Of White Slaves and Domestic Hostages

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The system of subjection to a man has become common.¹

During the twentieth century, Congress has promulgated two significant pieces of legislation whose purpose is to punish men who commit crimes against women. The first of these laws is the Mann Act,² which was debated and enacted in the opening decade of the century, while the second law, the Violence Against Women Act of 1994,³ was adopted as the century dwindled to a close. If one, curious to understand the meaning of these laws, were to limit her scrutiny to their texts, she would form the impression that the legislators aimed to discourage entirely different kinds of crimes against women, and, indeed, the statutes do forbid distinct activities. As enacted in 1910, the Mann Act is fairly narrow in scope, promising to punish those who transport in interstate commerce “any woman or girl for the purpose of prostitution.”⁴ By contrast, the Violence

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4. Of course, the Mann Act originally prohibited more than commercial traffic in women. Until 1986, the statute also criminalized the transportation in commerce of women and girls for the purpose of “debauchery” and, indeed, for “any other immoral purpose.” 18 U.S.C. § 2422 (1984) (amended 1986 & 1988). In Caminetti v. United States, 242 U.S. 470 (1917), the Supreme Court construed the latter phrase as authorizing the prosecution of men who traveled across state lines for the purpose of engaging in consensual extra-marital sex. As the Court put it, the Mann Act did not merely forbid “transportation . . . for the purpose of furnishing women for prostitution for hire,” but also proscribed transportation “for an immoral purpose, to wit, becoming a concubine or mistress.” Id. at 486. However, the Court acknowledged that the legislative history of the Mann Act focused exclusively on the
Against Women Act aims to deter a range of violent crimes perpetrated by men against women, including domestic violence, rape, and stalking. Thus, the Mann Act’s primary target is the sale of women’s sexual services, while the Violence Against Women Act includes an array of provisions that focus broadly on strategies for preventing inter-gender violence in its numerous manifestations. Based on a rough (or, for that matter, careful) comparison of these laws, we might be inclined to agree with Senator Biden, the principal sponsor of the Violence Against Women Act, when he implied that the Act targets offenses never before the subject of federal legislation; as Biden proclaimed, “nothing like [the Violence Against Women Act] has ever been attempted before; nothing like this has ever been introduced before.”

When we turn our attention from the statutory texts to the legislative debates from which those texts emerged, however, we may begin to speculate that these laws are not concerned with distinct misconduct, but, rather, with the same fundamental problem in slightly different guises. These speculations arise when we notice that the legislative reports in each era invoke metaphors of captivity to describe the plight of the female subjects whom Congress was determined to protect. That is, the proponents of the Mann Act insisted that the kind of prostitution covered by

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6. See Senate Immigration Comm., White-Slave Traffic, S. Rep. No. 886, 61st Cong., 2d Sess. 11 (1910) [hereinafter White-Slave Traffic] (“The term ‘white slave’ includes only those women and girls who are literally slaves—those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude.”).
the new law was that in which women were "enslaved" by procurers and pimps. In the words of a report on the "white-slave traffic" authored by the Senate Immigration Committee, "these women are practically slaves in the true sense of the word." Similarly, supporters of the Violence Against Women Act represented battered wives, not merely as women who are physically abused by their mates, but as the "prisoners" or "hostages" of those men. According to expert witnesses who testified in support of that Act, "many victims ... are really prisoners in their own home[s]," and women who had survived domestic abuse advised the legislators that they had been held "hostage" by the men who had beaten them. If these metaphors are to be believed, and their insistent repetition invites us to consider them carefully, the criminal penalties embodied in both the Mann Act and the Violence Against Women Act are designed to discourage men from holding women in conditions of captivity. For federal lawmakers in both eras, women's emancipation from such captivity appeared to require, at least in some cases, that men be incarcerated.

As I will describe in more detail below, the similarity between the legislative representations of the prostitute as "slave," on the one hand, and the battered wife as "prisoner" or "hostage," on the other, is more than metaphor-deep.

7. Id.
8. Id.
9. Women and Violence, supra note 5, at 110 (statement of Roni Young, Director, Domestic Violence Unit, Office of the State's Attorney for Baltimore City); see also id. at 109. Earlier in her testimony, this witness "characterize[d] [battered women] as prisoners of war. They are so physically and psychologically scarred, they are not going to be able to come up and testify at a hearing like this." Id. at 87. Supporters of the Mann Act also referred to prostitutes as "prisoners" of their pimps. See WHITE-SLAVE TRAFFIC, supra note 6, at 12 ("The facts are that in order to insure her continuance in the degraded life to which she has unwillingly been forced to submit, the procurer has resort to physical violence and the maintenance of a system of surveillance which makes her, to all intents and purposes, a prisoner.")
Indeed, I must immediately acknowledge that, although I refer to the terms "slave," "prisoner," and "hostage" as metaphors, the sponsors of these terms seemed to put them forward as literal, rather than figurative, representations of the experiences of the women to whom they refer. Thus, legislators in each era supported the analogy between woman and captive with detailed descriptions of the physical, psychological, and social shackles that bind prostitute to pimp and battered woman to abusive spouse. While these descriptions are noteworthy in numerous respects, this paper undertakes only a preliminary examination of the rhetoric they employ, revealing a remarkable coincidence in the experiences attributed to the prostitute in one era and to the abused wife in the next. I must pause here to emphasize that the captivity rhetoric is the focus of this paper and that the paper does not purport to, indeed, cannot, comment directly on the actual experiences of these female subjects. I insist on the limited nature of my inquiry for two reasons. First, commentators from a variety of disciplines have noticed that, as a general matter, the relationship between official rhetoric, such as that employed in these legislative histories and the statutes to which they gave rise, and the underlying social practices represented therein is highly complicated and, usually, indirect. Probably no less than other forms of institutionalized knowledge, legislative rhetoric provides at best a partial window into social relations and human experiences. Therefore, before I (or any other author) could claim to


