

THE MARITIME SLAVE TRADE: A 21ST CENTURY PROBLEM?

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I. INTRODUCTION

Whoever, being a citizen or resident of the United States and a member of the crew or ship's company of any foreign vessel engaged in the slave trade, or whoever, being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore seizes any person with intent to make that person a slave, or decoys or forcibly brings, carries, receives, confines, detains or transports any person as a slave on board such vessel, or, on board such vessel, offers or attempts to sell any such person as a slave, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from such vessel any person with intent to sell, or having previously sold, such person as a slave, shall be fined under this title or imprisoned not more than seven years, or both.¹

At first glance, 18 U.S.C. §1585 appears to be a curious artifact embedded in the United States Code. It is part of a chapter on peonage and slavery, whose other seven sections deal with peonage,² involvement with vessels for the slave trade,³ enticement into slavery,⁴ sale into involuntary servitude,⁵ service on slavers,⁶ possession of slaves,⁷ and the transportation of slaves from the United States.⁸ At first glance, these laws would appear to be more appropriate for a nineteenth century historical treatise or a romantic novel rather than a code constituting the law of the land. This paper will examine the existence of the maritime slave trade and analogous problems in the twentieth century and consider supporting arguments and evidence for the retention and elaboration of 18 USC § 77 as we move into a new millennium.

1. 18 U.S.C. § 1585 (1995); 18 U.S.C.A. § 1585 (1999) (seizure, detention, transportation or sale of slaves).

2. 18 U.S.C. § 1581 (1995, 1999); 18 U.S.C.A. § 1581 (1984, 1999) (peonage: obstructing enforcement).

3. 18 U.S.C. § 1582 (1995); 18 U.S.C.A. § 1582 (1999) (vessels for slave trade).

4. 18 U.S.C. § 1583 (1995, 1999); 18 U.S.C.A. § 1583 (1999) (enticement into slavery).

5. 18 U.S.C. § 1584 (1999); 18 U.S.C.A. § 1584 (1999) (sale into involuntary servitude).

6. 18 U.S.C. § 1586 (1995); 18 U.S.C.A. § 1586 (1999) (service on vessels in slave trade).

7. 18 U.S.C. § 1587 (1995); 18 U.S.C.A. § 1587 (1999) (possession of slaves aboard vessel).

8. 18 U.S.C. § 1588 (1999); 18 U.S.C.A. § 1588 (1999) (transportation of slaves from United States).

II. THE MARITIME SLAVE TRADE IN THE TWENTIETH CENTURY

A. "Beyond the Horizon": The 20th Century "Classic" Slave Trade Overseas

While the Atlantic⁹ and East African¹⁰ slave trade had largely ceased by the beginning of the twentieth century, classic maritime slaving was still practiced in the Red Sea and Persian Gulf area. It seems likely, for example, that the kidnaping of Eritrian women by pirates (which led to calls for more stringent policing by the Italian government) was for slaving purposes.¹¹ The second half of the twentieth century has shown persistence in this trade. Gerald de Gaury, writing about his Arabian experiences in 1950, noted that "[i]n 1941 the price of a small boy was about £20, for a strong young male £50 (for a Somali rather more), [and] for a small girl £12, which is considerably less than the price of a good horse . . . and a little less than that of a camel."¹² According to de Gaury, "the main route for them is to Mecca from the Yemen, where they are brought by sailing-boats from the opposite African coast."¹³ A November 7, 1953, report from France's ambassador to the Saudis claims that naturalized Saudis of Senegalese origin posed as Muslim missionaries in Sudan, Upper Volta and Niger and inveigled the faithful to make the *haj* (pilgrimage). This apparently occurred despite the 1936 decree of King Saud prohibiting the importation of slaves by sea. They were then transported by truck to Port Sudan or Suakin on the Red Sea and took specially constructed dhows across to Rith, only to be declared illegal pilgrims, thrown into prison and have their services sold. Sean O'Callaghan reports a generally similar scam, with the exception of the initial temptation and with land transportation being by camel on an individual basis.¹⁴

