

2005

Modern-Day Slavery: Framing Effective Solutions for an Age-Old Problem

Kathleen A. McKee

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

Kathleen A. McKee, *Modern-Day Slavery: Framing Effective Solutions for an Age-Old Problem*, 55 Cath. U. L. Rev. 141 (2006).

Available at: <https://scholarship.law.edu/lawreview/vol55/iss1/6>

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

MODERN-DAY SLAVERY: FRAMING EFFECTIVE SOLUTIONS FOR AN AGE-OLD PROBLEM

Kathleen A. McKee⁺

I. Introduction	142
II. The Thirteenth Amendment	147
A. Historical Background	147
B. Enabling Statutes	148
C. Scope of Coverage	153
1. Encouraging Free Labor	153
2. Eradicating the “Badges of Slavery”	155
D. Applicability to Modern-Day Trafficking	160
E. Effectiveness as a Remedy	163
III. The Racketeer Influenced and Corrupt Organizations Act	164
A. Legislative Background	164
B. Scope of Coverage	168
1. The Predicate Elements of a RICO Claim	168
2. Current Trends in Case Law	173
C. Applicability to Modern Trafficking	176
D. Adequacy as a Remedy	178
IV. Victims of Trafficking and Violence Protection Act of 2000	179
A. Legislative and Regulatory Framework	179
B. Executive Branch Implementation	183
1. Interagency Branch Implementation	183
2. Individual Agency Initiatives	184
C. Judicial Remedies	187
D. Adequacy of Remedies	188
V. Conclusion	190

⁺ Kathleen A. McKee, B.A. State University of New York at Albany, 1966; J.D. Columbus School of Law, Catholic University of America, 1977; L.L.M. in Labor Law Georgetown University Law Center, 1984; is an Associate Professor of Law at Regent University School of Law, Virginia Beach, VA.

I. INTRODUCTION

*"You shall not oppress an alien; you well know how it feels to be an alien, since you were once aliens yourselves in the land of Egypt."*¹

Trading in human beings was a well established business enterprise long before the colonization of the North American continent.² With the exploration and settlement of the New World, slavery rooted itself in American soil and became a significant source of labor.³ Between 1664 and 1682, many colonies enacted slave codes, which changed the status of African workers from indentured servants into slaves.⁴ Having created a mechanism for enslavement, additional laws were enacted to govern those enslaved and to make it "increasingly difficult" for them to gain their freedom.⁵ Those African workers who remained free found their freedom severely constricted by the slave codes.⁶

During the eighteenth century, the issue of slavery was openly debated in the public square. Prominent public figures such as John Jay and Alexander Hamilton participated in efforts to promote the "Manumission of Slaves and Protecting such of them that have or may be Liberated."⁷ However, when presented with an opportunity to address

1. *Exodus* 23:9.

2. See PAUL JOHNSON, *A HISTORY OF THE AMERICAN PEOPLE* 8 (1997) ("Throughout the 16th century the Portuguese had a virtual monopoly of the Atlantic slave-trade. By 1600 nearly 300,000 African slaves had been transported by sea to plantations—25,000 to Madeira, 50,000 to Europe, 75,000 to San Tom  , and the rest to America. By this date, indeed, four out of five slaves were headed for the New World. It is important to appreciate that this system of plantation slavery, organized by the Portuguese and patronized by the Spanish for their mines as well as their sugar-fields, had been in place, expanding steadily, long before other European powers got a footing in the New World." (footnote omitted)).

3. 1 PHILIP S. FONER, *HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES* 19 (1947) ("Planters discovered that a slave—a worker for life, whose children became the property of the master—was a more profitable investment than a servant who left after his period of indenture was up. Moreover, a master could often hire out idle slaves. Slave maintenance was less than half that of the indentured servant, a fact that made slavery a labor system desirable to both southern planters and northern merchants.").

4. *Id.*

5. THE LIBRARY OF CONGRESS CIVIL WAR DESK REFERENCE 77 (Margaret E. Wagner, Gary W. Gallagher & Paul Finkelman eds., 2002) [hereinafter *CIVIL WAR DESK REFERENCE*].

6. See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 88 (2d ed. 1985) ("Free blacks were discriminated against by law, and hounded from colony to colony. Law and society debased this class and used their low status as an excuse for further debasement. By 1776, the free black man was a kind of half slave in many parts of the country.").

7. *Id.* at 218 (citing MERRILL JENSEN, *THE NEW NATION* 135–36 (1950)).

the issue of slavery at the Constitutional Convention, delegates declined to take decisive action.⁸

The debate over slavery would continue up to the eve of the Civil War. The Constitution prohibited any ban on the importation of slaves prior to 1808.⁹ When the Congress eventually did enact legislation to prohibit the importation of slaves, the practice of selling slaves who were already in the United States continued unabated.¹⁰ Some individual slave owners chose to free their slaves in their wills.¹¹ Some states also enacted legislation to free slaves residing within their own borders prior to the Civil War.¹² However, there was a lack of consensus among the states on this issue. Other states were hostile to the presence of freed slaves within their borders.¹³

At the national level during the same time period, Congress enacted legislation to ensure the return to owners of slaves who attempted to escape to freedom,¹⁴ and debated the extension of slavery into new

8. See DON E. FEHRENBACHER, *THE SLAVEHOLDING REPUBLIC* 36 (Ward M. McAfee ed., 2001).

Slavery, as a brooding presence in the land, significantly influenced the deliberations of the Constitutional Convention, but the Convention made no calculated effort to affect the institution of slavery, and its members never conceived of themselves as having any power or responsibility to do so. The intrusions of slavery into the work of the Convention were largely side effects of progress toward a new constitutional design.

Id.

9. See U.S. CONST. art. I, § 9 ("The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.").

10. See FEHRENBACHER, *supra* note 8, at 136-37.

11. See FRIEDMAN, *supra* note 6, at 219. Speaking of the end of the eighteenth century, Friedman notes that

"[a]bolition" was not yet a curse word in the South. Some slave owners actually set their slaves free. Southern legislatures had for some time indulged in passage of private acts of manumission. In 1782, Virginia passed a general, and permissive law, allowing owners manumission rights. Maryland, in 1790, authorized owners to set slaves free by their last will and testament.

Id.

12. *Id.* at 218-19.

13. *Id.* at 220-21. Friedman notes that some states enacted "exile" statutes, laws barring freed slaves from remaining within their borders: "A Tennessee law put it bluntly: 'No free person of color shall remove from any other State or territory of the Union into this State to reside here and remain in the State twenty days.'" *Id.* at 221 (quoting TENN. CODE § 2726 (1858)).

14. See Act of Sept. 18, 1850, ch. 60, 9 Stat. 462 (1850) (repealed 1864); Act of Feb. 12, 1793, ch. 7, 1 Stat. 302, 302-05 (1793) (repealed 1864).

territories.¹⁵ The formulation of a national rather than a state policy abolishing slavery occurred slowly and incrementally. It was initiated with the issuance of the Emancipation Proclamation¹⁶ and culminated with the enactment and ratification of the Thirteenth Amendment to the Constitution and its enabling legislation.¹⁷ One historian has noted that “[e]ven the abolitionist movement could not decide whether the Amendment was an end or a beginning.”¹⁸ For the next century, the Thirteenth Amendment and its enabling legislation would be challenged and narrowly construed by the courts, leaving one with the distinct impression that having extinguished slavery as an institution, congressmen, senators, and federal judges were now disinclined to believe that slavery continued to be a national problem.

Victims of modern-day slavery face a similar “willing suspension of disbelief.” Although victims of human trafficking can be found “hiding in plain sight” in our society, members of the general public find it

15. See JAMES OLIVER HORTON & LOIS E. HORTON, *SLAVERY AND THE MAKING OF AMERICA* 104 fig. (2005) (“In 1820 the Missouri Compromise allowed Missouri to enter the nation as a slave state and brought in Maine as a free state. It restricted slavery in future states carved from the Louisiana territory to the area south of the southern border of Missouri. Congress hoped this compromise would settle the question of the extension of slavery once and for all.”).

16. 12 Stat. 1268 (1863). Issued September, 1862, the Emancipation Proclamation provided:

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

“That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, *all persons held as slaves within any state or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free*; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.”

Id. (emphasis added).

17. U.S. CONST. amend. XIII. Ratified in January 1865, the Thirteenth Amendment decreed: “Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.” *Id.* §§ 1-2.

18. ERIC FONER, *RECONSTRUCTION* 67 (1998).

Lurking behind these debates was an even broader question suggested by the end of slavery: Should the freedmen be viewed as individuals ready to take their place as citizens and participants in the competitive marketplace, or did their unique historical experience oblige the federal government to take special action on their behalf?

Id.

difficult to believe that slavery is an active and prosperous enterprise in this day and age. The limited data available indicates that victims of human trafficking are generally employed as domestics, agriculture workers, beggars and panhandlers, sweatshop workers, and employees in the sex industry.¹⁹ They are subject to the degradation and mistreatment associated with the chattel slavery of the past. This is strikingly illustrated in a case brought recently by a domestic servant in Minnesota.²⁰ In her complaint, the victim alleged that

[a]fter water flooded the basement, George [the Defendant] yelled at Uzonwanne and chased her around the house; punched and beat her about her body, which caused bruising; refused to allow her to leave the house for about two months; threatened to send her back to Nigeria; called her evil, stupid and a bastard child; told her she wanted to kill her and throw her away, and that if she did, no one would know because no one knows that she is there; forced her to write a letter in which she had to write that George was good to her; and locked her in a basement storage room as punishment.²¹

In actuality, with the demise of the former Soviet Union²² and current instability in many areas of the world, slavery or human trafficking²³ has once again established itself as a multinational business enterprise.²⁴ Because of its clandestine nature, figures on human traffic vary. According to a monograph prepared for the federal government in 1999, an estimated 45,000 to 50,000 individuals are trafficked into the United

19. AMY O'NEILL RICHARD, CENT. INTELLIGENCE AGENCY, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3 (2000), <http://www.cia.gov/csi/monograph/women/trafficking.pdf>.

20. See *Uzonwanne v. George*, No. 04CV1126 MJD/JGL, 2004 WL 3023795 (D. Minn. Sept. 7, 2004).

21. *Id.*

22. See RICHARD, *supra* note 19, at 55.

23. See The Prot. Project, Johns Hopkins Univ., *Trafficking in Persons or Alien Smuggling?*, GLOBAL ISSUES, June 2003, <http://usinfo.state.gov/journals/itgic/0603/ijge/gj09.htm> ("Two kinds of criminal activity involve the illegal movement of persons across international borders—trafficking in persons and migrant smuggling. Trafficking in persons and migrant smuggling are similar, but international agreements and national laws do make distinctions between them. . . . [I]n cases of alien smuggling, the smuggled alien, consenting to be smuggled, is treated as a criminal, whereas a trafficked person is considered a victim of the crime of trafficking since the trafficked person is typically subject to the 'threat or use of force or other forms of coercion, of abduction, or fraud and deception, of the abuse of power, or of a position of vulnerability . . . ' and as such, the person's consent is either lacking altogether or defective." (third alteration in original) (citations omitted) (quoting United Nations Trafficking in Persons Protocol art. 3(a))).

24. RICHARD, *supra* note 19, at 55.

States each year.²⁵ Figures recently released in a Department of State report mirror these estimates.²⁶ In fact, trafficking is a transnational business that affects over 700,000 men, women, and children each year and generates annual revenues estimated to be in the billions.²⁷

The challenge presented by modern-day trafficking is that of implementing an effective legal deterrent that acknowledges and addresses the injuries traffickers inflict upon their victims. To date, legal strategies to achieve these goals have been varied. Advocates for victims have sought redress for their clients by invoking both constitutional claims and wage and hour laws.²⁸ Federal law enforcement authorities have prosecuted traffickers using established federal statutes such as the Racketeer Influenced and Corrupt Organizations Act (RICO)²⁹ and the recently enacted Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).³⁰

This Article will limit its examination to three legal approaches to addressing modern-day slavery: the Thirteenth Amendment, the civil component of RICO, and the VTVPA as amended in 2003,³¹ focusing on both their strengths and weaknesses. Section I will examine the applicability and effectiveness of the Thirteenth Amendment to the Constitution. Section II will examine the extent to which the civil component of RICO may be invoked by victims in trafficking cases. Section III will review and assess the effectiveness of the VTVPA in interdicting trafficking and redressing the injuries of trafficking victims.

An examination of the Thirteenth Amendment, civil RICO, and the VTVPA will demonstrate that each provides at least a limited remedy to the growing international problem of human trafficking. Arguably, despite its limitations, the VTVPA has the greatest potential for

25. *Id.* at 3.

26. U.S. DEP'T OF STATE, VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT 3 (2001), available at <http://www.state.gov/documents/organization/4107.pdf>.

27. See Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution; Comprehensive New Legal Approaches*, 24 Hous. J. INT'L L. 551, 551-56 (2002) ("Trafficking in women for forced prostitution is a lucrative business for the pimps and procurers. One estimate puts the total earned by international traffickers at \$9 billion per year." (footnote omitted)).

28. See Becki Young, Note, *Trafficking of Humans Across United States Borders: How United States Law Can Be Used To Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 82-85 (1998).

29. See 18 U.S.C. §§ 1961-1968 (2000 & Supp. 2002), amended by 18 U.S.C.A. §§ 1961-1968 (West Supp. 2005).

30. Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 8, 18, 20, 22, 27, 28, and 42 U.S.C.).

31. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 18 and 22 U.S.C.).

addressing this problem. First, in the spirit of the Thirteenth Amendment, it acknowledges that the problem of human trafficking is that it “[involves] grave violations of human rights and is a matter of pressing international concern.”³² Second, although it draws upon the authority of the Commerce Clause and the Foreign Powers Clause of the Constitution as opposed to constitutionally mandated individual rights, the VTVPA authorizes both national and international initiatives.³³ It allows the Department of State to coordinate strategies to combat trafficking with both originating and transit countries.³⁴ It implements community outreach through grants to community-based organizations in an effort to reach victims of trafficking.³⁵ It creates a new visa program for victims of trafficking³⁶ and authorizes supportive services to victims of severe forms of trafficking as well.³⁷

II. THE THIRTEENTH AMENDMENT

A. *Historical Background*

During the debates on the Thirteenth Amendment, members of Congress generally acknowledged that slavery was a reprehensible institution.³⁸ However, there was not a consensus among congressmen and senators regarding the benefits to be conferred upon slaves by enactment of the Thirteenth Amendment.³⁹ In fact, the debate between supporters and opponents of this Amendment was at times acrimonious.⁴⁰ Many congressmen and senators who supported the

32. 22 U.S.C. § 7101(b)(23).

