

# The Racial Roots of Human Trafficking

Cheryl Nelson Butler



## ABSTRACT

This Article explores the role of race in the prostitution and sex trafficking of people of color, particularly minority youth, and the evolving legal and social responses in the United States. Child sex trafficking has become a vital topic of discussion among scholars and advocates, and public outcry has led to safe harbor legislation aimed at shifting the legal paradigm away from punishing prostituted minors and toward greater protections for this vulnerable population. Yet, policymakers have ignored the connection between race and other root factors that push people of color into America's commercial sex trade.

This Article argues that race and racism have played a role in creating the epidemic of sex trafficking in the United States and have undermined effective legal and policy responses. Race intersects with other forms of subordination including gender, class, and age to push people of color disproportionately into prostitution and keep them trapped in the commercial sex industry. This intersectional oppression is fueled by the persistence of myths about minority teen sexuality, which in turn encourages risky sexual behavior. Moreover, today's antitrafficking movement has failed to understand and address the racial contours of domestic sex trafficking in the United States and even perpetuates the racial myths that undermine the proper identification of minority youth as sex trafficking victims. Yet, the Obama administration has adopted new policies that raise awareness about the links between race and sex trafficking. These policies also facilitate the increased role of minority youth as leaders and spokespersons in the antitrafficking movement. Their voices defy stereotypes about Black sexuality and call upon legislators and advocates to address some of the unique vulnerabilities that kids of color face with respect to sex trafficking.

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## INTRODUCTION

In the past decade, human trafficking has been identified as a major criminal justice problem in the United States.<sup>1</sup> And while most of the attention has focused on international trafficking, domestic sex trafficking of minors<sup>2</sup> is not only prevalent, but a strong nexus also exists between sex trafficking and race.<sup>3</sup> First, an estimated 200,000 to 300,000 minors are trafficked annually from and within the United States,<sup>4</sup> a statistic that has dominated the conversation among

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1. PRESIDENT'S INTERAGENCY TASK FORCE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, COORDINATION, COLLABORATION, CAPACITY: FEDERAL STRATEGIC ACTION PLAN ON SERVICE FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013–2017, at 1–5 (2014) [hereinafter COORDINATION, COLLABORATION, CAPACITY], *available at* <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf> (“[T]he International Labour Organization estimates that more than 20 million men, women, and children are victimized by forced labor and sex trafficking worldwide, including in the United States.”).
  2. Domestic minor sex trafficking, a term coined by Shared Hope International, refers to “the commercial sexual exploitation of [minors] within U.S. borders.” LINDA A. SMITH ET AL., SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN iv–v (2009), *available at* [http://sharedhope.org/wp-content/uploads/2012/09/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf) [hereinafter SHARED HOPE INT’L 2009].
  3. *See* U.S. DEPT OF JUSTICE ET AL., COORDINATION, COLLABORATION, CAPACITY: FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013–2017, at 1, 5 (2014), <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>; U.S. DEPT OF HEALTH & HUMAN SERVS. ADMIN. FOR CHILDREN, YOUTH & FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 1 (2013), [http://www.vawnet.org/summary.php?doc\\_id=4219&find\\_type=web\\_sum\\_GC](http://www.vawnet.org/summary.php?doc_id=4219&find_type=web_sum_GC) (“Among the diverse populations affected by human trafficking, children are at particular risk for sex trafficking and labor trafficking.”). For research on the prevalence of human trafficking in the United States, see generally RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO (2001), [www.hawaii.edu/hivandaids/Commercial%20Sexual%20Exploitation%20of%20Children%20in%20the%20US,%20Canada%20and%20Mexico.pdf](http://www.hawaii.edu/hivandaids/Commercial%20Sexual%20Exploitation%20of%20Children%20in%20the%20US,%20Canada%20and%20Mexico.pdf); INST. OF MED. & NAT’L RESEARCH COUNCIL, CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES: A LEGAL GUIDE FOR THE LEGAL SECTOR 1 (2014) (“However, much of this attention [on commercial sexual exploitation and sex trafficking of minors] has focused internationally. This international focus has overshadowed the reality that commercial sexual exploitation and sex trafficking of minors may also occur every day within the United States.”).
  4. The U.S. Senate estimates that 200,000 to 300,000 domestic minors are at risk for sexual exploitation each year. S. Res. 340, 113th Cong., at 1 (2014), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-113sres340ats/pdf/BILLS-113sres340ats.pdf>; Improving Out-

scholars, advocates, and the media.<sup>5</sup> Indeed, public outcry has led to safe harbor legislation aimed at shifting the legal paradigm away from punishing prostituted minors and toward greater protections for this vulnerable population.<sup>6</sup> When it comes to race, statistics from the Federal Bureau of Investigation (FBI) indicate that over half of minors arrested on prostitution charges in America are Black.<sup>7</sup> Likewise, Shared Hope International, a nonprofit organization, has found that most of the identified victims in Texas cities are racial minorities and come from households with vulnerable socioeconomic status.<sup>8</sup>

Policy makers have ignored the connection between race and other root factors that push minority and poor youth into America's commercial sex trade,<sup>9</sup> and advocates have argued that the role of race and racism in making children vulnerable to domestic child sex trafficking has not been fully addressed to date.<sup>10</sup>

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comes for Youth at Risk for Sex Trafficking Act, S. 1518, 113th Cong., at 2 (2013) ("Recent reports on sex trafficking estimate that hundreds of thousands of children and youth are at risk for domestic sex trafficking.").

5. For scholarship on the new shifting legal paradigm and emerging jurisprudence for domestic child sex trafficking, see Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Legislation for Sexually Exploited Minors*, 94 N.C. L. REV. 102 (forthcoming 2015).
6. See generally Butler, *supra* note 5; Megan Annitto, *Consent, Coercion, and Compassion: Emerging Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 21–25 (2011); Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1059 (2011); Cheryl Nelson Butler, *Sex Slavery in the Lone Star State: Does the Texas Human Trafficking Legislation of 2011 Protect Minors?*, 45 AKRON L. REV. 843, 874–81 (2012) (discussing early safe harbor provisions within the Texas antitrafficking statute).
7. See Jackie Jones, *Black Teens Majority of Sex Traffic in U.S.*, NEW AMERICA MEDIA (May 30, 2007), [http://newamericamedia.org/news/view\\_article.html](http://newamericamedia.org/news/view_article.html).
8. CHILDREN AT RISK, THE STATE OF HUMAN TRAFFICKING IN TEXAS (Richard Sanborn et al. eds. 2013).
9. Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INTERN. L.J. 216, 247 (2007) (discussing how prior antitrafficking campaigns such as the White Slavery Campaign focused on the kidnapping and sexual exploitation of white American and European women, not Black women); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 607–08 (2009) (footnote omitted) ("[Otherness] causes Western leaders to overlook the extent to which human trafficking related abuses occur within their own borders at the hands of their own citizens.").
10. SOROPTIMIST, PROSTITUTION IS NOT A CHOICE 3–4 (2010), available at <http://www.soroptimist.org/whitepapers/WhitePaperDocs/WPProstitution.pdf>; Jamaal Bell, *Race and Human Trafficking in the US.: Unclear and Undeniable*, HUFFINGTON POST (May 10, 2010), [http://www.huffingtonpost.com/jamaal-bell/race-and-human-traffickin\\_b\\_569795.html](http://www.huffingtonpost.com/jamaal-bell/race-and-human-traffickin_b_569795.html) ("However a link that is rarely discussed in open forums about human trafficking is racial discrimination."); Scott Alessi, *The Surprising Face of Human Trafficking*, U.S. CATHOLIC BLOG, <http://www.soundslides.uscatholic.org/blog/2011/08/surprising-face-human-trafficking> ("When you hear the words 'human trafficker,' what do you picture? Whatever image those words conjure up in your mind, your first thought is probably not a 23-year-old, five-foot-five white male in Providence, Rhode Island. But that's exactly who was sentenced to 10 years in prison this week for trafficking young women from New York to Rhode Island, imprisoning them and forcing them into prostitution."); *Sex Trafficking's Black and Brown Victims*, ROOT (Sept. 26, 2013), <http://www.rootmagazine.com/2013/09/26/sex-trafficking-black-and-brown-victims/>

This Article contends that the time is ripe for policymakers to truly consider the connection between race and child prostitution in the United States.<sup>11</sup> Building upon emerging legal scholarship that has begun to explore the racial contours of the human trafficking epidemic, this Article argues that the modern-day commercial sex industry perpetuates a long and bitter history of sexual exploitation and racial subordination with respect to people of color. This is especially true when it comes to the sexual exploitation of minors. First, race intersects with other forms of subordination including gender, class, and age to push kids of color into prostitution and keep them there. In particular, this intersectional oppression also includes the persistence of myths about minority teen sexuality, which encourages risky sexual behavior like prostitution.<sup>12</sup> Second, this historical legacy and its continued existence not just in the modern sex trafficking industry, but also in the antitrafficking movement, belies America's claim to a postracial society.<sup>13</sup> America's antitrafficking movement has historically used the rhetoric and imagery of African slavery to garner outrage toward prostitution and trafficking. Yet, notwithstanding the use of such rhetoric, the antislavery movement denied protection to people of color. Instead, antitrafficking laws targeted racial minorities for stigmatization and prosecution. The Obama era, however, has created new opportunities to reconsider the role of race and racism in perpetuating sex trafficking. First, the President's administration has acknowledged a link between sex trafficking and race and ethnic discrimination. Second, Black activists have been more active in the antitrafficking movement. Their voices defy stereotypes about Black sexuality and call

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[newamericamedia.org/2013/09/sex-traffickings-black-and-brown-victims.php](http://newamericamedia.org/2013/09/sex-traffickings-black-and-brown-victims.php) ("The speaker, who says she met her pimp when she was 11 years old, is seen in shadow to protect her identity. But you can tell that she's black, and she sounds like she's still young.").

11. See Emily Chaloner, *Anybody's Daughter? How Racial Stereotypes Prevent Domestic Child Prostitutes of Color From Being Perceived as Victims*, 30 CHILD. LEGAL RTS. J. 48, 48, 53 (2010).
12. In New York City, for example, a disproportionate number of the women and girls exploited for sex (up to 50 percent) are Black and Latina. JANICE G. RAYMOND & DONNA M. HUGHES, *SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS* 9, 40 (2001).
13. Some legal scholars have addressed the role of race in domestic prostitution and sex trafficking. See, e.g., Karen E. Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. SOC. JUST. 555, 572 (2011) (exploring how "the efforts to combat white slavery in the late nineteenth and early twentieth centuries are progenitors of the dominant conceptual and legal frameworks applied to the modern traffic in human beings"); Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1370 (2013) (exploring how racial discrimination in Cook County, Illinois, put Black children at risk for coerced prostitution); Chaloner, *supra* note 11; Katie Beran, Note, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 LAW & INEQ. 19, 24–26 (2012). For a discussion on whether our criminal justice policies reflect a post-racial society, see Ian F. Haney Lopez, *Post Racial Racism: Mass Incarceration in the Age of Obama*, 98 CAL. L. REV. 1023 (2010).

upon legislators and other advocates to address some of the unique vulnerabilities that these minors face with respect to prostitution.

Part I of this Article explores the racial roots of America's modern-day commercial sex industry. This Part explores how racial constructs of Blacks and Native Americans were used to justify slavery and colonization. These women, for example, were stigmatized as jezebels with an insatiable appetite for sex.

Part II argues that the racial ideologies formulated during slavery and colonization were perpetuated in order to justify targeting people of color for sexual exploitation in America's modern-day commercial sex industry. Racial fetishes drive the supply of, and demand for, commercial sex with people of color. Structural racism also coerces people of color to engage in prostitution. As a key example, the music industry uses cultural images of prostitution and pornography to frame minority youth as sexual miscreants and normalize their participation in the commercial sex industry.

Part III explores how race and racism shaped the antitrafficking movement. In various ways, earlier antitrafficking movements, such as the "white slavery" campaign, intentionally excluded nonwhite women from legal protection. Moreover, legislation like the Mann Act, was used to persecute, rather than protect, people of color.

Part IV then examines the ways in which the modern antitrafficking movement continues to marginalize African Americans and other people of color. In particular, advocates and state actors have a tendency to identify Black people as criminals, as opposed to victims of trafficking.

Part V examines efforts in the Obama era to confront the nexus between race and sex trafficking. While disparate treatment based on race remains a problem, recent policy changes suggest an effort to focus more on this issue of disproportionality. The Obama administration and the antitrafficking movement have begun to encourage leadership by minority youth in the antitrafficking movement, a critical step toward protecting all persons from sexual trafficking.

## I. THE RACIAL ROOTS OF HUMAN TRAFFICKING

### A. African Slavery

Historically, people of color have been systematically exploited and trafficked for sex. To justify the sexual exploitation of Black slaves, White society

constructed Black females as “Jezebels”—“innately oversexed and overly fertile.”<sup>14</sup> The Jezebel myth framed slave women as the epitome of sexual immorality; thus, “Black women came to represent the modern Jezebel who, like her Biblical counterpart, was a symbol of lust, sexual immorality, ‘innate wickedness,’ and even ‘disobedience to God.’”<sup>15</sup> This stereotype created a “gendered allegory of sexual racism”<sup>16</sup> and deemed Black women unworthy of legal protection from sexual exploitation.

During slavery, this racialized sexual exploitation of Black women took several forms and served various purposes. First, the label was used to justify the pervasive rape, sexual assault, and abuse of Black women during slavery. In particular, white men used the Jezebel stereotype to characterize Black women and girls as exhibiting an insatiable appetite for free and loose sex, thereby excusing white men’s unlimited sexual access to and abuse of Black women, which was an inherent part of slavery.<sup>17</sup> Second, the sexual stereotyping of Black women during slavery served an economic purpose. Characterizing Black women as Jezebels justified the forced use of Black women as breeders of slave children.<sup>18</sup> Third, white men used rape “against [Black women] not only as individuals, but as a weapon of political terror.”<sup>19</sup> In this way, rape and sexual exploitation furthered slavery’s central purpose to “degrade, dehumanize, and

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14. Verna L. Williams, *The First (Black) Lady*, 86 DENV. U. L. REV. 833, 840 (2009).

15. Butler, *supra* note 13, at 1385.

16. Anders Walker, *Legislating Virtue: How Segregationists Disguised Racial Discrimination as Moral Reform Following Brown v. Board of Education*, 47 DUKE L.J. 399, 402–03 (1997) (discussing how racial stereotypes about sexuality formulated during slavery were later used to oppose integration and the *Brown* decision).

17. See Butler, *supra* note 13, at 1385–86; Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT 462–63 (Catherine MacKinnon & Reva B. Siegel eds., 2002) (“Foregrounding the interplay between slavery’s political economic structure and its sexual norms . . . sheds light on the plantation complex as a vast workplace and one of the earliest American sites of institutionalized sexual harassment. The labor relation as defined by slavery incorporated sexual relations for purposes of pleasure, profit, punishment, and politics.”); Zanita E. Fenton, *An Essay on Slavery’s Hidden Legacy: Social Hysteria and Structural Condonation of Incest*, 55 HOWARD L.J. 319, 320 (2012).

18. See generally Butler, *supra* note 13, at 1385–86 (describing the stereotypes of Black women involved in prostitution in the early days of the juvenile court system); Pamela D. Bridgewater, *Ain’t I a Slave: Slavery, Reproductive Abuses, and Reparations*, 14 UCLA WOMEN’S L.J. 89, 116 (2005) (explaining the exploitation of female slaves’ sexual and reproductive vulnerability, partly by characterizing them as “lascivious and immoral”).

19. Adrienne D. Davis, *Three Snapshots of Scholarly Engagement: Catharine MacKinnon’s Ethical Entrenchment, Transformative Politics, and Personal Commitment*, 46 TULSA L. REV. 15, 20 (2010).

subjugate.<sup>20</sup> Thus, slavery gave America an ideology for the systemic depiction and use of Black women as designated sexual deviants or targets of sexual abuse.<sup>21</sup>

Further, the Jezebel stereotype fueled society's designation of the white woman as the "True Woman."<sup>22</sup> True Women were white, pious, chaste, and domestic. At the heart of patriarchy and white supremacy was the theory that "womanhood required whiteness: a 'lady' must be white."<sup>23</sup> In this way, "true womanhood," which recognized White females as the ideal of womanhood, depended on the denigration of Black womanhood.<sup>24</sup> To further perpetuate this system, "the prostitution of Black women allowed White women to be the opposite: Black 'whores' make White 'virgins' possible."<sup>25</sup>

In seeking to affirm white women, these stereotypes often harmed them. The Cult of True Womanhood constrained white female sexuality.<sup>26</sup> For example, society considered sexual relations between white ladies and Black men as "morally transgressive" and therefore the law forbade such liaisons.<sup>27</sup> Furthermore, the culture of sexual abuse of Black women furthered a general culture of

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20. See Alexander Tsesis, *Gender Discrimination and the Thirteenth Amendment*, 112 COLUM. L. REV. 1641, 1643 (2012).