12. As Lawrence Stone reminds us, "Prescriptive texts . . . which deal with ideal morality and behavior, such as political speeches and pamphlets, works of political economy, and the sermons of prominent theologians, are unreliable guides to actual behavior. The first drawback is that it is hard to tell whether they are widely read and admired, or largely ignored . . . . Second, there is always a very wide gap between theory and practice, between uplifting moral sentiments and crass day-to-day behavior." LAWRENCE STONE, ROAD TO DIVORCE: ENGLAND 1530-1987 24 (1990).
offer an accurate account of prostitution at the turn of the last century, or of violent marriage today, it would be necessary to undertake a scrupulous historical investigation, which this paper makes no pretense of doing. Second, there is reason to suggest that one should approach this particular rhetoric with more than our usual sense of skepticism. Recently, historians of the Mann Act have argued that the “white slavery” metaphor and its associated factual claims were, as an empirical matter wildly inaccurate. For example, David Langum characterizes the turn-of-the-century crusade against prostitution as a collective “hysteria” in which religious leaders, feminists, legislators, and other reformers participated.\textsuperscript{13} Langum acknowledges that there is some disagreement about the scope of prostitution and the experiences of prostitutes in the early 1900s, but he argues that there was in fact “very little” forced prostitution “at the time of the white slave hysteria.”\textsuperscript{14} Likewise, although I have no reason to question, nor any desire to denigrate, claims made today concerning the incidence and severity of violent crimes against women, it may be the case that, when future historians examine our preoccupation with such crimes, they will approach with caution and, perhaps, modify empirical assertions made by our legislators that characterize, for example, rape as a “raging” and “escalating epidemic” that threatens to “brutally touch the lives of hundreds of thousands more mothers, wives, sisters, daughters . . . and their families.”\textsuperscript{15}

With this caveat in mind (not aside), I now will insist that it is precisely this asserted discrepancy between rhetoric and reality in the case of the Mann Act that makes the present topic such a fruitful one for feminist inquiry. The

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\item \textsuperscript{13} \textit{See} David J. Langum, \textit{Crossing Over The Line: Legislating Morality And The Mann Act} 15-42 (1995) (providing a concise and useful account of the crusade against prostitution leading up to the enactment of the Mann Act).
\item \textsuperscript{14} \textit{See id.} at 35.
\end{itemize}
suggestion that the rhetoric may not provide a faithful empirical account requires us to investigate the alternative, presumably normative, functions the rhetoric may serve. If it was not true that “panderers and procurers [were] compelling thousands of women and girls... to enter and continue in a life of prostitution,” why did legislators claim they were? Or, to be more precise, how did this official way of talking about women condition their experiences and their social relationships with men? This question is especially acute for feminists today when we remark that the sponsors of the Violence Against Women Act, at the instigation of feminist organizations, used rhetoric that is, in key respects, identical to that used by supporters of the Mann Act. Separated by nearly a century, and depicting subjects whose legal and moral status ostensibly is entirely distinct, the portraits of prostitute and wife nonetheless correspond so neatly that I shall assert (pleading guilty only to slight hyperbole) that one could be substituted for the other, with little fear of detection. Thus, a long view of federal criminal legislation concerning women appears to contradict Senator Biden’s confident assertions about the unprecedented character of his initiative. At least the representation of the female subject as captive endorsed by Biden and his associates is exceedingly difficult, perhaps impossible, to distinguish from that put forward by Representative Mann and his colleagues nearly a century earlier.

However, the long view also supports an analogy that is less tired, perhaps even novel, at least within legislative circles. That is, since the marital relationship at the end of the century is represented as a form of bondage potentially equivalent to that in which pimp was said to hold prostitute at the century’s inception, the long view instructs us to draw an analogy between prostitute and wife, or, less polemically, between prostitute and battered wife. As I will elaborate below, the force of this analogy resides primarily

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in the questions it raises about the moral and political status of marriage, though it also invites careful scrutiny of the value of prostitution. Of course, legislators in each era would disavow my interpretation of their analogy, though it emerges, virtually without teasing, from histories they wrote and which, like it or not, demands a careful rethinking of the potential liberatory function of their criminal laws. From what lives—and, more specifically, from what relationships with men—did the legislators imagine they were liberating women? Perhaps we also should ask, more urgently, to what lives—and to what relationships with men—did they imagine such liberation may deliver us? For the sponsors of the Mann Act, the official answer to these questions appears to have been unproblematic: in 1910, the orthodox alternative to prostitution was marriage. Representative Mann and his colleagues identified this alternative explicitly. By protecting women and girls from the snares set by pimps and procurers, the Mann Act was intended to secure for women a "fair chance" to become "good wives and mothers and useful citizens." 17 Moreover, one suspects that the legislation was offered for a related, though unexpressed, salvific purpose. Presumably, the promoters of the Mann Act were inspired not only to save women for marriage, but to rescue marriage for women and, thereby, also for men. Surely, the passionate outpouring of concern over the "girl problem," 18 which was ratified

17. See WHITE-SLAVE TRAFFIC, supra note 6, at 11.
18. I borrow this phrase from CAROLYN STRANGE, TORONTO'S GIRL PROBLEM: THE PERILS AND PLEASURES OF THE CITY, 1880-1930 (1995), to describe the public's anxiety, during the period leading up to the Mann Act and beyond, over the moral perils that were said to await single girls who left their family homes to find work in urban settings. Representative Russell of Texas offered this description of the girl problem during House debate over the Mann bill:

Inexperienced country girls, lured to the cities by promises of good positions; heedless and impulsive girls, trapped into run-away fake marriages; trustful city girls, who visit ice-cream parlors and unsuspectingly eat or drink that which has been "fixed" for their ruin; foreign girls, who land in this country and find themselves among the ravening wolves that are ever on the prowl; these are typical
in the provisions of the Mann Act, included an apprehension that the institution of marriage was imperilled by the social and financial temptations luring those young women to go astray. For the sponsors of the Violence Against Women Act, by contrast, resolution of the latter-day "girl problem" appears to pose a substantial puzzle, even at the level of orthodoxy. How are we to reconcile the emancipatory conceptualization of marriage fostered by the Mann Act with the prison-house of abuse delineated in the history of the Violence Against Women Act? Has the institution deteriorated so radically in the last eighty years, or are we only now detecting the irony latent in the original conceptualization? For women to have been delivered from the abusive pimp to the abusive husband, from sidewalk exploitation to connubial subjugation, presents a dilemma for those lawmakers today who seem imprisoned in their description of marriage by the same rhetoric their antecedents used to vilify prostitution.

I. THE SUBSTANCE OF THE CONCEIT

*Please understand that the questions that I ask I do more as a devil's advocate than anything else, because I think we need to understand the thinking of people like yourself.*

The analogy between prostitute or wife, on the one hand, and captive, on the other, is a vivid conceit about women's potential loss of freedom when they enter into certain relationships with men. As I mentioned earlier, the legislators employed different metaphors to describe women's subjugated status in these relationships: the pros-

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victims of the white slaver. Once decoyed into the house of prostitution, there is no escape.


stitute was referred to as a “white slave,” and the battered woman was designated “prisoner” or “hostage.” While a careful historicization would be necessary to venture a precise definition of the phrase “white slave” at the time it was in circulation, it suffices here to remark that the metaphors do not now possess identical meanings. A “slave” is a chattel, a thing that literally is owned by a human master. Like other forms of personal property, the slave lacks any authority over her present or future uses; her life options are determined, not by her own exercise of agency, but by the will of her master. Indeed, a slave who makes choices of her own presumably runs the risk of being discarded, if not destroyed, by her master because she thereby reveals that she possesses human qualities that things properly lack. By the time the Mann Act was under consideration, the institution of slavery had been outlawed de jure and, one hopes, thoroughly discredited in the mind of the populace. (Of course, the overt racism embodied in the term “white slavery,” a form of bondage denounced by Representative Mann as “much more horrible than any black-slave traffic ever was in the history of the world,” 20 testifies to the public’s ongoing ambivalence about the moral status of “black slavery.”) When we compare the “slavery” and “prison” metaphors, some obvious differences in meaning appear. Unlike slavery, the prison is a lawful institution, and its inmates ostensibly are not things, but persons who exercised their agency in favor of criminal misconduct. Thus, at least in the abstract, the designation “prisoner” is less degrading than the label “slave;” in fact, for some criminal law scholars, imprisonment for misconduct is an affirmation of the community’s respect for the offender’s human potential. 21 Of course, such claims about the lawful and

20. 45 Cong. Rec. H548 (daily ed. Jan. 12, 1910) (statement of Rep. Mann). Earlier in this debate, Mann likewise fulminated, “It is indeed appalling to know that, in this day of enlightenment, we have had for several years a species of slavery a thousand times worse and more degrading in its consequences and effects upon humanity than any species of human slavery that ever existed in this country.” Id. at H547.

21. See, e.g., George P. Fletcher, Rethinking Criminal Law 806 (1978)
respectful character of imprisonment apply only to that punishment which is officially imposed: private imprisonment—holding another person “hostage,” in the words of the other metaphor used to identify the position of battered wives—is no more legal than is slavery. Moreover, particularly when it is unofficial, imprisonment entails a loss of liberty that is, in some significant respects, not dissimilar to that which defines the status of the slave. Certainly, the hostage’s (or, for that matter, prisoner’s) life options are drastically curtailed; she enjoys no freedom of movement and little (if any) privacy; she has no power to choose her place of residence, her activities (productive or otherwise), or her companions. As a practical matter, she too must obey virtually any commands uttered by he who confines her.

Therefore, although the terms “slavery” and “imprisonment” are not identical, they are used in these legislative texts to signify that prostitutes and battered wives are unlawfully held captive by individual men, and they describe conditions of confinement that are (more than) roughly equivalent. Hence the analogy between prostitution and marriage: while conventional wisdom insists that these institutions possess entirely distinct material and moral content, the legislative captivity rhetoric instructs that, in this fundamental respect, they may be interchangeable. Certainly, in everyday discourse, the terms “prostitution” and “marriage” conjure up distinct occupations in which women perform completely different kinds of services for men, and these different services are subject to completely different moral interpretations within the community. Moreover, we must imagine that the life experience of the

woman who sells her sexual services promiscuously is not comparable to that of the woman who undertakes the domestic and sexual activities associated with heterosexual marriage. However, if women enter into or remain within these ostensibly distinct occupations only because they are being forced to do so by violent men, as the captivity rhetoric asserts, the disparity between their positions becomes much less clear. For example, consider the effect of the captivity rhetoric on our evaluation of the sexual activities performed by prostitute and wife. According to the slavery metaphor, the prostitute is forced to have sex with any man who is willing to pay what her master, the pimp, demands. By contrast, the battered wife is expected to have sex only with her husband, but the prisoner metaphor represents the marital intercourse also as coerced, forcible, unwanted. The captivity rhetoric represents the intercourse in both contexts as being forced or involuntary, or, to put it bluntly, the wife, as well as her less reputable counterpart, is being raped, albeit by only one man.22

