

2012

Assessing Public Health Strategies for Advancing Child Protection: Human Trafficking as a Case Study

Jonathan Todres

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>

Recommended Citation

Jonathan Todres, *Assessing Public Health Strategies for Advancing Child Protection: Human Trafficking as a Case Study*, 21 J. L. & Pol'y (2012).

Available at: <https://brooklynworks.brooklaw.edu/jlp/vol21/iss1/6>

This Article is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

ASSESSING PUBLIC HEALTH STRATEGIES FOR ADVANCING CHILD PROTECTION: HUMAN TRAFFICKING AS A CASE STUDY

*Jonathan Todres**

INTRODUCTION

Ensuring the well-being of all children is one of the great challenges of our time. Despite concerted efforts in the United States to protect children, research reveals that millions of children suffer harm each year.¹ This symposium, which aimed

* Associate Professor of Law, Georgia State University College of Law. The research on public health approaches to human trafficking discussed in this essay was published originally in Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447 (2011). I would like to thank Marsha Garrison and Cynthia Godsoe for the invitation to participate in this symposium, the editors of the *Journal of Law and Policy* for their excellent work on the symposium and during the editing process, and Caren Morrison for her comments on an earlier version of this essay.

¹ ANDREA J. SEDLAK ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) 3–15 (2010) [hereinafter NIS-4], *available at* http://www.acf.hhs.gov/programs/opre/abuse_neglect/natl_incid/reports/natl_incid/nis4_report_congress_full_pdf_jan2010.pdf. The NIS-4 utilizes two standards to measure child abuse and neglect. The “Harm Standard” is “relatively stringent in that it generally requires that an act or omission result in demonstrable harm in order to be classified as abuse or neglect.” *Id.* at 3. The “Endangerment Standard” includes all the Harm Standard children and also includes children who were not yet harmed by maltreatment, but who experienced abuse or neglect that placed them in danger of being harmed. *Id.* Using the Endangerment Standard, the NIS-4 estimate for 2005–2006 found that 2,905,800 children suffered maltreatment. *Id.* at 6. Of course, it is likely that many cases of abuse and neglect go unreported or undiagnosed, so that the actual figures might well be higher than reported data. *See also* CTRS. FOR DISEASE CONTROL & PREVENTION, CHILD MALTREATMENT: FACTS AT A

to explore the potential benefits of public health perspectives on child protection, provided an important opportunity to re-examine children's experiences and child protection strategies from a different perspective.

Typically, when policymakers and child advocates speak of "child protection," they focus primarily on abuse and neglect in the home. Often, child protection does not contemplate violence against children in the community. The inside/outside-the-home divide is somewhat of a false dichotomy, however, as the two realms are interrelated. Children who suffer abuse and neglect in the home are frequently at heightened risk of exploitation outside the home.² This essay focuses on the community-based issues of trafficking and commercial sexual exploitation of children, with a view to elucidating the merits of public health approaches to harm against children.

Trafficking and commercial sexual exploitation of children are significant issues in the United States.³ Although many individuals

GLANCE (2010), *available at* <http://www.cdc.gov/violenceprevention/pdf/CM-DataSheet-a.pdf> (reporting that roughly one in every five children in the United States suffers some form of maltreatment).

² See HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 4 (2008), *available at* <http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf> (noting the "correlations between runaway/throwaway youth and minors exploited through prostitution").

³ Human trafficking cases have been reported in all fifty states and Washington DC. U.S. DEP'T OF EDUC., HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES: A FACT SHEET FOR SCHOOLS 1 (Dec. 17, 2010), <http://www2.ed.gov/about/offices/list/osdfs/factsheet.pdf>. Commercial sexual exploitation of children also affects a significant number of children. See NAT'L INST. OF JUST., U.S. DEP'T OF JUST., COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT? 1-2 (2007) (reporting that the "number of known cases" is increasing, and that the "greatest challenge" is identifying the numerous cases that go unreported).

As used in this essay, "trafficking" includes:

recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having

still think of these problems as occurring elsewhere in the world, these forms of child exploitation occur regularly in the United States, and most experts agree that the number of intracountry trafficking cases exceeds the number of cross-border cases.⁴

This essay briefly outlines the current framework for responding to child trafficking. It then discusses what a public health approach could add to antitrafficking efforts. Finally, this essay seeks to draw lessons from a public health approach to child trafficking that might inform child protection strategies more broadly.

control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319, art. 3(a) (entered into force Dec. 25, 2003) [hereinafter Trafficking Protocol]. Under the Trafficking Protocol, consent of the victim is irrelevant. *Id.* art. 3(b). In addition, “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in [the above definition].” *Id.* art. 3(c). For a discussion of the definition of “commercial sexual exploitation of children” see *CSEC Terminology: Commercial Sexual Exploitation of Children*, ECPAT-INT’L, http://ecpat.net/EI/Csec_definition.asp (last visited Oct. 17, 2012).