O'Callaghan also found evidence of the funneling of slaves through Suakin from as far away as Zaire "and was given specific information from one slaver about a shipment of 10 juveniles, mainly Gallas, whom he had sent from Suakin

9. This does not necessarily mean that West African slavery had been extinguished, "in 1960 Lord Faringdon noted the continuing traffic in slaves on the coast river in eastern Nigeria, with boys taken upstream and sold to farmers in French-controlled territory and girls shipped downstream to Fernando Po." Dr. Samuel Pyeatt Menefee, *TRENDS IN MARITIME VIOLENCE: A SPECIAL REPORT FROM JANE'S INTELLIGENCE REVIEW AND JANE'S SENTINEL* 44 (n.d.). See also Sean O'Callaghan, *THE SLAVE TRADE TODAY* 185 (1961) (quoting from 225 HANSARD, 104, Thursday, July 14, 1960).

10. Sean O'Callaghan reports rumors of white slavers operating as far south as Zanzibar. See Sean O'Callaghan, *supra* note 9, at 125-29; Dr. Samuel Pyeatt Menefee, *supra* note 9, at 44.

11. See PRO C 10903/10903/22; Samuel Pyeatt Menefee "Piracy and Maritime Crimes of Violence," at 42 (ms.; n.d.).

12. GERALD DE GAURY, *ARABIAN JOURNEY AND OTHER DESERT TRAVELS* 89 (1950).

13. *Id.*

14. Dr. Samuel Pyeatt Menefee, *supra* note 9, at 43. See also C.W.W. Greenridge, "Slavery: Slavery After World War I," in 20 *ENCYCLOPEDIA BRITANNICA* 786 (1964); SEAN O'CALLAGHAN, *supra* note 9, at 108-11 (quoting dispatch from ambassador).

to Lith.”¹⁵ “Djibouti has been another transshipment port for slaves from southern Ethiopian who have been sent across the Red Sea to Yemen,”¹⁶ a city also “identified as a clearing house for slaves landed by dhow from Sudan [and] Ethiopia”¹⁷

Africa has not been the only source of slaves for the Arabian peninsula during the twentieth century. De Gaury notes that:

Among the white-skinned slaves from Persia or Indian Mekran, who fetch a higher price, are some who remember whence and how they came. It was usually to the Oman coast, but there are other clearing-houses on the mainland, much farther north, where cargoes of boys according to a good authority, were still arriving in 1947. The trade is if anything increasing, probably because of the cheapness of money consequent upon the War, the high cost of labourers, wives, and servants.¹⁸

Noting the difficulty in stanching this flow, de Gaury states that “it would, to be effective, entail the use of a number of fast vessels especially built to the quest.”¹⁹

According to Viscount Maugham in a House of Lords debate on July 14, 1960, a slave route extended from Iran and Iraq across the Persian Gulf to the Arabian peninsula. O’Callaghan states that he was told that as late as this date, men were shipped from Abadan to Kuwait by dhow, smuggled to Bahrain and sold into slavery. A story said to have appeared in a November 1958 Iranian newspaper reported the discovery of two starving men on a Persian Gulf island—all that remained of a group of 40 transportees who had been marooned there by a dhow captain seeking to avoid the Iranian Navy. Many such individuals were allegedly employed in pearl fishing and kept in a perpetual state of indentured servitude through loans for food.²⁰

While not prolific, this evidence suggests a continuing trickle of slaves shipped by sea, which argues that 18 U.S.C. § 77 can be viewed as more than an historical artifact. The development of international law on the subject during the century bolsters this conclusion.