21. See Davis, *supra* note 17, at 462–63.

22. See Williams, *supra* note 14, at 837 ("Yet, for all the professionalization of the First Lady's office much of the job consists of performing an identity: namely, to epitomize "true" American womanhood. . . . These responsibilities, substantive and stylistic in nature, also carry the mark of traditional domesticity, and the gendered expectations that comprise it.").

23. Bela August Walker, *Fractured Bonds: Policing Whiteness and Womanhood Through Race-Based Marriage Annulments*, 58 DEPAUL L. REV. 1, 3 (2008); see Williams, *supra* note 14, at 834 ("Unlike her husband, whose biracial background and international upbringing made fitting him into the Black male trope trickier, Mrs. Obama was an authentically and stereotypically Black woman: angry, sassy, unpatriotic, and uppity. Painting Mrs. Obama in this light, her critics essentially asked: How can Michelle Obama be First Lady when she's no lady at all?") (citations omitted).

24. PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT 7 (2000) ("From mammies, jezebels, and breeder women of slavery . . . ubiquitous Black prostitutes and ever-present welfare mothers of contemporary popular culture, negative stereotypes applied to African-American women have been fundamental to Black women's oppression"); Walker, *supra* note 23, at 3 (arguing that marriage annulments reflected certain racialized sexual norms: "The courts worked to protect the stability of whiteness and white society by protecting the image of white womanhood. The white husbands who claimed their wives were colored threatened the heart of racial norms and stereotypes upholding the racial system: the symbol of white womanhood. Men required white women as a demonstration of their whiteness."); see Williams, *supra* note 14, at 835 ("Thus, for example, in this system, white women have privilege based on their race; white femininity is the gold standard that other women must meet. Therefore, if the First Lady exemplifies femininity and true womanhood, it stands to reason that Black women would and should be excluded from attaining that status.") (citations omitted).

25. COLLINS, *supra* note 24, at 7–8.

26. Zanita E. Fenton, *An Essay on Slavery's Hidden Legacy: Social Hysteria and Structural Condonation of Incest*, 55 HOWARD L.J. 319, 324 (2012).

27. *Id.* at 326.

sexual abuse that affected white families. Specifically, the sexual improprieties among white masters and slaves created slippery slopes, which facilitated a culture of sexual exploitation of white women and children in the form sexual incest and rape.<sup>28</sup> Finally, as white wives grew resentful of the sexual liaisons between their white husbands and Black female slaves, the growing schisms between white and Black women limited the ability of either group to work together to challenge patriarchy.<sup>29</sup>

After slavery, American laws enforced and perpetuated derogatory racial stereotypes about Black sexuality. Jim Crow laws enforced the ideology of white supremacy by perpetuating these racialized notions of womanhood.<sup>30</sup> For example, laws justified the racial segregation of black and white women in railroad cars on the grounds that black women were too sexually deviant and morally inferior to sit in the same railroad cars as ladies.<sup>31</sup>

The sexual objectification and exploitation of minority males has also been shaped by racial myths of the slavery era. During slavery, a major strategy for racial subjugation of Black males was to stereotype them as sexual deviants.<sup>32</sup> Yet, at the same time, slavery subjected Black men to sexual abuse and exploitation.<sup>33</sup> Today, police still racially profile young Black and Latino males as hypersexual and sexually degenerate.<sup>34</sup> An “unwarranted fear of Black men” persists in Amer-

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28. *Id.*

29. *Id.*

30. Amii Larkin Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women's Fight Against Race and Gender Ideology, 1892-1920*, 3 UCLA WOMEN'S L.J. 1, 8 (1993) (“To prevent [racial] mixing, white women and Black men had to be segregated from each other to prevent them from establishing an affinity for one another. This theory legitimized every type of segregation possible—from Jim and Jane Crow laws to the prevention of casual contact between white women and Black men.”) (footnotes omitted); Lori A. Tribbett-Williams, *Saying Nothing, Talking Loud: Lil' Kim and Foxy Brown, Caricatures of African-American Womanhood*, 10 S. CAL. R. L. & WOMEN'S STUD. 167, 179–81 (2000) (discussing *Robinson v. Memphis & Charleston R.R. Co.*, 109 U.S. 3, 5, 25–26 (1883), in which the “defendant established a ‘ladies’ car on its train, to distinguish White women from ‘other’ [Black/whorish] women”).

31. Kenneth Mack, *Law, Society, Identity and Making of the Jim Crow South: Travel & Segregation on Tennessee Railroads, 1875-1905*, 24 L. & SOC. INQ. 377, 378 (1999) (“Taking her seat in the nonsmoking rear coach which, according to the railroad, was reserved for ‘white ladies and gentlemen,’ she refused the conductor’s request that she move to another car. The conductor, aided by two other men, physically ejected her from the car, in the process tearing her dress but suffering a serious bite wound inflicted by [her] in return.”).

32. Thomas A. Foster, *The Sexual Abuse of Black Men Under American Slavery*, 20 J. HIST. SEXUALITY 445, 451–52 (2011).

33. *Id.* at 448–49.

34. See e.g., *End Racial Profiling Act: Hearing on S. 1670 Before the S. Comm. on the Constitution, Civil Rights & Human Rights*, 112th Cong. (2012) (statements of Sen. Dick Durbin, chairman, and Sen. Benjamin L. Cardin, member, S. Comm. on the Constitution, Civil Rights & Human Rights).

ican law and society.<sup>35</sup> Finally, sexual stereotypes about men of color have also been shaped by the desire to sexually exploit and subjugate this group.<sup>36</sup> Beginning in slavery, Black male bodies became sights of both “desire” and “horror.”<sup>37</sup> Black men were stereotyped as “particularly sexual, prone to sensual indulgence, and desiring white women,” and these stereotypes “served to demonize and define the population of black men.”<sup>38</sup>

Slavery also subjected Black males to various forms of sexual abuse and exploitation<sup>39</sup> by both white men and white women.<sup>40</sup> As historian Thomas A. Foster has argued, the sexual assault on Black males “took a wide variety of forms, including physical penetrative assault, forced reproduction, sexual coercion and manipulation, and psychic abuse.”<sup>41</sup> In slavery, whites imposed sexual stereotypes on Black men in order to justify pervasive sexual abuse and exploitation. For example, forced breeding had the particularly “dehumanizing effect of labeling [Black male slaves] as ‘stock men’ or ‘bulls.’”<sup>42</sup> As part of forced breeding, Black males were coerced to rape Black women.<sup>43</sup> Moreover, forced breeding denied Black males both a fatherly role to their biological offspring as well as the opportunity to commit to one woman.<sup>44</sup>

Slavery also stigmatized Black children as targets for sexual abuse and commercial sexual exploitation. Slaveowners purchased Black men, women, and children, for breeding purposes.<sup>45</sup> Slave children were also subjected to sexual abuse and exploitation.<sup>46</sup> One Black slave, Harriet Jacobs, describes how slave children were not spared from sexual terrorism at the hands of their masters.<sup>47</sup>

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35. CHARLES J. OGLETREE, JR., *THE PRESUMPTION OF GUILT: THE ARREST OF HENRY LOUIS GATES JR. AND RACE, CLASS, AND CRIME IN AMERICA* 191 (2010).

36. See Athena D. Mutua, *Theorizing Progressive Black Masculinities*, in *PROGRESSIVE BLACK MASCULINITIES?* (Athena D. Mutua ed., 2006), available at <http://ssrn.com/abstract=2109939>.

37. Foster, *supra* note 32, at 448.

38. *Id.* at 451.

39. *Id.* at 448.

40. *Id.* at 449 (examining how some light-skinned black men were singled out by their white mistresses to have sexual relations with them).

41. *Id.* at 447.

42. *Id.* at 455.

43. *Id.*

44. *Id.* at 454–55.

45. Colleen A. Vasconcellos, *Children in the Slave Trade*, *CHILDREN & YOUTH IN HIST.*, <http://chnm.gmu.edu/cyh/teaching-modules/141> (last visited May 29, 2015) (“As the plantocracy purchased more breeding women and children in order to save their economic interests, traders modified their ideas of profit and risk and ideas of child worth changed throughout the Atlantic World.”).

46. See HARRIET A. JACOBS, *INCIDENTS IN THE LIFE OF A SLAVE GIRL* (L. Maria Child ed., 2nd ed. 2003).

47. *See id.*

Jacobs was born a slave in 1813 and was taught to read and write by her first Mistress. When Harriet was fourteen years old, her Mistress died.<sup>48</sup> As a result, Jacobs was bequeathed to live in a home where she was subjected to persistent sexual harassment and abuse by her new Master and jealous bouts of rage and emotional abuse by her new Mistress. The entirety of Chapter 5 of the iconic narrative focuses on Jacob's anguish over the sexual abuse:

But I now entered on my fifteenth year—a sad epoch in the life of a slave girl. My master began to whisper foul words in my ear. Young as I was, I could not remain ignorant of their import. I tried to treat them with indifference or contempt . . . But he was my master. I was compelled to live under the same roof with him—where I saw a man forty years my senior daily violating the most sacred commandments of nature. He told me I was his property; that I must be subject to his will in all things.<sup>49</sup>

According to Jacobs, her personal experiences of sexual abuse and exploitation was not uncommon; rather, it was part and parcel of the slave experience—a horror that many slave women and girls endured. In Jacobs' reflection on a reunion between herself and a slave mistress with whom she had played as a child, Jacobs compared the sex hierarchies for white women and Black women in the slave society. While white women were destined for marriage and legal protection from sexual exploitation, Black slave women, in contrast were destined for sexual concubinage at the hands of white men:

How had those years dealt with her slave sister, the little playmate of her childhood? She also was very beautiful; but the flowers and sunshine and love were not for her. She drank the cup of sin, and shame and misery, whereof her persecuted race are compelled to drink.<sup>50</sup>

In other words, Black women and girls were systematically marked for sexual degradation and abuse.

Furthermore, Jacobs emphasizes how all Black women were excluded from the law and cultural notions of sexual virtue that protected white women. In Jacobs' words: "No matter whether the slave girl be as black as ebony or as fair as her Mistress. In either case, there is no shadow of law to protect her from insult, from violence, or even from death; all these are inflicted by friends who bear the shape of men."<sup>51</sup> Specifically, Jacobs maintains that she engaged in sexual liaisons

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48. *See id.* at 44–48.

49. *Id.* at 44–45.

50. *Id.* at 48.

51. *Id.* at 45.

with her master because she was forced or coerced to do so.<sup>52</sup> In this way, Jacob's narrative refutes the stereotype that sexual relations between slave women and their masters were due to sexual immorality on the part of the slave woman. Notwithstanding her anguish, she "resolved never to be conquered" psychologically or spiritually.<sup>53</sup>

Jacobs also argues that slavery was uniquely abusive because this sexual abuse served not only a personal purpose for masters who indulged, but also an economic one. The sexual abuse of black women was profitable particularly where slave masters fathered other children:

The secrets of slavery are concealed like those of the Inquisition. My master was, to my knowledge, the father of eleven slaves. But did mothers dare to tell who was the father of their children? Did the other slaves dare to allude to it, except in whispers among themselves? No, indeed! They knew too well the terrible consequences.<sup>54</sup>

Here, Jacobs points out that sexual exploitation of black women also served as a tool of racial subordination as it terrorized not only the female slaves, but also the black male slaves who were silenced from challenging the sexual abuse, as well as the black children, raised without knowing—or raised without wanting to know—the identity of their fathers.<sup>55</sup>

## B. Slavery's Aftermath

After slavery, American laws enforced and perpetuated derogatory racial stereotypes about Black sexuality in order to enforce the continued sexual exploitation of Black people as a class. However, in the aftermath of slavery, the sexual objectification of Black people extended beyond the mere expression of sexual stereotypes; although freed from antebellum slave plantations, they were still subjected to these stereotypes. They were systemically targeted, coerced and fraudulently induced to engage in prostitution. Several laws and customs developed to shape a prostitution underclass along racial lines.

As the American commercial sex industry flourished at the turn of the twentieth century, Black communities were segregated to vice districts where the

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52. *See id.* at 86 ("Pity me and pardon me, O virtuous reader! You never knew what it is to be a slave, to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another.").

53. *Id.* at 31.

54. *Id.* at 55.

55. *See id.*

lure of prostitution and illegal crime was ever present.<sup>56</sup> For example, in its iconic study, *THE NEGRO IN CHICAGO: A STUDY OF RACE RELATIONS AND A RACE RIOT*, the Chicago Race Commission acknowledged the findings of the Chicago City Council Commission on Crime, which stated that, “first among the causes [for prostitution] should be named the unfavorable home conditions . . . often when the home is degraded there are conditions of crowding, and poverty which lead to misfortune.”<sup>57</sup> Too often, the State sanctioned and protected the proliferation of prostitution and related illegal activity within segregated Black neighborhoods.<sup>58</sup> American laws and customs structured society such that people of color were targeted and steered into prostitution.

Moreover, other forms of structural racism fostered a growing commercial sex industry with Black prostitutes. The Chicago Race Commission found that Black females encountered employment discrimination and unemployment not faced by their white counterparts, were pushed into prostitution as a means of economic survival; in the words of the Commission:

The greater liability of Negroes to unemployment introduces another factor. A plant official told the commission that his plant had dismissed more than 500 Negro girls for business reasons. These girls, it was stated, could not easily find re-employment and were therefore probably exposed to certain necessities and temptations from which white girls of comparable status are exempt.<sup>59</sup>

Likewise, as discussed in Part III, Black women seeking to escape the South, migrated North in search of work opportunities were steered and coerced into prostitution by employment agencies.<sup>60</sup> Black female migrants were often denied the legal protection and social services offered to white women to shield the latter from sexual coercion by sex traffickers.<sup>61</sup>

Even though the Chicago Commission and Chicago government agencies acknowledged these various forms of structural inequality, it nevertheless suggested that white citizens stereotyped Black people as being prone to crime based

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56. KEVIN J. MUMFORD, *INTERZONES: BLACK/WHITE SEX DISTRICTS IN CHICAGO AND NEW YORK* 22–23, 27 (1997); see generally Butler, *supra* note 13.

57. *THE CHICAGO COMMISSION ON RACE RELATIONS: THE NEGRO IN CHICAGO: A STUDY OF RACE RELATIONS AND A RACE RIOT*, 331 (1919), available at [https://books.google.com/books?id=3kErAAAAMAAJ&printsec=frontcover&source=gbs\\_ge\\_summ ary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=3kErAAAAMAAJ&printsec=frontcover&source=gbs_ge_summ ary_r&cad=0#v=onepage&q&f=false) [hereinafter *THE CHICAGO COMMISSION*].

58. KHALIL GIBRAN MUHAMMED, *THE CONDEMNATION OF BLACKNESS* 227 (2010) (“Behind the borders of segregated black communities, many officials participated directly as patrons and protectors of illegal activity.”).

59. *THE CHICAGO COMMISSION*, *supra* note 57, at 332.

60. See discussion *infra* Part III.

61. *Id.*

on moral deficiencies, as opposed to societal factors.<sup>62</sup> For example, the Commission “in its inquiry [it] met the following current beliefs among whites in regards to the Negro criminal: that the Negro is more prone than the white to commit sex crimes, particularly rape.”<sup>63</sup>

In response to these public fears about Black female sexuality and criminality, public lynching became a pervasive means of policing and condemning Black sexuality.<sup>64</sup> The prevalence of lynching persisted for almost a century after slavery ended.<sup>65</sup> Lynching was justified by stereotyping Black males as rapists and sexual savages.<sup>66</sup> Lynching also controlled the sexuality of Black men by limiting their access to sexual relations with white women.<sup>67</sup> These stereotypes dehumanized people of color by framing them as “others,” outsiders unworthy of full citizenship in civil society.<sup>68</sup> Modern society continues to perpetuate the stereotype of the “bad Black man’ who is crime-prone and hypersexual.”<sup>69</sup>

In addition to the stereotyping of Black men as sexual predators, white society stigmatized Black females as consenting prostitutes. In the aftermath of slavery, white society resurrected its racial construct of Black females as Jezebel, the erotic sex object. Although free from slavery, Black females were entrapped by the myth that they were naturally suited for prostitution.<sup>70</sup> This stereotype

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62. THE CHICAGO COMMISSION, *supra* note 57, at 331.

