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Prostitution Policy: Legalization, Decriminalization and the Nordic Model

Ane Mathieson, Easton Branam & Anya Noble*

I. INTRODUCTION

Issues concerning women's bodily integrity and autonomy, such as abortion, rape, and sterilization, are subject to strong opinions that give rise to equally charged political policies.¹ As with other issues pertaining to women's bodies, prostitution² discourse is largely concerned with

* Special thanks to: Gerda Christenson, feminist activist and member of KvinonFronten; Louise Eek, founder of Prostitutes' Revenge In Society (PRIS); Lea Honorine, feminist activist; Anna Hulusjö, feminist theorist with the University of Gothenburg; Antoinette Kinander, midwife with the Stockholm Prostitution Unit; Kajsa Ekis Ekman, journalist and author of *Being and Being Bought*; Hanna Olsson, journalist and author of *Catrine and Justice*; Sven-Axel Månsson, social work professor with Malmö University; Ebon Kram former CEO of the National Organization for Women's Shelters and Young Women's Shelters in Sweden (ROKS); Miki Nagata & Pia Turresson, social workers with the Stockholm Prostitution Unit; Karin Dahlborg & Yvonne Karlsson, social workers with the Gothenburg Prostitution Unit; Karin Pramberg, Susanne Street, Ylva Grönvall, & Lisa Green: Malmö Prostitution Unit; Matts Paulsson, police inspector with the Gothenburg Trafficking Unit; Zanna Tvilling & Simon Häggström, officers with the Stockholm Prostitution Unit; Katinka Strom & Madeleine Elgemyr, radical feminist activists; Maia Strufve, KAST, Gothenburg Buyers Intervention Unit; Johan Christiansson, employee with KAST; and Ulrika Rosval, employee with the Swedish Institute.

¹ DEBRAN ROWLAND, *THE BOUNDARIES OF HER BODY: A HISTORY OF WOMEN'S RIGHTS IN AMERICA XXIII-XXV* (2004).

² Prostitution is herein defined as a social practice by which men gain sexual access to the bodies of predominantly women, children, and sometimes other men, through the exchange of money, goods, or housing. Prostitution, as a social construct, arises from "men's dominance and women's subordination." SHEILA JEFFREYS, *THE IDEA OF PROSTITUTION 3* (Janet Mackenzie ed., 1997). Pornography is included in this definition as a subset of prostitution that is filmed or photographed. See Melissa Farley, *Pornography is Infinite Prostitution*, in *BIG PORN INC: EXPOSING THE HARMS OF THE GLOBAL PORNOGRAPHY INDUSTRY 150* (2011).

determining whether this social practice is exploitative, empowering, or a consequence of immorality.³

Most people take one of three salient positions on prostitution. The first position argues that prostitution is a consequence of deficient moral character.⁴ This position draws heavily from patriarchal and religious traditions that equate female sexuality with temptation and male sexuality with dominance and sanctioned insatiability.⁵ The second position, the “sex work” position, asserts that prostitution is a valid form of labor and argues that prostitution is not inherently harmful to women.⁶ This position further contends that women have a right to decide what they will do with their bodies and that sex work, though oppressive for some, is potentially both lucrative and empowering for other women.⁷ The third position asserts that prostitution is a consequence of social, political, and economic inequality and argues that women are predominantly conscripted into prostitution because of their social vulnerability.⁸ Political regulation of prostitution activity varies according to each nation’s underlying economic and social justice commitments. Three primary legislative responses to prostitution have emerged in response to these commitments: (1) criminalization, (2) legalization/decriminalization, and (3) the Nordic model. This paper argues

³ Jessica Spector, *Introduction: Sex, Money and Philosophy*, in PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY 5, 7–8 (Jessica Spector ed., 2006); CATHARINE MACKINNON, *Beyond Moralism: Directions in Sexual Harassment Law*, in WOMEN’S LIVES, MEN’S LAWS 188 (2005).

⁴ MACKINNON, *supra* note 2.

⁵ SUSAN GRIFFIN, PORNOGRAPHY AND SILENCE: CULTURE’S REVENGE AGAINST NATURE 22–24 (1981); Sibyl Schwarzenbach, *Contractarians and Feminists Debate Prostitution*, in PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY 212 (Jessica Spector ed., 2006).

⁶ See Spector, *supra* note 3, at 8.

⁷ *Id.* at 7–8; Debra Satz, *Markets in Women’s Sexual Labor*, in PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY 396–97 (Jessica Spector ed., 2006).

⁸ Vednita Carter & Evelina Grobbe, *Duet: Prostitution, Racism, and Feminist Discourse*, 10 HASTINGS WOMEN’S L.J. 37, 43–45 (1999).

that Washington State, and the city of Seattle in particular, is an important US case study site for the introduction of a new legal and social service model similar to the Nordic model.

The immorality position in the Judeo-Christian tradition explains the existence of prostitution as a result of women's sinful nature.⁹ The tradition often views women either as temptresses leading men astray or as virgins, covetable as valuable property.¹⁰ Criminalization policies, instituted within this context, approach prostituted women as criminals and disproportionately target them for arrest.¹¹ Either because of a presumed inability to control sexual impulse or because of an inalienable entitlement to sexually access women, men have historically faced far less scrutiny or accountability as buyers of prostitution sex.¹²

Those who ascribe to the sex work position often advocate for legalizing or decriminalizing all prostitution-related activities by asserting that prostitution, normalized like any other marketable human interaction as work, can advance the wellbeing and individual interests of women.¹³ Western Neoliberalism, which "seeks to bring all human action into the domain of the market," has influenced national and international prostitution discourse.¹⁴ The neoliberalism economic model frames prostitution in terms of (1) personal choice and individual freedom and (2) market contracts made between rational, consenting adults with equal

⁹ "And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire." *Leviticus* 21:9.

¹⁰ "If a man find a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found; Then the man that lay with her shall give unto the damsel's father fifty shekels of silvers, and she shall be his wife; because he hath humbled her, he may not put her away all his days." *Deuteronomy* 22:28–29.

¹¹ DONNA HUGHES, RACE AND PROSTITUTION IN THE UNITED STATES 1 (2005), available at <http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm>.

¹² SHEILA JEFFREYS, THE SPINSTER AND HER ENEMIES: FEMINISM AND SEXUALITY 1880-1930, 7–9, 11–12, 14 (1985).

¹³ Spector, *supra* note 3, at 8–9.

¹⁴ DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 3 (2005).

power.¹⁵ Neoliberals define women in prostitution as freely choosing agents in a free market responding to a market demand for sex.¹⁶ Thus, within the neoliberal model, prostitution is reframed as “sex work”—a labor practice purportedly arising from a woman’s personal choice to sell sexual access to her body to men.¹⁷ Many global agencies assert that the best interests of the individual—the health, safety, and well-being of “freely choosing” prostituted women¹⁸—would be advanced by legalizing or decriminalizing all aspects of prostitution.¹⁹ Much of the international discourse around prostitution proceeds from a framework that divides prostitution into two distinct categories: “sex work” and “sex trafficking”; the former is intended to represent choice-based or ethical prostitution, and the latter, is intended to represent forced or unethical prostitution.²⁰

¹⁵ Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, 93 ETHICS 561, 561–62, 564 (1983); D.A. Clarke, *Prostitution for Everyone: Feminism, Globalisation, and the ‘sex’ industry*, in NOT FOR SALE FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 166–171 (2004).

¹⁶ D.A. Clarke, *Prostitution for Everyone: Feminism, Globalisation, and the ‘sex’ industry*, in NOT FOR SALE FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 169–171 (2004)

¹⁷ See Schwarzenback, *supra* note 5, at 221.

¹⁸ We do not use the term “prostitute” in this paper. This term implies that a woman is *defined* by her experiences of prostitution. We occasionally use the phrase “*prostituted* woman” because this language implies that prostitution is something being *done to* a woman, and it brings the actions of the buyer and the pimp back into the conversation. This paper predominately references prostituted women and girls (1) because they represent the overwhelming majority of individuals exploited in the industry and (2) to acknowledge the gendered nature of prostitution. We include, though, in our analysis, all individuals exploited in the prostitution industry including boys, transgender women and men, and men.

¹⁹ UNAIDS, UNAIDS GUIDANCE NOTE ON HIV AND SEX WORK 3–12 (2012), available at http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf.

²⁰ See *id.* at 5–6 (providing an example of an international NGO making this type of theoretical argument as the basis for their policy stance on the decriminalization of prostitution).

The Nordic model of prostitution policy arises from social democratic theory, Marxism, and radical feminism.²¹ In contrast to both criminalization and legalization/decriminalization frameworks, the Nordic model is premised on the understanding that women's equity depends on excising structural barriers that preclude women's full economic, social, and political inclusion.²² A core component of the Nordic model is the prohibition of the purchase of sexual services law.²³ This law asymmetrically criminalizes buyers of prostitution²⁴ and third-party profiteers (pimps and brothel owners), while maintaining the decriminalization of individuals sold in prostitution.²⁵ In social democracies social policies—rather than the marketplace—are used to advance egalitarianism.²⁶ Sweden's social democracy, which informed the creation of the Nordic model, uses social policy initiatives, not market incentives, to further all citizens' societal wellbeing.

This paper will examine all three models and provide case studies that illustrate the relative successes or failures of each legislative approach according to its stated goals. A discussion of each model will be

²¹ ANNA HULUSJÖ, THE MULTIPLICITIES OF PROSTITUTION EXPERIENCE: NARRATIVES ABOUT POWER AND RESISTANCE 111, 115 (2013), *available at* http://dspace.mah.se/dspace/bitstream/handle/2043/16013/2043_16013%20Hulusj%C3%B6%20MUEP.pdf?sequence=2&isAllowed=y; GUNILLA S. EKBERG, SWEDISH LAWS, POLICIES AND INTERVENTIONS ON PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS 2 (2015).

²² EKBERG, *supra* note 21, at 2.

²³ MAX WALTMAN, SWEDEN'S PROHIBITION OF PURCHASE OF SEX: THE LAW'S REASONS, IMPACT, AND POTENTIAL 449 (2011), *available at* <http://prostitutionresearch.com/wp-content/uploads/2014/06/Swedens-prohibition-of-purchase-of-sex.pdf>.

²⁴ When we write of prostitution buyers, we are talking about men, as men are the overwhelming economic force driving demand for prostitution. Pateman, *supra* note 15, at 563–64; KAJSA EKIS EKMAN, BEING AND BEING BOUGHT PROSTITUTION, SURROGACY AND THE SPLIT SELF 4 (2013).

²⁵ EKBERG, *supra* note 21, at 2–3; HULUSJÖ, *supra* note 21, at 128–29; WALTMAN, *supra* note 23, at 449.

²⁶ GARY TAYLOR, IDEOLOGY AND WELFARE 52 (2007).

accompanied by an examination of the underpinning social and economic theory used to develop the model. Finally, this paper examines the development and structure of the Nordic model in-depth to better understand the current development of prostitution policies in Washington State.

II. GLOBAL POLICIES

A. Criminalization

Many countries have responded to male demand for commercial sexual access by criminalizing prostituted women and sometimes the buyers.²⁷ Underpinning this approach is a belief that prostitution is a public nuisance, a consequence of immoral decision-making requiring regulation with public order offenses.²⁸ In a criminalization regime, all aspects of prostitution are technically illegal including (1) brothel keeping or pandering, which is knowingly encouraging or compelling a person to sell sex for money, (2) pimping, receiving something of value knowing that it was earned through an act of prostitution, (3) prostitution, engaging in sexual intercourse for money, and (4) the purchase of sexual intercourse. Each of these is subject to regulation as a criminal offense and is technically illegal.²⁹ Though this legislation is often gender neutral, it is women, historically identified by Judeo-Christianity and patriarchal norms as the party responsible for

²⁷ KATHERINE T. BARTLETT & DEBORAH L. RHODE, GENDER LAW AND POLICY 485–86 (2010); see UNAIDS, MAKING THE LAW WORK FOR THE HIV RESPONSE: A SNAPSHOT OF SELECTED LAWS THAT SUPPORT OR BLOCK UNIVERSAL ACCESS TO HIV PREVENTION, TREATMENT, CARE AND SUPPORT (2010), available at http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/priorities/20100728_HR_Poster_en.pdf.

²⁸ *Id.* at 484–485.

²⁹ *Id.* at 485.

prostitution, who face greater legal sanction and far higher arrest rates for selling prostitution than men do for buying prostitution sex.³⁰

Neoconservatism, like neoliberalism, endorses limited government intervention in economics. However, the two differ in theorizing how large a role the government should play in regulating social practices.³¹ Individual freedom, according to neoconservatism, should be checked by collective social values and morals.³² Social issues identified by neoconservatives as morality issues require, according to this ideology, the oversight of an interventionist government and strong military to maintain “social coherence” and stability.³³ Whereas neoliberalism has focused on the “chaos of individual interests”³⁴ driving the market, “[n]eoconservatism has long hovered in the wings as a movement against the moral permissiveness that individualism typically promotes.”³⁵ Therefore, this ideology “seeks to restore a sense of moral purpose, some higher-order values that will form the stable center of the body politic.”³⁶ Those particular moral values guiding neoconservatives include Christian ethics and as such are antagonistic toward “new social movements such as feminism”³⁷ Judeo-Christian ethics assert that women are the gatekeepers of sexual responsibility, and that women who, in wielding significant sexual power over men, choose to tempt men into committing immoral sexual acts,

³⁰ *Id.*

³¹ MANFRED B. STEGER & RAVI K. ROY, NEOLIBERALISM: A VERY SHORT INTRODUCTION 22–3 (2010).

³² HARVEY, *supra* note 14, at 82.