15. Dr. Samuel Pyeatt Menefee, *supra* note 9, at 43.

16. *Id.*

17. *Id.*

18. Gerald de Gaury, *supra* note 12, at 90.

19. *Id.*

20. Dr. Samuel Pyeatt Menefee, *supra* note 9, at 43. *See also* Sean O’Callaghan, *supra* note 9, at 122-23, 174.

B. The Slave Trade and Twentieth Century International Law: A Brief Overview

Initially, twentieth century developments in the law on slavery related to earlier agreements dealing with the African Slave Trade such as the General Act for the Repression of the African Slave Trade.²¹ The 1919 Convention of St. German-en-Laye declared that its contracting parties would "endeavour to secure the complete suppression of slavery in all its forms and of the slave-trade by land and sea."²² Greenridge notes that the Brussels act of 1890 "is still in force as between parties to it which did not adhere to the Convention of St. Germain-en-Laye . . . and doubts are entertained by international lawyers of authority as to whether it was in fact abrogated even between parties to the convention."²³ A League of Nations investigation of slavery by the Slavery Commission of 1924 included not only the Red Sea trade, but forms of servitude in Liberia and Ethiopia resulting in the 1926 Convention to Suppress the Slave Trade and Slavery. This recognized the metamorphosis in the trade, as parties were not only to "prevent and suppress" the practice, but "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms," including certain forms of forced labor.²⁴ Due to the continuation of slavery problems, a second League of Nations Standing Committee was established in 1932, which called for a Permanent Advisory Committee of Seven Experts on the subject.²⁵ After World War II, the new United Nations appointed an *ad hoc* committee of four to consider the problem of slavery.

The committee recommended that the definition of slavery in the 1926 Slavery Convention was accurate and adequate and that the United Nations should assume the powers and functions of the League of Nations under the Slavery convention. It further recommended that a Supplementary Convention on Slavery should be prepared to remedy deficiencies found by experience to exist in the 1926 Slavery Convention.²⁶

This resulted in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956, stating that "[t]he act of conveying or attempting to convey slaves from

21. General Act for the Repression of the African Slave Trade, Brussels, July 2, 1890, 27 Stat. 886, T.S. No. 383, 1 Bevans 134.

22. C.W.W. G[reenridge], *supra* note 14, at 786.

23. *Id.*

24. See Convention to Suppress the Slave Trade and Slavery, Geneva, September 25, 1926, 60 L.N.T.S. 253, 46 Stat. 2183 at 2191, T.S. No. 778, 2 Bevans, 607, arts. 1, 2, 5. A separate Forced Labor Convention was drafted in 1930, dealing with "'work or service (other than penal labor), exacted under means of a penalty.'" C.W.W. G[reenridge], *supra* note 14, at 786).

25. This met from 1935-38. See C.W.W. G[reenridge] *supra* note 14, at 786. This Committee issued annual reports, the second part of each dealing with slave raiding and the slave trade. See *id.*

26. *Id.*

one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offense under the laws of States Parties"²⁷ The First United Nations Conference on the Law of the Sea considered the subject and embedded an anti-slavery article in the 1958 Convention on the High Seas: "Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, *ipso facto*, be free."²⁸ This wording was adapted as article 99 of the 1982 Convention on the Law of the Sea.²⁹ Thus, it can be seen that at the close of the twentieth century, a strong continuing basis exists in international law for criminalization of the slave trade.

C. "The New American 'Slavers'": A Slave Trade Analogue in Western Waters

It is comforting to assume that problems like those of the slave trade only exist in some "diminished capacity" over the horizon. The truth, unfortunately, is otherwise, as slave-trade analogues have been occurring in American waters with increased frequency. The problem of illegal Chinese immigration provides one obvious case study.

In September 1991, American authorities first intercepted a vessel carrying illegal Chinese immigrants.³⁰ It has been estimated that in the years following:

[S]ome 50 Chinese crime groups have smuggled tens of thousands of Chinese into the U.S. The routes vary, some plying the seas, others the air or the overland paths through Mexico. But the sticker price of \$20,000 to \$35,000 per head holds steady. In the southern coastal province of Fujain, home to some 80% of these immigrants, families band together to raise the funds, thinking they are making a down payment not only on a loved one's future but on their own as well. For their effort, they often bankrupt their savings—only to sell the loved one into slavery.³¹

27. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Geneva, September 7, 1956, 266 U.N.T.S. 3, 18 U.S.T. 3201, T.I.A.S. No. 6418, art. 3(1). See also J.A.C. Gutteridge, *Supplementary Slavery Convention, 1956*, 6 INT'L & COMP. L. Q. 449 (1957).