⁴ See, e.g., Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 623 (2010) (“Preliminary estimates reveal that domestic trafficking within the United States is as much a problem, if not a bigger problem, than international trafficking into the United States.”); ROBERT SANBORN ET AL., THE STATE OF HUMAN TRAFFICKING IN TEXAS 7 (2010), available at <http://childrenatrisk.org/wp-content/uploads/2010/11/State-of-Human-Trafficking-in-Texas-FINAL.pdf> (“Despite the general belief that victims of trafficking are mainly foreign citizens, the internal or ‘domestic’ component of human trafficking is much larger than the international one.”).

I. THE LEGAL FRAMEWORK

The modern response to human trafficking, including child trafficking, was launched formally in 2000, with the United Nations' adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("Trafficking Protocol")⁵ and the passage in the United States of the Trafficking Victims Protection Act.⁶ Both laws adopt a three-pronged approach to addressing the trafficking of persons that is widely accepted as the framework for responding to this problem. The three-pronged mandate requires governments to: (1) criminalize trafficking and punish perpetrators of these crimes, (2) protect and assist victims, and (3) implement prevention programs.⁷

⁵ Trafficking Protocol, *supra* note 3.

⁶ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. § 7101 (2006)); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered titles of the U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered titles of the U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered titles of the U.S.C.); *see also* Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered titles of the U.S.C.).

⁷ The major international conventions aimed at addressing human trafficking and related abuses have adopted this three-pronged approach. *See, e.g.*, Trafficking Protocol, *supra* note 3, arts. 5-6, 9 (mandating criminalization of trafficking, assistance to victims, and prevention measures); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography arts. 3, 8-9, *opened for signature* May 25, 2000, T.I.A.S. No. 13095, 2171 U.N.T.S. 227 (mandating criminal liability for acts of trafficking, prostitution, and pornography involving children and directing states parties to adopt appropriate victim assistance and prevention measures); *see also* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 25-32 (2009) [hereinafter TIP Report 2009], *available at* <http://www.state.gov/documents/organization/123357.pdf>.

This mandate is a sensible one. Yet there is little evidence that efforts over the past dozen years have reduced the prevalence of human trafficking. Admittedly, it is difficult to know for sure, as there are no reliable baseline data, and measuring the prevalence of trafficking is inherently challenging.⁸ However, most experts working to address human trafficking readily agree that we are a long way from achieving a significant reduction in the prevalence of human trafficking.⁹

One reason for the limited progress is the prevailing approach to human trafficking. Although the legal framework outlines a three-pronged approach, to date, most of the work aimed at addressing human trafficking has concentrated on the first prong—criminalizing the act and prosecuting perpetrators.¹⁰ Very little has been done on prevention. Moreover, even as

⁸ Figures on the number of trafficking victims are estimates, as there is a lack of reliable data on the prevalence of human trafficking. *See, e.g.*, ELZBIETA M. GOZDZIAK & MICAH N. BUMP, INST. FOR THE STUDY OF INT'L MIGRATION, GEORGETOWN UNIV., DATA AND RESEARCH ON HUMAN TRAFFICKING: BIBLIOGRAPHY OF RESEARCH-BASED LITERATURE 4 (2008), available at http://www12.georgetown.edu/sfs/isim/Publications/ElzPubs/NIJ_BIB_FINAL_REPORT-1.pdf (“[T]here is little systematic and reliable data on the scale of [human trafficking].”); UNICEF INNOCENTI RESEARCH CTR., CHILD TRAFFICKING IN EUROPE: A BROAD VISION TO PUT CHILDREN FIRST, at iv (2008), available at http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf (“[T]here is a dramatic absence of harmonized and systematic data collection, analysis and dissemination at all levels—international, regional and national. Few reliable estimates exist of the magnitude of the phenomenon.”).

⁹ *See, e.g.*, Wendy N. Duong, *The Southeast Asian Story and Its Forgotten “Prisoners of Conscience”: Some Proposed Measures to Combat Human Trafficking*, 9 SEATTLE J. FOR SOC. JUST. 679, 757 (2011) (“The mission of ending global human trafficking is practically as arduous as the never-ending mission to end poverty and to curtail the misuse of government power by bringing about prosperity, equality, and justice for all.”); Maudisa McSween, *Investing in the Business Against Human Trafficking: Embracing the Fourth “P” – Partnerships*, 6 INTERCULTURAL HUM. RTS. L. REV. 283, 295 (2011) (“To date, no country has implemented a significant and comprehensive response to end human trafficking.”).

¹⁰ *See, e.g.*, Karen E. Bravo, *Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 545, 556 (2009) (“[T]he law enforcement framework is predominant both internationally and in the U.S. domestic system.”).

many governments have given greater attention to programs for survivors in recent years, their legal and policy frameworks for addressing human trafficking have remained largely law enforcement focused. Indeed, a number of scholars have highlighted the fact that human trafficking law (including U.S. antitrafficking law) is very much criminal law centered.¹¹

There are several issues associated with a criminal-law-centric response to human trafficking. First, criminal law is not designed to address the scope of the harm; “[t]rafficked persons experience physical, sexual, and emotional violence at the hands of traffickers, pimps, employers, and others, and they are exposed to various workplace, health, and environmental hazards.”¹² The criminal justice system is not set up to address all of these harms, and we should not expect that it will.¹³

Second, a criminal justice response does not address the root causes of the problem.¹⁴ A criminal law framework tends to focus on select “bad actors” at the expense of the underlying

¹¹ See *id.*; Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, 13 IND. J. GLOBAL LEGAL STUD. 137, 138 (2006) (“[Governments] have tended to view trafficking as a ‘law and order’ problem requiring an aggressive criminal justice response.”); see also Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 394 (2005) (“The TVPA is designed primarily as a prosecutorial tool”); cf. Jennifer M. Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. PA. L. REV. 1609, 1621 (2010) (“[I]t is not clear that antitrafficking legislation aimed primarily at victim protection would have garnered congressional support.”).

