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## What Is a Spoke and What Is a Wheel? Elucidating Concepts and Taxonomies in Sex Trafficking Amidst Criticisms of the NFL and the Super Bowl

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WHAT IS A SPOKE AND WHAT IS A WHEEL?  
ELUCIDATING CONCEPTS AND TAXONOMIES IN  
SEX TRAFFICKING AMIDST CRITICISMS OF THE NFL  
AND THE SUPER BOWL

*“We are not to simply bandage the wounds of victims beneath the wheels of injustice, we are to drive a spoke into the wheel itself.”- Dietrich Bonhoeffer<sup>1</sup>*

I. INTRODUCTION

Likening that which the rest of the world calls “football” to a religion, comedian—and seemingly America’s newest go-to social moral compass—John Oliver announced, “[w]hen David Beckham got a tattoo of Jesus, the response of most soccer fans was ‘wow that’s huge for Jesus!’”<sup>2</sup> In the United States, the religion is *American Football*, and its “high holy day” annually transforms host cities into a Mecca for the masses.<sup>3</sup> As one professor notes:

[T]here is a remarkable sense in which the Super Bowl functions as a major religious festival for American culture, for the event signals a convergence of sports, politics, and myth. Like festivals in ancient societies, which made no distinctions regarding the religious, political and sporting character of certain events, the Super Bowl succeeds in reuniting these now disparate dimensions of social life.<sup>4</sup>

Even for those unable to make the pilgrimage, the event annually attracts the largest number of television viewers amongst all broadcasts.<sup>5</sup> Nineteen of the top twenty most-viewed television

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1. For information regarding theologian and anti-Nazi dissident, Dietrich Bonhoeffer, see RENATE WIND, DIETRICH BONHOEFFER: A SPOKE IN THE WHEEL (J. Bowden, trans., 1st English ed. 1992).

2. *Last Week Tonight with John Oliver: FIFA* (HBO television broadcast Jun. 8, 2014) (discussing soccer fans’ obsession with sport) available at <https://www.youtube.com/watch?v=DLJEt2KU33I> [<https://perma.cc/UD6R-YYK7>].

3. See *infra* notes 19–22 and accompanying text (discussing Super Bowl host city fanfare).

4. Joseph L. Price, *The Super Bowl as Religious Festival*, CHRISTIAN CENTURY, Feb. 22, 1984, at 190 (discussing Americans’ love of football and Super Bowl).

5. See Eyder Peralta, *Super Bowl XLIX Was Most Watched Show in TV History*, NPR (Feb. 2, 2015, 5:08 PM), <http://www.npr.org/sections/thetwo-way/2015/02/02/383352809/super-bowl-xlix-was-most-watched-show-in-tv-history> (presenting viewer statistics).

events in United States history have been Super Bowl broadcasts.<sup>6</sup> In 2016, Super Bowl 50 drew nearly thirty million *more* viewers than the first Trump-Clinton debate, the most-viewed presidential election debate in American history.<sup>7</sup> This ever-metastasizing piety amongst the many multitudes of Americans arguably now provides a reasonable foundation upon which critics allege the sacred event is responsible for an anathematic advancement of sex trafficking in the United States.<sup>8</sup>

In 2013, Cindy McCain, co-chair of the Arizona Human Trafficking Council and member of the McCain Institute's Human Trafficking Advisory Council, criticized the NFL, labeling the Super Bowl the "largest human-trafficking venue on the planet."<sup>9</sup> McCain stated, while "[e]verybody else has been very helpful, the NFL's not willing to deal with this issue, and I can't answer why, I don't know why."<sup>10</sup> McCain is not alone.<sup>11</sup> Other leaders, commentators, and activists argue the mass hordes and fanfare attached to the Super

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6. See, e.g., Catherine Taibi, *Super Bowl XLIX Was Most-Watched Show in U.S. Television History*, HUFFINGTON POST (Feb. 2, 2015, 4:56 PM), [http://www.huffingtonpost.com/2015/02/02/super-bowl-tv-ratings-2015-patriots-seahawks\\_n\\_6595690.html](http://www.huffingtonpost.com/2015/02/02/super-bowl-tv-ratings-2015-patriots-seahawks_n_6595690.html) [<https://perma.cc/ZZJ3-UFWC>] (listing the eight most watched television broadcasts in U.S. history). Super Bowl 50 has since landed at number three. See Media and Entertainment, *Super Bowl 50 Draws 111.9 Million TV Viewers, 16.9 Million Tweets*, NIELSON (Feb. 8, 2016), <http://www.nielsen.com/us/en/insights/news/2016/super-bowl-50-draws-111-9-million-tv-viewers-and-16-9-million-tweets.html> [<https://perma.cc/7RZ2-KKK7>].

7. See NIELSON, *supra* note 6 (providing viewership statistics for Super Bowl 50 and past Super Bowls); see also Brian Stetler, *Debate Breaks Record as Most-Watched in U.S. History*, CNN (Sept. 27, 2016), <http://money.cnn.com/2016/09/27/media/debate-ratings-record-viewership/index.html> [<https://perma.cc/E6LN-DZLD>] (reporting Sept. 26, 2016 Clinton-Trump debate was most-watched Presidential debate in U.S. history).

8. See, e.g., Abbey L. Wright, Comment, *Cleaning Up the Blood, Sweat, and Tears of the Super Bowl [Sex Trade]: What Host Cities Must Do in Preparation for Major Sporting Events to Combat Sex Trafficking*, 13 VA. SPORTS & ENT. L.J. 97 (2015) (discussing sex trafficking around Super Bowl). See also *United States v. Moore*, 612 F.3d 698, 702 (D.C. Cir. 2010). In *Moore*, the Honorable Brett M. Kavanaugh discussed the increasing criminal reach of 18 U.S.C. § 1001 (2006) stating, "I add these brief concurring comments because this case highlights one of the difficult issues that can arise in prosecutions under the *ever-metastasizing* § 1001. . . ." *Id.* (Kavanaugh, J., concurring) (emphasis added).

9. See Lucy McCalmont, *McCain Slams NFL on Sex Trafficking*, POLITICO (last updated Nov. 25, 2013, 1:24 AM), <http://www.politico.com/story/2013/11/women-rule-event-100119> [<https://perma.cc/KGM2-BUY5>] (quoting Cindy McCain's remarks from Women Rule conversation series).

10. *Id.* (quoting McCain regarding NFL's level of cooperation).

11. See *infra* notes 24–27 and accompanying text (discussing cases of possible trafficking around Super Bowl).

Bowl contribute to the sex trafficking industry and the NFL ought to respond accordingly.<sup>12</sup>

This comment attempts an honest discourse regarding the criticisms and studies of the putative causal relationship between the Super Bowl and sex trafficking in the United States.<sup>13</sup> Part II discusses the general background of Super Bowl fanfare, the various reported cases of sex trafficking, and two noted research findings regarding the correlation—and possible causation—between the fanfare and the reported trafficking.<sup>14</sup> The analysis in Part III attempts to elucidate how federal law defines “sex trafficking.”<sup>15</sup> Part III also engages various interpretive, conceptual, and taxonomical clarifications, confusions, and disagreements regarding the statutory language.<sup>16</sup> Part IV provides this comment’s conclusions, applying the statutory language, judicial precedents, and subsequent issues of confusion to the various news sources and research studies presented in Part II.<sup>17</sup> Part V ultimately concludes with a recommendation and an inquiry into the roles the government, the NFL, and American society ought to play in light of the analysis and application.<sup>18</sup>

## II. BACKGROUND: FANFARE AND ANATHEMA

### A. Religious Fanfare “Redefined”

Super Bowl host cities are finding new ways to “redefine the Super Bowl” and attract more customers.<sup>19</sup> Showcasing their large-scale attendance and corporate financial contributions, San Francisco’s Super Bowl 50 Host Committee released an article boasting, “[b]etween January 30 and February 7, 1.1 million people—both Bay Area locals and out-of-town fans”—visited megacorporation-sponsored local events.<sup>20</sup> The Committee also announced:

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12. See *infra* notes 24–27 and accompanying text (discussing cases of possible trafficking around Super Bowl).

13. See *infra* notes 19–212 and accompanying text.

14. See *infra* notes 19–73 and accompanying text.

15. See *infra* notes 74–85 and accompanying text.

16. See *infra* notes 86–167 and accompanying text.

17. See *infra* notes 168–197 and accompanying text.

18. See *infra* notes 198–212 and accompanying text.

19. See *Super Bowl 50 Sets Records Across the Board*, Super Bowl 50 Host Committee (Feb. 10, 2016), <http://www.sfbaysuperbowl.com/super-bowl-50-sets-records-across-the-board#VqOZiLevO7eOS4tJ.97> [https://perma.cc/LFJ2-EKYT] (“It’s been our goal from the beginning to redefine the Super Bowl, and I believe we’ve done just that.”).

20. *Id.* (“San Francisco events: Super Bowl City presented by Verizon, the 50th Mile and the NFL Experience driven by Hyundai.”).

