

2011

Note: On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, but Not the Victim—Sweden's Sexköpslagen in America

Heather Monasky

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

Monasky, Heather (2011) "Note: On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, but Not the Victim—Sweden's Sexköpslagen in America," *William Mitchell Law Review*: Vol. 37: Iss. 4, Article 8.

Available at: <http://open.mitchellhamline.edu/wmlr/vol37/iss4/8>

This Note is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

**NOTE: ON COMPREHENSIVE PROSTITUTION
REFORM: CRIMINALIZING THE TRAFFICKER AND THE
TRICK, BUT NOT THE VICTIM—SWEDEN’S
SEKKÖPSLAGEN[†] IN AMERICA**

Heather Monasky[†]

1. This is Swedish for “Sex Purchase Law.” Commentators use this term colloquially to refer to Sweden’s law that criminalizes the purchase of sex. LAG OM FÖRBUD MOT KÖP AV SEXUELLA TJÄNSTER [*Act Prohibiting the Purchase of Sexual Services*] (Svensk författningssamling [SFS] 1998:408) (Swed.) [hereinafter *Act Prohibiting the Purchase of Sexual Services*], available in English at http://www.bayswan.org/swed/swed_law.html (unofficial translation by Prostitutes’ Education Network). While the Act itself is no longer in force, it was replaced by legislation codified in Sweden’s criminal code. *Legislation on the Purchase of Sexual Services*, GOV’T OFFICES SWEDEN, <http://www.sweden.gov.se/sb/d/4096/a/119861> (last visited Mar. 8, 2011); see BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.), <http://www.sweden.gov.se/content/1/c6/15/14/61/e97ee975.pdf> (2005 codification); see *infra* Parts IV, V. Commentators also refer to it as “the Ban.” See, e.g., Statens Offentliga Utredningar [SOU] 2010:49 Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008 [Prohibition of the Purchase of Sexual Services] [government report series] (Swed.), <http://www.sweden.gov.se/content/1/c6/15/14/88/6dfbbdbd.pdf> (English summary) [hereinafter REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES].

[†] J.D., 2011, William Mitchell College of Law. The author will present this paper at the 2011 Interdisciplinary Conference on Human Trafficking at University of Nebraska-Lincoln. The author thanks Angela Bortel for opening my eyes and for her guidance in shaping this paper; Sarah Deer for helping me shoulder the emotional burden of our work, for encouraging me to “just write,” and for all the chocolate; Neal Axton for thorough feedback; and Artur Ogelid, Cecilia Knapp, Ingrid Kabir, Ann Hallner, and Suzanne Thorpe for their help with Swedish materials. She also thanks Kelly Fiege, for getting me started, and Jenna Yauch and Kelly Hudick, for getting me finished. The author thanks Officer Heather Weyker of the Gerald Vick Human Trafficking Task Force for her insight and kindness; Artika Roller, Judge Richard Hopper, and Vednita Carter for their contributions to this article; and Katie Rhoades, for her bravery. Finally, the author thanks the William Mitchell librarians for research assistance and everyone else for whom there is not enough room to thank. Contact the author at hmonasky@gmail.com.

I. INTRODUCTION.....	1992
II. HUMAN RIGHTS VIOLATIONS AGAINST INDIVIDUALS IN PROSTITUTION.....	2003
A. <i>Living or Dying?—“Prostitution is like Suicide”</i>	2003
B. <i>Feminist Analyses of Prostitution: Abolitionism vs. Sex Work</i>	2007
C. <i>Legal Responses to Prostitution</i>	2009
III. THE SWEDISH MODEL: A HISTORICAL PERSPECTIVE	2012
A. <i>Swedes Debate How to Treat Prostitution</i>	2013
B. <i>The Sexköpslagen’s Message: Prostitution Preserves Women’s Inequality and Furthers Sexual Exploitation</i>	2016
IV. HUMAN TRAFFICKING LAWS.....	2018
A. <i>A Brief History of International Anti-Trafficking</i>	2018
B. <i>United States Trafficking Laws</i>	2019
1. <i>Act of March 3, 1875 Used Immigration Powers to Police Morality</i>	2019
2. <i>Mann Act Enforces Racism</i>	2019
3. <i>Trafficking Victims Protection Act Positions Law Enforcement as Sentinels for Prosecuting Traffickers and Awarding Victims Services</i>	2021
a. <i>Trafficking Victims Protection Act of 2000</i>	2021
b. <i>Trafficking Victims Protection Reauthorization Act of 2003</i>	2024
c. <i>Trafficking Victims Protection Reauthorization Act of 2005</i>	2025
d. <i>William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008</i>	2026
e. <i>H.R. 3887</i>	2026
f. <i>Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010</i>	2027
V. THE SWEDISH MODEL TEN YEARS LATER: HOW IS IT WORKING?.....	2028
A. <i>The Commission’s Report</i>	2028
B. <i>Prosecutions of the Ban</i>	2029
C. <i>Criticisms of the Ban</i>	2030
VI. PRESCRIPTION FOR REFORM: CRIMINALIZE THE PURCHASE OF SEX, DECRIMINALIZE THE SALE OF SEX, AND REFORM SOCIAL SERVICES TO PROVIDE INCREASED OUTREACH AND SERVICES TO PEOPLE IN PROSTITUTION	2034
A. <i>The Swedish Model and the United States’ Constitution</i>	2034
B. <i>John Schools</i>	2035

2011]	COMPREHENSIVE PROSTITUTION REFORM	1991
	C. <i>Public Shaming</i>	2037
	D. <i>Help for People in Prostitution</i>	2038
	1. <i>Breaking the Cycle of Distrust</i>	2038
	2. <i>Forcing Help on Victims Avoids the Root of the Problem</i>	2039
VII.	CONCLUSION	2043

“We don’t have a problem with prostitutes . . . We have a problem with men who buy sex.”²

Katie’s family was very close—they did everything together.³ The man of the house took care of everyone, but he had strict rules.⁴ These included not only discipline, but rewards.⁵ If Katie was good and worked hard, he would allow her to drink and smoke weed.⁶ But he didn’t let any of the “wifey”⁷ do hard drugs.⁸ This was because if they did, they wouldn’t be as efficient at their work.⁹ If Katie was always high, she wouldn’t sell as much sex.¹⁰ And that mattered because all her earnings went to her pimp.¹¹

“SAGE [Standing Against Global Exploitation] has rescued individuals who did not know what city they were in or even what cities they had been trafficked through while forced to work in the

2. Roger Boyes, *Sweden-Denmark Link Boosts Red Light Trade*, TIMES (London), June 21, 2008 (quoting Inspector Kajsa Wahlberg of the Swedish police human trafficking unit), available at <http://www.timesonline.co.uk/tol/news/world/europe/article4183265.ece>.

3. E-mail from Katie Rhoades to author 3 (Feb. 24, 2011, 10:57 CST) (on file with author). For more information on Katie Rhoades, see *infra*, note 78.

4. *Id.* at 8, 9.

5. *Id.* at 9, 10.

6. *Id.* at 9.

7. All the girls under Katie’s pimp called each other “wifey.” *Id.* at 3.

8. *Id.* at 9.

9. *Id.*

10. Telephone Interview with Katie Rhoades (Oct. 24, 2010).

11. E-mail from Katie Rhoades, *supra* note 3, at 10. Katie is now in graduate school pursuing social work. Ruben Rosario, *After Prostitution and Addiction, A New Beginning*, PIONEER PRESS (St. Paul), May 6, 2010, at B1; e-mail from Katie Rhoades, *supra* note 3, at 11. Katie noted that in her experience in prostitution, a pimp was at the head of a group of girls, and they called themselves a “family.” Telephone Interview with Katie Rhoades, *supra* note 10. Katie also noted that the means of control was unique to each pimp and prostituted woman or girl; pimps were experts at capitalizing on Rhoades’ particular weaknesses. *Id.* Katie is a survivor of prostitution, the commercial sex industry, and domestic trafficking, and she speaks at conferences across the country on domestic trafficking. Rosario, *supra*; Telephone Interview with Katie Rhoades, *supra* note 10. See *infra* Part II.A–B for more of Katie’s story and the realities of prostitution that she experienced.

sex trade.”¹²

I. INTRODUCTION

Human trafficking, or trafficking in persons, involves the selling of human beings. Each year, human traffickers enslave up to four million people around the world.¹³ In the United States alone, traffickers move up to 50,000 people across the national border per year.¹⁴ Traffickers control many more people solely within the United States.¹⁵ Since 2001, the U.S. federal government has convicted 466 traffickers of adult persons¹⁶ but assisted few victims.¹⁷

Transnational organized criminals do not perpetrate all human trafficking; small “mom and pop” operations contribute as well.¹⁸ Human trafficking is growing faster than any other criminal

12. Norma Hotaling, Kristie Miller, & Elizabeth Trudeau, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective*, 18 YALE J.L. & FEMINISM 181, 186 (2006).

13. U.S. DEP'T OF STATE, VICTIMS OF TRAFFICKING & VIOLENCE PROTECTION ACT 2000, TRAFFICKING IN PERSONS REPORT 2 (2002), available at <http://www.state.gov/documents/organization/10815.pdf>.

14. See generally Johnny E. McGaha & Amanda Evans, *Where Are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 250–53 (2009) (describing and questioning the Department of State's report of 14,500 to 17,500 persons trafficked into the United States in 2004, and 45,000 to 50,000 in 2002). Measuring the number of trafficking victims proves difficult for many reasons, all of which stem from the hidden nature of human trafficking. Many victims are not U.S. citizens, so they hesitate to seek help out of fear of adverse immigration consequences, such as deportation. Often, traffickers threaten victims and their families into keeping quiet. Some traffickers literally imprison their victims or keep their identity documents so escape would prove futile. *Id.* at 244. Oftentimes traffickers abuse their victims daily. *Id.*

15. This is the definition of “domestic trafficking.” See *infra* Part IV.B.

16. U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 48 (2010) [hereinafter ATTORNEY GENERAL'S REPORT], available at <http://www.justice.gov/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf>. This figure excludes child sex trafficking and child sex tourism prosecutions by the Criminal Division of the Department of Justice. *Id.* at 48 n.35.

17. See *infra* Part IV.B.3.a.

18. See JAMES O. FINCKENAUER & JENNIFER SCHROCK, NAT'L INST. OF JUSTICE, HUMAN TRAFFICKING: A GROWING CRIMINAL MARKET IN THE U.S. (2000), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1013&context=humtraffdata>; see also MINN. INDIAN WOMEN'S RESOURCE CTR., SHATTERED HEARTS: THE COMMERCIAL SEXUAL EXPLOITATION OF AMERICAN INDIAN WOMEN AND GIRLS 15 (2009) (articulating that over half of young teen Native girls involved in prostitution get there by “[r]ecruitment by family and friends,” according to one study).

enterprise in the world.¹⁹ The black market for controlled substances may overshadow the trafficking industry in terms of money exchanged,²⁰ but in many countries, including the United States, the chances of conviction for selling drugs is greater than those for selling a human being.²¹ Adding to human traffickers' profit margin is the sad fact that human traffickers can resell their merchandise, while drug traffickers cannot.

Labor trafficking involves traffickers' selling humans for forced labor; sex traffickers sell humans for sexual purposes, often prostitution.²² This Note spotlights sex trafficking. In the last

19. *Fact Sheet: Human Trafficking*, U.S. DEP'T OF HEALTH & HUMAN SERVS., http://www.acf.hhs.gov/trafficking/about/fact_human.html (last updated Aug. 10, 2010).

20. *Id.* The trade in illegal arms and human trafficking share the number two ranking. *Id.*

21. See Kalen Fredette, *Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation*, 17 CARDOZO J. INT'L & COMP. L. 101, 121 (2009) (explaining the meager levels of apprehension and prosecution of human traffickers).

22. ANGELA BORTEL ET AL., *SEX TRAFFICKING NEEDS ASSESSMENT FOR THE STATE OF MINNESOTA* 3 (2008). *But see* Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2981 n.9 (2006) [hereinafter *Misery and Myopia*] (categorizing sex work as a form of labor). Some authorities decry the main focus of human trafficking discussions on sex trafficking, as opposed to labor trafficking. See Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 336 (2007) (asserting that service providers report that a "clear majority" of their trafficking cases originate from "non-sex industries," and that "[t]he government's lack of attention to labor trafficking cases results in the denial of law enforcement protection to trafficked workers . . . [and] has the additional consequence of condoning employer abuses in non-sex industries, thereby hindering long-term prevention efforts to deter labor exploitation . . ."); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 647 (2009) (contending that the conflation of terms common in trafficking discourse has caused people to misunderstand sex trafficking to include all instances of human trafficking); Rebecca L. Wharton, Note, *A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act*, 16 WM. & MARY J. WOMEN & L. 753, 774 (2010) (arguing that victims of sex trafficking receive a "disproportionate" amount of attention in the United States, although about one-half of U.S. human trafficking cases are not affiliated with commercial sex). The fundamental disagreement of authorities on the definition of "sex trafficking" contributes to this tension. The Trafficking Victims Protection Act (TVPA), first passed in 2000, emphasizes mainly sex trafficking. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), *amended by* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as

decade, the police, the courts, academics, non-governmental organizations, and the general public have increasingly realized that people in industrialized nations around the globe continue to sexually enslave others.²³ This Note posits that the feminist abolitionist²⁴ goal of eradicating prostitution aligns with an effective fight against sexual exploitation, including sex trafficking. This Note's purposes follow: 1) examine the Nordic movement to combat sex trafficking through a criminal justice approach of *partial* decriminalization;²⁵ 2) advocate that pimping, tricking, and trafficking remain criminalized, and that the United States continue to use public shaming and "john schools" to deter men from buying sex;²⁶ and 3) advocate that the United States decriminalize the sale of sex, reform the social service system to increase help offered to prostituted individuals, and conduct outreach to facilitate intervention points for prostituted individuals and those at risk for prostitution.²⁷

amended in scattered sections of 18, 22, 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 6, 8, 18, 22, 28, 42 U.S.C.).

23. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1; cf. Fredette, *supra* note 21, at 107 (writing that the past two decades have witnessed a spike in human trafficking). Scholars have attributed this recent cognizance of human trafficking to, essentially, the fall of the Soviet Union. See Todres, *supra* note 22, at 649 n.155 (suggesting that post-Soviet Union collapse, the number of trafficked women into the United States did not increase dramatically, and that congressional testimony recognized that trafficking from Asia had occurred for many years). This suggests that Congress took action to combat human trafficking only after an increase in the number of white women victims. *Id.*; Kajsa Claude, *Sweden Battles Human Trafficking*, SWEDEN.SE (Oct. 26, 2007), <http://www.sweden.se/eng/Home/Society/Equality/Reading/Sweden-targets-demand-in-the-battle-against-human-trafficking/> (contending that just a decade ago, "many influential groups and individuals" did not recognize the presence of trafficking in persons); *infra* Part II.

24. "Abolitionist" refers to those who seek to eradicate prostitution. Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1658 n.6 (2010).

25. See *infra* Parts V, VI.

26. See *infra* Parts VI.A, VI.B, VI.C.

27. See *infra* Parts VI.

Some participants in the anti-trafficking discourse use the terms “prostitution” and “sex trafficking” synonymously.²⁸ Pimps and tricks often victimize people in prostitution.²⁹ U.S. law enforcement officers have often arrested sex trafficking victims and charged them with prostitution.³⁰ The media commonly terms prostitution the world’s oldest profession,³¹ but some victim advocates call it “the world’s oldest oppression.”³²

The percentage of prostituted people who were forced into the sex industry, either by traffickers or by other hardships, exceeds this Note’s scope.³³ The sex industry, however, operates in large part upon traffickers luring vulnerable people. Those who enter of their own volition are often victimized and fail to escape. The author agrees that women should retain control of their own bodies. For many in prostitution, however, this rhetoric is illusory. This Note focuses on elevating their voices. The author acknowledges the horrible practices that men in prostitution suffer, but this Note focuses on women, children, and the heterosexual

28. Video: *Breaking Free Executive Director Vednita Carter: Prostitution Is Sex Trafficking*, SOURCEANNEX, <http://sourceannex.org/videobreakingfreevc> (discussing, midway through a video, how prostitution is sex trafficking) (last visited Mar. 27, 2011); see also Madame Kajsa Wahlberg, Detective Inspector, National Criminal Investigation Department (Sweden), Speech, available at http://docs.google.com/viewer?a=v&q=cache:BclUAhlG8NgJ:www.aretusa.net/download/centro%2520documentazione/03contributi/c-15Speech%2520EN.doc+My+name+is+Kajsa+Wahlberg+and+I+am+a+detective+inspector+at+the+Intelligence+Service+within+the+National+Criminal+Investigation+Department+in+Sweden.&hl=en&gl=us&pid=bl&srcid=ADGEEsJJGD713IOcmHw5setGoxJFqe9sDrfs8r-Yhciaje3gY9A4S_n0xQDkdZqUO-ej_Osx74QXmpMgFUB-EasHXmCuUkytUjnR9NQE23VLaSONOetTvVpB9qIRbOq3HWar8WV1Sd4C&sig=AHIEtbRrq_RqU31UVoe_Yqnf7eQzOZbm8w&pli=1 (noting that Sweden chooses not to distinguish prostitution from trafficking, as they are closely related); *infra* Part III.

29. See *infra* Part II.

30. See, e.g., Marisa Nack, Note, *The Next Step: The Future of New York State’s Human Trafficking Law*, 18 J.L. & POL’Y 817, 829 (2010) (reporting that New York police arrested victims of sex trafficking as “prostitutes”).

31. E.g., Dan Bilefsky, *World’s Oldest Profession, Too, Feels Crisis*, N.Y. TIMES, Dec. 8, 2008, available at <http://www.nytimes.com/2008/12/08/world/europe/08iht-sex.4.18500177.html?pagewanted=1&r=1>.

32. Minn. Coal. Against Sexual Assault, *Lead, Engage, Imagine, Prevention*, 4, available at http://www.mncasa.org/Documents/prevention_resources_8_2748064239.pdf (quoting Vednita Carter, Executive Director of Breaking Free). Breaking Free provides services to women escaping prostitution. See *Sisters Helping Sisters Break Free*, BREAKING FREE, <http://breakingfree.net/> (last visited Jan. 5, 2011).