¹² Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 463 (2011).

¹³ *Id.* at 467.

¹⁴ Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1725 (2010) (“[T]he criminal justice approach is a limited one. It addresses the consequences of the trafficking phenomenon but not its root causes.”); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT’L L. 1, 34 (2010) (“[A]lthough law enforcement plays a vital role in combating trafficking and commercial sexual exploitation of children, it does not address the roots of these human rights violations.”).

complex global, social, economic, and political forces that contribute to human trafficking.¹⁵ Furthermore, it does not address why certain individuals are more vulnerable to exploitation or what drives the demand for goods and services that trafficking victims provide.¹⁶

Third, a criminal-law-framed approach constrains strategies aimed at addressing victim assistance and prevention issues. For example, in more recent years, there has been a push to move from a law-enforcement-centered approach to a survivor-centered approach, and certain jurisdictions have undertaken significant efforts to effectuate that change.¹⁷ Multiple goals theory—which explains how agencies with multiple goals typically respond to competing demands—helps us understand the limitations inherent in recent antitrafficking efforts to move toward a survivor-centered approach.¹⁸ Multiple goals theory finds that “agencies faced with conflicting tasks will systematically overperform on the tasks that are easier to measure and have higher incentives, and underperform on the

¹⁵ Chacón, *supra* note 11, at 1628.

¹⁶ See Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT’L L. 53, 57–63 (2011).

¹⁷ See, e.g., Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the “Perfect Victim” Model*, 26 BERKELEY J. GENDER L. & JUST. 204, 218–19 (2011) (calling for the development of a victim-centered service delivery model); see also *Resources by State: State Efforts to Pass Legal Reform*, ECPAT-USA, <http://ecpatusa.org/what-we-do/helping-children-in-america/law-project/state-law-project/> (last visited Oct. 17, 2012) (detailing the nine states that have adopted “safe harbor” laws that aim to ensure sexually exploited children are treated as victims and not criminals, including Connecticut, Florida, Illinois, Massachusetts, Minnesota, New York, Vermont, and Washington, as well as Texas via a state supreme court decision).

¹⁸ See Eric Biber, *Too Many Things to Do: How to Deal with the Dysfunctions of Multiple-Goal Agencies*, 33 HARV. ENVTL. L. REV. 1, 9 (2009) (“Economists and political scientists have developed an extensive literature examining the problems of principal-agent interactions, with specific applications for governmental and non-profit organizations. That literature provides us with some important insights into the nature and logic of how agencies tasked with multiple goals are likely to function.”).

tasks that are harder to measure and have lower incentives.”¹⁹ Thus, despite efforts to have law enforcement adopt a survivor-centered approach, over time, law enforcement and prosecutors likely will continue to prioritize arrests, prosecutions, and convictions over survivors’ recovery-related considerations, given their own departmental incentives and expertise.²⁰ In other words, multiple goals theory reveals that it is not enough to ask law enforcement to pursue other goals if their departmental incentives and other structural issues remain unchanged. Moreover, other agencies must also be involved with, and direct programs aimed at, preventing exploitation of vulnerable individuals and assisting survivors.²¹

Finally, a criminal law response to human trafficking has had limited success even with respect to criminal law’s core goals of holding perpetrators accountable for their crimes and deterring others from committing crimes.²² Globally, in 2011,

¹⁹ *Id.*

²⁰ *See id.* at 11 (“[T]asks that are more easily measured are more likely to be performed at a higher level by an agent as compared to tasks that are harder to measure . . .”). Thus, it is easier to measure the number of arrests, prosecutions, and convictions than the emotional well-being of victims. *See also* Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 5–6 (2009) (highlighting how mandatory arrests and no-drop prosecution rules in domestic violence cases often conflict with the goals of women who are victims); Tamara F. Lawson, *A Shift Toward Gender Equality in Prosecutions: Realizing Legitimate Enforcement of Crimes Committed Against Women in Municipal and International Criminal Law*, 33 S. ILL. U. L.J. 181, 188–89 (2009) (noting prosecutorial decisions “attempt to accomplish multiple goals, such as: punishing the individual criminal actor, vindicating the injury of the victim, and alerting the public in an effort to deter future crime” and that they “have historically neglected the special needs of victimized women and failed to give their cases adequate attention”).

²¹ *See* Todres, *supra* note 12, at 494–95 (identifying health care and education agencies and professionals as essential partners in prevention and early intervention and highlighting the importance of other public and private sector entities).