The free public Super Bowl City was designed to showcase the best the Bay Area has to offer, with interactive exhibits and activities that highlighted the region's technological prowess, culinary excellence and cultural diversity, as well as celebrated the 50th Super Bowl and the Bay Area's place in professional football history.<sup>21</sup>

The San Francisco 49ers Chief Executive Officer, Jed York, stated, "[t]he entire region came together these last few years in impressive fashion by locking arms and working hard . . . . We thank the NFL community for providing us the great privilege of hosting Super Bowl 50 and we look forward to sport's [*sic*] greatest event returning very soon."<sup>22</sup>

Despite—or perhaps by virtue of—such national fanfare and festivities, sex traffickers may be finding ways to capitalize on these large gatherings.<sup>23</sup> Leading up to Super Bowl 49, in Phoenix, one local news article claimed "[o]ver 10,000 'prostitutes'—many of whom were trafficking victims—were brought into Miami for the Super Bowl in 2010, and during the Dallas Super Bowl in 2011, there were 133 arrests for sex with *minors*, according to the National Center for Missing and Exploited Children."<sup>24</sup> In Florida, two men were convicted of forcing a fourteen-year-old girl into prostitution through the use of online advertising.<sup>25</sup> During Super Bowl 44 in Miami Gardens, Klaas Kids Foundation, a child advocacy group, "identified at least 16 out-of-town underage prostitutes working the streets and hotels of South Beach and other Miami-area neighborhoods."<sup>26</sup> One author explains, quite simply, the large-scale nature of the event affords traffickers the opportunity to "cash in" on the presumable rise in demand.<sup>27</sup>

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21. *Id.* (describing "Super Bowl City").

22. *Id.*

23. *See generally* Wright, *supra* note 8 (discussing sex trafficking around Super Bowl).

24. Lane Anderson, *The Super Bowl is the Largest Human Trafficking Event in the Country*, DESERET NEWS (Jan. 30, 2015, 2:00 PM), <http://www.deseretnews.com/article/865620752/The-Super-Bowl-is-the-largest-human-trafficking-event-in-the-country.html> [<https://perma.cc/43LT-GK4T>] (emphasis added) (discussing issues of human trafficking in light of then-upcoming Super Bowl in Phoenix).

25. Rick Jervis, *Child Sex Rings Spike During Super Bowl Week*, USA TODAY (last updated Feb. 1, 2011, 1:02 PM), [http://usatoday30.usatoday.com/news/nation/2011-01-31-child-prostitution-super-bowl\\_N.htm](http://usatoday30.usatoday.com/news/nation/2011-01-31-child-prostitution-super-bowl_N.htm) [<https://perma.cc/EWS6-TVQD>] (listing previous incidents at Super Bowls).

26. *Id.* (discussing Miami child victim case).

27. *See id.* (noting one expert's explanation).

### B. Anathema Researched

In order to explore the “impact of the Super Bowl on sex trafficking,” the Office of Sex Trafficking Intervention Research (“STIR”) at Arizona State University (“ASU”) conducted a two-year study, funded by The McCain Institute for International Leadership.<sup>28</sup> In February 2015, STIR presented its findings “to develop new knowledge about the incidence of sex trafficking surrounding major events such as the Super Bowl.”<sup>29</sup> Dominique Roe-Sepowitz, Associate Professor at ASU and Director of STIR, explained, for ten days leading up to and including the Super Bowl, the researchers focused on online advertisements (“ads”) for sex, listing ages *eighteen to twenty-two* on Backpage.com.<sup>30</sup>

In the first year, STIR noted three conclusions.<sup>31</sup> First, traffickers *transported* victims to large sporting events.<sup>32</sup> Second, ads “indicating” sex trafficking often linked to other ads with phone numbers bearing area codes from outside the region.<sup>33</sup> Third, the researchers found a far greater demand than any single law enforcement agency can manage.<sup>34</sup>

ASU researchers—“trained specifically in the recognition of sex trafficking victimization”—attempted to identify ads involving victims of trafficking by scanning the ads and sending them to Praescent Analytics to be “scraped and analyzed . . . to explore volume and content.”<sup>35</sup> In doing so, Praescent Analytics relied on the “Sex Trafficking Matrix,” utilizing an algorithm to flag “high-risk”

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28. See generally Ariz. State Univ., *Exploring the Impact of the Super Bowl on Sex Trafficking 2015*, VIMEO (Feb. 23, 2015) [*hereinafter* ASU], <https://vimeo.com/120625333> [<https://perma.cc/VD74-CEXQ>]. For a printed version of statistics presented in the video, see also DOMINIQUE ROE-SEPOWITZ ET AL., McCain Inst. for Int’l Leadership at Ariz. State Univ., *EXPLORING THE IMPACT OF THE SUPER BOWL ON SEX TRAFFICKING 2015* (2015) [*hereinafter* McCain Inst.], available at <https://www.mccaininstitute.org/exploring-the-impact-of-the-super-bowl-on-sex-trafficking-2015/> [<https://perma.cc/78W2-89FQ>]. For Power Point slides from the 2014 portion of study, see also Presentation, Office of Sex Trafficking Intervention Research, *Exploring Sex Trafficking and Prostitution Demand during the Super Bowl 2014* (March 2015), [https://socialwork.asu.edu/sites/default/files/%5Bterm%3Aname%5D/%5Bnode%3Acreate%3Acustom%3AYm%5D/exploring-sex-trafficking-and-prostitution-demand-during-the-super-bowl-2014\\_2.pdf](https://socialwork.asu.edu/sites/default/files/%5Bterm%3Aname%5D/%5Bnode%3Acreate%3Acustom%3AYm%5D/exploring-sex-trafficking-and-prostitution-demand-during-the-super-bowl-2014_2.pdf) [<https://perma.cc/RRX9-UKFN>].

29. ASU, *supra* note 28 (stating purpose of study).

30. *Id.* (introducing research method).

31. See *id.*

32. See *id.*

33. See *id.*

34. See *id.* (describing vast number of “high risk” ads).

35. McCain Inst., *supra* note 28.

ads indicating a “sex trafficked *minor*.”<sup>36</sup> Limiting its search to ads listing ages eighteen to twenty-two, utilizing a method designed to identify victims who are minors, and specifically noting the transportation and movement of various ads to host cities as indicators of trafficking, the ASU research seemingly focused on identifying sex trafficking by searching for indications of transportation and underage commercial sex.<sup>37</sup>

In Phoenix, leading up to hosting Super Bowl 49, STIR recorded a significant increase of ads selling sex.<sup>38</sup> Roe-Sepowitz noted many of the ads utilized language related to the Super Bowl, or employed sports-related puns, to advertise sex.<sup>39</sup> For the ten days leading up to the Super Bowl, 95% of ads in the “adult entertainment” section advertised sex for money, and 65% of those ads indicated sex trafficking.<sup>40</sup> The study specifically identified thirty-four ads indicating trafficked minors.<sup>41</sup> STIR ultimately found the number of sex ads leading up to hosting the Super Bowl increased 30% from the previous year.<sup>42</sup>

Leading up to Super Bowl 49 in Phoenix, STIR also searched the New York region—the home of Super Bowl 48—for “[a]ll ads posted in the escort section of backpage.com for Northern New Jersey, Brooklyn, Manhattan and Staten Island with ages 18 to 22 labeled on the ad.”<sup>43</sup> As Phoenix hosted Super Bowl 49, 2,500 miles away, the researchers recorded a surprising 57% *increase* of sex ads in the New York region from when the region hosted a year before.<sup>44</sup> The researchers noted the increase indicates a surge in the demand for *commercial sex*, distinguishing commercial sex ads from those they allege “indicate trafficking.”<sup>45</sup> The study ultimately

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36. *Id.* (emphasis added).

37. See *supra* notes 30–34 and accompanying text; see also McCain Inst., *supra* note 28 (“The 2014 study found evidence of sex trafficking victimization through the movement of identified ads from outside the host city.”).

38. See ASU, *supra* note 28 (describing shift in Phoenix in light of Super Bowl).

39. *Id.* (for example, one ad stated, “come score a touchdown”).

40. See *id.* (explaining that variables were based on, among others, the “way the photo was taken, what we saw in the text, and what we saw in the language”).

41. See McCain Inst., *supra* note 28 (adding statistics regarding minors).

42. See ASU, *supra* note 28. Roe-Sepowitz also noted a 22% growth in the number of responses to “decoy ads.” See *id.*

43. McCain Inst., *supra* note 28 (emphasis added).

44. See *id.* (providing New York regional statistics).

45. See *id.* (“The overall increase in the sex buyer volume and the number of commercial sex ads indicates that public awareness and concern about sex trafficking and increased law enforcement attention on the crime has yet to reduce the overall demand for commercial sex or supply of sellers.”).

identified 43% of the New York “escorts” ads as “commercial sex” ads, almost 50% of which indicated “sex trafficking.”<sup>46</sup>

Making specific efforts to discover the source locations of these ads, the researchers searched through the phone numbers listed in the ads, noting area codes almost always coincided with source locations.<sup>47</sup> In Phoenix, they found 40% of ads selling sex came from outside of Arizona, and, of those, 20% came from California.<sup>48</sup> Because the study showed a large and varied distribution of source locations throughout the country, the researchers concluded traffickers are willing to travel far distances in order to make money at the sacred event.<sup>49</sup>

In sum, during Super Bowl 49, the study found that in Phoenix, out of 1,333 commercial sex ads listing ages eighteen to twenty-two, 870 ads “indicated sex trafficking.”<sup>50</sup> The study also flagged an additional twenty-four ads as potentially involving minors.<sup>51</sup> In the New York region, the study identified 1,527 ads selling sex and, of those, 743 “indicated trafficking.”<sup>52</sup>

The researchers ultimately highlighted the transportation aspect of trafficking and distinguished Phoenix from other Super Bowls, noting the low percentage of ads which originated locally in those cities.<sup>53</sup> In their concluding recommendations, the researchers stated:

Throughout the course of this research, a noticeable path of victimization was identified along which victims were moved either to limit exposure to local law enforcement or to move them towards significant events such as the

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46. *See id.* (presenting findings from New York region).

47. *See id.* (finding source locations based on area codes listed on ads).

48. *See* McCain Inst., *supra* note 28 (concluding majority of sources came from outside of Phoenix area).