33. Chuang, *supra* note 24, at 1659 (arguing that prostitution can fall between the extremes of “forced” and “any other form of work”); see also *infra* Part II.B.

prostitution market.³⁴ Women constitute 80 percent of trafficking victims, and children up to 50 percent.³⁵

Research shows that many average men purchase sex.³⁶ These men often are educated, have good jobs, and are in relationships.³⁷ Thus a comprehensive approach to combating sex trafficking would run the gamut from organized crime to your next-door neighbor. In order to abolish sex trafficking, countries must target reform at the domestic, personal sphere.³⁸ Prostitution and sex trafficking must merge in a campaign to combat men's violence against women and children in all its forms.³⁹ A successful anti-trafficking and anti-sexual exploitation policy must necessarily decrease the demand for sexual services.⁴⁰

34. *But see* Amanda Kloer, *Spain Busts Rare Male and Transgender Sex Trafficking Ring*, CHANGE.ORG (Sept. 2, 2010, 4:00 PM), http://humantrafficking.change.org/blog/view/spain_busts_rare_male_and_transgender_sex_trafficking_ring (describing a sex trafficking ring consisting solely of male and male-identifying transgender individuals who were "force-fed sexual stimulants," and noting that "male sex trafficking rings are . . . exceedingly rare," particularly when, as here, all the men were over the age of twenty).

35. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 31 (noting that sex trafficking "mainly affects young women and girls"); *Factors of Human Trafficking*, TRAFFICKING IN PERSONS.COM, http://www.traffickinginpersons.com/trafficking_factors.php; *see also* DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 341 (10th ed. 2010) (stating that women and children make up most foreign sex trafficking victims).

36. *See* Melissa Farley, "Renting an Organ for Ten Minutes: What Tricks Tell Us about Prostitution, Pornography, and Trafficking," in *PORNOGRAPHY: DRIVING THE DEMAND FOR INTERNATIONAL SEX TRAFFICKING* 144, 146 (David E. Guinn ed., 2007).

37. *See* KAJSA CLAUDE, *TARGETING THE SEX BUYER—THE SWEDISH EXAMPLE: STOPPING PROSTITUTION AND TRAFFICKING WHERE IT ALL BEGINS* 7 (2010) [hereinafter *TARGETING THE SEX BUYER*] (reporting that about one half of Swedes who purchase sex are in a relationship or married, and about 40 percent have children).

38. *See* Todres, *supra* note 22, at 647 (arguing that focusing anti-trafficking efforts on combating organized crime distracts from the impact that individuals have in altering societal realities that bolster the problem).

39. *See infra* Parts II, IV.

40. Economic and social conditions in the United States and elsewhere contribute to the large amount of people forced into prostitution. *See* Michèle Alexandre, *Sex, Drugs, Rock & Roll and Moral Dirigisme: Toward a Reformation of Drug and Prostitution Regulations*, 78 *UMKC L. REV.* 101, 130–31 (2009). With an increase in availability of viable employment options, prostitution would ensnare fewer people. *Id.* at 131. However, activists must analyze the problem not only from the seller's vantage point. Without demand for commercial sex, the sex trafficking market would wither. *See infra* Part IV.

Sweden leads the world in taking an innovative approach to fighting sexual exploitation and women's oppression.⁴¹ Since 1999, Swedish law has *partially* decriminalized prostitution by penalizing consumers of sex (i.e., johns), and human traffickers (from the local pimps to the mob bosses of international human trafficking).⁴² Sweden does *not*, however, criminally sanction individuals in prostitution.⁴³ Instead, social workers offer them help in finding a new life.⁴⁴ This, essentially, comprises the Swedish Model.⁴⁵ Commentators have extensively debated its methods and results in combating sex trafficking and prostitution.⁴⁶

The United States responded differently than Sweden. The United States has established an extensive network of operations to combat sex trafficking. While some of the same concerns that motivated Sweden also directed the United States to set up its anti-trafficking infrastructure, the United States has focused on sex trafficking of foreign nationals, imposed a high standard to access services that few victims meet, and employed a law enforcement

41. See *infra* notes 145–149.

42. See *Act Prohibiting the Purchase of Sexual Services*, *supra* note 1.

43. *Id.*

44. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 33; see also MINISTRY OF INTEGRATION AND GENDER EQUALITY SWEDEN, ACTION PLAN AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES (2008), available at <http://www.sweden.gov.se/content/1/c6/11/06/29/fcd261a4.pdf>.

45. It is alternately known as “the Swedish example.” TARGETING THE SEX BUYER, *supra* note 37, at 1. Due to recent laws enacted in Norway and Iceland, commentators now call it the “Nordic model” as well. See *infra* notes 113, 148, and accompanying text. The term “the Swedish model” also refers to other aspects of Sweden’s government and its Social Democratic Party’s (SAP) social welfare and economic policies. See GREGG BUCKEN-KNAPP, DEFENDING THE SWEDISH MODEL: SOCIAL DEMOCRATS, TRADE UNIONS, AND LABOR MIGRATION POLICY REFORM 30 (2009).

46. Compare Laura Agustín, *Doubtful Report on Sex-purchase Law, Laura’s Article from a Swedish Newspaper*, LAURA AGUSTÍN—THE NAKED ANTHROPOLOGIST ON MIGRATION, TRAFFICKING & SEX (July 17, 2010), <http://www.lauraagustin.com/in-english-evaluation-of-the-evaluation-swedens-sex-purchase-law> (asserting that “the report suffers from too many scientific errors”), with Sweden’s Prostitution Solution: Why Hasn’t Anyone Tried this Before?, WOMEN’S JUST. CTR., http://www.justicewomen.com/cj_sweden.html (last visited Mar. 9, 2011) (praising Sweden’s system as innovative and effective), and Nicholas D. Kristof, Op-Ed., *Do as He Said*, N.Y. TIMES, Mar. 13, 2008, available at http://www.nytimes.com/2008/03/13/opinion/13kristof.html?_r=1 (concluding that the Swedish model is the best approach yet, and “the bottom line is that if you want to rape a 13-year-old girl imported from Eastern Europe, you’ll have a much easier time in Amsterdam than in Stockholm”).

approach that trickles down to its methods of assisting victims.⁴⁷ Such a structure, together with U.S. prostitution laws that criminalize the sale of sex, has prevented many victims of sexual exploitation from getting help.⁴⁸

Part I of this Note provides a general background⁴⁹ and presents definitions and terms the author will use throughout the Note.⁵⁰ Part II will present the author's findings on the commercial sex industry and prostitution.⁵¹ Part III will discuss developments in Sweden that drove the implementation of partial decriminalization.⁵² Part IV will examine the history of human trafficking laws in both the international and U.S. spheres.⁵³ Part V will address Sweden's "ban" on buying sex and offer data on its effect.⁵⁴ Part VI will explore how the United States should pass its own Sexköpslagen and will recommend a new paradigm to help persons in prostitution.⁵⁵ Finally, Part VII will conclude this Note.⁵⁶

Definitions and Terminology

The term "sex trafficking" has multiple legal definitions. Three issues require clarification to understand the multiple legal definitions of sex trafficking: 1) movement; 2) force, fraud, or coercion;⁵⁷ and 3) immigration status. International and U.S. federal law both require force, fraud, or coercion, but neither requires movement.⁵⁸ Some state laws define "sex trafficking" to

47. See *infra* Part IV.B.3.a.

48. See *infra* Part II and notes 226–241 and accompanying text.

49. See *supra* Part I.

50. See *infra* notes 57–72 and accompanying text.

51. See *infra* Part II.

52. See *infra* Part III.

53. See *infra* Part IV.

54. See *infra* Part V.

55. See *infra* Part VI.

56. See *infra* Part VII.

57. 22 U.S.C. § 7102(8) (2006) (defining "severe forms of trafficking in persons").

58. The United Nations defines "trafficking in persons":

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against

encompass any situation where an individual entices another into prostitution.⁵⁹ At the federal level, trafficking includes situations where a woman consented to entry, but her trafficker perpetrated force, fraud, or coercion to compel her to stay.⁶⁰ Further, trafficking victims need not be foreign nationals.⁶¹ The author adopts a broad definition of trafficking, which does not require force, fraud, or coercion, or movement.⁶² The author adopts a common legal definition of “prostitution”: any sexual act done in exchange for anything of value.⁶³ People in prostitution may satisfy the legal definition of a sex trafficking victim under the law. Some work in the sex industry independently, but can still be sexually exploited by sex purchasers.⁶⁴ A “pimp” or “sex trafficker” means “[a]n individual who recruits, entices, harbors, transports, provides, receives, or obtains a person for a commercial sex act or prostitution, as defined respectively in federal and [state] law.”⁶⁵

Transnational Organized Crime, pt. I, art. 3(a), Nov. 15, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 [hereinafter U.N. Trafficking Protocol]. U.S. federal trafficking law includes two provisions, the Trafficking Victims Protection Act (TVPA) and the Mann Act. The former is the main provision. *See infra* Part IV.B.2. Unlike the TVPA, certain provisions of the Mann Act do require transport. *See infra* note 202 for more explanation of the differences between the Mann Act and the TVPA. While the TVPA’s definition of sex trafficking does not include force, fraud, or coercion, its definition of “severe forms of trafficking in persons” does. 22 U.S.C. §§ 7102(8)(a), 7105(b)(1)(C) (2006).

59. *See, e.g.*, MINN. STAT. § 609.321(7a)(1) (Supp. 2010). Officer Weyker commented that this lower standard protects prostituted people with developmental disabilities and other traumatic responses, whom pimps prey upon without needing to use force, fraud, or coercion. Interview with Heather Weyker, Officer, Vice/Human Trafficking Unit, St. Paul Police Dep’t, in St. Paul, Minn. (Oct. 25, 2010).

60. *See infra* Part IV.B.3.c.

61. *See infra* Part IV.B.3.a.

62. Requiring a victim’s consent to her own sexual exploitation defies reason. Further, it delimits the discourse to manifestations of victim-blaming, rather than focusing on the perpetrator. *See BORTEL ET AL., supra* note 22, at 9. This definition parallels the advancements in the rape context shifting focus from the victim’s attire, her actions, and previous sexual history to determine if “she wanted it,” to concentrating on the perpetrator. *See generally* Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in the Courtroom*, 5 S. CAL. REV. L. & WOMEN’S STUD. 387 (1996) (comparing these few advancements in rape reform to the larger failures).

63. *Cf.* 18 U.S.C. § 1591(e)(3) (Supp. III 2009) (defining “commercial sex act” as “any sex act, on account of which anything of value is given to or received by any person”).

64. *See BORTEL ET AL., supra* note 22, at 13 (defining “sexual exploitation”). The status of persons who sell sex can change, i.e., their status regarding operating under a pimp or independently.

65. *Id.* at 12.

Under this definition, a pimp is no different from a sex trafficker, because they both use various means to control their victims.⁶⁶ Katie Rhoades noted the following: “[I]n my experience . . . most of the women and girls engaging in prostitution were trafficked for the purpose of sexual exploitation at one point in their histories.”⁶⁷

“Sexual exploitation” encompasses prostitution, which can include “strip clubs, massage parlors, saunas, pornography, street walking, live sex shows, phone sex, . . . escort services, peep shows, ritual abuse, and mail-order bride services.”⁶⁸ It further includes survival sex, meaning “[s]ex acts exchanged for clothes, food, drugs, a place to stay or other items.”⁶⁹ In this Note, the author will focus on prostitution.

The author will use the terms “individual(s) in prostitution” or “prostituted persons” when discussing the views of those who believe the sale of sex to be harmful to the participants.⁷⁰ The author will also use these terms when discussing her own views. A “john,” “trick,” or “patron” means a purchaser of sex.⁷¹

Heated debate surrounds the term “sex worker.” Those who want governments to recognize the sale of sex as legitimate work employ this term.⁷² Typically the author uses the term “sex worker” or “sex work” when discussing laws favorable to those who believe that governments should recognize the purchase and sale of sex as legitimate business transactions.

66. *Id.* (employing the same definition for a pimp and for a trafficker).

67. E-mail from Katie Rhoades, *supra* note 3, at 2. Katie noted that while prostitution and trafficking are not synonymous, the end point of trafficking is prostitution. *Id.* She further noted that “separating [the two] is dangerous.” *Id.*

68. BORTEL ET AL., *supra* note 22, at 13.

69. *Id.* Although “survival sex” is not “sex trafficking” per se, it creates victims.

70. The author refers to the person who ultimately provides the sexual service as the “seller.” The author does this for the sake of consistency, and does not mean to suggest that these individuals are not often victimized to varying degrees. In such instances, the pimp and trafficker is the true “seller.”

71. *See, e.g.*, WASH. REV. CODE. § 9A.88.110(1)(b) (2010) (defining a patron to be, inter alia, one who “pays or agrees to pay a fee to another person pursuant to an understanding that . . . such person will engage in sexual conduct with him or her”). The author will use the terms “trick,” “john,” and “patron” interchangeably throughout this Note.

72. AUSTRIAN DEV. COOPERATION, “WHOSE BODY IS IT?": COMMERCIAL SEX WORK AND THE LAW IN NAMIBIA 3–5 (2002), available at <http://www.lac.org.na/projects/grap/Pdf/commsex.pdf>.

Methodology

In compiling statistics and opinions, the author drew heavily on the resources available in her locale. The author examined five studies of individuals in prostitution. She also conducted interviews in the Minneapolis, Minnesota area. Two of the social science research studies of individuals in prostitution were published in the 1980s, and one of these focused on boys in prostitution.⁷³ The other studies were published in the 1990s,⁷⁴ in 2001,⁷⁵ and in 2010.⁷⁶ She also corresponded with Officer Heather Weyker of the Saint Paul Police Department's Vice/Human

73. First, the author read Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 VICTIMOLOGY: AN INT'L J. 122 (1982). While the study authors interviewed only former and current women who "worked" on the street in the San Francisco Bay Area, just one-third of the interviewees came from low-income families, and 69 percent were white. *Id.* at 123. The women interviewed did not easily trust outsiders, so the interviewers hailed from an organization that provided services to individuals in prostitution, and every single interviewer was a former individual in prostitution who had suffered some form of assault. *Id.* Second, the author read D. KELLY WEISBERG, *CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION* (1985), focusing exclusively on seventy-nine juvenile males in prostitution in seven large cities across the United States.

74. John J. Potterat et al., *Pathways to Prostitution: The Chronology of Sexual and Drug Abuse Milestones*, 35 J. SEX RES. 4, 333 (1998). The study's authors conducted the report from 1990-1992 in Colorado Springs. *Id.* at 334. It compared women whom the researchers knew to have engaged in prostitution with women found at an STD clinic who had never engaged in prostitution. *Id.* at 335. Clinic personnel who worked with individuals in prostitution administered the questionnaires. *Id.* at 334; *see id.* at 334-36, 339 (providing more information on how the study was conducted); *see also* MARGARETHA JÄRVINEN, 13 OF VICE AND WOMEN: SHADES OF PROSTITUTION 10 (Karen Leander trans. 1993) (describing prostitution in Helsinki, Finland from 1945-1986).

75. Jody Raphael & Deborah L. Shapiro, *Violence in Indoor and Outdoor Prostitution Venues*, 10 VIOLENCE AGAINST WOMEN 126, 129-30 (2004) [hereinafter *Violence in Indoor Prostitution*] (surveying, by way of a snowball sampling technique, 222 adult women involved in prostitution currently or within the last five years in the Chicago area from July to October 2001). Twelve survivors of prostitution verbally administered the interview questionnaires. *Id.* at 129.

76. Matthews, N., Farley, M., Lopez, G., Deer, S. and Stark, C. (2010) *Trafficking of Native American Women for Prostitution in Minnesota: Some Preliminary Findings*. Focus Group on Human Trafficking of American Indian and Alaska Native Women and Children. Washington, D.C. August 25, *available at* <http://www.prostitutionresearch.com/MIWSAC%3APRE%20PrelimFindings8-25-10.pdf> (surveying 105 Native American women formerly or currently prostituting in Bemidji, Duluth, and Minneapolis, Minnesota). The study on Native women prostituting in Minnesota encompassed those who worked in the street, escort industry, clubs, and other venues. E-mail from Sarah Deer, Assistant Professor of Law, William Mitchell Coll. of Law, to author (Jan. 3, 2011, 15:25 CST) (on file with author).

Trafficking Unit;⁷⁷ Katie Rhoades, a survivor;⁷⁸ Artika Roller, program supervisor at PRIDE (from Prostitution to Independence, Dignity and Equality);⁷⁹ Vednita Carter, Executive Director of Breaking Free;⁸⁰ and Judge Richard Hopper, founder of the Hennepin County Community Court in Minneapolis, Minnesota.⁸¹ These studies and correspondences encompassed people in prostitution working on the street, in clubs, in escort services, and in other venues.⁸² The author derived her compendium from these studies and sources.

The author's sources represent a limited sampling of the prostitution literature. Due to time and geographical constraints, she was unable to interview sex workers' advocates directly. Instead, she conducted a literature review of opposing viewpoints.

77. The author e-mailed Officer Weyker a questionnaire. She based her reports on those responses, as well as on an informal and open-ended in-person discussion with Officer Weyker.

78. Katie was involved in the commercial sex industry for three years, from 1999-2002, in Portland, Oregon, in San Francisco, California, and occasionally in Las Vegas, Nevada. Telephone interview with Katie Rhoades, *supra* note 10. Occasionally "the family" would go to Vegas for a few days at a time and she worked there. *Id.*; see *supra* notes 3-11 and accompanying text. Katie consented to the use of her real name and authorized the selection of quotes contained herein as an accurate portrayal. The author e-mailed Katie a questionnaire. Next she spoke with Katie on the phone and they exchanged e-mail correspondence. Katie responded to direct questions, but also offered her own commentary, which the author used. From the beginning, the author apprised Katie of the purpose of this paper and how the author would use her responses.

79. *Pride*, FAM. PARTNERSHIP, http://familychildrengservice.nonprofitoffice.com/index.asp?Type=B_BASIC&SEC={06C4C9B8-8DA9-4AFE-BA8C-658065E23661}&DE= (last visited Oct. 22, 2010). *Pride* is a program within The Family Partnership. *Id.* The author conducted a phone interview with Ms. Roller. The author had specific questions, but the exchange remained open-ended.