63. *Id.*

64. MARTHA HODES, WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE NINETEENTH CENTURY SOUTH 1–6 (1997).

65. See IDA B. WELLS-BARNETT, SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES (1892), reprinted in AFRICAN AMERICAN CLASSICS IN CRIMINOLOGY & CRIMINAL JUSTICE 21, 21–38 (Shaun L. Gabbidon et al. eds., 2002) (providing a reprint of an 1892 series of editorials about the true causes of lynch law in the South that forced the paper that printed them to shut down); Anders Walker, *The Violent Bear It Away: Emmett Till and the Modernization of Law Enforcement in Mississippi*, 46 SAN DIEGO L. REV. 459, 461 (2009) (discussing how the lynching of fourteen year old Emmett Till in the 1950s galvanized the modern Civil Rights Movement).

66. Butler, *supra* note 13, at 1377–79; see Lisa Cardyn, *Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South*, 100 MICH. L. REV. 675, 745–62 (2002); Emma Coleman Jordan, *Crossing the River of Blood Between Us: Lynching, Violence, Beauty, and the Paradox of Feminist History*, 3 J. GENDER RACE & JUST. 545, 554 (2000); Wriggins, *supra* 92, at 107–08 (discussing lynching and its stereotypes that Black male sexuality was “wanton and bestial, and that Black men are wild, criminal rapists of white women.”).

67. Hodes, *supra* note 125, at 1–6.

68. *Id.*

69. Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 876–80 (2006); see also Ann C. McGinley, *Hillary Clinton, Sarah Palin, and Michelle Obama: Performing Gender, Race, and Class on the Campaign Trail*, 86 DENV U. L. REV. 709, 709 (2009).

70. Cheryl Nelson Butler, *A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America*, 27 YALE L. & FEMINISM 95, 126 (2015) (discussing America’s stigmatization of Black females as consenting prostitutes as an impetus for the founding of Black women’s club movement).

became so entrenched that it shaped American law and culture in a myriad of ways. As I have discussed in other works, this “prostitution myth,” the stigmatizing claim that Black females and their communities favored prostitution, motivated Black communities to organize civil rights and civic organizations to counter this cruel accusation.<sup>71</sup> For example, Jim Crow laws enforced these racialized notions of womanhood and sexual virtue.<sup>72</sup> The State justified the racial segregation of Black and white women in railroad cars on the grounds that Black women were too sexually deviant and morally inferior to sit in the same railroad cars as ladies.<sup>73</sup> This forced segregation of Black people also reflected the stereotype that as jezebels, Black females were predisposed to engage in prostitution.<sup>74</sup> Thus, these stereotypes coupled with the structural racism that pushed minority populations into vice, set the stage for marginalization of these groups within the movement.

### C. Sexual Colonization

To further understand the creation of a prostitution underclass based on race and racism, it is important to look beyond the binary of “black and white.”<sup>75</sup>

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71. Butler, *supra* note 13, at 1340; Dorothy Roberts, *Prisons, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492 (2012) (“A popular mythology promoted over centuries portrays black women as unfit to bear and raise children. The sexually licentious Jezebel, the family-demolishing Matriarch, the devious Welfare Queen, the depraved pregnant crack addict accompanied by her equally monstrous crack baby—all paint a picture of a dangerous motherhood that must be punished and regulated.”).
  72. Amii Larkin Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women’s Fight Against Race and Gender Ideology, 1892–1920*, 3 UCLA WOMEN’S L.J. 1, 8 (1993) (“To prevent [racial] mixing, white women and Black men had to be segregated from each other to prevent them from establishing an affinity for one another. This theory legitimized every type of segregation possible—from Jim and Jane Crow laws to the prevention of casual social contact between white women and Black men.”) (footnotes omitted); Lori A. Tribbett-Williams, *Saying Nothing, Talking Loud: Lil’ Kim and Foxy Brown, Caricatures of African-American Womanhood*, 10 S. CAL. R. L. & WOMEN’S STUD. 167, 179–81 (2000) (discussing *Robinson v. Memphis & Charleston R.R. Co.*, 109 U.S. 3, 5, 25–26 (1883), in which the “defendant established a ‘ladies’ car on its train, to distinguish White women from ‘other’ [Black/whorish] women”).
  73. Kenneth Mack, *Law, Society, Identity and Making of the Jim Crow South: Travel & Segregation on Tennessee Railroads, 1875–1905*, 24 L. & SOC. INQ. 377, 378 (1999) (“Taking her seat in the nonsmoking rear coach which, according to the railroad, was reserved for ‘white ladies and gentlemen,’ she refused the conductor’s request that she move to another car. The conductor, aided by two other men, physically ejected her from the car, in the process tearing her dress but suffering a serious bite wound inflicted by [her] in return.”).
  74. See Vednita Carter, *Prostitution and the New Slavery*, in NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 85–6 (Rebecca Whisnant & Christine Stark eds. 2004) (“Pornographic videos and magazines perpetuate the myth that all Black women are whores.”).
  75. Within critical race legal scholarship, the phrase “beyond black and white” has been used to look beyond the traditional paradigm of “white on black” racism to consider the experiences of other

In other words, America's prostituted underclass has been formed not only by racialized gender stereotypes based in slavery but also through the historical sexual colonization of Native American, Asian, and Latino people.

Similar to the Black American experience in slavery, Native American children have been historically targeted and seasoned for prostitution and sex trafficking in the United States.<sup>76</sup> Native Americans endured systemic sexual exploitation as part of their colonization by American troops.<sup>77</sup> For example, as part of its program to force Native American tribes to assimilate into American society, the U.S. government sanctioned practices that included sexual abuse and prostitution.<sup>78</sup> The federal government removed Native American children from their native lands and placed them in "boarding schools" and urban cities where they were indoctrinated with American culture.<sup>79</sup> In these government-sanctioned boarding schools, sexual abuse of Native Americans was a common means to forcibly strip them of their native culture, language, and religion.<sup>80</sup> Officials further denigrated Native American women and girls by exposing them to and normalizing sexual abuse and subjecting those who resisted colonization to "rape, physical abuse, and racist verbal abuse from colonists."<sup>81</sup> This systematic forced assimilation also pushed Native American minors into prostitution.<sup>82</sup> Similar to the subordination of Black female slaves, American settlers and troops used racialized sexual stereotypes to justify this systemic sexual exploitation.<sup>83</sup>

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racial minorities. See, e.g., Harvey Gee, *Beyond Black and White: Selected Writings by Asian Americans Within the Critical Race Theory Movement*, 30 ST. MARY'S L.J. 759 (1999).

76. Alexandra (Sandi) Pierce and Suzanne Koeplinger, *New Language, Old Problem: Sex Trafficking of American Indian Women and Children* 1, NAT'L ONLINE RESEARCH CTR. ON VIOLENCE AGAINST WOMEN (2011), [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/AR\\_NativeSexTrafficking.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/AR_NativeSexTrafficking.pdf) ("The selling of North America's indigenous women and children for sexual purposes has been an ongoing practice since the colonial era.")
77. *Id.* at 2 ("In the United States, military troops overseeing the nation's westward expansion targeted Native women for sexual assault, sexual mutilation, and slaughter.")
78. MELISSA FARLEY ET AL., GARDEN OF TRUTH: THE PROSTITUTION AND TRAFFICKING OF NATIVE WOMEN IN MINNESOTA 13 (2011), available at [www.prostitutionresearch.com/pdfs/Garden\\_of\\_Truth\\_Final\\_Project\\_WEB.pdf](http://www.prostitutionresearch.com/pdfs/Garden_of_Truth_Final_Project_WEB.pdf) (describing what is known to scholars as the "boarding school era" or "relocation era") (internal quotations omitted).
79. *Id.*
80. *Id.*
81. FARLEY ET AL., *supra* note 78, at 12; Andrea L. Johnson, *A Perfect Storm: The U.S. Anti-Trafficking Regime's Failure to Stop the Sex Trafficking of American Indian Women and Girls*, 43 COLUM. HUM. RTS. L. REV. 617, 632 n.76 (2012).
82. FARLEY ET AL., *supra* note 78, at 14 ("An honest review of history indicates that European system of prostitution was imposed by force on tribal communities through nearly every point of contact between Europeans and Native people.")
83. Pierce & Koeplinger, *supra* note 76, at 2 ("There is evidence that early British surveyors and settlers viewed Native women's sexual and reproductive freedom as proof of their 'innate' impurity,

Subsequently, other people of color have experienced systemic and state-sanctioned abuse in the United States. Stereotypes of Asian women are still greatly influenced by the long history of colonization and racial subordination by Great Britain. Moreover, Asians have been eroticized within American culture.<sup>84</sup> In the late 1870s, Asian women were trafficked from Asia to California specifically to serve as prostitutes for the male gold mining community. In addition, Asian women were compelled to serve as sexual servants for U.S. soldiers during World War II, the Korean War, and the Vietnam War.<sup>85</sup> Robert Chang has argued, however, Asian women who were demonized as prostitutes in the nineteenth century “were reconfigured in the post-World War II era as potentially redeemable and admissible through marriage to American servicemen with the passage of the War Brides Act of 1945.”<sup>86</sup> Yet, the dreams of many Asian American girls today are shattered when they are targeted based on race for grooming or for prostitution.<sup>87</sup>

Sexual colonization has also been part of the systemic racial subordination of Latinos in the United States. In particular, Latina women have often been sexually exploited and forced into prostitution as part of their experience as exploited agricultural workers.<sup>88</sup> For example, in the infamous “Reed Camps” of California, Mexican girls as young as seven were forced to provide sexual services to agricultural workers for over a decade.<sup>89</sup> In the United States, Latina women have historically been made vulnerable to sexual exploitation and have been forced to work as prostitutes.<sup>90</sup>

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and that many assumed the right to kidnap, rape, and prostitute Native women and girls without consequence.”).

84. Stewart Chang, *Feminism in Yellowface*, 38 HARV. J.L. & GENDER 235, 235 (2015) (arguing that recent stereotypical portrayals of Asians on television “operated in the same historical tradition of portraying Asians as villains, exotic temptress and prostitutes in the American media”); Sunny Woan, *White Sexual Imperialism: A History of Asian Feminist Jurisprudence*, 14 WASH. & LEE J. CIV. RTS. & SOC. JUST. 275, 278–79, 306 (2008).

85. *Id.*

86. Chang, *supra* note 84, at 237.

87. See Patricia Leigh Brown, *In Oakland, Redefining Sex Trade Workers as Abuse Victims*, N.Y. TIMES, May 24, 2011, at A18 (discussing an Oakland health clinic that was confronted with “an underground within an underground—the demand for Asian American girls, with Cambodian Americans among the most vulnerable”).

88. See Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking*, 7 NEV. L.J. 826, 826 (2007).

89. *Id.*

90. See Daniela Gerson, *Smuggled Women, Modern Slaves, Tell Their Tales in New York*, N.Y. SUN (May 18, 2005), <http://www.nysun.com/new-york/smuggled-women-modern-slaves-tell-their-tales/13991/>.

## II. LINKING THE PAST TO THE PRESENT: RACE AND COMMERCIAL SEX TRAFFICKING

### A. Disproportionality

The racialized sexual exploitation of people of color that developed during slavery and colonization impacts cultural expectations and beliefs about the availability and use of children of color for commercial sex today. In fact, sex trafficking of minors remains a major and persistent part of the epidemic of human trafficking in the United States,<sup>91</sup> where the average age of entry into prostitution is twelve to fourteen years old<sup>92</sup>—well below the legal age of sexual consent (the average of which is sixteen years old<sup>93</sup>). Across the United States, juvenile courts have reported an increase in the number of cases involving prostituted minors.<sup>94</sup> While policymakers and scholars agree that underage girls are the bulk of the participants in the U.S. commercial sex industry,<sup>95</sup> boys make up a significant, but often invisible subsection.<sup>96</sup> Despite reports that the number of minority boys in prostitution is increasing, prostituted boys do not garner the same level of public concern as do girls who are sexually exploited; thus, they are ignored and neglected relative to sexually exploited girls.<sup>97</sup>

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91. SHARED HOPE INT'L 2009, *supra* note 2.

92. S. Res. 340, *supra* note 4, at 1; SHARED HOPE INT'L 2009, *supra* note 2, at 30.

93. See Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 278–79 (2011); Jonathan Todres, *Maturity*, 48 Hous. L. REV. 1107, 1140 (2012) (“All states have established a minimum age at which a minor may consent to sex, with the range from sixteen to eighteen years old and the most common age being sixteen.”).

94. SHARED HOPE INT'L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 101 (2007), <http://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf> [hereinafter SHARED HOPE INT'L 2007].

95. *Id.* at 90.

96. See Samuel Vincent Jones, *The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking*, 2010 UTAH L. REV. 1143, 1143–44 (2010) (arguing that the media and society fails to acknowledge that the sex trafficking of boys “represent[s] a major criminal enterprise in the United States, and around the world, with boys constituting up to 90% of the child prostitutes in some countries”) (footnote omitted); see also FRANCES GRAGG ET AL., NEW YORK PREVALENCE STUDY OF COMMERCIAL SEXUALLY EXPLOITED CHILDREN: FINAL REPORT 27 (2007), available at <http://www.ocfs.state.ny.us/main/reports/csec-2007.pdf>.

97. See GRAGG ET AL., *supra* note 96; ECPAT-USA, AND BOYS TOO 2 (2013), <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/1b1293ef-1524-4f2c-b148-91db11379d11.pdf> (footnote omitted) (“The little notice given to boys primarily identifies them as exploiters, pimps and buyers of sex, or as active and willing participants in sex work, not as victims or survivors of exploitation.”).

Indeed, children of color make up a disproportionate number of sexually exploited children in the United States.<sup>98</sup> For example, most of the sexually exploited persons in major Texas cities, such as Houston, are racial minorities and come from economically vulnerable backgrounds.<sup>99</sup> A recent study, *Prostituted Youth*, found that 50 percent of all streetwalking prostituted minors in New York City—the largest subgroup—consisted of Black minors, while another 25 percent were Latino.<sup>100</sup> A separate study found that up to 67 percent of underage prostitutes in New York were Black and another 20 percent were Latino.<sup>101</sup> This is a vastly disproportionate rate, since African Americans make up only 26 percent of the population in New York City.<sup>102</sup> This pattern of disproportionality also exists in California.<sup>103</sup> For example, in Alameda County, 66 percent of all youth referred to a community agency exclusively serving commercially sexually exploited children were African American.<sup>104</sup>

Statistics show that these racial profiles mirror a national epidemic. The U.S. Bureau of Justice Statistics determined that between 2008 and 2010, nonwhite children accounted for 358 of the 460 cases of child sex trafficking investigated by the U.S. Department of Justice, and a majority of these 358 confirmed victims were reported to be Black and Latino.<sup>105</sup> Likewise, a 2013 National Juvenile Prostitution Study found that a disproportionate number of child sex trafficking victims were African American.<sup>106</sup>

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98. The Black & Missing Foundation reports that of the 635,155 children of all races who went missing in America in 2014, 36.8 percent of children ages seventeen and under are African American. See *Statistics*, BLACK & MISSING FOUND., <http://www.blackandmissinginc.com/cdad/stats.htm#1> (last visited July 31, 2015).
  99. See, e.g., THE NAT'L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY & ESSENCE MAG., UNDER PRESSURE: WHAT AFRICAN-AMERICAN TEENS AREN'T TELLING YOU ABOUT SEX, LOVE, AND RELATIONSHIPS 3 (2011) [hereinafter UNDER PRESSURE].
  100. MIA SPANGENBERG, PROSTITUTED YOUTH IN NEW YORK CITY: AN OVERVIEW (2001), <http://www.hawaii.edu/hivandaids/Prostituted%20Youth%20in%20New%20York%20City%20%20%20An%20Overview.pdf>.
  101. GRAGG ET AL., *supra* note 96, at ii.
  102. FURMAN CTR. FOR REAL EST. & URBAN POL'Y, THE CHANGING RACIAL AND ETHNIC MAKEUP OF NEW YORK CITY NEIGHBORHOODS 30 (2011), [http://furmancenter.org/files/sotc/The\\_Changing\\_Racial\\_and\\_Ethnic\\_Makeup\\_of\\_New\\_York\\_City\\_Neighborhoods\\_11.pdf](http://furmancenter.org/files/sotc/The_Changing_Racial_and_Ethnic_Makeup_of_New_York_City_Neighborhoods_11.pdf).
  103. *Domestic Child Sex Trafficking and African American Girls*, RIGHTS4GIRLS, <http://rights4girls.org/wp-content/uploads/r4g/2015/03/DCST-and-Af-Am-girls.pdf> (last visited July 31, 2015) (“In Los Angeles County, 92% of girls in the juvenile justice system identified as trafficking victims were African-American, 62% of those children were from the child-welfare system, and 84% were from poor communities in the southeastern part of L.A. County.”).
  104. *Id.*
  105. *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, BUREAU OF JUST. STATISTICS (Apr. 2011), <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.
  106. KIMBERLY J. MITCHELL ET AL., CRIMES AGAINST CHILDREN RESEARCH CTR., SEX TRAFFICKING CASES AGAINST MINORS 1 (2013). <http://www.unh.edu/ccrc/pdf/CV313>

## B. Demand Based on Racial Fetish and Stereotypes

In the United States, both racialized sexual fetish and racial animus fuel the market in which mostly white men purchase commercial sex with people of color, including minors. While Black children are most likely to experience some form of sex trafficking, other children of color are similarly at a higher risk than their white counterparts. Native Americans in particular argue that a strong connection exists between colonization and a persistent targeting of native people for prostitution.<sup>107</sup> The sexual stereotypes that were used to justify colonization persist today as Native American minors are targeted for sexual exploitation.<sup>108</sup> Studies have found that a prostitution of Native American girls is increasing at “alarming rates.”<sup>109</sup> In a groundbreaking study on Native women in prostitution, 75 percent of the women interviewed had sold sex in exchange for shelter, food, or drugs.<sup>110</sup> Thus, some young Native women perceive prostitution as an economic consequence of having lost their land, culture, and means of economic survival during colonization and subsequent deprivation of human rights and opportunity by the U.S. government.<sup>111</sup> As a result of the long history of racial oppression, today’s Native women and girls, in Minnesota for example, still do not perceive that alternative employment options are available to them.<sup>112</sup>

Similarly, America’s anti-immigrant culture facilitates the sexual exploitation and trafficking of immigrant girls.<sup>113</sup> In the United States, the rape of an immigrant minor can go unpunished,<sup>114</sup> as an undocumented victim may be

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\_Final\_Sex\_Trafficking\_Minors\_Nov\_2013\_rev.pdf (“Bulletin summarizing the finding of the National Juvenile Prostitution Study and finding that “36% were African American, which is quite disproportionate to the 14.5% of youth ages 10–19 in the general population who were African American.”).