49. *See id.* (explaining traffickers’ willingness to travel).

50. *Id.* (providing Phoenix statistics).

51. *See id.* (offering statistics from Phoenix). In addition, in San Jose, a year displaced in anticipation of Super Bowl 50, the researchers found 882 ads identified as prostitution, and, of those, 505 contained variables indicating trafficking. *See id.* The study also noted twenty-one ads as possible minors. *See id.*

52. *See* McCain Inst., *supra* note 28. The researchers recognized the findings in Phoenix may not necessarily indicate the Super Bowl *caused* a rise in sex trafficking. *See id.* The researchers noted various factors which may have contributed to increased ad volumes, including “numerous male-driven activities in the weeks before the Super Bowl (auto auction, golf tournaments, the 2015 Pro Bowl), or simply that the online sex market is on the rise.” *Id.* Thus, the study noted that the findings, rather, support a notion that “sex buying, sex selling and sex trafficking occur every day in Phoenix.” *Id.*

53. *See id.* (“A second piece of evidence to be gleaned during online investigations is the path of the movement of victims from one city or event to the next.”).



Super Bowl. These paths are the *nexus of sex trafficking* and are largely provided online.<sup>54</sup>

Without providing a precise definition of “sex trafficking,” ASU (1) limited its research to ads listing ages eighteen to twenty-two, (2) utilized an algorithm designed to identify underage victims, (3) heavily highlighted the local or non-local aspects of the ads, and (4) described movement as the “nexus of trafficking.”<sup>55</sup> It seems the researchers believed—or operated under the assumption—that the scope of “sex trafficking” is limited to commercial sex acts involving either transportation or a minor, or both.<sup>56</sup>

### C. Anathema Questioned

In 2016, researchers at Carnegie Mellon University (“CMU”) also conducted a study entitled, “Do Public Events Affect Sex Trafficking Activity?”<sup>57</sup> CMU stated their ultimate purpose was to “inform wise resource allocation, guide good policies and foster the most meaningful impact” in anti-trafficking efforts.<sup>58</sup> The CMU researchers noted the “pervasive belief that the Super Bowl is the single biggest day for human trafficking in the United States each year . . . despite a lack of evidentiary support” served as the impetus for their study.<sup>59</sup> CMU also argued much of the discussion regarding the putative relationship between the Super Bowl and sex trafficking had been based on “hearsay and popular belief.”<sup>60</sup> Conceiving the problems through anecdotes, rather than “empirical data,” risks the dangers of misappropriating resources.<sup>61</sup>

Seeking a broader perspective, the CMU researchers examined thirty-three public events generating numbers “comparable to the Super Bowl.”<sup>62</sup> Gathering data from female escort advertisements

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54. *Id.* (emphasis added).

55. *See id.*; *supra* notes 28–54 and accompanying text (outlining parameters of ASU’s study regarding sex trafficking at Super Bowl).

56. *See supra* notes 28–55 and accompanying text (discussing ASU’s search for signs of age and locality of victims).

57. Kyle Miller et. al, *Do Public Events Affect Sex Trafficking Activity?*, CARNEGIE MELLON UNIV. (Feb. 15, 2016), *available at* <https://arxiv.org/pdf/1602.05048.pdf> [<https://perma.cc/CJ7T-LKUC>].

58. *Id.* at 8 (introducing abstract).

59. *Id.* at 1 (discussing motive for study).

60. *See id.* at 2. (“Relying on hearsay and popular belief for decision-making may result in misappropriation of resources in anti-trafficking efforts.”).

61. *See id.*

62. *See id.* at 4 (describing research technique and comparing Super Bowl with, *e.g.*, 2015 Consumer Electronics Show, Formula One Grand Prix, and Oracle OpenWorld Convention).

offered in “popular classified websites” between October 2011 and February 2016, CMU used the number of online escort advertisements as a measure for “sex-worker” and trafficked-victim activity.<sup>63</sup> To precisely identify ads involving victims of *trafficking*, however, CMU looked only for ads suggesting *transportation*.<sup>64</sup> Presumably assuming the number of transported victims dictate the influx of trafficking *per se*, CMU measured the rise in sex trafficking by the number of “new-to-town” online ads, referring to traffickers and their victims who arrive from “disparate locations to the event vicinity.”<sup>65</sup>

Utilizing CMU’s findings and leading up to Super Bowl 51 in Houston, the City of Houston Mayor’s Office developed a presentation, “Super Bowl and Human Trafficking – Myth?”<sup>66</sup> The presentation touted the CMU’s findings, explaining the study “included over 32 million online sex ads [and] researchers used a 7 day window leading up to the event and a 91 day inference window making it a first of its kind of study.”<sup>67</sup> Based on the study’s findings, the presentation noted, “the influx of sex slaves to a Host Super Bowl City is much less than originally thought.”<sup>68</sup> Thus, CMU—and government agencies relying on CMU’s research—seemingly argues under the presumption that an influx of sex trafficking depends on whether victims are transported to the host cities.<sup>69</sup>

#### D. The Need for Elucidation Pronounced

ASU’s and CMU’s apparent assumptions regarding the nature and legal scope of “sex trafficking” leave much unclear.<sup>70</sup> According to ASU’s research methods, *transporting* a victim for commercial

63. *See id.* at 2 (describing research method and scope).

64. *See id.* at 4 (utilizing “new-to-town” ads to measure trafficking activity).

65. *Id.* at 3–4 (noting specific type of target advertisements). CMU ultimately concluded, “multiple other venues, events, times, and locations [ ] show a more significance influx of sex advertising than the Super Bowl.” *Id.* at 6. In one such “other venue,” the researchers “identified Memorial Day weekend at Myrtle Beach as systematically demonstrating a large spike in ‘new-to-town’ sex ads, which is more likely to be due to a local event than that seen around the Super Bowl, by an order of magnitude.” *Id.*

66. *See* Presentation, City of Houston Anti-Trafficking Mayor’s Office, Super Bowl and Human Trafficking – Myth? (Mar. 8, 2016), *available at* <http://human-traffickinghouston.org/toolkits/super-bowl-information-packet/> [<https://perma.cc/2VMB-GAF9>].

67. *Id.* (explaining CMU findings).

68. *Id.* (emphasis added) (explaining lack of influx of sex trafficking victims).

69. *See supra* notes 57–68 and accompanying text (discussing CMU’s search for “new-to-town” ads).

70. *See supra* notes 8–68 and accompanying text (discussing ASU, CMU, and their search methods).

sex or subjecting a *minor* to commercial sex seem to be the exclusive and necessary conditions of “sex trafficking.”<sup>71</sup> Meanwhile, according to CMU—and the Houston Mayor’s Office—the act of transporting a victim for commercial sex alone seems to define “sex trafficking.”<sup>72</sup>

Is either definition correct? What is the *precise* scope of “sex trafficking”? Is it even a crime? How does “sex trafficking” relate to the often-invoked “human trafficking”? If we can elucidate the terminological and taxonomical confusions and understand the conceptual disparities, we may better discern the reliability of various media claims and research findings and—for the purpose of this discussion—ultimately form an educated conclusion regarding the roles of the NFL and American society in the ongoing effort to combat this “contemporary manifestation of slavery.”<sup>73</sup>

### III. ANALYSIS: WHEELS OF INJUSTICE ELUCIDATED

Until the Trafficking Victims Protection Act (“TVPA”) of 2000, Congress had not established meaningful legal definitions or taxonomies to codify the existing societal and normative conceptions of “sex trafficking.”<sup>74</sup>

#### A. The Trafficking Victims Protection Act

Codified in 22 U.S.C. §§ 7101–7113 (2012), the TVPA offers several key definitions and provisions.<sup>75</sup> Section 7102(9) notably lists the two acts of “trafficking in persons”—often called “human trafficking”: (A) “sex trafficking” and (B) trafficking for “labor or services.”<sup>76</sup> “Sex trafficking” is “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a per-

71. See *supra* note 56 and accompanying text.

72. See *supra* notes 57–68 and accompanying text (discussing CMU’s search for “new-to-town” ads).

73. See 22 U.S.C. § 7101(a) (2012) (stating purpose of Trafficking Victims Protection Act).

74. See *generally id.* § 7101 (listing purposes and findings of Trafficking Victims Protection Act); see also Michelle M. Dempsey, *Decriminalizing Victims of Sex Trafficking*, 52 AM. CRIM. L. REV. 207, 209–10 (2014) (“Beyond [ ] limited points of agreement, [ ] there is no ‘one size fits all’ description of sex trafficking, and persistent disagreement surrounds the scope and size of this phenomenon.”).

75. See *generally* 22 U.S.C. § 7102.

76. *Id.* § 7102(9)(A)–(B). By listing the two acts, and the means through which they qualify as the prohibited “*severe forms* of trafficking in persons,” the statute provides “sex trafficking” and trafficking for “labor or services” as the two underlying acts of “trafficking in persons.” *Id.* (emphasis added). Section 7102(B) defines trafficking for “labor or services” as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services . . . .”

son for the purpose of a commercial sex act.”<sup>77</sup> A “commercial sex act”—often called “prostitution”—is “any sex act on account of which anything of value is given to or received by any person.”<sup>78</sup>

The statute provides the *prohibitive* scope of “sex trafficking” by defining the means through which the act becomes the criminal, “severe forms of trafficking in persons.”<sup>79</sup> Under § 7102(9)(A), the term “severe forms of trafficking in persons” means “sex trafficking in which a commercial sex act is induced by *force, fraud, or coercion*, or in which the person induced to perform such act has not attained 18 years of age.”<sup>80</sup> As a matter of taxonomy, sex trafficking is therefore a subset of “severe forms of trafficking in persons,” and both are subsets of “trafficking in persons”—“human trafficking.”<sup>81</sup> As a matter of scope, while “sex trafficking” is defined in § 7102(10), it is prohibited only when it qualifies as a “severe form[ ] of trafficking in persons,” under the TVPA and its criminal analogue, 18 U.S.C §§ 1581–96.<sup>82</sup>

In other words, sex trafficking—“the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act”—is a federal crime only when the commercial sex act, for which purpose the victim was trafficked, is “induced by force, fraud, or coercion, or [when] the person induced to perform such act has not attained 18 years of age.”<sup>83</sup> *Criminal* sex trafficking thus requires: (1) an *act* of sex trafficking; (2) through the *means* of force, fraud, or coercion—or *de facto* if underage; (3) for the *purpose* of prostitution.<sup>84</sup>

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77. *Id.* § 7102(10).