80. BREAKING FREE: SISTERS HELPING SISTERS BREAK FREE, <http://www.breakingfree.net> (last visited Jan. 9, 2011).

81. Beth Hawkins, *Judge Richard Hopper's Alternative Court Getting Results with Combination of Firmness and Fairness*, MINNPOST (July 30, 2010), http://www.minnpost.com/stories/2010/07/30/20124/judge_richard_hoppers_alternative_court_getting_results_with_combination_of_firmness_and_fairness. The author e-mailed Judge Hopper a questionnaire.

82. Not all the studies drew on prostituted people from all these venues. See *supra* notes 73-76 for details of each study.

II. HUMAN RIGHTS VIOLATIONS AGAINST INDIVIDUALS IN PROSTITUTION⁸³

People in prostitution lack basic freedom: freedom over their bodies, freedom to manage their own lives, and freedom to live without fear. Part II will present data on the background of people in prostitution, present data on the effects of prostitution on prostituted persons, and discuss the ways that societies treat prostitution, laying the groundwork for why the United States needs a victim-centered response.⁸⁴

A. *Living or Dying?*—“Prostitution is like Suicide”⁸⁵

Three clear patterns emerged from the author’s review of reports on prostituted people: abusive family background, entry before majority, and violence after entry.⁸⁶

A high percentage of people in prostitution reported abuse in their childhoods: physical,⁸⁷ sexual,⁸⁸ and emotional.⁸⁹ The women

83. See Amihud Gilead, *Philosophical Prostitution*, 6 J. SOC. SCI. 85, 92 (2010) (positing that prostitution is the worst form of slavery, and that viewing prostitution as legitimate work is “philosophical blindness”). See generally Kathleen Barry, *Prostitution of Sexuality: A Cause for New International Human Rights*, 2 J. PERS. & INTERPERSONAL LOSS 27 (presenting that the “social normalization of prostitution, even where it is still illegal,” has contributed to sanctioning of sexual exploitation).

84. See *infra* Part II.

85. Matthews, N., Farley, M., Lopez, G., Deer, S. and Stark, C., *supra* note 76, at 2 (quoting a victim).

86. “Prostitution, apart from professional boxing, is the only job where people fully expect you to accept serious physical violence every day without complaint.” *Prostitutes Speak of Their Ordeals*, BBC NEWS, <http://news.bbc.co.uk/2/hi/6183491.stm> (last updated Dec. 19, 2006); see also *Help Wanted: Women and Girls Do YOU Want This Job?*, PROSTITUTION RESEARCH & ED., <http://prostitutionresearch.com/faq/000009.html> (last visited May 4, 2011) (portraying a fictional “Help Wanted” that boasts “Special opportunities for poor women—single mothers—women of color” and “Note: Accusations of rape will be treated as a breach of contract by employee”).

87. WEISBERG, *supra* note 73, at 46–47 (noting 34 percent reported physical abuse from family-type members); Silbert & Pines, *supra* note 73, at 125 (showing 62 percent reported physical beating). Forty-five percent of the Silbert and Pines subjects reported physical abuse at least once a month. *Id.* at 125. In the Silbert and Pines study, the authors painstakingly distinguished “between being beaten and being spanked.” *Id.* In more than 75 percent of physical abuse cases in the Silbert and Pines study, “a male in some position of authority” battered the girl. *Id.*

88. Silbert & Pines, *supra* note 73, at 125–26 (explaining 60 percent of these responses attributed the act to a family-type member). The average number of

and girls reported negative lasting effects from the acts of sexual abuse.⁹⁰

In one study, 70 percent of the women responded that sexual abuse influenced their entry into prostitution.⁹¹ Among the women and girls who responded that abuse did not factor into their entry into prostitution, the effect of abuse clearly persisted: “My father bought me so who cares who else does? . . . Might as well make them pay for it. . . . I figured what have I got to lose?”⁹² Of the women Judge Hopper encountered, he noted, “[t]hey are very fragile human beings that suffer from PTSD [post-traumatic stress disorder] from sexual assaults as a child or young adult, crack addiction, traumatic brain injuries and developmental disabilities.”⁹³

abusers was two. *Id.* at 125. Eleven was the highest number of reported abusers. *Id.* at 125–26. The average period of exploitation was twenty months. *Id.* at 126. Sixty-seven percent of the abuse was at the hands of a father figure. *Id.* In 82 percent of the cases, force was involved. *Id.* The average number of acts of force per incident of sexual abuse was four. *Id.* Forty-seven percent of the time, the abuser inflicted serious physical injuries. *Id.*; see also WEISBERG, *supra* note 73, at 48 (reporting 29 percent). *Pathways to Prostitution: The Chronology of Sexual and Drug Abuse Milestones* tracked significant events in the interviewees’ lives and found that individuals currently or formerly in prostitution were over two and a half times more likely to have been penetrated by a penis prior to age eleven than those in the comparison group. Potterat et al., *supra* note 74, at 336. This penetration occurred two years earlier than for those in the comparison group who reported regular drug use. *Id.* Among this group, “regular sexual activity” occurred one year earlier for those who had engaged in prostitution. *Id.* Officer Weyker specifically observed that many of the girls had been sexually abused at a young age. Interview with Heather Weyker, *supra* note 59.

89. See WEISBERG, *supra* note 73, at 47 (showing 38 percent reported significant emotional abuse); Silbert & Pines, *supra* note 73, at 125 (noting 70 percent reported emotional abuse to be a serious problem in their home environment).

90. Silbert & Pines, *supra* note 73, at 126. One percent of the women said they felt good or “loved.” *Id.* In nearly 75 percent of the cases, fear resulted. *Id.* In 40 percent of sexual exploitation cases, the girl became scared of men in general. *Id.* The incidents of abuse clearly still haunted the victims. *Id.* at 127.

91. *Id.*

92. *Id.* (internal quotation marks omitted).

93. E-mail from Richard Hopper, Retired Judge, Minn. Dist. Ct., to the author (Nov. 18, 2010, 17:24 CST) (on file with author); see also BORTEL ET AL., *supra* note 22, at 4–5 (discussing research that demonstrates the short and long-term trauma that victims suffer). Judge Hopper founded the Minneapolis court that helps women in prostitution. E-mail from Richard Hopper, *supra*.

Many young girls engage in prostitution.⁹⁴ The majority of people in prostitution enter before the age of eighteen.⁹⁵ Many working on the street lived in extreme poverty,⁹⁶ and most of the children were runaways forced into prostitution.⁹⁷ Political, social, and economic circumstances disproportionately force people of color into prostitution.⁹⁸ Katie's story indicates how her youth and

94. Silbert & Pines, *supra* note 73, at 123. By "young," the author means age ten to thirteen. *Id.* Moreover, 70 percent of those currently in prostitution at the time of the study were under twenty-one, with 60 percent under seventeen. *Id.*; see also Carrie Baker, *Jailing Girls for Men's Crimes*, MS. MAGAZINE, Summer 2010, at 26 (chronicling widespread child prostitution in Atlanta's "adult entertainment" industry).

95. Silbert & Pines, *supra* note 73, at 123 (reporting that 78 percent of prostituted people enter before the age of eighteen); see also WEISBERG, *supra* note 73, at 53 (reporting that the boys first began to engage in prostitution at least four times per month at an average age of 14.8). Katie noted that most of the women and children she worked with began before age eighteen. E-mail from Katie Rhoades, *supra* note 3, at 4.

96. Eighty-eight percent of those still "working" and 92 percent of the juveniles said they were "just making it" or "very poor." Silbert & Pines, *supra* note 73, at 123. Katie said that she "[rode] in limos and drove Mercedes-Benzes . . . and went on lavish shopping sprees." Rosario, *supra* note 11. "I was put on the street only 2 times during my time in that life. I worked out of clubs or escort services." E-mail from Katie Rhoades, *supra* note 3, at 1. "I would tell myself that I was not a real prostitute . . . but I was doing the same thing just under a roof." *Id.* at 6.

97. See Silbert & Pines, *supra* note 73, at 127 (discussing women reporting that they had no alternative). Cf. WEISBERG, *supra* note 73, at xiii (asserting the average grade completion is 9.6 and pointing out that over three-quarters had not finished high school); *infra* Part IV.B.3.f (indicating that this reality persists in the United States today).

98. See Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621 (2010) (discussing the high rates of Native American women forced into prostitution); Matthews, N., Farley, M., Lopez, G., Deer, S. & Stark, C., *supra* note 76 at 2 (documenting that victims report that 70 percent of prostituted women they knew "had been lured, tricked or trafficked into it."); MINN. INDIAN WOMEN'S RES. CTR., SHATTERED HEARTS: THE COMMERCIAL SEXUAL EXPLOITATION OF AMERICAN INDIAN WOMEN AND GIRLS (2009) (presenting findings on the horrible things done to prostituted women, including gang rape, mutilation, and genital cutting); Vednita Nelson, *Prostitution: Where Racism and Sexism Intersect*, 1 MICH. J. GENDER & L. 81 (describing the uniquely difficult position of black women and their overrepresentation in the sex industry); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place; Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9, 25-35 (1989) (advocating the highest constitutional standard of review for black women, based on political powerlessness, immutability, and historical prejudice); see also Christine Stark, *Run*, 158 U. PENN. L. REV. 1575 (writing about her experience being chained by her abusers as a Native American four-year-old sexual slave). Moreover, many scholars have written regarding the American feminist movement's marginalization of the unique plight of women of color. See, e.g., Angela P. Harris, *Race & Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Dorothy E. Roberts, *Punishing*

economic factors propelled her into the commercial sex industry:

A few months out of high school, Katie was homeless and drug-addicted.⁹⁹ She called a friend of hers who had started stripping in high school.¹⁰⁰ And that's how Katie got a job.¹⁰¹ From there, it was hard not to move into prostitution.¹⁰² Of her time in that life, Katie says she was a misfit.¹⁰³ She started stripping after age eighteen, and she had a high school diploma.¹⁰⁴ "I remember being told that I . . . was too good and too educated."¹⁰⁵ "[My high school diploma] was more than the women I was with had."¹⁰⁶

After entry, violence continues toward prostituted women. According to one study, many of the women and girls reported that a customer had battered them,¹⁰⁷ and 66 percent reported that a pimp had battered them.¹⁰⁸ The same study reported that men had

Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy, 104 HARV. L. REV. 1419, 1424 & n.20 (1991).

99. E-mail from Katie Rhoades, *supra* note 3, at 4, 9.

100. *Id.* at 4.

101. *Id.*

102. *Id.* at 4–5. Pimps usually recruit strippers, who often have low self-esteem. *Id.* Katie noted that strip clubs were purposely equipped for prostitution transactions. Telephone Interview with Katie Rhoades, *supra* note 10. The venue provided private rooms with hand sanitizer and tissues, and staff handed out condoms to couples heading into the rooms. *Id.*

103. E-mail from Katie Rhoades, *supra* note 3, at 4.

104. *Id.*

105. *Id.*

106. *Id.*

107. Silbert & Pines, *supra* note 73, at 127 (explaining that 65 percent of prostituted people reported some form of physical abuse at the hands of a customer an average of 4.3 times); *Violence in Indoor Prostitution*, *supra* note 75, at 133–34 (charting particular violent acts by venue).

108. Silbert & Pines, *supra* note 73, at 128. The concept of a “pimp” as a non-relative male who controls a group of prostituted women is not static. See E-mail from Richard Hopper, *supra* note 93 (“If they have a pimp, it is their boyfriend/husband/crack buddy.”); see also Matthews, N., Farley, M., Lopez, G., Deer, S. & Stark, C., *supra* note 76 at 2 (quoting a victim: “I wouldn’t say there are pimps anymore. Now they’re all boyfriends.”). However, Katie’s experience suggests that it may be difficult to tell if a pimp controls a prostituted person. See Telephone Interview with Katie Rhoades, *supra* note 10. She left San Francisco to go back to work in Portland “on her own” on the condition that she report all her earnings to her pimp and pay him what she earned less her rent. *Id.* Katie said now she realizes that he had many more people watching her than she had thought. *Id.* Although her pimp was many miles away, and did not control her daily, she still had to answer to him. *Id.* The 1980s study on boys in prostitution

raped a majority of the interview subjects.¹⁰⁹

Katie's story exemplifies the harm that sex purchasers inflict on prostituted persons:

"I witnessed women and children experiencing much more than I did."¹¹⁰ Still, Katie's clients drugged, assaulted, and raped her more times than she could count."¹¹¹

Thus even if a prostituted person is not controlled by a trafficker or pimp, prostitution exposes them to sexual exploitation at the hands of customers.

B. Feminist Analyses of Prostitution: Abolitionism vs. Sex Work

Some sex workers self-advocate. For example, the International Committee on the Rights of Sex Workers in Europe (ICRSE) voices strong opposition to Sweden's sex purchase law.¹¹² ICRSE does not mix its metaphors: "What do PION [a Norwegian pro-sex-work organization] and Rose Alliance [a Swedish organization of sex and erotic workers] have to say about [the Swedish Model]? Fuck the Nordic model!"¹¹³ "We demand our voices are heard, listened to and respected. Our experiences are diverse, but all are valid, and we condemn those who steal our voice and say that we do not have the capacity to make decisions or

concluded, from a summary of earlier literature, that pimps generally do not coerce men into prostitution as they do women, and that men rarely work for pimps. WEISBERG, *supra* note 73, at 160. With or without a pimp, however, people in prostitution often experience sexual exploitation. *See supra* Part I.

109. Silbert & Pines, *supra* note 73, at 130 (reporting 75 percent—often violently). This number encompasses completed rapes only; "forced intercourse by customers" and "attempted rapes or other sexual abuses" did not count. *Id.* After the rape, only 7 percent of the victims sought any form of help, and in over half the cases, the woman or girl talked about the rape for the first time. *Id.* at 129; *see also Violence in Indoor Prostitution*, *supra* note 75, at 133 (noting that 23.3 percent of women reported rape in exotic dancing, versus a high of 66.7 percent at a drug house).

110. E-mail from Katie Rhoades, *supra* note 3, at 4.

111. *Id.* at 11.

112. ICRSE Coordinator, *AIDS2010 PION & Rose Alliance at the ICRSE NGO booth*, INTERNATIONAL COMMITTEE ON THE RIGHTS OF SEX WORKERS IN EUROPE (ICRSE) (Aug. 5, 2010, 10:41 AM), <http://www.sexworkeurope.org/en/campaigns-mainmenu-190/past-campaigns/92-iac2010/426-aids2010-pion-rose-alliance>.

113. The website notes that the Nordic model is synonymous with the Swedish model. *Id.* (internal quotation marks omitted).

articulate our needs.”¹¹⁴ Some sex workers also contend that they sell sexual services, rather than their bodies.¹¹⁵ Katie questions the inclusiveness of the sex work approach and its relevance to the experiences of the most marginalized individuals in prostitution:

*[T]he sex industry is as diverse and complex as any community. . . . The majority (not all) of the women that I see speaking on prostitution participated in a particular type of prostitution where they were able to maintain their power. . . . The public face of prostitution is of the least vulnerable population that is in that industry. The powerless and voiceless . . . are not being heard because they have been silenced, even after they are able to get out.*¹¹⁶

At minimum, this perspective demonstrates the complexity of addressing these problems.

Abolitionists and sex workers unite with their acknowledgments that governments must address violence against women in the sex industry.¹¹⁷ Sex workers’ rights groups have two things right: paternalism and stigma. Forcing help on those in the commercial sex industry presents problems: it denies victims’ autonomy, perpetuates a paternalistic society, and leads to victim-blaming.¹¹⁸ Societies around the world continue to stigmatize those in prostitution. Some sex workers, however, think sex trafficking is overrated¹¹⁹ and seek to legalize prostitution so the government can regulate the industry to promote sex workers’ health and control violence against women.¹²⁰ Abolitionists believe that stopping

114. INTERNATIONAL COMMITTEE ON THE RIGHTS OF SEX WORKER IN EUROPE (ICRSE), <http://sexworkeurope.org/> (quoting Sex Workers in Europe Manifesto (2005)) (last visited Mar. 5, 2011) (internal quotation marks omitted).

115. Yvonne Svanström, *Criminalising the John—A Swedish Gender Model?*, in THE POLITICS OF PROSTITUTION: WOMEN’S MOVEMENTS, DEMOCRATIC STATES AND THE GLOBALISATION OF SEX COMMERCE 225, 240 (Joyce Outshoorn ed., 2004) [hereinafter *Criminalising the John*].

116. E-mail from Katie Rhoades, *supra* note 3, at 3.

117. See Linda Nguyen, *Prostitution Ruling Stayed in Ontario*, NAT’L POST, Dec. 3, 2010, available at <http://www.nationalpost.com/news/canada/Prostitution+ruling+stayed+Ontario/3920698/story.html>.

118. See Baker, *supra* note 94, at 31 (“Arresting sexually exploited girls for prostitution is an egregious form of blaming the victim.”).

119. Laura Agustín, *New Statesman: The Myth of Trafficking*, LAURA AGUSTÍN—THE NAKED ANTHROPOLOGIST ON MIGRATION, TRAFFICKING & SEX (July 3, 2009), <http://www.lauraagustin.com/new-statesman-the-myth-of-trafficking>.

120. See *infra* Part V.C; *Why Decriminalizing Sex Work Is Good for All Women*, Posting of

women's oppression necessitates eradicating prostitution.¹²¹

C. *Legal Responses to Prostitution*

Governments have distilled the differing views of abolitionist feminists, sex worker advocates, and other viewpoints into four distinct legal responses to prostitution¹²²: complete criminalization,¹²³ legalization,¹²⁴ total decriminalization,¹²⁵ and partial decriminalization.¹²⁶

Under a complete criminalization scheme, the government criminalizes both the buying and selling of sex (as well as indirect dealings in, or profit from, the sex transaction, including pimping).¹²⁷ The U.S. states employ complete criminalization, with the exception of certain counties in Nevada.¹²⁸ United States

Crystal Jackson & Barbara Brents to Ms. Blog, <http://msmagazine.com/blog/blog/2010/11/01/why-decriminalizing-sex-work-is-good-for-all-women/> (Nov. 1, 2010) (discussing gender stereotypes in detail, while just mentioning that decriminalizing prostitution can lower "the risk of violence"). *But see infra* note 176.

121. Feminist abolitionists have formed an unlikely alliance with evangelical Christians in an attempt to abolish prostitution and pornography. *See* Chuang, *supra* note 24, at 1658; *see also* Mike Nichols, *Paganism and Pornography*, http://webpace.webring.com/people/wm/mike_nichols.geo/pandp.html (last updated Mar. 19, 2002) (commenting on the united front of abolitionist feminists Andrea Dworkin and Catherine MacKinnon with Jerry Falwell, a Christian fundamentalist).