33. *See id.* §§ 7101-7102.

34. *Id.* § 7103(d)(4).

35. *Id.* § 7105(b)(2)(A).

36. *Id.* § 7105(c)(3).

37. *Id.* § 7105(b)(1)(A)-(B).

38. *See* CONG. GLOBE, 38th Cong., 1st Sess. 1202 (1864). Senator Wilson stated: Which shall we elect? Shall it be peace? How can it be peace while liberty and slavery dwell together in our midst? These are enemies. These are ideas which cannot dwell together in harmony. How can we have peace? Let slavery die. Let its death be written in our Constitution.

Id.

39. *See, e.g., id.* at 2982. Congressman Mallory stated: “Now let me ask you a practical question. What do you intend to do with the slaves you propose to set free? . . . Has anyone attempted to furnish a solution of this question?” *Id.*

40. *Id.* at 2986. Congressman Edgerton stated:

The assertion of power or right in a majority of the States, either through the legislation of the Federal Government or through amendments of the Constitution, to interfere with or control the domestic institutions of a State, such, for example, as slavery, essentially repudiates the principle upon which the Union was formed, namely, the political equality of the States.

Amendment spoke in terms of legal equality but did not appear to contemplate that it would confer upon freed slaves social equality.⁴¹ For a period of time, Congress even contemplated funding a “voluntary” program by which freed slaves would be encouraged and financially assisted to immigrate back to Africa or South America where they could establish freedman’s colonies.⁴²

B. *Enabling Statutes*

Some legal analysts have suggested that the enactment and ratification of the Thirteenth Amendment was nothing less than a constitutional revolution.⁴³ As enacted, the Amendment drew upon the slavery provisions of the Northwest Ordinance of 1787.⁴⁴ The task of implementation was to be a daunting one. As one legal analyst has noted, slavery was based on customary law: “The Thirteenth Amendment’s countercustomary thrust is clear. Slavery was a historically present institution of society that had emerged as custom

Id.

41. *E.g.*, CONG. GLOBE, 38th Cong., 2d Sess. 237 (1865). Congressman Smith stated: Now, sir, if I believed that there was in this country a man with so little sense as to believe that he would become the equal of the negro, notwithstanding the laws of this country, notwithstanding the protection he can obtain from Congress, then I would be willing to vote for a resolution to give him two medals

Id.

42. See CIVIL WAR DESK REFERENCE, *supra* note 5, at 215.

The movement to encourage black emigration and colonization outside the United States began more than 40 years before the Civil War and was organized principally by the American Colonization Society, which settled American blacks in Liberia. Most free blacks opposed colonization and strongly objected to the notion that they were not, in fact, American. But, in the 1850s, the colonization movement revived, and although most free blacks were opposed to it, some African Americans—notably, Henry Highland Garnet, Martin Delany, and James Holly—favored colonization. They believed that blacks would never overcome the blatant discrimination they fought against daily in the United States.

The start of the Civil War brought a resurgence of enthusiasm for colonization among whites, as the country struggled with the future of slaves seeking refuge in Union lines. Thus, emigration was a political issue . . . Lincoln entertained and sometimes endorsed a series of colonization proposals. On December 3, 1861, he asked Congress for funds to acquire territory outside the United States, where contrabands and any free blacks who wanted to emigrate could be resettled.

Id. (citation omitted).

43. See, *e.g.*, Guyora Binder, *Did the Slaves Author the Thirteenth Amendment?: An Essay in Redemptive History*, 5 YALE L.J. & HUMAN. 471, 484-85 (1993).

44. See Ordinance of 1789: The Northwest Territorial Government, 1 U.S.C. LIII, LIII-LV (2000).

before it was recognized as law. To constitutionally abolish slavery was to disestablish and repudiate existing and enduring custom.”⁴⁵

The simplicity of this Amendment is striking. Section 1 of the Amendment abolishes the institution of slavery.⁴⁶ Section 2 authorizes Congress to enact whatever legislation is necessary and proper to effectuate the purpose of the Amendment.⁴⁷ There are several aspects of the Thirteenth Amendment that are noteworthy. First, it abolished not only chattel slavery, but also involuntary servitude⁴⁸ and peonage⁴⁹ (debt bondage). Second, it regulated relationships between private parties. It did not require state action to trigger the protection of the Amendment.⁵⁰ Third, unlike the Fourteenth Amendment, it did not explicitly require that a person be a natural born or naturalized citizen to benefit from its protections.⁵¹ Finally, it represented a shift from the state to the federal level in the enforcement of individual rights accorded by the Amendment. Causes that had traditionally been prosecuted in the state courts could now be prosecuted in the federal court system.⁵²

Despite its seeming simplicity, implementation of the Thirteenth Amendment would prove challenging in the century after its enactment and ratification. Although Section 1 of the Thirteenth Amendment was

45. Guyora Binder, *The Slavery of Emancipation*, 17 CARDOZO L. REV. 2063, 2066 (1996).

46. U.S. CONST. amend. XIII, § 1.

47. *Id.* § 2.

48. See 16A C.J.S. *Constitutional Law* § 482(a) (1984) (“As used in the [Thirteenth] Amendment, ‘involuntary servitude’ is the condition of one who is compelled by force, coercion, or imprisonment and against his will to labor for another whether or not he is paid, and includes ‘peonage.’” (emphasis omitted) (footnote omitted)).

49. See 70 C.J.S. *Peonage* § 1 (2005) (“*Peonage* is a status or condition of compulsory service based on the indebtedness of the peon to the master. . . . [A] peon is one who is compelled to work for his or her creditor until the debt is paid.” (emphasis added) (footnote omitted)).

50. See U.S. CONST. amend. XIII.

51. Compare *id.*, with *id.* amend. XIV. Notably, Blacks who were freedmen at the time of the enactment of the Thirteenth Amendment did not yet enjoy the status of citizens. See Barry Sullivan, *Historical Reconstruction, Reconstruction History, and the Proper Scope of Section 1981*, 98 YALE L.J. 541, 547-48 (1989).

52. See CONG. GLOBE, 38th Cong., 1st Sess. 2986 (1864). Congressman Edgerton stated:

It [the Thirteenth Amendment] proposes a revolutionary change in the Government. It seeks to draw within the authority of the Federal Constitution and the Federal Congress a question of local or internal policy belonging exclusively to the slaveholding States, and is in conflict with the principles on which the Union was originally formed, and with the whole theory and spirit of the Constitution as to the rights of the States.

Id.

intended to be self-implementing, its effects were not immediately felt by freed slaves.⁵³ According to one historian:

By 1875, the North's passion for equality had all but dribbled away. The North lost interest in black welfare; Northern racism, briefly and thinly covered over, came to the surface once more. As for the white South, it eagerly embraced the new situation. The Ku Klux Klan terrorized the blacks. Ultimately, the South saw to it that blacks did not vote or hold office. Blacks were relegated to a kind of peonage. They were to be rural workers on the white man's land. A tight network of law and practice was woven about rural blacks, who were desperately poor and largely illiterate. The network consisted of lien laws for landlords, vagrancy laws, enticement laws (which made it a crime to lure workers from their jobs, even by offering them better wages and conditions), laws against "emigrant agents," who were a kind of labor broker, and even laws that made it a crime to quit work "fraudulently." None of these laws specifically mentioned race; but they were practically speaking directed only against black workers.⁵⁴

In addition, Congress quickly found it necessary to enact legislation pursuant to Section 2,⁵⁵ which authorized "appropriate legislation."⁵⁶ According to one legal historian, "[i]mmediately following the ratification of the Amendment, numerous bills were introduced to implement it."⁵⁷ The goal of these bills was to guarantee the rights to the freedman granted by the Thirteenth Amendment and to penalize conduct that interfered with those rights.⁵⁸ As one historian noted, one of the bills enacted was

Congress's indignant response to reports of widespread atrocities against the freedmen and to the Black Codes which southern legislatures and municipalities had adopted to regulate the Negroes. "The colored man was free in name only in many cases. The apprentice, vagrancy, and other provisions of these statutes forced the Negro into situations where he would be under the uncontrolled supervision of his former master or other white men who were ready and willing to exploit his labor." These laws were designed to exclude Negroes from all

53. See FRIEDMAN, *supra* note 6, at 504.

54. See *id.* at 505.

55. See Howard Devon Hamilton, *The Legislative and Judicial History of the Thirteenth Amendment*, 9 NAT'L B.J. 26, 59 (1951).

56. See U.S. CONST. amend. XIII.

57. Hamilton, *supra* note 55, at 59; see, e.g., The Civil Rights Act of 1866, ch. 31, 14 Stat. 27. (1866).

58. See Hamilton, *supra* note 55, at 59.

vocations except agricultural labor and to insure that they remained at work.⁵⁹

The bills introduced would result in enactment of the Civil Rights Act of 1866 (Civil Rights Act),⁶⁰ the Slave Kidnapping Act of 1866,⁶¹ the Anti-Peonage Act of 1867,⁶² and the 1867 Amendment of the Judiciary Act.⁶³

The enactment of the Civil Rights Act foreshadowed the debate that would surround implementation of the Thirteenth Amendment for decades to come. According to one legal analyst:

The Civil Rights Act of 1866 merits attention, because it was the only act which evoked extensive discussion in Congress regarding the meaning and intent of the Amendment. That act declared that all persons born in the United States and not subject to any foreign power were citizens

Other sections of the act punished any official who should deprive a person of any right secured by the act, conferred exclusive jurisdiction over violations to federal courts, required federal officials to enforce it, and authorized the use of the military forces in its enforcement.⁶⁴

Opponents of the Act in Congress cited several grounds for their opposition. First, they alleged the Act violated principles of federalism and exceeded the authority of the Thirteenth Amendment.⁶⁵ Citing debate reported in the *Congressional Globe*, one analyst notes that “[t]he question of civil rights, it was argued, was not at all related to the abolition of the status or condition of slavery.”⁶⁶ According to historian Eric Foner:

Lurking behind these debates was an even broader question suggested by the end of slavery: Should the freedmen be viewed as individuals ready to take their place as citizens and participants in the competitive marketplace, or did their unique historical experience oblige the federal government to take special action on their behalf?⁶⁷

59. *Id.* at 61 (footnote omitted) (quoting CHARLES O. MANGUM, *THE LEGAL STATUS OF THE NEGRO* 27 (1940)).

60. ch. 31, 14 Stat. 27.

61. ch. 86, 14 Stat. 50.

62. ch. 187, 14 Stat. 546.

63. Act of Feb. 5, 1867, ch. 28, 14 Stat. 385.

64. Hamilton, *supra* note 55, at 55.

65. *Id.* at 62-63.

66. *Id.* at 63.

67. FONER, *supra* note 18, at 67.

The results of enforcing the Thirteenth Amendment in the aftermath of the Civil War were mixed. On the one hand, the courts were willing to interpret Section 1 of the Amendment broadly to include groups other than Blacks.⁶⁸ On the other hand, the courts were unwilling to apply Section 2 of the Amendment broadly to prohibit the "Jim Crow" laws that states enacted, which perpetuated the incidents or badges of slavery.⁶⁹ According to one analyst:

The constitutionality of [the 1866 Civil Rights] Act has never been passed upon by the Supreme Court, and its essential portions still remain on the statute books, but a series of cases between 1866 and 1906 have developed a cloud of unconstitutionality and have nearly drained its vitality, and with it much of the vitality attributed to the Thirteenth Amendment by its sponsors.⁷⁰

During the first decade after its enactment, the Thirteenth Amendment was actively enforced.⁷¹ However, by the end of that decade the federal courts began to narrowly interpret the Amendment, often denying relief to petitioners.⁷² For almost a century, courts would routinely reject efforts by plaintiffs seeking legal redress for violations arising under Section 2 on the grounds that the Amendment was not intended to regulate the social relationships of private parties.⁷³ The courts appeared disinclined to address the residual effects of the old state slave codes and the newly enacted Jim Crow laws.⁷⁴ Some analysts have attributed this to the fact that Congress and the courts were more

68. See *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 72 (1872) ("We do not say that no one else but the negro can share in this [Thirteenth Amendment] protection.").

69. See *The Civil Rights Cases*, 109 U.S. 3, 25 (1883) ("When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.").

70. Hamilton, *supra* note 55, at 64.

71. See *id.* at 64-67.

72. See Douglas L. Colbert, *Liberating the Thirteenth Amendment*, 30 HARV. C.R.-C.L. L. REV. 1, 17-25 (1995).

73. See Howard Devon Hamilton, *The Legislative and Judicial History of the Thirteenth Amendment*, 10 NAT'L B.J. 7, 7 (1952) ("[T]he claim of involuntary servitude has failed in a variety of cases, some of them plausible claims, others devoid of any merit. In rejecting these claims, the courts [sic] have construed the term 'involuntary servitude' strictly and have employed two rules of construction: (1) distinctly personal service is necessary, and (2) the Amendment must be given a reasonable, not an extravagant, interpretation. The Amendment contemplated African slavery and systems akin thereto, in which one person possesses virtually unlimited authority over another; it did not enact novel doctrines."); see also *The Civil Rights Cases*, 109 U.S. at 23-25.

74. See FONER, *supra* note 18, at 205.

concerned with reintegrating the secessionist states back into the Union.⁷⁵ Others have suggested that

[f]ew amendments have elicited so little litigation; compare it with Fourteenth Amendment in this respect. There are a number of factors which may explain the small volume of litigation: the Civil War had destroyed the economic utility of slavery and there was little desire to revive it; the addition of similar provisions to the southern state constitutions; poor Negroes lacked the means to engage in litigation. Perhaps, as the Supreme court said, "African slavery was well understood in this country" and hence required no interpretation.⁷⁶

Whatever the reason may have been, enforcement of Section 2 of the Amendment would abate until the 1968 case of *Jones v. Alfred H. Mayer Co.*⁷⁷

C. Scope of Coverage

1. Encouraging Free Labor

It appears that during the first decade after the Civil Rights Act's enactment, most federal courts treated it as constitutional.⁷⁸ This is illustrated by the federal cases of *In re Turner*,⁷⁹ which involved the "apprenticeship" of former slave children,⁸⁰ and *United States v. Rhodes*,⁸¹ which involved discrimination against black testimony in Kentucky courts.⁸²

During this same period of time, a number of state courts reviewed this Act and found it to be constitutional.⁸³ According to Howard Devon Hamilton, "the act was held constitutional by the supreme courts of Louisiana, Indiana, and California."⁸⁴ However, the Kentucky Supreme Court foreshadowed future narrow construction of the Act by federal courts in holding the Act invalid on the grounds that

75. See, e.g., *id.* at 204-05 ("In much of the South, the courts of Presidential Reconstruction appeared more interested in disciplining the black population and forcing it to labor than in dispensing justice.").