78. *Id.* § 7102(4).

79. *See id.* § 7102(9) (defining “severe forms of trafficking in persons”); *see also* 18 U.S.C. §§ 1581–97 (2012) (criminalizing categories within “trafficking in persons” and setting parameters). In the same way, the statute also provides the prohibited scope of trafficking for “labor or services” by qualifying it as a “severe form[ ] of trafficking in persons” when committed “through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *See* 22 U.S.C. § 7102(9)(B).

80. 22 U.S.C. § 7102(9)(A) (emphasis added) (providing *means* component). *See also* § 7102(9)(B) (providing the definition of “severe forms of trafficking in persons” in the scope of “labor and services”).

81. *See* § 7102(9)(A)–(B) *supra* note 76 and accompanying text (categorizing conceptions within “trafficking in persons”).

82. *See id.* For the sake of brevity and clarity, this Article will hereon refer to sex trafficking qualified as a “severe form[ ] of trafficking in persons” as “criminal sex trafficking.”

83. § 7102(9)(A)–(B).

84. *See* Michelle M. Dempsey et al., *Defining Sex Trafficking in International and Domestic Law: Mind the Gaps*, 26 EMORY INT’L L. REV. 137, 144 (2012) (explaining “act,” “means,” and “object”).

In light of such a complex and confusing statutory framework, three notable issues demand deliberation: (1) statutory terms and concepts facing judicial interpretation; (2) common misconceptions and misapprehension; and (3) normative disagreements whether sex trafficking and prostitution *ought* to be considered conceptually and categorically different.<sup>85</sup>

## B. Elucidating Scopes, Taxonomies, and Concepts in Light of TVPA

### 1. *Judicial Interpretation: Expounding, Expanding, and Evolving*

In two notable circuit decisions, the Judiciary expounded—arguably expanded—upon Congress’s definitions in the TVPA.<sup>86</sup> In *United States v. Jungers*,<sup>87</sup> the Court of Appeals for the Eighth Circuit considered whether the act of “sex trafficking” under the TVPA included buying.<sup>88</sup> Two defendants, caught responding to law enforcement’s fabricated advertisements for sex with minors, argued they do not qualify as “sex traffickers” because they were merely purchasers.<sup>89</sup> The court ultimately concluded, however:

[T]he TVPA definition of “sex trafficking”—broadly defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”—readily includes the actions of a purchaser whose sole purpose is obtaining a child for sex. “Traffic,” like “trade,” includes both the business of buying and selling for money and the business of exchanging commodities by barter.<sup>90</sup>

Holding “buying” sex qualifies as “sex trafficking,” the Court of Appeals for the Eighth Circuit viewed the existence of a “pimp” or seller as a sufficient condition—rather than a necessary condition—when determining whether certain conduct satisfies the *act*

85. See generally Michelle M. Dempsey, *What Counts as Trafficking for Sexual Exploitation? How Legal Methods Can Improve Empirical Research*, 3 J. HUM. TRAFFICKING 61, 64 (Feb. 23, 2017) (discussing differing views regarding disagreement).

86. See *id.* at 70 (explaining judicial interpretations of TVPA).

87. 702 F.3d 1066 (8th Cir. 2013).

88. See *id.* (considering whether buyers count as traffickers). The TVPA did not initially include “patronizing” and “soliciting” within the definition of “sex trafficking.” See *id.* at 1072 (quoting TVPA definition of “sex trafficking” as then defined). See also Dempsey, *supra* note 85, at 70 (discussing *Jungers*).

89. See *Jungers*, 702 F.3d at 1068 (discussing background and facts).

90. *Id.* at 1072 (quoting 22 U.S.C. § 7102(9) (2012)).

component of criminal sex trafficking.<sup>91</sup> Congress later codified the decision in the Combat Human Trafficking Act providing, “[t]he term ‘covered offender’ means an individual who obtains, patronizes, or solicits a commercial sex act involving a person subject to severe forms of trafficking in persons.”<sup>92</sup>

In *United States v. Mack*,<sup>93</sup> the Court of Appeals for the Sixth Circuit considered whether exploiting a victim’s drug addiction constitutes “coercion” under the TVPA.<sup>94</sup> This case is particularly notable because, while the statute does not define the other two means of criminal sex trafficking—“force” and “fraud”—it defines “coercion” and makes no mention of drugs.<sup>95</sup> The Court of Appeals for the Sixth Circuit held, nonetheless, that taking advantage of a victim’s drug addiction constitutes “coercion.”<sup>96</sup> Section 7102(3) defines “coercion” as:

(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.<sup>97</sup>

Construing heroin and cocaine withdrawal to be “serious harm,” the court, in *Mack*, determined the defendant coerced victims into prostituting themselves by providing them initial doses of drugs “under the pretense that they were free.”<sup>98</sup> When the defendant suddenly withheld the drugs and demanded payment, he exploited the very addictions he caused when he first offered the free drugs.<sup>99</sup> The court noted, “[one victim] testified that defendant would withhold heroin until she went to prostitution sessions, thus using her addiction as an incentive to prostitute herself. Similarly, [another victim] testified that she would get heroin from defendant

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91. *See id.*; *see also* Dempsey, *supra* note 85, at 70 (“Since the existence of a pimp is irrelevant to the definition of [criminal sex trafficking] under the TVPA, the existence of a pimp must be treated as irrelevant in any prevalence study.”).

92. 42 U.S.C. § 14044(g) (2012) (codifying *Junger* decision).

93. 808 F.3d 1074 (6th Cir. 2015).

94. *See id.* at 1082; *see also* Dempsey, *supra* note 85, at 70 (discussing *Mack*).

95. *See* 22 U.S.C. § 7102(3) (defining “coercion”).

96. *See Mack*, 808 F.3d at 1082 (concluding defendant’s actions were coercive under TVPA).

97. § 7102(3).

98. *See Mack*, 808 F.3d at 1081 (explaining victims’ fear of withdrawal).

99. *See id.* at 1082 (explaining defendant’s act of coercion).

only after she completed her ‘appointments’ with ‘Johns.’”<sup>100</sup> Reasoning “the victims engaged in commercial sex acts in order to avoid the physical and psychological harm of heroin and cocaine withdrawal,” the court concluded the defendant’s conduct fell within the statutory definition of coercion, showing a “scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm.”<sup>101</sup>

As in *Jungers* and *Mack*, the Judiciary continues to expound and expand upon the TVPA and serves as the vehicle for the evolving legal conceptualization of sex trafficking in the United States.<sup>102</sup> In light of the TVPA’s complex framework and ongoing judicial evolution, studies and news sources making—or denouncing—claims concerning sex trafficking and the Super Bowl, must face skeptical vetting for verity and precision.<sup>103</sup> What *precisely* do the studies mean when invoking “trafficking,” “human trafficking,” and “sex trafficking”?<sup>104</sup> Do their terms comport with the statutory definitions and ongoing judicial interpretations? Knowing how these sources define, categorize, and conceptualize the terms—if at all—is paramount to assessing the verity of their claims regarding the Super Bowl’s relationship to sex trafficking or criminal sex trafficking.<sup>105</sup>

## 2. *Confusion: Misapprehensions and Misconceptions*

### a. Misapprehension: “Trafficking is Transportation”

News sources and studies purportedly providing “empirical data” make claims regarding the influx of prostituted persons from areas outside of host cities.<sup>106</sup> In terms of the legal scope and taxonomy of sex trafficking, many seemingly believe—perhaps in light

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100. *Id.* at 1081 (describing victims’ dependence).

101. *Id.* at 1082 (“This evidence was sufficient to enable a reasonable jury to find that defendant’s supplying and withholding of drugs from [victims] was part of a ‘plan or pattern intended to cause them to believe that failure to perform [prostitution acts] would result in serious harm.’”) (quoting TVPA’s criminal analogue, 18 U.S.C. § 1591(e)(2)(B)) (internal brackets omitted).

102. *Cf.* Dempsey, *supra* note 85, at 73 (describing role of judicial interpretation in understanding TVPA).

103. *See supra* notes 24–69 and accompanying text (presenting ASU’s and CMU’s purported methodologies).

104. *See, e.g., supra* notes 9–12 and accompanying text (discussing Cindy McCain’s and others’ claims of human trafficking, sex trafficking, or, simply, trafficking).

105. *See supra* notes 70–73 and accompanying text (summarizing ASU’s and CMU’s methodologies and claims).

