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

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NOTE: ON COMPREHENSIVE PROSTITUTION
REFORM: CRIMINALIZING THE TRAFFICKER AND THE
TRICK, BUT NOT THE VICTIM—SWEDEN’S
SEXKÖPSLAGEN\(^1\) IN AMERICA

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\(^1\) 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.
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"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 “wifeys”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

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 “wifeys.” 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."

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. In the United States alone, traffickers move up to 50,000 people across the national border per year. Traffickers control many more people solely within the United States. Since 2001, the U.S. federal government has convicted 466 traffickers of adult persons but assisted few victims.

Transnational organized criminals do not perpetrate all human trafficking; small “mom and pop” operations contribute as well. Human trafficking is growing faster than any other criminal...
enterprise in the world. The black market for controlled substances may overshadow the trafficking industry in terms of money exchanged, but in many countries, including the United States, the chances of conviction for selling drugs is greater than those for selling a human being. 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. This Note spotlights sex trafficking. In the last

20. Id. The trade in illegal arms and human trafficking share the number two ranking. Id.
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. This Note posits that the feminist abolitionist 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; 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; 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.


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.


25. See infra Parts V, VI.

26. See infra Parts VIA, VLB, VLC.

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

The percentage of prostituted people who were forced into the sex industry, either by traffickers or by other hardships, exceeds this Note’s scope. 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/videosbreakingfreevc (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?vid=cache:BclUAhlG8Ngjwww.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=ADGEESjJGD713OCmHw5setGoxJFqeq9sDrfs8r-Yhciajc3gY9A4S_n0xQKdIzUq-Oxex74QXmpMgFUB-EasfHXmcuUytUjnR9NQF23VLaSoN OetTwVjBqLRbOq3HWar8WV1sdH&sig=AHIEtbRrq_RqU31UVoqYqI7eQzOZb m8xkpl=1 (noting that Sweden chooses not to distinguish prostitution from trafficking, as they are closely related); infra Part III.

29. See infra Part II.


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

Research shows that many average men purchase sex. These men often are educated, have good jobs, and are in relationships. 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. Prostitution and sex trafficking must merge in a campaign to combat men’s violence against women and children in all its forms. A successful anti-trafficking and anti-sexual exploitation policy must necessarily decrease the demand for sexual services.

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).


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. 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). Sweden does not, however, criminally sanction individuals in prostitution. Instead, social workers offer them help in finding a new life. This, essentially, comprises the Swedish Model. Commentators have extensively debated its methods and results in combating sex trafficking and prostitution.

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.
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).
approach that trickles down to its methods of assisting victims. 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.

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

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; and 3) immigration status. International and U.S. federal law both require force, fraud, or coercion, but neither requires movement. 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.
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.\textsuperscript{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.\textsuperscript{60} Further, trafficking victims need not be foreign nationals.\textsuperscript{61} The author adopts a broad definition of trafficking, which does not require force, fraud, or coercion, or movement.\textsuperscript{62} The author adopts a common legal definition of "prostitution": any sexual act done in exchange for anything of value.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{65}

\begin{footnotesize}
\begin{enumerate}
\item 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. \textit{See infra Part IV.B.2.} Unlike the TVPA, certain provisions of the Mann Act do require transport. \textit{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).\textsuperscript{65}

\item \textit{See supra} Part IV.B.3.a.

\item \textit{See supra} Part IV.B.3.c.


\item \textit{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).\textsuperscript{65}

\item \textit{See infra} Part IV.B.3.a.

\item \textit{See infra} Part IV.B.3.c.

\item \textit{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. \textit{See generally} Andrew E. Taslitz, \textit{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)\textsuperscript{65} (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”).\textsuperscript{65}

\item \textit{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.

\item \textit{Id. at} 12.
\end{enumerate}
\end{footnotesize}
Under this definition, a pimp is no different from a sex trafficker, because they both use various means to control their victims. 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.”

