma, and biases all create barriers to individuals' full realization of their rights and opportunities, pushing primarily minorities, women, and children to the margins and increasing their risk of exploitation.<sup>173</sup>

Tackling any one of these systemic issues is not easy, and tackling them in the aggregate is harder still. If, however, governments want to reduce the incidence of human trafficking, they must begin to confront these issues. It is important that policymakers recognize the significant cost of failure to address root causes. In addition to the human cost, continuing along the path of dealing with human trafficking after the harm occurs will require significant expenditures on investigations and prosecutions of perpetrators, treatment for human trafficking survivors, and long-term costs associated with correctional facilities (to house perpetrators) and social services programs that perpetrators and trafficking survivors might use for years to come. Equally important, governments can start to address root causes with a number of relatively low-cost interventions. For

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productive adults."); Deborah L. Crooks, *American Children at Risk: Poverty and Its Consequences for Children's Health, Growth, and School Achievement*, 38 AM. J. PHYSICAL ANTHROPOLOGY (SUPP. 21) 57, 57 (1995) ("Poor health and poor growth are likely to lead to poor school achievement via deficits in cognitive functioning, behavior and activity, and increased absenteeism and school failure.").

172. See DOTTRIDGE, *supra* note 158, at 69 (explaining that formal and informal education decreases the risk of exploitation). Moreover, schools provide not only basic education but also information on the types of exploitation to which children may be subjected. *Id.* Missing school means losing out on these opportunities as well.

173. Jonathan Todres, *The Importance of Realizing "Other Rights" to Prevent Sex Trafficking*, 12 CARDOZO J.L. & GENDER 885, 893 (2006); see also Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, U.N. Econ. Soc. Council, Comm'n on Human Rights, ¶ 55, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000) ("Gender-based discrimination intersects with discriminations based on other forms of 'otherness,' such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization."); Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 124-25 (2003) (noting that traffickers target women from particular racial or ethnic groups); Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms and Contexts*, 11 HARV. HUM. RTS. J. 65, 68 (1998) ("Trafficking in women is fueled by poverty, sexism, and racism . . ."); United Nations, *The Race Dimensions of Trafficking in Persons — Especially Women and Children, Backgrounder for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (2001), [http://www.un.org/WCAR/e-kit/trafficking\\_e.pdf](http://www.un.org/WCAR/e-kit/trafficking_e.pdf) ("[W]hen attention is paid to which women are most at risk of being trafficked, the link of this risk to their racial and social marginalization becomes clear.").

example, birth registration is a low-cost measure that ensures that each child exists in government records.<sup>174</sup> This small step not only removes one obstacle that often frustrates marginalized children's access to health care and education but also makes it more difficult for traffickers to falsify the age and identity of trafficked children.<sup>175</sup> Similarly, school lunch programs, which are relatively low cost, have been found to foster better attendance in certain poorer communities and simultaneously reduce child malnutrition, enabling children to perform better, stay in school, and avoid harmful situations.<sup>176</sup> The above are just two examples of measures that do not require major investments. As noted in Part III.A, further research is needed to determine the most cost-effective interventions for human trafficking. Ultimately, addressing root causes (including discrimination, marginalization, and the denial of economic and social rights), in conjunction with shorter-term measures (such as the targeted campaign for truckers), will reduce human trafficking in vulnerable communities.

The CDC's four-level social-ecological model for preventing violence offers one possibility.<sup>177</sup> There are other public health frameworks that merit exploration. This Article does not seek to catalog every possible public health idea on prevention, but rather it aims to highlight the value of public health's focus on prevention in the human trafficking context. It offers an opportunity to "move upstream" to address the underlying causes of human trafficking, rather than merely continuing to wait for the harm to occur and then attempting to punish perpetrators and aid the numerous victims.

### C. Addressing Population Attitudes and Behaviors

A core component of public health campaigns is to understand societal attitudes that lead to risky, unhealthy behavior and work to transform them with the end goal of fostering healthier behaviors.<sup>178</sup> Public health professionals target changes at the individual,

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174. See UNICEF, *supra* note 168, at 5, 20.

175. *Id.* at 5.

176. See *supra* note 171.

177. See *supra* note 151 and accompanying text.

178. Joan B. Wolf, *Is Breast Really Best? Risk and Total Motherhood in the National Breastfeeding Awareness Campaign*, 32 J. HEALTH POL. POL'Y & L. 595, 624 (2007) ("Public health campaigns are about advocacy and about changing behavior . . ."). *But cf.* David Hemenway, *The Public Health Approach to Reducing Firearm Injury and Violence*, 17 STAN. L. & POL'Y REV. 635, 645 (2006) ("Public health interventions began to emphasize the need to change the environment rather than just changing individual behavior.").

institutional, and community levels to achieve healthier outcomes in target populations.<sup>179</sup> In particular, public health campaigns aim to raise awareness of risky behaviors and their potential health impacts, address community and environmental factors,<sup>180</sup> and foster healthier choices.

One of the strategies employed in public health to change social behaviors is social marketing and advertising campaigns. This messaging has had success in addressing a range of public health issues, including youth smoking, obesity/diet, and seat belt use.<sup>181</sup> For example, targeted public health campaigns aimed at preventing youth from taking up smoking have proven successful, with one study finding that “[t]he percentage of youths who held anti-tobacco attitudes and beliefs increased by an amount that ranged from 6.6% to 26.4% during the first 10 months of the [‘truth’ anti-smoking] campaign.”<sup>182</sup>

Moreover, as public health campaigns have employed these methods for many years, there is substantial research on what makes a campaign effective.<sup>183</sup> Public health experts have learned and identified key steps including strategies for formulating effective

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179. Michelle A. Larkin & Angela K. McGowan, *Introduction: Strengthening Public Health*, 36 J.L. MED. & ETHICS (SPECIAL SUPP. TO ISSUE 3) 4, 4 (2008); see also MICHAEL SIEGEL & LYNNE DONER, *MARKETING PUBLIC HEALTH: STRATEGIES TO PROMOTE SOCIAL CHANGE* 22 (2d ed. 2007) (“[P]ublic health is in the business of creating or facilitating social change.”).