107. *Id.*

108. Pierce & Koeplinger, *supra* note 76, at 1 (“Native girls still are specifically targeted based on their race. The FBI recently noted, “There have been traffickers and pimps who specifically target Native girls because they feel that they’re versatile and they can post them [online] as Hawaiian, as Native, as Asian, as you name it.”).

109. Johnson, *supra* note 81, at 643 (2012); FARLEY ET AL., *supra* note 78.

110. *Id.* at 25.

111. *Id.* at 32–33.

112. FARLEY ET AL., *supra* note 78, at 3.

113. See LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT, TRABAJADORAS: CHALLENGES AND CONDITIONS OF LATINA WORKERS 23, 45–46, 88 (2012), available at [http://www.lclaa.org/images/pdf/Trabajadoras\\_Report.pdf](http://www.lclaa.org/images/pdf/Trabajadoras_Report.pdf) [hereinafter TRABAJADORAS]; S. POVERTY LAW CTR., UNDER SIEGE: LIFE FOR LOW-INCOME LATINOS IN THE SOUTH 4 (2009); see generally Jennifer M. Chacón, *Tensions and Trade Offs: Trafficking Victims in the Era of Immigration Enforcement*, 158 U. PENN. L. REV. 2609, 1609–12 (arguing that anti-immigration sentiment undermines the goals of antitrafficking legislation).

114. S. POVERTY LAW CTR., *supra* note 113, at 4.

reluctant to report the crime.<sup>115</sup> Furthermore, 77 percent of working Latinas say that sexual harassment on the job is a major problem for them.<sup>116</sup> Statistics show that on and off the job, Latinas remain vulnerable to sexual assault and sex trafficking.<sup>117</sup> In one recent federal case, hundreds of Mexican girls were forced to work as sex slaves in San Diego.<sup>118</sup>

Finally, there is a strong correlation between robust tourist industries within certain American cities and the prevalence of prostitution of minority youth in those cities. In American cities with strong tourism industries, nonwhites represent a substantial number of sexually exploited minors.<sup>119</sup> For example, Black girls as young as ten and eleven years old compose a substantial number of the sexually exploited minors in Atlanta.<sup>120</sup> Furthermore, the internet has made all minors more vulnerable to prostitution.<sup>121</sup> It has allowed “buyers from beyond the ethnic community to access the sexual services of the normally closed system.”<sup>122</sup> In other words, commercial sex networks that were traditionally only open to people of the same community or ethnic group become open to a larger Internet community.<sup>123</sup>

### C. Maintaining Supply: The Sexual Objectification of Kids of Color

The culture of racialized sexual exploitation developed during slavery and colonization also continues to manifest itself in a modern American culture that encourages their participation in prostitution. Today, hypersexualized stereotypes about minority teens continue to drive their prostitution and sexual exploitation. Lawmakers presume that minors have consented to prostitution even when the minor is below the age of consent.<sup>124</sup> American society embraces the

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115. *Id.* at 25.

116. *Id.* at 28.

117. See TRABAJADORAS, *supra* note 113, at 96; U.S. DEPT OF JUSTICE, EXISTE AYUDA HELP EXISTS: FACT SHEET, [http://www.ovc.gov/pubs/existeayuda/tools/pdf/factsheet\\_eng.pdf](http://www.ovc.gov/pubs/existeayuda/tools/pdf/factsheet_eng.pdf) (last visited July 31, 2015).

118. Cianciarulo, *supra* note 77, at 826; Peter Landesman, *The Girls Next Door*, N.Y. TIMES (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.

119. SHARED HOPE INT’L 2007, *supra* note 94, at 87, 98, 103–04 (describing the country of origin and ethnicity of victims of the commercial sex markets in U.S. cities such as Atlanta, Las Vegas, and Washington, D.C.); SPANGENBERG, *supra* note 100, at 4.

120. SHARED HOPE INT’L 2007, *supra* note 94, at 101.

121. Butler, *supra* note 5, 115–18.

122. SHARED HOPE INT’L 2007, *supra* note 94, at 87.

123. *Id.*

124. See generally *In re B.W.*, 313 S.W.3d 818, 819 (Tex. 2010) (detailing how the lower courts in Texas found that a minor under the age of sixteen was still capable of consenting to prostitution).

stereotype that good girls do not engage in premarital sex.<sup>125</sup> Conversely, kids involved in prostitution are stereotyped as bad girls who have turned to prostitution as an act of rebellion against mainstream moral values.<sup>126</sup>

These stereotypes reflect a culture of “racialized gender,” or oppression based upon the intersection of race and gender.<sup>127</sup> Specifically, kids of color are stereotyped as sexually aggressive, deviant, and predisposed toward risky sexual behavior such as prostitution. Society stereotypes nonwhite minors—Black and Latino kids in particular—as dysfunctional misfits whose inherently sexually promiscuous nature undermines the moral standards of the mainstream society.<sup>128</sup> The perceived hypersexuality of both teens and women of color is regarded as a societal threat, with such stereotypes often contributing to their sexual exploitation. Black girls today are perceived as “sexually promiscuous, lacking in morality of family values, and out of control.”<sup>129</sup> These stereotypes persist in part because traditionally, social science research on the sexual behavior of minority teens often confirms, rather than challenges, these stereotypes. According to research, teens of color allegedly are more sexually promiscuous than their white counterparts.<sup>130</sup> One study, for example, found that 45.7 percent of all teenage girls between fifteen and nineteen years old had experienced sexual intercourse, while the rate was 61.2 percent for teenage Black girls.<sup>131</sup> Black teens are also alleged to have had more sexual partners.<sup>132</sup> Yet, without analysis as to the environmental factors that contribute to these disproportionate rates, these

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125. Renée M. Landers, *Sexual Activity Between Minors, Prostitution, and Prosecutorial Discretion: What Difference Should Age and Sex Make?*, 53 BOSTON BAR J. 8, 11 (2009); see Todres, *supra* note 9 (discussing how cultural norms impact societal beliefs about a child’s legal maturity to engage in adult activities including sex).

126. Todres, *supra* note 9; see generally Rebecca Hall & Angela P. Harris, *Hidden Histories, Racialized Gender, and the Legacy of Reconstruction: The Story of United States v. Cruikshank*, in WOMEN AND THE LAW STORIES (Elizabeth M. Schneider & Stephanie M. Wildman eds. 2011).

127. See generally Hall & Harris, *supra* note 126.

128. See Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN’S L.J. 303, 320–22 (2005); Dorothy E. Roberts, *Deviance, Resistance, and Love*, 1994 UTAH L. REV. 179, 180–190 (1994) [hereinafter Roberts, *Deviance*] (exploring the treatment of Black people as “outlaws” in criminal and commercial contexts, as well as how Black people view other Black people in these situations); Dorothy E. Roberts, *Prison, Foster Care, and the Systematic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492 (2012) [hereinafter Roberts, *Prison*] (discussing the cultural mythology of unmarried Black women as “the ultimate irresponsible mothers—women who raises [sic] their children without the supervision of a man”).

129. See Nash, *supra* note 128, at 320–22; Roberts, *Deviance*, *supra* note 128, at 184–85; Roberts, *Prison*, *supra* note 128, at 1492.

130. See, e.g., THE NAT’L CAMPAIGN TO PREVENT TEEN AND UNPLANNED PREGNANCY, FACT SHEET: TEEN SEXUAL ACTIVITY, PREGNANCY AND CHILDBEARING AMONG BLACK TEENS 3 (2007), [http://www.advocatesforadolescentmothers.com/files/AfrAmericans\\_2007.pdf](http://www.advocatesforadolescentmothers.com/files/AfrAmericans_2007.pdf).

131. *Id.*

132. *Id.*

statistics are misleading and, as such, contribute to the persistence of sexual stereotypes about minority teens.

Modern media and popular culture also contribute to the sexual objectification of minority youth, thereby increasing their vulnerability to sexual exploitation. Pornographic images of Black teens flood the Internet, mainstream music videos, and television.<sup>133</sup> The media stereotypes minority kids as prostitutes and sexual deviants<sup>134</sup> and sexually objectifies minority women and girls especially. In doing so, the media renders these groups more vulnerable to sexual exploitation.<sup>135</sup>

Youth in American society are bombarded with images of sex, violence, and materialism on television, in the movies, and through music lyrics. A groundbreaking new study found the following:

In comparison to white characters on TV and in movies, black youth say that they are portrayed as less intelligent, more prone to failure, and less successful in relationships. Fewer than one in five (18%) say they often see themselves in the TV shows and movies they are watching, and seven in 10 say these TV shows and movies portray black youth as sexually aggressive.<sup>136</sup>

The same pop culture that immortalizes pimps as folkloric heroes also superficially glamorizes (but actually denigrates) girls who sell their bodies for pimps. The Jezebel stereotype of the slavery era is resurrected in the lyrics and persona of Black female rap artists and other cultural images.<sup>137</sup> Many of the top selling rap songs portray young women—especially Black young women—as glamorous prostitutes who seem empowered by their sexuality, but in actuality lack autonomy over their bodies and sexual images.<sup>138</sup> Further, while girls of all ethnicities are influenced by the media's encouragement of teen sexual activity, minority teens in particular perceive that the media disproportionately portrays them in a sexually stereotyped manner—that is, as lewd and sexually aggressive.<sup>139</sup>

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133. Vednita Nelson, *Prostitution: Where Racism & Sexism Intersect*, 1 MICH. J. GENDER & L. 81, 83 (1993).

134. See generally NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* (2010).

135. Vednita Nelson, *Prostitution: Where Racism & Sexism Intersect*, 1 MICH. J. GENDER & L. 81, 83 (1993).

136. *Id.* at 3.

137. For a discussion of the Jezebel stereotype, see *supra* notes 52–61 and accompanying text.

138. See Tribbett-Williams, *supra* note 32, at 183–85.

139. See UNDER PRESSURE, *supra* note 99, at 3.

For example, several legendary rap artists have at least one famous “pimpin” song.<sup>140</sup> The leading contemporary artists, including Jay-Z, 50 Cent, Snoop Dogg, Tony Yayo, and the late Pimp C, all have hit pimp songs, embody pimp personae, or both. The lyrics indicate that some children and teens (under eighteen years old) voluntarily engage in prostitution to finance a variety of needs and desires, whether those needs are food, handbags, or money for school.<sup>141</sup> Rap lyrics also adversely impact public culture and discourse by perpetuating race and gender hierarchies.<sup>142</sup>

To be sure, rap music has been highly influential in shaping the cultural attitudes of generations of youth throughout the world. In many respects, rap music represents positive expressions of cultural and musical genius. Some strands of rap music, however, perpetuate the sexual exploitation of and violence against women.<sup>143</sup> Through listening to these negative strands of rap music, female minors are often seduced, manipulated, or exploited into joining a lifestyle of pimping and prostitution. Girls are particularly vulnerable to having their sexuality shaped by music videos of gangsta rap, a subgenre that tends to idolize pimp culture.<sup>144</sup> Some grow up to believe that a heightened sexual persona is a central part of their sexual identity as young Black girls.<sup>145</sup> While adults may

140. See Eithne Quinn, *Who's the Mack?: The Performativity and Politics of the Pimp Figure in Gangsta Rap*, 34 J. AM. STUD. 115, 116 (2000).

141. Rapper 50 Cent raps about a pimp who hooks a girl by promising financial and emotional support. The pimp first pimps the girl in a strip club. She is “dancing for dollars [because she] has a thing for that Gucci, that Fendi, that Prada, that BCBG, Burberry, Dolce and Gabana.” The pimp makes promises to the stripper to force her into prostituting herself on the street. She is told to “hit that track, catch a date, and come and pay the kid.” Then he promises the girl, who is now his “bitch,” that she should continue to bring the money so that they can “live the good life”; they will “splurge,” “have a ball” and “tear up the mall.” The pimp encourages the girl to isolate herself emotionally and to make her pimp the only “friend,” “father,” or “confidant” she needs. 50 CENT, *P.I.M.P.*, on GET RICH OR DIE TRYIN’ (Aftermath Entertainment 2003). The fact that P.I.M.P. is a major hit song indicates that lots of teens are singing about pimping. The proliferation of “pimpin” culture influences youth in all communities. See Emma Lee, *Hooked on a Feeling: If I Was Having Meaningless Sex, It Might as Well Pay My Tuition*, ELLE (Apr. 29, 2008, 10:45 AM), <http://www.elle.com/life-love/sex-relationships/advice/a9125/hooked-on-a-feeling-18993/> (documenting a college girl’s self-promotion on Craigslist as an escort to earn spending money while in school).

142. Lolita Buckner Inniss, *A ‘Ho New World: Raced and Gendered Insult as Ersatz Carnival & the Corruption of Freedom of Expression Norms*, 33 N.Y.U. REV. L. & SOC. CHANGE 43, 44 (2009).

143. See Abdul Ali, *Parenting in the Hip Hop Age of Lil Wayne, Wife Beaters, Domestic Violence and Misogyny*, WASH. POST (Jan. 6, 2012, 12:51 PM), [http://www.washingtonpost.com/blogs/therootdc/post/parenting-in-the-hip-hop-age-of-lil-wayne-wife-beaters-domestic-violence-and-misogyny/2012/01/04/gIQA4ovDfP\\_blog.html](http://www.washingtonpost.com/blogs/therootdc/post/parenting-in-the-hip-hop-age-of-lil-wayne-wife-beaters-domestic-violence-and-misogyny/2012/01/04/gIQA4ovDfP_blog.html).

144. See Quinn, *supra* note 129, at 116.

145. See Elizabeth Marshall, Jeanine Staples & Simone Gibson, *Ghetto Fabulous: Reading Black Adolescent Femininity in Contemporary Urban Street Fiction*, 53 J. ADOLESCENT & ADULT LITERACY 28, 29–35 (2009).

enjoy the music for mere jest and entertainment, children who are in search of an identity—whether they are living in the American inner city or the suburbs—will internalize the images and embrace the pimp, hustler, and prostitute personae as role models.