76. Hamilton, *supra* note 55, at 55.

77. 392 U.S. 409, 419-20 (1968).

78. Hamilton, *supra* note 55, at 64.

79. 24 F. Cas. 337 (C.C.D. Md. 1867) (No. 14,247).

80. *Id.* at 339.

81. 27 F. Cas. 785 (C.C.D. Ky. 1866) (No. 16,151).

82. *Id.* at 785-86, 794.

83. See Hamilton, *supra* note 55, at 65.

84. *Id.* (citing *Hart v. Hoss & Elder*, 26 La. Ann. 90 (1874), *Smith v. Moody*, 26 Ind. 299 (1866), and *People v. Washington*, 36 Cal. 658 (1869)).

[t]he Amendment did nothing but free the slave from his master; it did not give him the rights of the white race, nor in any way diminish state jurisdiction over him. "Slavery had an explicit, well-defined, and thoroughly understood meaning. . . . To say that the power to abolish slavery includes the right to make the freedman a competent witness, is simply an absurdity."⁸⁵

The first of the Federal Supreme Court cases interpreting the Thirteenth Amendment was the *Slaughter-House Cases* in 1873.⁸⁶ The cases posed a challenge to a Louisiana statute which granted the Crescent City Stock Landing and Slaughter-House Company (Crescent City) a monopoly to operate a slaughterhouse within the region of New Orleans.⁸⁷ The petitioner, a butcher who was denied the right to operate a slaughterhouse by dint of the monopoly granted to Crescent City, argued that the statute amounted to an involuntary servitude under the Thirteenth Amendment because the statute which created it also deprived one class of persons of their property or freedom to pursue their occupation and violated the Fourteenth Amendment by abridging the Privileges and Immunities Clause.⁸⁸

In construing the Thirteenth Amendment claim, the Court acknowledged that the rights accorded by Section 1 of the Amendment were not limited to freed slaves.⁸⁹ Rather, the Amendment was an absolute prohibition against slavery in all its forms.⁹⁰ The Court noted:

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent.⁹¹

85. *Id.* at 66 (quoting *Bowlin v. Commonwealth*, 65 Ky. (2 Bush) 5 (1867)).

86. *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873).

87. *Id.* at 57.

88. *Id.* at 43, 55.

89. *Id.* at 72.

90. *Id.*

91. *Id.*

Having affirmed the broad scope of Section 1 of the Thirteenth Amendment, the Court went on to say that the legislation in question imposed a servitude upon the land, not upon the individual petitioners.⁹² Moreover, the Court determined that the “privileges and immunities” referred to by the petitioners “lay within the constitutional and legislative power of the States, and without that of the Federal government,”⁹³ thereby shifting the enforcement of individual rights back to the states.

The federal courts would soon have another opportunity to interpret the scope of the Thirteenth Amendment. In *United States v. Cruikshank*,⁹⁴ the question was raised as to whether the amendment reached private conduct other than forced labor.⁹⁵ Although the indictment on which the case was based was dismissed for over-breadth, the court confirmed in dictum that the Thirteenth Amendment allowed Congress to eliminate the “badge of servitude.”⁹⁶

2. Eradicating the “Badges of Slavery”

The *Civil Rights Cases*,⁹⁷ which were decided by the Supreme Court in 1883, foreshadowed a shift in the Court’s interpretation of the Thirteenth Amendment. These consolidated cases involved a challenge to Sections 1 and 2 of the Civil Rights Act,⁹⁸ passed by Congress on March 1, 1875.⁹⁹

92. *Id.* at 61.

93. *Id.* at 77.

94. 25 F. Cas. 707 (C.C.D. La. 1874) (No. 14,897).

95. *Id.* at 708-09.

96. *Id.* at 711.

97. 109 U.S. 3 (1883).

98. *Id.* at 5.

99. Act of Mar. 1, 1875, ch. 114, 18 Stat. 335. The sections of the law that were challenged provide:

[Sec. 1]. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

Sec. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall, also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year

Enacted pursuant to the Enforcement Clause of the Thirteenth Amendment, the purpose of the 1875 Act was to eradicate the badges of slavery.¹⁰⁰ It prohibited denying persons equal access to public accommodations and services on the basis of race, color, or previous condition of servitude.¹⁰¹ The cases did not all arise in the antebellum South. Plaintiffs were drawn from California, Kansas, Missouri, New York, and Tennessee.¹⁰² This was probably not coincidental. According to historian Eric Foner, some Blacks became active participants in exercising their newly created rights after enactment of the Civil Rights Act.¹⁰³

Large parts of the black belt remained untouched by organized politics, but many blacks were aware of Congressional debates on Reconstruction policy, and quickly employed on their own behalf the Civil Rights Act of 1866. "The negro of today," remarked a correspondent of the New Orleans *Tribune* in September 1866, "is not the same as he was six years ago. . . . He has been told of his rights, which have long been robbed."¹⁰⁴

The threshold issue the *Civil Rights Cases* presented the Court was whether sections 1 and 2 of the Civil Rights Act of 1875 were unconstitutional.¹⁰⁵ First, the Court examined the Thirteenth Amendment, which it acknowledged abolished slavery in all its forms, and authorized Congress to enact necessary legislation to abolish the badges and incidents of slavery in the United States.¹⁰⁶ Next, the Court turned to the issue of whether "the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theatre, does subject that person to any form of servitude, or tend to fasten upon him any badge of slavery."¹⁰⁷ The Court concluded that "such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it is violative of any right of the party, his redress is

Id. ch. 114, 18 Stat. at 336.

100. *See id.* ch. 114, 18 Stat. at 336.

101. *Id.*

102. *See The Civil Rights Cases*, 109 U.S. at 3. The cases consolidated as the *Civil Rights Cases* were: *United States v. Stanley*, *United States v. Ryan*, *United States v. Nichols*, *United States v. Singleton*, and *Robinson v. Memphis & Charleston Railway Co.* *Id.*

103. *See FONER, supra* note 18, at 118.

104. *Id.* at 118-19 (alteration in original) (citing WILLIAM C. HARRIS, *THE DAY OF THE CARPETBAGGER* 96 (1979)); *see also* CIVIL WAR DESK REFERENCE, *supra* note 5, at 216 ("Even as they campaigned for the emancipation of slaves, free blacks in the North also focused their efforts on obtaining voting rights, ending discriminatory laws, and serving in the Union army. Together with white abolitionists, they challenged accepted practices at both the national and state levels.").

105. *The Civil Rights Cases*, 109 U.S. at 8-9.

106. *Id.* at 23.

107. *Id.* at 21.

to be sought under the laws of the State,"¹⁰⁸ thereby marking a shift in authority from the federal to the state level when individual rather than state infringements on the rights of freedmen were implicated. In so holding, the Court noted that

[w]hen a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.¹⁰⁹

In the aftermath of this decision, the Thirteenth Amendment ceased to be an effective tool in combating the residual effects of the institution of slavery. As one legal analyst noted:

In the political, social, economic and judicial history of the United States, the Thirteenth Amendment has had a minor, even an insignificant part. Its history, subsequent to enactment, has never lived up to its historic promise as the "grand yet simple declaration of the personal freedom of all of the human race within the jurisdiction of this government."¹¹⁰

This characterization is corroborated by the case law of the period. Sections 1 and 2 of the Thirteenth Amendment and its enabling statutes provided viable legal tools for combating involuntary servitude and peonage but not the badges of slavery. For example, in the early 1900s a number of cases were filed in the federal court system challenging the practice of debt bondage, which had established itself in the former Confederacy.¹¹¹

108. *Id.* at 24.

109. *Id.* at 25.

110. Jacobus tenBroek, *Thirteenth Amendment to the Constitution of the United States: Consummation to Abolition and Key to the Fourteenth Amendment*, 39 CAL. L. REV. 171, 171 (1951) (quoting *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 69 (1872)).

111. See Harry H. Shapiro, *Involuntary Servitude: The Need for a More Flexible Approach*, 19 RUTGERS L. REV. 65, 73-74 (1964) ("Peonage or debt bondage was endemic to the social, economic and legal traditions of the Latin American countries, particularly Mexico, but was a system different from slavery. It was present in the New Mexico Territory when that territory was acquired from the Republic of Mexico, and was commonly known as the 'Mexican System.' Despite the enactment in 1867 of the Anti-Peonage Act, a debt bondage, although disappearing in New Mexico, found ready acceptance in some parts of the former Confederacy, where the former slave owner and others saw in the emancipated, but illiterate, propertyless, and unskilled Negro a source of cheap labor. It was in reality a condition of slavery without the holding in property of the Negro." (footnote omitted)).

Commencing with the *Peonage Cases*,¹¹² the federal courts delineated what legally constitutes a condition of involuntary servitude or peonage (debt bondage).¹¹³ Challenges to the constitutionality of the Anti-Peonage Act were unsuccessful.¹¹⁴ Between 1906 and 1947, courts would hear peonage cases arising in South Carolina,¹¹⁵ Florida,¹¹⁶ Georgia,¹¹⁷ Alabama,¹¹⁸ and California.¹¹⁹ Whether acting pursuant to a state criminal statute or a personal labor contract, the elements that were present in each case were the use of physical coercion and threats of legal action to force the individual to continue working for the defendant.¹²⁰ In the instance of peonage, the added element that kept the worker from leaving was his alleged indebtedness to the employer.¹²¹

In the late 1930s, the Department of Justice established a separate division of Civil Rights.¹²² As a result of this, the Department of Justice embarked on a campaign to more aggressively enforce the civil rights statutes enacted pursuant to the Thirteenth Amendment. A concomitant of this campaign was a strategy to breathe life back into this Amendment as a tool for eradicating the badges and incidents of slavery.¹²³ By the 1960s, the Civil Rights Division of the Department of Justice was actively prosecuting involuntary servitude and peonage cases and complaints.¹²⁴ According to statistics compiled by the division's Appeals and Research Section, between 1961 and 1963 the division handled 104 complaints from thirty-one different states.¹²⁵

In 1963, the case of *Jones v. Alfred H. Mayer Co.*,¹²⁶ breathed life back into Section 2 of the Thirteenth Amendment when the Supreme Court

112. 123 F. 671 (M.D. Ala. 1903).

113. *See id.* at 673-75.

114. *See, e.g.,* *Clyatt v. United States*, 197 U.S. 207, 218 (1905).

115. *See, e.g.,* *United States v. Clement*, 171 F. 974, 974-75 (D.S.C. 1909).

116. *See, e.g.,* *Davis v. United States*, 12 F.2d 253, 254 (5th Cir. 1926).

117. *See, e.g.,* *Taylor v. Georgia*, 315 U.S. 25, 29 (1942).

118. *See, e.g.,* *Bailey v. Alabama*, 219 U.S. 219, 227 (1911).

119. *See, e.g.,* *United States v. Ingalls*, 73 F. Supp. 76, 77 (S.D. Cal. 1947).

120. *See Taylor*, 315 U.S. at 29; *Bailey*, 219 U.S. at 244; *Clyatt v. United States*, 197 U.S. 207, 219 (1905); *Davis*, 12 F.2d at 255; *Ingalls*, 73 F. Supp. at 78; *Clement*, 171 F. at 976.

121. *See, e.g., Taylor*, 315 U.S. at 29; *Bailey*, 219 U.S. at 228-29; *Davis*, 121 F.2d at 256; *Clement*, 171 F. at 976.

122. Risa L. Goluboff, *The Thirteenth Amendment and the Lost Origins of Civil Rights*, 50 DUKE L.J. 1609, 1616 (2001).

123. *Id.* at 1639-40.

124. *See Shapiro, supra* note 111, app. at 85.

125. *See id.* But *see Goluboff, supra* note 122, at 1682 n.280. Goluboff suggests that from the 1950s onward, the Department of Justice abandoned the Thirteenth Amendment in favor of the Fourteenth Amendment in its civil rights strategy. *See id.*

126. 392 U.S. 409 (1968).

held that housing discrimination constituted a badge of slavery and was constitutionally prohibited.¹²⁷ In more recent decades, courts have seen a flurry of Thirteenth Amendment challenges brought by a wide array of plaintiffs.¹²⁸ The cases fall into one of two broad categories. The central theme of the first category of cases is government activity that is deemed to be oppressive to or infringe upon the freedoms of individual citizens.¹²⁹ It is the second category, which focuses on employment and similar relationships between private parties,¹³⁰ that is relevant for purposes of this Article.

Although the more recent cases arise in a variety of factual contexts, the elements that must be satisfied to prevail are the same. If the allegation is involuntary servitude, there must be legal or physical coercion and an inability of the victim to leave.¹³¹ If the allegation is peonage, there must also be indebtedness to the employer.¹³² For example, in a recent Fourth Circuit case, the court ruled that charging migrant workers for their groceries, forbidding them to leave camp until all debts were paid, and threatening the workers with beatings and death violated both the criminal ban on slavery and the Thirteenth Amendment.¹³³ A federal court also has held that a residential institution for the mentally disabled must limit inmate work duties to those reasonably related to therapeutic treatment.¹³⁴ However, the courts have determined that some forms of coerced labor are permissible. These included requiring extended active duty by an Air Force enlistee pursuant to an enlistment contract,¹³⁵ allowing school districts to require students to complete hours of community service as a condition of

127. *Id.* at 438-39.

128. *See, e.g.*, cases cited *infra* notes 129-30.

129. *See, e.g.*, *Dublino v. N.Y. Dep't of Soc. Servs.*, 348 F. Supp. 290, 295 (W.D.N.Y. 1972), *rev'd on other grounds*, 413 U.S. 405 (1973) (challenge to work requirements in state welfare program); *Immediato ex rel. Immediato v. Rye Neck Sch. Dist.*, 873 F. Supp. 846, 851 (S.D.N.Y. 1995), *aff'd*, 73 F.3d 454 (2d Cir. 1996) (challenge to a high school's requirement that students perform community service in order to graduate from high school).

130. *See, e.g.*, *United States v. Gaskin*, 320 U.S. 527, 527 (1944) (deciding whether the acts of holding, arresting, or returning to peonage constitute three distinct offenses); *Davis v. United States*, 12 F.2d 253, 254 (5th Cir. 1926) (determining whether a party charged with aiding and abetting who did not actually make arrest of persons returned to peonage was entitled to acquittal); *Bernal v. United States*, 241 F. 339, 341-42 (5th Cir. 1917) (holding an employee against his will to pay a debt constitutes peonage).