180. Hemenway, *supra* note 178, at 649.

181. See, e.g., Matthew C. Farrelly et al., *Evidence of a Dose-Response Relationship Between “truth” Antismoking Ads and Youth Smoking Prevalence*, 95 AM. J. PUB. HEALTH 425, 428–29 (2005) (finding anti-smoking ads aimed at youth successful in reducing youth smoking); David R. Holtgrave et al., *Cost-Utility Analysis of the National truth® Campaign to Prevent Youth Smoking*, 36 AM. J. PREVENTIVE MED. 385, 385 (2009) (finding that the “truth” campaign not only reduced youth smoking but did so economically); Jay Maddock et al., *Statewide Implementation of the 1% or Less Campaign*, 34 HEALTH EDUC. & BEHAV. 953, 960–61 (2007) (reporting on a successful campaign to encourage persons to switch to consumption of low-fat milk); Vinod Vasudevan et al., *Effectiveness of Media and Enforcement Campaigns in Increasing Seat Belt Usage Rates in a State with a Secondary Seat Belt Law*, 10 TRAFFIC INJ. PREVENTION 330, 337–38 (2009) (attributing a significant increase in seat belt usage among drivers and passengers to the combination of a media campaign and law enforcement). But see Marsha Garrison, *Reviving Marriage: Could We? Should We?*, 10 J.L. & FAM. STUD. 279, 323 (2008) (“Public health campaigns that seek to alter behavior have been markedly less successful than those that focus on the environment in which disease flourishes, and campaigns that target simple behaviors have been more successful than those that target complex behaviors.”).

182. Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 AM. J. PUB. HEALTH 901, 905 (2002).

183. Mercy et al., *supra* note 61, at 23.

objectives, identifying target audiences, and developing culturally competent messages.<sup>184</sup>

In the context of human trafficking, the general population is bombarded with pervasive messaging that counteracts the deterrent effect of criminal sanctions and fosters tolerance for sexual exploitation. Examining sexual abuse in the United States, Freeman-Longo writes that “[m]ost sexual abuse is illegal, but there are aspects of our culture, lifestyle, and sexual interests and behaviors that are abusive of sexuality, and yet they are legal.”<sup>185</sup> Similarly, some aspects of our culture and lifestyle in the United States facilitate human trafficking. Sexualization and objectification of women and girls feed demand for the sex industry, the end destination for many trafficked women and children.<sup>186</sup> Meanwhile, consumerism and materialism drive demand for low-cost goods, which, in turn, incentivizes employers to exploit labor forces in order to produce a product cheaply and maximize profits.<sup>187</sup> These are challenging issues to confront, but policymakers and anti-trafficking advocates can draw upon the experience of public health professionals for guidance.

Public health campaigns aimed at reducing violence have identified several essential component goals.<sup>188</sup> To begin, public health campaigns must raise awareness as to the nature and magnitude of the problem.<sup>189</sup> Today, there is increased attention on the problem of human trafficking, but still significant portions of the U.S. population are either unaware of the problem or unaware that it is an issue in the United States.<sup>190</sup>

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184. *Id.*

185. Freeman-Longo, *supra* note 25, at 305.

186. AM. PSYCHOLOGICAL ASS'N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 34–35 (2007), available at <http://www.apa.org/pi/women/programs/girls/report-full.pdf> (recognizing the lack of research on media sexualization of women and girls and its connection to increased demand for the sex industry, but suggesting that such a connection likely exists, particularly regarding the demand for child sex trafficking).

187. See Eric Engle, *Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?*, 40 WILLAMETTE L. REV. 103, 109–11, 119–20 (2004) (suggesting how international legal norms can counter consumerism's encouragement of exploitative labor practices).

188. Mercy et al., *supra* note 61, at 23.

189. *Id.*

190. See, e.g., LexisNexis & The Polaris Project, *U.S. Awareness of Human Trafficking: Executive Summary of Survey Findings*, LEXISNEXIS (2010), <http://www.lexisnexis.com/redlight/lexisnexis-human-trafficking-survey.pdf> (“A new survey of Americans’ awareness of human trafficking reveals that the majority of Americans do not realize the severity and scope of this crime that affects nearly every country in the world, including the United States.”).

Second, public health campaigns must convey to individuals and communities information about what works to prevent the problem and what they can do to contribute to prevention efforts.<sup>191</sup> Thus, policymakers and anti-trafficking advocates must identify concrete steps that individuals and communities can take to help reduce the incidence of human trafficking. Lawmakers, in turn, can adopt legislation to provide communities with the support they need to take these steps. Public health campaigns can inform choices made in the human trafficking context, as they have had success in modifying behavior toward healthier actions.<sup>192</sup> Equally important, research on public health campaigns shows us which strategies are likely to succeed. For example, what the campaign seeks to do—that is, whether it seeks to prevent behavior, promote behavior, or cease behavior—makes a difference.<sup>193</sup> Meta-analyses of existing research suggest that “[c]ampaigns promoting the commencement of a new behavior will have a greater average effect size than campaigns promoting prevention of an undesirable behavior, which, in turn, will have a greater average effect size than campaigns promoting the cessation of an existing undesirable behavior.”<sup>194</sup> As commencement campaigns appear to have greater success in shaping behavior than cessation campaigns,<sup>195</sup> anti-trafficking programs might be more successful if they developed campaigns that seek to have the public adopt a practice. For example, spurring the public to take small steps to inform themselves about prospective purchases (and whether trafficked labor was used to manufacture such products) could be successful, if relevant information is made readily accessible (e.g., with Internet purchases).

Some research has shown that public health campaigns aimed at behavior change produce only modest results.<sup>196</sup> Snyder and his co-authors report that campaigns to change public behavior on average changed eight percent of the population’s behavior, although campaigns that included enforcement messages (such as messages about enforcement of seat-belt regulations) have changed behavior in seventeen percent of the target population.<sup>197</sup> Even modest changes,

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191. Mercy et al., *supra* note 61, at 23.

192. *See supra* note 181.

193. Leslie B. Snyder et al., *A Meta-Analysis of the Effect of Mediated Health Communication Campaigns on Behavior Change in the United States*, 9 J. HEALTH COMM. (SPECIAL ISSUE) 71, 72–73 (2004).

194. *Id.* at 73.

195. *Id.* at 78.

196. *Id.* at 89.

197. *Id.*

however, can still result in thousands, or possibly millions, of people changing their behavior to avoid activities that foster exploitation of individuals through human trafficking.<sup>198</sup>

Further, public health research reveals that regardless of the behavior change sought, targeted campaigns are more successful, as evidenced by the important role played by targeted public health campaigns aimed at preventing youth from taking up smoking.<sup>199</sup> Therefore, public health campaigns to address human trafficking must identify target populations on both the supply side and demand side of the equation. Such an approach would include creating targeted campaigns that prioritize reaching the most vulnerable individuals to reduce the supply of trafficked persons and developing focal populations for campaigns aimed at reducing demand (e.g., individuals who seek out commercial sex).