These images can have a negative impact on minority youth and sexual behavior. Cornel West has argued that the media “convinces young people that the culture of gratification—a quest for insatiable pleasure, endless titillation, and sexual stimulation—is the only way of being human.”<sup>146</sup> Whereas youth of prior generations led the civil rights and other social movements of the 1960s, today’s youth have been seduced by the media and corporate marketers to focus on “hedonistic values,” “narcissistic identities,” and other behaviors that distract them from advancing the social justice issues that are important to their communities.<sup>147</sup> Thus, the media’s sexualized images encourage minority youth to see themselves as sex objects. Nearly three out of four surveyed black teens (72 percent) say that the “media sends the message that black girls’ sex appeal is their most important quality.”<sup>148</sup> Black males are portrayed as hypersexual and untrustworthy figures; 64 percent of teens feel “that the media sends the message that it is okay for black males to cheat in relationships.”<sup>149</sup> The media’s stereotyped sexual images of minority youth create social pressures for these youth to engage in sexual activity. They feel “*more* pressure to have sex from society (51 percent) and the media (48 percent) than they feel from their own partners (36 percent).”<sup>150</sup>

#### D. Structural Inequality

In addition to their sexual objectification in American culture, other forms of structural racism push people of color, particularly minors, into prostitution. Squarely imbedded within societal structures, race and gender discrimination makes minors targets for coerced prostitution at the hands of pimps, facilitators, or johns precisely because they are dependent on adults for survival.

My contention is that when this protection is denied due to discrimination, minors become the victims of abuse and neglect, with some engaging in “survival

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146. CORNEL WEST, *DEMOCRACY MATTERS: WINNING THE FIGHT AGAINST IMPERIALISM* 175 (2004).

147. *Id.*

148. *See* UNDER PRESSURE, *supra* note 99, at 3.

149. *Id.* at 6.

150. *Id.* at 2.

sex” as a means of finding necessities; lacking educational opportunities and often surrounded by poverty, vulnerable minors often find themselves in foster homes or under the custody of child protective services that increases their risk for sexual abuse and exploitation, which facilitates their entry into the commercial sex industry.<sup>151</sup>

Studies show that African American girls become trafficked at younger ages than their racial counterparts. They are more likely to experience poverty, and consequently more likely to be disconnected from schools and other community supports. African American girls experience physical and sex abuse at young ages and witness multiple forms of violence at higher rates than their white peers. In 2013, 26 percent of children in the foster care system were African Americans.<sup>152</sup>

### III. THE RACIAL ORIGINS OF THE ANTITRAFFICKING MOVEMENT

Historically, the antitrafficking movement has ignored or otherwise failed to address the racial disproportionality of domestic sex trafficking. This Part illustrates how the efforts to portray sex trafficking as only involving white women has worked to further victimize people of color who are trafficking victims or at risk of being trafficked.

#### A. The “White Slavery” Campaign

American campaigns to end prostitution and sex trafficking have used the rhetoric of, and analogies to, transatlantic slavery to condemn modern sex trafficking; but have not adequately protected people of color or even acknowledged them as victims. For example, the “white slavery” campaign of the early 1900’s, which led to the enactment of the Mann Act,<sup>153</sup> (originally known as the White Slave Traffic Act<sup>154</sup>) utilized morally charged rhetoric by analogizing prostitution with the history of African slavery in America. According to lawmakers who would sponsor the legislation, “the white slave trade was the business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes.”<sup>155</sup>

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151. See generally Butler, *supra* note 70. For more on “survival sex,” see Butler, *supra* note 5, at 1292.

152. Tanya A. Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 224 (2013).

153. See White-Slave Traffic Act (“Mann Act”), 18 U.S.C. §§ 2421–24 (1910).

154. See Todres, *supra* note 9, at 649.

155. Barbara Holden-Smith, *Lynching, Federalism & the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31, 61 (1996).

The use of the slavery rhetoric allowed “white slaves” to fit a certain paradigm. The legislative history of the White Slave Act speaks to the need to help women and girls “in captivity” by pimps and procurers.<sup>156</sup> They were presumed to be “held in bondage . . . without an opportunity to leave.”<sup>157</sup> The white slavery campaign focused on protecting and policing “those women who are owned and held as property and chattel—whose loves are of involuntary servitude.”<sup>158</sup>

But, on its face, the term “white slave” is clearly racially prescribed. This paradigm included racialized notions of who could be identified as a victim of exploitation. As Karen E. Bravo has explained:

[S]ince the victimization of whites alone was targeted, leaving unchallenged the exploitation of white women, the racialized character of the fight against the eighteenth and early nineteenth century traffic helped undermine the effectiveness of the international instruments adopted to combat the trade by targeting only the sexual exploitation of a single racial group.<sup>159</sup>

Indeed, the white slavery campaign ignored the pervasiveness of sex trafficking of Black women and girls. For example, during the Great Migration, employment agencies in northern American cities recruited Black women from the South to come to Boston, Chicago, and New York for promised jobs in factories, department stores, and other reputable businesses. When many of the women arrived, however, their bags were confiscated and they were sent to work in brothels as prostitutes, or as maids. Some employment agencies in Chicago blatantly steered even college-educated Black women and girls into prostitution because it was legal to do so. Black girls, unlike white girls, were not protected by early pandering laws.<sup>160</sup>

This refusal to recognize women and girls of color as victims of forced prostitution perpetuates the Jezebel myth that Black women would always consent to sex.<sup>161</sup> Indeed, because the law “did little to discourage White men

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156. Anne M. Coughlin, *From White Slaves to Domestic Hostages*, 1 BUFFALO CRIM. L. REV. 110, 111 (1997) (arguing that the legislative history of both the Mann Act and the Violence Against Women Act, of which the TVPRA is a part, both “invoke metaphors of captivity to describe the plight of the female subjects whom Congress was determined to protect”).

157. BRIAN DONOVAN, *WHITE SLAVE CRUSADES: RACE, GENDER, AND ANTI-VICE ACTIVISM, 1887–1917*, at 72 (2006).

158. See SENATE IMMIGR. COMM., *WHITE-SLAVE TRAFFIC*, S Rep. No. 886, 61<sup>st</sup> Cong., 2d Sess. 11 (1910).

159. Bravo, *supra* note 13, at 574; see also Bravo, *supra* note 9.

160. Butler, *supra* note 13, at 1387.

161. CHERYL D. HICKS, *TALK WITH YOU LIKE A WOMAN: AFRICAN-AMERICAN WOMEN, JUSTICE, AND REFORM IN NEW YORK, 1890–1935*, at 91–93 (2010).

who were determined to have their way with Black women,” the alleged rape of a Black woman—particularly at the hands of a White man—has traditionally not been recognized as a crime.<sup>162</sup> Further, the claim that, “Black women do not experience coerced sex in the sense that white women experience it. . . . reflect[s] a set of myths about Black women’s supposed promiscuity which were used to excuse white men’s sexual abuse.”<sup>163</sup> These different experiences between Black and white women regarding rape alienated Black women from the first wave of the feminist advocacy for rape reform.<sup>164</sup> Today, “the criminal justice system continues to take the rape of Black women less seriously than the rape of white women.”<sup>165</sup>

The intentional marginalization of women and girls of color was reflected not only in the rhetoric of the white slavery movement but also in the State’s legal response. For example, state agencies created programs that only shielded white women from trafficking.<sup>166</sup> As Cheryl D. Hicks has argued, Progressive era efforts to protect white and Black women from sexual exploitation “proceeded from different motives and assumptions and were shaped by black and nonblack women’s differing relations to the female labor market.”<sup>167</sup> The conflicting ideologies of antitrafficking advocates Frances Kellor, a white female reformer, and Victoria Earle Matthews, an African American woman, reflect these distinctions.<sup>168</sup> Kellor and other white reformers “were anxious about the alleged increase in prostitution among white native-born and immigrant women [and] emphasized the involuntary character of their sexual exploitation by using the term ‘white slavery.’”<sup>169</sup> In contrast, “Kellor and her cohort believed that enslavement made all black women less capable of leading moral, respectable lives. Thus, white reformers emphasized changing these women’s labor efficiencies rather than transform the racially restrictive practices of the labor market and of social institutions.”<sup>170</sup>

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162. Jeffrey J. Pokorak, *Rape as Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 NEV. L.J. 1, 8–11 (2006) (discussing charging disparities as a legacy of the historical refusal of the law to recognize the rape of black women as a crime).

163. Wriggins, *supra* note 66, at 120.

164. ANGELA Y. DAVIS, *WOMEN, RACE, AND CLASS* 151 (1981) (“If black women have been conspicuously absent from the ranks of the contemporary anti-rape movement, it may be due, in part, to that movement’s indifferent posture toward the frame-up rape charge as an incitement to racist aggression.”).

165. FARLEY ET AL., *supra* note 78, at 17–18 (arguing that empirical data support the conclusion that women of color are overrepresented in American prostitution).

166. HICKS, *supra* note 161, at 91–93.

167. *Id.* at 92.

168. *Id.*

169. *Id.*

170. *Id.* at 93.

Rather than blame Black women for the culture of sexual exploitation waged upon them, Matthews, who was “haunted by the legacy of enslavement,” “sought to show that young black girls were also the victims of sexual procurers and predators.”<sup>171</sup> Matthews was mindful that young Black female migrants to northern cities were systemically denied employment opportunities and instead steered toward prostitution. Matthews warned Black scholars and leaders to focus upon race-based sex trafficking: “[M]any of the dangers confronting our girls from the South in the great cities of the North are so perfectly planned, so overwhelming in their power to subjugate and destroy that no woman’s daughter is safe away from home.”<sup>172</sup> Here, Matthews alluded to the structural racism and sexism that targeted black women and girls for prostitution and sex trafficking. To provide black women and girls with the same type of protection offered to their white counterparts, Matthews founded the White Rose Mission Working Girls Home in New York.<sup>173</sup> In Matthews’ words, for “the young and unfriended [women] of other races, there are all sorts of institutions.” But, for Black girls “there is nothing.”<sup>174</sup> Unfortunately, but unsurprisingly, compared to their white counterparts, black reformers such as Matthews struggled to receive funding for their work on behalf of sexually exploited Black girls.<sup>175</sup> This disparity in resources reflected the racial confines of the white slavery campaign.

Some leaders of the white slavery campaign not only denied Black women and girls protection from forced or coerced prostitution,<sup>176</sup> but also blamed Black people for the rise in vice and prostitution.<sup>177</sup> In addition to the framing of Black women and girls as predisposed to consensual prostitution, the imagery of the Black male as a menacing pimp and a sexual threat in general was a central tenet of some White Slave crusaders.<sup>178</sup> When Francis Willard, the internationally renowned leader of the Women’s Christian Temperance Union, warned white women and girls to stay away from “dark places,” she alluded not only to the dangers of being present in Chicago’s poorest neigh-

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171. *Id.* at 92.

172. Seth Kramer, *Uplifting our “Downtrodden Sisterhood”: Victoria Earle Matthews and New York City’s White Rose Mission, 1897–1907*, J. AFRICAN AM. HIST. 243, 243 (2006).

173. HICKS, *supra* note 161, at 92.

174. Kramer, *supra* note 172, at 244.

175. DONOVAN, *supra* note 157, at 92–93.

176. *Id.* at 95 (“The construction of white womanhood in the white slavery narrative linked racial and sexual purity. Accordingly, investigators not only sought ‘white’ as opposed to ‘colored’ girls but also sexually innocent girls.”).

177. DONOVAN, *supra* note 157, at 63 (“For Snead, Turner and Bell [leaders in the anti-vice crusade], the vice trade in Chicago threatened to shred the moral fabric of the city. They blamed white slavery on foreign influences and the growing presence of African Americans in Chicago.”).

178. *Id.* at 48–49.

borhoods, but also the sexual threat that black men and women posed for white womanhood and white racial purity.<sup>179</sup> As Brian Donovan argues, “[i]nsofar as these neighborhoods housed a large percentage of the city’s immigrants and African Americans, ‘dark places’ becomes more than a metaphor for sin; it carries a double meaning that links sexual practices and race.”<sup>180</sup>

To conclude, white women and girls were not blamed for prostitution, but were instead framed as slaves who were worthy of rescue and protection. They were recognized as victims of white slavery, their agency to engage in prostitution having been robbed or coerced as a result of the evil influence of Black prostitutes.<sup>181</sup> Many of the most popular and notorious stories of white women found “consorting with the vilest kind of Negroes” involved alleged trickery and coercion by black pimps and madams. Indeed, Negroes were “keepers of the dive into whose hellish place she had been entrapped by evil machinations.”<sup>182</sup> Rather than stand trial, a white girl “found in a negro house of prostitution” was better off praying “for death to relieve her of a life that had become too painful to be borne.”<sup>183</sup>

#### **B. The Mann Act: How Antitrafficking Legislation Victimized, Rather Than Protected, Black People**

Early antitrafficking legislation also reflected the inherent racism within the white slavery movement. The White Slave Act, enacted in 1910, threatened the prosecution of anyone who transported “any woman or girl for the purpose of prostitution” in interstate commerce.<sup>184</sup> As an alternative to prostitution, the legislators’ intent was to give women “a fair chance” to become “good wives and mothers and useful citizens.”<sup>185</sup>

But, in practice, the references to “any woman or girl” did not apply to females of color.<sup>186</sup> Arguably, the legislators felt no commitment to moving Black women out of roles as prostitutes and into roles as respectable wives or mothers. As Barbara Holden-Smith has noted, “[t]he focus of the congressional

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179. *Id.*

180. *Id.* at 48.

181. *Id.* (“Although prostitution ultimately corrupted the moral and racial purity of white girls, the [Women’s Christian Temperance Union] did not hold them responsible for their entry into the vice trade.”).

182. *Id.*

183. *Id.*

184. Coughlin, *supra* note 156, at 110.

185. *Id.* at 115.

186. Bravo, *supra* note 13, at 574.

floor debates on Mann's bill was the mythical white farm girl who came to the city looking for adventure and found herself trapped in a life of sexual slavery.<sup>187</sup>

As such, the Mann Act was actually used to further police the sexuality of white women by prosecuting black men for engaging in consensual interracial relations.<sup>188</sup> The most infamous case involved the federal prosecution of World Boxing Champion Jack Johnson.<sup>189</sup> In 1908, when Johnson, an African American fighter, defeated World Heavyweight Champion Tommy Burns, a white man, whites throughout the world feared that Johnson's win would threaten the "myths of white physical and mental superiority" and desperately searched for a "Great White Hope" who could take the title back from Johnson.<sup>190</sup> Unable to find a "great white hope" to defeat Johnson, racial violence by whites against African Americans erupted throughout the United States.<sup>191</sup>

As Kevin Johnson has explained, the United States prosecuted Johnson under the Mann Act "for transporting across state lines a white woman, Belle Schrieber."<sup>192</sup> The prosecutors pursued the Mann Act charge, "even though Schrieber was an adult and, as she testified, her travels with Johnson were wholly consensual."<sup>193</sup> Department of Justice officials "acknowledged the impropriety of a Mann Act charge . . . [but] considering Johnson's fraternizing with a white woman "a crime against nature,"<sup>194</sup> they continued to "press its

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187. Holden-Smith, *supra* note 142, at 67.

188. Committee to Pardon Jack Johnson, Petition for Pardon to the President of the United States 10–11 (2004), [http://www-tc.pbs.org/unforgivableblackness/knockout/pardon\\_petition.pdf](http://www-tc.pbs.org/unforgivableblackness/knockout/pardon_petition.pdf) [hereinafter Petition for Pardon]. For additional legal scholarship on the social and legal prohibitions against interracial romantic relationships, see Angela Onwuachi-Willig, *What Would Be the Story of Alice & Leonard Rhinelander Today?*, 46 U.C. DAVIS L. REV. 939, 946–47 (2013) ("Although occurring almost a century ago, the lives of Alice and Leonard Rhinelander remain relevant in today's society. . . . [T]he *Rhinelander* narrative forecasts a strong lingering taboo against interracial marriage in general and black-white marriage in particular."); see generally Angela Onwuachi-Willig, *A Beautiful Lie: Exploring Rhinelander v. Rhinelander as a Formative Lesson on Race, Identity, Marriage, and Family*, 95 CALIF. L. REV. 2393 (2007); Rose Cuison Villazor, *The Other Loving: Uncovering the Federal Government's Racial Regulation of Marriages*, 86 N.Y.U. L. REV. 1361 (2011).

189. See Kevin R. Johnson, *The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance*, 84 TEX. L. REV. 739, 753–55 (2006).

190. Petition for Pardon, *supra* note 188, at 5–7.

191. Petition for Pardon, *supra* note 188, at 9 ("For example . . . A white man slashed the throat of a black man in Houston who was cheering Johnson's triumph; two other blacks were killed in Little Rock as a result of an argument with a group of whites about the march. Other African-Americans were badly injured in New York City, New Orleans, Baltimore, St. Louis, Cincinnati, Los Angeles, and many other cities.").