122. *See* Alexandre, *supra* note 40, at 128 (presenting these four models). Some commentators think private means should be used to combat prostitution. *See* Arthur Gould, *The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden*, 30 J. SOC. POL'Y 437, 438 (2001). This view centers itself on a belief in prostitution's immorality. *Id.*

123. Alexandre, *supra* note 40, at 128.

124. *Id.*

125. *Id.*

126. *Id.*

127. *See, e.g.*, 18 U.S.C. §§ 1583(a), 1584, 1589(a) (Supp. III 2009) (criminalizing the trafficker); 18 U.S.C. § 1589(b) (Supp. III 2009) (criminalizing one who "knowingly benefits" from the trafficking of another). The United States has legalized the purchase and sale of sex so long as someone films it. In that instance, the First Amendment considers it speech and distinguishes pornography from obscenity. This mirrors the forced-or-voluntary debate: if a sex worker actually signs a contract to allow herself to be filmed in the act, then the law deems it voluntary. *See generally* Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, 79 VA. L. REV. 1099, 1138 (1993) (positing that some women voluntarily pose for sexually explicit material).

128. In Nevada, prostitution is legal (and regulated by the state) in counties with a population under 400,000 and in licensed brothels. NEV. REV. STAT. ANN. § 244.345 (LexisNexis 2005); *see generally* Jocelyn Eskow, *Eleventh Annual Review of*

Indian tribes generally lack prostitution-specific laws;¹²⁹ those tribes that do have laws follow the standard Anglo-American prostitution statutory scheme of criminalizing all parties.¹³⁰

Legalization means that the government does not criminalize sex work, but regulates it.¹³¹ Some activists, including certain feminists, advocate for legalization in order to secure labor, licensing, and medical regulations for sex workers.¹³² Some feminist experts view the criminalization of the sale of sex as pointless, because it will not eradicate the practice.¹³³ Others assert that legalization would legitimize political discussion of violence in the sex industry.¹³⁴ Many feel that denying women the right to prostitute paternalizes them.¹³⁵

Gender and Sexuality Law: Criminal Law Chapter: Prostitution and Sex Work, 11 GEO. J. GENDER & L. 163, 166 (2010) (discussing how American states treat prostitution and related activities). Nevada's prostitution regulations seek to combat violence against women and the spread of STDs. See Lauren M. Davis, *Criminal Law Chapter: Prostitution*, 7 GEO. J. GENDER & L. 835, 840–41 (2006). Such efforts notwithstanding, unlicensed prostitution (which is illegal) is booming, especially in Nevada's largest cities, Las Vegas and Reno, which are located in counties where prostitution is illegal. *Id.* at 841. In 2009, Rhode Island criminalized all prostitution. See R.I. GEN. LAWS §§ 11-34.1-1 to 11-34.1-14 (Supp. 2010). Previously, indoor prostitution had been legal in Rhode Island. See *id.*; Davis, *supra*, at 841–42 (describing previous failed attempts in Rhode Island to criminalize prostitution).

129. A review of over one hundred tribal codes yielded only a few laws on prostitution. See Interview with Sarah Deer, Assistant Professor of Law, William Mitchell Coll. of Law, in Saint Paul, Minn. (Dec. 29, 2010) [hereinafter Deer Interview].

130. *Id.*

131. Alexandre, *supra* note 40, at 128.

132. See Corinne E. Longworth, *Male Violence Against Women in Prostitution: Weighing Feminist Legislative Responses to a Troubling Canadian Phenomenon*, 15 APPEAL 58, 75 (2010).

133. Gould, *supra* note 122, at 438.

134. See Alexandre, *supra* note 40, at 128 (stating that legalization would “shift the focus of enforcement resources from targeting prostitutes to safeguarding the system”).

135. See Lindsay Strauss, *Adult Domestic Trafficking and the William Wilberforce Trafficking Victims Protection Reauthorization Act*, 19 CORNELL J.L. & PUB. POL'Y 495, 523–24 (2010) (asserting that sex workers should not be stripped of agency); see also Agustín, *supra* note 119. See generally STEPHANIE A. LIMONCELLI, *THE POLITICS OF TRAFFICKING: THE FIRST INTERNATIONAL MOVEMENT TO COMBAT THE SEXUAL EXPLOITATION OF WOMEN* 152–55 (2010) (chronicling the stand-offs between feminist factions); Per Ole Tråskman, *Purchase of a Sexual Service—A Lawful Private Delight or an Offence? A Study of Criminal Legislation in the Nordic Countries*, in 54 SCANDINAVIAN STUDIES IN LAW: CRIMINAL LAW 289, 290–93 (Peter Wahlgren ed., 2009) (elucidating the distinctions between sexual moralism, sexual liberalism, and feminism's “victim perspective”).

Under total decriminalization, in contradistinction to legalization, the government does not regulate the prostitution industry.¹³⁶ In a total decriminalization regime, no laws specific to the sale of sex exist.

Under partial decriminalization, laws do not penalize those who sell sex.¹³⁷ This distinguishes partial decriminalization from total decriminalization, as the government may still punish clients and other third-party involvement.¹³⁸ Sweden adopted this scheme in 1999.¹³⁹ It was the first country to do so. Advocates of partial decriminalization converge on the fact that many in prostitution endure a harsh existence and want to escape.¹⁴⁰ Some assert that the mere existence of prostitution is anathematic to gender equality.

From a public policy perspective, the United States must prioritize either sex workers' rights or rights of prostituted people. Prioritizing the rights of both groups negates government's ability to respond effectively to either. Adverse consequences stem from both: prioritizing sex workers complicates helping those that cannot escape prostitution, while prioritizing victims marginalizes sex workers' ability to work legally and to exercise agency.¹⁴¹

Partial decriminalization properly places victims before sex workers. This system weighs the costs and decides that the human right to live free from violence and fear trumps the privilege of choosing one's occupation. Pimps often force, lure, and threaten individuals into prostitution.¹⁴² The high risk that a pimp will harm a person in prostitution implicates the sex buyer in endangering that person.¹⁴³ The sex purchaser, by generating demand for

136. Alexandre, *supra* note 40, at 128.

137. *Id.*

138. *Id.*

139. *Id.*

140. See Marisa Silenzi Cianciarulo, *What is Choice? Examining Sex Trafficking Legislation Through the Lenses of Rape Law and Prostitution*, 6 U. ST. THOMAS L.J. 54, 65–67, 68 (2008) (arguing that “sex trafficking involves elements of both rape and prostitution” and that confronting sex trafficking necessitates tackling prostitution).

141. Although partial decriminalization does not penalize sex workers directly, they nonetheless react very negatively toward this scheme, as it criminalizes their clients. See INTERNATIONAL COALITION FOR RIGHTS OF SEX WORKERS IN EUROPE, <http://www.sexworkeurope.org/> (last visited Mar. 8, 2011).

142. See Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1753 (2010) (explaining why governments should criminalize sex purchasers).

143. *Id.* at 1762–64.

prostitution, contributes to the harm done to individuals by traffickers or abusive pimps.¹⁴⁴ While the sex buyer does not directly inflict the harm, the sex purchaser nonetheless sexually exploits the victim via the sex act.¹⁴⁵

III. THE SWEDISH MODEL: A HISTORICAL PERSPECTIVE

Sweden's road to partial decriminalization can be traced back to the early twentieth century.¹⁴⁶ Part III presents an abbreviated view of Sweden's journey to its current prostitution laws.¹⁴⁷

Sweden was the first country in the world to simultaneously make it legal to sell sex, but illegal to buy sex.¹⁴⁸ This partial

144. *Id.* at 1752–63 (spinning out this logic).

145. This is in contradistinction to the purchase of products produced using child labor. *Id.* at 1757–58. In the purchase of a sex act, the buyer's role is hardly attenuated compared to that in the supply chain of products such as carpets or shoes, and the purchase of a product produced via child labor does not, in itself, further harm the victim. *Id.*

146. See generally Ann Hallner, *Från vit slavhandel till trafficking. En studie om föreställningar kring människohandel och dess offer* [From White Slavery to Trafficking. A Study of Conceptions of Human Slavery and Its Victims], 129 HISTORISK TIDSKRIFT 429, abstract available at http://www.historisktidskrift.se/fulltext/2009-3/2009_3_429-443.htm (comparing Sweden's modern discourse on human trafficking to its white slavery discourse in the early twentieth century).

147. See *infra* Part III.

148. *Act Prohibiting the Purchase of Sexual Services*, *supra* note 1; BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.), <http://www.sweden.gov.se/content/1/c6/15/14/61/e97ee975.pdf> (2005 codification). Sweden included the legislation in the government bill Violence Against Women, Proposition [Prop.] 1997/1998:55 Kvinnofrid [government bill] (Swed.), <http://www.riksdagen.se/webbnav/?nid=37&dokid=GL0355>. Sweden does not remain the only country in the world that criminalizes the buying, but not the selling, of sex. In 2009, both Norway and Iceland made it illegal to buy sex. See Lov om endringer i straffeloven 1902 og straffeprosessloven (kriminalisering av kjøp av seksuell omgang eller handling) [Law Amending the Criminal Code and Criminal Procedure Act 1902 (Criminalization of the sale of sexual intercourse or dealings)], LOV-2008-12-12-104 (Nor.) (amending §§ 202a, 203 of Criminal Code and Criminal Procedure Act 1902), <http://www.lovdato.no/cgi-wift/wiftdrens?/app/gratis/www/docroot/ltavd1/filer/nl-20081212-104.html>. Deputy Justice Minister Astri Aas-Hansen has said “We think buying sex is unacceptable because it favours human trafficking and forced prostitution.” *New Norway Law Bans Buying of Sex*, BBC NEWS (Jan. 1, 2009), <http://news.bbc.co.uk/2/hi/7806760.stm>; see also *Fréttir/A New Law Makes Purchase of Sex Illegal in Iceland*, JAFNRETTISSTOFA (Apr. 21, 2009), <http://www.jafnretti.is/jafnretti/?D10cID=ReadNews&ID=523>; GENERAL PENAL CODE 19/1940, ch. XXII art. 206 (Ice.), <http://eng.domsmalaraduneyti.is/information/nr/119> (listing certain Icelandic sexual offenses that have been translated to English). Up to 70 percent of Icelanders favor the new law, according to opinion polls. See *Fréttir/A New Law Makes Purchase of Sex Illegal in Iceland*, *supra*.

decriminalization scheme differentiates itself from legalization because there the government does not regulate the industry.¹⁴⁹ Sweden passed its sex purchase law in 1999. Commentators commonly refer to the law as the Sexköpslagen.¹⁵⁰

A. *Swedes Debate How to Treat Prostitution*

Debate on the proper legal treatment of prostitution¹⁵¹ enjoys a storied past in Sweden.¹⁵² Sweden legalized prostitution until 1999.¹⁵³ Researchers began studying prostitution in the 1970s.¹⁵⁴ The Swedes performed these early studies through a lens that saw prostitution as the oppression of women.¹⁵⁵ The view of prostitution as legitimate work did not emerge until the 1990s.¹⁵⁶

Disparity between the 1990s view that government should legalize sex work¹⁵⁷ and new research on the reality of the life of people in prostitution¹⁵⁸ culminated in the Sexköpslagen.¹⁵⁹ In 1981, the Swedish government initiated its first official prostitution investigation, which produced a 1983 law outlawing live sex shows.¹⁶⁰ The second official prostitution investigation produced

149. See Alexandre, *supra* note 40, at 128; see also *infra* Part III.A.

150. See Thomas Buch-Andersen, *Swedes Argue Over Sex Law*, BBC NEWS (Jan. 21, 2008), <http://news.bbc.co.uk/2/hi/europe/7199960.stm>.

151. See *supra* Part III.A for the different legal theories of prostitution.

152. See Yvonne Svanström, *Prostitution in Sweden: Debates and Policies 1980–2004*, in INTERNATIONAL APPROACHES TO PROSTITUTION: LAW AND POLICY IN EUROPE AND ASIA 67 (Geetanjali Gangoli & Nicole Westmarland eds., 2006) [hereinafter *Prostitution in Sweden*] (discussing legal possibilities of handling prostitution).

153. See Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 362 (2006) (discussing how the product of feminist debate played out very differently in Europe: After Sweden partially decriminalized prostitution in 1999, the Netherlands lifted its law outlawing brothels in 2000).

154. *Prostitution in Sweden*, *supra* note 152, at 69.

155. *Id.* Current research on Swedish prostitution has expanded, and includes prostitution's connection to the sex industry and to trafficking. *Id.* at 70.

156. See *id.* at 69, 70 (discussing how the pre-1990 studies analyzed prostitution in a “gender role perspective” view, whereby women were objectified within the patriarchal tradition).

157. *Id.* at 71.

158. Gould, *supra* note 122, at 439.

159. *Act Prohibiting the Purchase of Sexual Services*, *supra* note 1.

160. *Criminalising the John*, *supra* note 115, at 226; cf. ORDNINGSLAG (Svensk författningssamling [SFS] 1993:1617) (Swed.), <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1993:1617>.

the first proposal for *Kvinnofrid*,¹⁶¹ the larger bill of which *Lag om förbud mot köp av sexuella tjänster* [Act Prohibiting the Purchase of Sexual Services]¹⁶² was part.¹⁶³ A government Minister for Equality appointed a Commission¹⁶⁴ in 1993 to study the sex trade.¹⁶⁵ The Commission recoiled from the view that selling sex should be government-sanctioned work.¹⁶⁶

The Commission's findings were significant, and they mirror the findings of the earlier Swedish studies, as well as studies done elsewhere in the world.¹⁶⁷ The *Könshandel*, one of the Commission's reports on the sex trade, noted that prostitution hurt not only the parties involved, but their communities as well.¹⁶⁸

The Commission frowned on European Union member states' legalization of prostitution.¹⁶⁹ Its report noted that the worldwide

161. Proposition [Prop] 1997/1998:55 Kvinnofrid [government bill] (Swed.), <http://www.riksdagen.se/webbnav/?nid=37&dokid=GL0355>.

162. *Act Prohibiting the Purchase of Sexual Services*, *supra* note 1.

163. *Kvinnofrid* addressed many women's issues, and it was a piece of Sweden's national initiative to promote gender equality. See MARY LUCILLE SULLIVAN, MAKING SEX WORK: A FAILED EXPERIMENT WITH LEGALISED PROSTITUTION 10 (2007) (noting that Sweden's prostitution legislation is a component of Sweden's national gender equality program). These issues included fighting sexual harassment and violence against women in general. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 30.

164. Swedish legislation often begins with commissions that gather information for the proposed law. *Criminalising the John*, *supra* note 115, at 226.

165. Gould, *supra* note 122, at 439. Although Sweden had last appointed a similar commission in 1982, it felt a new commission was necessary because of the new focuses on and findings of prostitution research. See *id.*; see also *Prostitution in Sweden*, *supra* note 152, at 70–71 (detailing the progression of research findings and focuses from the 1970s through the present).

166. Statens Offentliga Utredningar [SOU] 1995:15 *Könshandel* [government report series] (Swed.), <http://regeringen.se/content/1/c6/02/51/23/5ceff4b3.pdf>; see also Gould, *supra* note 122, at 439–40 (noting the many “damaging effects” of prostitution on societies, particularly those that had accepted prostitution).

167. See Statens Offentliga Utredningar [SOU] 1995:15 *Könshandel* [government report series] (Swed.), <http://regeringen.se/content/1/c6/02/51/23/5ceff4b3.pdf>.

168. Statens Offentliga Utredningar [SOU] 1995:15 *Könshandel* [government report series] (Swed.), <http://regeringen.se/content/1/c6/02/51/23/5ceff4b3.pdf>; see also Gould, *supra* note 122, at 439.

169. Gould, *supra* note 122, at 440. Although Sweden had a comparatively low number of individuals in prostitution (2,500) at the time, the Commission did not want Sweden to be infiltrated by the Eastern-European-women concentrated sex market in the way that other European Union countries were. *Id.* at 439–40. The Commission feared that the growth of the international sex industry was already beginning to affect Sweden. *Id.* Notably, war and oppressive or unstable governments can be a base point for driving women into prostitution; Polish

sex industry had witnessed increases in organized crime.¹⁷⁰ Sex tourism, pornography, and human trafficking of women and children had also spiked.¹⁷¹ As a result, the Commission wanted to make Sweden different from the rest of Europe.¹⁷²

The Commission sought to criminalize both the buying and selling of sex.¹⁷³ Although its proposal failed,¹⁷⁴ its three overriding justifications buoy the Sexköpslagen of today: 1) a legalized sex trade is incompatible with gender equality;¹⁷⁵ 2) prostitution has increased in countries that have legalized it, such as Holland and Germany;¹⁷⁶ and 3) “the social costs of prostitution in terms of disease and crime damage society as a whole.”¹⁷⁷

Jewish and Russian women overpopulated foreign brothels during the late nineteenth century to the end of World War II. LIMONCELLI, *supra* note 135, at 23.

170. Gould, *supra* note 122, at 440.

171. *Id.*

172. See Caitlin M. Mulcahy, *Ladies of Leisure: Parks, Policy, and the Problem of Prostitution*, 1 J. UNCONVENTIONAL PARKS, TOURISM & RECREATION RESEARCH 2, 7 (2008) (describing the Netherlands’ “safe parks,” where johns can drive up, choose their sex worker, and conduct business in a car stall), available at http://juptrr.asp.radford.edu/Volume_1/Ladies_of_Leisure.pdf.

173. Gould, *supra* note 122, at 441.

174. Very few organizations supported the Commission’s recommendations. *Id.* Stockholm’s police authority and a single women’s organization were among them. *Id.* at 441–42. An anti-pornography organization, the National Association for Battered Women’s Shelters, the manager of a treatment facility for individuals in prostitution, and the Public Health Institute supported partial decriminalization. *Id.* Nearly every comment in support of partial decriminalization pointed out that Sweden could herald itself as a country committed to equal treatment. *Id.* at 443. Notably, the presence of women-friendly laws does not guarantee that those laws were passed in order to benefit women. R. AMY ELMAN, *SEXUAL SUBORDINATION AND STATE INTERVENTION: COMPARING SWEDEN AND THE UNITED STATES* vii (1996). The Sexköpslagen uses gender-neutral language; however, it focuses heavily on women in prostitution. Gould, *supra* note 122, at 439; see also *Prostitution in Sweden*, *supra* note 152, at 67 (explaining that the law was touted to be a “feminist law”).