28. Convention on the High Seas, Geneva, April 29, 1958, 450 U.N.T.S. 82, 13 U.S.T. 2312, T.I.A.S. No. 5200, art. 13.

29. United Nations Convention on the Law of the Sea, Montego Bay, Dec. 10, 1982, art. 99.

30. Marlowe Hood, *Why Clinton cannot stem the flood of illegal immigrants*, SOUTH CHINA MORNING POST, July 18, 1993, at 5, available at lexis.com.

31. Jill Smolowe, *Where's the Promised Land?* 141 TIME, no. 25, June 21, 1993, at 29. Paul George notes that the United States Coast Guard intercepted 3000 illegal Chinese boat immigrants between September 1991 and April 1994. See Paul George, *Immigration By Sea to North America: More Golden*

On June 6, 1993, the *Golden Venture* grounded off Rockaway peninsula in Queens. Some two hundred and eighty five illegal Chinese immigrants were aboard, and six to eight of them perished in the surf.³² The conditions aboard the rusty freighter came as a shock. Flies swarmed among the clothing, blankets, and personal possessions that were strewn everywhere, and the smell of urine and fecal matter filled the air. Says Petty Officer Chris O'Neil of the Coast Guard:

You don't like to say something smelled like death, but . . . [n]o food was in evidence, save some rice. An assortment of bags illustrated the efforts of the ship's 285 immigrants to collect rainwater for drinking. Despite the damp conditions in the cargo hold, exposed wires jutted every which way.³³

Asian analyst Paul George notes that:

Typically, a down-payment is made in China with the balance being paid off over many years of virtual slave labor in the garment and restaurant industries Retribution for failing to make repayment is believed to be harsh. For the individual, the voyage usually involves many months crowded into the hold of an unseaworthy vessel with inadequate toilet and bathing facilities. Paid enforcers maintain brutal control over the passengers and distribute the food, which consists only of rice.³⁴

Ventures?, Commentary, no. 43, April, 1994, available at <http://www.csis-scrcs.gc.ca/eng/comment/com43e.html> (on file with author).

32. See PAUL GEORGE, *supra* note 31; JILL SMLOWE, *supra* note 31, at 29; Bertil Lintner, *Organized Crime: World Wide Web: The tangled trail of illicit Chinese migrants*, in FAR EASTERN ECONOMIC REVIEW 34, available at Westlaw: 1998 WL-FEER 652/798; Michael Grey, *US pledges action on smuggled immigrants*, LLOYD'S LIST INT'L, June 9, 1993, at 3, available at Westlaw: 1993 WL 10624069 (stating that the *Golden Venture* was the 24th ship apprehended smuggling illegal immigrants into the US). See also Jennifer Mattos, *Tarnished Venture*, A. MAGAZINE, July 30, 1996, available at Westlaw: 1996 WL 15520458 (noting an increase in illegal smuggling vessels from China . . . from just a few in 1989 to 17 ships in 1992.); Gordon Witkin et al., *One way, \$28,000 Why smuggling aliens into American is a boom business*, U.S. NEWS & WORLD REPORT, April 14, 1997, available at Westlaw: 1997 WL 8331882 ("at least 43 smuggling ships . . . have brought Chinese aliens to the Western Hemisphere since 1991. A 1996 Coast Guard report pegs the number of Chinese immigrants crossing the Pacific by boat at 400 to 600 people a month.").

33. Jill Smolowe, *supra* note 31, at 29. Such appalling conditions were not unusual; the Chens, a Fujian couple who arrived illegally in 1992, subsisted for two months "on a single bottle of water weekly and a single meal daily." *Id.* See also Jennifer Mattos, *supra* note 32.