³³ *Id.* at 82–3.

³⁴ *Id.*

³⁵ *Id.* at 83.

³⁶ *Id.*

³⁷ *Id.* at 84.

should be held accountable for prostitution.³⁸ In the United States, prostitution is largely treated as an issue of traditional morality.³⁹

Guided by neoconservatism, every state, excluding parts of Nevada,⁴⁰ criminalizes women “engaging in sexual intercourse for money or offering to do so.”⁴¹ Approximately half these states also have criminal laws targeting men who buy prostitution sex.⁴² And so, the onus of criminalization laws in the United States falls largely on the sellers (predominately women) instead of the buyers (predominately men). The ensuing section argues that criminalizing individuals sold in prostitution, as though they were equal parties to a crime with the buyers of prostitution sex, and third-party profiteers (pimps and brothel owners), is a human rights violation of the women and youth sold in prostitution. It also argues that placing the disproportionate weight of criminalization upon those individuals being prostituted is a further human rights violation and a failure of criminalization as a policy model.

1. Neoconservative Prostitution Policy in Practice: The United States as a Case Study

This paper argues that the criminalization of prostituted women in the United States reinforces an age-old culture of blaming victims of prostitution for their exploitation. In this context, criminalization can perpetuate a vision of prostitution as a victimless crime, committed by immoral, sexual deviants. This vision is furthered by a plethora of cultural norms glorifying pimping while denigrating and encouraging violence against women with “whore” language in mainstream music, television,

³⁸ “And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire.” *Leviticus* 21:9.

³⁹ MACKINNON, *supra* note 2.

⁴⁰ MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA 15 (2007).

⁴¹ BARTLETT & RHODE, *supra* note 27, at 484–85.

⁴² *Id.*

videogames, books, and colloquial conversations.⁴³ In criminalization regimes, the culture of blame is so strong that even children are culpable for their exploitation in prostitution.⁴⁴ In Los Angeles County, of the 35,402 females arrested for solicitation (offering sex in exchange for money) between 2003 and 2012, approximately 1,400 were children as young as nine years old.⁴⁵

Approximately half of all US states subject prostitution buyers to the same legal prohibitions enforced on women in prostitution.⁴⁶ In those states, where buyers face legal sanctions, the laws remain largely unenforced.⁴⁷ Buyers act with near impunity, largely escaping legal punishment, despite being the driving economic force behind prostitution. National studies have indicated that only 10–30 percent of all prostitution arrests are of sex buyers, while 70–90 percent of arrests target prostituted adults.⁴⁸ Punishment of the prostituted individual fails to acknowledge that conscription into prostitution is overwhelmingly driven by a combination of coercive factors, including racist and heterosexist social structures, homelessness, poverty, drug addiction, unemployment, childhood sexual abuse, and experiences of violence.⁴⁹

Laws criminalizing the selling of prostitution sex further exploit prostituted women:

⁴³ Anita Sarkeesian, *Tropes vs Women in Video Games*, FEMINIST FREQUENCY, <http://feministfrequency.com/tag/tropes-vs-women-in-video-games/> (last visited Oct. 12, 2015).

⁴⁴ Carolyn Maloney, *Foreword to PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS* xv (2007).

⁴⁵ Don Knabe & Daphne Phung, *Bill Would Target Demand Side of Child Sex Trafficking*, L.A. DAILY NEWS (April 2, 2014, 9:55 AM), <http://www.dailynews.com/opinion/20140402/bill-would-target-demand-side-of-child-sex-trafficking-guest-commentary>.

⁴⁶ BARTLETT & RHODE, *supra* note 27, at 485.

⁴⁷ *Id.*

⁴⁸ HUGHES, *supra* note 11, at 1.

⁴⁹ WALTMAN, *supra* note 23, at 450–52.

Criminal prostitution laws collaborate elaborately in women's social inequality; through them, the state enforces the exploitation of prostituted women directly When legal victimization is piled on top of social victimization, women are dug deeper and deeper into civil inferiority, their subordination and isolation legally ratified and legitimated.⁵⁰

A 2004 study of 222 women in prostitution revealed that law enforcement officers contribute to this exploitation, as they are often the perpetrators of violence against prostituted women.⁵¹ Raphael and Shapiro's study of women in prostitution in Chicago found that 24 percent of women on the streets who had been raped identified a police officer as the perpetrator. In the same study, 30 percent of exotic dancers who reported being raped also identified the perpetrator as a police officer.⁵² In 2014, headlines across the United States exposed police exploitation by reporting that a provision in Hawaii's criminal code allowed police to have intercourse with prostituted women if they were "acting in the course and scope of duties."⁵³

In criminalization regimes, violence against women in all classes of prostitution goes far beyond police misconduct. It is common for women in prostitution "to be deprived of food and sleep and money, beaten, tortured, raped, and threatened with their lives, both as acts for which the pimp is paid by other men and to keep the women in line."⁵⁴

⁵⁰ CATHARINE MACKINNON, *Prostitution and Civil Rights*, in *WOMEN'S LIVES, MEN'S LAWS* 155 (Harv. Univ. Press, 2005).

⁵¹ JODY RAPHAEL & DEBORAH L. SHAPIRO, *VIOLENCE IN INDOOR AND OUTDOOR PROSTITUTION VENUES* 126–39 (2004).

⁵² *Id.* at 136.

⁵³ Eliana Dockterman, *Hawaii Police Won't Get to Have Sex With Prostitutes Anymore*, TIME (Mar. 6, 2014), <http://time.com/38444/hawaii-police-prostitutes-sex/>; Mark Memmott, *Hawaii's Police, Lawmakers Reach Consensus on Prostitution Law*, NPR (Mar. 26, 2014, 10:56 AM), <http://www.npr.org/sections/thetwo-way/2014/03/26/294714686/hawaiis-police-lawmakers-reach-consensus-on-prostitution-law>.

⁵⁴ MACKINNON, *supra* note 50, at 157.

In the United States, prostituted women and girls endure extensive sexual and physical violence including rape, battery, and murder.⁵⁵ A study in Colorado Springs of 1,969 prostituted individuals between the years of 1967–1999 found that persons actively involved in prostitution face a murder rate that is 18 times higher than non-prostituted persons.⁵⁶ Additionally, in 1985, “the Special Committee on Pornography and Prostitution in Canada quoted estimates that mortality for prostituted persons may be 40 times higher than the national average.”⁵⁷ Furthermore, as demonstrated by convicted murder Gary Ridgeway, serial killers often target women in prostitution because they know they can get away with their crimes more easily.⁵⁸ Ridgeway operated for years in Seattle, Washington, murdering countless prostituted women and girls.⁵⁹

Criminal records and repeated incarceration create severe economic disadvantages for women with experiences of prostitution and adds to the difficulty women have exiting prostitution.⁶⁰ Criminal records from prostitution-related crimes and time spent incarcerated impact a woman’s ability to access education, legal employment, and loans.⁶¹ It is appropriate to ask whether long-term counseling, financial assistance, drug and alcohol

⁵⁵ MELISSA FARLEY & VANESSA KELLY, PROSTITUTION: A CRITICAL REVIEW OF THE MEDICAL AND SOCIAL SCIENCES LITERATURE 10, 16–17 (2000).

⁵⁶ WALTMAN, *supra* note 23, at 453.

⁵⁷ *Id.*

⁵⁸ Transcript of CNN Live Event/Special, Wolf Blitzer, *Gary Ridgeway Pleads Guilty to Green River Murders*, CNN (Nov. 5, 2003), available at <http://www.cnn.com/TRANSCRIPTS/0311/05/se.04.html>.

⁵⁹ *Id.*; WALTMAN, *supra* note 23, at 453; JANICE RAYMOND, NOT A CHOICE, NOT A JOB 187 (2013).

⁶⁰ LINDA DERIVIERE, A HUMAN CAPITAL METHODOLOGY FOR ESTIMATING THE LIFELONG PERSONAL COSTS OF YOUNG WOMEN LEAVING THE SEX TRADE 377 (2006).

⁶¹ POLARIS PROJECT, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS: VACATING CONVICTIONS FOR SEX TRAFFICKING VICTIMS 1 (2013), available at <http://www.polarisproject.org/storage/documents/2013-Analysis-Category-10-Vacating-Convictions.pdf>.

treatment, and housing would be more successful in enabling women to leave prostitution than incarceration or the threat of incarceration.

B. Legalization and Decriminalization

Legalization is closely related to complete decriminalization in theory and in practice, so they will be discussed simultaneously in this paper.⁶² Proponents of legalization and decriminalization often proceed from the standpoint that prostitution arises from personal choice, is an indication of women's empowerment, and is a business agreement made between consenting adults with equal power.⁶³ Though local ordinances may place restrictions on prostitution, it is important to note that national legalization and decriminalization of prostitution activities remove the legal barriers to the growth of the "legal" commercial sex industry.

Legalization generally refers to the regulation of prostitution through labor laws that legalize the majority of the following: pimping, buying, brothel ownership, and the sale of prostitution sex.⁶⁴ In legalization regimes, the government takes an active role in regulating prostitution, as is the case in Victoria, Australia, the Netherlands, and Germany.⁶⁵ After legalizing prostitution, municipal and national governments may also promote the sex industry. The City of Hamburg's official city website advertises "a varied

⁶² RAYMOND, *supra* note 59, at xlii.

⁶³ *Id.* at 84–85.

⁶⁴ *Id.* at xlii; DUTCH MINISTRY OF FOREIGN AFFAIRS, DUTCH POLICY ON PROSTITUTION: QUESTION AND ANSWERS 2012 7 (2012), available at http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you_and_the_netherlands/about_the_netherlands/ethical_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf.

⁶⁵ MARY SULLIVAN & SHEILA JEFFREYS, LEGALISING PROSTITUTION IS NOT THE ANSWER: THE EXAMPLE OF VICTORIA, AUSTRALIA 2 (2001); DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 5, 13–16; FED. MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN & YOUTH, REPORT BY THE FEDERAL GOVERNMENT ON THE IMPACT OF THE ACT REGULATING THE LEGAL SITUATION OF PROSTITUTES (PROSTITUTION ACT) 65, 70, 71 (2007), available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/federal_government_report_of_the_impact_of_the_act_regulating_the_legal_situation_of_prostitutes_2007_en_1.pdf.

assortment of entertainment, including Reeperbahn's famous strip clubs and brothels."⁶⁶ The website also notes that "Just around the corner from the Reeperbahn is Herbert Street, the principal red light area. Both ends of the street are blocked by barriers and it is inaccessible to women and minors."⁶⁷ In the Netherlands, the "Official portal website of the City of Amsterdam" provides an information page on the red light district.⁶⁸ The page cautions tourists about "sex trafficking, forced prostitution," and "seedier characters" in the red light district, but still promises "plenty of sex shops, peep shows, brothels, an elaborate condom shop, a sex museum and prostitutes in red-lit windows."⁶⁹ While acknowledging these dangers, the site assuages the potential safety and ethical concerns of sex tourists with the assurance that, "Sex-workers here have their own union, plenty of police protection, an information centre . . . frequent monitoring and testing and professional standards."⁷⁰ Legalization regimes embed a prostitution economy into a country's market structure enabling the country to derive major tax and tourism revenue from the industry.⁷¹ Legalization regimes, by situating prostitution within a labor model framework, advance profit goals.⁷²

Decriminalization refers to the elimination of laws and penalties associated with all or some parts of the prostitution industry, as in the case of New Zealand and Denmark.⁷³ Following decriminalization, enforcement

⁶⁶ *Reeperbahn*, HAMBURG.DE, <http://english.hamburg.de/nofl/294386/reeperbahn-hamburg-st-pauli-nightclub-english> (last visited Jan 14, 2016).

⁶⁷ *Id.*

⁶⁸ *Red Light District*, I AMSTERDAM, <http://www.iamsterdam.com/en/visiting/areas/amsterdam-neighbourhoods/centre/red-light-district> (last visited Oct. 12, 2015).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 13; SHEILA JEFFREYS, *THE INDUSTRIAL VAGINA: THE POLITICAL ECONOMY OF THE GLOBAL SEX TRADE* 130–131 (2009).

⁷² RAYMOND, *supra* note 59, at 84.

⁷³ *Id.* at xlii; TIGHE INSTONE & RUTH MARGERISON, *SHADOW REPORT FOR THE CEDAW COMMITTEE ON NEW ZEALAND FROM: COALITION AGAINST TRAFFICKING IN*

of laws pertaining to prostitution is largely transferred from law enforcement to local councils.⁷⁴ In this approach, local councils must dedicate funding and administrative staff to finding ways to regulate the industry without police authority or resources to investigate, penalize, or shut down brothel owners or pimps.⁷⁵ The country that decriminalizes prostitution benefits from prostitution tourism and may collect tax revenue through administrative regulations.⁷⁶

Those who identify prostitution as simply another form of labor seek to legalize or decriminalize prostitution sex and to incorporate it into the labor market as “sex work.”⁷⁷ The economic theory of neoliberalism underpins this endeavor because it “seeks to bring all human action into the domain of the market.”⁷⁸ Neoliberal markets have particular investment in commodifying sex; as the saying goes, “Sex sells.”⁷⁹ Within a neoliberal framework, everything, including sex and the human body, is

WOMEN NEW ZEALAND 2 (2007), available at <http://www.vawpreventionscotland.org.uk/sites/www.vawpreventionscotland.org.uk/files/CEDAW-CATWANZ.pdf>; DIRECTORATE GENERAL FOR INTERNAL POLICIES, POLICY DEPT C: CITIZENS’ RIGHTS & CONSTITUTIONAL AFFAIRS, THE POLICY ON GENDER EQUALITY IN DENMARK - UPDATE 24 (2015), available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510026/IPOL_IDA\(2015\)510026_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510026/IPOL_IDA(2015)510026_EN.pdf).