131. *See, e.g.*, *United States v. Booker*, 655 F.2d 562, 566 (4th Cir. 1981).

132. *See, e.g.*, *Dolla v. Unicast Co.*, 930 F. Supp. 202, 204-05 (E.D. Pa. 1996).

133. *See Booker*, 655 F.2d at 563-64.

134. *See Widenfeller v. Kidulis*, 380 F. Supp. 445, 450-51 (E.D. Wis. 1974).

135. *See Lonchyna v. Brown*, 491 F. Supp. 1352, 1353-54 (N.D. Ill. 1980).

graduation,¹³⁶ requiring recipients of public assistance to work as a condition of eligibility for benefits,¹³⁷ and requiring attorneys to represent indigent defendants pro bono.¹³⁸

Efforts continue to extend the reach of the Thirteenth Amendment.¹³⁹ However, for the present, in order to prevail in a suit alleging a violation of Section 1 of the Thirteenth Amendment, a plaintiff will have to prove that he was "compelled by force, coercion, or imprisonment and against his will to labor for another whether or not he is paid."¹⁴⁰ If the victim has an alternative to the employment in question, albeit an unpleasant one, the test for involuntary servitude may not be satisfied.¹⁴¹ While the court may consider the characteristics of the individual victim, the coercion must be physical or legal.¹⁴² If the coercion is primarily psychological, the courts are unlikely to find that the conduct rises to the level of involuntary servitude.¹⁴³

D. Applicability to Modern-Day Trafficking

Section 1 of the Thirteenth Amendment embodies an absolute prohibition against slavery, involuntary servitude, and peonage.

136. See *Immediato ex rel. Immediato v. Rye Neck Sch. Dist.*, 873 F. Supp. 846, 851 (S.D.N.Y. 1995); *Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989, 1000 (3d Cir. 1993).

137. See *Brogan v. San Mateo County*, 901 F.2d 762, 764 (9th Cir. 1990).

138. *United States v. DeLaCruz*, 870 F.2d 1192, 1194 (7th Cir. 1989).

139. See Karen Goss, *The Debtor as Modern Day Peon: A Problem of Unconstitutional Conditions*, 65 NOTRE DAME L. REV. 165, 201-05 (1990); Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207, 251 (1992).

140. See 16A C.J.S. *Constitutional Law* § 482 (1984).

141. See *United States v. Shackney*, 333 F.2d 475, 486 (2d Cir. 1964) ("But a holding in involuntary servitude means to us action by the master causing the servant to have, or to believe he has, no way to avoid continued service or confinement, in Mr. Justice Harlan's language, 'superior and overpowering force, constantly present and threatening,'—*not a situation where the servant knows he has a choice between continued service and freedom, even if the master has led him to believe that the choice may entail consequences that are exceedingly bad.*" (emphasis added) (citation omitted) (quoting *Hodges v. United States*, 203 U.S. 1, 34 (1906) (Harlan, J., dissenting))).

142. See *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

143. See *id.* at 949-50 ("The Government has argued that we should adopt a broad construction of 'involuntary servitude,' which would prohibit the compulsion of services by any means that, from the victim's point of view, either leaves the victim with no tolerable alternative but to serve the defendant or deprives the victim of the power of choice. Under this interpretation, involuntary servitude would include compulsion through psychological coercion as well as almost any other type of speech or conduct intentionally employed to persuade a reluctant person to work. This interpretation would appear to criminalize a broad range of day-to-day activity Under such a view, the statutes would provide almost no objective indication of the conduct or condition they prohibit, and thus would fail to provide fair notice to ordinary people who are required to conform their conduct to law." (citations omitted)).

Coverage under this Amendment does not hinge upon citizenship. Rather, the applicability of the Amendment turns on the conditions of employment and the impact of those conditions on the employee(s).¹⁴⁴ In other words, has the employer used physical or legal coercion? Has the impact of that coercion subordinated the will of the employee to the point that he believes that he has no other option but to continue working for the employer despite the slave-like conditions of employment?

The jobs in which victims of modern-day trafficking are placed are diverse. Depending upon the trafficking organization and the country of origin of the victim,¹⁴⁵ trafficked workers may be placed as agricultural laborers, garment workers in the clothing industry, household domestics, food industry workers, or prostitutes.¹⁴⁶ These placements have much in common. The victims are usually isolated and deprived of a support system.¹⁴⁷ They may be housed in overcrowded barracks or dormitories.¹⁴⁸ Usually, they are denied contact by mail or telephone with friends and family.¹⁴⁹ They are monitored when they leave the workplace or dormitory.¹⁵⁰ They are frequently verbally and physically abused.¹⁵¹ Their passports, visas, and return airplane tickets often are withheld from them by the trafficker.¹⁵² They are required to work off the cost of their passage to the United States, room and board, and any incidentals provided by the employer at exorbitant rates.¹⁵³ Despite these deplorable conditions, the victims often remain in their jobs because they fear prosecution because of their illegal immigration status or threats of harm to their families.¹⁵⁴

In a recent case involving a former domestic worker, an employee sued for various tort claims and involuntary servitude.¹⁵⁵ She alleged that her employers tricked her into accompanying them from the Philippines to the United States.¹⁵⁶ Once in the United States, she was forced to live in

144. See *supra* text accompanying notes 131-38.

145. See RICHARD, *supra* note 19, at v, 3.

146. *Id.*

147. *Id.* at 5, 25.

148. See *id.* at 25, 48.

149. See *id.* at 5.

150. See *Manliguez v. Joseph*, 226 F. Supp. 2d 377, 382 (E.D.N.Y. 2002); RICHARD, *supra* note 19, at 25-26.

151. RICHARD, *supra* note 19, at 25.

152. *Id.* at 25, 48.

153. *Id.* at 25.

154. See *id.*

155. *Manliguez*, 226 F. Supp. 2d at 380.

156. *Id.*

crowded quarters with the family.¹⁵⁷ In addition to running the household, she was expected to provide childcare for the family's three children.¹⁵⁸ She worked from 4:00 a.m. to 10:30 p.m. every day for seven days a week.¹⁵⁹ Her employers denied her sick days and vacation days.¹⁶⁰ They controlled her food supply.¹⁶¹ She was emotionally abused and physically isolated.¹⁶² The family denied her a means of exiting their apartment and monitored her movements on those occasions when she was allowed to leave the apartment.¹⁶³ She was not allowed to use the household telephone to call her mother in the Philippines and her employer withheld mail sent to her by her family.¹⁶⁴ Her wages "were wired to her bank account in the Philippines for her mother's use."¹⁶⁵ For two years of employment, the plaintiff received only \$1050 for her wages.¹⁶⁶

Relying on the definition of involuntary servitude enunciated by the Supreme Court in *United States v. Kozminski*,¹⁶⁷ the court held that

[t]hese [Plaintiff's] allegations describe acts of barbarism and unrelenting mental brutality reminiscent of the gulag memorialized by Aleksandr Solzhenitsyn in his novel entitled *One Day in the Life of Ivan Denisovich*. Consequently, I find that Plaintiff has stated a claim for involuntary servitude and is entitled to pursue civil relief for Defendants' alleged violation of her civil rights.¹⁶⁸

Ms. Manliguez's conditions of employment are fairly representative of those of other victims of modern-day trafficking.¹⁶⁹ Consequently, as one commentator noted, this "modern, third-generation form of slavery . . . implicates the core concerns of the Thirteenth Amendment. Modern victims' work is performed under various forms of physical or

157. *Id.* at 380-81.

158. *Id.* at 381.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 381-82.

163. *Id.*

164. *Id.* at 382.

165. *Id.* at 381.

166. *Id.*

167. 487 U.S. 931 (1988).

168. *Manliguez*, 226 F. Supp. 2d at 384-85.

169. See, e.g., *Jane Doe I v. Reddy*, No. C 02-05570WHA, 2003 WL 23893010, at *1 (N.D. Cal. Aug. 4, 2003) ("Plaintiffs claim defendants fraudulently induced them to come to the United States from India on false promises that they would be provided an education and employment opportunities, but then forced them to work long hours under arduous conditions for pay far below minimum wage and in violation of overtime laws, and sexually abused and physical [sic] beat them.").

psychological threat as well as under conditions that deprive victims of essential aspects of their humanity, rendering their labor coerced rather than free.”¹⁷⁰

E. Effectiveness as a Remedy

The government currently implements the Thirteenth Amendment through a series of criminal statutes.¹⁷¹ These statutes have been used to “convict defendants for activities ranging from employing migrant farm laborers to forced prostitution, and they have potential application in a broad range of trafficking cases.”¹⁷² However, these statutes do not create a private civil cause of action for victims of trafficking.¹⁷³ Consequently, a victim of trafficking must first meet the challenge of establishing a legal basis for a private cause of action. Arguments in support of a private cause of action are predicated on the assumption that “[t]he Thirteenth Amendment is self-executing. It needs no ancillary legislation to give it effect. Because it is an absolute prohibition on the existence of slavery, private actors are liable for breaching the Thirteenth Amendment.”¹⁷⁴

In practice, whether a victim will be permitted to bring an implied private cause of action under one of the criminal civil rights statutes will depend upon the judicial circuit in which his case is brought. The court in the *Manliguez* case cautioned that “[t]he Supreme Court has yet to recognize that a private cause of action exists for involuntary servitude under the Thirteenth Amendment.”¹⁷⁵ However, the *Manliguez* court concluded that

recognizing a private civil cause of action for involuntary servitude would be consistent with the underlying legislative purpose of section 1584 because it would provide a victim with a direct and efficient means of protecting his or her rights and deter potential offenders from engaging in behavior that the statute was designed to prohibit.¹⁷⁶

170. Baher Azmy, *Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda*, 71 *FORDHAM L. REV.* 981, 1035 (2002).

171. See 18 U.S.C. §§ 1581-1584 (2000).

172. Young, *supra* note 28, at 82.

173. See Azmy, *supra* note 170, at 1036-37 (“Congress has not yet created a civil cause of action for violations of the Thirteenth Amendment.”); see also *Turner v. Unification Church*, 473 F. Supp. 367, 373-76 (D.R.I. 1978), *aff’d*, 602 F.2d 458 (1st Cir. 1979).

174. Samantha C. Halem, *Slaves To Fashion: A Thirteenth Amendment Litigation Strategy To Abolish Sweatshops in the Garment Industry*, 36 *SAN DIEGO L. REV.* 397, 416 (1999) (footnote omitted).

175. *Manliguez v. Joseph*, 226 F. Supp. 2d 377, 383 n.7 (E.D.N.Y. 2002).

176. *Id.* at 384.

In doing so, it cautioned that “[s]ome courts in other circuits have declined to extend civil liability for section 1584 claims.”¹⁷⁷

If a victim can establish that a private civil cause of action exists under the Thirteenth Amendment enabling statutes, there is still a question as to what he is entitled to as a remedy. One legal analyst has suggested that a victim could seek restitution but cites no cases in which the courts have granted restitution or other damages to victims of involuntary servitude.¹⁷⁸ Another has suggested that restrictive judicial construction of the Thirteenth Amendment presents a significant obstacle to plaintiffs invoking it effectively.¹⁷⁹ In the absence of a private cause of action that allows the remedy of damages, a favorable decision is little more than a pyrrhic victory.

In sum, although the goal of the Thirteenth Amendment is to prohibit involuntary servitude and to interdict it when it occurs, it still does not provide an adequate remedy for victims of human trafficking. Modern-day slavery has become a transnational business; consequently, it demands a transnational solution. While the Thirteenth Amendment can address trafficking within the United States, it cannot be used to interdict trafficking in the countries of origin or transit. Moreover, there is nothing intrinsic in the Thirteenth Amendment or its construction by the courts that protects victims of trafficking as witnesses in court proceedings or insulates them from immigration proceedings. It is, in fact, a remedy of limited effectiveness.

III. THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

A. Legislative Background

What is deemed by some courts to be implicit in the Thirteenth Amendment, a private cause of action and the right to damages, is explicitly provided for in the Racketeer Influenced and Corrupt Organizations Act (RICO).¹⁸⁰ RICO was enacted as Title IX of the

177. *Id.* at 384 n.8.

178. *See* Halem, *supra* note 174, at 416.

179. *See* Lauren Kares, Note, *The Unlucky Thirteenth: A Constitutional Amendment in Search of a Doctrine*, 80 CORNELL L. REV. 372, 380 (1995) (“Judicial deference to Congress’ role as interpreter of the Thirteenth Amendment creates a considerable barrier to plaintiffs seeking to vindicate Thirteenth Amendment-based rights. Although federal legislation may create a cause of action against conduct that Congress perceives to be a badge of slavery, plaintiffs cannot challenge actions that they believe are badges of slavery in the absence of specific congressional authorization.” (footnote omitted)).

180. *See* 18 U.S.C. § 1964 (2000).

Organized Crime Control Act of 1970.¹⁸¹ It was enacted pursuant to a congressional determination that

(1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.¹⁸²

The statutory scheme enacted as the Organized Crime Control Act of 1970, which included RICO, was comprehensive. It created the authority for special grand juries,¹⁸³ established "use" immunity rather than "transaction" immunity in designated proceedings,¹⁸⁴ codified the current

181. Pub. L. No. 91-452, § 901, 84 Stat. 922, 941 (1970) (codified as amended at 18 U.S.C. §§ 1961-1968).

182. *Id.*, 84 Stat. at 922-23.

183. H.R. REP. NO. 91-1549, at 32 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4007, 4007; *see also* 18 U.S.C. §§ 3331-3334 (2000).