34. Paul George, *supra* note 31.

While several vessels directly targeted the western and eastern coasts of the United States, other sea smugglers have used a more oblique approach: Mexico.³⁵

Upon arrival, assuming they are not intercepted, the immigrants have to fade into American life, but in fact enter a strange half world run by the Chinese tongs and "snakeheads" who have sponsored their immigration. "We live like pigs and eat like dogs." Working for minimal wages with no legal safeguards, many of the immigrants live in gang-run safe houses.³⁶ Tales of forced behavior abound. Twice during 1998 "gang members surrounded the Bowry quarters, blocked the fire escapes, then calmly robbed the residents of their savings. The victims didn't complain, they said, because they feared retaliation against their families in China if they caused trouble for the gangs."³⁷ On other occasions, when workers cannot pay off their immigration debt, the gangsters offer them a deal. The illegals describe their ex-employer's operation and return with shotguns and masks to rob the place with members of the gang. The debt is then canceled. "Local police are usually stumped, but we know exactly what

35. See *Id.*; THE ECONOMIST, July 24, 1993, available at Westlaw: 1993 WL 12190650 (noting a single maritime seizure which netted 661 illegal Chinese immigrants); Yogana Sharma, *China: International Action Needed to Stop Human Smuggling*, Inter Press Service Global Information Network, available at Westlaw: 1993 WL 2538372 (noting the repatriation of three boatloads of illegal immigrants from Mexico). See also Bert Wilkinson, *Authorities Investigating Major Alien Smuggling Ring*, Inter Press Service Global Information Network, available at Westlaw: 1994 WL 2588935 (smuggling of immigrants by boat from Guyana). Peter Kwong notes that Chinese human smuggling entails an elaborate and sophisticated international network, which is said to be financed and masterminded in Taiwan. The whole operation is like a global baseball game. Most often, the sprint to first base involves the transfer of would-be immigrants from Fuzhou or Wenzhou to international waters, where they are picked up by Taiwanese cargo ships or fishing boats. After each vessel is fully loaded (the shipping companies are paid by the head), it sails south to Thailand for refueling before making the dash to second base, across the Pacific to the coast of Central America or Mexico. The southern sea route is specifically chosen to avoid detection by U.S. reconnaissance satellites monitoring American coastal waters. (The path selected by the Golden Venture-making a landing off the American shoreline-is the most risky and least popular route.) Having landed, the smuggling crew escorts its charges to third base, crossing the U.S. border by land. If the ship comes ashore in Central America, the immigrants travel through Mexico City, cross the border clandestinely and arrive in Houston. If they land in the Baja peninsula of Mexico, they cross into San Diego and rest in safe houses in Monterey Park before making their way to New York. Kwong, *China's Human Traffickers: Wake of the Golden Venture*, 259 THE NATION no. 12, October 17, 1994, available at Westlaw: 1994 WL 1344869. See also CLIVE CUSSLER, FLOOD TIDE: A NOVEL (1997); small watercraft plying between islands in the St. Lawrence river, CP, *Human Smuggling Ring Busted*, in LONDON FREE PRESS (1998), available at Westlaw: 1998 WL 27450952 (noting that "[t]he ring is believed to have made 33 smuggling runs in 60 days, moving from eight to 24 persons per run and adding that the illegals "paid "\$40,000 US or more and some worked as indentured servants for years to pay their fee!").

36. *Slaves of New York*, 72 TIME, November 2, 1998 (noting the presence of 300 such safe houses in New York city).

37. *Id.*

happens," says [New York city police intelligence officer Tony] Ong. "It has been a nationwide problem."³⁸

Such illegal workers "are slaves, pure and simple," says a United States immigration official. "Many end up in bondage, forced to become gang enforcers or drug carriers."³⁹ The coercive nature of the smuggling has been confirmed by at least one of the bosses involved in the racket,⁴⁰ of his \$20,000 prepaid package trips, which he claims have a success rate of 80% to 90%.

"What if the Chinese illegal is detained?" a writer asks.

"We will get him out," Big Boss says cockily.

"What if the full fee cannot be paid?"