Third, public health campaigns must motivate individuals, organizations, and communities to take action.<sup>200</sup> To a limited extent, heightened awareness of human trafficking in the United States has already begun to mobilize organizations and communities. Each year, state lawmakers add to a growing body of law aimed at combating human trafficking,<sup>201</sup> and non-profit organizations continue to implement training programs and protective services.<sup>202</sup> These efforts, however, must expand beyond the usual participants (e.g., social services agencies and organizations) and engage individuals and organizations across a much broader terrain. As Part II highlighted, the health implications of human trafficking demonstrate that trafficking's impact affects almost all sectors of society.<sup>203</sup> Anti-trafficking campaigns must provide individuals and entities in all

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198. *Id.* ("It is crucial to remember that small percentage changes may affect very large numbers of people in a community, state, or national campaign."). In the United States, which has a population of approximately 305 million, even a one percent difference would mean changing the behavior of three million people, which could make a meaningful difference in anti-trafficking initiatives.

199. See, e.g., Farrelly et al., *supra* note 182, at 905 ("The percentage of youths who held anti-tobacco attitudes and beliefs increased by an amount that ranged from 6.6% to 26.4% during the first 10 months of the ['truth' anti-smoking] campaign.").

200. Mercy et al., *supra* note 61, at 23.

201. See, e.g., *U.S. Policy Alert on Human Trafficking*, POLARIS PROJECT, 1-4 (May 12, 2010), <http://www.polarisproject.org/images//policy%20alert%20-%20may%202010%20final.pdf> (providing an update on states with anti-human-trafficking legislation and legislation pending as of May 2010).

202. See, e.g., ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 12, at 14-19 (describing the Rescue and Restore Victims of Human Trafficking Coalitions, which include many faith-based and non-profit organizations that provide services to victims and educational materials for the community).

203. See *supra* notes 73-75, 79 and accompanying text.

areas with clear steps that each can take to help reduce the incidence of human trafficking.

Fourth, public health campaigns must provide information about what steps will be effective and how to carry out successful prevention programs.<sup>204</sup> To date, most of the focus in the context of human trafficking has been on law enforcement initiatives and programs to assist survivors,<sup>205</sup> both of which are interventions that take place after the harm occurs. There is little empirical evidence on what works to prevent human trafficking.<sup>206</sup> The results from public health campaigns can shed light on what might work in the context of human trafficking. For example, research demonstrates that effective campaigns need to “ensure that a high-threat appeal is accompanied by an equally high-efficacy (or greater) message.”<sup>207</sup> In other words, campaigns must be designed so that they associate a fear or threat with the high-risk behavior and are accompanied by a message that provides a viable alternative practice.<sup>208</sup> There is much to learn from public health methodologies in addressing disease and promoting health. Anti-smoking campaigns have had varying levels of success in advancing measures such as getting warning labels on tobacco products and ensuring equal space for anti-smoking advertisements.<sup>209</sup> Imagine similar labels or signs that warn that particular activities or the purchase of certain products might result in the exploitation of trafficked boys or girls.

Fifth and finally, public health campaigns must be designed and implemented in a manner that allows researchers to assess their effectiveness and identify best practices.<sup>210</sup> As discussed in Part III.A, monitoring and evaluation are essential to developing sound evidence upon which effective prevention strategies can be built, and they must be incorporated into anti-trafficking initiatives.<sup>211</sup>

In summary, modifying risky beliefs and behaviors is crucial to fostering healthier outcomes. Public health campaigns demonstrate that efforts to foster behavior change must utilize a multi-faceted

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204. Mercy et al., *supra* note 61, at 23.

205. See *supra* notes 34–42 and accompanying text.

206. See GOŹDZIAK & BUMP, *supra* note 9, at 10 (addressing the need for evaluation studies to determine what works in combating human trafficking).

207. Kim Witte & Mike Allen, *A Meta-Analysis of Fear Appeals: Implications for Effective Public Health Campaigns*, 27 HEALTH EDUC. BEHAV. 591, 606 (2000).

208. *Id.*

209. See Ahron Leichtman, *The Top Ten Ways to Attack the Tobacco Industry and Win the War Against Smoking*, 13 ST. LOUIS U. PUB. L. REV. 729, 732–34 (1994).

210. Mercy et al., *supra* note 61, at 23.

211. See *supra* notes 133–45 and accompanying text.

approach that addresses individual, community, and environmental factors. Moreover, public awareness campaigns and education aimed at behavior change cannot operate in isolation. Campaigns aimed at changing individual behavior work better when coupled with strategies that address community and environmental factors.<sup>212</sup> Experience from past public health campaigns reveals that success is most likely when public awareness and education initiatives are “coupled with other incentives—criminal liability, taxes, use restrictions—as they have been in campaigns against smoking, drunk driving, and nonuse of seatbelts.”<sup>213</sup> Governments and non-governmental organizations must draw upon this extensive body of evidence and experience from the public health arena to develop effective strategies for addressing the underlying societal views and behaviors that facilitate human trafficking.

#### *D. Engaging All Essential Partners*

Public health campaigns, with their focus on prevention, pay significant attention to identifying essential partners, engaging affected communities, and fostering community coordination and preparedness.

To begin, public health campaigns typically focus on identifying all essential partners. Public health’s approach to violence has focused on “establishing links with each of the sectors that figures in violence prevention: education, labor, public housing, media, business, medicine, and criminal justice.”<sup>214</sup> In the human trafficking context, current efforts rely primarily upon law enforcement, immigration and customs officials, and social services organizations.<sup>215</sup> Preventing human trafficking will require much broader engagement, as the current approach underutilizes many other key partners. Health care professionals and educators need to be engaged more effectively and comprehensively. For example, hospitals and other health care facilities sometimes present one of the only windows of opportunity to identify human trafficking victims when traffickers, pimps, or employers—seeking to “protect their investment”—take trafficked individuals in their custody to emergency rooms for necessary health

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212. Garrison, *supra* note 181, at 323.

213. *Id.*

214. Mercy et al., *supra* note 61, at 16.

215. See generally ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 12, at 4–8 (discussing the latest U.S. efforts to combat human trafficking).



care.<sup>216</sup> Moving further upstream, teachers and other school officials often are well positioned to identify vulnerable children before they are exploited.<sup>217</sup> The media also has an important role to play. In addition, many entities and sectors currently facilitate (often unknowingly) the trafficking of persons, including the tourism industry, airline industry, shipping industry, transportation sector, textiles industry, and others.<sup>218</sup> All of these partners must be brought into the fold when developing prevention strategies so that they contribute to anti-trafficking efforts, rather than facilitate human trafficking (recall the discussion of targeting truckers in Part III.B).<sup>219</sup> In short, as one public health initiative explains, “[p]artnerships are essential” for achieving program goals, and the prevention of threats to human health “will require improved communication, cooperation, and collaboration across disciplines, institutions, and countries. It will require valuing our existing partnerships while building new ones.”<sup>220</sup>

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216. Elizabeth Miller et al., *Migration, Sexual Exploitation, and Women's Health: A Case Report from a Community Health Center*, 13 VIOLENCE AGAINST WOMEN 486, 486 (2007) (“Health care providers are in a unique position to identify and support U.S. sex trafficking victims; thus, education and training for health care professionals on trafficking is needed.”).