184. H.R. REP. NO. 91-1549, at 32-33, *reprinted in* 1970 U.S.C.C.A.N. at 4007-08; *see also* 18 U.S.C. § 6002.

civil contempt practices with regard to recalcitrant witnesses,¹⁸⁵ established a new “false declaration provision applicable in Federal grand jury and court proceedings,”¹⁸⁶ authorized the Attorney General to “protect and maintain Federal or State organized crime witnesses and their families,”¹⁸⁷ and authorized the government to “preserve testimony by the use of a deposition in a criminal proceeding.”¹⁸⁸ The Act also authorized limiting the “disclosure of information illegally obtained by the Government to defendants who seek to challenge . . . [its] admissibility,”¹⁸⁹ made it illegal to operate illegal gambling businesses,¹⁹⁰ created a criminal and civil cause of action against “Racketeer Influenced and Corrupt Organizations,”¹⁹¹ provided for extended sentences for “dangerous adult special offenders,”¹⁹² and established new federal controls “over the interstate and foreign commerce of explosives.”¹⁹³ Perhaps in acknowledgement of criticism that the legislation conferred unfettered law enforcement authority,¹⁹⁴ a National Commission on Individual Rights was also established whose mandate was

to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries and to special offender sentencing authorized under this act, wiretapping and electronic surveillance, bail reform, and preventive detention, no-knock search warrants, and the accumulation of data on

185. H.R. REP. NO. 91-1549, at 33, *reprinted in* 1970 U.S.C.C.A.N. at 4008; *see also* 28 U.S.C. § 1826 (2000).

186. H.R. REP. NO. 91-1549, at 33, *reprinted in* 1970 U.S.C.C.A.N. at 4008; *see also* 18 U.S.C. § 1623.

187. H.R. REP. NO. 91-1549, at 32-33, *reprinted in* 1970 U.S.C.C.A.N. at 4008.

188. *Id.* at 33-34, *reprinted in* 1970 U.S.C.C.A.N. at 4009; *see also* 18 U.S.C. § 3503 (repealed 2002).

189. H.R. REP. NO. 91-1549, at 34, *reprinted in* 1970 U.S.C.C.A.N. at 4009; *see also* 18 U.S.C. § 3504(a)(2).

190. H.R. REP. NO. 91-1549, at 34, *reprinted in* 1970 U.S.C.C.A.N. at 4009; *see also* 18 U.S.C. § 1955.

191. H.R. REP. NO. 91-1549, at 35, *reprinted in* 1970 U.S.C.C.A.N. at 4010; *see also* 18 U.S.C. §§ 1961-1968 (2000 & Supp. 2002), *amended by* 18 U.S.C.A. § 1961 (West Supp. 2005).

192. H.R. REP. NO. 91-1549, at 35, *reprinted in* 1970 U.S.C.C.A.N. at 4010; *see also* 18 U.S.C. §§ 3575-3576 (1982) (repealed 1984).

193. H.R. REP. NO. 91-1549 at 36, *reprinted in* 1970 U.S.C.C.A.N. at 4011; *see also* 18 U.S.C. §§ 841-848 (2000 & Supp. 2002), *amended by* 18 U.S.C.A. §§ 842, 844-845 (West Supp. 2005).

194. H.R. REP. NO. 91-1549 at 185, *reprinted in* 1970 U.S.C.C.A.N. at 4081 (“[I]t [Title IX] runs amuck. It embodies poor draftsmanship, and it employs penalties and investigative procedures which are both abusive and pregnant with the potential for abuse.”).

individuals by Federal agencies as authorized by law or acquired by executive action.¹⁹⁵

Since its enactment, RICO has been amended on numerous occasions. The amendments have extended the reach of RICO to include "trafficking in contraband cigarettes,"¹⁹⁶ interstate transportation of stolen vehicles and stolen vehicle parts,¹⁹⁷ witness tampering,¹⁹⁸ the sexual exploitation of children,¹⁹⁹ and financial institution fraud.²⁰⁰ Of particular relevance to this Article are the recent amendments that address passport and visa fraud in conjunction with peonage and slavery, illegal smuggling of aliens, and add peonage, slavery, and trafficking in persons to the statutory definition of "racketeering activity."²⁰¹

Given the breadth of the RICO statute, it should come as no surprise that both criminal and civil applications of RICO have provoked heated debate. As one legal analyst noted:

Since its enactment in 1970, the Racketeer Influenced and Corrupt Organizations Act ("RICO") has been one of the most controversial of federal statutes. Its criminal provisions are both novel and stringent, and apply to a greater range of conduct than any other criminal law. Its private civil provisions not only expand the scope of federal civil jurisdiction to cover most business torts but also materially alter the balance of power between plaintiffs and defendants. And under RICO's so-called "government civil" provisions, the state can assert control over entire businesses and organizations.

During the 1990s many of the fundamental questions regarding RICO's scope and power were resolved. Nevertheless, the statute remains difficult to apply because its terms are artificial and not easily correlated with everyday experiences.²⁰²

195. *Id.* at 36, reprinted in 1970 U.S.C.C.A.N. at 4011-12.

196. Act of Nov. 2, 1978, Pub. L. No. 95-575, § 3(c), 92 Stat. 2463, 2465-66 (amending 18 U.S.C. § 1961(1)(B)).

197. Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. No. 98-547, §§ 204-205, 98 Stat. 2754, 2770 (amending 18 U.S.C. § 1961(1)).

198. Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 50, 100 Stat. 3592, 3605 (amending 18 U.S.C. § 1961(a)).

199. Minor and Technical Criminal Law Amendments Act of 1988, Pub. L. No. 100-690, § 7054, 102 Stat. 4395, 4402 (amending 18 U.S.C. § 1961(1)(B)).

200. Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, § 968, 103 Stat. 183, 506 (amending 18 U.S.C. § 1961(1)).

201. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 433, 110 Stat. 1214, 1274 (amending 18 U.S.C. § 1961(1)).

202. Jed S. Rakoff, *The Fundamentals of RICO*, in *RICO: CIVIL AND CRIMINAL LAW AND STRATEGY* § 1.01, at 1-3 (Jed S. Rakoff & Howard W. Goldstein eds., 2000) (footnote omitted).

A part of this controversy may be attributed to the fact that the number of cases filed under civil RICO has increased progressively over the past two decades.²⁰³ Many of these cases are now perceived by critics of civil RICO to raise “pedestrian fraud claims”²⁰⁴ and issues that Congress did not intend to cover with the RICO statute.²⁰⁵

B. Scope of Coverage

1. The Predicate Elements of a RICO Claim

In order to prevail in a civil RICO claim, a plaintiff must establish that the defendant has engaged in one or more of the four categories of conduct prohibited by the statute.²⁰⁶ These categories are enumerated in 18 U.S.C. § 1962 and include:

(1) using or investing any income derived from a “pattern of racketeering activity” to acquire an interest in or to establish an “enterprise”;

(2) acquiring or maintaining an interest in or control of an “enterprise” through “a pattern of racketeering activity”;

(3) conducting or participating in an “enterprise’s” “pattern of racketeering activity” whether as an employee or an associate; or

(4) conspiring to violate any of the above.²⁰⁷

The burden is on a plaintiff who files a RICO action to plead the elements of the cause with specificity. He must allege the “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity” and “show that (5) he was injured in his business or property (6) by reason of the RICO violation.”²⁰⁸ If a plaintiff is able to prove each of these elements, he is entitled to recover treble damages for the injury he has sustained and the cost of the suit, including attorney’s fees,²⁰⁹

203. See William J. Hughes, *RICO Reform: How Much Is Needed?*, 43 VAND. L. REV. 639, 644 (1990).

204. Michael P. Kenny, *Escaping the RICO Dragnet in Civil Litigation: Why Won’t the Lower Courts Listen to the Supreme Court?*, 30 DUQ. L. REV. 257, 257 (1992).

205. William H. Rehnquist, Chief Justice, U.S. Supreme Court, *Reforming Diversity Jurisdiction and Civil RICO*, Address at the Eleventh Seminar on the Administration of Justice (Apr. 7, 1989), in 21 ST. MARY’S L.J. 5, 9 (1989) (“[C]ivil RICO is now being used in ways that Congress never intended when it enacted the statute in 1970. Most of the civil suits filed under the statute have nothing to do with organized crime. They are garden-variety civil fraud cases of the type traditionally litigated in state courts.”).

206. Gary P. Naftalis, *Civil RICO: Basic Applications*, in RICO: CIVIL AND CRIMINAL LAW AND STRATEGY, *supra* note 202, § 2.01, at 2-3.

207. *Id.* (footnotes omitted) (citing 18 U.S.C. § 1962(a)-(d) (2000)).

208. D’Addario v. Geller, 264 F. Supp. 2d 367, 388 (E.D. Va. 2003) (citation omitted).

209. 18 U.S.C. § 1964(c).

provided that the injury for which he seeks compensation is a quantifiable injury to business or property, not personal injury.²¹⁰

The expansion of RICO jurisdiction and the breadth of authority it confers on law enforcement agencies and private parties necessitates that the courts play a significant role in its interpretation.²¹¹ Consequently, there is substantial case law (though not necessarily judicial consensus among the circuits) on what constitutes each of the enumerated elements of a RICO civil action.²¹² As a result, courts have been challenged to apply the RICO provisions to an interesting array of defendants. Parties ranging from governmental entities to television programs have been sued pursuant to civil RICO.²¹³

The civil component of RICO effectuates the “congressional objective of encouraging civil litigation to supplement Government efforts to deter and penalize . . . prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors . . . dedicated to eliminating racketeering activity.”²¹⁴ While civil RICO litigants will not be held to the same evidentiary standards applied in a criminal RICO prosecution, they will be required to plead the elements of a civil RICO claim with specificity and to prove each element.²¹⁵ “Further, a substantial majority of courts require that the complaint state the time, place, and content of the fraudulent misrepresentations” and the individual roles of each party to the fraudulent activity.²¹⁶

In order to effectively prosecute a case under civil RICO, certain factual predicates must be satisfied. The plaintiff must allege that a person has employed a “pattern of racketeering activity”²¹⁷ or the proceeds of racketeering activity in a manner that affects an interstate

210. Stephen D. Brown & Alan M. Lieberman, *RICO Basics: A Primer*, 35 VILL. L. REV. 865, 867 (1990).

211. *Id.* at 866 (“The development of RICO as a private civil cause of action has taken the statute far beyond its original purposes. The basic elements of the statute define organized crime. Yet this definition is not limited to the traditional concept of the gangster or the mob involved in narcotics, prostitution, illegal gambling, extortion, contract murder, contract arson and similar conduct associated with traditional organized criminal elements in the United States. RICO defendants can be a Fortune 100 company and its CEO just as easily as Nicky Scarfo and La Cosa Nostra.”).

212. *Id.* at 865.

213. *See, e.g.*, *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 233 (1989) (adjudicating a suit against a telephone company by customers alleging it gave members of the state public utilities commission bribes to influence their rate schedule decisions); *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 121 (5th Cir. 1996).

214. *Rotella v. Wood*, 528 U.S. 549, 557 (2000).

215. Rakoff, *supra* note 202, § 1.04[1][d][i], at 1-26 to -27.

216. *Id.* § 1.04[1][d][ii], at 1-29 to -30.

217. 18 U.S.C. § 1961 (2000).

enterprise.²¹⁸ The effect of the racketeering activity may be established by one of the following: (1) investing the income derived from a pattern of racketeering in the enterprise;²¹⁹ (2) acquiring or maintaining an interest in a business through a pattern of racketeering;²²⁰ or (3) conducting the affairs of an enterprise through a pattern of racketeering.²²¹ An additional element must be alleged in a civil RICO case: injury to the plaintiff's property or business by reason of the racketeering activity.²²²

Each of the elements of a civil RICO action is established by statute. Given the limited legislative history and definitional provisions of the statute, the courts have had to play a pivotal role in construing the statutory elements. For example, 18 U.S.C. § 1961(3) defines "person" to include "any individual or entity capable of holding a legal or beneficial interest in property."²²³ In applying this section of RICO, the courts have held that La Cosa Nostra, an organized crime organization also referred to as "the Mafia," is not a person for purposes of RICO,²²⁴ but an unincorporated association may be.²²⁵

The "enterprise" in question will need to be "an entity separate and apart from the pattern of activity in which it engages."²²⁶ There is a lack

218. *Id.* § 1962.

219. *See* Kimmel v. Peterson, 565 F. Supp. 476, 497 (E.D. Pa. 1983) (stating that a complaint that fails to allege that a defendant had ownership interest in the enterprise or that he used commission earned on plaintiffs' transactions to invest in said enterprise does not satisfy requisites of 18 U.S.C. § 1962(a)).

220. *See* Nationwide Mut. Ins. Co. v. Perez, 52 F. Supp. 2d 297, 300 (D.C.P.R. 1999). In *Perez*, the insurer filed a civil RICO claim against two partners in crime. *Id.* at 299. The claim detailed insurance fraud involving previously wrecked cars. *Id.* at 299-300. The court found that the plaintiff had satisfied the pleading requirements by pleading with specificity that the partners were associated with the alleged enterprise in fact. *Id.* at 300.

221. *See* Newman v. Rothschild, 662 F. Supp. 957, 958 (S.D.N.Y. 1987). In *Newman* the court held that the plaintiff must allege not only that defendant is engaged in activities that affect interstate commerce, such as the purchase and sale of securities, but must also allege a common purpose and predicate acts relating to the common purpose. *Id.*

222. *Pelletier v. Zweifel*, 921 F.2d 1465, 1497 (11th Cir. 1991) (holding that a civil RICO plaintiff must establish a causal connection between plaintiff's injury and defendant's predicate acts of fraud); *see also* Pilkington v. United Airlines, 112 F.3d 1532, 1536 (11th Cir. 1997) (holding that a plaintiff's claim of emotional and mental distress rather than injury to property or business is not cognizable under civil RICO).

223. 18 U.S.C. § 1961(3).

224. *See* United States v. Bonanno Organized Crime Family of La Cosa Nostra, 879 F.2d 20, 29-30 (2d Cir. 1989).

225. *See* Jund v. Town of Hempstead, 941 F.2d 1271, 1281-82 (2d Cir. 1991).

226. *United States v. Turkette*, 452 U.S. 576, 583 (1981); *see also* Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 160 (2001) ("This case focuses upon a person who is the president and sole shareholder of a closely held corporation. The plaintiff claims that the president has conducted the corporation's affairs through the forbidden 'pattern' In these circumstances, are there two entities, a 'person' and a separate 'enterprise'?

of uniformity among the federal circuits regarding the degree of organization and structure required to constitute an “enterprise.”²²⁷ However, the Eighth Circuit has enunciated a three-prong test that has been adopted and adapted by some of the other circuits.²²⁸ To establish an “association in fact” enterprise, the Eighth Circuit has required “(1) those engaged in the enterprise must share a ‘commonality of purpose’; (2) the enterprise must ‘function as a continuing unit’; and (3) the enterprise must have ‘an ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering activity.’”²²⁹ Moreover, the same individual or entity may not be alleged to be “both the liable ‘person’ (the defendant) and the enterprise (the ‘victim’).”²³⁰

Once a plaintiff has established that there is an entity satisfying RICO’s definition of “person,” he must then prove that the person has engaged in one of the predicate offenses that constitutes “racketeering activity” under the Act.²³¹ The predicate acts enumerated in RICO encompass a wide range of federal and state criminal statutes. The federal offenses include bribery, counterfeiting, embezzlement from pension and welfare funds, extortionate credit transactions, dealing in obscene matter, passport and visa fraud, and white slave trade.²³² State offenses that constitute predicate acts include “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in [narcotics or other dangerous drugs], which is chargeable under State law and punishable by imprisonment for more than one year.”²³³

Despite the numerous federal and state statutes that provide predicate acts for a RICO suit, plaintiffs still face a daunting task. Lower federal courts will carefully scrutinize the pleadings for specificity.²³⁴ A plaintiff who fails to allege each element of the RICO predicate act that is alleged to be a part of the pattern of racketeering may face dismissal of his complaint by the court.²³⁵

. . . [W]e conclude that the ‘person’ and ‘enterprise’ here are distinct and that the RICO provision applies.”).