As a representation of the specific harms that pimp and violent husband impose on women, both terms define one of the most serious injuries a human being may endure. By his treatment of her, the man demotes the woman from the status of person to that of thing because (to borrow a phrase from Stephen Morse) he deprives her "of that most human capacity, the power to choose."23 Viewed in this light, the analogy between woman and captive represents a claim not only about the severity of the harms these offenses impose on women, but also a claim about who is responsible for those harms. By testifying to the

22. Not surprisingly, the legislative history of the Violence Against Women Act contains a number of statements in which battered wives characterize intercourse with their husbands as rape. See Violence Against Women: Fighting the Fear, Hearing Before the Senate Comm. on the Judiciary, 103d Cong., 1st Sess. 5-6 (1993) (statement of Donna Baietti, Director, Battered Women’s Project, Aroostook, Maine) [hereinafter Fighting the Fear]; id. at 14 (statement of Lisa, a survivor of a violent marriage).

woman’s total loss of agency within the relationship, the analogy has the effect of allocating to the man, be he pimp or violent husband, sole responsibility for any injuries these relationships inflict. A careful reading of the legislative history suggests that the metaphors “slave,” “prisoner,” and “hostage” often were used to fulfill this allocative function. That is, both sets of legislative reports intimate that some of the most significant work the metaphors performed was to establish that “the persons chiefly responsible for [these crimes] are not the women themselves, but the [men], who live by their exploitation.”

The question of whether women should be blamed for participating in prostitution, on the one hand, or a violent marriage, on the other, emerged in different forms throughout both sets of legislative debates, but I will focus briefly here on only one version of the question. The version I emphasize is interesting because it appears in identical terms in both legislative histories and because it purports to instantiate the philosophical debate over human responsibility for misconduct into lived experience. In both eras, we find lawmakers puzzling over the question, “Why

24. U.S. IMMIGRATION COMM’N, PARTIAL REPORT ON THE IMPORTATION AND HARBORING OF WOMEN FOR IMMORAL PURPOSES, S. DOC. NO. 186, 61st Cong., 2d Sess. 7 (1909) [hereinafter PARTIAL REPORT ON HARBORING WOMEN]. One vivid example of the metaphor’s allocative function in the context of the Mann Act is provided by an exchange between Representative William Richardson of Alabama and Representative Thetus Sims of Tennessee. One of the few dissenters from the bill, Richardson remarked, during a debate on the House floor, that the “bill does not punish the alien woman, or any other woman, for being transported from one state to another.” When Sims inquired whether Richardson believed the woman should be punished, Richardson identified the illogic of punishing the man, but not the woman: “Yet you punish the man who aids the woman. You punish him for aiding a crime that you do not punish her for committing.” Sims replied by invoking a version of the “prison” metaphor, “Which is the more evil, the deluded, deceived, imprisoned soul that is being carried from one State to another by that scoundrel or the scoundrel himself? The poor, deluded female perhaps would not be able to make the trip were it not for the demon, in human form, who is furnishing the money to carry her there, to sell her soul and body into hell, in order that he may have a few more dollars to put into his unholy pocket.” 45 CONG. REC. H812 (Jan. 19, 1910) (statements of Rep. Richardson and Rep. Sims).
doesn't she leave?" The question affirms that the woman is an autonomous actor; it implies that the prostitute or wife has a variety of life options, as well as the capacity to choose the option she prefers. At the same time, the question identifies the choice that the questioner believes that the woman should be making, and it suggests that a woman who rejects such choice is blameworthy. The question also is noteworthy for the way in which it characterizes the woman's options as consisting of the performance or refusal of a physical act ("leaving" or "staying") and the implications of such characterization for the definitions of "prostitute" and "wife." By asking why the woman does not "leave," the question defines the subject positions of prostitute and wife not as social roles in which culture holds women captive, but as physical places, presumably the brothel or the marital home, where women should be free to leave or stay, as they choose. The question implies that the women have the ability to emancipate themselves (if only they would make the responsible choice and do so) by taking the simple, physical step of moving from their current location inside those places to a different location outside.

The question ("Why doesn't she leave?") truly was a permanent fixture of the hearings on the Violence Against Women Act, as legislators repeatedly posed the question to expert and lay witnesses alike.\textsuperscript{25} Indeed, the significance of the inquiry was so well understood that some witnesses ventured an answer even when no one asked them the question.\textsuperscript{26} For me, the most poignant exchange of this

\textsuperscript{25} As Senator Kennedy put it in an exchange with Sarah Buel, who survived a violent marriage and went on to become a lawyer specializing in the prosecution of domestic violence cases, "I suppose the first question is how you were able to extricate yourself successfully from the marriage . . . ." \textit{Hearing on Domestic Violence Before the Senate Comm. on the Judiciary, 103d Cong., 1st Sess. 18} (1993).