217. See ECPAT-USA, *supra* note 37, at 31 (including the utilization of school officials as a means of increasing victim identification as part of the Department of Education’s initiative).

218. See, e.g., Lin Lean Lim, *Introduction to THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 1, 6–7 (Lin Lean Lim ed., 1998) (calculating that two to fourteen percent of the gross domestic product of Indonesia, Malaysia, the Philippines, and Thailand derives from the sex sector); see also ECPAT INT’L, *supra* note 163 (“[T]rafficking occurs mainly along the major trucking roads between Poland and Germany . . .”).

219. In a small number of cases, efforts have been made to engage some of these industries. See, e.g., *Overview*, THECODE.ORG, [http://www.thecode.org/index.php?page=2\\_3\\_2](http://www.thecode.org/index.php?page=2_3_2) (last visited Dec. 31, 2010) (describing a public-private initiative to encourage the travel industry companies to comply with a code of conduct aimed at reducing commercial sexual exploitation of children). Some of these efforts include staff training, cooperation with labor unions, and encouraging immediate reporting of suspected child sexual exploitation. *Id.*

220. THE NAT’L CTR. FOR ZOO NOTIC, VECTOR-BORNE, & ENTERIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, *CONFRONTING INFECTIOUS DISEASES IN AN INTERCONNECTED WORLD: PEOPLE, ANIMALS, AND THE ENVIRONMENT*, at i (2009) available at <http://www.onehealthinitiative.com/publications/d%20%20Confronting%20Infectious%20Diseases.pdf>; see also WORLD HEALTH ORG. ET AL., *CONTRIBUTING TO ONE WORLD, ONE HEALTH: A STRATEGIC FRAMEWORK FOR REDUCING RISKS OF INFECTIOUS DISEASES AT THE ANIMAL-HUMAN-ECOSYSTEMS INTERFACE* 13 (2008), [http://www.oie.int/downld/AVIAN%20INFLUENZA/OWOH/OWOH\\_14Oct08.pdf](http://www.oie.int/downld/AVIAN%20INFLUENZA/OWOH/OWOH_14Oct08.pdf) (“[T]here is a need [in public health initiatives] for both a wide range of stakeholders and to promote strategic collaboration and partnerships across various disciplines, sectors, departments, ministries, institutions and organizations at the country, regional and international levels.”).

That mindset, common in public health, must be applied to initiatives aimed at preventing human trafficking.

Next, public health strategies recognize the need to engage the most affected communities and target interventions.<sup>221</sup> Participatory epidemiology ensures community participation and respect for local knowledge and concerns.<sup>222</sup> Typical of many public health programs, the “One World, One Health” initiative emphasizes that participatory approaches must be utilized and “community members should be involved in identifying any new health threats confronting the community.”<sup>223</sup> As a threshold matter, engaging target communities fosters greater community buy-in and support for such programs.<sup>224</sup> Target communities must be partners in the design, development, and implementation of trafficking prevention programs. Their involvement helps ensure that programs and policies are culturally appropriate and supported by target populations.<sup>225</sup> Engaging local partners enables programs to take advantage of potential synergies by “building upon existing social and community networks.”<sup>226</sup> Equally important, it also facilitates consideration of a broader range of ideas, increasing the likelihood that policymakers and other stakeholders together will identify and pursue better ideas for prevention programs and discard the less viable ideas.<sup>227</sup>

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221. See WORLD HEALTH ORG. ET AL., *supra* note 220, at 32 (recognizing the importance of “a bottom-up approach, which recognizes the needs of those most directly concerned and which emphasizes community involvement, ensuring the participation of women” to a strategy to reduce the risk of infectious diseases).

222. See *About Participatory Epidemiology*, PARTICIPATORY EPIDEMIOLOGY, <http://www.participatoryepidemiology.info/about-participatory-epidemiology/index.html> (last visited Dec. 31, 2010).

223. WORLD HEALTH ORG. ET AL., *supra* note 220, at 32.

224. See GUY BESSETTE, *INVOLVING THE COMMUNITY: A GUIDE TO PARTICIPATORY DEVELOPMENT COMMUNICATION* 141 (2004) (“Development research and the implementation of development initiatives will not have much impact without the effective participation of the communities.”); Ray Jennings, U.S. Agency for Int’l Development, *Participatory Development as New Paradigm: The Transition of Development Professionalism* 1–2 (Oct. 2000) (unpublished manuscript), [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/transition\\_initiatives/pubs/ptdv1000.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/transition_initiatives/pubs/ptdv1000.pdf) (“Participation requires recognition and use of local capacities and avoids the imposition of priorities from the outside.”). Local community participation and buy-in is an essential component of any sustainable development project. See Jennings, *supra*.

225. See BESSETTE, *supra* note 224, at 16 (arguing that development must be defined by each community’s cultural context and that various groups in the community “must play an active part in the process”). On the challenges of engaging historically marginalized communities, see, for example, Todres, *supra* note 14, at 26–27.

226. WORLD HEALTH ORG. ET AL., *supra* note 220, at 32.

227. See Udaya Wagle, *The Policy Science of Democracy: The Issues of Methodology and Citizen Participation*, 33 POL’Y SCI. 207, 207 (2000) (“[C]itizen participation is important . . . to improve the quality of information provided to make appropriate policy

Finally, public health programming recognizes the need to respond quickly and efficiently, and thus public health typically incorporates a focus on effective coordination among government agencies at the various levels of government, between government and the public, and among key partners in each community.<sup>228</sup> Current responses to human trafficking are in significant need of improved coordination. A 2009 U.N. secretary-general report on coordination in the context of anti-trafficking efforts found:

[C]oordination is often lacking among various law enforcement agencies, such as immigration, workplace inspectors and police authorities. This results in agencies working at cross-purposes. . . . Poor coordination between law enforcement and criminal justice service providers, on the one hand, and victim service providers, including NGOs, on the other, [is] a recurrent theme . . . .<sup>229</sup>

Governments must take a lead role in improving coordination and community preparedness, fully engaging all community partners in this process. They also need to ensure that coordination efforts are not limited to, or heavily weighted toward, law enforcement strategies.<sup>230</sup> Ultimately, the issue of human trafficking calls for well-coordinated plans of action at the international, national, and local levels, to ensure that all key partners understand their roles, have the necessary resources to carry out their responsibilities, and understand how their activities dovetail with the actions of other partners

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decisions . . . ."); Jennings, *supra* note 224, at 2 ("[Participation] increases the odds that a program will be on target and its results will more likely be sustainable."); see also David Orentlicher, *Diversity: A Fundamental American Value*, 70 MO. L. REV. 777, 780 (2005) ("[D]iversity both promotes good outcomes and discourages bad outcomes.").