175. Gould, *supra* note 122, at 440. Many in the United States regard Sweden as the paradigmatic social welfare state, despite the fact that “until recently, [Sweden] was described as ignoring the problem of domestic violence.” Gould, *supra* note 122, at 437; ELMAN, *supra* note 174, at vii.

176. Gould, *supra* note 122, at 440–41; Longworth, *supra* note 132, at 75–77 (explaining how legalization efforts in the Netherlands and Victoria, Australia, have resulted in increases in organized crime, sex trafficking, and violence against women in prostitution).

177. Gould, *supra* note 122, at 441. The Commission stressed that penalizing the buyer and seller in an exchange of sex for money would “serve a normative purpose and make it clear that prostitution is socially unacceptable.” *Id.*

Notably, the forced-or-voluntary debate present in America today did not hold up the Commission.¹⁷⁸ Sweden had already resolved that question, prioritizing the protection of women and children at the expense of marginalizing those who advocate that governments should recognize sex as work.¹⁷⁹

B. The Sexköpslagen's Message: Prostitution Preserves Women's Inequality and Furthers Sexual Exploitation

While current Swedish law punishes the purchase of sex to the same extent as it punishes shoplifting,¹⁸⁰ Sweden enacted the law to send a societal message that Sweden does not tolerate prostitution.¹⁸¹ Sweden yoked prostitution to sexual exploitation: "it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives."¹⁸² Instead, Sweden regards prostitution as a form of violence against women:¹⁸³

178. *Id.* at 445.

179. See Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187 (2004) (discussing how other countries use the Sexköpslagen as an example of best practices for protecting women and children from prostitution and trafficking), available at <http://www.ostgruppen.se/Dokument/Ekberg.txt>. Sweden invented creative slogans and tactics to broadcast its message, such as "[t]ime to flush the johns out of the Baltic." ELIZABETH BERNSTEIN, *TEMPORARILY YOURS: INTIMACY, AUTHENTICITY, AND THE COMMERCE OF SEX* 149 (Univ. of Chi. Press 2007).

180. *Prostitution in Sweden*, *supra* note 152, at 73; see Ekberg, *supra* note 179, at 1192 (noting that the Sexköpslagen imposed a penalty of up to six months in prison or payment of a fine). But see REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 42 (recommending heightened penalties of up to one year in prison, commensurate with the circumstances).

181. See BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.), <http://www.sweden.gov.se/content/1/c6/15/14/61/e97ee975.pdf> (2005 codification) (outlining prohibited acts and corresponding sentences).

182. Ekberg, *supra* note 179, at 1188 (translating Violence Against Women, Proposition [Prop] 1997/1998:55 Kvinnofrid [government bill] (Swed.), <http://www.riksdagen.se/webbnav/?nid=37&dokid=GL0355>); see also BERNSTEIN, *supra* note 179, at 148–51 (describing Sweden's media campaigns on the Sexköpslagen).

183. For example, Birgitta Ekstrom, who ran a treatment center for individuals in prostitution, supported the Sexköpslagen on the grounds that women in prostitution "were always in an inferior position . . ." Gould, *supra* note 122, at 441. However, not everyone felt this way. Gould discusses how some in Sweden wanted to enact Sexköpslagen to keep foreign women out of the country because they are more vulnerable to mistreatment and likely to "spread life-threatening

The Swedish government has explicitly noted that the female body cannot be looked upon as merchandise which can be bought or sold. . . . All trade is based on the fact that there are customers and demand. If there were no customers looking upon women's bodies as objects, there would be no market where the victims for this trade could be offered and exploited¹⁸⁴

Sweden's explicit invocation of the link between women's equality and men's demand for commercial sex jars with the United States' comparatively muted emphasis of these issues, and its broader focus on prosecuting traffickers.¹⁸⁵ While the United States developed its anti-trafficking policy earlier than Sweden¹⁸⁶ and has infused a large and varied network of anti-trafficking measures into America's criminal justice system that Sweden does not rival, United States prostitution laws continue to victimize vulnerable persons, and United States trafficking laws hinder victim recovery.¹⁸⁷

sexual diseases." *Id.* at 444. This "fear of the foreign" extended to a desire to prevent non-Swedish opinions and ideas from entering the country. *Id.*

184. *Prostitution in Sweden*, *supra* note 152, at 67 (translating Ministry of Gender Equality, Margaretha Winberg).

185. *See infra* Part IV. *Compare* REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, with Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 104(b)(1)(A) (addressing for the first time the demand for commercial sex acts).

186. *Compare infra* Part IV.B., with note 276 and accompanying text. *See* MINISTRY OF INDUSTRY, EMPLOYMENT, AND COMMUNICATIONS, PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS (2005) (providing an overview of Swedish legal responses to prostitution), available at <http://www.legislationline.org/topics/topic/14/country/1> (scroll down and click "Prostitution and trafficking in human beings (2005)"). Still, a foreign victim of sex trafficking in Sweden must prove either that her trafficker used force against her, or that she had been particularly susceptible to being trafficked. E-mail from Ann Hallner, Dep't of History, Univ. of Stockholm, to author (Sep. 30, 2010, 08:21 CST) (on file with author); *see* BUCKEN-KNAPP, *supra* note 45, at 1 (noting that Sweden has hotly debated immigration, particularly labor migration, since 2000). But Swedish police are in favor of a law that would not discriminate based on national origin. E-mail from Ann Hallner, *supra*. As for the sex trafficking law itself, commentators have challenged it in ways similar to those in which United States observers criticized TVPRA 2008 and the failed H.R. 3887. *See Prostitution in Sweden*, *supra* note 152, at 72; *infra* Part IV.B.3.d-e.

187. *See infra* Part IV.B.3.

IV. HUMAN TRAFFICKING LAWS

A. *A Brief History of International Anti-Trafficking*

Developments

The first international law combating human trafficking was the White Slave Traffic Agreement,¹⁸⁸ signed in 1904.¹⁸⁹ Its stated purpose was to “repress[] . . . [the] trade in white women,”¹⁹⁰ and the statute sought to prevent the “debauchery” of women and girls.¹⁹¹ Notably, in the early twentieth century, the international community did not concern itself *at all* with protecting women of color.¹⁹²

The United Nations (U.N.) first tackled the international problem of trafficking in persons in 1949 with the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic.¹⁹³ The U.N. passed the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2000.¹⁹⁴ In addition to

188. Agreement Between the United States and Other Powers for the Repression of the Trade in White Women, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 [hereinafter White Slave Traffic Agreement] (proclaimed by the President of the United States June 15, 1908). There are slight translation differences between the Statutes at Large and the League of Nations Treaty Series in the document’s title and text. All direct quotes are from the official U.S. source, but the substance of the assertions is the same.

189. *Id.*

190. *Id.*

191. *Id.* at art. II; *see generally* Chuang, *supra* note 24, at 1674 (discussing how laws against trafficking have been preoccupied with preserving the “purity” of women, as opposed to pursuing a human rights approach).

192. The signatories were almost all European nations. White Slave Traffic Agreement, *supra* note 188.

193. Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, Signed at Paris, on 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic, Signed at Paris, on 4 May 1910, *opened for signature* May 4, 1949, 2 U.S.T. 1997, 30 U.N.T.S. 23 [hereinafter Protocol Amending White Slave Traffic]. In 1949, the United Nations (U.N.) had only been in existence for four years. *UN at a Glance*, UNITED NATIONS, <http://www.un.org/en/aboutun/index.shtml> (last visited Mar. 8, 2011).

194. U.N. Trafficking Protocol, *supra* note 58. As recently as July 30, 2010, the U.N. called for member states to reinforce their obligations to prevent trafficking in persons. U.N. Global Plan of Action Against Trafficking in Persons, G.A. Res. 64/L.64, ¶ 1, U.N. Doc. A/RES/64/L.64 (July 29, 2010) (draft resolution), *available at* <http://documents.un.org/advance.asp> (to access the document, complete a Full-Text Search for “A/64/L.64”; then follow the “A/64/L.64” hyperlink next to the date “29/07/2010”; then follow the “English” hyperlink the

eliminating racial language in the protocol's title, the U.N. Trafficking Protocol calls for its signatories to adopt criminal laws against trafficking in persons,¹⁹⁵ and also mandates that ratifying states safeguard trafficking victims' rights.¹⁹⁶

B. *United States Trafficking Laws*

1. *Act of March 3, 1875 Used Immigration Powers to Police Morality*

The United States Congress' first attempt to rein in sex trafficking occurred in 1875.¹⁹⁷ The Act of March 3, 1875 applied to foreign women only.¹⁹⁸ It denied entry into the country of any "subject of China, Japan, or any Oriental country" who had agreed to engage in prostitution.¹⁹⁹ Congress intended to keep out those it considered to be inclined toward "lewd and immoral purposes."²⁰⁰

2. *Mann Act Enforces Racism*

The White-Slave Traffic Act,²⁰¹ or Mann Act, was the first law developed in the United States to combat sex trafficking of American women.²⁰² Unlike more recent sex trafficking laws, the

row titled "Display PDF File"). See generally BORTEL ET AL., *supra* note 22, at 209–14 (explaining the United States' international human rights obligations).

195. U.N. Trafficking Protocol, *supra* note 58, pt. I, art. 5(1).

196. *Id.* pt. II, art. 6. The U.N. Trafficking Protocol qualifies the directive for member states to provide services to victims "to the extent possible under its domestic law." *Id.* pt. II, art. 6(1). The types of services the U.N. Trafficking Protocol lists as being necessary for victims include housing, medical and psychological care, and employment options. *Id.* pt. II, art. 6(3).

197. Act of March 3, 1875, ch. 141, 18 Stat. 477 (1875), amended by 32 Stat. 1213 (1903) (repealed 1974); see also *Misery and Myopia*, *supra* note 22, at 3012–13 (stating the law's formal name to be the *Alien Prostitution Importation Act*, its colloquial name to be the *Page Law*, and describing the law's enactment and enforcement).

198. Act of March 3, 1875 § 5.

199. *Id.* § 1. It also set penalties for the traffickers. *Id.* §§ 2–3.

200. *Id.* § 1.

201. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (2006)).

202. The United States ratified the Protocol Amending White Slave Traffic on August 7, 1950; it entered into force in the United States on August 14, 1950. Protocol Amending White Slave Traffic, *supra* note 193. Currently, the Mann Act criminalizes the knowing movement of anyone in "interstate or foreign commerce" with the purpose to use that person in prostitution or another sexual crime. 18 U.S.C. § 2421. It also criminalizes the intentional "persua[sion], induce[ment], entice[ment], or coerc[ion]" of anyone "in interstate or foreign commerce" to participate in a sexual act for which one can be convicted of a

Mann Act requires victim transport.²⁰³ Much like the White Slave Traffic Agreement, it aimed to protect white females from immorality.²⁰⁴ Professor Jennifer Chacón has explored how law enforcement used the Mann Act to perpetuate racism: only white women could be victims, because only women of color would choose to prostitute themselves.²⁰⁵ Law enforcement disproportionately prosecuted men of color who associated with white women.²⁰⁶ Interestingly, the Supreme Court ruled that the transported woman herself could not violate the Mann Act, or be guilty of conspiracy with another to do so, by merely agreeing to her own transportation.²⁰⁷ The Supreme Court seemed to recognize, if only implicitly, that a woman cannot legally agree to exploit herself.²⁰⁸

crime. *Id.* § 2422(a). Another piece of the Mann Act targets the movement of children with the intent for the child to engage in an illegal sexual act. *Id.* § 2423. And another section punishes the maintenance of an alien, without notifying the Commissioner of Immigration and Naturalization, for prostitution or other “immoral purpose[s].” *Id.* § 2424(a).

203. *Id.* § 2421.

204. White-Slave Traffic (Mann) Act § 6.

205. *Misery and Myopia*, *supra* note 22, at 3016.

206. *Id.*

207. *Gebardi v. United States*, 287 U.S. 112 (1932).

208. The Mann Act has never been repealed. 18 U.S.C. §§ 2421–2424. According to Jessica Neuwirth, President of Equality Now, more sex trafficking prosecutions have been brought under the Mann Act than under more recent legislation because the Mann Act does not require “force, fraud, or coercion.” *Statement of Jessica Neuwirth, President of Equality Now, to the New York City Council 6/11/08*, EQUALITY NOW, http://www.equalitynow.org/english/pressroom/press_releases/presidentstatement_20080613_en.html (last visited Mar. 8, 2011) (referring to Trafficking Victims Protection Act of 2000 (TVPA 2000), Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, 20, 22, 28, 27, 42 U.S.C.)). Nonetheless, the Mann Act is inadequate because of the very few sex trafficking cases that have been prosecuted under federal law. *See id.* (noting that in six years, only seventy sex trafficking cases have been prosecuted successfully, mostly under the Mann Act). It fails to offer victim protections that the TVPA does. *Compare* 18 U.S.C. §§ 2421–2424 (2006), *with* 8 U.S.C. § 1101(a)(15)(T)(i)(I) (2006 & Supp. III 2009) (offering victim certification only to victims of a “severe form of trafficking in persons”). Also, the TVPA provides for higher possible penalties than the Mann Act. *Compare* 18 U.S.C. § 2421 (2006) (providing ten years as the maximum imprisonment), *with* 18 U.S.C. § 1591(b)(1) (2006 & Supp. III 2009) (setting fifteen years as the minimum imprisonment for offenses that either do not involve force, fraud, or coercion, or where the victim was under fourteen years when the crime occurred).

3. *Trafficking Victims Protection Act Positions Law Enforcement as Sentinels for Prosecuting Traffickers and Awarding Victims Services*

a. *Trafficking Victims Protection Act of 2000*

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA 2000), the United States' first comprehensive modern effort to combat trafficking.²⁰⁹ Congress enacted the TVPA 2000 in tandem with a growing international awareness of trafficking.²¹⁰ The United States did not frame the problem as one of gender equality as did the Swedes in enacting the Sexköpslagen.²¹¹ Congress did concede, however, that traffickers target mainly women and girls.²¹² Instead of explicitly gendering the discourse by invoking theoretical conceptions of women's status in society, Congress noted that "[t]he low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry."²¹³ Congress also added that women and girls suffer more than men from poverty, discrimination, and lack of education.²¹⁴ The TVPA 2000's justifications shifted focus from the United States' responsibilities for the problem by suggesting that other countries were mainly responsible for trafficking.²¹⁵

Congress staked out a role for the United States as a leader in recognizing and responding to what is perceived as the transnational nature of human trafficking.²¹⁶ Congress dedicated

209. TVPA 2000, *amended by* Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 18, 22, 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 6, 8, 18, 22, 28, 42 U.S.C.).

210. *See* TVPA 2000 § 102(b)(23) (codified at 22 U.S.C. § 7101(b)(23) (2006)). The TVPA 2000 and the U.N. Trafficking Protocol were enacted in the same year. *See supra* note 58; TVPA 2000.

211. *See supra* Part III.B.

212. 22 U.S.C. § 7101(b)(4) (2006).

213. *Id.* § 7101(b)(2).

214. *Id.* § 7101(b)(4).

215. *See, e.g., id.* § 7101(b)(2) (noting women's poor status "in many parts of the world").

216. *See* TVPA 2000 § 102(b)(24) (codified at 22 U.S.C. § 7101(b)(24) (2006)). Some scholars believe that the TVPA 2000 was, at heart, a response to the increase in the trafficking of white European women. *See, e.g.,* Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40

an incredible amount of money and resources to halting trafficking and providing victim services.²¹⁷ With the TVPA 2000, Congress also set out its strategy for fighting human trafficking: law enforcement. By imposing high burdens on victims, U.S. trafficking law took a cue from U.S. prostitution laws by treating victim status with suspicion.²¹⁸ While Congress provided for victim protections, it concentrated the bulk of its energies on prosecuting traffickers.²¹⁹

The “three Ps” formed the backbone of the TVPA 2000: “protection, prevention, and prosecution.”²²⁰ Protection of trafficking victims was an entirely new innovation in U.S. law.²²¹ The law included provisions to aid victims in other countries²²² as

STAN. J. INT’L L. 1, 2–3 (2004). The fall of the Soviet Union and the resulting instability in that region caused many white women to be trafficked into Western Europe and the United States, and this helped to motivate the passage of the TVPA 2000 (as well as the U.N. Trafficking Protocol). *See* Todres, *supra* note 22, at 648 n.149, 649 n.155. The TVPA 2000 emphasized sex trafficking over labor trafficking, and focused on those trafficked over international borders. *See* TVPA 2000, Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, 22 U.S.C.); TVPRA 2005, Pub. L. No. 109-164, 119 Stat. 3558, tit. III (codified as amended in scattered sections of 18, 20, 22, 27, 28, 42 U.S.C.) (implementing entirely new provisions to combat domestic trafficking).

217. *See, e.g.*, William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (codified at 22 U.S.C. § 7110 (Supp. III 2009)) (allocating ten million dollars for each of the fiscal years 2008 through 2011 to prevent trafficking, in addition to multiple other allocations).

218. *See supra* note 30 and accompanying text (noting that police have arrested sex trafficking victims for prostitution); Dina Francesca Haynes, *Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act*, 6 U. ST. THOMAS L.J. 77, 88–90 (2010) (detailing the specific pitfalls of the victim-services structure).

219. *See, e.g.*, TVPA 2000, Pub. L. No. 106-386, § 112(a)(2) (codified as amended at 18 U.S.C. § 1589(a) (Supp. III 2009)) (adding criminal penalties for traffickers). The law provides for heightened penalties where the defendant attempted or completed kidnapping, killing, or aggravated sexual abuse. 18 U.S.C. § 1589(d); *see also id.* § 1591 (Supp. III 2009) (adding a new crime for the sex trafficking of children via “force, fraud, or coercion”); *id.* § 1594 (Supp. III 2009) (providing punishments for attempted violations of trafficking-related crimes).

220. Luis CdeBaca, Ambassador-at-Large, Office to Monitor & Combat Trafficking in Persons, U.S. Dep’t of State, Trafficking Victims Protection Act: Progress and Promise, Remarks at the Department of Justice’s National Human Trafficking Conference (May 3, 2010), <http://www.state.gov/g/tip/rls/rm/2010/141446.htm>.