⁷⁴ See RAYMOND, *supra* note 59, at xlii.

⁷⁵ *Id.* at xliii.

⁷⁶ *Self-Employed Activities*, SKAT 1 (Feb. 3, 2012), <http://skat.dk/SKAT.aspx?oId=2035444&chk=205878>.

⁷⁷ See generally OPEN SOC’Y FOUNDS., 10 REASONS TO DECRIMINALIZE SEX WORK (2015), available at http://www.nswp.org/sites/nswp.org/files/10-reasons-decriminalize-sex-work-20150410_0.pdf (defines prostitution as “sex work” and provides arguments for the decriminalization of prostitution); Carter & Grobbs, *supra* note 8, at 52–53.

⁷⁸ HARVEY, *supra* note 14, at 3.

⁷⁹ NAOMI WOLF, THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN 16–18, 131–133 (1st ed. 1991); see generally *Sex Sells*, HUFFINGTON POST, <http://www.huffingtonpost.com/news/sex-sells/> (last visited 02/17/2016) (providing a sample of 15 Huffington Post articles reporting on ways in which sex is used in advertising to sell products).

commodifiable and potentially saleable in a market.⁸⁰ Neoliberalism also asserts that the best interests of the individual are advanced by unfettered market laws.⁸¹ The argument that legalization of prostitution will serve the interests of women in prostitution aligns easily with these theories of neoliberalism.

Liberal discourses of empowerment, agency, and sex positivity advance the notion that sex can be labor and hence exchanged on a market.⁸² These liberal discourses dovetail with the economic theory of neoliberalism. Neoliberal theory advances the concept of “individualism” arguing that the interests of the individual take precedence over those of the state and society and that the individual should be freed from the constraints of either of these institutions to make rational decisions and contracts in the marketplace that will best serve her or his interests.⁸³ Within this framework, it is argued that the practice of exchanging money for sexual access is legitimate and should be legalized or decriminalized.⁸⁴

According to the neoliberal argument, “human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills.”⁸⁵ Proponents of the commercial sex industry argue that a legal system that protects a woman’s right to choose to work in the sex industry will provide women access to benefits such as social security, will protect women from

⁸⁰ JEFFREYS, *supra* note 71, at 1.

⁸¹ TAYLOR, *supra* note 26, at 13.

⁸² WENDY CHAPKIS, LIVE SEX ACTS: WOMEN PERFORMING EROTIC LABOR 78–79 (1997); JEFFREYS, *supra* note 71, at 208–212.

⁸³ HARVEY, *supra* note 14, at 64–65.

⁸⁴ Laurie Shrage, *Prostitution and the Case for Decriminalization*, in PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY 241 (Jessica Spector ed., 2006); *see generally*, Debra Satz, *Markets in Women’s Sexual Labor*, in PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY 394–418 (Jessica Spector ed., 2006) (demonstrating how academics use liberal discourses of sexuality and economics to explain why the exchange of sex for money should be decriminalized).

⁸⁵ HARVEY, *supra* note 14, at 2.

violence, and will normalize and remove the social stigma of prostitution.⁸⁶ The following section examines the legalization of prostitution in the Netherlands to better understand the social, political, and economic consequences of this approach. Most of the findings in this analysis are extendable to other countries that have legalized or decriminalized prostitution, such as Germany, parts of Australia, New Zealand, Switzerland, and Denmark.

1. Neoliberal Prostitution Policy in Practice: The Netherlands as a Case Study

The history of legalization in the Netherlands provides insight into how the pro-prostitution lobby has influenced language used to discuss prostitution. The precedent set by the Netherlands influences the way that societies understand prostitution and attempt to regulate it.⁸⁷ From 1911 to 2000, in the Netherlands, pimping and brothel keeping were criminalized, although the laws were largely unenforced.⁸⁸ In the 80s, the Dutch government began to consider legalizing and taxing prostitution.⁸⁹ The Dutch government argues that prostitution was legalized to enable the government to “end abuses in the sex industry” and that the policy “prevents human trafficking.”⁹⁰ Dutch parliamentarians also recognized that legalization would conveniently enable the Dutch government to tax the large, illegal but lucrative commercial sex industry.⁹¹

⁸⁶ Isabel Crowhurst, Joyce Outshoorn, & May-Len Skilbrei, *Introduction: Prostitution Policies in Europe*, SEXUALITY RESEARCH AND SOCIAL POLICY 187, 188 (2012); see also AMNESTY INT’L, AMNESTY INTERNATIONAL DRAFT POLICY ON THE PROTECTION OF THE HUMAN RIGHTS OF SEX WORKERS (2015).

⁸⁷ RAYMOND, *supra* note 59, at 78, 82.

⁸⁸ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 4, 5.

⁸⁹ RAYMOND, *supra* note 59, at 83-85.

⁹⁰ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 5, 14.

⁹¹ RAYMOND, *supra* note 59, at 84; DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 13.

To further this goal, the country provided subsidies to non-governmental organizations lobbying for legalization.⁹² With government funding, groups were able to advocate internationally creating a theoretical division of prostitution into two categories: forced—currently known as trafficking; and free—colloquially known as sex work.⁹³ The lobby groups and the government that funded them divided prostitution into these categories in order to legitimately tax one (free category) and excise the other (forced category).⁹⁴ After legitimizing a sector of the illegal prostitution market as “voluntary” (framing women in this sector as choosing to be in prostitution), the Dutch government advocated for legalization as the official position of the Netherlands.⁹⁵ Prostitution buyers formed organizations to promote buying and legalization, and they were included as advisers on governmental reports regarding prostitution.⁹⁶ As a result, in 2000, the Netherlands changed the penal code in what became known as “lifting the general ban on the brothels,” which included legalizing pimping and brothel keeping.⁹⁷ Prostitution buying and the selling of prostitution were already legal.⁹⁸

Capitalism, at its most basic, is the production of commodities through the exploitation of individual wage labor. Neoliberalism, in brief, is a capitalist, political, economic theory, characterized by free markets, free trade, and strong individual property rights.⁹⁹ Neoliberalism calls for deregulation (limited government involvement) of the markets. Today, neoliberalism has globalized and become the dominant, governing

⁹² *See id.* at 80–85.

⁹³ *Id.* at 82.

⁹⁴ *Id.* at 84–85.

⁹⁵ *See id.* at 84, 85.

⁹⁶ *Id.* at 85.

⁹⁷ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 4.

⁹⁸ *Id.*

⁹⁹ HARVEY, *supra* note 14, at 64.

economic theory of the world's markets.¹⁰⁰ The influence and effects of this monolithic ideology is visible in the lucrative red light district of the Netherlands—a country that has come to be internationally identified as a destination site for sex tourism.¹⁰¹

In legalizing prostitution, the Netherlands embraced the symbiotic ideologies of neoliberalism and sex-positive feminism;¹⁰² thus reframing women in prostitution as “independent agents” whose right to chose to be in the sex industry should be protected by the law. According to neoliberal market principles, “there are presumed to be no asymmetries of power or of information that interfere with the capacity of individuals to make rational economic decisions in their own interests.”¹⁰³ Such logic assumes no structural barriers to an individual's participation or decision-making in the labor market. Advocates of prostitution argue that women in prostitution are stigmatized, and thus subject to violence, because of their exclusion from the legal labor market.¹⁰⁴ The Dutch government argues that legalization, “gives sex workers the same rights and protection as other professionals”; thus, by bringing women into the labor market as legal sex workers, the market facilitates an improvement in the status of women marginalized in the sex industry.¹⁰⁵ The intentions of the legislation were to

control and regulate the employment of sex workers through a municipal licensing system, protect the position of sex workers, protect people from being coerced into prostitution, protect minors against sexual abuse, reduce prostitution by foreign nationals

¹⁰⁰ *Id.* at 2–3.

¹⁰¹ JEFFREYS, *supra* note 71, at 133–34.

¹⁰² RAYMOND, *supra* note 59, at 84–85.

¹⁰³ HARVEY, *supra* note 14, at 68.

¹⁰⁴ Laurie Shrage, *Prostitution and the Case for Decriminalization*, in *PROSTITUTION AND PORNOGRAPHY: PHILOSOPHICAL DEBATE ABOUT THE SEX INDUSTRY* 241, 242 (Jessica Spector ed., 2006).

¹⁰⁵ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 14; RAYMOND, *supra* note 59, at 83.

residing illegally in the Netherlands, and sever the links between prostitution and crime.¹⁰⁶

Actions of the Dutch government after it passed the law indicate that the stated goals of the law were not being met. In 2003, the city of Amsterdam began to close many sex bars and clubs and it began to place restrictions on prostitution; Amsterdam limited all-night brothel hours,¹⁰⁷ and on December 15, 2003, prohibited the street tolerance zone¹⁰⁸ altogether.¹⁰⁹ In 2005 and 2006, because of the proliferation of organized crime in the sex industry, many Dutch cities closed their legal prostitution zones as they had become incredibly unsafe for women.¹¹⁰ Former Amsterdam Mayor Job Cohen explained, “It appeared impossible to create a safe and controllable zone for women that was not open to abuse by organized crime.”¹¹¹ The legislation’s failures were evidenced by continued bar closures; in 2006, 37 prostitution venues in Amsterdam closed because the city council determined that they were run by organized crime—men were facilitating human and drug trafficking out of the venues.¹¹² Europol investigations in 2006 revealed that Dutch pimps and brothel owners were collaborating with traffickers to bring women into the country and that women in the industry

¹⁰⁶ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 6.

¹⁰⁷ RAYMOND, *supra* note 59, at 87–88.

¹⁰⁸ These are specific areas of a city where street prostitution may legally occur. See PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL, POLICY OBJECTIVES 1 (2003), available at

[http://www.scottish.parliament.uk/S2_Bills/Prostitution%20Tolerance%20Zones%20\(Scotland\)%20Bill/b07s2-introd-pm.pdf](http://www.scottish.parliament.uk/S2_Bills/Prostitution%20Tolerance%20Zones%20(Scotland)%20Bill/b07s2-introd-pm.pdf).

¹⁰⁹ See generally *Why Dutch Street Walkers are Getting the Boot*, EXPATICA (Dec. 9, 2003), http://www.expatica.com/nl/news/country-news/Why-street-walkers-are-getting-the-boot_109558.html (reporting on Amsterdam’s closing of its official street prostitution zone).

¹¹⁰ RAYMOND, *supra* note 59, at 88.

¹¹¹ *Why Dutch Street Walkers are Getting the Boot*, *supra* note 109, at 1.

¹¹² RAYMOND, *supra* note 59, at 88.

were subject to extreme violence and murder.¹¹³ In 2008, Amsterdam City Council members introduced measures to cut the red light district's sex windows by nearly half—reducing the number from 482 to 243.¹¹⁴

In 2008, the National Prosecutor's Office and the National Police Service conducted an investigation into the status of prostitution in the Netherlands.¹¹⁵ In 2008, *Beneath the Surface*, a report summarizing this investigation, was published.¹¹⁶ The report documented that criminal gangs, working as pimps and bodyguards, had been using extreme violence against women in the *legal, licensed* sector of the industry for as long as ten years despite the presence of brothel inspectors.¹¹⁷

Victims who made reports or submitted statements to the police tell of how they were beaten with baseball bats, and how they were made to stand outside in the cold water of lakes in holiday parks during winter. There were also reports of forced abortions, breast enlargement (forced and voluntary), and tattoos with the names of the pimps.¹¹⁸

The 2008 National Police Service report asked, “How is it possible that forced prostitution, i.e., human trafficking, was able to take place (almost unimpeded) in the licensed window prostitution sector?”¹¹⁹ The report identifies several answers, including (1) that law enforcement has less power and incentive to investigate prostitution activities since, as a general rule, law enforcement is less critical of legal industries¹²⁰ and (2) that

¹¹³ NAT'L POLICE SERV., CRIMINAL INVESTIGATIONS DEP'T (KLPD), *BENEATH THE SURFACE (SCHONE SCHIJN): THE IDENTIFICATION OF HUMAN TRAFFICKING IN THE LICENSED PROSTITUTION SECTOR 4* (2009) [hereinafter KLPD].

¹¹⁴ *Amsterdam to Cut Brothels by Half*, BBC NEWS EUROPE, at 1, <http://news.bbc.co.uk/2/hi/europe/7769199.stm> (last updated Dec. 6, 2008, 16:15 GMT).

¹¹⁵ KLPD, *supra* note 113, at 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 5.

¹²⁰ *Id.* at 24.

brothel inspections were not successful in detecting exploitation.¹²¹ Brothel inspections were unsuccessful because pimps often monitored women when interviewed by inspectors making them unable to reveal the true conditions under which they were prostituted.¹²² Additionally, the report documented prostitution inspectors “maintain[ing] contact with pimps or bodyguards.”¹²³ Furthermore, the report found that bodyguards, often working for criminal gangs,¹²⁴ were not protecting the women.¹²⁵ Thus the report suggests that police inspectors “maintain[ing] contact with pimps or bodyguards” increases the inspector’s “risk of collusion or slipping into a criminal environment” and that such “behavior does not improve the trust of possible victims of human trafficking in the inspectors.”¹²⁶ In part, the legislation relies on the goodwill of brothel owners and buyers, often exploiters themselves, to prioritize reporting abuse over profit margins and personal sexual satisfaction.¹²⁷ The investigators found that one criminal gang forced women to work in window brothels for years without detection by the inspectors.¹²⁸ As indicated by this report, the policies in place for identifying abuse are ineffective.¹²⁹ Licensing and inspecting a brothel gives no true guarantee that women will not face abuse.¹³⁰ Prostitution buyers and brothel operators may choose to not report the abuse that they witness.¹³¹ Women are often under extreme duress, facing violence and threats of violence by pimps. From this, one conclusion is that the legal commercial

¹²¹ *Id.* at 10.