²² *See* Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 347–48 (2007); Todres, *supra* note 12, at 459–60.

there were an estimated 4,239 successful human trafficking prosecutions.²³ Although this record number of convictions indicates progress, by most accounts it represents a small percentage of the number of actual trafficking cases.²⁴ As we have learned from criminal law initiatives to combat drug trafficking, criminal law alone is not sufficient to tackle these complex problems.²⁵ The root causes of the problem, including

²³ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 44 (2012), available at <http://www.state.gov/documents/organization/192587.pdf>.

²⁴ See INT'L LABOUR ORG., ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 1 (2008) ("According to ILO estimates there are at least 2.4 million trafficked persons at any given point in time."). Obtaining accurate data on the number of victims is challenging at best, and current figures are estimates. For more on data-related issues, see, for example, The Vienna Forum to Fight Human Trafficking, *024 Workshop: Quantifying Human Trafficking, Its Impact and the Responses to It* 2, 3 (U.N. Global Initiative to Fight Human Trafficking, Background Paper No. 024, 2008), available at <http://www.unodc.org/documents/human-trafficking/2008/BP024QuantifyingHumanTrafficking.pdf>. The background paper from the forum states:

The difficulties connected with researching human trafficking are related to the nature of the subject itself At present, statistical data on trafficking in persons frequently do not meet the basic standards for statistical accounting: at the global and regional levels, detailed data are simply not available and even when data are presented, they are frequently partial, incomplete and unreliable.

Id. Underreporting is a significant issue. *Id.* at 6–7, 14 (discussing reasons for underreporting, including victims' vulnerability and fear that traffickers will seek retribution if they report them). Others have suggested the number is much higher. See KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 8 (2012) (estimating that there are twenty-seven million people enslaved worldwide); INT'L LABOUR OFFICE DIRECTOR-GENERAL, A GLOBAL ALLIANCE AGAINST FORCED LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 10 (2005), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf> ("Today, at least 12.3 million people are victims of forced labour worldwide. . . . [These] includ[e] more than 2.4 million in forced labour as a result of human trafficking.").

²⁵ See, e.g., David D. Cole, *Formalism, Realism, and the War on Drugs*, 35 SUFFOLK U. L. REV. 241, 252 (2001) ("By all accounts, the war on drugs has been a failure. Although nearly half a million people are locked up for drug crimes, drugs are cheaper, purer, and more easily available than ever before. . . . Further, the criminalization of drugs . . . creat[es] the

both supply and demand issues, must be addressed. Today, many prosecutors and law enforcement officers are working tirelessly to combat human trafficking. It is clear from the past decade, however, that we will not prosecute our way out of this problem. Law enforcement remains essential. However, we also need to draw upon other sectors and perspectives to strengthen our approach to combating human trafficking, and public health provides a valuable starting point.

II. A PUBLIC HEALTH APPROACH

Public health offers four important lessons for addressing human trafficking. These lessons, in turn, offer insights for child protection more generally.

A. *Emphasis on Evidence-Based Research*

First, public health stresses the importance of using evidence-based research to inform the development of law and policy. In the field of human trafficking, there is relatively little evidence-based research.²⁶ Many laws and programs have been adopted with almost no advance research,²⁷ and evaluation of the impact of these laws and programs is lacking.²⁸ Consequently,

incentive and opportunity for substantial organized criminal activity.”); Kal Raustiala, *Law, Liberalization & International Narcotics Trafficking*, 32 N.Y.U. J. INT’L L. & POL. 89, 113 (2002) (“If effectiveness is defined as ‘problem solving,’ clearly the [legal response to illicit drugs] has not been effective. The drug problem has not abated, and, in the view of many experts, it is getting worse.”).

²⁶ See *supra* note 8 and accompanying text.

²⁷ See GOZDZIAK & BUMP, *supra* note 8, at 9 (recognizing that “the dominant anti-trafficking discourse is not evidence-based” and encouraging the development of such research).

²⁸ See ERIN WILLIAMSON ET AL., ICF INT’L, WHERE IS THE RESEARCH ON HUMAN TRAFFICKING AND THE EVALUATION OF ANTI-TRAFFICKING EFFORTS? 4–5 (2008), available at <http://www.icfi.com/insights/white-papers/2009/where-is-the-research-on-human-trafficking-and-the-evaluation-of-anti-trafficking-efforts> (identifying gaps in research including the monitoring and evaluation stages).

we have little sense of whether we are doing something or doing something *effective*.

B. Focus on Prevention

Second, public health's primary focus is prevention.²⁹ From a public health perspective, success occurs when a population has been fully immunized so that illness is prevented. For public health professionals, it would make little sense if, instead of vaccinating a population, the government simply waited for a major disease outbreak and then sought to hold the responsible parties accountable for the lives lost or harmed. Yet to date, most of the work on human trafficking—which includes primarily law enforcement efforts and provision of services for survivors—takes place after the harm has occurred.³⁰ Prevention strategies need much greater attention, and public health has a wealth of experience upon which policymakers and antitrafficking advocates can draw.³¹

²⁹ See ERNEST DRUCKER, *A PLAGUE OF PRISONS: THE EPIDEMIOLOGY OF MASS INCARCERATION IN AMERICA* 163 (2011); James A. Mercy et al., *Public Health Policy for Preventing Violence*, HEALTH AFFAIRS, Winter 1993, at 7, 11 (noting public health's key "contributions include placing prevention at the forefront of our efforts" to prevent violence).