221. TVPA 2000, Pub. L. No. 106-386, § 107, 114 Stat. 1464, 1474–80 (2000) (codified as amended at 22 U.S.C. § 7105 (2006 & Supp. III 2009)).

222. *See id.* § 107, 114 Stat. at 1474–75.

well as in the United States.²²³ Congress directed the President to establish a special task force exclusive to curtailing human trafficking.²²⁴ Additionally, to augment victim services, the TVPA 2000 provides funding for grants, contracts, and cooperative agreements to states, Indian tribes, and nonprofit and government organizations to further anti-trafficking measures and furnish victim services.²²⁵

Victim Services Accessible to a Very Limited Number of Trafficking Victims

Trafficking victims need public benefits to provide them with basic mechanisms to reorder their lives.²²⁶ Congress responded inefficaciously to the call. Only victims of a “severe form of trafficking in persons” meet eligibility for public benefits.²²⁷ To qualify as a victim of a “severe form of trafficking in persons,” victims must either be under eighteen²²⁸ or prove that their trafficker perpetrated force, fraud, or coercion, and few victims pass this hurdle.²²⁹ Additionally, the Secretary of Health and Human Services must certify that an individual “is willing to assist in every reasonable way in the investigation and prosecution” of her trafficker for the individual to be labeled a “victim of a severe form of trafficking” in order to apply for these benefits.²³⁰ Still, to qualify for these benefits, victims must not only help law enforcement²³¹

223. See *infra* Part IV.B.3.a.

224. Namely, “an Interagency Task Force to Monitor and Combat Trafficking.” TVPA 2000 § 105(a) (codified as amended at 22 U.S.C. § 7103(a) (2006)). One of its responsibilities was to investigate the “role of the international ‘sex tourism’ industry in the trafficking of persons and in the sexual exploitation of women and children around the world.” *Id.* § 105(d)(5) (codified at 22 U.S.C. § 7103(d)(5) (2006)). “Sex tourism” is travel in interstate or foreign commerce to engage in illegal sex. 18 U.S.C. §§ 2423 (b)–(f) (2006).

225. See 22 U.S.C. §§ 7105a, 7105(f)(3) (2006 & Supp. III 2009).

226. See BORTEL ET AL., *supra* note 22, at 72.

227. 22 U.S.C. § 7105(b)(1)(A) (2006).

228. 22 U.S.C. §§ 7102(8)(A), (13).

229. 22 U.S.C. § 7102(8)(B); BORTEL ET AL., *supra* note 22, at 14; see also Dina Francesca Haynes, (*Not*) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act, 21 GEO. IMMIGR. L.J. 337, 343–45 (2007) (explaining the intricacies of why few victims get help).

230. 22 U.S.C. § 7105(b)(1)(E); see also 8 U.S.C. § 1101(a)(15)(T)(i)(II) (Supp. III 2009).

231. See Haynes, *supra* note 218, at 78–84 (discussing how many trafficking victims are not rescued by law enforcement, but escape on their own, and are thus

but also must be foreign nationals.²³² Federal provisions preclude U.S. citizens and lawful permanent residents from accessing these benefits.²³³

Congress established a new visa for trafficking victims, the “T visa,”²³⁴ and also provided for “an alien individual’s continued presence in the United States” for those that assist with investigation and prosecution of traffickers.²³⁵ As with public benefits, law enforcement must certify victims before they can qualify for a T visa.²³⁶ Since 2002, United States Citizen and Immigration Services has granted only 1,591 T visas,²³⁷ while at least 14,500 trafficking victims enter the United States every year.²³⁸

b. Trafficking Victims Protection Reauthorization Act of 2003

Congress stepped up measures aimed at suppressing sex tourism in the Trafficking Victims Protection Reauthorization Act of 2003 (TVpra 2003).²³⁹ The applicable provisions directed that

not considered victims).

232. See BORTEL ET AL., *supra* note 22, at 73.

233. See 22 U.S.C. § 7105(b)(1)(A) (Supp. III 2009). However, the TVpra 2008 begins to provide assistance for U.S. citizens and legal permanent residents. See 22 U.S.C. § 7105(f). U.S. citizens are eligible for public benefits and federal crime victim services. See ATTORNEY GENERAL’S REPORT, *supra* note 16, at 17–18. But the Attorney General’s report notes that there is “little data to assess the extent to which U.S. citizen trafficking victims are accessing the benefits for which they are eligible.” *Id.* at 18; see BORTEL ET AL., *supra* note 22, at 72–73 (explaining how federal mandates effectively impede U.S. citizens and legal permanent residents from gaining certification as a “victim of a severe form of trafficking”).

234. See 22 U.S.C. § 7105 (2006); 8 U.S.C. § 1101(a)(15)(T) (2006).

235. 22 U.S.C. § 7105(c)(3).

236. See 8 U.S.C. § 1101(a)(15)(T)(i)(I) (2006 & Supp. III 2009) (offering victim certification only to victims of a “severe form of trafficking in persons”).

237. ATTORNEY GENERAL’S REPORT, *supra* note 16, at 37–38.

238. See *supra* note 14 and accompanying text. United States Citizenship and Immigration Services (USCIS) granted visas to an additional 1,473 family members of victims, who may or may not be trafficking victims. ATTORNEY GENERAL’S REPORT, *supra* note 16, at 37–38. Trafficking victims may also receive a “U visa,” broadly designed for victims of crime. *Id.* at 38. USCIS grants many more U visas than T visas, but even assuming all U visas went to trafficking victims, this still does not come close to helping all the victims in the United States. See *id.* at 39 (showing the total number of U visas granted in 2009 to be 8,663 but showing that 2,838 of these went to victims’ family members, who may or may not also be crime victims).

239. Trafficking Victims Protection Reauthorization Act of 2003 (TVpra 2003), Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), *amended by* Trafficking Victims Protection

international travelers be apprised via informational materials that sex tourism exploits individuals.²⁴⁰

In perhaps the most celebrated change in the TVPRA 2003, Congress provided a civil cause of action for victims against their traffickers.²⁴¹ Trafficking victims no longer need to rely on a prosecutor's discretion, nor be penalized by a hard-to-prove criminal case.²⁴² The TVPRA 2003 also authorized measures to conduct research on trafficking victims in the United States.²⁴³ This recognized the plight of many people caught in prostitution wholly within the United States.

c. Trafficking Victims Protection Reauthorization Act of 2005

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) turned its focus to U.S. resident victims.²⁴⁴ Congress authorized a study specifically to determine the incidence of domestic sex trafficking and of commercial sex acts,²⁴⁵ and so began to hone in on sexual exploitation that may not constitute trafficking, but contributes to the demand for sex trafficking

Reauthorization Act of 2005 (TVPRA 2005), Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 18, 22, 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 6, 8, 18, 22, 28, 42 U.S.C.).

240. TVPRA 2003 § 3(a)(2), 117 Stat. 2875, 2876 (codified as amended at 22 U.S.C. § 7104(e)(1) (2006)). The President decides in which places "sex tourism is significant." *Id.* The TVPRA 2003 also added a provision whereby any private recipient of a federally-awarded grant, contract, or cooperative agreement is susceptible to revocation of the monies if the grantee or anyone under its control "engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or . . . uses forced labor in the performance of the grant, contract, or cooperative agreement." *Id.* § (3)(b), 117 Stat. 2875, 2877 (codified as amended at 22 U.S.C. § 7104(g) (2006)).

241. *Id.* § 4(a)(4)(A), 117 Stat. 2875, 2878–79 (2003) (codified as amended at 18 U.S.C. § 1595 (Supp. III 2009)); *see also* Strauss, *supra* note 135, at 502.

242. *See* Strauss, *supra* note 135, at 502; *see also* Haynes, *supra* note 229, at 349–53 (discussing the Department of Justice's failure to protect victims who are not essential to successful trafficking prosecution cases).

243. TVPRA 2003 § 6(g)(1), 117 Stat. 2875, 2883–84 (2003) (codified as amended at 22 U.S.C. § 7109a (2006)); *see* Strauss, *supra* note 135, at 502–03.

244. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. No. 109-164, § 201, 119 Stat. 3558, 3567–72 (2006) (codified as amended at 22 U.S.C. §§ 7103–7104 (Supp. III 2009) and 42 U.S.C. §§ 14044, 14044a–14044d (Supp. III 2009)); *see* Strauss, *supra* note 135, at 503–05.

245. TVPRA 2005 § 201, 119 Stat. 3558, 3567–69 (2006) (codified as amended at 42 U.S.C. § 14044 (Supp. III 2009)); *see also* Strauss, *supra* note 135, at 503–05.

victims.

d. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

With passage of the TVPRA 2008,²⁴⁶ Congress explicitly clarified its position that prostitution is not a legitimate, victimless enterprise.²⁴⁷ Congress also acknowledged that combating the demand for prostitution figures prominently in the fight against sex trafficking.²⁴⁸

e. H.R. 3887

The process leading up to the enactment of TVPRA 2008 deserves note. H.R. 3887, the House version of the bill that was ultimately defeated, would have established a new definition of sex trafficking. It would have equated prostitution with sex trafficking for all practical purposes by replacing the requirement of “force, fraud, or coercion”²⁴⁹ with “persuades, induces, or entices.”²⁵⁰ As noted earlier, some state laws use such a standard.²⁵¹

246. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008) (codified as amended in scattered sections of 6, 8, 18, 22, 28, 42 U.S.C.). The TVPRA 2008 authorized appropriations through fiscal year 2011. *Id.* (“To authorize appropriations for fiscal years 2008 through 2011 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in persons, and for other reasons.”).

247. *See id.* § 225, 122 Stat. 5044, 5072 (2008) (codified at 22 U.S.C. § 7101 (Supp. III 2009)). The TVPRA 2008 represents a “consensus” between the Senate and the House versions of the bill. Strauss, *supra* note 135, at 526–31. *See generally* Chuang, *supra* note 24, at 1680–95 (discussing prostitution-related developments in the 2003, 2005, and 2008 TVPRAs, and attempted legislation).

248. *See* TVPRA 2008 § 225, 122 Stat. 5044, 5072 (2008) (codified at 22 U.S.C. § 7101 (Supp. III 2009)) (ordering the Attorney General to develop a model state statute examining and prosecuting trafficking via an overhaul of state or local government prostitution and pandering laws); Chuang, *supra* note 24, at 1692–93 (discussing H.R. 3887’s attempt to make sex trafficking a federal crime).

249. 22 U.S.C. § 7102(8)(B) (2006).

250. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007, H.R. 3887, 110th Cong. § 221(f)(1) (2007). The bill defined sex trafficking anew by adding “in or affecting interstate or foreign commerce” but eliminating the requirement of “force, fraud, or coercion” from 22 U.S.C. § 7102(8)(B) (2006). *Id.* This would have consolidated the TVPA 2000 and the Mann Act. *See Statement of Jessica Neuwirth, supra* note 208.

251. *See* Nack, *supra* note 30, at 820 n.80.

Due to intense debate over whether prostitution is a choice and whether all persons in prostitution should be considered “trafficked,” H.R. 3887 was ultimately defeated.²⁵² Its inclusion in the House version of the bill represented a step forward in the fight against sexual exploitation.²⁵³

*f. Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010*²⁵⁴

The 111th Congress passed the Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010 (TDVSA) on December 22, 2010.²⁵⁵ TDVSA focuses on child sex trafficking.²⁵⁶ TDVSA notes that “[c]hildren who have run away from home are at a high risk of becoming exploited through sex trafficking . . . and of engaging in prostitution.”²⁵⁷ It also recognizes that “minors do not have the capacity to consent to their own sexual exploitation, [so] minor sex trafficking victims should not be charged as criminal defendants.”²⁵⁸ Although TDVSA commendably moves in the right direction, Congress should have recognized that no one can consent to his or her own sexual

252. See Silenzi Cianciarulo, *supra* note 140, at 65–67 (explaining the controversy surrounding H.R. 3887); see also *supra* note 59 and accompanying text (noting Minnesota’s less stringent definition).

253. See Silenzi Cianciarulo, *supra* note 140, at 68 (arguing that sex trafficking involves elements of both “rape and prostitution,” and that confronting sex trafficking necessitates tackling prostitution). *But see* Strauss, *supra* note 135, at 523–24 (articulating that opponents of the bill “believed it conflated prostitution with sex trafficking” and “impermissibly affected women who chose to engage in prostitution as a profession”).

254. S. 2925, 111th Cong. (2010) (enacted) [hereinafter TDVSA].

255. *Id.*

256. See, e.g., *id.* §§ 2(3), (11). The official title of Senate Bill 2925 is “An Act to establish a grant program to benefit victims of sex trafficking, and for other purposes.” *Id.*

257. *Id.* § 2(7). See generally CAPTIVE DAUGHTERS MEDIA, PORNOGRAPHY: DRIVING THE DEMAND IN INTERNATIONAL SEX TRAFFICKING (David E. Guinn ed., 2007) (arguing that pornography drives the demand for sex trafficking); Catharine A. MacKinnon, *Pornography as Trafficking*, 26 MICH. J. INT’L L. 993, 993 (2005) (postulating that pornography qualifies as a form of sex trafficking, in that people “are rented out for use in commercial sex acts . . . and sold for a buyer’s sexual use”).

258. TDVSA, *supra* note 254, § 2(13). TDVSA acknowledges New York’s new safe harbor law. See *id.* at § 6(2). New York recently adopted a law that channels the defeated House Bill 3887. N.Y. SUBSTITUTION OF PETITION OR FINDING LAW § 311.4 (McKinney 2010). Under this new “safe harbor” provision, a minor who is charged with a prostitution offense is presumptively sex trafficked. *Id.* at § 3.

exploitation, as Sweden has.

V. THE SWEDISH MODEL TEN YEARS LATER: HOW IS IT WORKING?

In July 2010, the Swedish government released a report evaluating the effects of the Sexköpslagen from 1999-2008.²⁵⁹ All over the world, people eagerly awaited Sweden's results.²⁶⁰ Part V summarizes some of the report's findings, as well as criticism to which the report has been subject.²⁶¹

A. *The Commission's Report*

The *Report on Prohibition of the Purchase of Sexual Services* recommended that the Sexköpslagen remain in effect.²⁶² It also recommended increasing the punishments for certain aggravated sexual offenses.²⁶³ To some critics, the law has been a huge success;²⁶⁴ to others, a huge failure.²⁶⁵ A few years ago, the media reported that "Sweden has drastically reduced human trafficking and prostitution by imposing a ban on the purchase of sexual services"²⁶⁶ *Report on Prohibition of the Purchase of Sexual Services* states the following: "Our assessment shows that the ban on the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution."²⁶⁷ Jonas Trolle, who works with Stockholm law enforcement to fight prostitution, explained that after passage of the Sexköpslagen,

259. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1.

260. See *id.* at 30.

261. See *infra* Part V.

262. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 30.

263. *Id.* at 42 (recommending that the maximum imprisonment be raised from six months to one year). The report suggested that a higher penalty would be appropriate in several cases, including where a minor was exploited, where there was more than one purchaser, where the exploitation lasted for several hours, or where the victim had a mental disability. *Id.*

264. *Id.* at 40.

265. See Agustín, *supra* note 46.

266. *Prostitution Ban Huge Success in Sweden*, HUMANTRAFFICKING.ORG (Jan. 30, 2008) [hereinafter Anwar], <http://www.humantrafficking.org/updates/838> (Adapted from: André Anwar, *Prostitution Ban Huge Success in Sweden*, SPIEGEL (Nov. 8, 2007), available at <http://www.spiegel.de>).

267. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 40.

Sweden had much less prostitution and trafficking than its neighboring countries, even taking into account factors such as proximity to Russia and underground prostitution.²⁶⁸

Still, the Sexköpslagen was not a cure-all, especially at first. In the period immediately following its passage, before the enactment of Sweden's human trafficking law, police did not rigorously enforce the Sexköpslagen.²⁶⁹ At first, Swedish police were apprehensive of how the Sexköpslagen would work in practice.²⁷⁰ These concerns centered on the ability to enforce the Ban and issues of proof.²⁷¹ Currently, however, most prosecutors and law enforcement favor the law.²⁷²

B. Prosecutions of the Ban

Even though the Sexköpslagen purposes to stop violence against women in the commercial sex industry,²⁷³ the low penalty negates the message's urgency.²⁷⁴ This directly influences the law enforcement approach. Due to the low penalties for purchasing crimes, law enforcement does not prioritize violations of the Ban.²⁷⁵ After Sweden enacted its sex trafficking law, effective July 1, 2002,²⁷⁶ the number of prosecutions of johns skyrocketed.²⁷⁷ Pimping and

268. Anwar, *supra* note 266.

269. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 39 (noting a "dramatic increase" in the Ban's enforcement after the trafficking law became effective). Many factors likely account for this: for example, Swedish law governing what police officials may do in order to effect arrest. See BERNSTEIN, *supra* note 179, at 151 (noting that many police felt frustrated that laws prohibiting entrapment impeded their efforts to arrest johns); see also *infra* note 277 and corresponding text.

270. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 39.

271. *Id.* at 40.

272. *Id.*

273. See *supra* Part III.B.

274. See BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.), <http://www.sweden.gov.se/content/1/c6/15/14/61/e97ee975.pdf> (2005 codification).

275. E-mail from Artur Ogelid to author (Oct. 5, 2010, 07:44 PM CST) (on file with author) [hereinafter Report Translation] (summarizing REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1).

276. BROTTSBALKEN [BRB] [CRIMINAL CODE] 4:1a (Swed.), <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1962:700#K4>; see also E-mail from Magdalena Wikstrand Danelius, Legal Advisor, Div. for Criminal Law, Ministry of Justice, to author (Oct. 13, 2010, 03:17 CET) (on file with author) (containing an unofficial translation).

277. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note

human trafficking investigations have led to the increased prosecutions,²⁷⁸ as prosecutors regard the purchasers of sex to be valuable witnesses in pimping and human trafficking cases.²⁷⁹ As such, Sweden prioritizes prosecutions of sex purchasers mainly for purposes of sex trafficking prosecutions.

Sweden has directed most of its efforts toward street prostitution. A majority of prosecutions in Sweden occurred in cases where the buyer approached a woman on the street.²⁸⁰ Every single prosecution from 1999 to 2008 was against a man, and in eight out of ten prosecutions, the man admitted to the crime.²⁸¹ They usually paid in cash, and the median age was forty-three.²⁸² Just under half of the reported violations involved only one man.²⁸³ In such cases, three options exist: 1) issue a fine, 2) give a waiver of prosecution, or 3) press charges.²⁸⁴

C. Criticisms of the Ban

Data show that the Sexköpslagen succeeded at starting to de-normalize the purchase of sex.²⁸⁵ It limited accessibility, at least on the streets, and either eliminated some of the johns or made them move elsewhere.