“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.” It further includes survival sex, meaning “[s]ex acts exchanged for clothes, food, drugs, a place to stay or other items.” 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. The author will also use these terms when discussing her own views. A “john,” “trick,” or “patron” means a purchaser of sex.

Heated debate surrounds the term “sex worker.” Those who want governments to recognize the sale of sex as legitimate work employ this term. 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.

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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.
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. The other studies were published in the 1990s, in 2001, and in 2010. 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.

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://familychildrenservice.nonprofitoffice.com/index.asp?Type=B_BASIC&SEC={06C4C9DB8-8DA9-4AFE-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.


\(^{81}\) 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 PROSTITUTION

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.

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

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

A high percentage of people in prostitution reported abuse in their childhoods: physical, sexual, and emotional. 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. PERSONAL & 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.


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.\footnote{90}

In one study, 70 percent of the women responded that sexual abuse influenced their entry into prostitution.\footnote{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?\footnote{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.\footnote{93}"

\footnote{89} See \textit{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).

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

\footnote{91} \textit{Id.} (internal quotation marks omitted).

\footnote{92} \textit{Id.} (internal quotation marks omitted).

\footnote{93} E-mail from Richard Hopper, Retired Judge, Minn. Dist. Ct., to the author (Nov. 18, 2010, 17:24 CST) (on file with author); \textit{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. The majority of people in prostitution enter before the age of eighteen. Many working on the street lived in extreme poverty, and most of the children were runaways forced into prostitution. Political, social, and economic circumstances disproportionately force people of color into prostitution. 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.”); MNN. 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. 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. She called a friend of hers who had started stripping in high school. And that’s how Katie got a job. From there, it was hard not to move into prostitution. Of her time in that life, Katie says she was a misfit. She started stripping after age eighteen, and she had a high school diploma. “I remember being told that I . . . was too good and too educated.” “[My high school diploma] was more than the women I was with had.”

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


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 139–34 (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.\textsuperscript{109}  
Katie’s story exemplifies the harm that sex purchasers inflict on prostituted persons:

\begin{quote}
“\textit{I witnessed women and children experiencing much more than I did}. \textsuperscript{210} \textit{Still, Katie’s clients drugged, assaulted, and raped her more times than she could count.}\textsuperscript{111}
\end{quote}

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.

\textbf{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.\textsuperscript{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!”\textsuperscript{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. \textit{Weisberg, supra} note 73, at 160. With or without a pimp, however, people in prostitution often experience sexual exploitation. \textit{See supra} Part I.

\textsuperscript{109} Silbert & Pines, \textit{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. \textit{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. \textit{Id.} at 129; \textit{see also Violence in Indoor Prostitution, supra} note 75, at 135 (noting that 28.3 percent of women reported rape in exotic dancing, versus a high of 66.7 percent at a drug house).

\textsuperscript{110} E-mail from Katie Rhoades, \textit{supra} note 3, at 4.

\textsuperscript{111} \textit{Id.} at 11.


\textsuperscript{113} The website notes that the Nordic model is synonymous with the Swedish model. \textit{Id.} (internal quotation marks omitted).
articulate our needs.” Some sex workers also contend that they sell sexual services, rather than their bodies. 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.

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. 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. Societies around the world continue to stigmatize those in prostitution. Some sex workers, however, think sex trafficking is overrated and seek to legalize prostitution so the government can regulate the industry to promote sex workers’ health and control violence against women. Abolitionists believe that stopping

116. E-mail from Katie Rhoades, supra note 3, at 3.
118. See Baker, supra note 94, at 31 (“Arresting sexually exploited girls for prostitution is an egregious form of blaming the victim.”).
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


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; those tribes that do have laws follow the standard Anglo-American prostitution statutory scheme of criminalizing all parties.

Legalization means that the government does not criminalize sex work, but regulates it. Some activists, including certain feminists, advocate for legalization in order to secure labor, licensing, and medical regulations for sex workers. Some feminist experts view the criminalization of the sale of sex as pointless, because it will not eradicate the practice. Others assert that legalization would legitimize political discussion of violence in the sex industry. Many feel that denying women the right to prostitute paternalizes them.
Under total decriminalization, in contradistinction to legalization, the government does not regulate the prostitution industry. 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. This distinguishes partial decriminalization from total decriminalization, as the government may still punish clients and other third-party involvement. Sweden adopted this scheme in 1999. 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. 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.