"That," Big Boss says calmly, "is very dangerous business."⁴¹

While American sources testify as to the force used against illegal immigrants, Chin Ko-Lin of Rutgers University reports that:

[M]any illegal immigrants are locked up in "safe houses" until their final installment is paid. Sometimes triad goons are hired to do the collection, and the "safe houses" turn into "hell houses," says Chin. Methods of persuasion to pay up include sexual assault, starvation, and the chopping-off of fingers.⁴²

Similar brutality infects European safe houses. "When these people arrive, those who do not pay up are treated as slaves, sometimes they even have an ear chopped off," Winrich Granityka, police chief in Cologne, said in a recent interview. "To pay their debts, women are often forced to prostitution . . ."⁴³

When relatives cannot pay a fare, immigrants are often forced to borrow money from the "snakeheads" at rates of thirty percent. "The snakeheads hire enforcers to beat up debtors who evade their obligations. A favorite tactic is to threaten the victim's relatives with his imminent execution so they will come up with some quick cash."⁴⁴ *Asiaweek* has described New York's Chinatown as a "grim place where powerful businessmen and crime syndicates keep . . . [undocumented workers] in line with threats of kidnaping, torture and rape."⁴⁵

Despite such hardships, the wave of illegal immigration continues. In July 1995, the *Jung Sheng 8* with 147 Chinese illegals was nabbed by the Coast

38. *Id.*

39. Jill Smolowe, *supra* note 31, at 29.

40. A Thai of Chinese extraction, who spoke on the record.

41. *Id.*

42. Bertil Lintner, *supra* note 32.

43. *Id.*

44. Peter Kwong, *supra* note 35.

45. *Books: Fear and Bondage in America: How dreams turn into nightmares for Chinese illegals*, ASIaweek, June 16, 1998, available at Westlaw: 1998 WL 13699293. See also PETER KWONG, FORBIDDEN WORKERS: ILLEGAL CHINESE IMMIGRANTS AND AMERICAN LABOR (1998).

Guard 800 miles south of Hawaii. Some of the migrants were beaten and sexually abused by enforcers on board, and many suffered from skin and urinary tract infections due to dehydration and unsanitary conditions. "When we pulled the hatch on the hold, we were overwhelmed with a rush of hot steamy air that smelled of urine and fecal matter," says Lt. Shannon Crothers, a Coast Guard boarding officer. "The smell just never went away."⁴⁶

Early in 1999 "a surge of illegal smuggling vessels began targeting the island of Guam,"⁴⁷ while in September of that year, suspected Chinese illegals were removed from a ship off Vancouver by Canadian authorities; the vessel was one of three ships with no names or flags recently spotted in the area.⁴⁸ It seems clear that this represents an ongoing problem, which will remain with us into the new millennium. How then may American law on the subject best be revised to cover the modern maritime slave trade?

III. "FURTHER REVISION . . . SHOULD BE CONSIDERED": UPDATING UNITED STATES LAW ON THE SLAVE TRADE

It was felt that further revision of this chapter should be considered at an opportune time for the same reasons stated with respect to Chapter 81, "Piracy and Privateering."⁴⁹

In recasting American law on the slave trade to take account of contemporary conditions, a process similar to that used for piracy and privateering would appear to be in order.⁵⁰ The following discussion will focus on major suggestions and corrections which might be considered.

46. GORDON WITLAIN, DANA HAWKINS, and BRIAN PALMER, *supra* note 32.

47. *INS Repatriates Second Group of Chinese Nationals from Tinian*, U.S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE NEWS RELEASE, June 22, 1999, available at <http://www.ins.usdoj.gov/graphics/publicaffairs/newsrels/tinian.htm> (noting *eighteen* boats which have landed or been intercepted at this location since May, 1998).

48. David Osler, *Chinese taken off "rustbucket": Canada*, LLOYD'S LIST, September 2, 1999, available on Westlaw (1999 WL 21568339).

49. 18 U.S.C. § 77 (1995); 18 U.S.C.A. § 77 (1984) (historical and revision notes). The note to Chapter 81 states:

In the light of far-reaching developments in the field of international law and foreign relations, the law of piracy is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion It is recommended . . . that at some opportune time in the near future, the subject of piracy be entirely reconsidered and the law bearing on it modified and restated in accordance with the needs of the times.