\textsuperscript{26} For example, at the conclusion of her formal statement before the Senate Committee on the Judiciary, Angela Browne remarked, "It is not part of my prepared comments, but at some point in discussion I would like to speak to the issue of leaving." Senator Biden interjected, "Beg pardon?" Browne re-
kind occurred between a woman who had survived a violent marriage and George Sangmeister, representative from Illinois and member of the House Subcommittee on Crime and Criminal Justice. Testifying anonymously to prevent reprisals by her former husband, Jane Doe offered the subcommittee a heart-rending account of the pain and terror she and her children endured during and after the marriage. In her testimony, Doe described a number of conditions that made her feel "trapped" in the marriage, including her feelings of loyalty to her husband and his family, her fear for her own and (especially) her babies' safety because her husband's abuse escalated whenever she attempted to leave him, the social isolation imposed on her by her husband, the adverse influence her husband's behavior had on her employment opportunities, his ability to persuade some police officers that her behavior was the source of their marital problems, the seeming indifference of other officers to the abuse she was enduring, and her own feelings of guilt over and helplessness to avoid the violence that consumed her life.\(^27\) The denouement of Doe's factual narrative was her description of her decision to stage a suicide attempt in order to force her husband to take her to a hospital, where she might (and, ultimately, did) find someone who would take her predicament seriously. Then, although her testimony had identified the barriers impeding her earlier escape, Doe conceded that the committee members nonetheless might be inclined to view her as a willing participant in her husband's violence. Like other witnesses, she anticipated the inculpatory query by asking herself, "The first question is: Why did I stay?\(^28\) She re-

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27. Violence Against Women, supra note 10, at 55-58 (statement of Angela Browne, Professor of Psychiatry, University of Massachusetts) [hereinafter Women and Violence, Part 2].


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sponded by alluding again to the obstacles blocking her exit and by affirming "I stayed because I did not know that I had a choice." In conclusion, Doe explicitly invoked the "hostage" metaphor, as she urged the lawmakers "to create a Federal enforcement mechanism so that women aren’t held hostage by their husbands."  

Representative Sangmeister devoted his allotted time at the hearing to probing Jane Doe’s explanation for why she had remained married to a man who beat her. Sangmeister assured Doe that he was speaking "as a devil's advocate," but he prefaced his questions with a personal hypothetical that belied the notion that he was speaking on behalf of an authority baser than himself. Thus, he advised Doe, "If I were to leave here today and go home and hit my wife, in any manner, after 40 years of marriage, it's over. I mean, she's gone. There will be no explanations and she doesn't, in my opinion, have to give any." Although the condemnation of Doe implied by this hypothetical was clear enough—if Ms. Sangmeister would have left the Representative after only one blow, without pausing for even the briefest of conversations, surely Ms. Doe was blameworthy for staying with a man who beat her repeatedly and abused their children as well—Sangmeister was not content to leave his point at the level of implication. Rather, he informed Doe directly that he found her explanation for why she had remained in the marriage (which he paraphrased

29. Id.
30. Id. at 59.
31. Id. at 67.
32. Id.
33. Of course, since the story was explicitly offered as a hypothetical, it also served to reassure listeners that Sangmeister was not himself one of the abusive husbands his subcommittee was proposing to punish. Other legislators also took pains to distinguish themselves from the battering husbands they were hearing so much about. For example, during one hearing, Senator Biden decided "to be anecdotal for a moment" and explained that "[i]n my house, being raised with a sister and three brothers, . . . it was a nuclear sanction, if under any circumstances, for any reason, no matter how justified, even self-defense—if you ever touched our sister." Women and Violence, Part 2, supra note 26, at 171.
as "I didn’t have a choice") to be incredible in a number of key respects. In particular, Sangmeister could not understand "why women get paranoid" when they encounter the financial and institutional obstacles, or feel the pull of the affective and social bonds, that Doe claimed made it so hard for her and other wives to leave their mates.  

At least for Sangmeister, therefore, women are in part responsible for the violence their husbands inflict on them if they fail to perform the physical act that he attributed (hypothetically) to his own wife, since he was unpersuaded by Doe’s implication that social barriers were the primary impediments to her escape.

The history of the Mann Act features a similar exchange between a lawmaker and a prostitute who responded to the standard question by exclaiming, "Get out? I can’t."35 One of the most significant documents supporting the Mann Act is a report from the United States Immigration Commission, whose authors affirmed their desire to make an objective assessment of the empirical claims concerning the nature and extent of the "white slave" trade that were circulating in the popular media. As the authors put it, "[s]ince the subject is especially liable to sensational exploitation, it is important that the report be primarily a statement of undeniable facts."36 One section of the report documents the methods of operation of the so-called "disorderly houses," and, here, the report quotes an affidavit from an Assistant United States Attorney who recounts a conversation he had with "a big Irish girl [who] was taken" in a raid on a disorderly house in Chicago. Like Representative Sangmeister after him, this prosecutor was curious to

34. Violence Against Women, supra note 10, at 67. The specific factors characterized by Doe as making it difficult for her to leave her husband that Sangmeister questioned were her desire to live up to her marriage vows and her fear that, if she left, her husband would retain custody of their children. See id. As Sangmeister pointed out, Doe could not claim that she stayed because she could not "get a job." . . . In fact, you’re supporting the family." Id.

35. PARTIAL REPORT ON HARBORING WOMEN, supra note 24, at 25.

36. Id. at 3.
understand why the girl had not elected to escape from this disreputable home, and he too expressed incredulity at the notion that she was constrained to remain there. The prosecutor conceded that (initially, at least) he had believed that this girl possessed the power to emancipate herself by her own acts of physical "opposition." As he put it, "She was old enough, strong enough, and wise enough, it seemed to me, to have overcome almost every kind of opposition, even physical violence. She could have put up a fight which few men, no matter how brutal, would care to meet. I asked her why she did not get out of the house, which was one of the worst in Chicago." Like Jane Doe, the Irish girl responded by referring to some of the conditions encompassed by the "slavery" metaphor, and she emphasized, "We've simply got to stick, and that's all there is to it."