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. The high risk that a pimp will harm a person in prostitution implicates the sex buyer in endangering that person. The sex purchaser, by generating demand for

136. Alexandre, supra note 40, at 128.
137. Id.
138. Id.
139. Id.
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).
143. Id. at 1762–64.
prostitution, contributes to the harm done to individuals by traffickers or abusive pimps.\textsuperscript{144} While the sex buyer does not directly inflict the harm, the sex purchaser nonetheless sexually exploits the victim via the sex act.\textsuperscript{145}

### III. THE SWEDISH MODEL: A HISTORICAL PERSPECTIVE

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

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

\begin{itemize}
  \item \textsuperscript{144} Id. at 1752–63 (spinning out this logic).
  \item \textsuperscript{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.
  \item \textsuperscript{147} See infra Part III.
  \item \textsuperscript{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/e97ec975.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/?rid=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 (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.jurdata.no/cgi-wift/wiftldrens?/app/gratis/www/docroot/lavd1/filer/ni/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.jafnrettisstofa.is/jafnrettisstofa/?D10cID=ReadNews&ID=523; General Penal Code 19/1940, ch. XXII art. 206 (Icel.), http://eng.domsmalaraduneyti.is/information/nn/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.
\end{itemize}
A. Swedes Debate How to Treat Prostitution

Debate on the proper legal treatment of prostitution enjoys a storied past in Sweden. Sweden legalized prostitution until 1999. Researchers began studying prostitution in the 1970s. The Swedes performed these early studies through a lens that saw prostitution as the oppression of women. The view of prostitution as legitimate work did not emerge until the 1990s.

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

149. See Alexandre, supra note 40, at 128; see also infra Part III.A.
151. See supra Part III.A for the different legal theories of prostitution.
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.
159. Act Prohibiting the Purchase of Sexual Services, supra note 1.
the first proposal for *Kvinnofrid,* the larger bill of which *Lag om förbud mot köp av sexuella tjänster* [Act Prohibiting the Purchase of Sexual Services] was part. A government Minister for Equality appointed a Commission in 1993 to study the sex trade. The Commission recoiled from the view that selling sex should be government-sanctioned work.

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. 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.

The Commission frowned on European Union member states’ legalization of prostitution. Its report noted that the worldwide...
sex industry had witnessed increases in organized crime.\footnote{170} Sex tourism, pornography, and human trafficking of women and children had also spiked.\footnote{171} As a result, the Commission wanted to make Sweden different from the rest of Europe.\footnote{172}

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

Jewish and Russian women overpopulated foreign brothels during the late nineteenth century to the end of World War II. \cite{Limoncelli:supra:note:135:at:23}. \footnote{170} Gould, \textit{supra} note 122, at 440. \footnote{171} Id. \footnote{172} See Caitlin M. Mulcahy, \textit{Ladies of Leisure: Parks, Policy, and the Problem of Prostitution}, 1 \textit{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), \textit{available at http://juptrr.asp.radford.edu/Volume_1/Ladies_of_Leisure.pdf}. \footnote{173} Gould, \textit{supra} note 122, at 441. \footnote{174} Very few organizations supported the Commission’s recommendations. \textit{Id.} Stockholm’s police authority and a single women’s organization were among them. \textit{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. \textit{Id.} Nearly every comment in support of partial decriminalization pointed out that Sweden could herald itself as a country committed to equal treatment. \textit{Id.} at 443. Notably, the presence of women-friendly laws does not guarantee that those laws were passed in order to benefit women. \textit{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, \textit{supra} note 122, at 439; \textit{see also Prostitution in Sweden}, \textit{supra} note 152, at 67 (explaining that the law was touted to be a “feminist law”). \footnote{175} Gould, \textit{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, \textit{supra} note 122, at 437; Elman, \textit{supra} note 174, at vii. \footnote{176} Gould, \textit{supra} note 122, at 440–41; Longworth, \textit{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). \footnote{177} Gould, \textit{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.” \textit{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.
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).
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 exploited.\textsuperscript{184}