106. *See, e.g., supra* notes 57–65 and accompanying text (describing CMU’s “empirical data” relying on “new-to-town” ads).

of the Mann Act—*transporting* a victim is a necessary condition to any form of trafficking in persons.<sup>107</sup> The Mann Act, 18 U.S.C. §§ 2421-24, states:

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.<sup>108</sup>

The language may lead some to conflate separate crimes and definitions, and, in turn, inadvertently misapprehend “sex trafficking”—and therefore criminal sex trafficking—to necessarily involve transportation.<sup>109</sup> While the Mann Act does criminalize a *type* of transportation of individuals for prostitution, in terms of “sex trafficking” and the TVPA, transportation is but one of several *acts* by which, through the necessary *means* of force, fraud, or coercion, one commits a crime for the purpose of prostitution.<sup>110</sup> When studies claim to examine rises in sex trafficking around Super Bowl host cities, but search only for ads indicating transportation, their findings inevitably mislead.<sup>111</sup> Discounting all other ways traffickers commit criminal sex trafficking, such studies severely shortchange the potential pervasiveness of the crime in the wake of the Super Bowl.<sup>112</sup>

#### b. Misconception: Sex Trafficking is Always a Crime

Under the TVPA, sex trafficking is only a crime when it occurs through the means of “force, fraud, or coercion,” or when the vic-

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107. See 18 U.S.C. § 2421 (2012) (prohibiting “knowingly” transporting); see also *Myths and Misconceptions*, Nat’l Human Trafficking Hotline, <https://human-traffickinghotline.org/what-human-trafficking/myths-misconceptions> [https://perma.cc/6W7D-C6ER] (last visited Feb. 17, 2017) (“Myth 2: Human trafficking is essentially a crime that must involve some form of travel, transportation, or movement across state or national borders.”).

108. § 2421.

109. See *Myths and Misconceptions*, *supra* note 107 (“Myth 2: Human trafficking is essentially a crime that must involve some form of travel, transportation, or movement across state or national borders.”).

110. See § 2422; *supra* notes 75–85 and accompanying text (analyzing TVPA).

111. See, e.g., *supra* notes 57–65 and accompanying text (describing CMU’s reliance on “new-to-town” ads).

112. See *supra* notes 106–111 and accompanying text.



tim is under the age of eighteen.<sup>113</sup> Some argue, by not making sex trafficking a federal crime, *per se*, Congress failed to meaningfully address sex trafficking in the United States and provided a mere “symbolic victory” for those who wish to outlaw sex trafficking altogether.<sup>114</sup> A majority of Americans, however, still seemingly believe sex trafficking is always a crime.<sup>115</sup> This general misconception is particularly troubling in light of researchers and news articles “overblowing” statistics of sex trafficking and spawning the various subsequent indictments aimed at large event organizers, such as the NFL.<sup>116</sup>

When news media and researchers describe the Super Bowl’s effects on sex trafficking, they often frame the term “sex trafficking” as a crime.<sup>117</sup> By incorrectly broadening the legal scope of the term, these sources immunize Congress’s apparent failure to meaningfully engage sex trafficking in the United States.<sup>118</sup> Making a federal crime of that which is not, sources presenting overblown figures and rhetoric about sex trafficking simply gloss over the “symbolic victories” and legislative shortcomings.<sup>119</sup>

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113. See 22 U.S.C. § 7102(9)(A) (2012); *supra* notes 83–85 and accompanying text (analyzing proper scope of variables which amount to criminal sex trafficking).

114. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1679 (2010) (“Including ‘sex trafficking’ in the TVPA definition was, at best, a symbolic victory for the neo-abolitionists . . . because the statute limited application of its key operational terms to severe forms of trafficking.”).

115. See, e.g., Eric Gaillard, *FBI’s New Approach To Crack Down on Super Bowl Sex Trafficking*, CBS NEWS (Jan. 12, 2016, 3:34 PM), <http://www.cbsnews.com/news/fbi-trying-new-approach-to-crack-down-on-super-bowl-sex-trafficking/> [<https://perma.cc/NJ9H-XQLB>] (discussing “cracking down” on sex trafficking under presumption of assumed illegality); McCain Inst., *supra* note 28 (“The overall increase in the sex buyer volume and the number of commercial sex ads indicates that public awareness and concern about sex trafficking and increased law enforcement attention on the *crime* has yet to reduce the overall demand for commercial sex or supply of sellers.”) (emphasis added).

116. See, e.g., *supra* notes 9–12 and accompanying text (discussing Cindy McCain labeling the Super Bowl the “largest human-trafficking venue on the planet”).

117. See, e.g., McCain Inst., *supra* note 28 (“The overall increase in the sex buyer volume and the number of commercial sex ads indicates that public awareness and concern about sex trafficking and increased law enforcement attention on the *crime* has yet to reduce the overall demand for commercial sex or supply of sellers.”) (emphasis added); Gaillard, *supra* note 115 (discussing “cracking down” on sex trafficking under presumption of assumed illegality).

118. See Chuang, *supra* note 114, at 1679 (discussing “neo-abolitionist” view of TVPA).

119. See *id.*; see *infra* notes 145–165 and accompanying text (discussing possible shortcomings in TVPA).

3. *Disagreement: Are “Severe Forms of Trafficking in Persons” and “Prostitution” The Same?*

Even when studies correctly formulate the legal scopes, taxonomies, and definitions under the TVPA, their findings still vary by whether the researchers believe sex for money alone is *per se* criminal sex trafficking.<sup>120</sup> Scholars often disagree whether prostitution necessarily involves force, fraud, or coercion.<sup>121</sup> If prostitution necessarily involves force, fraud, or coercion, all forms of buying and selling sex are *de facto* criminal sex trafficking under the TVPA, and would significantly affect how we measure the Super Bowl’s alleged effect on “sex trafficking.”<sup>122</sup>

In May 2016, Amnesty International published its *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*.<sup>123</sup> In it, Amnesty International urged “governments to repeal

120. See Dempsey, *supra* note 74, at 215 (“[D]espite widespread agreement that adult prostitution induced by ‘force, fraud, or coercion’ counts as sex trafficking, there is often little agreement about what counts as ‘force,’ ‘fraud,’ and/or ‘coercion’ in the commercial sex industry.”).

121. Compare Martha C. Nussbaum, “Whether from Reason or Prejudice”: *Taking Money for Bodily Services*, 27 LEGAL STUD. 693, 693 (1998) (“Professors, factory workers, lawyers, opera singers, prostitutes, doctors, legislators – we all do things with parts of our bodies for which we receive a wage in return.”) with Janice G. Raymond, *Not a Choice, Not a Job*, 5 UNIV. OF NEB. PRESS 2013 (arguing against “sex industry apologists” who “complain that the number of victims don’t warrant the attention being given to sex trafficking”).

122. See *supra* note 103 and accompanying text (discussing need for studies, like ASU, to clarify terms); see, e.g., Kat Banyard, *Why is a Pimp Helping to Shape Amnesty’s Sex Trade Policy?*, GUARDIAN (Oct. 22, 2015), <https://www.theguardian.com/commentisfree/2015/oct/22/pimp-amnesty-prostitution-policy-sex-trade-decriminalise-brothel-keepers> [<https://perma.cc/MY6Y-LUEJ>] (proposing prostitution is, inherently, an act of violence against women). Some may argue, because every state in the United States, save Nevada, criminalizes prostitution—whether by punishing the buyer, seller, victim, or all three—this is a moot controversy. See Wright, *supra* note 8, at 197–99 (discussing state laws). The debate regarding the legalization, criminalization, and de-criminalization of prostitution, however, is very much ongoing. Compare Peter Singer, *The Case for Legalizing Sex Work*, PROJECT SYNDICATE (Nov. 14, 2016), <https://www.project-syndicate.org/commentary/case-for-legalizing-sex-work-by-peter-singer-2016-11> [<https://perma.cc/SG6U-H3HG>] (proposing “sex work” be legalized in light of harms criminalization may cause) with Banyard, *supra* note 122 (proposing prostitution is, inherently, an act of violence against women). Therefore, due to its dialectically fluid status, a discussion regarding the potential effects of legalization and decriminalization, in light of major sporting events, is inevitable. See Wright, *supra* note 8, at 196–206 (“The discussion of international approaches to combat sex trafficking at major sporting events unavoidably encounters the issue of criminalization versus legalization of prostitution.”).

123. See Amnesty Int’l, AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS (2016), available at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/> [<https://perma.cc/C722-CBH7>].

laws criminalizing the exchange of sex for money by consenting adults.”<sup>124</sup> In its policy statement, Amnesty International stated:

[C]riminalization and penalization of sex work have a foreseeably negative impact on a range of human rights. These include: the rights to life, liberty, autonomy and security of person; the right to equality and non-discrimination; the right to be free from torture or cruel, inhuman or degrading treatment or punishment; the right to privacy; the right to the highest attainable standard of health; the right to information and education; the right to freedom of opinion and expression; the right to adequate housing; the right to just and favourable conditions of work; the right to family life and to found a family; and the right to remedy for human rights abuses.<sup>125</sup>

Appealing to the rights of liberty and autonomy, among others, Amnesty International seemingly proposed sex for money *can* be a matter of individual choice and may exist outside of the means of force, fraud, or coercion.<sup>126</sup>

Supporting Amnesty’s policy, one professor argues, while sex trafficking through the means of force, fraud, or coercion—or involving children—is universally condemned, keeping prostitution illegal produces a more dangerous environment for the “sex workers” by chilling the report of abuses.<sup>127</sup> The author ultimately asks: “[f]aced with the prospect of monotonous, repetitive work for eight hours a day on an assembly line or flipping hamburgers, [sex workers] prefer the higher pay and shorter hours that the sex industry offers. Many may not make that choice, *but should we make criminals of those who do?*”<sup>128</sup>

Critics of this approach argue such a choice is no choice at all.<sup>129</sup> “Choice has come to replace what is actually a *strategy of survival* for most prostituted women. It is a ‘choiceless choice.’”<sup>130</sup> A

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124. Singer, *supra* note 122 (describing Amnesty International’s published policy).