228. See, e.g., WORLD HEALTH ORG., CITIES AND PUBLIC HEALTH CRISES: REPORT OF THE INTERNATIONAL CONSULTATION, 29–30 OCTOBER 2008, LYON, FRANCE 12 (2009), available at [http://www.who.int/ihr/lyon/FRWHO\\_HSE\\_IHR\\_LYON\\_2009.5.pdf](http://www.who.int/ihr/lyon/FRWHO_HSE_IHR_LYON_2009.5.pdf) ("Experience shows that, without coordination, the response to the [public health] crisis will not be effective and is likely to alarm the population rather than reassure them.").

229. U.N. Secretary-General, *Improving the Coordination of Efforts Against Trafficking in Persons: Background Paper*, at 12 (2009) (emphasis omitted) (footnote omitted), <http://www.un.org/ga/president/63/letters/SGbackgroundpaper.pdf>. There have been significant challenges with coordination among entities working within the United States on these issues. See, e.g., CAL. ALLIANCE TO COMBAT TRAFFICKING & SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA: FINAL REPORT OF THE CALIFORNIA ALLIANCE TO COMBAT TRAFFICKING AND SLAVERY TASK FORCE 8 (2007), available at [http://www.ohs.ca.gov/pdf/Human\\_Trafficking\\_in\\_CA-Final\\_Report-2007.pdf](http://www.ohs.ca.gov/pdf/Human_Trafficking_in_CA-Final_Report-2007.pdf) ("The delivery of and access to victim services are not always well coordinated throughout [California].").

230. See PROTECT Our Children Act, 42 U.S.C. § 17611(a)–(c) (Supp. II 2009) (housing responsibility for a national plan of action with the Attorney General).

working on the issue. By following the lead of public health and engaging all relevant partners in the fight against human trafficking, we give ourselves the best chance of developing successful initiatives that actually prevent the harm from occurring.

As detailed in this Part, public health strategies as applied to human trafficking offer significant potential benefits. Anti-trafficking initiatives would benefit greatly from evidence-based research. A greater focus on prevention is needed to avoid an endless cycle of pursuing perpetrators of these abuses and attempting to aid victims after they are harmed. Addressing societal behaviors and views presents an opportunity to make progress with respect to the root causes of the problem. The involvement of all community partners enhances the chances of success of any program. In each of these ways, anti-trafficking initiatives can gain from utilizing public health methodologies.

#### IV. LESSONS FROM LIMITATIONS

The previous section details four key aspects of public health methodologies that can strengthen current efforts to combat human trafficking. Like all approaches, public health methodologies have limitations. Assessing human trafficking through a public health lens reveals two types of potential limitations. First, there are ways in which public health methodologies could present challenges or limitations (potential risks). Second, and perhaps more important, viewing the problem of human trafficking from a public health perspective uncovers distinctive features of human trafficking that make it different from typical public health issues (potential constraints). Whether the constraints unveiled are intractable problems cannot be determined at this stage. However, exposing these issues is a significant step in taking on these problems. Thus, even with respect to limitations, a public health perspective on human trafficking can identify systemic problems and refocus efforts to help solve the underlying problems that foster human trafficking.

##### *A. Learning from Other Public Health Initiatives*

This section briefly identifies several potential risks that have arisen in other public health programming and discusses why these risks need not materialize and, in some instances, are easily avoided.

First, public health campaigns have confronted challenges related to stigma and discrimination associated with particular diseases, such

as HIV/AIDS.<sup>231</sup> Similarly, human trafficking survivors frequently experience stigma and discrimination. Governments and anti-trafficking advocates must ensure that their efforts do not import additional stigma and prejudices that would further harm survivors. These risks can arise in any area of anti-trafficking work, and public health measures are no exception. For example, public health programming “focus[ed] on HIV as the dominant issue in health and trafficking in women not so subtly implicates the women as ‘vectors’ of disease. . . . An HIV focus may unwittingly create prejudices and stigmatize women who are trafficked.”<sup>232</sup> Policymakers and anti-trafficking advocates must carefully review anti-trafficking strategies and seek input from survivors to ensure that programs do not stigmatize the individuals they seek to aid.

Another potential challenge is that the health needs and priorities of human trafficking survivors might differ from public health officials’ priorities.<sup>233</sup> For example, while some public health officials might want to focus on controlling the spread of HIV, trafficked individuals might view other health issues, such as physical

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231. See Lisanne Brown et al., *Interventions to Reduce HIV/AIDS Stigma: What Have We Learned?*, 15 AIDS EDUC. & PREVENTION 49, 50–52 (2003) (discussing the stigma attached to HIV/AIDS and its effect on public health); see also Ronald Bayer, *Stigma and the Ethics of Public Health: Not Can We but Should We*, 67 SOC. SCI. & MED. 463, 463–68 (2008) (reviewing how stigma and discrimination have been associated with public health issues for decades, but also suggesting that in some instances, most notably smoking, stigma can advance public health aims).

232. Cathy Zimmerman & Charlotte Watts, *Documenting the Effects of Trafficking in Women*, in PUBLIC HEALTH & HUMAN RIGHTS: EVIDENCE-BASED APPROACHES 143, 167 (Chris Beyrer & H.F. Pizer eds., 2007).

233. See Cathy Zimmerman et al., *The Health of Trafficked Women: A Survey of Women Entering Posttrafficking Services in Europe*, 98 AM. J. PUB. HEALTH 55, 58 (2008) (describing the complexities of identifying the needs of trafficking survivors); HEATHER CLAWSON ET AL., ICF INT’L, NATIONAL SYMPOSIUM ON THE HEALTH NEEDS OF HUMAN TRAFFICKING VICTIMS: BACKGROUND BRIEF 5, <http://www.icfi.com/docs/hhs-symposium.pdf> (“[T]he individual needs of each victim are as varied as the victims themselves.”). Human trafficking victims often have mental and emotional needs stemming from their traumatic experience. Sadruddin et al., *supra* note 56, at 404–06; ERIN WILLIAMSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., NATIONAL SYMPOSIUM ON THE HEALTH NEEDS OF HUMAN TRAFFICKING VICTIMS: POST-SYMPOSIUM BRIEF 3–4 (2009), <http://aspe.hhs.gov/hsp/07/humantrafficking/Symposium/ib.pdf>. However, public health responses have historically ignored the mental health impact of public health disasters. *Mental Health and Behavioral Guidelines for Responses to a Pandemic Flu Outbreak*, CTR. FOR THE STUDY OF TRAUMATIC STRESS, 1, [http://www.centerforthestudyoftraumaticstress.org/csts\\_items/CSTS\\_mental\\_health\\_behavioral\\_guidelines\\_response\\_to\\_pandemic\\_flu\\_outbreak\\_dcoe.pdf](http://www.centerforthestudyoftraumaticstress.org/csts_items/CSTS_mental_health_behavioral_guidelines_response_to_pandemic_flu_outbreak_dcoe.pdf) (last visited Dec. 31, 2010) (recognizing that only recently have researchers considered the mental health impact of natural disasters, and almost none have considered the mental health impact of disease outbreaks).