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.\textsuperscript{185} While the United States developed its anti-trafficking policy earlier than Sweden\textsuperscript{186} 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.\textsuperscript{187}

\textsuperscript{184} Sexual diseases.” \textit{Id.} at 444. This “fear of the foreign” extended to a desire to prevent non-Swedish opinions and ideas from entering the country. \textit{Id.}

\textsuperscript{185} \textit{Prostitution in Sweden, supra} note 152, at 67 (translating Ministry of Gender Equality, Margaretha Winberg).


\textsuperscript{187} \textit{See infra} Part IV.B., \textit{with} note 276 and accompanying text. \textit{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); \textit{see} BUCKEN-KNAPP, \textit{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, \textit{supra}. As for the sex trafficking law itself, commentators have challenged it in ways similar to those in which United Stated observers criticized TVPRA 2008 and the failed H.R. 3887. \textit{See Prostitution in Sweden, supra} note 152, at 72; \textit{infra} Part IV.B.3.d–e.

\textsuperscript{187} \textit{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.
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, and also mandates that ratifying states safeguard trafficking victims’ rights.

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. The Act of March 3, 1875 applied to foreign women only. It denied entry into the country of any “subject of China, Japan, or any Oriental country” who had agreed to engage in prostitution. Congress intended to keep out those it considered to be inclined toward “lewd and immoral purposes.”

2. Mann Act Enforces Racism

The White-Slave Traffic Act, or Mann Act, was the first law developed in the United States to combat sex trafficking of American women. Unlike more recent sex trafficking laws, the...
Mann Act requires victim transport. Much like the White Slave Traffic Agreement, it aimed to protect white females from immorality. 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. Law enforcement disproportionately prosecuted men of color who associated with white women. 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. The Supreme Court seemed to recognize, if only implicitly, that a woman cannot legally agree to exploit herself.

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.
205. Misery and Myopia, supra note 22, at 3016.
206. Id.
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/presseleases/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. Congress enacted the TVPA 2000 in tandem with a growing international awareness of trafficking. The United States did not frame the problem as one of gender equality as did the Swedes in enacting the Sexköpslagen. Congress did concede, however, that traffickers target mainly women and girls. 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.” Congress also added that women and girls suffer more than men from poverty, discrimination, and lack of education. 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.

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. Congress dedicated


211. See supra Part III.B.


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.\textsuperscript{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.\textsuperscript{218} While Congress provided for victim protections, it concentrated the bulk of its energies on prosecuting traffickers.\textsuperscript{219}

The “three Ps” formed the backbone of the TVPA 2000: “protection, prevention, and prosecution.”\textsuperscript{220} Protection of trafficking victims was an entirely new innovation in U.S. law.\textsuperscript{221} The law included provisions to aid victims in other countries\textsuperscript{222} as


\textsuperscript{219} 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).


\textsuperscript{221} 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/rbs/rm/2010/141446.htm.

well as in the United States.\footnote{See infra Part IV.B.3.a.} Congress directed the President to establish a special task force exclusive to curtailing human trafficking.\footnote{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).}

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.\footnote{See 22 U.S.C. §§ 7105a, 7105(f)(3) (2006 & Supp. III 2009).}

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.\footnote{See BORTEL ET AL., supra note 22, at 72.} Congress responded ineffectuously to the call. Only victims of a “severe form of trafficking in persons” meet eligibility for public benefits.\footnote{22 U.S.C. § 7102(8)(A); 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).} To qualify as a victim of a “severe form of trafficking in persons,” victims must either be under eighteen\footnote{22 U.S.C. § 7102(8)(B); BORTEL ET AL., supra note 22, at 14; see also 8 U.S.C. § 1101(a)(15)(T)(i)(II) (Supp. III 2009).} or prove that their trafficker perpetrated force, fraud, or coercion, and few victims pass this hurdle.\footnote{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 not eligible for benefits).}

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.\footnote{22 U.S.C. § 7105(b)(1)(E); see also 8 U.S.C. § 1101(a)(15)(T)(i)(II) (Supp. III 2009).} Still, to qualify for these benefits, victims must not only help law enforcement
but also must be foreign nationals. Federal provisions preclude U.S. citizens and lawful permanent residents from accessing these benefits.