³⁰ Todres, *supra* note 12, at 457–58 (explaining that governments' efforts to date have largely overlooked prevention and instead focus on measures—such as law enforcement and survivor assistance—that address the issue only after the harm has occurred); see also U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 14* (2010), available at <http://www.state.gov/documents/organization/142979.pdf> ("While prevention is an important goal, neither the Palermo Protocol nor the TVPA as amended give much guidance in setting forth prevention activities beyond the obvious: public awareness campaigns, addressing root causes, and conducting law enforcement-related or border security activities.").

³¹ See *Violence Prevention—The Social-Ecological Model: A Framework for Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 9, 2009), <http://www.cdc.gov/ViolencePrevention/overview/social-ecologicalmodel.html> [hereinafter *CDC Violence Prevention*]. Public health's prevention focus can help policymakers and antitrafficking organizations understand and address the "complex interplay between individual, relationship, community, and societal factors" which may "put people at risk for experiencing or perpetrating violence." *Id.*

C. Addressing Harmful Attitudes and Behaviors

Third, public health has decades of experience working to address underlying societal attitudes and behaviors that exacerbate harm or increase the risk of adverse health outcomes.³² Public health interventions at the individual, institutional, and community levels have led to healthier outcomes in target populations across a range of issues, including youth smoking,³³ nutrition,³⁴ seat belt use,³⁵ and

³² Joan B. Wolf, *Is Breast Really Best? Risk and Total Motherhood in the National Breastfeeding Awareness Campaign*, 32 J. HEALTH POL. POL'Y & L. 595, 624 (2007) ("Public health campaigns are about advocacy and about changing behavior . . ."); see also MICHAEL SIEGEL & LYNNE DONER, *MARKETING PUBLIC HEALTH: STRATEGIES TO PROMOTE SOCIAL CHANGE* 22 (2d ed. 2007) ("[P]ublic health is in the business of creating or facilitating social change."); Marsha Garrison, *Reviving Marriage: Could We? Should We?*, 10 J.L. & FAM. STUD. 279, 323 (2008) ("Public health campaigns that seek to alter behavior have been markedly less successful than those that focus on the environment in which disease flourishes, and campaigns that target simple behaviors have been more successful than those that target complex behaviors."); David Hemenway, *The Public Health Approach to Reducing Firearm Injury and Violence*, 17 STAN. L. & POL'Y REV. 635, 645 (2006) ("Public health interventions began to emphasize the need to change the environment rather than just changing individual behavior."); Michelle A. Larkin & Angela K. McGowan, *Introduction: Strengthening Public Health*, 36 J.L. MED. & ETHICS (Supp.) 4, 4 (2008).

³³ See, e.g., Matthew C. Farrelly et al., *Evidence of a Dose-Response Relationship Between "truth" Antismoking Ads and Youth Smoking Prevalence*, 95 AM. J. PUB. HEALTH 425, 428–29 (2005) (finding antismoking ads aimed at youth successful in reducing youth smoking); David R. Holtgrave et al., *Cost-Utility Analysis of the National Truth® Campaign to Prevent Youth Smoking*, 36 AM. J. PREVENTIVE MED. 385, 385 (2009) (finding that the "truth" campaign not only reduced youth smoking but did so economically).

³⁴ See, e.g., Jay Maddock et al., *Statewide Implementation of the 1% or Less Campaign*, 34 HEALTH EDUC. & BEHAV. 953, 960–61 (2007) (reporting on a successful campaign to encourage persons to switch to consumption of low-fat milk).

³⁵ See, e.g., Vinod Vasudevan et al., *Effectiveness of Media and Enforcement Campaigns in Increasing Seat Belt Usage Rates in a State with a Secondary Seat Belt Law*, 10 TRAFFIC INJ. PREVENTION 330, 337–38 (2009) (attributing a significant increase in seat belt usage among drivers and passengers to the combination of a media campaign and law enforcement).

violence.³⁶ Public health's experience addressing violence offers important insights that could be employed to address demand-related issues by countering attitudes and behaviors that promote tolerance of exploitation of others for sex or cheap labor. Public health programs could be utilized also to confront underlying supply-related issues, including by improving identification of risk factors associated with vulnerability to trafficking and related forms of exploitation.³⁷

D. Identification and Coordination of Stakeholders

Fourth, public health programs stress the need to identify key stakeholders, engage target populations, and strengthen coordination among essential partners and local communities. For example, the public health response to violence seeks to engage numerous sectors of society, including "education, labor, public housing, media, business, medicine, and criminal justice."³⁸ A similar model is needed to address human trafficking.³⁹ Engaging partners in all sectors of society improves prospects for early intervention and, ultimately, prevention.⁴⁰ Public health campaigns also appreciate the importance of partnering with target populations.⁴¹ Last, public health puts an

³⁶ Mercy et al., *supra* note 29, at 12–13. *See generally* Hemenway, *supra* note 32, at 643–44 ("[T]he most promising approach to reduce firearm injury is to emphasize prevention [and] focus on the community," which "can be contrasted to the often reactive, individual focus of . . . traditional criminal justice.").

