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The Normative Basis for Combating Human Trafficking:

*A Victim - Centred
Framework*

A thesis submitted in
fulfilment of the requirements
of the award of the degree

Doctor of Philosophy

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CERTIFICATE OF ORIGINALITY

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma of the university or other institute of higher learning, except where due acknowledgment is made in the text.

I also declare that the intellectual content of this thesis is the product of my own work, even though I may have received assistance from others on style, presentation and language expression.

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Dimitra Hatziplis

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Any omissions and errors in this work are my sole responsibility.

ABSTRACT

Human trafficking is the movement of a person from one place to another through the use of force, fraud or coercion for the purpose of exploitation. It is thought to be one of the fastest growing international crimes generating profits only second to arms trading. It is also the largest manifestation of contemporary slavery. In an effort to suppress trafficking, the international community came together in 2000 to draft international law to combat the problem. Unfortunately, these efforts have had little impact on reducing trafficking. It is the position of this thesis that one of the reasons for this failure is that there was little normative legal theory underpinning the provisions in the instruments adopted to deal with trafficking. The articulation of a clear normative premise for action by states in combating trafficking is essential because without it the objectives for international action become ambiguous leaving room for varying interpretations for state action.

Essentially, the existing international legal framework as reflected in the international instruments is a product of infused criminal law and migration concerns neither of which has been adequate in dealing with the problem of trafficking. Indeed, many of the responses by state parties mirror historical attempts to deal with trafficking from the early 1900s. What is missing however is a proper victim centred approach which would work to reduce trafficking, protect victims and even address state concerns by enhancing criminal law efforts.

The search for an appropriate normative theoretical framework necessarily requires an analysis of the role played by migration, gender, consent, human rights and slavery in trafficking. Indeed, all of these factors provide valuable insights into trafficking while also illustrating the motivation behind different views concerning trafficking. For example, migration concerns and crime control lie at the heart of state interests whereas many feminist groups perceive trafficking to be a gender issue.

After a detailed analysis of the various issues underpinning trafficking, appropriate law reforms can be formulated that are informed by ideologies set in values, attitudes and

beliefs that are fundamentally victim – centred. When the well being of the victim is prioritised, the response that flows will have the effect of also providing tools for dealing with irregular migration, crime control, gender and labour issues. However, this can only result from a shift in focus to the exploitation of the victim and a re-evaluation of the definition and treatment of slavery. The current perception of slavery as a practice steeped in proprietary rights akin to chattel slavery is antiquated and provides little insight into modern practices. However this perception can be corrected with a re-definition of slavery as an infringement of personal autonomy. This would result in a clearer understanding and treatment of modern day slavery. This also leads to the conclusion that trafficking should be considered a sub category of slavery and that efforts to eradicate trafficking should also be matched by efforts to eradicate slavery in general.

ABBREVIATIONS

AFP	Australian Federal Police
BVF	Bridging Visa F
BWS	Battered Wife Syndrome
CJSC	Criminal Justice Stay Certificate
CJSV	Criminal Justice Stay Visa
GAATW	Global Alliance Against Traffic in Women Coalition
HRC	Human Rights Caucus
IHRN	International Human Rights Network
ILO	International Labour Organisation
IOM	International Organisation for Migration
NGO	Non Governmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights
OPTN	Organ Procurement and Transplantation Network (United States)
PWPTV	Permanent Witness Protection (Trafficking) Visa
SAARC	South Asian Association for Regional Cooperation
SRTR	Scientific Registry of Transplant Recipients
TVPA	<i>Trafficking Victims Protection Act of 2000</i>
TWPTV	Temporary Witness Protection (Trafficking) Visa
UN	United Nations
UNAFEI	Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
VIS	Victim Impact Statement

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