Congress established a new visa for trafficking victims, the “T visa,” and also provided for “an alien individual’s continued presence in the United States” for those that assist with investigation and prosecution of traffickers. As with public benefits, law enforcement must certify victims before they can qualify for a T visa.

Since 2002, United States Citizen and Immigration Services has granted only 1,591 T visas, while at least 14,500 trafficking victims enter the United States every year.

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). 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”).


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).

international travelers be apprised via informational materials that sex tourism exploits individuals.\(^\text{240}\)

In perhaps the most celebrated change in the TVPRA 2003, Congress provided a civil cause of action for victims against their traffickers.\(^\text{241}\) Trafficking victims no longer need to rely on a prosecutor’s discretion, nor be penalized by a hard-to-prove criminal case.\(^\text{242}\) The TVPRA 2003 also authorized measures to conduct research on trafficking victims in the United States.\(^\text{243}\) 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.\(^\text{244}\) Congress authorized a study specifically to determine the incidence of domestic sex trafficking and of commercial sex acts,\(^\text{245}\) and so began to hone in on sexual exploitation that may not constitute trafficking, but contributes to the demand for sex trafficking...
victims.

d. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

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

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” with “persuades, induces, or entices.” As noted earlier, some state laws use such a standard.


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. Its inclusion in the House version of the bill represented a step forward in the fight against sexual exploitation.

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

The 111th Congress passed the Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010 (TDVSA) on December 22, 2010. TDVSA focuses on child sex trafficking. 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.” 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.” 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”).


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.
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. All over the world, people eagerly awaited Sweden’s results. Part V summarizes some of the report’s findings, as well as criticism to which the report has been subject.

A. The Commission’s Report

The Report on Prohibition of the Purchase of Sexual Services recommended that the Sexköpslagen remain in effect. It also recommended increasing the punishments for certain aggravated sexual offenses. To some critics, the law has been a huge success; to others, a huge failure. 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 . . . .” 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.” 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.
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.
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.  

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.  

At first, Swedish police were apprehensive of how the Sexköpslagen would work in practice. These concerns centered on the ability to enforce the Ban and issues of proof. Currently, however, most prosecutors and law enforcement favor the law.

B. Prosecutions of the Ban

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

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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.
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).
277. REPORT ON PROHIBITION OF THE PURCHASE OF SEXUAL SERVICES, supra note
human trafficking investigations have led to the increased prosecutions, as prosecutors regard the purchasers of sex to be valuable witnesses in pimping and human trafficking cases. 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. Every single prosecution from 1999 to 2008 was against a man, and in eight out of ten prosecutions, the man admitted to the crime. They usually paid in cash, and the median age was forty-three. Just under half of the reported violations involved only one man. In such cases, three options exist: 1) issue a fine, 2) give a waiver of prosecution, or 3) press charges.

C. Criticisms of the Ban

Data show that the Sexköpslagen succeeded at starting to de-normalize the purchase of sex. 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 Skåne police disfavored the Ban. 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. They would not risk getting caught. 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.\footnote{290} “All that’s left are the more troubled ones . . . .”\footnote{291} The women still need money, though, so “[i]t puts you at their mercy.”\footnote{292} Women in prostitution were not able to insist on the use of condoms.\footnote{293} Thus, for women in prostitution, there were fewer johns, greater rivalry, and a greater exposure to sexually transmitted diseases (STDs).\footnote{294} The number of reported violent crimes perpetrated against women in prostitution also increased.\footnote{295} Many women still in prostitution who cannot or will not leave disfavor the law.\footnote{296}