violence or mental health needs, as more pressing than HIV testing.<sup>234</sup> This risk is present in any approach to human trafficking (and is why it is essential to engage all key partners, including trafficking survivors, in developing responses to the problem). A law-enforcement-centered model often produces these differences in priorities, for example, when prosecutors seek to obtain witness testimony from human trafficking survivors who instead are focused on accessing services or are afraid that cooperation with police will lead to retribution against them or their families.<sup>235</sup> Policymakers and anti-trafficking advocates need to be aware that similar risks arise with a public health approach and to ensure that they address the needs identified by survivors and other vulnerable persons.

Although the prior section focused on public health strategies that can foster better outcomes with respect to human trafficking, it would be misleading to suggest that a public health approach means simply working on population attitudes and behaviors and abandoning some of the strategies currently employed to combat human trafficking (e.g., law enforcement measures and social services for victims). For example, a combination of measures—including improved vehicle safety (through mandating seat belts, airbags, and other measures), improved roads, and drunk driving laws—reduced the number of traffic fatalities.<sup>236</sup> Changing public attitudes toward drunk driving (through campaigns by MADD and others) was an integral part of this reduction of traffic fatalities.<sup>237</sup> As a result of all of these measures, between 1982 and 1999, deaths from alcohol-related accidents declined by thirty-seven percent.<sup>238</sup> In other words, public health interventions must be multi-faceted. That is what has worked when addressing road safety, tobacco use, and other public health

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234. Zimmerman & Watts, *supra* note 232, at 167.

235. See Marisa Silenzi Cianciarulo, *The Trafficking and Exploitation Victims Assistance Program: A Proposed Early Response Plan for Victims of International Human Trafficking in the United States*, 38 N.M. L. REV. 373, 391 (2008).

236. Stephen L. Isaacs & Steven A. Schroeder, *Where the Public Good Prevailed: Government's Public Health Successes*, AM. PROSPECT, June 4, 2001, at 26, 28–29, available at [http://www.prospect.org/cs/articles?article=where\\_the\\_public\\_good\\_preveled](http://www.prospect.org/cs/articles?article=where_the_public_good_preveled); see also Stephen D. Sugarman, *Nader's Failures?*, 80 CALIF. L. REV. 289, 290 (1992) (reviewing JERRY MASHAW & DAVID L. HARST, *THE STRUGGLE FOR AUTO SAFETY* (1990) (discussing a public health approach that included not only efforts to change driver behavior but also measures aimed at improving vehicle and highway design to increase safety)).

237. William DeJong & Ralph Hingson, *Strategies to Reduce Driving Under the Influence of Alcohol*, 19 ANN. REV. PUB. HEALTH 359, 359–60 (1998) (noting the “first success” of MADD and similar groups was “a widespread change in public attitudes”).

238. Isaacs & Schroeder, *supra* note 236, at 29.

issues.<sup>239</sup> And that is what is needed to shift from dealing with trafficking after individuals have been exploited to preventing human trafficking from occurring in the first place.

A separate challenge emerges when campaigns seek to raise public awareness of criminal behavior, such as human trafficking. Some stakeholders might be resistant to such negative publicity about their communities.<sup>240</sup> Business owners might fear a decline in tourists or other visitors, and members of the public might become unduly alarmed (and possibly take matters into their own hands).<sup>241</sup> Programs to prevent human trafficking must engage the private sector and other key partners, including the media, to avoid this problem. Engaging key stakeholders to strategize around this issue can help avoid the stigma of negative publicity and instead ensure that these partners are seen as playing a valuable role in addressing the problem.<sup>242</sup>

Finally, a central issue in public health is the balance between the state's responsibility to protect the public's health and individual autonomy.<sup>243</sup> Public health aims to adopt the least restrictive means of achieving the community's or population's health goals.<sup>244</sup> In order to maintain the public's trust and continue to enjoy public support,<sup>245</sup>

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239. See generally David Hemenway, *The Public Health Approach to Motor Vehicles, Tobacco, and Alcohol, with Applications to Firearms Policy*, 22 J. PUB. HEALTH POL'Y 381 (2001) (discussing the successful multifaceted public health approaches to motor vehicles, tobacco and alcohol); see also *supra* note 236 and accompanying text (discussing road safety).

240. Emmanuel Barthe, *Crime Prevention Publicity Campaigns*, in PROBLEM-ORIENTED GUIDES FOR POLICE 15 (Office of Cmty. Oriented Policing Servs., U.S. Dep't of Justice, Response Guides Ser. No. 5, 2006).

241. *Id.*

242. For example, although Atlanta, Georgia, is often referred to as a "hub" of human trafficking, the commitment by certain policymakers and advocates to do something about the problem has led Atlanta to be seen as "on the forefront" of efforts to combat human trafficking. Aixa M. Pascual, *Human Trafficking Plagues U.S. Cities*, ATL. J. & CONST., Sept. 15, 2004, at F1 (reporting that Atlanta is an ideal setting for human trafficking and was one of the first cities to establish a coalition of nonprofit organizations, faith-based groups, and local and federal agencies to prosecute traffickers and protect victims).

243. See, e.g., WING ET AL., *supra* note 88, at 51–52 (discussing the fundamental challenge of balancing individual rights with the state's power to act to secure the public's health); Dorothy Puzio, *An Overview of Public Health in the New Millenium: Individual Liberty vs. Public Safety*, 18 J.L. & HEALTH 173, 175–79 (2003–2004) (exploring the tension between developing effective public health systems and protecting individual liberties).