227. See Rakoff, *supra* note 202, § 1.05[1].

228. See *id.* § 1.05[2], at 1-49 to -50.

229. *Id.* § 1.05[2], at 1-49 (quoting *United States v. Bledsoe*, 674 F.2d 647, 665 (8th Cir. 1982)).

230. *Id.* § 1.05[3], at 1-55.

231. 18 U.S.C. § 1961(1) (2000).

232. *Id.*

233. *Id.*

234. See Rakoff, *supra* note 202, § 1.04[1][d][i], at 1-26 to -27 & 1-27 n.22.

235. See *Tierney & Partners, Inc. v. Rockman*, 274 F. Supp. 2d 693, 698-99 (E.D. Pa. 2003) (establishing that where the plaintiff failed to identify particular conduct committed by vice presidents formerly employed by the company that constituted predicate acts of

Having established the statutory requirements of a person who has engaged in one or more of the RICO predicate acts, the plaintiff must still establish a pattern of racketeering activity. This requires proof of two of the specified predicate acts within a ten year period; one of which must have occurred after the enactment of RICO.²³⁶ Once again, the courts have filled the gaps in the RICO statute by enunciating judicial criteria to apply in determining whether the requirement of a pattern of racketeering is met. Among the factors to be considered are whether the alleged predicate acts are related and part of a continuous criminal endeavor,²³⁷ "the number . . . of predicate acts and the length of time over which they were committed,"²³⁸ as well as "the number of putative victims, the presence of separate schemes, and the potential for multiple distinct injuries."²³⁹ Consequently, when "the plaintiffs have alleged a single scheme directed at a single victim . . . resulting in a single injury" and involving similar acts that all occurred in less than a year,²⁴⁰ or where a clear pattern of fraudulent activity was "addressed to one contract and did not comprise or threaten the 'kind of "continued" activity at which the RICO statute was aimed,"²⁴¹ the courts have found that the "pattern of racketeering" requirement was not met.²⁴²

Last, but not least, RICO requires that plaintiffs establish that the injury they have sustained to business or property was caused by the RICO violation.²⁴³ Thus, the plaintiff must be able to prove that he has been directly injured by or has been the direct target of the racketeering activity on which his suit is based. Failure to establish the requisite causal nexus will result in dismissal of the case.²⁴⁴

racketeering activity and invoices allegedly transmitted by company did not provide sufficient details regarding mail or wire fraud or furtherance of the overall fraudulent scheme).

236. 18 U.S.C. § 1961(5).

237. See *Int'l Data Bank v. Zepkin*, 812 F.2d 149, 154 (4th Cir. 1987).

238. *Jones v. Lampe*, 845 F.2d 755, 757 (7th Cir. 1988).

239. *Brandenburg v. Seidel*, 859 F.2d 1179, 1185 (4th Cir. 1988).

240. See *Wade v. Hopper*, 993 F.2d 1246, 1250-51 (7th Cir. 1993).

241. *Sys. Mgmt. Inc. v. Loiselle*, 303 F.3d 100, 105-06 (1st Cir. 2002) (quoting *Apparel Art Int'l, Inc. v. Jacobson*, 967 F.2d 720, 724 (1st Cir. 1992)).

242. See *Loiselle*, 303 F.3d at 105-06; *Hopper*, 933 F.2d at 1251.

243. 18 U.S.C. § 1964(c) (2000).

244. *Maryville Acad. v. Loeb Rhoades & Co.*, 530 F. Supp. 1061, 1066-67, 1069 (N.D. Ill. 1981); see also *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 270-71, 274, 276 (1992).

2. Current Trends in Case Law

In recent years, in addition to filing civil RICO claims on their clients' behalf, plaintiffs' attorneys have pursued these claims as class actions.²⁴⁵ One commentator suggests that "pleading a RICO claim may provide a basis for asserting fraud claims otherwise not certifiable because of individualized reliance issues that defeat the predominance requirement for class certification."²⁴⁶ This commentator also points to two recent court decisions that "provide competing views concerning whether a RICO claim avoids the reliance problem by permitting classwide reliance to satisfy the predominance requirement."²⁴⁷ The first of these decisions, *Sandwich Chef of Texas, Inc. v. Reliance National Indemnity Insurance Co.*,²⁴⁸ was issued by the Fifth Circuit United States Court of Appeals.²⁴⁹ The second, *Klay v. Humana, Inc.*,²⁵⁰ was issued by the Eleventh Circuit.²⁵¹

In *Sandwich Chef*, the plaintiffs, who were businesses in forty-four states, alleged that 141 insurance companies collaborated with the National Council on Compensation Insurance to overcharge them on employee workers' compensation claims over a fourteen year period.²⁵² The fraudulent scheme involved making false filings with state insurance regulators and sending the employer policyholders inflated billings.²⁵³ The district court judge certified the class, concluding that the plaintiffs "could prove RICO proximate causation without requiring individual proof of reliance, and rejected the defendants' contention that predominance could not be satisfied because the plaintiffs would have to demonstrate injury through individual proof."²⁵⁴ The Fifth Circuit Court of Appeals reversed, holding that RICO fraud cases require that a misrepresentation be relied upon by each plaintiff, individually, and that each individual plaintiff must show detrimental reliance.²⁵⁵

The Eleventh Circuit took a different position in the case of *Klay v. Humana, Inc.*²⁵⁶ As the court noted: "This is a case of almost all doctors

245. See Linda S. Mullenix, *RICO Class Actions*, NAT'L L.J., Nov. 29, 2004, at 10.

246. *Id.*

247. *Id.*

248. 319 F.3d 205 (5th Cir. 2003).

249. *Id.*

250. 382 F.3d 1241 (11th Cir. 2004), *cert. denied*, 125 S. Ct. 877 (2005).

251. *Id.*

252. *Sandwich Chef*, 319 F.3d at 211.

253. *Id.*

254. Mullenix, *supra* note 245 (citing *Sandwich Chef*, 319 F.3d at 215).

255. *Sandwich Chef*, 319 F.3d at 219-20.

256. 382 F.3d 1241 (11th Cir. 2004), *cert. denied*, 125 S. Ct. 877 (2005).

versus almost all major health maintenance organizations (HMOs). . .” as well as subscribers to the HMO.²⁵⁷ The plaintiffs alleged that the HMOs’ reimbursement system is based on “covertly denying payments to physicians based on financially expedient cost and actuarial criteria rather than medical necessity, processing physicians’ bills using automated programs which manipulate standard coding practices to artificially reduce the amount they are paid, and . . . systematically delaying payments to gain increased use of the physicians’ funds.”²⁵⁸

The defendants argued that class certification under Federal Rule of Civil Procedure 23(b)(3) was improper for several reasons.²⁵⁹ They alleged that “common questions of law and fact concerning the federal claims do not predominate over individual issues specific to each plaintiff” and that this was true of the plaintiffs’ state claims as well.²⁶⁰ They also alleged that “regardless of whether common issues of law and fact predominate, a class action is inferior to other methods of adjudicating them.”²⁶¹ Although the court expressed concerns about the definition of the plaintiff classes, the court rejected the defendants’ arguments.²⁶² It noted that “the common issues of fact discussed in the previous Section, concerning the existence of a national conspiracy, a pattern of racketeering activity, and a Managed Care Enterprise, are quite substantial. They would tend to predominate over all but the most complex individualized issues.”²⁶³ The court also concluded that the numerosity of the class militated in favor of class certification: “It is ridiculous to expect 600,000 doctors across the nation to repeatedly prove these complicated and overwhelming facts.”²⁶⁴

In recent years, the courts have also reviewed the issue of whether “competitive injury” satisfies the requirement of direct injury to business and property requirement in a civil RICO suit.²⁶⁵ These cases entail some form of third party injury as a consequence of the defendants’ conduct. For example, in the case of *Mendoza v. Zirkle Fruit Co.*,²⁶⁶ legally documented agricultural workers alleged that growers hired undocumented workers through an employment agency to leverage and

257. *Id.* at 1246.

258. *Id.* at 1247 (quoting Plaintiffs’ Complaint at ¶ 6).

259. *Id.* at 1251.

260. *Id.*

261. *Id.*

262. *Id.* at 1259.

263. *Id.* at 1258-59.

264. *Id.* at 1260.

265. *See, e.g., Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1166, 1168 (9th Cir. 2002).

266. 301 F.3d 1163 (9th Cir. 2002).

depress their wages.²⁶⁷ In the case of *Ideal Steel Supply Corp. v. Anza*,²⁶⁸ the plaintiff alleged that its competitor caused it to lose sales by failing to pay the state and municipal sales tax and falsifying its sales records to conceal that fact.²⁶⁹ In the case of *Commercial Cleaning Services, L.L.C. v. Colin Service Systems, Inc.*,²⁷⁰ the plaintiff alleged that the defendant hired illegal aliens to perform its cleaning work.²⁷¹ This allowed the defendant to underbid the plaintiff for cleaning contracts and resulted in the plaintiff's loss of contract work.²⁷²

In each case, the courts were called upon to determine whether the plaintiffs were alleging direct injury caused by the defendant enterprise's engaging in a pattern of racketeering activity or "passed on" injury. The courts, relying on the analytical framework provided by the case of *Holmes v. Securities Investor Protection Corp.*,²⁷³ determined that in each instance the plaintiffs satisfied the threshold showing of injury required to withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).²⁷⁴ The courts noted that there could be multiple classes of victims in such fraudulent schemes.²⁷⁵ The courts also cautioned in each case that the plaintiffs would bear the burdening of proving the requisite elements of direct harm, i.e., that they were the target, victim, or customer of the defendants' scheme and suffered harm as a consequence of that scheme.²⁷⁶ However, based on the facts presented by the plaintiffs in each case, the courts concluded that the impact of an alleged RICO scheme on the wages of employees, the customer base of an iron and building supply business, or existing contracts of a cleaning business sufficiently satisfied the requirement of an injury to business or property to allow the plaintiffs to survive a motion to dismiss.²⁷⁷

267. *Id.* at 1166-67.

268. 373 F.3d 251 (2d Cir. 2004).

269. *Id.* at 253.

270. 271 F.3d 374 (2d Cir. 2001).

271. *Id.* at 378-79.

272. *Id.* at 379.

273. 503 U.S. 258 (1992).

274. *See Ideal Steel*, 373 F.3d at 263-64; *Mendoza*, 301 F.3d at 1168-70; *Commercial Cleaning Servs.*, 271 F.3d at 381-82.

275. *See Ideal Steel*, 373 F.3d at 262-63; *Mendoza*, 301 F.3d at 1171; *Commercial Cleaning Servs.*, 271 F.3d at 383-84.

276. *See Ideal Steel*, 373 F.3d at 257; *Mendoza*, 301 F.3d at 1168; *Commercial Cleaning Servs.*, 271 F.3d at 380.

277. *Ideal Steel*, 373 F.3d at 264; *Mendoza*, 301 F.3d at 1171; *Commercial Cleaning Servs.*, 271 F.3d at 381.

C. Applicability to Modern Trafficking

While a plaintiff who initiates a civil RICO suit against modern-day traffickers will face some challenges, an examination of the elements of a civil RICO cause will demonstrate that it can be done without unduly stretching the meaning of the statute. As noted above, there must be a person or "legal entity."²⁷⁸ Trafficking often involves an array of actors. According to a monograph prepared for the Department of State in 1999:

In the United States, trafficking in women and children is primarily being conducted by smaller crime rings and loosely connected criminal networks. The nucleus of several of these crime rings centers around a family. There may be additional overlaps among the categories as many crime rings use their connections abroad to contract out duties. It is this amorphous nature of these rings and networks that make combating trafficking in women a challenging problem for law enforcement.²⁷⁹

The amorphous nature of these organizations does not preclude satisfying the "person" requirement. As the court concluded in the case of *United States v. Goldin Industries, Inc.*,²⁸⁰ a case involving three corporations that dealt in scrap metal and defrauded their customers by sending fraudulent checks and invoices and short-weighting the loads of scrap metal brought to the corporations for purchase,

[t]he terms "person" and "enterprise" in the [RICO] statute have been specifically defined by Congress Moreover, under our case law, a RICO enterprise need not possess an "ascertainable structure" distinct from the associations necessary to conduct the pattern of racketeering activity. . . .

The Supreme Court has held that the existence of an enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."²⁸¹

Consequently, for purposes of RICO jurisdiction, the small or family crime rings, the loosely connected criminal networks, the gangs, and the informal associations they form with each other would constitute a "person" and "enterprise" individually and collectively. Traffickers in humans clearly meet this threshold.²⁸²

278. See *supra* text accompanying notes 223-30.

279. RICHARD, *supra* note 19, at 51.

280. 219 F.3d 1271, 1273 (11th Cir. 2000).

281. *Id.* at 1274-75 (citations omitted).

282. See Lan Cao, Note, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1309 (1987).

Trafficking by its very nature satisfies the requirement of two factual predicates within a ten-year period. It is a process that usually begins with the perpetuation of a fraud on the victim.²⁸³ It is effectuated by coercion and falsification of immigration documents.²⁸⁴ It culminates in the victim's providing coerced labor or services such as prostitution, or agricultural, sweatshop, or domestic labor.²⁸⁵ The above activities are among those enumerated in 18 U.S.C. § 1961(1) of RICO as predicate acts²⁸⁶ and are generally carried out in a manner that satisfies the time prerequisites as well.²⁸⁷

The challenge for prosecuting a civil RICO action for victims of trafficking will be establishing injury to business or property.²⁸⁸ One legal analyst has suggested that the element of injury can be met if the premise is accepted that a woman's body is her property.²⁸⁹ He contends that

[p]rostitution enterprises control and use prostitutes' bodies as vehicles for conducting their illegal business. The victims' bodies are, in essence, treated as property to generate profit for the enterprise. If the injury is perpetrated on the premise that victims' bodies are "property," the law should recognize this fact and address the violation rather than pretend that it does not exist.²⁹⁰

To run and furnish the sex slave business, women are recruited by organized rings of procurers, using fraudulent recruiting methods. For example, they are abducted, procured through organized crime, recruited by phony employment agencies, and trafficked into the U.S. via false marriage contracts.