A 2001 report from the Skåne²⁸⁶ police disfavored the Ban.²⁸⁷ It found that while street prostitution had declined, the violence against prostituted women increased. Fewer men were willing to purchase sex, but the disappearing johns had been the nicer customers.²⁸⁸ They would not risk getting caught.²⁸⁹ Those that

1, at 39.

278. *Id.*

279. Report Translation, *supra* note 275, at 2. In cases connected to a pimping or human trafficking offense, a prosecutor leads the investigation against a sex purchaser. *Id.* If the case is a “simple” crime against the Ban, then the police lead the investigation. *Id.*

280. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 39.

281. *Id.*

282. *Id.*

283. *Id.* at 40.

284. *Id.*

285. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 37 (explaining an increase in public support for the Sexköpslagen).

286. Skåne is a city in Sweden’s southern district. *Prostitution in Sweden*, *supra* note 152, at 73.

287. *Id.*

288. *See* Anwar, *supra* note 266.

289. *Id.*

remained insisted on violent, perverted, and unprotected sex—sometimes demanding sex acts with urine and feces, among other humiliating acts.²⁹⁰ “All that’s left are the more troubled ones”²⁹¹ The women still need money, though, so “[i]t puts you at their mercy.”²⁹² Women in prostitution were not able to insist on the use of condoms.²⁹³ Thus, for women in prostitution, there were fewer johns, greater rivalry, and a greater exposure to sexually transmitted diseases (STDs).²⁹⁴ The number of reported violent crimes perpetrated against women in prostitution also increased.²⁹⁵ Many women still in prostitution who cannot or will not leave disfavor the law.²⁹⁶

A 2004 official commission by the Swedish government disparaged the *Law on Women’s Peace*,²⁹⁷ the 1999 law that included the Ban and other measures to address women’s inequality in Sweden. It alleged that the powers-that-be fail to prioritize the issue of “men’s violence against women,” that the government provides insufficient resources to implement the law, and that those implementing the law do not receive adequate training.²⁹⁸

The Swedish government, however, has addressed these concerns. In 2008, Sweden allocated more money to law enforcement training, victims’ services, and targeting demand.²⁹⁹

290. Petra Östergren, *Sexworkers Critique of Swedish Prostitution Policy*, available at http://www.worldaidscampaign.org/en/content/download/81504/811488/file/Critique%2520of%2520Swedish%2520Prostitution%2520policy.doc+prostitution+underground+sweden&hl=en&gl=us&pid=bl&srcid=ADGEESiK35f86ScvIuVoSjGhZXv1VP8e4nO2I1-Q_2BYPR4C7J_f9dTIQaABt6rTyF1macM0ZrKsQeENeTs5MOMSrAycSqO6tSLnRRiY2aw5jimpzV7jEt-FJDIW15SB5CFrnsuqvCf_&sig=AHIEtbRwouFNPU n8ynQ33eYGBfHi3CeQg&pli=1 (last visited May 17, 2011).

291. Anwar, *supra* note 266 (quoting a prostituted woman).

292. *Id.* (quoting a prostituted woman).

293. Östergren, *supra* note 290.

294. *Id.*

295. See *Prostitution in Sweden*, *supra* note 152, at 73 (explaining this claim in the 2001 Skåne report and opining that conformance with the Ban was not impressive because it imposed the same penalty as that for shoplifting). This result underscores the buyer-seller power differential and the importance of law enforcement’s receiving adequate training, and victims’ access to services. See *infra* Part VI.D.

296. See Anwar, *supra* note 266.

297. *Prostitution in Sweden*, *supra* note 152, at 68.

298. *Id.* Scholars have similarly criticized the lack of adequate training for law enforcement in the United States with regard to identification of trafficking victims. See, e.g., Haynes, *supra* note 229, at 366.

299. REGERINGSKANSLIET (GOVERNMENT OFFICES OF SWEDEN), AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES 7 (2009) [hereinafter

In 2007, Helena Cewers, a nurse who works with many women in prostitution at a drug-addiction clinic in Malmö, was reported as saying that the government had improved considerably in helping the women.³⁰⁰ At first, Cewers had disfavored the law, but now she has come to see its utility.³⁰¹

Still, critics have disparaged the most recent evaluation of the Ban, calling it “embarrassingly light on evidence.”³⁰² Laura Agustín, an author and speaker on sex worker rights, denounces the Swedish Ban.³⁰³ In particular, she asserts various discrepancies and weaknesses in the Commission’s evidence-gathering functions.³⁰⁴ Agustín points to the Swedish government’s reliance on “flawed” Copenhagen street prostitution data as the most egregious disparity.³⁰⁵

Critics also assert that prostitution has not decreased overall, and they attack the Commission for failing to note this.³⁰⁶ Some assert that street prostitution has decreased only because the industry moved—into clubs, Internet venues, and generally underground.³⁰⁷ Commentators have noted that Swedish police target only public prostitution, or streetwalking.³⁰⁸ According to

AGAINST PROSTITUTION], <http://www.sweden.gov.se/content/1/c6/13/36/71/ae076495.pdf>.

300. Anwar, *supra* note 266.

301. *Id.*

302. Laura Agustín, *Magical Thinking of Swedish-law Evaluation Refuted by New Swedish Research*, LAURA AGUSTÍN—THE NAKED ANTHROPOLOGIST ON MIGRATION, TRAFFICKING & SEX (Sept. 23, 2010), <http://www.lauraagustin.com/magical-thinking-of-swedish-law-evaluation-refuted-by-new-swedish-research> [hereinafter *Magical Thinking*]; see also TAMPEP [EUROPEAN NETWORK FOR HIV/STI PREVENTION AND HEALTH PROMOTION AMONG MIGRANT SEX WORKERS], SEX WORK MIGRATION HEALTH: A REPORT ON THE INTERSECTIONS OF LEGISLATIONS AND POLICIES REGARDING SEX WORK, MIGRATION AND HEALTH IN EUROPE 59 (2009), available at http://tampep.eu/documents/Sexworkmigrationhealth_final.pdf (arguing that sex workers suffer state discrimination, are not accorded their full human rights, and that there is “no solid evidence” for the Ban).

303. See *Magical Thinking*, *supra* note 302.

304. *Id.*

305. *Id.*

306. Laura Agustín, *Smoke Gets in Your Eyes: Evaluation of Swedish Anti-Prostitution Law Offers Ideology, Not Methodology*, LAURA AGUSTÍN—THE NAKED ANTHROPOLOGIST ON MIGRATION, TRAFFICKING & SEX (July 15, 2010), <http://www.lauraagustin.com/smoke-gets-in-your-eyes-evaluation-of-swedish-anti-prostitution-law-offers-ideology-not-methodology>.

307. Östergren, *supra* note 290. The Swedish Government noted that its data did not support this assertion. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 37–38.

308. See BERNSTEIN, *supra* note 179, at 152. The Swedish Government notes

Agustín, the Commission claimed that investigation of Internet prostitution was not feasible, so it did not try to measure a shift in incidence.³⁰⁹ But Malmö, one of Sweden's three major cities, undertook its own Internet prostitution evaluation.³¹⁰

The Commission also surveyed Swedes to determine their attitudes toward the Sexköpslagen. Agustín wrote that the survey process is not reliable.³¹¹ She also noted that the Swedish government has not responded to the criticisms.³¹²

In 2009, Norway followed Sweden's lead and became the second country to criminalize the purchase, but not the sale, of sex.³¹³ Iceland was the third.³¹⁴ They all cite Sweden's example and its success in combating sex trafficking as support for the new legislation.³¹⁵ These countries emulate the Swedish Model in part because of their own rising immigration and sex trafficking problems.³¹⁶ The Nordic trend toward de-normalizing the purchase of sex and increasing resources available to prostituted people to enable escape constitute solid, formative steps in the struggle to end violence against women.

concurrent with passage of the Ban and a decrease in Sweden's street prostitution, Norway and Denmark's numbers of women in street prostitution "increased dramatically." REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 35. In order to avoid this "bubble effect" among neighboring states, Congress should use its Spending Power to ensure that as many states and tribes as possible enact an American Sexköpslagen. *See infra* Part VI.A.

309. *Magical Thinking*, *supra* note 302.

310. *Id.*

311. According to Agustín, the Commission distributed 2,500 survey questionnaires, under half of which were returned. *Id.* However, the Commission's researcher warned against overreliance on the results, as those who did return the questionnaires did not truly represent the sought-after response pool. *Id.* Agustín also excoriates the "attempt[ed]" inclusion of sex workers. *Id.* She described the questionnaire as "stilted," and wrote that a mere fourteen responses were received. *Id.* She also wrote that the replies that were received were from sex workers in established sex worker organizations. *Id.*

312. *Id.* The report, released in late July 2010, underwent a comment period before official release. *See* E-mail from Magdalena Wikstrand Danelius, *supra* note 276. Agustín claimed "[t]he Swedish government has proved nothing with this evaluation, and most Swedish politicians are keeping quiet, because they obviously know it." Laura Agustín, *Big Claims, Little Evidence: Sweden's Law Against Buying Sex*, THE LOCAL (Jul. 23, 2010), <http://www.thelocal.se/27962/20100723/>.

313. *See supra* note 148.

314. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1; *see also* Fréttir/A New Law Makes Purchase of Sex Illegal in Iceland, *supra* note 148.

315. *See supra* note 148.

316. *See supra* note 148.

VI. PRESCRIPTION FOR REFORM: CRIMINALIZE THE PURCHASE OF
SEX, DECRIMINALIZE THE SALE OF SEX, AND REFORM SOCIAL
SERVICES TO PROVIDE INCREASED OUTREACH AND SERVICES TO
PEOPLE IN PROSTITUTION

A. *The Swedish Model and the United States' Constitution*

The Sexköpslagen is in force everywhere in Sweden.³¹⁷ America's governmental system vastly differs from Sweden's. Power is divided between the federal government and the individual states and Indian tribes.³¹⁸ How would the United States pass a Sexköpslagen?

At present, the United States' best tool against sex trafficking is the Trafficking Victims Protection Act.³¹⁹ But scholars have noted that federal and state law enforcement often fail to help trafficking victims.³²⁰ An American Sexköpslagen should (and could) be passed at the federal level,³²¹ to ensure that it applies uniformly

317. See REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1.

318. See, e.g., U.S. CONST. art. I, § 8, cl. 3.

319. Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), amended by Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, 22 U.S.C.), Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 18, 22, 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 6, 8, 18, 22, 28, 42 U.S.C.). Many states now have trafficking legislation, but they cannot provide for immigration and other federal benefits for victims. See, e.g., MINN. STAT. § 609.321(7a) (2010).

320. See, e.g., *Misery and Myopia*, *supra* note 22, at 3028, 3036-37 (addressing failed TVPA enforcement, specifically the focus on commercial sex over forced labor, and the proclivities of law enforcement to disproportionately penalize people of color and immigrants); see also BORTEL ET AL., *supra* note 22, at 94-108 (chronicling the weaknesses of Minnesota law enforcement agents, particularly in rural areas, in enforcing Minnesota trafficking laws, and the dilemma law enforcement confronts in having to choose between trafficking victim status and criminal liability for prostitution). Jennifer Chacón notes that in this way TVPA enforcement mirrors that of early Mann Act enforcement. Jennifer M. Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. PA. L. REV. 1609, 1615-16 (2010) (noting that anti-trafficking measures have exacerbated the common misperception that foreigners mainly perpetuate the trafficking scourge); *supra* Part IV.B.3.

321. The Commerce and Spending clauses of the U.S. Constitution limit Congress' power to pass legislation. U.S. CONST. art. I, § 8, cl. 1, 3. Under the former, Congress may regulate the channels and instrumentalities of interstate

across the United States. With the Violence Against Women Act (VAWA),³²² Congress used its Spending Power to condition certain grants and funding on states' and tribes' taking certain actions to battle violence against women. An American Sexköpslagen could be modeled after VAWA and provide states and tribes funds and grants if they passed Sexköpslagen. More specific mechanics of implementation, however, exceed this Note's scope.

A partial decriminalization scheme's true potential lies in effective law enforcement and social service practices. Tricks must be taught about the impact of their actions and helped to reform. Individuals in prostitution have diverse and far-reaching needs, but social workers should work toward establishing earlier intervention points by increasing visibility and services in areas that prostituted people frequent. This includes outreach to those at risk of entering prostitution. This section discusses how such programs could supplement a Sexköpslagen in the United States. It looks to Sweden's practices, but finds that the United States has started moving in a positive direction.

B. *John Schools*

In Sweden, the government offers help to men who purchase sex.³²³ They may choose to attend a "KAST group,"³²⁴ or "john school,"³²⁵ wherein the men can get help to stop buying sex.³²⁶ At

commerce, as well as "activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995). Under the latter, Congress could condition states' and Indian tribes' receipt of federal funds on their implementation of Sexköpslagen. *See South Dakota v. Dole*, 438 U.S. 230, 207-08 (1978) (laying out the requirements for exercise of the congressional spending power); *see also* ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW* 238 (3d ed. 2009) (discussing how Congress may use its Spending Power).

322. Congress first passed VAWA in 1994. Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.). Congress reauthorized VAWA in 2000, Violence Against Women Act of 2000, Pub. L. No. 106-386, div. B, 114 Stat. 1491 (codified as amended in scattered sections of 8, 18, 20, 28, and 42 U.S.C.), and 2005, Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (codified as amended in scattered sections of 6, 8, 18, 21, 22, 25, 28, 31, 42, 47, and 49 U.S.C.). It is currently undergoing reauthorization.

323. *See* TARGETING THE SEX BUYER, *supra* note 37, at 14.

324. This stands for *Köpare Av Sexuella Tjänster*, "purchasers of sexual services." *AGAINST PROSTITUTION*, *supra* note 299, at 12.

325. "John schools" are programs that seek to prevent men from buying sex. Recidivism rates remain low for john school participants and for men arrested for

the time of arrest, certain police inform the men of services where they can seek support.³²⁷ Sweden's three largest cities, Stockholm, Gothenburg, and Malmö, have operated these KAST groups since 1997.³²⁸

Cities across the United States already have similar programs.³²⁹ Such preventive services comprise a key component in the crusade to end violence against women, as they seek to change behavior in ways other than traditional punishment.³³⁰ U.S. cities that operate their own john schools each do so differently.³³¹ Chicago's Genesis House provides services as a condition of arrestees' probation.³³² Often persons formerly in prostitution, or their advocates, speak at the schools about the harsh reality of the life of prostitution.³³³ Some programs charge tuition, and the money is diverted to programs that help women and girls leave prostitution.³³⁴

Certain law enforcement practices in the United States could continue if a Sexköpslagen were passed. For example, female undercover police pose as prostituted women in order to catch

solicitation. DARIA MUELLER, CHICAGO COALITION FOR THE HOMELESS, CURBING THE DEMAND FOR PROSTITUTION 1-2 (2005), available at http://www.thenightministry.org/070_facts_figures/030_research_links/150_prostitution/Curbing%20Demand%20for%20Prostitution%20-%20CCH%20policy%20paper%202005.pdf.

326. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 33; AGAINST PROSTITUTION, *supra* note 299, at 12.

327. TARGETING THE SEX BUYER, *supra* note 37, at 14 (noting that these police officers offer to put arrestees in "contact with social services, where sex buyers can get support").

328. AGAINST PROSTITUTION, *supra* note 299, at 12; *Criminalising the John*, *supra* note 115, at 226.

329. See MUELLER, *supra* note 325, at 1 (noting Washington, D.C.; West Palm Beach, Florida; Pittsburgh, Pennsylvania; Buffalo, New York; and Brooklyn, New York).

330. See *id.*

331. See *id.*; Joe Lambe, 'John School' Shows Men How Prostitution Hurts Women, Communities, Themselves, THE KANSAS CITY STAR, Sept. 14, 2008, at B1, available at <http://womensphere.wordpress.com/2008/09/25/%e2%80%98john-school%e2%80%99-in-kansas-shows-men-how-prostitution-hurts-women-communities-themselves/> (discussing the recent U.S. trend in "john schools," specifically in Kansas City, Missouri, but also noting programs in Los Angeles, California, Dayton, Ohio, and San Francisco, California, and pointing out their successes).

332. MUELLER, *supra* note 325, at 1.

333. *Id.* at 1-2 ("Typically, john schools offer a day of education covering various topics [like] a review of prostitution laws[,] facts and statistics about prostitution and pimping . . . [and] testimony . . . about the victimization and hardship of a prostitute's life . . .").

334. See *id.* at 1 (discussing Chicago's Genesis House).

johns in sting operations.³³⁵ Office Weyker observed that “stings” would seamlessly continue under an American Sexköpslagen.³³⁶ She also noted that if an American Sexköpslagen were passed, her job would not change much.³³⁷

C. Public Shaming

Governments and citizens publicly shame criminals when they publicize their names and crimes. This technique has surged in recent years in the United States.³³⁸ Several U.S. cities use the internet, billboards, or even cable T.V. to post pictures of arrested johns.³³⁹ For many men, however, and particularly those in relationships, the bare fact of arrest and its accompanying disclosure to their family scares them.³⁴⁰ When queried on whether the postings were effective, Officer Weyker emphatically replied that they were.³⁴¹

“Public shaming” has existed for centuries.³⁴² Pre-colonial Native American communities employed this tactic against tribe members who committed violent acts against women and children.³⁴³ In severe cases, they banished such men.³⁴⁴ These communities had low levels of sexual violence.³⁴⁵

335. See, e.g., Press Release, Sergeant Neil Hennelly, Police Dep’t, City of West Linn, Or., Craigslist Prostitute Sting by West Linn Police (June 2, 2009), available at <http://westlinnoregon.gov/police/craigslist-prostitute-sting-west-linn-police>.