125. AMNESTY INT’L, *supra* note 123, at 10.

126. *See id.* (discussing rights implicated and violated with criminalized prostitution).

127. *See* Singer, *supra* note 122 (arguing against dangers of criminalizing prostitution).

128. *Id.* (emphasis added) (arguing against criminalizing those who choose prostitution).

129. *See, e.g.,* Raymond, *supra* note 121, at 19 (arguing against potential illusion of choice).

130. *Id.* (emphasis added).

choice made absent options proves no exercise of agency and is *de facto* a product of force or coercion.<sup>131</sup> Assuming the assertion is true, however, it does not necessarily mean persons could never conceivably choose sex for money over other available options.<sup>132</sup> To argue no person *could* possibly choose sex for money over other options would assume a normative assertion that no person *would* ever conceivably choose sex for money over other options. As one author argues:

The discursive slippage between prostitution and trafficking sweeps *any exercise of agency* by the putative victim under a totalizing narrative of victimization that refuses to engage in any marking of relative control or freedom—men dominate and all prostitute women are subordinated, oppressed and unfree. Instead, those women—the self-proclaimed “sex workers” who defy the dominant narrative—are explained away as suffering from a false consciousness and thereby unaware of their oppression or as deviant in desiring abuse.<sup>133</sup>

An altogether different—perhaps Utilitarian—approach, however, argues the theoretical debate whether “sex workers” can conceivably exercise legitimate agency ultimately proves far less significant than observable facts.<sup>134</sup> “Philosophically, the response to the choice debate is *not* to deny that women are capable of choosing within contexts of powerlessness, but to question how much real value, worth, and power these so-called choices confer.”<sup>135</sup> Regardless of agency, sex trafficking and prostitution may create “unacceptable risk[s] of harm” in *fact*.<sup>136</sup>

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131. See *id.* at 20 (arguing that choosing option when it is the only one is not choice).

132. See *id.* at 21 (acknowledging true issue is *not* to deny such a scenario).

133. Chuang, *supra* note 114, at 1699 (emphasis added).

134. See Michelle M. Dempsey, *Rethinking Wolfenden: Prostitute-Use, Criminal Law, and Remote Harm*, CRIM. L. REV. 444, 450 (2005) (contrasting conceptual concessions with factual conclusions). See generally John Stuart Mill, *Utilitarianism* (George Sher, ed., 2nd ed. 2002) (1861); see also Julia Driver, *Consequentialism (New Problems of Philosophy)* 22 (Routledge ed., 1st ed. 2012) (differentiating John Stuart Mill and Jeremy Bentham through Mill’s application of utilitarianism to women’s rights and suffrage) (“We can be said to have certain rights, then, but those rights are underwritten by utility. If one can show that a purported right or duty is harmful, then one has shown that it is not genuine.”).

135. Raymond, *supra* note 121, at 21.

136. Dempsey, *supra* note 134, at 450 (arguing factual conclusion of harm despite conceptual possibility of consent and choice).

First, likely oblivious to “sex workers’” circumstances surrounding a “transaction,” buyers purchase sex not knowing whether the person is in fact a victim of force, fraud, or coercion.<sup>137</sup> Thus, even if a “sex worker” *may* exercise agency, paying for sex not knowing whether the person *has* in fact exercised legitimate agency, a buyer risks further victimizing a prostituted person and committing criminal sex trafficking.<sup>138</sup> Second, unaware of “sex workers’” true mental states, buyers also risk having sex with persons absent genuine consent.<sup>139</sup> Buying sex absent knowledge of genuine consent is “tantamount to the harm experienced in the paradigmatic sexual offenses of rape and sexual assault.”<sup>140</sup> Thus, relegating the conceptual debate in favor of Utilitarian considerations, the “unacceptable risk of harm” argument shifts the discourse from whether prostitution necessarily falls within the framework of the TVPA’s criminal sex trafficking to whether the TVPA adequately addresses the risks accompanying prostitution.<sup>141</sup>

One author suggests legal systems such as those under the TVPA “practically guarantee[ ] that the number of indictments and prosecutions will be minimal. If victims must prove that force was used in recruiting them into prostitution or keeping them there, very few women will have legal recourse, and very few offenders will be prosecuted.”<sup>142</sup> The author joins many who argue the TVPA, while helpful, is insufficient.<sup>143</sup> Scholars also claim individual state

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137. See *id.* (describing buyers lack of clairvoyance).

138. See *id.* (explaining specific risks of harm); *supra* notes 87–92 and accompanying text (discussing holding in *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013) that buying can satisfy the *act* component of criminal sex trafficking).

139. Dempsey, *supra* note 134, at 450 (arguing buyer lacks knowledge of true consent).

140. Michelle M. Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1763 (2010) (explaining “endangerment theory”).

Another argument supporting the feminist-abolitionist call to criminalize the purchase of sex is grounded in a theory of responsibility for endangerment. One is responsible for endangering another if one’s conduct creates a significant risk of harming that person. Note that one can still be responsible for endangering another person even if no harm actually results. The key to endangerment, rather, is simply posing the risk of harm . . . [T]he argument from endangerment focuses on the buyer’s conduct at the time he is actually having sex with a prostituted person. *Id.* at 1762.

141. See *supra* notes 134–140 and accompanying text (discussing view regarding unacceptable risk).

142. Raymond, *supra* note 121, at 21–22 (arguing legislative shortcomings of requiring “force,” “fraud,” or “coercion”).

143. See, e.g., Dempsey, *supra* note 74, at 211 (noting U.S. legislative shortcomings despite ratifying Palermo Protocol). For further discussion of the Palermo Protocol, see *infra* notes 146–167 and accompanying text.

attempts—if any—to make up for the TVPA’s shortcomings have also proved insufficient.<sup>144</sup> Thus, while the TVPA presents some black letter guidelines regarding sex trafficking, the various misapprehensions, misconceptions, and disagreements may in fact stem from shortcomings in the statute itself and relevant state laws.<sup>145</sup>

### C. Insufficient: Shortcomings Within the TVPA and Throughout State Laws

Several scholars argue the international law regarding “sex trafficking”—the United Nations Protocol for the Prevention, Protection and Prosecution of Trafficking in Persons, Especially Women and Children (“Palermo Protocol”)—more effectively combats the pervasive issue.<sup>146</sup> The Palermo Protocol serves as the international TVPA analogue.<sup>147</sup> Despite several similarities, the TVPA and the Palermo Protocol display two key differences.<sup>148</sup>

First, the Palermo Protocol requires the requisite *means* of sex trafficking show an “abuse of power or a position of vulnerability” as opposed to the TVPA’s higher burden of proof—force, fraud, or coercion.<sup>149</sup> Due to this broader conception of sex trafficking, under the Palermo Protocol, prostitution is nearly *per se* sex trafficking.<sup>150</sup> The February 2006 Report of the Special Rapporteur on Trafficking in Persons noted:

144. See *infra* notes 164–167 and accompanying text (discussing shortcomings within individual state legislatures).

145. See Dempsey, *supra* note 74, at 211 (noting U.S. legislative shortcomings despite ratifying Palermo Protocol). For further discussion of the Palermo Protocol, see *infra* notes 146–167 and accompanying text.

146. See generally Protocol for the Prevention, Protection and Prosecution of Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *opened for signature* Nov. 15, 2000, O.H.C.H.R. 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [*hereinafter* Palermo Protocol], *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> [<https://perma.cc/TFN4-TFXW>]. See, e.g., Mohamed Y. Mattar, *Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later*, 19 AM. U. J. GENDER SOC. POL’Y & L. 1247, 1294–96 (2011) (comparing TVPA and United Nations Protocol). See also Dempsey, *supra* note 74, at 209–15 (discussing Palermo Protocol and comparing with TVPA).

147. Special Rapporteur on the Human Rights Aspects of Victims of Trafficking in Persons, Especially Women and Children, *Integration of the Human Rights of Women and a Gender Perspective*, ¶ 32, Comm’n on Human Rights, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) (“[t]he Protocol definition of trafficking stands today as the accepted international definition of trafficking.”).

148. See Dempsey, *supra* note 74, at 209–215 (discussing TVPA and Palermo Protocol).

149. *Id.* at 213–14 (arguing against TVPA’s “narrow” approach).

150. See *id.* at 214 (referring to observations of former United Nations Special Rapporteur on Trafficking in Persons).

For the most part, prostitution *as actually practiced in the world* usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person's experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability.<sup>151</sup>

Despite the conceivable possibility of genuine consent, like the "unacceptable risk of harm" argument, the report observes the factual conclusion that it is rare to find a path to prostitution that did not involve at least "an abuse of power and/or an abuse of vulnerability."<sup>152</sup> The report also notes the elements of trafficking, as listed in the Palermo Protocol, reflect prostitution as it is actually practiced throughout the world.<sup>153</sup> Despite ratifying the Palermo Protocol, the United States, however, still adheres to the TVPA standards of "force, fraud, and coercion."<sup>154</sup> In the United States, without the requisite showing of force, fraud, or coercion, adults trafficked through an "abuse of power" or "abuse of a position of vulnerability" remain criminals under most state laws and non-victims under the TVPA.<sup>155</sup>

Second, the Palermo Protocol specifically finds consent "irrelevant" in terms of sex trafficking.<sup>156</sup> While consent *can* nullify force, fraud, or coercion, under the TVPA, the Palermo Protocol specifically provides, as a matter of law, consent does not nullify the various *means*.<sup>157</sup> Under the Palermo Protocol, a victim may consent in *fact* to being trafficked, but does not consent under the *law*.<sup>158</sup> One author explains the difference between "factual consent" and "legal consent":

Factual consent involves an attitude of agreement (or at least acquiescence), and it can be present even in cases where the consenting person has been subjected to force,

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151. Special Rapporteur on the Human Rights Aspects of Victims of Trafficking in Persons, Especially Women and Children, *supra* note 147, at ¶ 42 (emphasis added); *see also* Dempsey, *supra* note 74, at 214 (quoting accompanying text from Special Rapporteur).