....

In all these schemes, the procurers are not loose and disjointed groups sporadically engaged in pimping activities. On the contrary, they are organized networks structured to procure, transport, and retain women in prostitution. Once procured, the women are psychologically conditioned, physically and mentally intimidated, and if needed, trafficked through established transportation networks.

Id. at 1299-1301 (footnotes omitted).

283. *Id.* at 1299, 1301-02.

284. *Id.*

285. RICHARD, *supra* note 19, at 51.

286. 18 U.S.C. § 1961(1) (2000).

287. RICHARD, *supra* note 19, at 51 ("A review of trafficking and slavery operations, involving sweatshop, agricultural, and other forms of labor, over the last eight years showed that these operations went unnoticed or were able to exist longer than sex trafficking operations. Labor trafficking operations generally lasted from 4½ to 6½ years, whereas trafficking operations for prostitution lasted from a little over a year to approximately 2½ years before being discovered.").

288. Cao, *supra* note 282, at 1312.

289. *See id.* at 1315.

290. *Id.* (footnotes omitted).

Aside from the fact that this argument seems to commodify the victims, it would not appear to be applicable to victims who are trafficked into other jobs like agricultural, domestic, and sweatshop labor. An alternative argument is suggested by the *Mendoza* case, in which the plaintiffs claimed “an injury to their property in the form of lost wages.”²⁹¹ A common element in the different categories of trafficking is that the victim is lured into the control of the trafficker by promises of jobs and wages that do not materialize.²⁹² In addition to the lost wages argument, victims may also argue that one’s personal labor is a property right. Once the victim becomes the captive of the trafficker, he is also denied his property right to contract his labor without interference where he sees fit for a price that he finds acceptable.²⁹³

The last hurdle that victims of trafficking must overcome is the issue of damages. Victims clearly incur injuries in the form of lost wages, lost work opportunities, physical and emotional injury, and possible shame within their country of origin as a consequence of their employment in the sex industry. However, none of these injuries are compensable under RICO.²⁹⁴ RICO only compensates plaintiffs for injuries to business or property, not for personal injuries.²⁹⁵ Moreover, the damages alleged must be quantifiable; they must not be speculative.²⁹⁶

D. Adequacy as a Remedy

To the extent that the facts of a human trafficking case fit within the conceptual framework of civil RICO, victims have access to broader remedies than those provided by the Thirteenth Amendment. The Thirteenth Amendment vindicates a dignitarian interest. It affirms that trafficking in humans is reprehensible. However, the ability of victims of human trafficking to use the Thirteenth Amendment to vindicate their rights is tentative. There is no consensus among the judicial circuits that a private cause of action exists under the Thirteenth Amendment.²⁹⁷ Moreover, there is judicial uncertainty regarding whether a violation of

291. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1168 (9th Cir. 2002).

292. *See* Cao, *supra* note 282, at 1299-1300.

293. *See* The Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 56 (1872) (“The right to labor, the right to one’s self physically and intellectually, and to the product of one’s own faculties, is past doubt property, and property of a sacred kind.”).

294. *See* 18 U.S.C. § 1964(c) (2000).

295. *See* Pilkington v. United Airlines, 112 F.3d 1532, 1536 (11th Cir. 1997); Oscar v. Univ. Students Coop. Ass’n, 965 F.2d 783, 787 (9th Cir. 1992).

296. *See* Astech-Marmon, Inc. v. Lenoci, 349 F. Supp. 2d 265, 270 (D. Conn. 2004).

297. *See supra* Part II.D.

the Thirteenth Amendment entitles the victim of the breach to damages.²⁹⁸

Civil RICO fills some of the gaps in Thirteenth Amendment coverage. It explicitly authorizes a private cause of action.²⁹⁹ It also authorizes court costs, attorneys fees, and treble damages for injury to business or property.³⁰⁰ It also has the potential for extraterritorial application.³⁰¹ A separate provision, passed as part of the Organized Crime Control Act of 1970 in conjunction with RICO, provides protection for witnesses and their families as federal witnesses.³⁰² However, RICO's provisions may provide only nominal compensation to victims whose jobs would normally pay the minimum wage. It does not compensate the victims for the mental and physical health problems they may develop as a consequence of their treatment at the hands of traffickers. Last but not least, civil RICO does not remedy the risk that victims of trafficking may be deported during the pendency of their RICO suit.³⁰³

IV. VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000

A. Legislative and Regulatory Framework

The formulation of current United States policy on human trafficking began in 1998. In the wake of growing awareness of the problem, the Clinton administration implemented an initiative it referred to as the three "P's."³⁰⁴ "On March 11, 1998, President Clinton issued a directive establishing a U.S. government-wide anti-trafficking strategy of (1) prevention, (2) protection and support for victims, and (3) prosecution of traffickers. The strategy, as announced, had strong domestic and

298. See *supra* Part II.D.

299. 18 U.S.C. § 1964(c).

300. *Id.*

301. Kristen Neller, Note, *Extraterritorial Application of RICO: Protecting U.S. Markets in a Global Economy*, 14 MICH. J. INT'L L. 357 (1993). But see *N. S. Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996) ("In considering the limits of subject matter jurisdiction over transnational securities frauds, our analysis in the past has focused on whether one of two alternative tests has been satisfied: the 'conduct test' and the 'effects test.'"); *Butte Mining PLC v. Smith*, 76 F.3d 287, 291 (9th Cir. 1996) ("We do not suppose that Congress in enacting RICO had the purpose of punishing frauds by aliens abroad even if peripheral preparations were undertaken by them here.").

302. Pub. L. No. 91-452, §§ 501-504, 901, 84 Stat. 922, 933-34, 941 (1970). The current provision concerning protection of witnesses is codified at 18 U.S.C. § 3521 (2000).

303. See U.S.C. § 1964 (2000).

304. See FRANCIS T. MIKO, CONG. RESEARCH SERV., RL30545, *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE* 8 (2004), <http://fpc.state.gov/documents/organization/31990.pdf>.

international policy components.”³⁰⁵ This initiative culminated in the bipartisan enactment of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).³⁰⁶

The stated purpose of the VTVPA is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”³⁰⁷ The findings in support of the Act are extensive and capture much of the information that is known about the demographics, logistics, and impact of trafficking.³⁰⁸ Of particular significance in the “Findings” section is the Act’s reaffirmation of the principles underlying the Thirteenth Amendment:

One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. . . . Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.³⁰⁹

This legislation addresses trafficking on a national and international level.³¹⁰ It vests congressional oversight in the Committee on Foreign Relations, the Committee on the Judiciary of the Senate, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives.³¹¹ The Secretary of State is now required to submit to Congress an annual report on efforts by countries receiving United States economic or security assistance to combat trafficking.³¹² An interagency task force was established to monitor and combat trafficking.³¹³ The President is authorized to “establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking.”³¹⁴ These

305. *Id.*

306. Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 8, 18, 22, 27 and 42 U.S.C.).

307. 22 U.S.C. § 7101(a) (2000).

308. *Id.* § 7101(b).

309. *Id.* § 7101(b)(22).

310. *Id.* § 7101(b)(23).

311. *Id.* §§ 7102(1), 7105(g), 7107(b)(1), 7108(b).

312. *Id.* § 2151n(f).

313. *Id.* § 7103.

314. *Id.* § 7104(a).

programs may range from micro-credit lending programs and initiatives that promote the economic and educational status of women to public awareness campaigns on the dangers of trafficking.³¹⁵ Protection and assistance is authorized for victims of trafficking in other countries³¹⁶ and in the United States.³¹⁷ To that end, victims in the United States who previously were ineligible for assistance under many governmental assistance programs because of their status as illegal aliens are made eligible for certain entitlement programs administered through the Department of Health and Human Services, the Department of Labor, and the Legal Services Corporation.³¹⁸ The legislation directs the Attorney General and the Secretary of Health and Human Services to promulgate regulations that will treat victims of trafficking as victims of crime rather than as illegal aliens,³¹⁹ and authorizes the creation of a special visa program (referred to as the T visa) for victims of severe forms of trafficking.³²⁰ Minimum standards are set for “the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking”³²¹ To ensure that the minimum standards are met, the legislation authorizes the President to “provide assistance to foreign countries directly or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for elimination of trafficking.”³²² To motivate noncompliant governments, the Secretary of State is directed to submit to Congress a report each year which lists both countries that have and countries that have not complied with the minimum standards as defined by the legislation.³²³ The President is authorized to withhold non-humanitarian, non-trade-related assistance when he determines that a country has not complied and has not made a significant effort to comply with the minimum standards.³²⁴ He is also authorized to impose the penalties set forth in the International Emergency Economic Powers Act to sanction significant traffickers in persons.³²⁵ Prosecution and punishment of traffickers is strengthened by amending the criminal code

315. *Id.*

316. *Id.* § 7105(a).

317. *Id.* § 7105(b).

318. *Id.* § 7105(b)(1)(A)-(B).

319. *Id.* § 7105(b)(1)(C), (E).

320. 8 U.S.C. §§ 1101, 1182, 1184 (2000).

321. 22 U.S.C. § 7106(a).

322. *Id.* § 2152d(a).

323. *Id.* § 7107(b)(1).

324. *Id.* § 7107(d)(1).

325. *Id.* § 7108.

to increase criminal penalties,³²⁶ and adding provisions pertaining to “[f]orced labor”;³²⁷ “[t]rafficking with respect to peonage, slavery, involuntary servitude, or forced labor”;³²⁸ “[s]ex trafficking of children”; or trafficking “by force, fraud[,] or coercion”;³²⁹ unlawful conduct with regard to passports and other immigration documents;³³⁰ and “[m]andatory restitution” to victims.³³¹ Part B of the Act, The Violence Against Women Act, also provides additional services to battered immigrant women.³³² These provisions have been supplemented by the Trafficking Victims Protection Reauthorization Act of 2003,³³³ which includes provisions directed at noncompliant destination countries, elevates the importance of prosecution, requires better statistical monitoring, establishes a special watch list,³³⁴ and creates a private, civil cause of action.³³⁵

In tacit recognition of the urgent need to quickly implement this legislation, the Attorney General and Secretary of State were directed to promulgate regulations to implement certain provisions within 180 days of the VTPA’s enactment.³³⁶ On July 24, 2001, the Department of State (DOS) and Department of Justice (DOJ) jointly promulgated an interim regulation.³³⁷ The stated purpose of this regulation was to provide guidance concerning “(1) [p]rotections for victims of severe forms of trafficking in persons while in custody; (2) victims’ access to information and translation services; (3) authority to permit continued presence in the United States of a victim and potential witness; and (4) training of government personnel.”³³⁸

To effectuate these goals, the regulations set the following legal parameters. They define what are considered “severe forms of

326. 18 U.S.C. §§ 1583-1584 (2000).

327. *Id.* § 1589.

328. *Id.* § 1590.

329. *Id.* § 1591 (footnote omitted).

330. *Id.* § 1592.

331. *Id.* § 1593.

332. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 1502-1513, 114 Stat. 1464, 1518-37 (codified as amended in scattered sections of 8 U.S.C.).

333. Pub. L. No. 108-193, 117 Stat. 2878 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

334. 22 U.S.C. §§ 7106(b), 7107(b) (2000), amended by 22 U.S.C.A. §§ 7106(b), 7107(b) (West 2004).

335. 22 U.S.C.A. § 1595 (West Supp. 2004).

336. 22 U.S.C. § 7105(c) (2000).

337. See 28 C.F.R. § 1100.25-37 (2004).

338. Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38,514, 38,514 (July 24, 2001) (codified as amended at 28 C.F.R. § 1100.27) (citations omitted).

trafficking in persons.”³³⁹ They differentiate between alien smuggling and severe forms of trafficking.³⁴⁰ The regulations also describe the forms of support and assistance that victims are eligible to receive.³⁴¹ For example, the regulations acknowledge that trafficking victims are victims of crime, not criminals.³⁴² As a consequence, they are to be “housed in a manner appropriate to their status as crime victims.”³⁴³ They are also to be provided “proper medical care and other assistance.”³⁴⁴ Victims of trafficking must also be provided “access to information about their rights and with translation services.”³⁴⁵ Procedures are established to allow federal law enforcement authorities to request that potential witnesses be permitted to remain in the country and to protect the victims and their family members against intimidation and threats of reprisal.³⁴⁶

In addition to these regulations, each federal agency that has a role to play in the implementation of the VTVPA would have had to amend its current regulations or promulgate new ones to carry out its mandate. For example, prior to the enactment of this legislation, victims of trafficking would not have been eligible for the Department of Agriculture’s Food Stamp Program, Health and Human Services’ Medicaid Program, or the Legal Services Corporation funded free civil legal aid because of their illegal immigration status.³⁴⁷ The VTVPA removes these restrictions, subject to certain limitations.³⁴⁸

B. Executive Branch Implementation

1. Interagency Branch Implementation

Responsibility for implementing the VTVPA is distributed among several executive branch agencies. However, to ensure effective coordination, a cabinet level task force is also mandated.³⁴⁹ To that end, President Bush has issued a National Security Presidential Directive that

339. 28 C.F.R. § 1100.25.

340. *See id.*

341. *Id.* §§ 1100.25, .31-.35.

342. *See id.* § 1100.27.

343. *Id.* § 1100.27(a)(1).

344. *Id.*

345. *Id.* § 1100.27(a)(2).

346. *Id.* § 1100.27(a)(3).

347. *See* Human Trafficking & Modern-day Slavery, <http://gvnet.com/humantrafficking/USA.htm> (follow “more” hyperlink) (last visited Oct. 20, 2005).

348. *Id.*; *see also* 28 C.F.R. § 1100.27(d).

349. 22 U.S.C.A. § 7103 (West 2004).

establishes a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons.³⁵⁰

The task force is chaired by the Secretary of State and includes the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Homeland Security, the Director of Central Intelligence, the Director of the Office of Management and Budget, and the Administrator of the U.S. Agency for International Development.³⁵¹

The duties of the Task Force include coordinating and implementing the administration's anti-trafficking activities.³⁵²

2. *Individual Agency Initiatives*

At the agency level, the following executive agencies have responsibility for carrying out specific program initiatives and services to victims of trafficking: the Department of Justice, the Department of State, the Department of Health and Human Services, the Department of Labor, and the Legal Services Corporation.³⁵³ The program initiatives for which each agency is responsible are described briefly below.