50. See "Yo Heave Ho!": Updating America's Piracy Laws, 21 CAL. W. INT'L L. J. 151-79 (1990-91).

A. § 1581. *Peonage; Obstructing Enforcement*⁵¹

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interfere with or prevent the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).⁵²

In addition to problems of coverage, this section suffers from poor drafting and verbosity. As currently drafted, those who return an individual to peonage, however inadvertent or innocent, their action may be, are liable to fine or imprisonment. It would serve further to require a *mens rea*. Similarly, expansion to include slavery and indentured servitude would provide more comprehensive coverage of the problem. A more succinct reading of § 1581(a), might be: Whoever entices, persuades or induces, kidnaps or carries away, sells, receives, holds or detains, arrests, transfers, delivers, or transports any person with the intent of placing him in, keeping, or returning him to a condition of slavery, peonage, or indentured servitude shall be fined.

B. § 1582. *Vessels for Slave Trade*⁵³

As drafted, the section suffers from three major flaws—the individuals covered, the required geographical nexus for their crimes, and the limitation to maritime situations. It would appear a better strategy to concentrate on the *mens rea* of the persons involved rather than their particular title or designation, and to expand geographical coverage to allow for a more universal jurisdiction. As has been argued in the case of piracy, establishment of an expansive jurisdiction does not require the prosecution of the crime in all cases; it is better that jurisdictional overlapping occur, rather than that some criminal conduct be

51. 18 U.S.C. § 1581 (1995) (peonage; obstructing enforcement).

52. 18 U.S.C. § 1581(a) (1999); 18 U.S.C.A. § 1581(a) (1999); 18 U.S.C. § 1581(b) (1995); 18 U.S.C.A. § 1581 (b) (1984).

53. 18 U.S.C. § 1582 (1995); 18 U.S.C.A. § 1582 (1999) (Vessels for slave trade).

Whoever, whether as master, factor, or owner, builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, in any port or place within the United States, or causes such vessel to sail from any such port or place, for the purpose of procuring any person from any foreign kingdom or country to be transported and held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined under this title or imprisoned not more than seven years, or both.

allowed to “fall between the cracks.”⁵⁴ Similarly, an expansion to include potential aerial transport would appear to be in order. A redraft of this section could read:

Whoever builds, fits out, equips, loads or otherwise prepares, sends away, or insures a vessel, vehicle or aircraft with knowledge that it is to be used for the transportation, sale, or disposal of slaves, peons, or indentured servants, shall be fined under this title or imprisoned not more than seven years, or both.

*C. § 1583. Enticement into Slavery*⁵⁵

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held, shall be fined under this title or imprisoned not more than 10 years, or both.⁵⁶

Section 1583 has certain problems of coverage. While its first paragraph speaks of slavery or indentured servitude, only the former is referred to in the subsequent “subsection.” Enticement into involuntary servitude is thus not a punishable crime! Neither paragraph covers the subject of peonage. A more expansive statement might read: (a) Whoever kidnaps or carries a person away with the intent that he be made a slave, peon, or involuntary servant; or (b) Whoever entices, persuades, or induces a person to board a vehicle, vessel or aircraft or to travel to any location with the intent that the person be made a slave, peon, or involuntary servant shall be fined under this title or imprisoned not more than 10 years, or both.

*D. § 1584. Sale into Involuntary Servitude*⁵⁷

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or

54. See Samuel Pyeatt Menefee, ‘Boxing the Compass’: A Review of Contemporary Laws of Piracy and Their Legal Framework (December 5, 1996) (speech at semi-annual MARLO [Maritime Liaison Office] Shipping Conference, Dubai, U.A.E.).

55. 18 U.S.C. § 1583 (1999) (enticement into slavery).

56. 18 U.S.C. § 1583 (1995, 1999); 18 U.S.C.A. § 1583 (1999).