244. Stoto, *supra* note 122, at 717.

245. See George J. Annas, *Blinded by Bioterrorism: Public Health and Liberty in the 21st Century*, 13 HEALTH MATRIX 33, 56 (2003) ("[T]rust . . . is absolutely essential to containing panic in a bioterrorist-induced epidemic."); Puzio, *supra* note 243, at 198

public health must ensure that privacy issues and related issues remain a primary consideration. For example, public health surveillance programs must weigh the need to obtain important data against potential interference with individuals' privacy rights.<sup>246</sup> By their very nature, public health surveillance programs present "privacy risks as governments must collect sensitive medical information from patients, travelers, migrants, and other vulnerable populations."<sup>247</sup> In the context of human trafficking, policymakers must give careful consideration to the data needed and any potential privacy implications. They also need to collaborate with attorneys, public health professionals, experts on human trafficking, and human trafficking survivors to review relevant privacy laws to ensure that such laws enable the collection of needed data while protecting individuals' privacy.<sup>248</sup>

The fact that human trafficking involves criminal behavior, and thus law enforcement, complicates the issue, as marginalized communities might be more wary of public health initiatives that are too closely tied to policing. For example, public health strategies in immigrant communities where there are significant numbers of undocumented individuals might be less effective if the community perceives that data collected might be shared with law enforcement.<sup>249</sup>

There are also concerns about the collection of particular types of data, such as race and ethnicity data.<sup>250</sup> The challenge is that, unlike

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(quoting Liz Marlantes, *Bioterror: All the Rules Change*, CHRISTIAN SCI. MONITOR, Dec. 17, 2001, at 1).

246. Stoto, *supra* note 122, at 717; see also Mariner, *supra* note 123, at 395 ("[Public health surveillance must] balance[] the present value of the particular information to achieve specific public health functions against the dignitary cost of invading privacy ....").

247. Gostin & Berkman, *supra* note 121, at 156. See generally Ronald Bayer & Amy Fairchild, *The Limits of Privacy: Surveillance and the Control of Disease*, 10 HEALTH CARE ANALYSIS 19 (2002) (discussing the "ethics of surveillance" through analysis of the history of surveillance and reporting in the context of HIV and other infectious diseases).

248. See Gostin & Berkman, *supra* note 121, at 156–57 ("Countries should enact public health information privacy laws to require justifiable criteria for data disclosure and to prohibit wrongful disclosures, for example, to employers, insurers, and immigration or criminal justice authorities. Whenever a government authorizes or mandates the disclosure of identifiable health data, it should make public the proposed use of the data, the reason for disclosure, and the extent to which third parties can have access to the data.").

249. See Sadruddin et al., *supra* note 56, at 395 ("[T]he complexity of [the T-visa] eligibility requirements as well as the linking of benefits to cooperation with law enforcement prevent many victims from coming forward.").

250. See Christopher Ogolla, *Will the Use of Racial Statistics in Public Health Surveillance Survive Equal Protection Challenges? A Prolegomenon for the Future*, 31 N.C.



other fields, public health is an area where collecting data on race and ethnicity is important, particularly given the pressing need to address health disparities.<sup>251</sup> Thus, in the context of human trafficking, where data suggest that marginalized populations are at heightened risk,<sup>252</sup> collection of sensitive data, including race and ethnicity data, can help policymakers and advocates address disparities in access to needed services.<sup>253</sup> Policymakers, public health professionals, and anti-trafficking advocates must ensure an appropriate balance between data collection and individuals' privacy, particularly when working with vulnerable populations.

Public health professionals have confronted all of the above risks when addressing other issues that affect population health. Models from public health campaigns for other issues such as road safety, youth smoking, and violence, need to be modified to fit the exigencies of human trafficking scenarios so that communities can reap the benefits of public health methodologies while risks are minimized if not avoided altogether.

### *B. Challenges Unveiled Through a Public Health Lens*

Viewing the problem of human trafficking through a public health lens sheds light on constraints embedded in the issue of human trafficking itself. In this respect, this subsection is less about limitations of a public health approach than it is an affirmation of the importance of a public health perspective. For it is through this lens that we can see one of the most significant challenges to meaningful progress in preventing human trafficking.

This challenge relates to the concern expressed by some scholars that violence issues are an awkward fit for public health.<sup>254</sup> Their argument is that, unlike lung cancer or malaria, for which the pathogen is readily identifiable (nicotine and protozoan parasites, respectively), the "pathogen" is less clear for violence-based health issues.<sup>255</sup> If pathogens cause the risk of harm in other areas of public health, what parallel agent creates the risk of harm in human trafficking settings? One might posit that traffickers create the risk of harm. Certainly, traffickers harm the victims of this trade. I submit,

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CENT. L. REV. 1, 2 (2008) ("[Q]uestions still abound about classification by race, color, or ethnicity in public health.").

251. *Id.* at 3.

252. *See supra* note 167 and accompanying text.

253. Care must be taken to avoid stigma and discrimination. *See supra* notes 231–32.

254. *See, e.g.,* Ruttenger, *supra* note 27, at 1887.

255. *Id.* at 1887–88.

however, that such a view too narrowly construes the cause of the harm. In the drug trafficking arena, kingpins might supply the drugs, but the end users sustain the demand for the drug trade. Similarly, the demand for sexual services and cheap goods drives human trafficking. Public health initiatives in the human trafficking context, therefore, can help reorient anti-trafficking initiatives to focus on the underlying demand issues.

The demand for trafficked individuals' services differs, however, from demand for drugs in important ways. Most fundamentally, from a public health perspective, drug use harms the individual user. So with drugs, or smoking for that matter, education about the dangers of cocaine or nicotine can raise public awareness about the harm individuals inflict upon themselves by using drugs or smoking tobacco.<sup>256</sup> In contrast, individuals who demand services from trafficked people—whether commercial sex services or labor that produces inexpensive food and clothing—do not expose themselves to a “pathogen” that could harm them (except, in the case of sex, with STIs). The harm instead is inflicted upon the trafficked individuals. Indeed, those who purchase inexpensive food and clothing produced by trafficked labor actually reap a benefit through cost savings.

In this respect, a closer analogy might be efforts to address the harms caused by second-hand smoke. Still, the issue of second-hand smoke differs on the “demand” side of the equation in that a public health initiative aimed at reducing harm caused by second-hand smoke nevertheless also encourages smokers to take action (i.e., stop smoking) that will benefit themselves. Despite these differences, the second-hand smoke analogy fits more closely with the “supply” side of human trafficking. Public awareness campaigns might educate non-smokers on how to reduce the risk of, or exposure to, second-hand smoke. Similarly, anti-trafficking programs could target individuals vulnerable to human trafficking and identify steps they can take to reduce their vulnerability and risk of being trafficked.<sup>257</sup>

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256. See *supra* notes 181–82.

257. Recall, though, that public health approaches, such as the four-level CDC model, emphasize the importance of addressing not only individual factors, but also relationship, community, and societal factors. See *supra* notes 151–77 and accompanying text. If governments aim to reduce the vulnerability of people at high risk of being trafficked, their anti-trafficking programs must address the fact that many of the risk factors associated with individuals vulnerable to being trafficked are rooted in structural disadvantages—abject poverty, gender-based violence and discrimination, other forms of discrimination, etc. See April Thompson, *The Immigration HIV Exclusion: An Ineffective Means for Promoting Public Health in a Global Age*, 5 HOUS. J. HEALTH L. & POL'Y 145, 151 (2005) (“[HIV] prevention can be attained through protecting human rights and

Ultimately, the demand for trafficked persons, their bodies, and their labor is at the root of the harm. Therefore, while public health methodologies are relevant, traditional public health models for addressing social behaviors might have limited utility because of the different relational dynamics in the human trafficking context.