152. *See* Special Rapporteur on the Human Rights Aspects of Victims of Trafficking in Persons, Especially Women and Children, *supra* note 147, at ¶ 42.

153. *See id.*

154. *See* Dempsey *supra* note 74, at 214 (describing TVPA).

155. *See id.* (arguing against criminalizing victims).

156. *See* Dempsey, *supra* note 84, at 143 (explaining irrelevance of victim consent in Palermo Protocol, Article 3(b)).

157. *See id.* (explaining irrelevance of victim consent in Palermo Protocol).

158. *See id.*

threats, coercion, abuse of vulnerability, etc. Legal consent, however, is consent that makes a legal difference in delineating what is prohibited from what is permissible. Where consent is rendered irrelevant under the terms of a legal definition, then consent simply does not matter in determining whether the legal definition is satisfied. For, even if one factually consents, that consent has no legal force.<sup>159</sup>

In other words, under the Palermo Protocol, while victims of trafficking may agree to their own victimization, such consent remains irrelevant as a matter of law and taxonomy.<sup>160</sup> Thus, requiring a lower requisite showing to prove the *means*, the Palermo Protocol provides a broader scope of trafficker culpability.<sup>161</sup> Making victim consent legally irrelevant, the Palermo Protocol also narrows the scope of victim culpability and trafficker *exculpability*.<sup>162</sup>

In the United States, however, despite ratifying the Palermo Protocol—requiring “the decriminalization of sex trafficking victims”—thirty-two states still treat child victims of sex trafficking as criminals, and “no states have comprehensively decriminalized adult victims of sex trafficking.”<sup>163</sup> While the TVPA prohibits sex trafficking by means of force, fraud, or coercion, “only twenty-nine states require or even encourage law enforcement training to assist officers in identifying trafficking cases.”<sup>164</sup> Thus, in the United States, persons globally considered “victims” of trafficking are not afforded the same protection under legislation or enforcement, and remain labelled as “prostitutes” in violation of state law, subject to the criminal justice system.<sup>165</sup> The failures to legally treat victims as victims and to provide law enforcement with a comprehensive training regime highlight the vast gap in the efforts to combat sex trafficking—let alone criminal sex trafficking—in the United

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159. Dempsey, *supra* note 85, at 7.

160. *See id.* (stating implications of Palermo Protocol deeming consent irrelevant).

161. *See supra* note 148–155 and accompanying text (discussing Report of Special Rapporteur on Trafficking in Persons).

162. *See supra* note 156–160 and accompanying text (discussing Dempsey’s presentation of consent in fact as opposed to consent under law).

163. Dempsey, *supra* note 120, at 209 (noting lack of protection for child victims).

164. *Id.* at 212 (noting lack of enforcement assistance in U.S.).

165. *See id.* at 213 (“[W]ithout adequate training to identify cases of trafficking, police may mistakenly identify potential victims as simply engaged in the commercial sex trade—“prostitutes”—and thus arrest them and charge them with prostitution-related offenses.”).



States.<sup>166</sup> Thus, in light of these various federal and state legislative shortcomings, when even law enforcement cannot regularly distinguish between criminal and victim, studies and news outlets understandably and undoubtedly fall victim to misconceptions, misapprehensions, and disagreements.<sup>167</sup>

#### IV. CONCLUSION: NEWS OUTLETS AND STUDIES REVISITED

##### A. The Largest Human Trafficking Incident in the United States

The American people, from whom legislators and legislation derive, must be aware of the various shortcomings in the TVPA and various state laws.<sup>168</sup> As CMU researchers note, various news media offer many anecdotal and overblown numerical figures.<sup>169</sup> CMU rightly suggests such figures only lead to misappropriating resources and obstructing the elucidation process.<sup>170</sup> Most notably, however, such inflated figures serve to immunize the statutory shortcomings and keep victims stranded in the legislative and enforcement gaps, without help or remedy.<sup>171</sup>

When news outlets make various claims regarding the pervasiveness of sex trafficking—assuming “sex trafficking” is correctly invoked—the writers rely on the general reader’s belief that “sex trafficking” *per se* must be a crime.<sup>172</sup> If that were *not* the case, surely the fact that sex trafficking is *not* necessarily a federal crime, the fact that adult victims trafficked through “abuse of power” or “abuse of their vulnerability” are *not victims* under federal law but,

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166. *See id.* (“The failure to screen prostitution cases for evidence of trafficking results not only in unjust prosecution of victims but also in missed opportunities to prosecute their traffickers.”).

167. *See generally* Dempsey, *supra* note 85 (arguing for legally-based empirical studies).

168. *See supra* notes 147–167 and accompanying text (regarding legislative shortcomings).

169. *See generally* Miller, *supra* note 57 (discussing issues of pervasive anecdotal allegations of influx in sex trafficking regarding Super Bowl).

170. *See id.* at 2 (arguing against misappropriation of resources and thus describing impetus for study).

171. *See supra* note 115–119 and accompanying text (regarding danger of overblown figures).

172. *See* Gaillard, *supra* note 115 (discussing “cracking down” on sex trafficking under presumption of assumed illegality); *see also* *Myths and Misconceptions*, *supra* note 107 (“Myth 2: Human trafficking is essentially a crime that must involve some form of travel, transportation, or movement across state or national borders.”); *see also* McCain Inst., *supra* note 28 (“The overall increase in the sex buyer volume and the number of commercial sex ads indicates that public awareness and concern about sex trafficking and increased law enforcement attention on the crime has yet to reduce the overall demand for commercial sex or supply of sellers.”) (emphasis added).

rather, *criminals* under state law, and the fact that thirty-two states still treat *child victims as criminals*, would be no less shocking and newsworthy than the annual breaking headline claiming “sex trafficking” occurs in conjunction with a football game.<sup>173</sup> When sources, however, acknowledge no such shortcomings, but exclusively discuss “crackdowns” on “trafficking,” “sex trafficking,” and “human trafficking,” they indicate and perpetuate a general misconception that any act involving the word “trafficking” is prohibited in the United States.<sup>174</sup> When the general public, from whom legislators and legislation derive, are left complacent toward black letter laws, real legislative shortcomings remain immunized and child and adult victims remain both victims and criminals.<sup>175</sup>

### B. Trafficking as Transportation

Studies touting “empirical data” may also present serious concerns.<sup>176</sup> Both CMU and ASU researchers seemingly base their data-gathering and analyses on the misapprehensions that *only* transported victims—or underage victims—are victims of criminal sex trafficking.<sup>177</sup> Specifically, CMU states, “[t]he event-driven sex trafficking narrative purports that events draw traffickers and their victims from disparate locations to the event vicinity. To measure evidence of such behavior it is necessary to identify which advertisements represent individuals recently arrived from elsewhere. We refer to this concept as ‘new-to-town.’”<sup>178</sup>

While the study claims to respond to a specific narrative suggesting events draw traffickers and victims from disparate locations, the transportation aspect of that narrative seems self-generated.<sup>179</sup> First, the study makes no mention of the difference between transportation and other *acts* of trafficking, no less sex trafficking as a

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173. See *supra* notes 147–167 and accompanying text (regarding legislative shortcomings).

174. See Anderson, *supra* note 24 (“Over 10,000 ‘prostitutes’—many of whom were trafficking victims—were brought into Miami for the Super Bowl in 2010.”); see also Gaillard, *supra* note 115 (discussing sex trafficking “crackdown”).

175. See *supra* notes 147–167 and accompanying text (regarding legislative shortcomings).

176. See generally Dempsey, *supra* note 85 (arguing for legally-based empirical studies).

177. See *supra* notes 106–111 and accompanying text (arguing against misapprehensions regarding trafficking as necessary condition).

178. Miller, *supra* note 57, at 3 (explaining method of accurately researching event-based sex trafficking cases).

179. For analysis fortifying this conclusion, see *infra* notes 180–184 and accompanying text.

“severe form of trafficking in persons.”<sup>180</sup> CMU states its purpose is to promote “wise resource allocation, guide good policies, and foster the most meaningful impact in the various responses to allegations of sex trafficking and the Super Bowl.”<sup>181</sup> With this goal in mind, surely the researchers did not intentionally choose a mere portion of the many cases of criminal sex trafficking in which transportation fulfilled the *act* component.<sup>182</sup> The sources CMU claims to lack an “evidentiary basis” merely allege the Super Bowl is a large—or the largest—human or sex trafficking incident in the United States; they do not, however, present the findings in a transportation narrative, which the CMU researchers, themselves, seem to have instilled into the findings.<sup>183</sup> By imputing the “disparate location” narrative into the various sources of allegations, the study thus reflects CMU’s own misapprehension of sex trafficking as transportation.<sup>184</sup>

The greatest concern with this presumption is that it short-changes the pervasiveness of sex trafficking.<sup>185</sup> While transportation is one way in which traffickers may fulfill the *act* component, there are several others the study does not address.<sup>186</sup> According to the TVPA, the *act* component may be fulfilled by any act listed in the definition of “sex trafficking” including, “the recruitment, harboring . . . provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”<sup>187</sup> CMU did not account for scenarios where traffickers may have recruited, harbored, provided for, obtained, or even solicited or patronized *local*

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180. See generally Miller, *supra* note 57 (discussing sex trafficking and human trafficking in general terms of transportation throughout article).