³⁷ Todres, *supra* note 12, at 476–78.

³⁸ Mercy et al., *supra* note 29, at 16.

³⁹ To date, governments have relied primarily on law enforcement and social services to "solve" the problem. Todres, *supra* note 12, at 455.

⁴⁰ *Id.* at 493–95 (discussing the importance of engaging numerous sectors of society in addition to law enforcement and social services, including health care, education, media, the tourism industry, airline industry, shipping industry, transportation sector, textiles industry, and others).

⁴¹ WORLD HEALTH ORG. ET AL., CONTRIBUTING TO ONE WORLD, ONE HEALTH: A STRATEGIC FRAMEWORK FOR REDUCING RISKS OF INFECTIOUS DISEASES AT THE ANIMAL-HUMAN-ECOSYSTEMS INTERFACE 32 (2008), available at http://www.oie.int/download/avian%20influenza/owoh/OWOH_14Oct08.pdf (recognizing the importance of "a bottom-up approach, which

emphasis on preparedness and coordination among stakeholders. Such a focus could help address gaps in coordination, which have been a persistent problem in antitrafficking responses.⁴²

In summary, public health offers new perspectives on the problem of human trafficking and strategies for responding to the issue, including addressing the root causes of the problem.

III. WHAT A PUBLIC HEALTH APPROACH TO HUMAN TRAFFICKING TELLS US ABOUT CHILD PROTECTION

It is perhaps counterintuitive to look at the issue of human trafficking for answers to questions related to child protection, as the modern antitrafficking movement started well after efforts to address child abuse and neglect. Taking such an approach, however, enables us to see how public health methodologies can address harm to children and provides insights that can be applied to other areas of child protection. Having seen what public health can offer in the way of responding to human trafficking, we can then take a fresh look at how public health strategies might improve child protection and current responses to abuse and neglect of children.

recognizes the needs of those most directly concerned and which emphasizes community involvement [that] ensur[es] the participation of women” in any strategy for reducing the risk of infectious diseases).

⁴² See, e.g., WORLD HEALTH ORG., CITIES AND PUBLIC HEALTH CRISES 12 (2009), available at http://www.who.int/ihr/lyon/FRWHO_HSE_IHR_LYON_2009.5.pdf (“Experience shows that, without coordination, the response to the [public health] crisis will not be effective”); UNITED NATIONS, IMPROVING THE COORDINATION OF EFFORTS AGAINST TRAFFICKING IN PERSONS: BACKGROUND PAPER OF THE SECRETARY-GENERAL 12 (2009), available at <http://www.un.org/ga/president/63/letters/SGbackgroundpaper.pdf> (“[P]oor coordination [of human trafficking responses is] a recurrent theme.”). There have been significant challenges with coordination among entities working within the United States on these issues. See, e.g., CAL. ALLIANCE TO COMBAT TRAFFICKING & SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA 8 (2007), available at http://ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf (“The delivery of and access to victim services are not always well coordinated throughout [California].”).

A. Evidence-Based Research

The world is changing rapidly, and children's lives are continually transformed by these changes (e.g., new technology). Therefore, as child advocates, we continually need to update our understanding of children's experience. In other words, we continue to need evidence-based research that assesses risk factors for children across a variety of settings. We need ongoing research that identifies the individual, relationship, community, and societal risk factors that threaten a child's well-being.⁴³ Monitoring and evaluation remain essential tools.⁴⁴ Given that such work is not typically the work of lawyers, multidisciplinary responses are necessary to ensure effective responses to these problems.

In addition, children are important partners in developing effective evidence-based practices. Much of what children, especially adolescents, experience today occurs away from adults, and children can contribute valuable insights to our understanding of vulnerability and exploitation. Therefore, youth need a voice in the design, implementation, monitoring, and evaluation of programs.⁴⁵ If we develop programs that make

⁴³ *CDC Violence Prevention*, *supra* note 31.

⁴⁴ TARA M. SULLIVAN & DEEPA RAMCHANDRAN, MEASURING SUCCESS OF A CONTINUING-CLIENT STRATEGY 3 (2007), *available at* <http://archive.k4health.org/system/files/MeasuringSuccessofCCStrategy.pdf> ("Monitoring and evaluation is a fundamental component of all health programs."); *see also* CTRS. FOR DISEASE CONTROL & PREVENTION, INTRODUCTION TO PROGRAM EVALUATION FOR PUBLIC HEALTH PROGRAMS: A SELF-STUDY GUIDE, 1 (2011), *available at* <http://www.cdc.gov/eval/guide/CDCEvalManual.pdf> ("[S]trong program evaluation is essential now more than ever.").

⁴⁵ *See* UNICEF INNOCENTI RESEARCH CTR., *supra* note 8, at v ("Children's experiences, recommendations and own actions to prevent trafficking are often overlooked when developing programmes and initiatives to address trafficking and to assist those children who have been trafficked."); Mike Dottridge, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe*, at vi (UNICEF Innocenti Research Centre, Working Paper No. IWP-2008-05, 2008), *available at* http://www.unicef-irc.org/publications/pdf/iwp_2008_05.pdf ("[Children] are 'experts' on the factors that make children vulnerable, their reasons for leaving home, and their special needs regarding prevention, assistance[,] and

sense to adults but do not work for young people, ultimately the programs will fail, and we will fail our children.