¹²² *Id.* at 9.

¹²³ *Id.* at 8.

¹²⁴ *Id.* at 16.

¹²⁵ *Id.* at 4.

¹²⁶ *Id.* at 8.

¹²⁷ RAYMOND, *supra* note 59, at 91.

¹²⁸ *See* KLPD, *supra* note 113, at 1.

¹²⁹ *Id.* at 7–9.

¹³⁰ *Id.*

¹³¹ *Id.* at 91.

sex industry acts as a cover for the illicit industry, making it harder to track the illegal market.

The 2008 National Police Service report also indicated that 50–90 percent of prostituted women in all three cities were “working against their will.”¹³² This reality is in direct contradiction to the goals of legalization, which explicitly aim to “protect the position of sex workers, protect people from being coerced into prostitution, protect minors against sexual abuse, reduce prostitution by foreign nationals residing illegally in the Netherlands, [and] sever the links between prostitution and crime.”¹³³ In summation, the report stated, “The idea that a clean, normal business sector has emerged is an illusion.”¹³⁴

In a 2012 study, “Does Legalized Prostitution Increase Human Trafficking,” researchers analyzed cross-sectional data of 116 countries, including the Netherlands, to determine the effect of legalized prostitution on human trafficking.¹³⁵ They also reviewed case studies of Denmark, Germany, and Switzerland to examine the longitudinal effects of legalizing or criminalizing sex buying and sex selling. The study’s findings conclude:

- (1) countries that have legalized sex buying are associated with higher human trafficking inflows than countries where sex buying is prohibited;¹³⁶
- (2) evidence indicates that the criminalization of sex buying in Sweden resulted in the shrinking of the prostitution market and a decline in human trafficking inflows; and¹³⁷

¹³² *Id.* at 7.

¹³³ DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 6.

¹³⁴ KLDP, *supra* note 113, at 1.

¹³⁵ Seo-Young Cho et al., *Does Legalized Prostitution Increase Human Trafficking?*, 41 *WORLD DEV.* 67, 67 (2013).

¹³⁶ *Id.* at 71, 74–75.

¹³⁷ *Id.* at 75.

(3) cross-country comparisons of Sweden (where sex buying is criminalized) with Denmark (where sex buying is decriminalized) and Germany (where sex buying is legalized) are consistent with the quantitative analysis, which show that trafficking inflows decreased with criminalization of sex buying and increased with legalization or decriminalization of sex buying.¹³⁸

Despite findings such as these, major intergovernmental organizations call for the complete decriminalization¹³⁹ and/or legalization of (1) the individual sold in prostitution, individuals they identify as “sex workers”;¹⁴⁰ (2) sex buyers, identified as “clients”;¹⁴¹ and (3) the pimps and brothel keepers, who they identify as “managers.”¹⁴² Major intergovernmental organizations argue that legalization and decriminalization reduce the harm to women in the industry and reduce the spread of HIV/AIDS.¹⁴³ They also advocate for making a strong distinction between trafficking and “sex work”; one they identify as forced, the other as free and consensual.¹⁴⁴

In response to industrialism and modern capitalism, laborers have organized for collective bargaining rights to ensure their safety in the face of employers who ignore the well-being of the laborer in favor of profit.¹⁴⁵ Women in prostitution, unlike laborers, face the perpetual risk of violence at the hands of both their employers and their “clients.” This risk is not

¹³⁸ *Id.*

¹³⁹ UNAIDS, *supra* note 19, at 6 (Annex 1); *see generally* AMNESTY INT’L, *supra* note 86 (advocating for decriminalizing or legalizing prostitution.).

¹⁴⁰ AMNESTY INT’L, *supra* note 86, at 1.

¹⁴¹ *See* DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 4.

¹⁴² UNAIDS, *supra* note 19, at 3.

¹⁴³ *Id.* at 6; *see generally* AMNESTY INT’L, *supra* note 86 (arguing that decriminalizing prostitution will reduce the spread of HIV/AIDS and violence against women in prostitution).

¹⁴⁴ UNAIDS, *supra* note 19, at 15.

¹⁴⁵ KARL MARX & FREDERICH ENGELS, *THE COMMUNIST MANIFESTO* 69–73 (Joseph Katz ed., Samuel Moore trans., Wash. Square Press 1964).

incidental, but arises from the literal commodification, not of a woman's labor, but of her body and self.¹⁴⁶ Women endure further psychological and emotional violation from commodification.¹⁴⁷ Commodification abrogates a woman's subjecthood by reducing her to the status of a sex object, purchasable and exchangeable on the market. Survivors of prostitution describe experiencing feelings of estrangement, dissociation, and disembodiment as a consequence of prostitution.¹⁴⁸ Survivor activists Vednita Carter¹⁴⁹ and Evelina Giobbe¹⁵⁰ made the process of disembodiment strikingly clear when they wrote that the prostituted woman "is empty space surrounded by flesh into which men deposit evidence of their masculinity. She does not exist so that he can."¹⁵¹ This sex class distinction, alluded to by Carter and Giobbe, is borne out of centuries of women's political, social, and economic oppression.¹⁵² The distinction gives rise to "prostitution as a social institution" that "gives men personhood—in this case, manhood—through depriving women of theirs."¹⁵³

In *A Brief History of the Neoliberal State*, David Harvey argues that

¹⁴⁶ JEFFREYS, *supra* note 71, at 134; Melissa Farley et. al. COMPARING SEX BUYERS WITH MEN WHO DON'T BUY SEX, PSYCHOLOGISTS FOR SOCIAL RESPONSIBILITY ANNUAL CONFERENCE 29 (2011), available at <http://www.catwinternational.org/content/images/article/212/attachment.pdf> (revealing perspectives held by buyers of the women they buy); D. A. Clarke, *Resisting the Sexual New World Order*, in NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 151 (Christine Stark & Rebecca Whisnant eds., 2004).

¹⁴⁷ Maddy Coy, *This Body Which is Not Mine: The Notion of the Habit Body, Prostitution and (Dis)embodiment*, 10(1) FEMINIST THEORY 61, 68–69 (2009).

¹⁴⁸ *See id.* at 61, 66–73 (2009).

¹⁴⁹ Vednita Farmer, *Leadership at Breaking Free*, BREAKING FREE, <http://www.breakingfree.net/leadership.aspx> (last visited Oct. 11, 2015).

¹⁵⁰ *Id.*; Carter & Grobbe, *supra* note 8, at 37.

¹⁵¹ *Id.* at 46.

¹⁵² *See generally* SIMONE DE BEAUVOIR, *THE SECOND SEX* (H. M. Parshley trans. & ed., Vintage Books 1974) (1952); *see generally* SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* (1970) (arguing that women are systematically oppressed by men).

¹⁵³ MACKINNON, *supra* note 50, at 153.

biases arise . . . out of the treatment of labour and the environment as mere commodities. In the event of a conflict, the typical neoliberal state will tend to side with a good business climate as opposed to either the collective rights [and quality of life] of labour¹⁵⁴

Harvey's assessment holds particular veracity in the case of prostituted women and children. As stated by Dorchen Leidholdt, "What other job is so deeply gendered that one's breast, vagina, and rectum constitute the working equipment? Is so deeply gendered that the workers are exclusively women and children and young men used like women?"¹⁵⁵ Despite overwhelming evidence of the gendered violence endured by those in prostitution, governments and major international organizations have legalized/decriminalized, called for the legalization/decriminalization, or advocated for the legitimacy of prostitution, pimping, and brothel keeping. Nations and nongovernmental organizations advocating for legalization or decriminalization include, Germany, parts of Australia, the Netherlands,¹⁵⁶ Denmark, the World Health Organization, UNAIDS,¹⁵⁷ the International Labor Organization,¹⁵⁸ UN Women,¹⁵⁹ the UN Special Rapporteur on the Right to Health,¹⁶⁰ and a variety of other entities. Amnesty International

¹⁵⁴ HARVEY, *supra* note 14, at 70; *see also id.* at 64–86.

¹⁵⁵ MACKINNON, *supra* note 50, at 160.

¹⁵⁶ Gunilla Ekberg, *The International Debate About Prostitution and Trafficking in Women: Refuting the Arguments*, in SEMINAR ON THE EFFECTS OF LEGALISATION OF PROSTITUTION ACTIVITIES—A CRITICAL ANALYSIS 9 (2002).

¹⁵⁷ UNAIDS, *supra* note 19, at 3–12.

¹⁵⁸ JEFFREYS, *supra* note 71, at 4.

¹⁵⁹ U.N. WOMEN, NOTE ON SEX WORK, SEXUAL EXPLOITATION AND TRAFFICKING 2 (Oct. 9, 2013), *available at* <http://www.nswp.org/sites/nswp.org/files/UN%20Women's%20note%20on%20sex%20work%20sexual%20exploitation%20and%20trafficking.pdf>.

¹⁶⁰ U.N. Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, 46–50, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010), *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>.

also recently released a statement advocating for the decriminalization of all prostitution related activities.¹⁶¹ These organizations apply to prostitution the neoliberal logic that legitimizing prostitution, as “labor” in the legal marketplace, will improve conditions for prostituted people.

Feminist law scholar Catharine MacKinnon argues that “women are prostituted precisely in order to be degraded and subjected to cruel and brutal treatment without human limits; it is the opportunity to do this that is acquired when women are bought and sold for sex.”¹⁶² MacKinnon argues that the exploitation of women’s political, social, and economic vulnerability in the form of prostitution is a human rights violation in and of itself and that the normalization of this social practice through legalization/decriminalization does not render the practice humane.¹⁶³

Legalization/decriminalization regimes normalize prostitution as “labor,” thereby increasing the market potential for prostitution.¹⁶⁴ Brothel owners and pimps, acting as classic employers, oblige the demands of customers to protect profit margins, regardless of the harms to the prostituted woman. As dictated by capitalism, in the never-ending drive to increase profit and to secure clients, brothel owners, pimps, and buyers coerce women into engaging in unprotected sex, violent sex, anal sex, pregnant sex, bondage, group sex, and so forth.¹⁶⁵

¹⁶¹ Doreen Carvajal, *Amnesty International Considers Pushing for Decriminalization of Prostitution*, N.Y. TIMES (July 31, 2015), http://www.nytimes.com/2015/08/01/world/europe/amnesty-international-weighs-decriminalization-of-prostitution.html?_r=0.

¹⁶² MACKINNON, *supra* note 50, at 151.

¹⁶³ *See id.* at 151–57.

¹⁶⁴ *See* JEFFREYS, *supra* note 71, at 133–35.

¹⁶⁵ *See* Cordula Meyer et al., *Unprotected: How Legalizing Prostitution Has Failed*, SPIEGEL ONLINE INT’L (May 30, 2013, 3:41 PM), <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>.

The demographic of prostituted individuals is not limited to adults, despite laws prohibiting the prostituting of minors. The most economically, socially, and politically vulnerable groups in the world are targeted for prostitution,¹⁶⁶ so it is unsurprising that when countries legalize and endorse prostitution culture, this culture targets children.¹⁶⁷ In 2006, the Dutch National Rapporteur on Human Trafficking reported, “There was a striking increase in the number of registered under-age victims, particular in the age group from 15-17 years.”¹⁶⁸ Interpol and Dutch police statements reveal that the Netherlands plays a leading role in creating and sustaining pedophile networks in Europe.¹⁶⁹ From 2006 to 2010, in the Netherlands, there existed the only known political party to promote pedophilia.¹⁷⁰ The Party for Brotherly Love, Freedom and Diversity sought to lower the minimum age of consent to 12 and to legalize child pornography.¹⁷¹

The Dutch government stated that its goals for legalizing prostitution were as follows:

control and regulate the employment of sex workers through a municipal licensing system, protect the position of sex workers, protect people from being coerced into prostitution, protect minors against sexual abuse, reduce prostitution by foreign nationals

¹⁶⁶ See JACQUI TRUE, POLITICAL ECONOMY OF VIOLENCE AGAINST WOMEN 102 (2012); HUGHES, *supra* note 11, at 1; see generally Melissa Farley et. al., *Prostitution in Vancouver: Violence and The Colonization of First Nations Women*, 42 TRANSCULTURAL PSYCHIATRY 242 (2005).

¹⁶⁷ See RAYMOND, *supra* note 59, at 115.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 116–17.

¹⁷⁰ See generally *Dutch Pedophile Party Disbands After Lack of Success*, HUFFINGTONPOST.COM, http://www.huffingtonpost.com/2010/03/15/dutch-pedophile-party-dis_n_499127.html (last visited Sept. 16, 2015) [hereinafter HUFFINGTONPOST.COM] (reporting on the disbanding of the Dutch Party for Brotherly Love, Freedom and Diversity); see also RAYMOND, *supra* note 59, at 116.

¹⁷¹ See generally Nicholas Watt, Dutch Court Lets Paedophile Party Contest Country's General Election, THE GUARDIAN (July 18, 2006), <http://www.theguardian.com/world/2006/jul/18/topstories3.mainsection>.

residing illegally in the Netherlands, and sever the links between prostitution and crime.¹⁷²

Though the Dutch government has yet to meet these stated goals, legalization remains in place.¹⁷³ With the industry generating upwards of 800 million USD a year, the most identifiable “success” of the law aligns well with a neoliberal ideology. This ideology promotes individual business interests and advances contractual relationships in a market.¹⁷⁴ Though the legal prostitution industry is overwhelmed with organized crime and exploitation,¹⁷⁵ prostitution remains a source of high tax revenue, providing the Dutch government with a powerful incentive to uphold the legislation.¹⁷⁶ Legalization and blanket decriminalization laws and policies grant legitimacy to buyers, brothel owners, and pimps, but have not stopped the violence women face at the hands of these same individuals.¹⁷⁷ What legalization and decriminalization have done is bring the illegal prostitution market into the legal arena for significant taxation¹⁷⁸ and tourism profit.¹⁷⁹ As of today, the Netherlands attributes five percent of its total GDP to the sex industry.¹⁸⁰

¹⁷² DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 64, at 6.