336. Interview with Heather Weyker, *supra* note 59.

337. *Id.*

338. See Courtney Guyton Persons, Note, *Sex in the Sunlight: The Effectiveness, Efficiency, Constitutionality, and Advisability of Publishing Names and Pictures of Prostitutes’ Patrons*, 49 VAND. L. REV. 1525, 1535 (1996) (chronicling some jurisdictions’ creative shaming of their criminals); see also Scott E. Sanders, Note, *Scarlet Letters, Bilboes and Cable TV: Are Shame Punishments Cruel and Outdated or Are They a Viable Option for American Jurisprudence?*, 37 WASHBURN L.J. 359 (1998).

339. See generally Persons, *supra* note 338; Sanders, *supra* note 338. St. Paul posts the pictures of arrested buyers and sellers online. See *Saint Paul Arrests for Engaging in Prostitution*, SAINT PAUL MINNESOTA, <http://mn-stpaul.civicplus.com/index.aspx?NID=2167> (last visited Mar. 9, 2011).

340. See TARGETING THE SEX BUYER, *supra* note 37, at 14.

341. Interview with Heather Weyker, *supra* note 59.

342. Persons, *supra* note 338, at 1533–34 (noting that the first American colonists employed shaming punishments).

343. Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 126, 132 (1995).

344. *Id.*

345. See Sarah Deer, *Toward an Indigenous Jurisprudence of Rape*, 14 KAN. J.L. & PUB. POL’Y 121, 129–32 (2004) (describing the low rates of sex crimes in pre-colonial Native communities, and noting that indigenous cultures did not

D. *Help for People in Prostitution*

Many scholars have pointed out the necessity of helping women move out of their circumstances.³⁴⁶ This would “break[] the cycle of victimization.”³⁴⁷ Scholars also note that victims often do not use available services.³⁴⁸

1. *Breaking the Cycle of Distrust*

Victims often forgo services because they do not trust law enforcement. Most of those offering help to women also arrest and incarcerate them. Law enforcement has been guilty of arresting prostituted people while leaving the tricks alone.³⁴⁹ Katie noted, “I guarantee every person that has abused or hurt these women at one point said ‘trust me.’”³⁵⁰ If the criminal justice system stacks itself against women in prostitution, then no amount of services will be effective at large-scale eradication of sexual exploitation.³⁵¹ Katie explained her distrust of law enforcement:

The police were seen to us as far worse than the pimps.³⁵² We were more scared of them [than] the pimps and tricks.³⁵³ The main reason I did not go for help sooner was because I would have been arrested or further victimized by the police.³⁵⁴

consider women to be men’s property).

346. See, e.g., Silbert & Pines, *supra* note 73, at 131–32.

347. *Id.* at 131.

348. *Id.* at 131. Officer Weyker articulated that law enforcement had offered every woman arrested for prostitution the chance to attend a support group through Breaking Free. Interview with Heather Weyker, *supra* note 59.

349. See BERNSTEIN, *supra* note 179, at 149.

350. E-mail from Katie Rhoades, *supra* note 3, at 1.

351. See *Sisterwatch: Protecting Women in the Downtown Eastside*, THE VANCOUVER POLICE DEPT., <http://vancouver.ca/police/organization/investigation/investigative-services/major-crime/sister-watch.html> (last visited Mar. 6, 2011) (establishing a “Sister Watch Tip Line” staffed by trained civilian women knowledgeable in helping traumatized callers, and offering a \$10,000 reward for information concerning the mysterious death of one woman who fell to her death). The website notes that the Sister Watch Project is geared toward fighting violence against women, and notes that crime data do not accurately portray the danger to women who live there. It mentions distrust of authority as a contributing factor. *Id.*

352. E-mail from Katie Rhoades, *supra* note 3, at 7.

353. *Id.*

354. *Id.* at 6. Katie knew of many women whom police had victimized. *Id.* at 7; see also Nancy Erbe, *Prostitutes: Victims of Men’s Exploitation and Abuse*, 2 L. & INEQUALITY 609, 617–18 (1984) (describing police abuse of prostituted women).

If prostituted people distrust law enforcement, then the criminal justice system cannot appropriately facilitate their recovery, even via alternative court programs modeled toward prostituted people.

2. *Forcing Help on Victims Avoids the Root of the Problem*

Some cities in the United States currently experiment with alternative court programs for those in prostitution.³⁵⁵ These include diversion programs and others where probation officers and social service providers supervise and support women.³⁵⁶ They seek to rehabilitate women offenders.³⁵⁷ Programs involving social services, distant from the penal nature of the court system, deserve merit and have helped many.³⁵⁸ Such programs, however, force help on victims. As such, they sidestep the fact that prostituted people do not trust the criminal justice system or law enforcement. Often, an encounter with the criminal justice system facilitates the first contact prostituted people have with social service providers and others that seek to help them. These valuable points of intervention need to come earlier, and social service providers—not law enforcement—should offer help.

Artika Roller, program supervisor at Minneapolis' PRIDE³⁵⁹ (from Prostitution to Independence, Dignity and Equality), provides social services to prostituted women and girls.³⁶⁰ She

Some law enforcement officers, however, offer support to exploited women and youth. During our hour and a half interview, for example, Officer Weyker fielded a call from a victim, and had to ignore three others. Interview with Heather Weyker, *supra* note 59. She explained that it was not part of her official job, but that these girls have no family and no support. *Id.*

355. See Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts are Run*, 48 HASTINGS L.J. 851, 857–58 (1997).

356. See *Hennepin County Community Court History and Current Features 2* (on file with author).

357. Much of the time, women only enter the programs after a brush with the criminal justice system: as a condition of probation or other court order. Telephone Interview with Artika Roller, PRIDE Program Director, The Family Partnership (Oct. 6, 2010).

358. See E-mail from Richard Hopper, *supra* note 93, at 1.

359. See *Pride*, FAM. PARTNERSHIP, http://familychildrensenservice.nonprofitoffice.com/index.asp?Type=B_BASIC&SEC={06C4C9B8-SDA9-4AFE-BA8C-658065E23661}&DE= (last visited Feb. 16, 2011). PRIDE is a program within The Family Partnership. *Id.*

360. See Telephone Interview with Artika Roller, *supra* note 357. TeenPRIDE, another program of The Family Partnership, works exclusively with teenagers. *Id.*

acknowledges that judges order many of PRIDE's participants into the programs³⁶¹ and that the criminal justice system facilitates the first point of intervention.³⁶²

Roller disfavors legalization, but would support the United States' implementation of partial decriminalization.³⁶³ Roller notes that many women and children need help, and their first point of contact with a service provider should not stem from criminalization.³⁶⁴

Vednita Carter, Founder and Executive Director of Breaking Free, a program that helps women leaving prostitution, noted that if the sale of sex were decriminalized, then some prostituted women would lose a valuable intervention point with law enforcement.³⁶⁵ Carter noted that intervention in the form of law enforcement is only effective for some women—but until a better solution is put in place, it is the only form of assistance many of the women receive.³⁶⁶ For social workers to effectively reach individuals in prostitution and stem the risk that street prostitution would simply move underground, they would need to perform outreach in the community to establish contact.³⁶⁷ Breaking Free conducts street outreach and sends out survivors of sexual exploitation who possess a unique capacity to reach vulnerable women and girls.³⁶⁸

Encouraging prostituted individuals to trust law enforcement and society at large will not happen overnight.³⁶⁹ In some Native

Roller views much of prostitution as child abuse, given the minority of many victims. *See id.* Even in the cases where the individual in prostitution has attained majority, Roller believes the practice is often violent and demeaning to women. *Id.*

361. *Id.*

362. *Id.*; *see also* TeenPRIDE, THE FAM. PARTNERSHIP, http://familychildrenservation.nonprofitoffice.com/index.asp?Type=B_BASIC&SEC=%7BCABA11E0-1010-4702-B0D9-AB6EF7224B6F%7D (last visited Mar. 9, 2011).

363. *See* Telephone Interview with Artika Roller, *supra* note 357.

364. *Id.* When asked if she had any doubts about an American Sexköpslagen, Roller replied that she did not think the law would be enforced. *Id.*

365. *See* Telephone Interview with Vednita Carter, Founder & Exec. Dir., Breaking Free (Jan. 5, 2011).

366. *Id.*

367. Carter worried that decriminalizing the sale of sex might drive the industry further underground, with no one to come into contact with prostituted women. *See id.*

368. *Id.*

369. The underlying causes of a criminal justice system where law enforcement officials abuse and blackmail the most vulnerable people in society can be traced to patriarchal norms that marginalize women and privatize abuse and disrespect. *See, e.g.,* Sarah Krieger, Note, *The Dangers of Mediation in Domestic Violence Cases*, 8

American communities, for example, prostituted women cannot remember when the law has favored them.³⁷⁰ Addressing the problem of underreporting of violence at the hands of pimps and tricks may well be easier in Sweden, which has a more homogenous population than the United States, and lacks the racial fault lines that fracture attempts at a racially harmonious society in America.³⁷¹ Building trust among people in prostitution includes offering culturally appropriate services to victims.³⁷² Social service providers trained in traumatic recovery must offer help to individuals in prostitution. A change in the law is not going to wipe away a broken system's decades of harm, especially in the more vulnerable communities. But giving prostituted people reason to trust someone, rather than forcing help upon them, transcends the battles in legislatures and courts that effect changes only in the law.³⁷³ As a survivor, Katie recognized the difficulty of intervention by law enforcement:

*It is that invisible line between enabling individuals and forcing our will upon them. I'm not sure there is a clear answer. I do, though, firmly believe that law enforcement is not the appropriate facilitators [sic].*³⁷⁴

She also recommended that social workers who can identify with prostituted persons make themselves available to assist such

CARDOZO WOMEN'S L.J. 235, 241 (2002). Shifting societal conceptions of women, and nurturing respect for all, must occur in order to eliminate the caste-like system upon which the United States was founded, remnants of which thrive today.

370. See Deer Interview, *supra* note 129.

371. See generally Deer, *supra* note 345 (chronicling the high rates of sexual assault of Native American women).

372. See generally PARTNERS FOR VIOLENCE PREVENTION, SAFE HARBORS YOUTH INTERVENTION PROJECT: GUIDELINES FOR WORKING WITH HOMELESS, RUNAWAY AND SEXUALLY EXPLOITED YOUTH (2009) (presenting guidelines for working with troubled youth based on race and other factors).

373. See generally Lisa Frohmann & Elizabeth Mertz, *Legal Reform and Social Construction: Violence, Gender, and the Law*, 19 LAW & SOC. INQUIRY 829 (1994) (finding, in a domestic violence context, that changing the law is only part of the solution; the other part lies in changing attitudes); see also REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 40. But see generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996) (advocating that mandated victim participation in domestic violence cases is the best way to counteract violence against women, even at the expense of the victim's wishes).

374. E-mail from Katie Rhoades to author I (Dec. 30, 2010, 21:50 CST) (on file with author).

persons, as they understand the emotional journey that survivors must travel:

These [women who helped Katie rehabilitate herself] were social workers and victims of crime themselves. I could hear it from them and it was out of love and genuine desire to help. [L]ooking back to my experience I wasn't going to accept help until I was ready, but once I was out and receiving help it took someone as hard as me to get through my hardness and belligerents [sic]. When I got into treatment I had an attitude, I was belligerent, defensive, argumentative, violent, angry, and unpredictable. I had a case manager that did not put up with my behavior. She was understanding, soft, gentle, but also put me in my place a few times. I hated her when I was there but now I have nothing but great feelings toward her and I'm grateful because she had a huge part in saving my life.

We can encourage women to get help by showing them that we care even if we do not understand. Writing them off just because they don't "look like" or "seem like" they want help is giving up. Unfortunately because of the lack of trust these women develop it is up to the service providers to prove, sometimes[s] repeatedly[,] that they are trustworthy.³⁷⁵

Katie commented on how simple it can seem to outsiders that prostituted persons leave an abusive situation if they can, but explained the reality:

From [service providers' and others'] point of view just getting out of an abusive situation is benefit enough, it seems obvious right? But from the point of view of a victim the cost of getting out looks more like loss of money, possible retaliation [by] others (even death), giving up relationships (even though the[y're] sick), emotional pain of getting off drugs, dealing with the system [], no one giving you legit work because you have prostitution on your record, etc. And the benefits sometimes are only getting away from a pimp (which sometimes treats you better th[a]n the "normal" people, and not having to sell yourself.³⁷⁶ The girl that trained

375. *Id.*

376. Katie's pimp put cars in her name. She eventually had to declare bankruptcy, and still, today, must deal with its effects on her life. E-mail from Katie Rhoades 11 (Oct. 21, 2010, 01:19 CST) (on file with author). *See also*

*me used to say to me all the time “would you rather be the B**** that gets paid or the B**** that is sitting at home while your husband is paying me[.]” After awhile you stop believ[ing] that life on the other side is really any different.*³⁷⁷

Governments must recognize the complexity of escaping prostitution and implement a multi-faceted, victim-centered, respectful approach to interventions and assistance.

VII. CONCLUSION

Sexual exploitation, including sex trafficking, threatens women’s equality and health around the globe. Women and children account for most sex trafficking victims.³⁷⁸

Many women in prostitution suffered childhood abuse, entered the sex industry before reaching majority, and still undergo brutality at the hands of customers or pimps. Sex workers believe criminalizing prostitution ravages their ability to live safe and meaningful lives. They seek to de-stigmatize sex work and reduce violence against sex workers. While their visibility increases, those trapped in sexual slavery are often silenced.

In addressing the problem of sexual exploitation, Sweden has looked beyond the criminal justice system to address the true causes of women’s inequality.³⁷⁹ Sweden’s 1999 experiment with partial decriminalization recognizes the properly limited role of law enforcement in fighting women’s oppression: police target johns, but social workers offer help to women in prostitution. The Swedish Model has attracted international attention. Commentators have lauded it³⁸⁰ and excoriated it in equal part.

Haynes, *supra* note 229, at 380–81 (chronicling how despite Ahn’s asylum grant, she ultimately had to sell herself to one of her traffickers because they kept threatening her family in her home country).

377. E-mail from Katie Rhoades, *supra* note 374, at 2.

378. See *supra* note 35 and corresponding text.

379. See *supra* Part III.

380. See Longworth, *supra* note 132, at 85 (calling for Canada to adopt the Swedish model); Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 459 (2009) (calling Sweden’s approach the most “victim-centered”); Melissa Holman, Comment, *The Modern-Day Slave Trade: How the United States Should Alter the Victims of Trafficking and Violence Protection Act in Order to Combat International Sex Trafficking More Effectively*, 44 TEX. INT’L L.J. 99, 119–22 (2008) (noting the stark differences in sex trafficking laws between Australia and Sweden, ultimately endorsing Sweden’s approach and denouncing Australia’s); Ji

The Swedes continue to tweak their model. Countries are considering the Swedish Model in their efforts to address rising awareness of sex trafficking.³⁸¹

The United States has outlawed trafficking in some form for over a century. From language to enforcement, racial and moral stigma against prostituted persons tempered these laws' effectiveness.³⁸² Even with better laws on the books now, the United States fails in large measure to both prosecute traffickers and rehabilitate victims.

U.S. trafficking laws perpetuate the distrust victims have toward law enforcement—criminalizing prostituted people fails to end the cycle of victimization and endemic distrust that prostituted people foster towards the criminal justice system.³⁸³ Both position law enforcement as the first point of intervention for victims of sexual exploitation. This stymies victim recovery. The United States needs comprehensive prostitution reform. The United States must combat sexual exploitation by targeting demand for sexual services and while reaching out to individuals trapped in prostitution. States have taken positive steps with public shaming

Hye Kim, Comment, *Korea's New Prostitution Policy: Overcoming Challenges to Effectuate the Legislature's Intent to Protect Prostitutes from Abuse*, 16 PAC. RIM L. & POL'Y J. 493, 520–21 (discussing how Korea could adopt the Swedish model); Anne Marie Tavella, Note and Comment, *Sex Trafficking and the 2006 World Cup in Germany: Concerns, Actions and Implications for Future International Sporting Events*, 6 NORTHWESTERN U. J. INT'L HUM. RTS. 196, 32 (2007) (highlighting Sweden's results in combating trafficking); Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 684 (2008) (recommending that the United States adopt the Swedish model); Melissa Farley, *Unequal*, PROSTITUTION RESEARCH & EDUCATION (Sept. 13 2005), <http://www.prostitutionresearch.com/Unequal.pdf> (praising the Swedish model).

381. See Amanda Kloer, "Women to Go" Store Causes Uproar in Israeli Mall, CHANGE.ORG (Oct. 25, 2010), <http://news.change.org/prostitution#search/Women%20to%20Go%20Store%20Causes%20Uproar%20in%20Israeli%20Mall> (reporting on a high-end, Tel Aviv shopping center's decision to pose battered female mannequins with price tags providing height and weight in windows in order to raise support for Israel's proposed bill that would criminalize the purchase, but not the sale, of sex).

382. See *supra* Part II.

383. See Silbert & Pines, *supra* note 73 (finding that just 7 percent of individuals in prostitution who had been raped sought any form of help). Officer Weyker noted that some women had "graduated" from court-ordered therapy multiple times, but returned to the life. Interview with Heather Weyker, *supra* note 59. She doubted if anything could be done to reach such persons, but still did not think that it would be fair to punish just the sex purchaser. *Id.*

of purchasers of sex, john schools, and beginning to rehabilitate prostituted persons. Community courts' involvement of social workers heralds progress; however, help for prostituted individuals should not be forced, but rather offered by social workers trained to help those escaping traumatic situations. Social workers must also position themselves in arenas where they can facilitate earlier points of intervention for those currently prostituting or at risk of entering prostitution.

"Criminali[z]ation can never be anything other than a supplement to other efforts to combat prostitution."³⁸⁴ When asked about how a Sexköpslagen would have affected her, Katie responded:

*I would have felt just as crappy The law doesn't change the psychological effects What it would have done is taken the power away from my pimp. . . . I did not go for help . . . because I would have been arrested If those dynamics [were] gone . . . I think I would have fled earlier.*³⁸⁵

Some people in prostitution may never get help. No approach may ever entirely eradicate the inequalities inherent in many prostituted women's lives, and no system is perfect. But the Swedish Model holds the most potential to address the complex issue of sexual exploitation that encompasses sex trafficking, prostitution, and women's inequality. Despite good intentions, America slouches toward equality. The United States should follow Sweden's lead and acknowledge that prostitution thrives not on women's sexuality,³⁸⁶ but on women's oppression.

384. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, *supra* note 1, at 41.

385. E-mail from Katie Rhoades, *supra* note 3, at 6.

386. *Criminalising the John*, *supra* note 115, at 239–40.