B. Prevention

We need to continue working to develop prevention strategies—that means identifying and aiding vulnerable children before they are harmed. We need a holistic approach that recognizes the interconnected nature of risk factors. For example, the CDC employs “a four-level social-ecological model to better understand violence and the effect of potential prevention strategies.”⁴⁶ This model contemplates the “complex interplay between individual, relationship, community, and societal factors” and offers one possible methodology for better understanding child abuse and neglect in order to improve child protection measures.⁴⁷ Such a prevention program would look at (1) individual risk factors; (2) relationships that might increase the risk of harm in the home and in the community, including those with peer groups; (3) the role of community settings, such as schools and neighborhoods; and (4) societal factors, including social and cultural norms.⁴⁸ These and other public health prevention strategies have value in the child protection context and should be incorporated more systematically into initiatives aimed at protecting children from abuse, neglect, and other harms.

C. Changing Attitudes and Behaviors

We live in a world where our children are exposed to violence from a host of sources—not only in movies and music, but also in their schools, communities and, tragically, in many of their homes.⁴⁹ In the United States, “the majority of urban

protection. Children and young people have an important role to play in helping to identify areas for intervention, design relevant solutions[,] and act as strategic informants of research.”).

⁴⁶ See *CDC Violence Prevention*, *supra* note 31.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Mary Schwab-Stone et al., *No Safe Haven II: The Effects of Violence*

youths have witnessed or been victims of violent behavior” (and more than eighty percent of U.S. children live in urban areas).⁵⁰ Popular culture frequently glamorizes exploitation and objectification of children.⁵¹ The field of public health has extensive experience that offers key insights on harm reduction strategies, developing culturally competent messages, and reaching target populations effectively.⁵² Such experience and skill sets provide valuable tools to policymakers and child advocates seeking to address behaviors and attitudes that foster environments that are tolerant of child maltreatment.

D. Partners and Stakeholders

In the child trafficking context, we are still in early stages of developing comprehensive responses but are starting to

Exposure on Urban Youth, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 359, 365 (1999); see also AM. PSYCHOLOGICAL ASS'N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 34–35 (2007), available at <http://www.apa.org/pi/women/programs/girls/report-full.pdf> (recognizing the lack of research on media sexualization of women and girls and its connection to increased demand for the sex industry, but suggesting that such a connection likely exists, particularly regarding the demand for child sex trafficking); Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 303, 305 (1997).

⁵⁰ Schwab-Stone et al., *supra* note 49, at 365; see also U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD HEALTH USA 2010 (2010), available at <http://www.mchb.hrsa.gov/chusa10/popchar/pages/105ruc.html> (reporting that in 2007, more than eighty-one percent of U.S. children lived in urban areas); Renée Boynton-Jarrett et al., *Cumulative Violence Exposure and Self-Rated Health: Longitudinal Study of Adolescents in the United States*, 122 PEDIATRICS 961, 967 (2008), available at <http://pediatrics.aappublications.org/content/122/5/961.full> (“[W]itnessing gun violence, threat of violence, feeling unsafe, repeated bullying, and criminal victimization each independently and significantly increased risk for poor [health].”).

⁵¹ See, e.g., Freeman-Longo, *supra* note 49, at 305 (“Most sexual abuse is illegal, but there are aspects of our culture, lifestyle, and sexual interests and behaviors that are abusive of sexuality, and yet they are legal.”).

⁵² Mercy et al., *supra* note 29, at 23. See also Kim Witte & Mike Allen, *A Meta-Analysis of Fear Appeals: Implications for Effective Public Health Campaigns*, 27 HEALTH EDUC. BEHAV. 591, 606 (2000); Maddock et al., *supra* note 34, at 960; Hemenway, *supra* note 32, at 643–44.

recognize the importance of engaging a broad range of partners—not only law enforcement and social services, but also health care providers, schools, the private sector, media, and others.⁵³ Similarly, a multisector approach can advance child protection strategies aimed at preventing abuse, neglect, and other harms.

Additionally, as the public health methodologies suggest, time and resources must be invested in ensuring and enhancing positive collaborations among all relevant stakeholders.⁵⁴ Parents and families must feel that other stakeholders are partnering with them, not policing them. Collaboration among all essential stakeholders is critical to ensure the success of child protection policies and programs.

E. Interconnected Nature of Harm

Finally, this discussion of the various aspects and complexities of human trafficking and child protection highlights that these problems implicate a range of children's rights and that strategies for addressing these issues must account for the interrelated and interdependent nature of rights.⁵⁵

⁵³ Mercy et al., *supra* note 29, at 16 (noting that public health's approach to violence has focused on "establishing links with each of the sectors that figures in violence prevention: education, labor, public housing, media, business, medicine, and criminal justice").