¹⁷³ *Id.* at 3.

¹⁷⁴ Anne Holligan, *Amsterdam’s Prostitutes Targeted by Dutch Tax Officials*, BBC NEWS (Mar. 21, 2011), <http://www.bbc.com/news/world-africa-12705531>.

¹⁷⁵ *See generally* NAT’L POLICE SERV., *supra* note 113 (documenting organized crime and exploitation in the legal prostitution industry).

¹⁷⁶ *See generally id.* Prostituted women in the Netherlands are expected to charge customers a 19 percent sales tax and pay income tax at a rate of 33–52 percent. In 2011, the Dutch government launched a major effort to increase tax collection from prostituted women in order to help fill the country’s budget gap. *See Dutch Prostitutes Get Visit from Tax Collector*, CBS NEWS (Jan. 12, 2011), <http://www.cbsnews.com/news/dutch-prostitutes-get-visit-from-tax-collector/>.

¹⁷⁷ *See generally* KLPD, *supra* note 113.

¹⁷⁸ *See* Holligan, *supra* note 174.

¹⁷⁹ *See Red Light District*, *supra* note 68.

¹⁸⁰ RAYMOND, *supra* note 59, at 133.

In Germany, where recent estimates indicate that roughly 400,000 women service 1.2 million men every day,¹⁸¹ the Verdi public services union estimates that prostitution generates €14.5 billion annually.¹⁸² The intersection of capitalism and legalization has even produced flat rate brothels in Germany:

When the Pussy Club opened near Stuttgart in 2009, the management advertised the club as follows: ‘Sex with all women as long as you want, as often as you want and the way you want. Sex. Anal sex. Oral sex without a condom. Three-ways. Group sex. Gang bangs.’ The price: €70 during the day and €100 in the evening. According to the police, about 1,700 customers took advantage of the offer on the opening weekend. Buses arrived from far away and local newspapers reported that up to 700 men stood in line outside the brothel at any one time. Afterwards, customers wrote in Internet chat rooms about the supposedly unsatisfactory service, complaining that the women were no longer as fit for use after a few hours.¹⁸³

Though lobbyists for decriminalization/legalization make their arguments in reference to the benefits they claim will accrue to survivors of prostitution, the commercial sex trade, in actuality, benefits men who, as pimps and brothel owners, gain economically and who, as buyers, gain unfettered sexual access to women’s bodies.¹⁸⁴ Significant revenue is at stake for the prostitution industry and governments that decriminalize/legalize prostitution.¹⁸⁵ Therefore, within a country advancing

¹⁸¹ Nisha Lilia Diu, *Welcome to Paradise*, THE TELEGRAPH (2013), <http://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/index.html?src=longreads>.

¹⁸² *Unprotected: How Legalizing Prostitution Has Failed*, SPIEGEL ONLINE INT’L (May 30, 2013, 3:41 PM), <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>.

¹⁸³ *Id.*

¹⁸⁴ Helmut Sporer, Speech at the European Women’s Lobby Seminar (Oct. 1, 2013), available at <http://www.scribd.com/doc/184667092/Prostitution-in-Germany-by-Detective-Superintendent-Helmut-Sporer#scribd>.

¹⁸⁵ JEFFREYS, *supra* note 71, at 130–131.

these policy regimes the average sex buyer can, without much difficulty, buy sexual access to a woman of any “age, bust or dress size, ethnicity, [or] sexual orientation” from either the legal or illegal sector.¹⁸⁶

C. *The Nordic Model*

The theoretical underpinnings and practical interventions mandated by the Nordic model of legislation differ substantially from the policy approaches of criminalization and legalization/decriminalization. The Nordic model, by interweaving political and social policy, is consistent with the social democratic tendency to use government and social policies to advance egalitarianism.¹⁸⁷ The model proceeds from an understanding of prostitution as gendered violence, which creates a very different framework than those that identify prostitution as either labor or a consequence of female immorality. The conceptualization of prostitution as gendered violence led Sweden to enact extensive interventions and treatment for women.¹⁸⁸ According to Kajsa Wahlberg,¹⁸⁹ Sweden, unlike the Netherlands, does “not separate prostitution from trafficking in human beings.”¹⁹⁰ Sweden was the first country to asymmetrically *decriminalize* individuals exploited in prostitution (primarily women and children), while *criminalizing* buying, pimping, and brothel keeping.¹⁹¹ The Nordic model

¹⁸⁶ *Prostitution and the Internet: More Bang For Your Buck*, THE ECONOMIST (Aug. 9, 2014), <http://www.economist.com/news/briefing/21611074-how-new-technology-shaking-up-oldest-business-more-bang-your-buck>.

¹⁸⁷ TAYLOR, *supra* note 26, at 52–54.

¹⁸⁸ SWEDISH NAT’L BOARD OF HEALTH & WELFARE, PROSTITUTION IN SWEDEN 2003: KNOWLEDGE, BELIEFS & ATTITUDES OF KEY INFORMANTS 13, 75–8 (2004), *available at* https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/10488/2004-131-28_200413128.pdf.

¹⁸⁹ Kajsa Wahlberg, Swedish Nat’l Rapporteur on Trafficking in Human Beings, Statement at the Czech Republic Conference: Preventing and Combating Trafficking in Human Beings and Reducing Prostitution and Sexual Exploitation (June 3, 2009).

¹⁹⁰ *Id.* at 2.

¹⁹¹ EKBERG, *supra* note 21, at 1–2.

penalizes those with power who demand the prostitution transaction, the buyer with money or the pimp/brothel owner profiting.¹⁹² Note that this is *not* a “decriminalization” model; in fact, it is quite the opposite. As such, it is best to refer to it as “the Nordic model” to avoid confusion.

For many social democrats, women’s attainment of equity necessitates that structural barriers to women’s full economic, social, and political inclusion be excised: “While classical liberals are famed for wanting to free the individual from the constraints of others, social democrats believe that freedom depends upon there being at least some measure of equality. Inequality is thought to stand in the way of freedom.”¹⁹³

Sweden sees the sex industry—thriving off the social inequality between women and men, adults and children, white people and people of color, wealthy nations and colonized nations—as an unacceptable practice rather than a market opportunity.¹⁹⁴ Swedes, in viewing prostitution as a consequence of structural injustices (including sexism, racism, and heterosexism), called for the provision of social service support to survivors of prostitution and for the criminalization of those abusing their greater socioeconomic power by buying prostituted women.¹⁹⁵ According to social democratic theory, “society is free to the extent that . . . its institutions and policies are such as to enable its members to grow to their full stature.”¹⁹⁶ Social democracies tend to use policy initiatives, not market incentives, to further the societal wellbeing of all citizens.¹⁹⁷ A country committed to advancing the welfare of the majority would not economically institutionalize the sexual subordination of women to men. Nor is it like that this country would justify segregating marginalized populations in an

¹⁹² *See id.*

¹⁹³ TAYLOR, *supra* note 26, at 55.

¹⁹⁴ EKBERG, *supra* note 21, at 1–2.

¹⁹⁵ *See id.*

¹⁹⁶ TAYLOR, *supra* note 26, at 55.

¹⁹⁷ *Id.* at 52.

economy (the sex industry) where these disenfranchised citizens would be expected to sexually service their social superiors (i.e., those with more economic power) for survival.

1. Social Democratic Prostitution Policy in Practice: Sweden as a Case Study

The Nordic model took a number of decades to implement and involved the work of numerous people and agencies, including the National Organization for Women's Shelters and Young Women's Shelters in Sweden (ROKS), the members of Prostitutes' Revenge In Society (PRIS), the feminist, the activist network *Kvinnofronten*, and a host of other professionals including social workers, journalists, and politicians.¹⁹⁸ Therefore, the Nordic model is a collaborative effort focused on changing the social norms that enable prostitution to flourish.¹⁹⁹ Punitive measures or incarceration do not drive the Nordic model.²⁰⁰ The model is a combination of three equally important components: (1) community education,²⁰¹ (2) social services,²⁰² and (3) law enforcement.²⁰³

¹⁹⁸ Interview with Gerda Christenson, Swedish Feminist Activist With Kvinnofronten, in Stockholm, Swed. (Dec. 11, 2012); Interview with Louise Eek, Founder of Prostituerades Revansch i Samhället [Prostitutes Revenge In Society] and Author of *Att Köpa eller Köpas* [To Buy or Be Bought], in Lund, Swed. (July 8, 2013); Interview with Ebon Kram, Former CEO of *Riksorganisationen för kvinnojourer och tjejjourer* [National Organization for Women's and Girls' Shelters in Sweden] (ROKS), in Stockholm, Swed. (Dec. 9, 2012); Interview with Kajsa Ekis, Author of *Being and Being Bought*, in Stockholm, Swed. (Oct. 17, 2012).

¹⁹⁹ EKBERG, *supra* note 21, at 1–2; Wahlberg, *supra* note 189, at 1.

²⁰⁰ Wahlberg, *supra* note 189, at 1.

²⁰¹ EKBERG, *supra* note 21, at 18.

²⁰² SWEDISH NAT'L BOARD OF HEALTH & WELFARE, *supra* note 183, at 75–8.

²⁰³ KAJSA WAHLBERG, SWEDISH NAT'L POLICE BOARD, SITUATION REPORT 13: TRAFFICKING IN HUMAN BEINGS FOR SEXUAL AND OTHER PURPOSES (2011), available at https://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Trafficking_1998_/Trafficking_report_13_20130530.pdf.

In Sweden, the feminist, women's shelter movement and social democratic ideals guided the development of prostitution policy.²⁰⁴ In the mid-1970s, as reports of extensive adult and child prostitution emerged, the women's movement demanded that a governmental commission be called to investigate the status of prostitution in Sweden.²⁰⁵ Women demanded men, who were using their socio-economic power to buy sexual access, be held accountable for the harms they were causing women and children.²⁰⁶ In the 1980s, a government commission²⁰⁷ investigated the issue of prostitution in Sweden.²⁰⁸ Fifty women in the sex industry were interviewed; over the course of two years, interviewers conducted in-depth interviews with 25 of these women.²⁰⁹ The ensuing report included extracts from the interviews with women explaining how they coped in prostitution, the violence they endured, their struggles with drug addiction, as well as their relationships to prostitution buyers and pimps.²¹⁰ Out of this report emerged the first governmental recommendation that Sweden criminalize buyers and pimps.²¹¹ Interviews with prostituted women directly informed this report.²¹² In the mid-1970s, Sweden established social work units in four major cities—Norrköping, Stockholm, Malmö, and Gothenburg—to support victims of prostitution.²¹³ These units conducted outreach work,

²⁰⁴ HULUSJÖ, *supra* note 21, at 110–111.

²⁰⁵ Interview with Sven-Axel, Social Work Professor, Malmö University, in Malmö, Swed. (Oct. 10, 2012).

²⁰⁶ Interview with Ebon Kram, *supra* note 198.

²⁰⁷ The 10-person commission, including author Hanna Olsson and social work professor Sven-Axel Månsson, also interviewed buyers and pimps, and mapped out the scope and causes of prostitution.

²⁰⁸ Interview with Sven-Axel, *supra* note 205.

²⁰⁹ Interview with Hanna Olsson, Author of *Catrine and Justice*, in Stockholm, Swed. (Jan. 1, 2013).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ Interview with Anna Hulusjö, PhD Candidate, Malmö University, Department of Health and Society, in Malmö, Swed. (Oct. 3, 2012).

offered psychosocial support, and assisted with education, job training, housing, and financial counseling.²¹⁴

In the 1990s, ROKS undertook a major campaign to educate the community about the harms of prostitution. At this time, women comprised 50 percent of the *Riksdag*, the Swedish Parliament. ROKS built strong alliances with female politicians and encouraged them to draw on their own experiences of oppression, to empathize with other women, and to educate their male counterparts about the harms of prostitution.²¹⁵

In the 1990s, the Swedish Parliament reached the consensus that prostitution did not belong in a gender equal society.²¹⁶ In January of 1999, as part of the Violence Against Women bill, *Kvinnofrid*,²¹⁷ Sweden criminalized prostitution buyers.²¹⁸ Other exploiters of prostitution, pimps (procurers) and brothel owners, were already criminalized.²¹⁹ Sweden was the first country to asymmetrically *decriminalize* individuals exploited in prostitution (primarily women and children), while *criminalizing* prostitution buying (pimping and brothel keeping were already criminalized).²²⁰ At this time, the spotlight in Sweden was on men and their role in creating, sustaining, and driving the prostitution industry.²²¹ Swedish society identified male demand for prostitution as the major contributing

²¹⁴ *Id.*

²¹⁵ Interview with Ebon Kram, *supra* note 198.

²¹⁶ Interview with Anna Hulusjö, PhD candidate, Malmö University, Department of Health and Society, in Malmö, Swed. (Apr. 10, 2013).

²¹⁷ The Swedish Violence Against Women Act is not to be confused with the Violence Against Women Act of 1994 introduced in the United States.

²¹⁸ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1191 (2004).

²¹⁹ HULUSJÖ, *supra* note 21, at 111.