181. *Id.* at 1 (“Reliance on quantitative evidence accessible through data-driven analysis can inform wise resource allocation, guide good policies, and foster the most meaningful impact.”).

182. See 22 U.S.C. § 7102(10) (2012) (providing *act* component, and defining “sex trafficking,” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act”).

183. See Miller, *supra* note 57, at 1–2 (listing three quotes alleging connection between Super Bowl and sex or human trafficking).

184. For analysis regarding the basis of this conclusion, see *supra* notes 178–184 and accompanying text.

185. See *supra* notes 106–111 and accompanying text (arguing dangers of such misapprehensions).

186. See § 7102(10) (providing *act* component, and defining “sex trafficking,” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act”).

187. *Id.*

prostituted persons.<sup>188</sup> While CMU correctly identifies a need to wisely allocate resources, “guide good policies, and foster the most meaningful impact,” such a misapprehension of the concepts and taxonomies, in this case, leads to severely narrow results.<sup>189</sup>

### C. High Risks and Variables

Studies employing various terms and concepts to present their findings must do so with precision and accuracy.<sup>190</sup> The ASU research claims it employed “algorithms” to detect “high risk” ads—of the hundreds selling sex—which “indicated trafficking.”<sup>191</sup> In an oral presentation regarding the findings, Roe-Sepowitz states the variables included, among others, the “way the photo was taken, what we saw in the text, and what we saw in the language.”<sup>192</sup> Neither the presentation nor the McCain Institute’s published findings disclose the remaining variables or how they define “trafficking” and “sex trafficking.”<sup>193</sup> The study also employs an algorithm designed to detect *underage* victims, only searching for those advertisements listing ages eighteen to twenty-two.<sup>194</sup> Claiming to search for ads “indicat[ing] trafficking,” ASU seemingly neglects all cases in which adults over the age of twenty-two may have fallen victim to trafficking, providing inescapably misleading results.<sup>195</sup> To veritabily assess the effects of the Super Bowl regarding sex trafficking, findings must provide precise terms, concepts, and taxonomies.<sup>196</sup> Unfortunately, without accurate and precise findings, we conclude very little.<sup>197</sup>

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188. For analysis regarding the basis of this conclusion, see *supra* notes 178–184 and accompanying text.

189. Miller, *supra* note 57, at 8. For analysis regarding the basis of this conclusion, see *supra* notes 178–184 and accompanying text.

190. See Dempsey, *supra* note 85, at 12–15 (arguing against research which fail to study what “counts” as “trafficking”).

191. See McCain Inst., *supra* note 28 (discussing “high risk” or “trafficked” ads).

192. See ASU, *supra* note 28 (explaining that variables were based on, among others, the “way the photo was taken, what we saw in the text, and what we saw in the language”).

193. See generally McCain Inst., *supra* note 28; see also ASU, *supra* note 28.

194. See *supra* notes 28–54 and accompanying text (discussing ASU’s methodology).

195. See *supra* notes 28–54 and accompanying text (noting ASU’s narrow search and findings).

196. See Dempsey, *supra* note 85, at 12–15 (arguing against research which fail to study what “counts” as “trafficking”).

197. See *id.* (noting shortcomings in researches).

## V. RECOMMENDATION: SPOKES IN THE WHEELS OF INJUSTICE

What we *may* conclude, however, is that sex trafficking—criminal or not—even in its variously misapprehended, misconceived, and under-defined forms, is a pervasive problem in the United States.<sup>198</sup> One point upon which both studies and other various sources agree is the relationship between *large gatherings* and the influx of sex trafficking.<sup>199</sup> Thus, while researchers and news outlets must employ correct concepts, terms, and taxonomies for a more precise and accurate understanding of the Super Bowl's role, the NFL must also take some measure of responsibility for the undeniable effects.<sup>200</sup>

While opponents of overblown figures and unnecessary accusations argue that the NFL may not be responsible in these situations, there are several key considerations.<sup>201</sup> Despite CMU's findings regarding various large venues, the Super Bowl incontrovertibly remains the "high holy day" of America's religion.<sup>202</sup> While the other events may themselves generate a comparable number of attendees, no event compares to the fanfare and the sheer number of visitors involved in Super Bowl celebrations, as exemplified in San Francisco.<sup>203</sup> As the governing body behind the largest show in America, the NFL must consider, at minimum, means to combat the accompanying influx of sex trafficking.<sup>204</sup>

One measure the NFL may contemplate is to withhold Super Bowl hosting consideration from cities and states until such states implement proper enforcement training and adopt laws

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198. See, e.g., *The Super Bowl Myth*, POLARIS (Feb. 5, 2016), <https://polaris-project.org/blog/2016/02/05/super-bowl-myth> [<https://perma.cc/945A-C49T>] ("[Human trafficking] is found during the Super Bowl, but it is also found at motorcycle rallies in South Dakota, in the fields of Florida, in gangs in California, and in brothels in Washington, D.C.").

199. See, e.g., *id.* ("Sporting and other major venue events where large groups of people descend on a specific region are a magnet for business of all kinds, including human trafficking.").

200. See *supra* notes 198–199 and accompanying text (regarding points of fact upon which various sources do agree).

201. See Jon Wertheim, *The Super Bowl Sex-Trafficking Myth: Is it the Crises It's Cracked Up to Be?*, SPORTS ILLUSTRATED (Jan. 27, 2017), <http://www.si.com/nfl/2017/01/27/super-bowl-prostitution-sex-trafficking-ryan-murphy-broncos> [<https://perma.cc/L9A6-3AWG>] (arguing Super Bowl trafficking statistics are overblown) (originally titled, *Super Bowl Prostitution: Sex-Trafficking Spike is Overblown*).

202. See *supra* notes 2–22 and accompanying text (regarding Super Bowl's special, almost religious, place in American infatuation).

203. See *supra* notes 2–22 and accompanying text (regarding, particularly, San Francisco and "Super Bowl City").

204. See Wright, *supra* note 8, at 115 (arguing for NFL to respond to trafficking issues).

decriminalizing child and adult victims.<sup>205</sup> Whether the Super Bowl and the NFL are directly responsible for the influx or whether the surges of trafficking are simply byproducts in the wake of such a large event, NFL franchises, cities, and the brand itself, greatly profit from America's "high holy day."<sup>206</sup> Super Bowl 49 had a "gross economic impact of \$719.4 million for the [host] state," an increase of "more than 30 percent [ ] from the last time Arizona hosted the event."<sup>207</sup> Considering the massive revenue available to host cities and states, withholding host consideration would provide strong incentives to petition their respective legislatures.<sup>208</sup>

The measure would also help expose the millions of NFL faithful to the pervasive issue of sex trafficking in the United States and the various legislative and enforcement shortcomings.<sup>209</sup> In light of Cindy McCain's accusations, the many news outlets asserting a causal connection, and—most veritably—the severe need for justice on behalf of the multitudes of trafficking victims, the NFL would do well to consider such a measure.<sup>210</sup>

Even still, while the measure may prove a workable bandage, ultimately the issue must be resolved within society. "We are not to simply bandage the wounds of victims beneath the wheels of injustice, we are to drive a spoke into the wheel itself."<sup>211</sup> Just as the NFL, Congress, state legislatures, researchers, and news outlets variously contribute to the problem, American society must not further exacerbate the issue by relying on those contributors for a solution.

We must first acknowledge *we* are the wheels of injustice. As the source of the demand, we animate the market for sex trafficking, and, naïve to our own laws, we perpetuate our own misconceptions and misapprehensions.<sup>212</sup> We must then realize we, *ourselves*,

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205. See *id.* ("[T]he National Football League should require that any state home to a city bidding to host the Super Bowl obtain a Tier 1 ranking in the annual Polaris Project report.").

206. See *supra* notes 2–22 and accompanying text (discussing fanfare associated with hosting Super Bowl).

207. Bryant McInerney, *Super Bowl Benefits Host City, But by How Much?*, CNBC (Jan. 31, 2016, 2:00 PM), <http://www.cnbc.com/2016/01/29/super-bowl-benefits-host-city-but-by-how-much.html> [<https://perma.cc/M4FD-7YKY>] (surveying economic impact of hosting Super Bowl in Arizona and Bay Area).

208. See *id.* (noting economic incentives to host cities of Super Bowl).

209. See *supra* notes 147–167 and accompanying text (regarding legislative shortcomings).

210. See *supra* notes 9–10 and accompanying text (quoting Cindy McCain).

211. For information regarding theologian and anti-Nazi dissident, Dietrich Bonhoeffer, see Wind, *supra* note 1.

212. See, e.g., McCain Inst., *supra* note 28 (arguing, ultimately, issue is demand).

are also to be the driving spoke. Society cannot—and ought not—rely solely, or even primarily, on the government, legislation, or the NFL to send down a panacea. We must, in turn, look to ourselves to *correctly* apprehend the problems and provide societal solutions to combat demand and further victimization.

To start: perhaps sometimes, religious infatuation with a sport ought to be measured and curbed in light of those things—persons—that truly matter.

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\* J.D. Candidate, May 2018, Villanova University Charles Widger School of Law. I am grateful to Professors Ann Juliano, Tuan Samahon, and Patrick Brennan for their continuous encouragement and guidance. I am also grateful to my parents, Kenny and Amie, for their unshakable love and support, and I am grateful to my sons, Ari and Addison, for being my perpetual source of joy. Above all, I am grateful to my wife, Emilie, for constantly showing this fool what it means to love, to be just, to speak with wisdom, and to know the law of kindness.