The different relational dynamics of human trafficking highlight the issue of effectiveness of messaging, a key component of strategies aimed at shaping societal behavior and promoting healthier outcomes. Anti-smoking messages, anti-drunk-driving messages, and other similar campaigns rely on persuasive messages that arouse fear (known as fear appeals).<sup>258</sup> Research demonstrates that for campaigns to be effective they need to “ensure that a high-threat fear appeal is accompanied by an equally high-efficacy (or greater) message.”<sup>259</sup> That is, fear appeals must be accompanied with a recommended response that individuals believe will work to avert the threat.<sup>260</sup> The challenge, thus, is for anti-trafficking messaging to convince a potential customer of the sex industry that not going to a prostitute will reduce human trafficking or to persuade a shopper that not buying a particular brand of jeans or basketball shoes will reduce the exploitation of trafficked children working in sweatshops. The reality is that buying a more expensive brand of a particular item does not necessarily guarantee that workers were treated more humanely; in fact, it might just mean those suppliers have higher profit margins. Thus, the research on public health campaigns indicates that new models or modified versions of existing public health strategies need to be developed in order to address the different relational dynamics inherent in human trafficking. Otherwise, efforts to change destructive behaviors will have limited impact.

Public health’s road safety success story provides an interesting comparison. Some have posited that drivers today do not drive more safely than drivers did fifty years ago.<sup>261</sup> However, over the past fifty

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confronting the structural factors that create vulnerability to disease in a given population.”); Jonathan Todres, *Law, Otherness and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 619–20 (2009) (“In the current global power structure, . . . tiered othering exacts a toll on the most marginalized individuals and communities. For example, poor women of color in developing countries confront an ongoing intersectional otherness and attendant devaluation of their personhood based on stereotyping rooted in discrimination based on race, sex, class, culture, and geography.”). It would be inappropriate, therefore, to rely solely on vulnerable persons engaging in self-help.

258. Witte & Allen, *supra* note 207, at 591–92.

259. *Id.* at 606.

260. *Id.* at 592.

261. Hemenway, *supra* note 178, at 648.

years, the number of automobile fatalities per mile driven has declined by more than eighty percent.<sup>262</sup> An array of measures has fostered much greater safety, including significant improvements in safety features of automobiles and improved roads, as well as changes in attitudes about driving while intoxicated.<sup>263</sup> Applied to human trafficking, the automobile safety movement suggests an important component must be included—structural factors. That is, individual behaviors can be reshaped, for example, by addressing demand for commercial sex. Not to be overlooked, however, is that intervention aimed at behavior must not focus solely on the individual. The incidence of fatalities on the road declined because pressure was also brought to bear on automakers, which ultimately produced safer cars.<sup>264</sup> Similarly, in the labor trafficking context, interventions focused on individual purchasing choices will need to be accompanied by efforts that motivate corporations to change their business models and produce their products without using exploited labor.<sup>265</sup>

How we develop effective public health campaigns for human trafficking is beyond the scope of this Article. The valuable lesson is that by looking at this issue from a public health perspective, we are much closer to understanding some of the systemic issues and

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262. *Id.*

263. *Supra* notes 236–37 and accompanying text.

264. Hemenway, *supra* note 239, at 382–86.

265. See Diane L. Fahey, *Can Tax Policy Stop Human Trafficking?*, 40 GEO. J. INT'L L. 345, 381 (2009) (“When corporations are made accountable to someone with power—plaintiffs in ATCA lawsuits, the corporations’ own investors (shareholders) or consumers—corporate behavior can change. The most notable example is the DeBeers cartel’s support for the Kimberley Process for fear that a threatened boycott would harm the diamond industry. In the face of actual and threatened boycotts and consumer activism, Nike improved its labor practices and Pepsi withdrew from Burma (the Burmese military junta is a repressive regime).”); see also Special Representative of the Secretary-General, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶ 61, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006) (recognizing that, under international customary law, corporations may be liable for their role in human rights violations, including labor trafficking); Christine Bader, *Beyond CSR: How Companies Can Respect Human Rights*, STAN. SOC. INNOVATION REV., Fall 2008, at 31, 31, available at <http://www.thecode.org/dokument/documents/research/christine-bader-ssir-english-2008.pdf> (discussing how thousands of corporations have developed corporate social responsibility reports, which can become a vehicle for companies to develop human rights policies and avoid human rights abuses). Similar efforts can be successful in combating sex trafficking. For example, since 1994, the tourism industry has taken measures to combat the child sex trade. See *Overview*, *supra* note 219 (listing anti-sex-trafficking policies adopted by several international organizations and detailing the efforts of the World Tourism Organization, International Hotel & Restaurants Association, and the European Parliament). Some of these efforts include training staff, cooperating with labor unions, and encouraging immediate reporting of suspected child sexual exploitation. *Id.*

relational dynamics that have been largely ignored to date but must be accounted for to achieve success in preventing the trafficking of human beings.

#### CONCLUSION

Human trafficking is one of the gravest abuses of human rights and human dignity. If the minimal progress achieved by anti-trafficking law and initiatives in the past decade has taught us anything, it is that conventional wisdom will not solve this problem. We need new ideas and new approaches. The merits of a public health approach are considerable. Public health draws upon methodologies that have been underutilized in the human trafficking context but offer significant benefits. The dearth of reliable data on human trafficking highlights the value of public health's emphasis on evidence-based research. We need to know what works so our actions produce the desired result—a reduction in the incidence of human trafficking. Additionally, public health's prevention orientation would significantly advance anti-trafficking initiatives, which currently deal with the harm only after it occurs. The deep-seated issues that make many individuals vulnerable to exploitation and foster ongoing demand for products and services provided by exploited individuals underscores the importance of changing views and behaviors that lead to unhealthy practices and foster human trafficking. And public health's traditional emphasis on engaging all community stakeholders will add value at all stages of anti-trafficking efforts, from the drafting of relevant laws and policies to the implementation of prevention programs. Moreover, a public health approach enhances our understanding of the nuanced dynamics of human trafficking so that we can begin to develop strategies that will effectively account for those dynamics. In these respects, public health offers a valuable set of tools greatly needed in the fight against human trafficking. Public health methodologies can move us from confronting harm only after millions of people have suffered to strengthening individuals' and communities' capacities to prevent human trafficking.