As answers to the question, "why doesn't she leave," the captivity metaphors aim to disabuse official questioners of the notion that women may secure their freedom merely by undertaking easy (or, even, difficult) acts of bodily rebellion. As I will illustrate briefly below, the accounts underlying the metaphors propose a more complex description of women's position than the metaphors do by themselves because they depict economic and social barriers, as well as physical ones, impeding women's escape from violent heterosexual relationships. These accounts are useful to the extent that they begin to illuminate our understanding of the cultural forces that condition women's exercise of agency, an understanding that would seem to be crucial for lawmakers still struggling to understand why many women apparently continue to believe that their marriage "vows . . . mean that . . . whatever your husband would do to you or say to you, that you would have to take it." However, the accounts ultimately will continue to obscure as much as they clarify until they begin to focus not merely

37. Id. at 25.
38. Id.
on the problematic character of female agency, but on that
of male agency as well. That is, in these accounts, men are
represented as having the power to “do or say” to women
whatever they will; in particular, the accounts tend to rep-
resent the women as trapped by affective inclinations and
psychological disabilities that the men inculcate and then
manipulate in order to maintain them in captivity. In turn,
the problem for law always is conceptualized as how to
intervene and protect women from male domination, so
that individual women will begin to understand, as Repre-
sentative Sangmeister would instruct them, that they do
not “have to take it.” Left unexamined in these accounts
are the cultural factors that confer on men this power to
regulate women’s lives, as well as presumably their own,
and thus the accounts tend to leave the impression that
male agency is a natural, rather than a social, acquisition.
In short, the rhetoric remains androcentric at its core since
agency is represented as a desirable, even essential, human
attribute that men naturally possess, but that women at-
tain only with considerable social assistance.

II. THE CONDITIONS THAT CONFINE HER

[There are many things that serve to make her condition
helpless and hopeless.]

As I acknowledged in the preceding section, the terms
“slave,” “prisoner,” and “hostage” are not identical in mean-
ing, though all describe a subject whose future options are
determined, possibly exclusively, by another’s will. When
we move from the abstract terms themselves, however, to
the specific experiential accounts that the legislators and
witnesses offered to justify them, the distinction between
the metaphors begins to fade. In this section, I will outline
the strategies of confinement through which the pimp was

said to enslave his prostitute and the violent husband to imprison his wife. The section will proceed by offering a brief description of the coercive tactics attributed to pimps by Representative Mann and his followers, and remarking the similarity between those tactics and the husband’s methods as represented in contemporary accounts of the phenomenon we denominate “domestic violence.” I proceed in this way primarily in the interest of brevity: most (if not all) readers will be familiar with the representations of domestic violence contained in the cases concerning battered woman syndrome, and those same representations are incorporated in the legislative history of the Violence Against Women Act, for example, in the vivid account of the dynamics of a violent marriage provided by Jane Doe. Therefore, readers surely would prefer that the more detailed account (since such an account there must be) describe an earlier presentation of the phenomenon, with themselves detecting in the description of the conditions confining “white slaves” the same symptoms we attribute today to the subjects known as battered women.

At the outset of this description, I offer one general observation. Not surprisingly, the sponsors of the Mann Act drew a distinction in kind between the sexually experienced woman who “willingly” sold her sexual services and the innocent girl whose corruption was accomplished through male deception and violence. Indeed, Representative Mann and his colleagues made this distinction frequently, emphasizing that their legislation was motivated primarily to rescue “female purity” from “the whoremongers and the pimps and the procurers and the keepers of the bawdy houses.” Significantly, however, within the Immigration Commission’s report, the slavery metaphor was applied to both kinds of women, as the authors consciously sought to persuade readers that this was a distinction largely with-

41. For my description and critique of those representations, see Anne M. Coughlin, Excusing Women, 82 CAL. L. REV. 1, 48-87 (1994).
out a difference. Thus, the authors asserted that “the hardened prostitute as well as the innocent maiden” ultimately fell victim to the same “brutal system” of male control and exploitation; even the women who came “willingly to lead a vicious life” found themselves powerless to evade the “men whose business it is to protect them, direct them, and control them.” When we turn to the history of the Violence Against Women Act, we find similar representations of all women as susceptible to male domination. There we encounter statements by legislators affirming that “it is very clear that most men in our society feel that they have an absolute right to abuse their . . . wife or girlfriend” because “[e]verything is stacked against the woman, the victim,” and by numerous expert witnesses characterizing domestic violence as a phenomenon that “cuts across all race and class lines.” If these representations are to be believed, the seemingly dramatic changes that have taken place in women’s legal and social status over the course of the past hundred years have done little, if anything, to relieve their vulnerability to male coercion and violence.

A. Love

As I have remarked elsewhere, contemporary experts in domestic violence represent that many battered women find it difficult to leave their violent marriages because

44. Id. at 9.
45. See Fighting The Fear, supra note 22, at 17 (statement of Sen. William S. Cohen).
46. Women and Violence, Part 2, supra note 26, at 124 (statement of Sarah M. Buel, Assistant District Attorney). As another witness explained, "contrary to common misperceptions, domestic violence is not confined to any one socioeconomic, ethnic, religious, racial or age group. Victims come from a wide spectrum of life experiences and backgrounds. Women can be beaten in any neighborhood and in any town. Battered women are factory workers, nurses, lawyers, homemakers, police officers and college students. They are grandmothers and they are teenagers." Id. at 139 (prepared statement of Susan Kelly-Dreiss, Executive Director, Pennsylvania Coalition Against Domestic Violence).
they continue to love their husbands, despite the physical and psychological beatings that the men inflict on them.\textsuperscript{47} For the supporters of the Mann Act, love was the “lure” with which men baited the traps they set to catch innocent girls.\textsuperscript{48} The legislative history emphasizes that procurers and pimps understood that love, and, more precisely, forms of love-making, possessed an instrumental character, particularly when exercised against young, inexperienced women. According to the Immigration Commission, for example, the procurer’s “cunning knowledge of human nature” instructed him that one of the best methods for capturing a girl was by “treat[ing] her kindly . . . . Her confidence and affection won, she is within his power, and is calculatingly led into a life of shame.”\textsuperscript{49} Moreover, the authors implied, love disequipped the woman to take the rational and responsible step of leaving the man because, even after she discovered that what he proposed for her was not marriage, but prostitution, her affections continued to hold her in his sway. Thus, when depicting the bonds through which pimps continued to restrain the girls whom they had seized, the report placed “affection” squarely in the foreground: of the “many things” that made the woman “helpless” to escape her man, the condition enumerated first was “her real affection for him.”\textsuperscript{50} Although the report offers no precise definition of “affection,” it implies that the women experienced feelings of gratitude and loyalty towards men who promised them friendship, romantic or otherwise, which feelings persisted even after the men consigned them to lives of physical and moral degradation. The term “affection” also comprised the attachment that girls were said to form for the men who initiated them into sexual activity; thus, the authors supported their assertion about the con-