⁵⁴ THE NAT'L CTR. FOR ZOO NOTIC, VECTOR-BORNE, & ENTERIC DISEASES, *CONFRONTING INFECTIOUS DISEASES IN AN INTERCONNECTED WORLD: PEOPLE, ANIMALS, AND THE ENVIRONMENT*, at i (2009) *available at* <http://www.onehealthinitiative.com/publications/d%20%20Confronting%20Infectious%20Diseases.pdf> (explaining that preventing threats to human health "will require improved communication, cooperation, and collaboration across disciplines, institutions, and countries. It will require valuing our existing partnerships while building new ones."); WORLD HEALTH ORG. ET AL., *supra* note 41, at 32 (recognizing the importance of "a bottom-up approach, which recognizes the needs of those most directly concerned and which emphasizes community involvement, ensuring the participation of women" to a strategy to reduce the risk of infectious diseases).

⁵⁵ *See* Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights, G.A. Res. 41/117, U.N. Doc. A/RES/41/117 (Dec. 4, 1986) ("Reaffirming the provisions of its resolution 32/130 of 16 December 1977 that all human rights and fundamental freedoms are

We know, for example, that children who do not have a regular source of health care have more frequent health issues.⁵⁶ Children who are ill more often are at risk of higher absenteeism from school, falling behind their peers, and dropping out early.⁵⁷ In turn, children who leave school early confront the world equipped with few skills and limited education. These children are prime targets for traffickers and others who seek to exploit children.⁵⁸ At each stage in this

indivisible and interdependent and that the promotion and protection of one category of rights can never exempt or excuse States from the promotion and protection of the other rights.”); Philip Alston, *Economic and Social Rights*, 26 STUD. TRANSNAT’L LEGAL POL’Y 137, 147–48 (1994) (“[S]upport for the notion that the two sets of rights [civil and political and economic, social and cultural rights] are interdependent is widespread and is clearly reflected in international human rights instruments.”); see also Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights*, 27 OSGOODE HALL L.J. 769, 779–86 (1989).

⁵⁶ See Michael D. Kogan et al., *Underinsurance Among Children in the United States*, 363 NEW ENG. J. MED. 841, 845 (2010) (“[U]nderinsured children were significantly more likely to be without a medical home, to have delayed or forgone care, and to have difficulty obtaining needed specialist care.”); Paul W. Newacheck et al., *Health Insurance and Access to Primary Care for Children*, 338 NEW ENG. J. MED. 513, 514–16 (1998) (demonstrating that children with no health insurance are consistently less likely to receive adequate medical care).

⁵⁷ MATTHEW C.H. JUKES ET AL., SCHOOL HEALTH, NUTRITION AND EDUCATION FOR ALL: LEVELLING THE PLAYING FIELD 41 (2008); WORLD HEALTH ORG. ET AL., FOCUSING RESOURCES ON EFFECTIVE SCHOOL HEALTH 5 (2000), available at <http://www.unicef.org/lifeskills/files/FreshDocument.pdf> (“Poor health and malnutrition are important underlying factors for low school enrollment, absenteeism, poor classroom performance, and early school dropout”); see also JOY MILLER DEL ROSSO & TONIA MAREK, CLASS ACTION: IMPROVING SCHOOL PERFORMANCE IN THE DEVELOPING WORLD THROUGH BETTER HEALTH AND NUTRITION 11 (1996) (“Healthier and better nourished children stay in school longer, learn more, and become healthier and more productive adults.”); Deborah L. Crooks, *American Children at Risk: Poverty and Its Consequences for Children’s Health, Growth, and School Achievement*, 38 AM. J. PHYSICAL ANTHROPOLOGY (Supp. 2) 57, 57 (1995) (“Poor health and poor growth are likely to lead to poor school achievement via deficits in cognitive functioning, behavior and activity, and increased absenteeism and school failure.”).

⁵⁸ See MIKE DOTTRIDGE, KIDS AS COMMODITIES? CHILD TRAFFICKING

process, children's rights are implicated, reflecting the reality of children's experience—that their health rights, education rights, and right to freedom from exploitation are all interconnected.⁵⁹ Programs to prevent harm against children in the home and the community must address these issues in a holistic manner.

CONCLUSION

Much has happened in the past decade on trafficking and commercial sexual exploitation of children. Going forward, one major challenge will be to ensure that law, policies, and programs are designed to *prevent* these forms of exploitation. In many respects, child abuse responses are far ahead of child trafficking responses. We know much more about treating survivors of child abuse than we know about the needs of survivors of human trafficking, adults or children. Despite that, in both arenas, we still have a great deal to learn and do in order to prevent harm from occurring in the first place. The goal when it comes to abuse, neglect, or exploitation of children must be prevention. Public health has a wealth of experience on what works and what does not work to prevent harm. We would do well to draw upon public health models to enhance our understanding of and strategies for child protection.

AND WHAT TO DO ABOUT IT 69 (2004) (explaining that formal and informal education decreases the risk of exploitation). Moreover, schools provide not only basic education but also information on the types of exploitation to which children may be subjected. *Id.* Missing school means losing out on these opportunities as well.

⁵⁹ See Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 art. 24 (Nov. 20, 1989) (child's right to health); *id.* art. 28 (right to education); *id.* art. 32 (child's right to protection from economic exploitation); *id.* art. 34 (child's right to protection from sexual abuse and exploitation); *id.* art. 35 (right to protection from sale and trafficking).