192. See Johnson, *supra* note 176.

193. *Id.*

194. Petition for Pardon, *supra* note 191, at 15.

case.”<sup>195</sup> In doing so, they used the Mann Act “for what was openly acknowledged by the Federal officials involved to have been the purpose of sending a message to African-Americans not to challenge the prevailing divide and taboo of the time.”<sup>196</sup> Johnson argued that the trial “marked the first time the Mann Act was invoked to invade the personal privacy for two consenting adults and criminalize their consensual sexual behavior—a purpose nowhere found in the legislative history of the Mann Act.”<sup>197</sup> Nevertheless, the Seventh Circuit rejected this claim, holding that the Mann Act could be used to criminalize any form of “sexual immorality.”<sup>198</sup> Thus, the Mann Act upheld the customary views regarding the protection of white womanhood from unacceptable sexual liaisons. Furthermore, the Johnson trial also reveals how the Mann Act was used to further denigrate, rather than protect or dignify, sexual relations with people of color. In short, only white women could be white slaves and prosecutors tended to foresee their traffickers as black.

#### IV. THE CONTEMPORARY ANTITRAFFICKING MOVEMENT

This Part explores several ways in which the modern antitrafficking movement continues to marginalize African Americans and other people of color. In several ways, the modern movement reflects the earlier racial biases of its predecessor, the white slavery movement. On the one hand, the proper identification of prostituted victims as people of color, and minors in particular, continues to be undermined by centuries old stereotypes about race. On the other hand, and discussed later in Part V, the Obama administration has taken some important steps to recognize the role of race and ethnicity in making people of color, including minority youth, more vulnerable to prostitution and sex trafficking in the United States.

##### A. Perpetuating the Myth of the Iconic White Female Victim

Perhaps as a result of the white slave campaign, the mainstream media portrays the iconic prostituted youth as white and suburban, thereby rendering minority victims invisible. It is important to make the public aware that, indeed, sexual exploitation affects children of all races; yet one unintended consequence of doing so is that white kids have become the “iconic victims” of domestic trafficking,

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195. *Id.* at 11.

196. *Id.* at 23.

197. *Id.* at 18.

198. *Id.*

while the racialized nature of sexual exploitation is ignored. Scholars and advocates have galvanized attention to sex trafficking by highlighting the victimization of young white middle class girls.<sup>199</sup> Cheryl Hanna's article, *Somebody's Daughter*, raises awareness to the fact that sex trafficking is not a crime that is limited to victims of any racial, geographic, or socioeconomic group in America.<sup>200</sup> To drive home her point, however, Hanna tells the true story of a "blond and beautiful" white teen named Christal from a "small, bucolic, lakeside college town in Vermont," which the locals called "God's country."<sup>201</sup> Christal is targeted in her hometown by a 25-year-old pimp named Jose "Ritchie" Rodriguez.<sup>202</sup> Rodriguez convinces Christal to run away and become his sex slave in a sleazy apartment on Zerega Avenue in the South Bronx. Christal is later found murdered.<sup>203</sup>

While Christal could be the poster child for sex trafficking in Vermont, it is unlikely that her face is that of the majority of sex trafficking victims in California, New York, or Texas. When Christal arrived at that seedy apartment in the South Bronx, she probably joined local Black and Latina girls who shared her exploitation, as would have been the case if her trafficker brought her to any major city in the United States. Advocates have to ensure that Hanna's intended message is not lost: Traffickers will victimize "anybody's daughter," a group that necessarily includes Black women and girls.<sup>204</sup> American girls of color should not remain marginalized in the modern-day sex trafficking campaigns' efforts to protect victims.

## B. Failing to Identify People of Color as Crime Victims

Notwithstanding efforts to address the role of race, racial stereotypes about prostitution continue to undermine the juvenile justice system's ability to identify kids of color as trafficking victims. Racialized stereotypes that emerged during slavery and colonization shaped the juvenile court's response to issues of prostitution and sexual exploitation of minors.<sup>205</sup> Emerging within the first decades after slavery and within months of the U.S. Supreme Court's *Dred Scott* decision, the American juvenile justice system equated blackness with delinquency itself, thereby denigrating black children as inherently degenerate sexual

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199. See, e.g., Cheryl Hanna, *Somebody's Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1 (2010).

200. See *id.*

201. *Id.* at 2.

202. *Id.* at 2–3.

203. *Id.*

204. *Id.*

205. See generally Butler, *supra* note 13.

miscreants.<sup>206</sup> As part of this racialized jurisprudence, Black girls were stereotyped as sexual miscreants and prostitutes.<sup>207</sup> Notably, the early juvenile courts reinforced rather than challenged racial stereotypes that Black and immigrant girls were more prone to prostitution and sexual immorality.<sup>208</sup> Because the juvenile court system prejudged nonwhite girls as predisposed to prostitution and sexual immorality,<sup>209</sup> Black girls were punished more severely than white girls for sexual immorality.

Furthermore, white child savers were ineffective at, and at worst uncommitted to, protecting Black girls from sexual exploitation.<sup>210</sup> Even as reformers began white slave crusades to discourage young women from engaging in prostitution, Black girls were excluded from such efforts.<sup>211</sup>

State policies still fail to properly identify people of color as victims of child sex trafficking. The State Department has determined that the failure to properly identify victims of human trafficking is a major barrier to addressing the crime itself.<sup>212</sup> This undermines the efforts of the federal Trafficking Victims Protection Act and the U.N. Protocol's three-pronged commitment to prosecute traffickers, protect victims with services, and prevent future abuse.<sup>213</sup> A recent study confirmed that effective victim identification by state officials remains a major problem in the United States.<sup>214</sup>

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206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *See supra* Part III.A.

212. U.S. DEPT STATE, TRAFFICKING IN PERSONS REPORT 2013 (June 2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> ("This Report estimates that, based on the information governments have provided, only around 40,000 victims have been identified in the last year. In contrast, social scientists estimate that as many as 27 million men, women, and children are trafficking victims at any given time. This shows that a mere fraction of the more than 26 million men, women, and children who are estimated to suffer in modern slavery have been recognized by governments as such and are eligible to receive the protection and support they are owed."); *Trafficking in Persons Reports 2012*, U.S. DEPT STATE, <http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm> (last visited July 31, 2015) ("Myths and misperceptions about trafficking in persons and its complexities continue to hinder governments' ability to identify victims, provide them the services they need, and bring their traffickers to justice.")

213. U.S. DEPT STATE, *supra* note 212 ("The lack of support and protection that results from inadequate victim identification tells only part of the story. Another consequence of the limited number of victims identified is that the traffickers who enslave and exploit millions are operating with impunity, beyond the reach of the law. It means that modern antitrafficking laws and structures go unused, existing as theoretical instruments of justice. It also stymies research and data collection critical to understanding trafficking's root causes.")

214. HEATHER J. CLAWSON & LISA G. GRACE, U.S. DEPT HEALTH & HUMAN SERVS., FINDING A PATH TO RECOVERY: RESIDENTIAL FACILITIES FOR MINOR VICTIMS OF DOMESTIC SEX TRAFFICKING 3 (Sept. 2007), <http://aspe.hhs.gov/hsp/07/Human>

Given federal law's recognition that all prostituted minors are victims of human trafficking, this problem at the state level is all the more troubling.<sup>215</sup> In the United States, misidentification of victims normally manifests itself when state actors, such as law enforcement officers, stereotype trafficking victims as criminals instead of victims.<sup>216</sup> The collateral consequences of victim misidentification are severely detrimental for minors:

When authorities misclassify or fail to identify victims the victims lose access to justice. Even worse, when authorities misidentify trafficking victims as illegal migrants or criminals deserving punishment, those victims can be unfairly subjected to additional harm, trauma, and even punishment such as arrest, detention, deportation, or prosecution. These failures occur too often, and when they do, they reinforce what traffickers around the world commonly threaten their victims: law enforcement will incarcerate or deport victims if they seek help.<sup>217</sup>

The State Department has asserted that "victim identification" is the first step to stopping modern-day slavery.<sup>218</sup> But the aggregate data suggests state policies allow it to persist: According to the State Department, social scientists estimate that over 27 million people are trafficked at any given time, yet only 40,000 human trafficking victims were identified in the past year.<sup>219</sup>

Even advocates and scholars who have attempted to bring attention to the horrors of human trafficking have disproportionately focused on white victims, thereby ignoring poor minority girls.<sup>220</sup> Although Hanna agrees that poor minority girls are victims of forced prostitution as well, her article raises public outcry over the issue of sex trafficking by highlighting only the plight of white victims. In the process, the prostituted Black and Latina girls are ignored, increasing the chances that they will be profiled as bad girls deserving punishment, rather than being identified as victims.

Minorities continue to be stigmatized and profiled as criminals generally<sup>221</sup> and these biases undermine the ability of police and other stakeholders to

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Trafficking/ResFac/ib.pdf [hereinafter HEALTH & HUMAN SERVICES RESIDENTIAL FACILITIES STUDY].

215. Trafficking Victims Protection Act (TVPA), 22 U.S.C. §§ 7101–13, 7102(8) (2012).

216. U.S. DEPT STATE, *supra* note 212.

217. *Id.*

218. *Id.* at 7.

219. *Id.*

220. See Hanna, *supra* note 199; Landesman, *supra* note 118.

221. See Yolanda Vázquez, *Perpetuating the Marginalization of Latinos: A Collateral Consequence of the Incorporation of Immigration Law Into the Criminal Justice System*, 54 HOW. L.J. 639 (2011); see

properly recognize when minority youth have not consented to prostitution and thus have been trafficked.<sup>222</sup> Judges, legislators, and others presume that girls from certain racial groups are “oversexed” and likely to consent to prostitution.<sup>223</sup> Legal scholars have argued that, in order to determine a rule for consent in the context of sex between adults and minors, “the possibility of consent based on differing cultural norms” should be considered.<sup>224</sup> Other scholars, including Angela P. Harris, have criticized the application of these theories.<sup>225</sup>

Police officers and other community stakeholders adopt the view that only a morally corrupt person would choose to be a prostitute.<sup>226</sup> Jonathan Todres has referred to this process as “othering,” or the marginalization of one group as inferior and therefore unworthy of socialization within the dominant “superior” group.<sup>227</sup> This phenomenon is demonstrated by studies proving that in the United States, prostituted females of color are targeted by law enforcement officials for harassment and arrest more often than their white counterparts.<sup>228</sup> Ultimately, police are more likely to perceive a prostituted child of color as a criminal, as opposed to a victim of sexual assault or abuse.<sup>229</sup>

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generally Lisa R. Pruitt, *Latina/os, Locality, and Law in the Rural South*, 12 HARV. LATINO L. REV. 135 (2009) (discussing how Latinos often are racially profiled in the United States).

222. See Todres, *supra* note 8, at 659 (arguing that “otherness” is a root cause of both inaction and the selective nature of responses to the prostitution and trafficking of people of color in the United States); see generally Berta Esperanza Hernández-Truyol, *The Gender Bend: Culture, Sex, and Sexuality—A LatCritical Human Rights Map of Latina/o Border Crossings*, 83 IND. L.J. 1283 (2008); Cianciarulo, *supra* note 88.
223. See Lewis Bossing, Note, *Now Sixteen Could Get You Life: Statutory Rape, Meaningful Consent, and the Implications for Federal Sentence Enhancement*, 73 N.Y.U. L. REV. 1205, 1241–42 (1998) (arguing that in order to determine a rule for consent in the context of sex between an adult and a minor, “different constructions of sexual normalcy based on the practices and beliefs of differing cultures” should be considered in evaluating whether a victim consents to sex or instead is a rape victim); see also Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313, 332–33 (2002) (discussing how age of sexual consent laws are not enforced against Black or working class girls “unless the welfare rolls are threatened by a resulting [unwanted] pregnancy” and are not enforced in cases involving white girls unless it is between “a white middle class girl and a working-class boy or a black boy, or an older man”).
224. Bossing, *supra* note 223, at 1242.
225. *Id.* at 1241.
226. Sutherland, *supra* note 223, at 317. For an in-depth study of the hostile treatment of street prostitutes by law enforcement, see JUHU THUKRAL & MELISSA DITMORE, URBAN JUSTICE CENTER, REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY 10 (2003), <http://sexworkersproject.org/downloads/RevolvingDoor.pdf> (“This research reveals that street-based sex workers in New York City experience problems of excessive police contact, violence at the hands of customers and sometimes from police themselves, and a lack of housing and intensive supportive services which can assist them in staying off the street.”).
227. See COLLINS, *supra* note 24, at 70–72; Todres, *supra* note 8, at 609.
228. COLLINS, *supra* note 24, at 172, 190.
229. SHARED HOPE INT’L 2009, *supra* note 2.

Instead of recognizing minors as victims of sexual exploitation, the legal system too often profiles child prostitutes as criminals and juvenile delinquents. This practice has racial implications and perpetuates the multiple intersecting oppressions that push kids into prostitution in the first place. Conflicts over how to legally address the issue of children's agency in the context of sexual relations show that, as Annette Appell argues, the "law shapes . . . the space of childhood." Along these lines, the law shapes that space differently for children of different races and classes.<sup>230</sup> Racial and cultural biases also shape law enforcement's perspectives on what constitutes "force" and "coercion" on the one hand, and "agency" and "choice" on the other hand.<sup>231</sup> For example, cultural and language barriers undermine the willingness of minorities to testify against their victimizers and cooperate with the prosecution.<sup>232</sup> To law enforcement, this refusal to cooperate is sometimes misconstrued as choice and agency.<sup>233</sup>

Racial stereotypes also influence whether males are identified as trafficking victims and traffickers. Today, men and boys of color are also the victims of sex trafficking and other forms of sexual exploitation,<sup>234</sup> yet they are rarely perceived as victims.<sup>235</sup> The media and policymakers too often consciously neglect the fact that males are also sexually exploited in the United States.<sup>236</sup> This trend is exacerbated by race; police still profile Black and Latino males as hypersexualized rapists;<sup>237</sup> stereotypes have dominated in the absence of facts to the contrary.

Further, until recently, there was little modern statistical research on profiles of who perpetrates human trafficking within the United States.<sup>238</sup> Recent studies have highlighted that while most traffickers and accomplices are males who are older than victims (around 70 percent), a significant number of traffickers are female as well (at least 30 percent). The Department of Justice has also begun to determine the racial profiles of sex traffickers. A 2011 Department of Justice Re-

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230. COLLINS, *supra* note 24, at 86, 90.

231. Brown, *supra* note 87, at A18.

232. *Id.* at 12.

233. *Id.*

234. Jones, *supra* note 104, at 1149. For reports on sex trafficking of boys, see Taya Moxley-Goldsmith, *Boys in the Basement: Male Victims of Commercial Sexual Exploitation*, 2 CHILD SEXUAL EXPLOITATION PROGRAM UPDATE 1 (Nov. 1, 2005), [http://www.ndaa.org/pdf/child\\_sexual\\_exploitation\\_update\\_volume\\_2\\_number\\_1\\_2005.pdf](http://www.ndaa.org/pdf/child_sexual_exploitation_update_volume_2_number_1_2005.pdf).

235. Jones, *supra* note 104, at 1144.

236. *Id.*

237. I. Bennett Capers, *The Unintentional Rapist*, 87 WASH. U. L. REV. 1345 (2010); N. Jerimi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1315 (2004).

238. DUREN BANKS & TRACEY KYCKELHAHN, U. S. DEP'T OF JUSTICE, CHARACTERISTICS OF HUMAN TRAFFICKING INCIDENTS, 2008-2010, at 2 (Apr. 2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

port found that sex traffickers are white, Black, Hispanic, and Asian, with no one racial group forming a majority.<sup>239</sup> Overall, research indicates there is no main prototype of a sex trafficker based on race, nationality, gender, or even age group.<sup>240</sup>

The failure to recognize prostituted people of color as trafficking victims, and the misidentification of people of color as perpetrators of trafficking has serious collateral consequences. In particular, racism increases the likelihood that state and local law enforcement officials will categorize these prostituted people of color as criminals as opposed to crime victims.<sup>241</sup> Minority women and girls are more likely to be criminally sanctioned for prostitution, rather than provided with victim services.<sup>242</sup> As Kimberlé Crenshaw recently noted, women of color are the targets of mass incarceration even though women have not been a major focus of the debates on mass incarceration.<sup>243</sup> As Crenshaw points out, this mass incarceration of women of color is the end result of the legal system's hyper-surveillance and social control over this group.<sup>244</sup>

The systemic failure of federal law enforcement personnel and others to accurately identify people of color as trafficking victims also means that fewer people of color are eligible for victim-centered services and resources. The sexual stigmatization of women of color has further contributed to this lack of access to resources.<sup>245</sup> For example, the sapphire stereotype, a modern variation of the Jezebel stereotype, is used to further stigmatize poor Black women. A sapphire is depicted as an emotionally untamed woman who is quick to mock and berate

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239. *Id.* at 6.