\textsuperscript{47} See Coughlin, \textit{supra} note 41, at 60-61.

\textsuperscript{48} See \textit{Partial Report on Harboring Women}, \textit{supra} note 24, at 9 (characterizing “their affections” as one of the primary factors through which “innocent girls” are “lured into the country” as prostitutes).

\textsuperscript{49} \textit{Id.} at 8.

\textsuperscript{50} \textit{Id.} at 22.
tinuing "affection" that bound the girl to her pimp by remarking, parenthetically, "he has often been her first lover."51

B. Financial Control

The pimps also were represented as exercising (almost) complete financial control over their prostitutes. Whether "innocent" or "hardened," the women were snared by promises of work (legitimate and illegitimate, respectively) at wages substantially higher than those they could hope to extract from employers on their own.52 In the view of the authors of the Immigration Commission's report, these promises were worse than simple falsehoods. The women did earn money, some of them reputedly at fabulous rates, but the pimps took "every cent of the hard-earned money"53 as "repayment" for sums advanced to transport, house, clothe, and feed them. For example, the "big Irish girl" who appeared in the Immigration Commission's report cited financial enslavement as the reason why she could not escape the keepers of her disorderly house. In the words attributed to her by the assistant prosecutor, "we are so deeply in debt that there is no hope of ever getting out from under...[W]e seldom get an accounting oftener than once in six months, and...when we do get an accounting it is always to find ourselves deeper in debt than before."54 Of course, the notion that pimps exercised financial power sufficient to hold the women hostage implies that the women possessed no alternative sources of income, and the Immigration Commission's report emphasized that no such alternatives appeared. Although some legitimate, if "menial," opportunities may have existed, the men prevented the women from seeking out even these meager alternatives: when a girl "tries to leave her man and get legitimate

51. Id. at 22.
52. Id. at 14.
53. Id. at 15.
54. Id. at 25.
work, usually he threatens her by saying that he will tell her employer what her life has been—a measure sufficient to cause the loss of her place."55 When we turn to the Violence Against Women Act, we likewise find expert witnesses asserting that violent husbands exercise control over their wives through "economic abuse," such as "[p]reventing her from getting or keeping a job," "[m]aking her ask for money," "[g]iving her an allowance," "[t]aking her money," and "[n]ot letting her know about or have access to family income."56

C. Violence

According to the legislative history of the Mann Act, violence and threats of violence were prominent and highly effective tactics through which pimps maintained and extended their control over women. The Immigration Commission's report implies that "physical cruelty, even to the extent of criminal assaults," was an ordinary incidence of the prostitute's life,57 but most of the discussion of violence focused on the pimp's instrumental "brutality," namely, his use of beatings and threats to discourage the girl from trying to leave him.58 Thus, the report emphasizes that the women "are beaten and threatened, sometimes with murder, if they attempt to escape."59 Regrettably, some pimps did not hesitate to execute those threats since, as the report recounts, "[i]f she betrays him, sometimes he

55. Id. at 22.
56. Violent Crimes Against Women, Hearing on the Problems of Violence Against Women in Utah and Current Remedies Before the Senate Comm. on the Judiciary, 103d Cong., 1st Sess. 67 (1993) (prepared statement of Diane Stuart). Similarly, as one woman who survived an abusive marriage put it, "[M]y skills as a nurse were more antiquated and I did not feel that I could support myself financially, and he reinforced that. He reinforced that I would be penniless." Women And Violence, Part 2, supra note 26, at 105 (statement of Charlotte Fedders).
57. PARTIAL REPORT ON HARBORING WOMEN, supra note 24, at 26.
58. Id. at 22.
59. Id. at 25.
kills her. Such claims appear to be indistinguishable from representations made in the history of the Violence Against Women Act concerning the battering husband's instrumental use of threats and violence. As Jane Doe put it, on one occasion when she tried to leave her husband, he threatened to kill her, claiming "You lied to me when you said our wedding vows and said 'until death do we part.' Well, that's the way it's going to be."  

D. Surveillance and Isolation  

Another tactic through which Jane Doe's husband impeded his wife's freedom to take shelter elsewhere was his surveillance of her activities and friendships. For example, she explained, "I wasn't allowed to have any keys to the car or the house. I was allowed only to go to my job and come home and nowhere else. Every time I went to the bathroom, I had to leave the door open. I had no sense of self, no sense of privacy." An expert witness testifying in support of the Violence Against Women Act described the threat of male violence generally in similar terms, as imprisoning women "in their own homes. They can't even walk the dog at certain hours of the day. They can't walk down to the convenience store." Similarly, the promoters of the Mann Act identified surveillance as a technique pimps found indispensable to the correct regulation of their prostitutes. Although surveillance was especially important during the period in which the pimp was "breaking in" a fresh girl, surveillance continued thereafter to prevent women from developing the friendships and other resources necessary to make their break for freedom. The men confined some women inside the disorderly houses by denying them access to street clothes and money, they carefully

60. Id. at 22.  
61. Violence Against Women, supra note 10, at 58.  
62. Id. at 57.  
63. Women and Violence, supra note 5, at 109.  
64. PARTIAL REPORT ON HARBORING WOMEN, supra note 24, at 22.
monitored the comings and goings of the streetwalkers, and they intercepted and destroyed the women's letters to and from friends and family members.  