57. 18 U.S.C. § 1584 (1999) (sale into involuntary servitude).

brings within the United States any person so held, shall be fined under this title or imprisoned not more than 10 years, or both.⁵⁸

As currently drafted, this only covers the condition of involuntary servitude. A redraft of the section could combine it with § 1581.⁵⁹

E. § 1585. Seizure, Detention, Transportation or Sale of Slaves⁶⁰

This section only applies to citizens or residents of the United States, leaving other foreigners free to engage in slavery activities. Expansion to include forms of land and air transportation would appear to be in order. Again, an amended § 1581 could include the major points made under this section.⁶¹

F. § 1586. Service on Vessels in Slave Trade⁶²

Whoever, being a citizen or resident of the United States, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined under this title or imprisoned not more than two years or both.⁶³

Two problems similar to those found with previous situations appear in this section, the class of those subject to the law, and the absence of any requirement for intent. There seems to be no good reason to confine the statute's ambit to United States citizens or residents, and equally, no need to make criminal the activity of voluntarily serving on board a slaver if the crewman lacks the necessary *mens rea*. Particularly with the advent of hidden compartments, it is not inconceivable that some members of the crew might not be in on a smuggling racket, and it thus seems unfair to make their mere presence on board criminal. Again, the current statute seems to be adequately covered by a revised version of § 1581.⁶⁴

G. § 1587. Possession of Slaves Aboard Vessel

Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the

58. 18 U.S.C. § 1584 (1999); 18 U.S.C.A. § 1584 (1999).

59. *Supra* note 51; *see also supra* text accompanying note 51.

60. *Supra* note 1; *see also supra* text accompanying note 1.

61. *Supra* note 51; *see also supra* text accompanying note 51.

62. 8 U.S.C. § 1586 (1995) (service on vessels in slave trade).

63. 8 U.S.C. § 1586 (1995); 18 U.S.C.A. § 1586 (1999).

64. *Supra* note 51; *see also supra* text accompanying note 51.

jurisdiction of the United States, or hovering off the coast thereof, and having on board any person for the purpose of selling such person as a slave, or with intent to land such person for such purpose, shall be fined under this title or imprisoned not more than four years, or both.⁶⁵

As it now exists, this statute exclusively relates to the individual in charge of a vessel. Additionally, it is not clear whether any place outside American jurisdiction is included in the statute's ambit, nor are peonage or involuntary servitude considered within the context of the law. A revised § 1581 would appear to cover these matters adequately.

*H. § 1588. Transportation of Slaves from United States*⁶⁶

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined under this title or imprisoned not more than 10 years, or both.⁶⁷

While this might initially seem to represent the flip side of § 1585, dealing with the seizure, detention, transport, or sale of slaves from foreign shores, it arguably does not cover the transport of slaves between points in the United States. The key question here is whether "any such place" means any place besides the point of transshipment, or whether it refers to a place other than "any place within the United States." Additionally, unlike § 1585, § 1588 makes owners liable for punishment.⁶⁸ This section would again be subsumed under a revised § 1581.

IV. "BROKEN FETTERS": FIGHTING THE 21ST CENTURY SLAVE TRADE

This study has traced the slave trade through some of its 20th century permutations. It has been shown that vestiges of the "classic" slave trade remain in the Red Sea and Persian Gulf area, but that the situation has changed with the introduction of slave trade analogues to American waters, such as the illegal importation of Chinese immigrants. The greatest threat we face in the

65. 18 U.S.C. § 1587 (1995); 18 U.S.C.A. § 1587 (1999).

66. 18 U.S.C. § 1588 (1999) (transportation of slaves from United States).

67. 18 U.S.C. § 1588 (1999); 18 U.S.C.A. § 1588 (1999).

68. Although, arguably, § 1585 owners are covered under § 1582.

21st century, lies in the landward extension of the slave-like relations between immigrants and “snakeheads.” Much as is the case with marine piracy, changed conditions call for changed laws. A revised chapter 77 would consist of four articles, a revised and much expanded § 1581, subsuming many of the previous articles, revised versions of §§ 1582 and 1583, and a new article making attempts to engage in the forbidden activities and accessories before and after the fact, liable to some punishment. Expansion to include peonage and involuntary servitude would obviate many of the definitional problems found in the current statutes and would more closely track the targeted behavior as it is now practiced. Such a revision of 18 U.S.C. § 77 would not only clarify the meaning of the statutes, but would make law dealing with the maritime slave trade more directly responsive to the events occurring on today’s oceans.