²²⁰ Ekberg, *supra* note 218; HULUSJÖ, *supra* note 21, at 111.

²²¹ KAJSA CLAUDE, THE SWEDISH INST., TARGETING THE SEX BUYER. THE SWEDISH EXAMPLE: STOPPING PROSTITUTION AND TRAFFICKING WHERE IT ALL BEGINS 3 (2010), available at http://exoduscry.com/wp-content/uploads/2010/07/swedish_model.pdf.

factor to the commercial sex industry's growth.²²² With the Nordic model, Sweden made a political commitment to ending prostitution by convincing “people to abstain from committing the crime of buying sex and to establish norms under which no woman, man, girl, or boy can be sold and no one has the right to sexually exploit another human being.”²²³

Gary Taylor, in *Ideology and Welfare*, stated, “Social democrats tend to be openly egalitarian and believe that freedom is not a purely individual possession but something that resides in the community.”²²⁴ In keeping with this spirit, this report and public debates in Sweden reframed prostitution as an issue of social responsibility, a systemic problem, and a consequence of gender inequality.²²⁵

In accordance with the social democratic drive to agitate for social betterment, the primary intention of the Nordic model was not punitive; it intended to change social norms that promoted and enabled prostitution to flourish.²²⁶ The six primary directives of the Nordic model were to (1) reduce the number of women in prostitution, (2) reduce the size of the trafficking industry, (3) reduce the number of buyers, (4) reduce the number of pimps and sex clubs, (5) educate other countries about the model, and (6) promote women's equality more generally.²²⁷ Prostitution units in Sweden act as intermediaries and facilitators with the country's broader social service system to help women access housing, welfare support, healthcare, and more.²²⁸ Social democracy calls for policies that advance the well-being of the most oppressed. “Rather than see the individual as an isolated being,

²²² *Id.* at 3, 6–7.

²²³ *Id.* at 6.

²²⁴ TAYLOR, *supra* note 26, at 55.

²²⁵ Interview with Sven-Axel, *supra* note 205.

²²⁶ Wahlberg, *supra* note 189, at 5.

²²⁷ *Id.*

²²⁸ Interview with Miki Nagata, Social Worker, Stockholm Prostitution Unit, in Stockholm, Swed. (Oct. 20, 2012); Interview with Anna Hulusjö, *supra* note 213.

social democrats are apt to consider people in their broader social context and to regard freedom as something that can only be achieved for the vast majority.”²²⁹ Though Sweden acknowledges that some individuals may choose to remain in prostitution, the country’s policies on this issue focus on enabling individuals who wish to leave the opportunity to do so.

One of the primary intentions of the Nordic legislation was to change social norms that enable and encourage men to buy sexual access to others.²³⁰ A Swedish special inquiry found that the number of men purchasing sexual services dropped from 13.6 percent to 7.8 percent after the introduction of legislation criminalizing sex buying.²³¹ Opinion polls have indicated that 70 percent of Swedes now support the law—a finding that may be indicative of the law’s success in shaping social norms.²³² Furthermore, according to Sweden’s national rapporteur on human trafficking, Sweden has become an unattractive destination country for traffickers, pimps, and sex buyers.²³³ Estimates show that in the entire country of Sweden, with a population of 9.6 million, only 400–600 individuals are trafficked each year.²³⁴ Conservative estimates indicate that in the city of Amsterdam—with a population of approximately 813,500—4,000 individuals are trafficked each year.²³⁵ In 1999, Denmark decriminalized sex buying and sex selling; whereas in 1999, Sweden criminalized sex buying and decriminalized sex selling.²³⁶ After the enactment of this legislation, estimates show that between 1999 and 2002 prostitution in Sweden dropped between 30 percent and 50 percent.²³⁷

²²⁹ TAYLOR, *supra* note 24, at 55.

²³⁰ Wahlberg, *supra* note 189, at 3.

²³¹ EKBERG, *supra* note 21, at 17.

²³² CLAUDE, *supra* note 221, at 6.

²³³ Wahlberg, *supra* note 189, at 6.

²³⁴ CLAUDE, *supra* note 221, at 6.

²³⁵ RAYMOND, *supra* note 59, at 93.

²³⁶ Cho et al., *supra* note 135, at 74–5.

²³⁷ Ekberg, *supra* note 221, at 1193.

Conversely, in 2008, estimates show that street prostitution in Denmark—with a population size 40 percent smaller than Sweden—to be three to four times higher.²³⁸ Furthermore, the estimated number of human trafficking victims in Sweden is 500, whereas in Denmark the estimate was much higher at 2,500.²³⁹

II. THE NORDIC MODEL

A. Nordic Model In-Depth

The ensuing section provides an in-depth look at the Nordic model as it operates in Sweden. The information presented in this section comes from interviews conducted with a wide range of individuals in Sweden. The interviews include feminist activists, social workers from all three Swedish social service prostitution units, therapists, law enforcement officers with the Stockholm Prostitution Unit, a police inspector with the Gothenburg Trafficking Unit, government employees, researchers, employees of Buyers of Sexual Services (KAST) (an intervention service available to sex buyers who want to stop buying sex), the founder of Prostitutes' Revenge In Society, a midwife from the Stockholm prostitution unit, the former CEO of ROKS, and many others.

1. Social Services: The Stockholm Prostitution Unit

Three of the Swedish social service prostitution units, *Prostitutionsenheten*, continue to operate in Malmö, Gothenburg, and Stockholm.²⁴⁰ The units act as intermediaries and facilitators with broader social services to help women access housing, financial assistance, psychosocial support, and more.²⁴¹ Those who seek services from the units

²³⁸ Cho et al., *supra* note 135, at 75.

²³⁹ *Id.* at 41.

²⁴⁰ Ane Mathieson visited each of these facilities between 2012 and 2013.

²⁴¹ Interview with Miki Nagata, *supra* note 228.

do so on their own volition. The judicial system does not compel them to seek support as a condition of sentencing, as is often the case in the United States.²⁴² Services offered by the units are entirely free,²⁴³ and clients of the units are under no obligation to leave prostitution in order to receive services.²⁴⁴ With a client demographic that includes women, men, and those in the transgender community, the employees meet people with any prostitution-related experience—from stripping and pornography to street and brothel prostitution.²⁴⁵ Clients from every stage of prostitution, including those who have recently entered to those who have exited the industry, seek services at the units.²⁴⁶ The units do not have specific exit programs; rather, employees will ask clients what they need help with to tailor the social service support to the specific needs of each client.²⁴⁷ In contribution to the community education and norm changing efforts of the Nordic model, employees also provide trainings to various groups, including educators, law enforcement, youth, medical personal, and other social welfare offices.²⁴⁸

The most comprehensive Swedish unit, located in Stockholm, offers access to two therapists (who are also street and internet outreach workers), a trafficking specialist, street and internet outreach workers, social workers, a midwife, a part time gynecologist, a general practitioner, and a psychologist.²⁴⁹ The unit contains an on-site medical office. In 2011, the unit served 310 clients; these clients visited the unit 874 times.²⁵⁰ In 2013, this unit had approximately 70 regular clients per month (not including

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

those who only received medical services). The unit met with an additional 20 contacts on the street.²⁵¹

The unit's employees have developed a therapeutic approach to their work based on what they have learned from their clients.²⁵² Four primary principles guide their work: attitude, time, cooperation, and flexibility.²⁵³ Regarding attitude, the employees speak without judgment or criticism of their clients, and they approach prostitution through the lens that it is not an empowering act. They approach their work with utter patience, allowing relationships with clients to build over time. There is no expectation that anyone leave prostitution immediately. For many women, exiting prostitution is a multi-staged process that can take many years. In light of this, services are accessible indefinitely.²⁵⁴ With regards to cooperation, employees advocate for their clients in many settings. They constantly add to their network of trained and trusted professionals who are sensitive to the unique needs of women in prostitution from other agencies. Regarding flexibility, employees strive to meet clients where they are located because the clients' lives are often full of serious struggles including poverty, homelessness, drug and alcohol addiction, eating disorders, and other self-harming behaviors.²⁵⁵ As described by Antoinette Kinannder, midwife with the Stockholm unit, it is

[i]mportant to hold space . . . the way you talk, express yourself is so important. So they know that this is a place where they can say anything . . . can trust. I tell new visitors 'I can show you around here: introduce you to my colleagues.' That closeness is very important. The check-up can be a carrot to bring women in . . . to say, 'Oh wow! Welcome!' Her coming in is a sign that she is

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Interview with Antoinette Kinannder, Midwife, Stockholm Prostitution Unit, in Stockholm, Swed. (Dec. 2, 2012).

²⁵⁵ *Id.*

considering that she for once needs something. When she is so used to being used, this is an important sign.²⁵⁶

The employees accompany clients to meetings at other agencies, advocate for their clients, make home visits, and more. Some clients, after having left prostitution, continue to return to the unit for years because of the safe relationships built. Clients are referred to the unit by other agencies. The majority of referrals are made by the unit's current clients.²⁵⁷

Many women initially visit the unit for medical services.²⁵⁸ The midwife, trained as a psychiatric nurse, has a medical examination room attached to her counseling office. She is able to test for STIs, UTIs, and to provide basic medical examinations.²⁵⁹ Many of the unit's clients have never had a gynecological exam before meeting with the unit's midwife.²⁶⁰ To highlight how delicate this work is, Antoinette notes:

To follow these destinies, you have to follow at their speed. [You] have to wait . . . They have to feel trust for the prostitution unit and themselves to make the change in their lives . . . It is so important to give people knowledge about their bodies, to encourage them to be proud of their body. To say, 'You are normal. You look perfectly normal' with the authority of a professional. Many women seek medical services for months or even years until they feel ready for psychosocial services.²⁶¹

²⁵⁶ *Id.*

²⁵⁷ Interview with Miki Nagata, *supra* note 228.

²⁵⁸ *Id.*

²⁵⁹ Interview with Antoinette Kinannder, *supra* note 254.

²⁶⁰ *Id.*

²⁶¹ *Id.*

2. Social Services: KAST (Buyer of Sexual Services), Counseling Services for Buyers

Sweden provides voluntary counseling services to men who want to stop buying prostitution.²⁶² Three counseling centers exist in Sweden.²⁶³ KAST, an acronym for the Swedish translation of Buyer of Sexual Services, collaborates with the Stockholm Prostitution Unit. It is often directly after arrest that buyers are most motivated to change their behavior.²⁶⁴ A KAST counselor accompanies the police on surveillance and during questioning. After questioning, the buyer is encouraged to meet with the KAST counselor confidentially and to receive counseling support for behavior modification. KAST services are voluntary, so prostitution buyers have to be motivated to change to pursue this service.²⁶⁵

3. Law Enforcement: The Stockholm Prostitution Unit

Stockholm has the only law enforcement Prostitution Unit in Sweden.²⁶⁶ Trafficking units, though, are located in multiple municipalities. Although the law enforcement infrastructure is fairly simple, with only two detectives comprising the Prostitution Unit, their collaboration with other units and social services is extensive. The Prostitution Unit's primary responsibility is to arrest buyers. In Stockholm, between 200 and 300 buyers are arrested a year.²⁶⁷

The laws in Sweden reflect an understanding that prostitution industries exploit both children and adults. If a man buys sexual access to a child

²⁶² Interview with Johan Christiansson, *KAST* [Buyer of Sexual Services], in Stockholm, Swed. (Dec. 11, 2013).

²⁶³ Wahlberg, *supra* note 189, at 6.

²⁶⁴ Interview with Johan Christiansson, *supra* note 262.

²⁶⁵ *Id.*

²⁶⁶ Interview with Zanna Tvilling & Simon Häggström, Law Enforcement Officers, Stockholm Prostitution Unit, in Stockholm, Swed. (Jan. 29, 2013).

²⁶⁷ *Id.*

under the age of 15, he faces prosecution for child rape.²⁶⁸ If a man buys sexual access to a child between 15 and 18, this is considered buying sex from a child, resulting in a maximum sentence of two years imprisonment.²⁶⁹ If a man buys or attempts to buy sexual access to an adult, he receives a minimum fine of 2,500 SEK (approximately \$350 USD) and faces up to one year of incarceration.²⁷⁰ At the time of this author's interviews in Sweden, the highest fine assessed was 70,000 SEK (approximately \$10,000 USD).²⁷¹ Fines are assessed on a sliding scale based on the buyer's income. Most men are less concerned with the fine and more concerned with whether prosecution will reveal their purchase of prostitution to their family, the public, or their employer.²⁷² Trials for this crime are public and well attended, so the majority of men admit to the charged crime to avoid trial.²⁷³ Of those who decide to go to trial, seven out of 10 are convicted.²⁷⁴

The unit deals predominantly with prostitution that takes place indoors, such as in apartments and hotels. The officers interviewed note that, "Now many men are writing on online forums are saying that hotels and apartments [like the streets] are bad, too, because of the police." Detective Inspector Häggström, with Stockholm's Prostitution Unit, noted, "It is as easy to find hotel and apartment prostitution as street prostitution."²⁷⁵

The Prostitution Unit's officers argue that the onus should not be on survivors to educate the public about the violence that happens in prostitution, as there are so many other witnesses to this exploitation.²⁷⁶

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

They argue it is everyone's responsibility to change norms that glorify or hide the reality of prostitution. The Swedish laws focus on supporting those individuals for whom prostitution is an oppressive, traumatic, or violent experience. As Detective Inspector Simon Häggström notes, "I have full respect for the views and opinions of those that claim they are doing this of their own volition, but they are the voice of a minority We need a law that speaks to the majority who are oppressed. Not the unoppressed minority."²⁷⁷

Though the pro-prostitution lobby asserts that women choose to be in prostitution,²⁷⁸ the law enforcement officers with Stockholm's Prostitution Unit stated that, in their experience, only two or three women out of 100 might say, "I want to be in prostitution."²⁷⁹ Most women instead shared experiences of childhood abuse, single motherhood, and trauma; all of which are coercive factors either facilitating their entrance into prostitution, or preventing them from leaving.²⁸⁰ The officers also stated that nine-tenths of the women encountered were willing to provide statements against the buyers.²⁸¹ Many of the women expressed resentment towards the buyers. It can be argued that, since women under the Nordic model are not penalized for prostitution, they have a far more equal relationship with police than women under criminalization regimes. Women identified as victims in prostitution are empowered to speak more fully about their experiences and to know that they have protection under the law; they do not face incarceration.