240. As discussed above, 81 percent of traffickers are male and 19 percent are female. *Id.* at 7. Among sex trafficking suspects whose race was identified, blacks made up 62 percent, Hispanics 48. *Id.* Of child sex trafficking suspects, whites made up 17.6 percent, blacks 52.1 percent, Hispanics 26.1 percent and Asians 3.4 percent. ESTES & WEINER, *supra* note 3.

241. SHARED HOPE INT'L 2007, *supra* note 94, at 90.

242. *Id.*

243. Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race and Social Control*, 59 UCLA L. REV. 1418, at 1437–38 (2012); Roberts, *Prison*, *supra* note 128, at 1492 (“The sexually licentious Jezebel, the family-demolishing Matriarch, the devious Welfare Queen, the depraved pregnant crack addict accompanied by her equally monstrous crack baby—all paint a picture of a dangerous motherhood that must be regulated and punished.”).

244. Crenshaw, *supra* note 243, at 1492.

245. See Walker, *supra* note 23, at 3; D. Wendy Greene, *Black Women Can't Have Blond Hair . . . in the Workplace*, 14 J. GENDER RACE & JUST. 405 (2011) (interpreting recent case law forbidding Black women to wear Blonde hair in the workplace as precluding Black women to evince characteristics of beauty, femininity and power reserved for white women); Verna L. Williams, *Reform or Retrenchment? Single-Sex Education and the Construction of Race and Gender*, 2004 WIS. L. REV. 15 (2004) (arguing that the single sex education movement grew out of efforts to keep white girls from attending schools with Black boys in the post-segregation era in order to preserve notions of white femininity).

others. She is overemotional, loud, and angry. This harsh portrayal not only encourages Black women to stay passive and silent to avoid falling into the stereotype, but it also punishes those who voice their complaints.<sup>246</sup>

## V. TURNING THE TIDE: THE IMPACT OF THE OBAMA ADMINISTRATION

### A. Playing the “Slavery” Card to Address Race

As Professor Karen Bravo has argued, the use of rhetoric in modern antislavery campaign has resembled earlier American antitrafficking campaigns, which co-opted the imagery of slavery but still marginalized people of color.<sup>247</sup> Professor Bravo has written extensively on the tendency of scholars and advocates to compare modern-day sex trafficking to antebellum slavery and the misconceptions about the crime that ensues from the comparison.<sup>248</sup> The United States’ use of the cultural imagery of African slavery to garner support for against trafficking has remained a major strategy in the modern movement.<sup>249</sup>

The election of the first Black president raises important questions about President Obama’s use of slavery imagery and rhetoric to condemn modern-day human trafficking. It suggested a turning of the tide. Speaking to the world during the Clinton Global Initiative conference, President Obama called human trafficking “the injustice, the outrage . . . which must be called by its true name—modern slavery.”<sup>250</sup> Obama acknowledged that referring to modern-day trafficking as “slavery” invoked inevitable comparisons to the enslavement of people of African descent here in America.<sup>251</sup> Recognizing the seriousness and profound meaning of such a comparison, President Obama explained:

Now, I do not use that word, “slavery” lightly. It evokes obviously one of the most painful chapters in our nation’s history. But around the world, there’s no denying the awful reality. When a man, desperate for work, finds himself in a factory or on a fishing boat or in a field, working, toiling, for little or no pay, and beaten if he tries to

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246. See McGinley, *supra* note 52, at 722; see also Williams, *supra* note 15, at 840.

247. Bravo, *supra* note 13, at 574; see generally Bravo, *supra* note 8.

248. *Id.*

249. See *id.*

250. Press Release, *Remarks By the President to the Clinton Global Initiative*, WHITE HOUSE (Sept. 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

251. See *id.*

escape—that is slavery. When a woman is locked in a sweatshop, or trapped in a home as a domestic servant, alone and abused and incapable of leaving—that’s slavery.<sup>252</sup>

In addition to garnering disdain through the power of phrases such as “slavery,” President Obama also invoked the symbolism of the Emancipation Proclamation.<sup>253</sup>

Now, as a nation, we’ve long rejected such cruelty. [as slavery]. Just a few days ago, we marked the 150th anniversary of a document that I have hanging in the Oval Office—the Emancipation Proclamation. With the advance of Union forces, it brought a new day—that “all persons held as slaves” would thenceforth be forever free. We wrote that promise into our Constitution. We spent decades struggling to make it real. We joined with other nations, in the Universal Declaration of Human Rights, so that slavery and the slave trade shall be prohibited in all their forms.<sup>254</sup>

Similarly, in its 2012 Trafficking in Persons Report, the U.S. Department of State also evoked the memory and symbolism of the Emancipation Proclamation to compare human trafficking to antebellum slavery and call for its eradication. Similarly, as 2012 marked the 150th anniversary of the Emancipation Proclamation in 2012, Secretary of State Hillary Rodham Clinton also invoked both the moral and legal authority of the Thirteenth Amendment and reminded the world “that when the guns of the civil war fell silent,” the United States had resolved to end slavery.<sup>255</sup> Connecting the past to the present, Secretary Clinton warned that, despite the adoption of the Thirteenth Amendment and other prohibitions, “the evidence shows that many men, women, and children continue to live in modern-day slavery through the scourge of trafficking in persons.”<sup>256</sup>

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252. *Id.*

253. *Id.*

254. *Id.*

255. Letter from Secretary of State Hillary Rodham Clinton, in 2012 TRAFFICKING IN PERSONS REPORT, U.S. DEPT STATE (June 19, 2012), [http://photos.state.gov/libraries/malaysia/99931/lrc/iif\\_tip-june2012.pdf](http://photos.state.gov/libraries/malaysia/99931/lrc/iif_tip-june2012.pdf) (“Over the coming months we will celebrate the 150<sup>th</sup> anniversary of the Emancipation Proclamation, which Abraham Lincoln announced on September 22, 1862 and issued by Executive Order on January 1, 1863. In 1865, as the guns of the Civil War fell silent, the Congress passed and the states ratified as the 13<sup>th</sup> Amendment of the Constitution President Lincoln’s commitment that ‘neither slavery nor involuntary servitude shall exist in the United States.’”).

256. *Id.*

In his comments to the 2012 Trafficking in Persons Report, Ambassador Luis CdeBaca drew an even more direct analogy between modern human trafficking and the enslavement of Black people in America:

In the United States, chapters of our history are written in the voices of those who toiled in slavery. Whether through the memoirs of men and women who sought their freedom from a then-legal institution on the Underground Railroad or the impassioned pleas of African Americans and immigrants trapped in sharecropping and peonage in the years after the Civil War, slavery's brutal toll has been given witness time and again by those who suffered and survived.<sup>257</sup>

Ambassador CdeBaca also suggested that the Obama administration was concerned with learning from the past:

What do they tell us? How do the voices of the past and present help inform our struggle against modern slavery? Our challenge as we face the 150th anniversary of Emancipation is . . . to apply history's lessons to the modern crime.<sup>258</sup>

Significantly, CdeBaca advises that “they tell us that victims of this crime are not waiting helplessly for a rescuer, but are willing to take the chance to get out once they know it is possible.”<sup>259</sup> Here, the ambassador suggests that trafficking victims do not fit one paradigm, and that the slavery analogy is, at times, imperfect. Apparently, Ambassador CdeBaca suggests here that a commitment to eradicating modern trafficking means recognizing that some victims are not shackled, physically confined, or otherwise completely constrained by a pimp or procurer. Ambassador CdeBaca's comments also reflect the Obama administration's efforts to create new strategies for combating human trafficking—ones that move beyond merely using the symbolism and rhetoric of black slavery and towards solutions that help marginalized victims.

In several ways, the rhetoric employed by antitrafficking advocates evokes the analogy of slavery, but still marginalizes children of color. By equating sex trafficking with transatlantic slavery, advocates invoke powerful moral imagery that draws attention to some of the worst abuses suffered by trafficking victims but obscures the equally traumatic experience of others. These images suggest that victims are locked behind bars, held against their will in chained rooms, or moved around without knowledge of their whereabouts. Just as sexually exploited children are marginalized by referring to sex trafficking as a “hidden

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257. *Letter from Ambassador Luis CdeBaca*, U.S. DEPT STATE, <http://www.state.gov/j/tip/rls/tiprpt/2012/192349.htm> (last visited July 31, 2015).

258. *Id.*

259. Letter from Secretary of State Hillary Rodham Clinton, *supra* note 244.

crime,” so too is their exploitation obscured by equating all sex trafficking with slavery. Modern sex trafficking of minors does not always look like chattel slavery. For example, some domestically exploited children who are forcibly pimped on the street are trafficked, but others move about to attend school (indeed, some are trafficked there) and otherwise exist normally in their communities. The problem, as Professor Janie Chuang points out, is that “equating trafficking with slavery risks inadvertently raising the legal threshold of trafficking by creating expectations of more extreme harms than required under the law.”<sup>260</sup>

Chuang’s argument is especially poignant with respect to domestic sex trafficking of children in the United States. Some minors, kids of color in particular, often do not fit the paradigm of the iconic victim. As scholar Dina Franchesca Haynes has argued, every sex trafficking victim is not “chained to a bed in a brothel.”<sup>261</sup> In my view, this myth that frames the typical sex trafficking victim as a foreigner who is smuggled into the country and hidden away in a brothel obscures the reality that many victims of sex trafficking in the United States are American citizens. The myth is also particularly troubling for people of color because it implies that true victims of sex trafficking are those who are held against their will in an indoor location and will be rescued from such physical bondage or false imprisonment.<sup>262</sup>

## B. Recognizing Vulnerabilities Based on Race and Other Factors

In contrast to the white slavery campaigns, the Obama administration has added teeth to its use of the imagery and symbolism of antebellum slavery. First, and foremost, the Obama administration has acknowledged that minors in the United States as a class are uniquely vulnerable to sex trafficking. In his Clinton Global Initiative speech, President Obama acknowledged that the prostitution of minors in his own country also amounts to “slavery.” The President made clear “the bitter truth is that trafficking also goes on right here, in the United States . . . the teenage girl, beaten, forced to walk the streets. This should not be happening in the United States of America.”<sup>263</sup>

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260. Janie A. Chuang, *Rescuing Trafficking From Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1709 (2009).

261. Dina Franchesca Haynes, *(Not) Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 351 (2007) (“Most victims of human trafficking are not ‘rescued’ by anyone. They are not found by law enforcement chained to a bed in a brothel. They are not rescued in law enforcement raids of restaurants or sweat shops.”).

262. *Id.* at 349.

263. *Press Release: Remarks By the President to the Clinton Global Initiative*, *supra* note 239.

Furthermore, President Obama's commitment to fight human trafficking, both globally and at home, transforms mere use of catchy phrases in speeches. Instead, the Obama administration has recognized the unique vulnerabilities of certain groups to human trafficking as a result of bias and discrimination against the group as a class. For example, in its 2014 Trafficking in Persons Report, the State Department opined that "the cumulative effects of homophobia and discrimination make LGBT persons particularly vulnerable to traffickers who prey on the desperation of those who wish to escape social alienation and maltreatment."<sup>264</sup> The State Department also acknowledged that state action and policies reflect such biases against LGBT individuals and directly increase their vulnerability to human trafficking.<sup>265</sup> In response, President Obama has created a "Strategic Action Plan for Victim Services," which commits the federal government to a five-year plan where it will develop victim services for survivors of human trafficking.<sup>266</sup> As part of the plan, the Obama administration will develop special programs that address the bias and discrimination that make certain groups, such as LGBT individuals, more vulnerable to human trafficking.<sup>267</sup>

Moreover, the Obama administration has acknowledged that race and ethnicity make people vulnerable to sex trafficking. The 2014 Report, highlighted the plight of the Roma people, the largest ethnic minority in Europe,<sup>268</sup> and emphasized that discrimination based on the Roma's ethnicity shaped that vulnerability.<sup>269</sup> Specifically, the Roma "are particularly vulnerable to human trafficking due to poverty, multigenerational social exclusion, and discrimination including lack of access to a variety of social services, education, and employ-

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264. U.S. DEPT STATE, TRAFFICKING IN PERSONS REPORT 10 (June 2014), <http://www.state.gov/documents/organization/226844.pdf>.

265. *Id.* ("Biases and discrimination severely complicate proper identification of, and provision of care to, LGBT victims of human trafficking.")

266. *The Obama Administration's Record on Human Trafficking Issues*, WHITE HOUSE (Apr. 9, 2013), <http://www.whitehouse.gov/the-press-office/2013/04/09/obama-administration-s-record-human-trafficking-issues>; see generally COORDINATION, COLLABORATION, CAPACITY, *supra* note 1, at 1 ("The Plan lays out four goals, eight objectives, and contains more than 250 associated action items for victim service improvements that can be achieved during the next 5 years.")

267. *Topics of Special Interest*, U.S. DEPT STATE, <http://www.state.gov/j/tip/rls/tiprpt/2014/226646.htm> (last visited July 31, 2015) ("As part of the 2013-2017 Federal Strategic Action Plan on Services for Victims of Trafficking in the United States, U.S. agencies have committed to gathering information on the needs of LGBT victims of human trafficking. NGOs in the United States estimate LGBT homeless youth comprise 20 to 40 percent of the homeless youth population; these youth are at particularly high risk of being forced into prostitution.")

268. United States, Department of State, 2014 Trafficking in Persons Report 19 (2014).

269. *Id.* ("Victim protection services and prevention campaigns are often not accessible to the Romani community, as they are at times denied services based on their ethnicity or are located in isolated areas where services are not available.")

ment.<sup>270</sup> The State Department found that European governments do not adequately identify or protect the Roma people from trafficking.<sup>271</sup> Furthermore, trafficking campaigns have been used to persecute, as opposed to protect, Roma people: “[C]ombating trafficking has been used as a pretext to promote discriminatory policies against Romani, such as forced evictions and arbitrary arrests and detentions.”<sup>272</sup>

The Obama administration has also acknowledged that indigenous people are more vulnerable to human trafficking.<sup>273</sup> Here, too, the State Department concluded that “worldwide, indigenous people are often economically and politically marginalized,” and too often “may lack citizenship and access to basic services, including education” and that these factors “make them more vulnerable to both sex and labor trafficking.”<sup>274</sup> Notably, the Department of State also recognized that indigenous minors are particularly vulnerable to prostitution and sexual exploitation.<sup>275</sup>

Finally, the Obama administration and Congress have taken legislative action to address ethnicity as a vulnerability to trafficking. The TVPRA of 2013 included for the first time a tribal provision that protects Native Americans from sex crimes.<sup>276</sup> Under the new provision, tribal prosecutors can now bring claims in tribal courts against non-Natives for sex abuse crimes against tribal members.<sup>277</sup>

But despite these advances, discourse on the nexus between structural racism and modern sex trafficking of African Americans has been slow to surface. In his Clinton Global Initiative speech, for example, President Obama did use the slavery analogy, but did not address the nexus between racial subordination and modern-day sex trafficking.<sup>278</sup>

Yet, the federal government has recognized that a nexus between racial stereotyping and victim identification does indeed exist. The U.S. Department of Health and Human Services has noted that proper identification of trafficking

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270. *Id.* at 1.

271. *Id.*

272. *Id.*

273. *Id.* at 36.

274. *Id.*

275. *Id.*

276. Violence Against Women Reauthorization Act of 2013, § 904. Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in scattered sections of U.S.C. titles 8, 18, 22, 25, and 42).

277. *Id.*

278. See Press Release: Remarks By the President to the Clinton Global Initiative, *supra* note 239.

victims has been hindered by ethnic stereotypes.<sup>279</sup> In the 2013 Trafficking in Persons Report, the State Department acknowledges that ethnicity is a major risk factor for victimization.<sup>280</sup> Further, it seemed to acknowledge the role of intersectional oppression. Traffickers, the Report noted, “tend to prey on “excluded populations.”<sup>281</sup> The 2013 Report added:

Many trafficking victims come from backgrounds that make them reluctant to seek help from authorities or are otherwise particularly vulnerable—marginalized ethnic minorities, undocumented immigrants, the indigenous, the poor, persons with disabilities—whose experiences often make them reluctant to seek help from authorities.<sup>282</sup>

Significantly, the State Department has also acknowledged that the government is a major perpetrator of victim misidentification.<sup>283</sup>

### C. People of Color Protesting Sexual Exploitation

Journalists, activists, artists, and survivors have all made efforts to change these trends. Advocates have challenged the antitrafficking movement to consider the experiences of people of color in the commercial sex industry. The “current approaches to human trafficking replicate many of the flaws of earlier approaches” including “a process of decision making that excludes critical voices.”