As the following chart illustrates, each agency now has a broader role to play in addressing trafficking. For example, in addition to investigation and prosecution of traffickers, the Department of Justice has responsibility for training federal prosecutors and agents, conducting community outreach in an effort to better identify victims of trafficking, and coordinating services to victims of trafficking with the Department of Health and Human Services. The Department of Justice oversees the special visa program created for victims of severe forms of international trafficking, the T visa program, and the Department of Health and Human Services coordinates certification of victims who are approved for T visas to receive other governmental benefits. Similarly, the Department of State has primary responsibility for coordinating anti-trafficking efforts with other governments through education and other technical assistance. In addition, it reports on the status of other governments' efforts to combat trafficking in its annual report to Congress. The Department of Labor, traditionally viewed as a domestic labor agency, also has an international role to play in combating trafficking, working with both nongovernmental organizations and the International Labor Organization.

350. Exec. Order No. 13,257, 67 Fed. Reg. 7259 (Feb. 13, 2002).

351. Human Trafficking & Modern-day Slavery, *supra* note 347.

352. *Id.*

353. See 22 U.S.C. § 7105(b)(1)(B) (2000), amended by 22 U.S.C.A. § 7105(b)(1)(B) (West 2004).

AGENCY	DUTIES
Department of Justice	<ol style="list-style-type: none"> 1. Conducts anti-trafficking training for federal prosecutors and agents.³⁵⁴ 2. Investigates and prosecutes traffickers.³⁵⁵ 3. Conducts an outreach program to educate victims of trafficking about their rights and creates working relationships with community-based organizations.³⁵⁶ 4. Coordinates with the Department of Health and Human Services to certify the eligibility of victims of trafficking to receive various federally funded or administered benefits.³⁵⁷ 5. Oversees the T visa program, which benefits victims of severe forms of international trafficking.³⁵⁸
Department of State	<ol style="list-style-type: none"> 1. Operates the Office to Monitor and Combat Trafficking in Persons.³⁵⁹ 2. Sponsors anti-trafficking programs in other countries.³⁶⁰ 3. Has primary responsibility for educating and soliciting the cooperation of other countries in combating trafficking.³⁶¹ 4. Publishes the annual Trafficking In Persons (TIP) Report assessing "other governments' efforts to combat trafficking in persons."³⁶²

354. Press Release, White House, Trafficking in Persons National Security Directive (Feb. 25, 2003), <http://www.whitehouse.gov/news/releases/2003/02/20030225.html>.

355. Human Trafficking & Modern-day Slavery, *supra* note 347.

356. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, TRAFFICKING IN PERSONS AND WORKER EXPLOITATION TASK FORCE, <http://www.usdoj.gov/crt/crim/tpwetf.htm> (last visited Oct. 21, 2005).

357. Trafficking in Persons National Security Directive, *supra* note 354.

358. Press Release, U.S. Dep't of Justice, Department of Justice Issues T Visa To Protect Women, Children and all Victims of Human Trafficking (Jan. 24, 2002), http://www.usdoj.gov/opa/pr/2002/January/02_crt_038.htm.

Department of Health and Human Services	<p>1. Certifies the eligibility of victims of trafficking to receive “temporary housing, legal assistance, educational opportunities, mental health counseling, foster child care, and other benefits.”³⁶³</p> <p>2. Promotes public awareness campaigns to provide information to victims and organizations that may serve them.³⁶⁴</p> <p>3. Provides grants to nongovernmental organizations to conduct outreach and provide services to trafficking victims.³⁶⁵</p> <p>4. Coordinates certification of victims who are approved for T visas.³⁶⁶</p>
Department of Labor	<p>1. “[C]ombats international trafficking through its own programs and through nongovernmental and faith-based organizations.”³⁶⁷</p> <p>2. “[W]orks in conjunction with the International Labor Organization’s campaign to eliminate child labor.”³⁶⁸</p>
Legal Services Corporation	<p>1. Makes legal assistance available to victims of trafficking through its grantees.³⁶⁹</p>

359. Human Trafficking & Modern-day Slavery, *supra* note 347.

360. *See id.*

361. John R. Miller, *The United States’ Effort to Combat Trafficking in Persons*, GLOBAL ISSUES, June 2003, <http://usinfo.state.gov/journals/itgic/0603/ijge/gj02.htm> (last viewed Oct. 21, 2005).

362. *Id.*

363. *Id.*

364. *See* Wade F. Horn, *U.S. Human Service Agencies Respond to Trafficking*, GLOBAL ISSUES, June 2003, <http://usinfo.state.gov/journals/itgic/0603/ijge/gj03.htm> (last viewed Oct. 21, 2005).

365. Human Trafficking & Modern-day Slavery, *supra* note 347.

366. *See supra* note 357 and accompanying text.

367. Miller, *supra* note 361.

368. *Id.*

369. Human Trafficking & Modern-day Slavery, *supra* note 347.

C. Judicial Remedies

Prior to enactment of the VTVPA, the challenge of prosecuting trafficking cases was formidable. According to a study prepared by the Center for the Study of Intelligence in 1999, the Department of Justice's Department of Involuntary Servitude Coordinator had prosecuted "numerous modern-day slavery" and trafficking cases involving over 150 victims during the prior three years.³⁷⁰ The number of victims assisted seems inconsequential compared to the number of victims trafficked into the United States annually (17,000 to 20,000 per year according to more recent Department of State reports).³⁷¹ However, the numbers are reflective of the difficulties prosecutors encounter in identifying the victims of trafficking as well as the labor intensive nature of prosecuting the cases.

Since the enactment of the VTVPA, the Department of Justice has made a concerted effort to increase trafficking investigations and prosecutions. According to a recent report on the United States' efforts,

[a]s of April 2004, the Criminal Section of the Civil Rights Division had 153 open trafficking investigations—twice as many as compared with three years earlier. Over one-half of these investigations were initiated as a result of the "Trafficking in Persons and Worker Exploitation Task Force Complaint Line," . . . established in February 2000. In fiscal years 2001 through 2003, the Department of Justice's Civil Rights Division and US Attorneys Offices initiated prosecutions of 110 traffickers, nearly a three-fold increase compared to the previous three fiscal years. In fiscal years 2001 through 2003, the Department of Justice secured 77 convictions and guilty pleas, a 50 percent increase over the previous three years.³⁷²

One of the cases brought during this period was *United States v. Lee*,³⁷³ a twenty-two count indictment brought against the owner of an American Samoa garment factory for holding workers in involuntary servitude.³⁷⁴ The United States Immigration and Customs Enforcement (ICE) agency made sixteen arrests in a case involving the smuggling of Ecuadorian and Chinese nationals into the United States.³⁷⁵ In another

370. RICHARD, *supra* note 19, app. at 47.

371. See *supra* note 26 and accompanying text.

372. OFFICE OF THE UNDER SEC'Y FOR GLOBAL AFFAIRS, U.S. DEP'T OF STATE, PUBL'N NO. 11150, TRAFFICKING IN PERSONS REPORT 259 (2004), available at <http://www.state.gov/documents/organization/34158.pdf>.

373. 159 F. Supp. 2d 1241 (D. Haw. 2001).

374. OFFICE OF THE UNDER SEC'Y FOR GLOBAL AFFAIRS, *supra* note 372, at 258-59.

375. Eric Green, Arrests Made in Case Involving Smuggling of Ecuadoreans, Chinese, <http://usinfo.state.gov/eap/Archive/2004/Dec/14-870774.html> (last updated Dec. 15, 2004).

case, defendants in a twenty-seven count indictment filed in the Eastern District of New York pled guilty to charges of “forcing young Mexican women into prostitution in brothels throughout the New York City metropolitan area, including Queens and Brooklyn, between 1991 and 2004.”³⁷⁶ Similarly, in Buffalo, New York, six defendants were charged in a multi-count indictment with “conspiracy, forced labor, trafficking in persons, social security fraud, immigration violations, and violations of the Migrant and Seasonal Agricultural Worker Protection Act.”³⁷⁷

D. Adequacy of Remedies

Given the magnitude of the problem presented by modern-day trafficking, it remains to be seen whether the VTVPA is up to the task. Many of the concerns raised by advocates prior to its enactment (e.g., treatment of arrested trafficking victims,³⁷⁸ lack of adequate shelters or services for trafficking victims,³⁷⁹ difficulties with the S visa,³⁸⁰ and improved coordination, information, and training of law enforcement³⁸¹) have been addressed by the VTVPA.

By some accounts, the reaction to the VTVPA is positive but cautious:

Labor and human rights activists welcomed the passage of the Trafficking Act in 2000 for many reasons. First, the new law sharpened the legal teeth of existing sanctions for involuntary servitude, peonage, and slavery by adding new crimes of human trafficking, sex trafficking, forced labor, and document servitude (withholding or destroying documents as part of the trafficking scheme). . . .

Second, the act not only strengthened laws so that traffickers could be held accountable for their crimes, but it provided specific measures to address the unique needs of trafficking victims.³⁸²

376. Three Mexicans Plead Guilty in New York Human-Trafficking Case, <http://usinfo.state.gov/gi/Archive/2005/Apr/06-922355.html> (last updated Apr. 6, 2005) (quoting Press Release, U.S. Immigration & Customs Enforcement, 3 Plead Guilty to Charges Involving Forcing Young Mexican Women into Sexual Slavery in N.Y. (Apr. 5, 2005)).

377. *United States v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *1 (W.D.N.Y. Dec. 2, 2003).

378. See RICHARD, *supra* note 19, at 39.

379. *Id.* at 40.

380. *Id.* at 41.

381. See *id.* at 45.

382. FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL., BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 21 (2004) (footnote omitted), available at http://www.hrcberkeley.org/download/hiddenslaves_report.pdf.

This optimism is tempered by concerns regarding some perceived shortcomings of the VTVPA. For example, one report points out that “[a]dvocates and service providers criticize the essential framework of the Trafficking Act which conditions benefits on the cooperation of survivors with federal law enforcement.”³⁸³ It also points out that “[t]he approach now taken by federal and state agencies to combat forced labor in the United States is fragmentary and inconsistent.”³⁸⁴

Some human rights advocates have expressed concern about the accuracy of the annual reports submitted to Congress by the Secretary of State. For example, in June 2003, LaShawn R. Jefferson, Executive Director for the Women’s Rights Division of the Human Rights Watch, raised the following concerns about the State Department’s June 2003 Trafficking Report: (1) lack of meaningful evaluation of anti-trafficking efforts; (2) spotty statistical data that is inconsistently used; (3) failure “to weigh and condemn harmful immigrations policies”; (4) failure to track whether countries credited with anti-trafficking legislation have “passed legislation specifically criminalizing trafficking into all forms of forced labor”; and (5) lack of specificity or follow-up on the outcomes of trafficking prosecutions.³⁸⁵

Creating economic opportunities for possible victims of trafficking in their country of origin, while laudable, is clearly a long-term initiative that may require years to implement. In the interim, some legal analysts believe that it is counterproductive to impose the sanction of withholding non-humanitarian aid from countries that have failed to meet the minimum standards for compliance with the VTVPA.³⁸⁶

Despite some positive steps, current efforts to assist victims of trafficking may still not be adequate. For example, the new T visa

383. *Id.* at 22.

384. *Id.* at 26.

385. Letter from LaShawn R. Jefferson, Executive Dir., Women’s Rights Div., Human Rights Watch, to Colin L. Powell, Sec’y of State, U.S. Dep’t of State (June 27, 2003), <http://www.hrw.org/press/2003/06/us062703ltr.htm>.

386. Kara C. Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. 45, 64 (2002) (“[I]ncreasing cooperation among nations is essential to eliminating world trafficking. Because almost all countries are nations of either origin, transit or destination of trafficking victims, it is important to work together to ensure traffickers are captured, prosecuted, and punished. To be successful, the United States must form close working relationships with the enforcement agents in foreign countries and share intelligence information in order to follow traffickers, learn their routes and patterns, and eventually apprehend them. Such cooperation is significantly impeded by sanctions that destroy all efforts to establish an international force to fight the transnational trafficking problem.” (footnotes omitted)).

authorized by the Trafficking Act is limited to 5,000 per year.³⁸⁷ This represents roughly one-third of potentially eligible applicants.³⁸⁸ To date, the Department of Justice has authorized less than one thousand per year.³⁸⁹ Last, but not least, unless adequate appropriations are authorized for national and international programs, funding may not be adequate to sponsor supportive activities for victims within the United States and to initiate economic and educational projects in countries of origin and transit.

V. CONCLUSION

The Thirteenth Amendment, civil RICO, and the Victims of Trafficking and Violence Protection Act of 2000, as amended, should be viewed on a continuum. The first, the Thirteenth Amendment and its enabling statutes, abolished an institution that was slowly being dismantled by some states and deteriorating as an institution in others. In the aftermath of the Civil War, many states attempted to subvert the newly forged freedom of former slaves. In the century following the Civil War, enforcement of the Thirteenth Amendment and related legislation would progress from dormancy to active enforcement. But the penalties would be modest compared to the offense.

With the enactment of RICO, Congress created a tool that could be used both to benefit victims of trafficking by levying significant economic penalties on persons and entities operating an enterprise engaged in racketeering activity. While RICO explicitly authorizes a private cause of action, court costs, attorneys fees, and treble damages, it is complex in structure and presents significant challenges to plaintiffs seeking to use it. It compensates victims only for injuries to business and property and can be used to reach foreign trafficking activities only if certain stringent criteria are satisfied.

Of these three remedies, the Victims of Trafficking and Violence Protection Act of 2000 shows the most promise. It builds upon and extends the elements of the Thirteenth Amendment and civil RICO. It reaffirms the underlying premise of the Thirteenth Amendment that slavery is an abhorrent institution that must be abolished. Unlike civil RICO, it acknowledges the individual needs of trafficking victims. As amended, it creates a private cause of action for victims. It strengthens the mandate of the federal government to interdict modern-day slavery and brings a full array of federal agency resources to bear on the

387. 8 U.S.C. § 1184(o)(2) (2000); see also Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 2 n.3 (2004).

388. See *supra* note 26 and accompanying text.

389. Kim & Hreshchyshyn, *supra* note 387, at 14.

problem. In doing so, it revitalizes the Civil Rights Division of Department of Justice's capacity to develop a coherent body of favorable case law on trafficking, as the division did in its Thirteenth Amendment litigation in the 1930s and 1940s. Equally important, unlike civil RICO, the VTVPA accomplishes its objectives in a manner that tries to humanize rather than commodify the victims of trafficking.