A 2004 official commission by the Swedish government disparaged the Law on Women’s Peace,\footnote{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.\footnote{298} The Swedish government, however, has addressed these concerns. In 2008, Sweden allocated more money to law enforcement training, victims’ services, and targeting demand.\footnote{299}

\footnote{290. Petra Östergren, \textit{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=ADGEESiK35f86ScvhVoSjGhZXv1VP8ehn02H1-Q_2BYPR4C7f_9dTlTQuAB6frTylmacM0ZrKsQeENeTs5MOMSrAycSqO6sLnrHRH2aw5jmpzV7jEtJDIW15SB5CFnsupCF&sig=AHIEtbRwouFNPUn8ynQ35eVXBFH3CeQq&pli=1 (last visited May 17, 2011).}

\footnote{291. Anwar, \textit{supra note} 266 (quoting a prostituted woman).}

\footnote{292. \textit{Id.} (quoting a prostituted woman).}

\footnote{293. Östergren, \textit{supra note} 290.}

\footnote{294. \textit{Id.}}

\footnote{295. \textit{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. \textit{See infra Part VI.D.}}

\footnote{296. \textit{See Anwar, supra note} 266.}

\footnote{297. \textit{Prostitution in Sweden, supra note} 152, at 68.}

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

\footnote{299. \textit{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. At first, Cewers had disfavored the law, but now she has come to see its utility.

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

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

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300. Anwar, supra note 266.
301. Id.
303. See Magical Thinking, supra note 302.
304. Id.
305. Id.
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.


\(^{320}\) 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 instrumentalties of interstate
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across the United States. With the Violence Against Women Act (VAWA), 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. They may choose to attend a “KAST group,” or “john school,” wherein the men can get help to stop buying sex.


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/050_research_links/150_prostitution/Curbing%20Demand%20for%20Prostitution%20-%20CCH%20policy%20papers%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.


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. Office Weyker observed that “stings” would seamlessly continue under an American Sexköpslagen. She also noted that if an American Sexköpslagen were passed, her job would not change much.

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. Several U.S. cities use the internet, billboards, or even cable T.V. to post pictures of arrested Johns. For many men, however, and particularly those in relationships, the bare fact of arrest and its accompanying disclosure to their family scares them. When queried on whether the postings were effective, Officer Weyker emphatically replied that they were.

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

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

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. Katie noted, “I guarantee every person that has abused or hurt these women at one point said ‘trust me.’” 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. Katie explained her distrust of law enforcement:

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

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. These include diversion programs and others where probation officers and social service providers supervise and support women. They seek to rehabilitate women offenders. Programs involving social services, distant from the penal nature of the court system, deserve merit and have helped many. 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’ PRIDE (from Prostitution to Independence, Dignity and Equality), provides social services to prostituted women and girls. 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.

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.
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 programs and that the criminal justice system facilitates the first point of intervention. Roller disfavors legalization, but would support the United States’ implementation of partial decriminalization. Roller notes that many women and children need help, and their first point of contact with a service provider should not stem from criminalization.

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. 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. 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. Breaking Free conducts street outreach and sends out survivors of sexual exploitation who possess a unique capacity to reach vulnerable women and girls. Encouraging prostituted individuals to trust law enforcement and society at large will not happen overnight. Roller views much of prostitution as child abuse, given the minority of many victims. Even in the cases where the individual in prostitution has attained majority, Roller believes the practice is often violent and demeaning to women.


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.


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. 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.

Building trust among people in prostitution includes offering culturally appropriate services to victims. 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. 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].*

She also recommended that social workers who can identify with prostituted persons make themselves available to assist such
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. [I]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 repeatedly[,] that they are trustworthy.

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 they[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 than the “normal” people, and not having to sell yourself. 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 belie[ing] that life on the other side is really any different.itic

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.

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

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\(^{381}\). 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. \textit{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 Sexköpplagen 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.