Additionally, a commitment to challenging the stereotyping of people of color as prostitutes has been a major goal of Black feminist discourse.<sup>284</sup> This determination to “defend our name” has long been an impetus for the mobilization of women of color to challenge sexual oppression.<sup>285</sup>

Advocates of color have fought to be heard in the antitrafficking movement.<sup>286</sup> During the 2001 World Conference against Racism, human rights advocates recognized the “critical link between trafficking and racial discrim-

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279. U.S. DEPT HEALTH & HUMAN SERVS., IDENTIFYING VICTIMS OF HUMAN TRAFFICKING (Oct. 2011), [http://www.justice.gov/sites/default/files/usao-ndia/legacy/2011/10/14/health\\_identify\\_victims.pdf](http://www.justice.gov/sites/default/files/usao-ndia/legacy/2011/10/14/health_identify_victims.pdf).

280. TIP Report of 2013, at Introduction.

281. *Id.*

282. *Id.*

283. *Id.*

284. COLLINS, *supra* note 24, at 69 (discussing the challenging of these sexual myths as a major theme in feminist discourse by feminist scholars).

285. *See generally* Butler, *supra* note 13 (discussing the emergence of the National Association of Colored Women as a civil rights organization committed to challenging laws and policies based on sexual stereotypes, including the prostitution of Black women and the lynching of Black men).

286. U.N. DEPT PUB. INFO., THE RACE DIMENSIONS OF TRAFFICKING IN PERSONS—ESPECIALLY WOMEN AND CHILDREN (Mar. 2001), [http://www.un.org/WCAR/e-kit/trafficking\\_e.pdf](http://www.un.org/WCAR/e-kit/trafficking_e.pdf).

ination.”<sup>287</sup> A U.N. Report to the Conference (“World Conference Report”) shed important light, finding that “trafficking is usually considered a gender issue and the result of discrimination on the basis of sex. It is rarely analyzed from the perspective of race discrimination.”<sup>288</sup>

Adopting an intersectional approach, the World Conference Report recognized that racism often exacerbates gender and economic inequality.<sup>289</sup> The report added that “there has been little discussion of whether race and other forms of discrimination contribute to the likelihood of women and girls becoming victims of trafficking.”<sup>290</sup> The World Conference Report determined that, “in the case of trafficking into the global sex industry, we are talking about the relatively prosperous countries paying for the sexual services of women of women and girls—and sometimes man [sic] and boys—from less wealthy countries . . . . It is a basic human rights issue because it involves such a massive and harmful form of discrimination.”<sup>291</sup> Finally, the report found that “racist ideology fuels trafficking” and furthers the “commoditization’ of women’s sexuality.”<sup>292</sup> Further research by the United Nations has found that these intersectional oppressions continue to drive sex trafficking.<sup>293</sup>

African American civic organizations have partnered with other community stakeholders to raise awareness of the abuse and exploitation that people of color face in prostitution.<sup>294</sup> For example, the descendants of Frederick Douglass, the famed African American former slave and abolitionist, have joined the modern antitrafficking movement by raising awareness of the similarities between African antebellum slavery and modern-day sex trafficking.<sup>295</sup> Shandra McDonald-Buford, an award winning director, is one of several African American artists who have organized artistic projects to raise general awareness of sex trafficking

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287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

293. See SIGMA HUDA, REPORT OF THE SPECIAL RAPPOREUR ON THE HUMAN RIGHTS ASPECTS OF THE VICTIMS OF TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN 32 (2006).

294. For example, Phi Beta Sigma, the historically African American fraternity, began a public campaign called “Gentlemen Don’t John.” See e.g., Krishana Davis, *Fraternity Raises Awareness about Sex Trafficking*, AFRO (Apr. 4, 2013), <http://www.afro.com/fraternity-raises-awareness-about-sex-trafficking/>.

295. See e.g., FREDERICK DOUGLASS FAMILY INITIATIVES, HISTORY, HUMAN RIGHTS AND THE POWER OF ONE (2013), <http://www.fdfi.org/docs/preview-nyc-2013.pdf>.

and of the fact that black girls are disproportionately victimized.<sup>296</sup> Other organizations have raised national awareness about the broader issue of sexual abuse of Black women by police actors<sup>297</sup>—efforts that should keep the issue of race and trafficking in the forefront.

Likewise, minority news outlets have begun to focus on the pervasiveness of sex trafficking of children of color.<sup>298</sup> Cases involving minority children have begun to receive attention, particularly from minority journalists and scholars.<sup>299</sup> The recent independent film, *Black Girl Lost: The Sexual Exploitation of African American Girls*, has helped bring the sexual abuse of nonwhite girls out of the margins and into the forefront.<sup>300</sup> In 2007, musical artists Mary J. Blige and Snead O'Connor produced a remake of O'Connor's hit song, *This Is to Mother You*, in order to raise money for Harlem-based Girls Educational & Mentoring Services (GEMS).<sup>301</sup> GEMS is a nationally recognized group focused on rehabilitating sexually exploited girls, most of whom are ethnic minorities.<sup>302</sup>

Survivors of sexual exploitation have become more visible as advocates in the antitrafficking movement.<sup>303</sup> Leah Albright-Byrd, founder of Bridgett's

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296. Yvette Caslin, *Sex Trafficking: 'Hands Off This Girl' Tackles the Epidemic in Georgia*, ROLLING OUT (Oct. 21, 2012 7:47 PM), <http://rollingout.com/culture/sex-trafficking-hands-off-this-girl-tackles-the-epidemic-in-georgia/> (chronicle of the Hands Off This Girl video web series on child prostitution).

297. AFRICAN AMERICAN POLICY FORUM, SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN (2015).

298. See e.g., Annette Emery et al., *Human Trafficking: Black Girls Are Still Enslaved*, [https://www.ctafsc.org/ama/orig/2012\\_Conference/PPT/pdf/Human\\_Trafficking\\_Final\\_2-11-12.pdf](https://www.ctafsc.org/ama/orig/2012_Conference/PPT/pdf/Human_Trafficking_Final_2-11-12.pdf). For additional examples of recent media coverage voicing concern about the sexual exploitation of minority children, see Jeannine Amber, *Black Girls for Sale*, ESSENCE 164 (Oct. 2010), [http://www.jeannineamber.com/uploads/cgblog/id21/black\\_girls\\_for\\_sale\\_.pdf](http://www.jeannineamber.com/uploads/cgblog/id21/black_girls_for_sale_.pdf); Jamaal Bell, *Race and Human Trafficking in the U.S.: Unclear but Undeniable*, HUFFINGTON POST (May 10, 2010, 3:03 PM), [http://www.huffingtonpost.com/jamaal-bell/race-and-human-trafficking-in-b\\_569795.html](http://www.huffingtonpost.com/jamaal-bell/race-and-human-trafficking-in-b_569795.html); Deidra Robey, *Shaniya's Story Reveals Widespread Sex Trafficking in Black Community*, THE GRIO (Nov. 18, 2009, 8:34 AM), <http://thegrio.com/2009/11/18/no-one-can-imagine-what/>; Malika Saada Saar, *The New Middle Passage*, THE ROOT (June 17, 2010, 12:41 PM), [http://www.theroot.com/articles/culture/2010/06/sex\\_trafficking\\_of\\_girls\\_on\\_craigslist.html](http://www.theroot.com/articles/culture/2010/06/sex_trafficking_of_girls_on_craigslist.html); Paul Shepard, *Somali Gangs in Minnesota Traded Girls for Sex*, WZAK CLEVELAND (Nov. 9, 2010, 3:15 PM), <http://wzakcleveland.hellobeautiful.com/1419101/somali-gangs-in-minnesota-traded-girls-for-sex-video/>.

299. See, e.g., Valandra, *Reclaiming Their Lives and Breaking Free: An Afrocentric Approach to Recovery*, 22 AFFILIA 195, 197 (2007); Robey, *supra* note 294.

300. See Kinyofu Mteremeshi-Mlimwengu, *1st Awareness Event, Black Girl Lost, Drops Knowledge of Sexual Exploitation*, EXAMINER (July 10, 2011, 6:37 PM), <http://www.examiner.com/article/1st-awareness-event-black-girl-lost-drops-knowledge-of-sexual-exploitation>.

301. *Mary J Blige's Song to Benefit Victims of Sex Trafficking*, ESSENCE (Dec. 3, 2009, 12:59 PM), <http://www.essence.com/2009/12/03/mary-to-the-rescue/>.

302. *Id.*

303. See e.g., RACHEL LLOYD, GIRLS LIKE US (2010); Kate Rosin, *Tina Frumdt: A Survivor's Story*, SGI QUARTERLY (July 2011), <http://www.sgiquarterly.org/feature2011jly-4.html> (featuring the

Dream, is representative of a group of survivors who have founded advocacy organizations to raise awareness that women often experience prostitution as sexual abuse, not empowerment.<sup>304</sup> Albright-Byrd entered prostitution under the same coercive circumstances as many of her counterparts in the United States.<sup>305</sup> Albright-Byrd faced a “childhood marked by molestation, domestic abuse and a family saturated in addiction.”<sup>306</sup> Attempting to escape the trauma of these circumstances, Albright-Byrd ran away from home when she was fourteen years old.<sup>307</sup> An older man manipulated her into a life of prostitution and sexual exploitation. At age eighteen, a “spiritual mother” showed her the path out of the prostitution lifestyle, and she enrolled in college. Other minors who were prostituted with her did not survive; inspired by the memory of a friend in prostitution who was murdered, she founded Bridgett’s House to help others leave prostitution.<sup>308</sup>

Like Albright-Byrd, other antitrafficking advocates have framed prostitution as exploitation of—instead of empowerment for—people of color. Tina Frundt, the African American founder of Courtney’s House in Washington, D.C., was thirteen years old when she met an older man on her walk to her neighborhood store in Chicago.<sup>309</sup> The older man named Tiger seduced her with gifts and promises of love and protection. Tiger then took her to Cleveland, Ohio, where he forced Frundt into prostitution.<sup>310</sup> Tina was forced to service up to eighteen men a day.<sup>311</sup> Police arrested Frundt and treated her as a criminal and delinquent. Nevertheless, she emerged as an award-winning advocate, opening

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African American founder of Courtney’s House in Washington, D.C.); *Our Founder*, BRIDGETT’S DREAM, <http://www.bridgetsdream.org/our-founder.html> (last visited June 10, 2015) (featuring Leah Albright-Byrd of “Bridgett’s Dream”); Yvette Caslin, *Sex Trafficking: ‘Hands off This Girl’ Tackles the Epidemic in Georgia*, ROLLING OUT (Oct. 21, 2012 7:47 PM), <http://rollingout.com/culture/sex-trafficking-hands-off-this-girl-tackles-the-epidemic-in-georgia/> (discussing the advocacy of African American survivors of sex trafficking in America); Taina Bien-Aime, *Still Time to Do the Right Thing*, HUFFINGTON POST (Sept. 22, 2008, 3:25 PM) [http://www.huffingtonpost.com/taina-bienaime/still-time-to-do-the-right\\_b\\_127870.html](http://www.huffingtonpost.com/taina-bienaime/still-time-to-do-the-right_b_127870.html) (article by African American director of Women’s City Club and former executive director of Equality Now, two groups that advocate for victims of sex trafficking).

304. See *Our Founder*, *supra* note 299.

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. Kate Rosin, *Tina Frundt: A Survivor’s Story*, SGI QUARTERLY (July 2011), <http://www.sgiquarterly.org/feature2011Jly-4.html>; Tina Frundt, *Slavery Ended in 1865? That Myth Puts Our Kids in Danger*, HUFFINGTON POST (July 20, 2011, 2:48 PM), [http://www.huffingtonpost.com/tina-frundt/slavery-ended-in-1865-that\\_b\\_904680.html](http://www.huffingtonpost.com/tina-frundt/slavery-ended-in-1865-that_b_904680.html).

310. Frundt, *supra* note 309.

311. *Id.*

several resource centers for sexually exploited survivors.<sup>312</sup> She has served as a member of the Washington D.C. Anti-trafficking Task Force.<sup>313</sup>

People of color are advocating that policymakers take their experiences into account to formulate social policy concerning prostitution and sex trafficking.<sup>314</sup> Frundt and other advocates have even testified before Congress to address the societal myth that minors in prostitution are there by their own choice.<sup>315</sup> In Frundt's words:

Specialized street outreach is a very important component because most victims of domestic minor sex trafficking do not self identify; they come to believe their trafficker's assertion that prostitution is their choice. And trafficking victims are under tight pimp control which prevents them from seeking out help. So Courtney's House goes to see them where they can – most often on 14<sup>th</sup> and K Streets just two blocks from the White House in our nation's capitol. We let the girls and boys know we are there for them when they are ready.<sup>316</sup>

Frundt further testified about the absence of shelter and specialized services for survivors of sexual exploitation.<sup>317</sup>

Other advocates have challenged the dominant narrative about people of color freely choosing prostitution. Shaquana, a young Black girl who survived prostitution, testified about her experience as a child prostitute before the Judiciary Committee's Subcommittee on Human Rights and the Law. At the age of fourteen, Shaquana was physically abused and manipulated so that she would sell her own body for a pimp, who she hoped would one day love her.<sup>318</sup> Shaquana was alone, with no one to turn to, because she worried about being judged. Further, she felt an absolute inability to make a change.<sup>319</sup>

When Shaquana was fourteen years old, she was arrested and sentenced to a juvenile detention facility. Jail only made her continue to think worse of herself.<sup>320</sup> However, GEMS allowed Shaquana to start feeling better about

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312. *Id.*

313. *Id.*

314. *Id.*

315. Tina Frundt, Founder and Exec. Dir. Courtney's House, Testimony Before the House Committee on the Judiciary, Subcomm. on Crime, Terrorism and Homeland Sec. (Sept. 15, 2010) (transcript available at [http://ftsblog.net/wp-content/uploads/2010/09/Tina-Frundt\\_written-testimony\\_SubcommitteeOnCrime\\_9-15-10.pdf](http://ftsblog.net/wp-content/uploads/2010/09/Tina-Frundt_written-testimony_SubcommitteeOnCrime_9-15-10.pdf)).

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

herself and helped her deal with the trauma of being exploited.<sup>321</sup> Once Shaquana was able to, she started volunteering with GEMS to aid other young victims of sex trafficking.<sup>322</sup> Shaquana is a role model for other teens who want to stand as agents of social change. Her testimony speaks to the profound “spirit injury” that results from sexual exploitation. But it also speaks to a determination to see oneself not solely as a victim but as an agent of change.

Despite this progress, others advocates feel there is more to be accomplished. Shahidah Simmons, producer of the documentary film, “*No!*” has expressed concern over the absence of public discourse about the sexual exploitation of minority youth in the United States. Simmons believes that the problem is ignored in part because the lives of minority children are not valued or considered worthy enough to protect or rescue. There should be no doubt that racism is an integral part of the sexual exploitation of minors in America—both female and male. And women of color remain at great risk of forced and coerced sexual exploitation. Because race and gender discrimination has played a historic role in the development of the American commercial sex industry, reports that suggest women of color do not account for a significant number of victims of sex trafficking should be viewed with caution.

### CONCLUSION

This problem of victim identification highlights how the modern antitrafficking movement has not fully addressed the role of race in sexually exploiting vulnerable people of color in the United States. The modern stereotyping of people of color as prostitutes undermines the ability of community stakeholders to identify people of color as victims of coerced prostitution and other forms of sex trafficking. In these ways, the antitrafficking movement’s marginalization of the role of race and racism in sexual exploitation perpetuates sex trafficking. As a result of the postracial rhetoric of the antitrafficking movement, including analogies to African slavery and the notion of only white child victims, unique approaches that are needed to support minority children remain absent. The old myth that minority children do not deserve help or that they are not victims remains well-told because mainstream media stories fail to identify them as victims.

There should be no doubt that race still plays a factor in the sex trafficking of kids and women in America, and that kids and women of color remain at

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321. *Id.*

322. *Id.*

great risk of this type of forced and coerced sexual exploitation. In crafting legislative solutions to the problem of sex trafficking, no dimension—including race—should be overlooked.