E. Official Indifference

One of the central criticisms to emerge from the domestic violence literature is leveled at the indifference of police and other members of the law enforcement establishment towards the women who request prosecution of the men who abuse them. Indeed, the domestic violence literature is crowded with police officers like those from whom Jane Doe unavailingly sought aid. In Doe's case, the most sympathetic officers were utterly misguided about the forms of assistance they should provide, while the worst tacitly approved her husband's violent misbehavior. Although I did not expect to discover similar representations in the legislative history of the Mann Act, the Immigration Commission's report explicitly criticizes law enforcement officials for failing to do more to release the girls from their captivity. In the words of the authors, "[i]n many cases it appears as if the police made little effort to assist the girls; for . . . it is their business to know every prostitute who comes to town, and they doubtless would be called upon if the girl felt that they would be of assistance." Indeed, the police ultimately are represented as complicitous in the pimps' domination of their women. Not only did the women believe

65. Id. at 25.

66. Doe testified that one officer to whom she "tried to reach out . . . took me to his . . . Church where they laid healing hands on me, spoke in tongues, and pulled the evil spirits out of me so my husband wouldn't have to beat me any more. Of course, this approach did not work and my husband insisted we move because I had not kept our personal life personal." Violence Against Women, supra note 10, at 55. Other officers told Doe's husband that "if he didn't leave marks, [Doe] could not press charges . . . . The police officers told me that, no matter what my husband did, the bottom line under Texas law was whatever was mine was his, as long as we were married." Id. at 56.

67. PARTIAL REPORT ON HARBORING WOMEN, supra note 24, at 22.
it was useless to summon police aid, but they also feared that, if they did request help, the police would blame them, rather than the men, for participating in the criminal relationship.

F. Psychological Deficits

According to Jane Doe's story, the "emotional and psychological abuse" imposed by her husband "was worse than [his] physical abuse," so much so that it would "take years" for her "inner scarring" to heal.68 Although she "felt trapped" in the marriage by a variety of external conditions, the "psychological abuse" inculcated in her the belief that her behavior was the cause of "his anger and violent outbursts" and that she should remain in the relationship, "do[ing] anything to make him happy."69 The psychological symptoms that Doe diagnosed in herself are part of the mental health condition known as "battered woman syndrome," which attributes to abused women cognitive and volitional deficits that make it difficult for them to perceive and/or take advantage of available avenues for escaping their violent mates.70 While the supporters of the Mann Act did not use sophisticated psychological terminology, they did describe the mental state of the prostitutes in terms reminiscent of the psychological paralysis and helplessness attributed to battered wives. Thus, for example, the Immigration Commission's report explained that, even in cases where the woman was able "to keep secretly a little money" through which she might effect her escape, "she has often become so nervously weakened, so morally degraded, that she can not look beyond to any better life, and apparently even loses desire for any change."71

68. Violence Against Women, supra note 10, at 56.
69. Id.
70. See Coughlin, supra note 41, at 70-87 (describing and criticizing the psychological underpinnings of the battered woman syndrome).
71. PARTIAL REPORT ON HARBORING WOMEN, supra note 24, at 23; see also id. at 25.
CONCLUSION

For the sponsors of the Mann Act, of course, that “better life” for which the prostitute should have been yearning was marriage. Marriage to a good man was the destination towards which the woman’s efforts to escape, had she the will to undertake them, should have been directed. The irony latent in this turn-of-the-century portrait of legislators—agonizing over ways to deliver women from the cruel grasp of the pimp to the loving embrace of the husband—must have been apparent to some feminists then, since generations of feminist writers had been characterizing marriage as an institution in which women were, practically and legally speaking, enslaved by men.\textsuperscript{72} It would be tempting to think that, by repeating the captivity rhetoric, our generation of legislative reformers also perceived this irony and its pessimistic tale about women’s constricted social position, namely, the lesson that there are no safe places for women to go in a culture that represents marriage and prostitution as only slightly different versions of the same occupation. Indeed, I would be inclined to conclude merely by recommending this ironic insight to both our legislators and the contemporary feminists who are telling narratives of women in captivity, were it not for the fact that the irony is produced by a rhetoric that is fundamentally androcentric. The captivity rhetoric trains us to recognize male domination of women across a spectrum of heterosexual relationships, ranging from prostitution to marriage, and it assists us when we offer to testify that such domination has endured, painfully, at least over the course of the past century. However, the rhetoric is deficient because it provides no way to articulate the indisputable, and not entirely mundane, differences between prostitution and marriage or of remarking the many changes in

\textsuperscript{72} See, \textit{e.g.}, \textsc{Declaration of Sentiments, Seneca Falls Convention} (July 1848), \textit{reprinted in} \textsc{Katharine T. Bartlett, Gender and Law: Theory, Doctrine, Commentary} 73-75 (1993).
women's legal, social, and material status that have occurred in the past hundred years. Precisely because the rhetoric suppresses the existence of these differences and obscures the evolution of women's position, it has the appearance of promoting the subjugation the legislators ostensibly would remedy. What is needed now is a new rhetoric, a fresh way of articulating the social roles that culture has prepared for us in the past, of charting the progress that we have made, and of describing the free spaces (or human agency, if you will) that may remain.