During an arrest, Detectives Zanna and Simon take the woman aside and explain to her the Swedish laws. They tell women, "We are not here to

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

arrest you. We will not take your money. We are here to see that you are okay because what this man is doing to you is illegal. In Sweden we don't accept that he can buy you."²⁸² After collecting a statement, the police offer connects the woman to the social services prostitution unit.²⁸³

An assertion often made by the pro-prostitution lobby is that penalizing demand makes prostitution more dangerous for women and forces them to take bigger risks.²⁸⁴ When women have a law's support, and can see law enforcement as a resource intended to ensure their safety, women are more empowered to call the police when buyers or pimps are violent or abusive.

In Stockholm, women speak with one another about the Prostitution Unit's officers. Women have told Detectives Zanna and Simon, "We have heard about you. We know that you are nice."²⁸⁵ Sometimes women call the officers when they witness girls prostituted on the street or if they witness violence against other women. According to the officers, in important ways, women can act as the eyes and ears on the street and are enabled to collaborate with the police to prevent the abuse and exploitation of individuals in prostitution. Many women know that the police are there to support them.²⁸⁶ Thus, in Sweden, penalizing the demand for prostitution has made conditions safer for women.

4. Law Enforcement: The Gothenburg Trafficking Unit

In Sweden, the trafficking units deal specifically with international trafficking—their primary responsibility is to investigate and arrest pimps and traffickers. Officers indicated that the Swedish buyers law is an important tool used by law enforcement to combat organized crime. Law

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ AMNESTY INT'L, *supra* note 86, at 4.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

enforcement often traces traffickers through prostitution buyers.²⁸⁷ Detective Mats Paulsson, in Västra Götaland County, states, “Before the law the police didn’t really care about prostitution or pay much attention to street prostitution. No one did anything because it wasn’t a crime, they didn’t ask what was going on behind the scenes.”²⁸⁸ Detective Paulsson’s quotation comments on Sweden’s history prior to the Nordic model when prostitution in Sweden was decriminalized. When the trafficking unit conducts trainings, people are surprised that prostitution is so ruthless, that there is so much money involved, that it is so easy to sell women and girls in front of everyone, and that this exploitation has been going on for so long.²⁸⁹ Detectives have found that people are shocked by how violently and exploitatively women in prostitution are treated and used.²⁹⁰

When conducting a raid, the trafficking officers connect women to the nearest social services prostitution unit. For example, trafficking officers may contact the social services unit two weeks before a raid and ask that safe houses be prepared for the number of women trafficked in the ring. Inspectors with the human trafficking department will brief the social services unit on the case and arrange with social workers to meet at the police station on the day of the sting. After law enforcement speaks with women trafficked in the ring, the social workers step in to offer women support.²⁹¹ Many of those interviewed in the course of writing this article stressed that the success of the Nordic model is dependent upon good interagency cooperation.²⁹²

²⁸⁷ Interview with Mats Paulsson, Police Inspector & Section Head of the Human Trafficking Group, Västra Götaland County, in Gothenburg, Swed. (June 18, 2013).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Interview with Yvonne Karlsson, Social Worker, Gothenborg Prostitution Unit, in Gothenborg, Swed. (Apr. 9, 2013); Interview with Mats Paulsson, *supra* note 287; Interview with Miki Nagata, *supra* note 228.

III. SEATTLE'S APPROACH

Washington State is struggling to bring the illegal sex trade under control.²⁹³ According to Washington Senator Patty Murray, Washington is a hub for human trafficking and recruitment because of its border with Canada and its many ports.²⁹⁴ In 2003, state lawmakers passed HB 1175, which created two human trafficking crimes and Washington became the first state in the United States to criminalize trafficking.²⁹⁵ Three years later in 2006, Washington became the second state in the nation to prohibit sex tourism with the passage of SB 6731.²⁹⁶ Senator Kohl-Welles led a subsequent effort in 2007 that is especially noteworthy for the change in language that accompanied legal action. Prior to 2007, a man who bought sexual access to a child was subject to a charge of “patronizing a juvenile prostitute”; language that effectively erased the child and replaced her or him with the abstracted concept of a “juvenile prostitute.”²⁹⁷ SB 5718 revised this language to provide a more accurate description of the crime: commercial sexual abuse of a minor (CSAM).²⁹⁸ SB 5718 also created four new crimes pertaining to the sexual exploitation of children.²⁹⁹ Legislators at the state level were attempting to distinguish between voluntary prostitution and the trafficking of child and adult victims.³⁰⁰ In 2015, Kohl-

²⁹³ Sara Jean Green, ‘Buyer Beware:’ *King County Taking Aim at Those Who Pay For Sex*, SEATTLE TIMES (Oct. 15, 2014), <http://blogs.seattletimes.com/today/2014/10/buyer-beware-king-county-taking-aim-at-those-who-pay-for-sex/>.

²⁹⁴ Email from Senator Patty Murray, US Senator from Wash., to Ane Mathieson (Sept. 15, 2011) (on file with author).

²⁹⁵ Jeanne Kohl-Welles, *Testimony to Subcommittee on Human Resources of the Committee on Ways and Means* 6 (Feb. 19, 2014) available at http://waysandmeans.house.gov/UploadedFiles/Senator_Kohl-Welles_Testimony_HR021914.pdf.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 1.

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 6.

³⁰⁰ *Id.*

Welles introduced Senate Bill 5277, which focused on adults and would change the crime of “patronizing a prostitute” from a misdemeanor to a gross misdemeanor.³⁰¹ The bill attempted to increase the maximum penalty from \$1,000 and a 90-day jail sentence,³⁰² to \$5,000 and up to a year of jail time.³⁰³ Organizations advocating against sex trafficking and working with survivors of prostitution have supported SB 5277, although it did not pass.³⁰⁴ While the Washington State Legislature passed 33 anti-trafficking bills between 2002 and 2013, prior to 2012, Seattle’s approach to prostitution replicated a traditional, full-criminalization response to prostitution.³⁰⁵ The criminal justice system treated prostitution as a victimless crime and, for the most part, ignored buyers; women in prostitution were the primary targets for arrest and prosecution.³⁰⁶

Although laws remain in place to fully criminalize all parties involved in prostitution, a new narrative is emerging in Seattle. The King County Prosecuting Attorney’s Office and the Seattle Police Department have adopted new policies and tactics to address prostitution.³⁰⁷ Seattle has not eliminated existing, full-criminalization laws, but it enforces them differently as a key component of a countywide initiative to shift the focus of legal efforts onto the buyers who fund the sex industry.³⁰⁸ The crime of

³⁰¹ S.B. 5277, 2015 Leg., 64th Reg. Sess. (Wash. 2015).

³⁰² WASH. REV. CODE § 9.02.030 (1982).

³⁰³ WASH. REV. CODE § 9.92.020 (2011).

³⁰⁴ OPS and SAS launched a petition encouraging people to sign on and call their legislators in support of SB 5277. *See Hold Sex Buyers Accountable*, <https://actionsprout.io/B11C0B/initial> (last visited Mar. 6, 2016).

³⁰⁵ David Kroman, *To Reduce Prostitution Seattle Gets Experimental*, CROSSCUT (May 27, 2015), <http://crosscut.com/2015/05/to-reduce-prostitution-seattle-gets-experimental/>.

³⁰⁶ Sarah Jean Green, *Tougher Police Tactics Stinging Sex Buyers*, SEATTLE TIMES (Oct. 15, 2014), <http://www.seattletimes.com/seattle-news/tougher-police-tactics-stinging-sex-buyers/>.

³⁰⁷ *Local Jurisdictions Join Together Launch New Approach to Reduce Demand for Prostitution*, KING COUNTY PROSECUTING ATT’YS OFFICE (Oct. 16, 2014), <http://www.kingcounty.gov/Prosecutor/news/2014/october/prostitution.aspx>.

³⁰⁸ *Id.*

buying sex from an adult, per Washington law RCW 9A.88.110, remains a simple misdemeanor with a maximum penalty of 90 days in jail.³⁰⁹ Men who buy or attempt to buy sex from a minor face a stronger, felony charge of commercial sexual abuse of a minor (CSAM).³¹⁰ Those arrested for pimping face felony charges. If convicted, they must register as sex offenders.³¹¹

Beginning in 2012, noticeable changes in local enforcement policy began to reshape long established patterns of victim blaming and indifference.³¹² Two years later, charges filed by the county against buyers outnumbered charges filed against prostituted women.³¹³ Additionally, between 2013 and 2015, the King County Prosecutor's Office charged more than 140 men with buying or trying to buy sex with children.³¹⁴ This represents a change from previous years in which the number of charges filed against prostituted minors was far greater than the number of charges filed against prostitution sex buyers.³¹⁵ In January of 2015, at the request of the city attorney's office, the Seattle City Council unanimously voted to revise the language in the city's criminal code describing the crime from "patronizing a prostitute" to "sexual exploitation."³¹⁶ Although the name was changed, the crime

³⁰⁹ WASH. REV. CODE § 9A.88.120 (1988).

³¹⁰ WASH. REV. CODE § 9.68A.100 (1982); BRIAN BONLENDER, CRIMINAL PENALTY FINES RELATED TO PROSTITUTION AND COMMERCIAL SEXUAL ABUSE OF MINORS 9 (2015), available at <http://www.commerce.wa.gov/Documents/Commerce-Criminal-Penalty-Fines-2015.pdf>.

³¹¹ Green, *supra* note 293.

³¹² Kroman, *supra* note 305.

³¹³ *Id.*

³¹⁴ King Cty. Prosecuting Attorney's Office, Minors Charged with Prostitution v. Men Trying to Buy Sex from Minors, FACEBOOK (FEB. 22, 2015, 5:30 PM), <https://www.facebook.com/kcprosecutor/photos/a.948779028476157.1073741828.948518318502228/1059132324107493/?type=3&theater>.

³¹⁵ *Id.*

³¹⁶ Daniel Beekman, *Crime of Buying Sex May Carry New Name and Bigger Penalty*, SEATTLE TIMES (Jan. 11, 2015), <http://www.seattletimes.com/seattle-news/crime-of-buying-sex-may-carry-new-name-and-bigger-penalty/>.

remained a simple misdemeanor.³¹⁷ The shift represents an understanding that the narrative around prostitution must reflect an understanding that prostitution is a system in which the choice of buyers to exploit others for sexual satisfaction harms individuals. Another key language shift is reflected in the renaming of the Seattle Police Department's Vice Unit to the "Vice and High Risk Victims Unit."³¹⁸

King County officials are taking part in a national, grant-funded program called "The Cities Empowered Against Sexual Exploitation Network (CEASE)."³¹⁹ "The CEASE Network is a collaboration of pioneering cities committed to reducing sex-buying by 20 percent in two years."³²⁰ As one of the collaborating CEASE cities, Seattle's initiative to reduce demand is "Buyer Beware."³²¹ As part of the county's "Buyer Beware" initiative, men convicted of "sexual exploitation" must complete a 10-week intervention course, as is mandated for domestic violence offenders.³²²

The implications of law enforcement's shift in focus from those prostituted to those demanding sexual access is that more criminal charges are brought against those buying sexual access and or pimping adult women and children. A report from the Washington State Department of Commerce found in state fiscal year (SFY) 2015, law enforcement agencies in King County were responsible for 88 percent of the arrests for patronizing a prostitute in the state, and 82 percent of convictions.³²³ Out of Washington State's 39 counties, King County courts also generated over two-thirds (67

³¹⁷ *Id.*

³¹⁸ Timothy Burgess, *Changing Course on Prostituted Children*, CITY VIEW (Dec. 21, 2010), http://timothyburgess.typepad.com/tim_burgess_city_view_/2010/12/changing-course-on-prostituted-children.html.

³¹⁹ *Cities Empowered Against Sexual Exploitation*, CEASE NETWORK, <http://www.ceasenetwork.org> (last visited Sept. 22, 2015).

³²⁰ *Id.*

³²¹ Green, *supra* note 293.

³²² Beekman, *supra* note 316.

³²³ BONLENDER, *supra* note 310, at 9.

percent) of the convictions for promoting prostitution.³²⁴ The City of Seattle played a leading role in King County's efforts, accomplishing nearly 42 percent of all arrests statewide for patronizing a prostitute (96 out of 231 arrests).³²⁵ To place these numbers in context, Seattle is home to roughly nine percent of Washington's population.³²⁶ The numbers reflect “an expressed commitment from the Seattle Police Department to focus law enforcement efforts on arresting the buyers of commercial sex, rather than those being prostituted.”³²⁷ Outside King County, the historical trends of criminalization continue wherein far more prostituted individuals were arrested and convicted than buyers or pimps.³²⁸

In order to understand the shift that has taken place in Seattle, it is necessary to examine the influence of non-profit and feminist organizations. Survivors of the prostitution industry, feminist advocates and direct service providers lead norm-changing efforts. Local nonprofits involved in this effort include the Organization for Prostitution Survivors (OPS), Rare Coins Ministries, Real Escape from the Sex Trade (REST), People of Color Against AIDS Network (POCAAN), Seattle Against Slavery (SAS), and Businesses Ending Slavery & Trafficking (BEST), among others. Many of these organizations are collaborating with city officials to educate the public about harms perpetrated by the local commercial sex industry.³²⁹ For instance, Town Hall Seattle has hosted panels about sex trafficking in Seattle and the recent changes in prostitution policies, featuring presenters from OPS, SAS, Stolen Youth, and BEST, as well as King County

³²⁴ *Id.* at 9.

³²⁵ *Id.* at 14.

³²⁶ *Id.* at 14.

³²⁷ *Id.* at 14.

³²⁸ *Id.* at 9.

³²⁹ King Cty. Prosecuting Attorney's Office, *supra* note 314.

Prosecuting Attorney Dan Satterberg, King County Deputy Prosecutor Val Richey, and Seattle City Attorney Pete Holmes.³³⁰

Similar to the feminist mobilization that preceded legislative changes in Sweden, a burgeoning grassroots feminist movement endorsing the Nordic model is influencing the discourse about prostitution in Seattle. The movement includes groups such as the Furies Collective, Fourth Wave Feminists, the Seattle Feminist Book Club, and the Guerrilla Feminist Art Collective. Since 2014, the Furies Collective, a grassroots feminist activist group, has organized and contributed to several public presentations about the Nordic model and how it compares to legalization and criminalization models for prostitution.³³¹ In 2014, the Fourth Wave Feminists, a student group at the University of Washington School of Social Work, hosted a talk by Indigenous Women Against the Sex Industry (IWASI) member, Cherry Smiley, and the founder of “formerly Exploited Voices now Educating (EVE),” Trisha Baptie.³³² Cherry Smiley and Trisha Baptie discussed the disproportionate exploitation of aboriginal women in the Canadian sex trade and the recent changes to Canadian prostitution law, which the Nordic model influenced.³³³ In 2015, members of the Fourth Wave Feminists also spoke about the prostitution industry at a Seattle University conference on

³³⁰ Dan Arkless & Pete Holmes et. al., Address at Seattle Town Hall: Sex Trafficking: Changing a Culture of Demand (Jan. 26, 2015); Nature Carter & Jane Charles et.al., Address at Seattle Town Hall: Human Trafficking in Seattle and Abroad (Feb. 19, 2015).

³³¹ Easton Branam & Ane Mathieson, Panel at Univ. of Wash. Sch. of Soc. Work: Where Do We Go From Here: A Forum on Prostitution Policy, the Sex Lobby and Male Accountability (Apr. 30, 2015); Easton Branam & Ane Mathieson, Address at the Nordic Model of Prostitution: Improved Protections for the Exploited (May 6, 2014).

³³² Trisha Baptie & Cherry Smiley, Panel at Univ. of Wash. Sch. of Soc. Work: For Our Daughters and Granddaughters: Aboriginal Women and Girls and the Abolition of Prostitution (Nov. 18, 2014).

³³³ *Id.*

gender justice in February³³⁴ and at a benefit for sexual assault survivors in March.³³⁵ The Seattle Feminist Book Club has screened documentaries and read books that are critical of the sex industry and confront the concept of prostitution as a matter of “choice,” “agency,” or “empowerment” for women.³³⁶

These grassroots organizations provide a counter narrative to the advocacy in favor of decriminalizing prostitution promulgated by entities such as the Sex Worker’s Outreach Project (SWOP)³³⁷ and the Rose Alliance.³³⁸ Seattle’s free weekly newspaper, *The Stranger*, has consistently published articles echoing the neoliberal notion that “sex workers” are shrewd entrepreneurs successfully navigating a market economy.³³⁹ This

³³⁴ Ane Mathieson & Anjilee Dodge, et al., Programs from Around the World, Address at a Faceless Movement: Searching for a System that Promotes Empowerment Among All Survivors of Gender Violence, Seattle University (Feb. 20, 2015).

³³⁵ Myani Gilbert, Address at Speak Against the Silence, the Shame, the Stigma: A Benefit for Sexual Assault Survivors (Mar. 30, 2015).

³³⁶ On August 2, 2015, the Seattle Feminist Book Club (SFBC) watched “Hot Girls Wanted,” a documentary about the amateur porn industry. On May 28, 2015, SFBC discussed *Pornland*, a book that is critical of the sex industry, by Gail Dines. On April 30, 2015, SFBC attended a forum on prostitution policy, the sex lobby, and male accountability. On November 18, 2014, SFBC attended the talk “For Our Daughters and Granddaughters: Aboriginal Women and Girls & the Abolition of Prostitution.” On September 28, 2014, SFBC watched and discussed “Buying Sex,” a documentary about Canadian prostitution policy featuring EVE founder, Trisha Baptie. The author attended all of these events. Past SFBC events are viewable at <http://www.meetup.com/Seattle-Feminist-Book-Club/events/past/?scroll=true#past>.

³³⁷ “It is past time that we decriminalize the actions of consenting adults to focus our time, resources and energy to address the important human rights and social issues directly.” *About*, SEX WORKERS OUTREACH PROJECT, <http://swop-seattle.org/about/> (last visited Sept. 22, 2015).

³³⁸ “Rose Alliance is opposed to any criminalization of sexual acts for remuneration that take place between consenting, adult persons as well as the criminalization of third parties.” ROSE ALLIANCE, <http://www.rosealliance.se/> (last visited Sept. 22, 2015).

³³⁹ Sydney Brownstone, *Meet the Sex Workers Who Lawmakers Don’t Believe Exist*, THE STRANGER (Feb. 11, 2015), <http://www.thestranger.com/news/feature/2015/02/11/21689047/meet-the-sex-workers-who-lawmakers-dont-believe-exist>;

selective support of neoliberal economics is inconsistent with *The Stranger's* otherwise critical stance on capitalism, exemplified by their routine endorsement of socialist city council member, Kshama Sawant.³⁴⁰ Recently, *The Stranger* published an article arguing that survivor-led and feminist efforts that point out the harms of prostitution are comparable to homophobia and racism.³⁴¹ Interestingly, this article mentioned the endemic rape of Native American women by European colonizers.³⁴² The same issue also featured an article about the shift in the Washington State public school curriculum to incorporate tribal history.³⁴³ *The Stranger* ignores the disproportionate exploitation of Indigenous women in systems of prostitution,³⁴⁴ as it advocates for “sex work” as a vehicle for women’s empowerment. While *The Stranger* publishes articles in favor of legalizing the sex industry, feminist organizations and the city of Seattle have focused on asking: do men have a right to buy sex?

OPS in particular has partnered with King County to increase recognition of prostituted women as victims and to shift emphasis of prosecution efforts

Conner Habib, *If You're Against Sex Work, You're a Bigot*, THE STRANGER (June 24, 2015), <http://www.thestranger.com/features/feature/2015/06/24/22436683/if-youre-against-sex-work-youre-a-bigot>; Cate McGehee, *Camming Is Not Like Any Other Kind of Sex Work*, THE STRANGER (June 10, 2015), <http://www.thestranger.com/features/feature/2015/06/10/22360297/camming-is-not-like-any-other-kind-of-sex-work>.

³⁴⁰ *The Stranger's Endorsements for the August 2015 Primary Election!*, THE STRANGER (July 15, 2015), <http://www.thestranger.com/news/feature/2015/07/15/22545709/the-strangers-endorsements-for-the-august-2015-primary-election>.

³⁴¹ Habib, *supra* note 339.

³⁴² *Id.*

³⁴³ Sydney Brownstone, *Teaching Tribal History Is Finally Required in Washington Public Schools*, THE STRANGER (June 24, 2015), <http://www.thestranger.com/news/feature/2015/06/24/22438654/teaching-tribal-history-is-finally-required-in-washington-public-schools>.

³⁴⁴ A. PIERCE & S. KOEPLINGER, NEW LANGUAGE, OLD PROBLEM: SEX TRAFFICKING OF AMERICAN INDIAN WOMEN AND CHILDREN, NATIONAL ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN 3 (Oct. 2011), available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_NativeSexTrafficking.pdf.

toward buyers and pimps instead of prostituted women.³⁴⁵ OPS was established by prostitution survivor, Noel Gomez, and pro-feminist activist, Peter Qualliotine, in the spring of 2012 as a response to the acute lack of services available to prostituted adults (as compared to minors).³⁴⁶ OPS quickly became a leader in the coordinated community response for a victim-centered treatment approach for survivors in Seattle and elsewhere in King County.³⁴⁷ OPS is fostering committed, international collaboration as well as strong community grassroots mobilization by partnering with local city councils, universities, community members, and international nonprofits to address the root causes of sexual exploitation.³⁴⁸ Their mission includes three focus areas: (1) survivor services: support group services, peer mentoring, and empowerment-based advocacy to provide opportunities for prostitution survivors to direct their healing and exiting process from prostitution; (2) community education: raising awareness of the root causes of prostitution, training service providers to serve survivors, and building partnerships across services and systems; and (3) men's accountability: demand-reduction strategies, buyer intervention curricula, male ally and accountability training and programming.³⁴⁹

Notable among OPS' various initiatives is their intensive 10-week curriculum, "Stopping Sexual Exploitation: A Program for Men" (SSE). SSE has three process-based goals: (1) reframe prostitution from a "victimless crime" to a system of male violence against women, children, and sometimes other men; (2) deconstruct male sexual identity and

³⁴⁵ *Local Jurisdictions Join Together Launch New Approach to Reduce Demand for Prostitution*, *supra* note 307.

³⁴⁶ *About Us*, ORG. FOR PROSTITUTION SURVIVORS, <http://seattleops.org/about-us/> (last visited Sept. 22, 2015).

³⁴⁷ *Organization for Prostitution Survivors*, THE SEATTLE FOUND., <http://www.seattlefoundation.org/npos/Pages/OrganizationforProstitutionSurvivors.aspx> (last visited Sept. 22, 2015).

³⁴⁸ *Id.*

³⁴⁹ Green, *supra* note 293.

encourage the development of an alternative sexuality based on mutuality and consent (not subordination); and (3) promote male accountability and allyship³⁵⁰ consciousness.³⁵¹ The program is a peer cohort comprised of men arrested for sex buying (and consequently court mandated to attend), non-sex buyers, and men who self-refer. Judges in several King County jurisdictions have mandated attendance to SSE as a sentencing condition for men convicted of prostitution-related charges, and Seattle will soon implement this as a sentencing condition.³⁵²

1. Survivor Services

Founded on a principal of recognizing prostituted women as victims of abuse and exploitation, the Nordic model calls for the provision of comprehensive social services to prostituted individuals. Seattle has echoed this approach to a degree—arrested women are encouraged to seek services as an alternative to jail time. However, non-profit organizations largely provide the services to women, unlike in Sweden where public agencies are responsible. Women who are arrested may receive referrals for shelters (usually to the YWCA or REST) and rehab clinics from a survivor advocate. Advocates also offer transportation, food, and clothing if necessary at the time of an arrest. The primary organizations serving the specific needs of prostitution survivors are OPS and REST. Both organizations provide mentorship, support programs, therapeutic care, as well as access to basic supplies, such as hygiene products, clothing, and condoms. Therapeutic care includes weekly art workshops and yoga at

³⁵⁰ The Anti-Oppression Network defines allyship as “an active, consistent, and arduous practice of unlearning and re-evaluating, in which a person of privilege seeks to operate in solidarity with a marginalized group of people.” See Allyship, The Anti-Oppression Network, <http://theantioppressionnetwork.wordpress.com/allyship/> (last visited Mar. 5, 2016).

³⁵¹ *Stopping Sexual Exploitation*, ORG. FOR PROSTITUTION SURVIVORS, <http://seattleops.org/stopping-sexual-exploitation/> (last visited Sept. 22, 2015).

³⁵² Green, *supra* note 293.

OPS.³⁵³ REST also offers long-term residential housing (but limited to ages 18–24) and will soon have a 24-hour emergency shelter.³⁵⁴

With the police and service organizations now collaborating to assist prostituted women, more women are benefiting from these services. However, the services available in Seattle pale in comparison to those in Sweden, both in scope and cohesion. In Sweden, a woman may access professional therapy, medical and gynecological care, housing and financial help, and drug treatment referrals all from one service unit. All of these services are offered free of charge. In order to appreciably alleviate the economic, medical, and psychological conditions forcing women to return to prostitution post-arrest, Seattle must expand and adequately fund survivor services. Additionally, the city must develop measures to protect survivors from any repercussions from pimps and traffickers if they decide to exit prostitution. Many women face threats, stalking, abuse, or coercion back into prostitution if they try to leave.³⁵⁵ Since Seattle has recognized prostituted women as victims of gender-based violence and exploitation, rather than criminals, the city could adapt existing strategies supporting victims of domestic violence (DV) to incorporate the needs of prostitution survivors. It could also encourage increased collaboration between DV services and prostitution/trafficking services, both of which are related forms of violence against women.³⁵⁶

³⁵³ *Survivor Services*, ORG. FOR PROSTITUTION SURVIVORS, <http://seattleops.org/what-we-do/survivor-services/> (last visited Mar. 24, 2016).

³⁵⁴ *A Holistic End-to-End Approach Against the Sex Trade*, REST, <http://iwantrest.com/services> (last visited Sept. 22, 2015).

³⁵⁵ A study conducted by the Coalition Against Trafficking in Women found that 52 percent of the US women who were interviewed had difficulty leaving prostitution because they were stalked, threatened, harassed, and physically abused by pimps. See JANICE RAYMOND ET. AL., SEX TRAFFICKING OF WOMEN IN THE UNITED STATES 88 (2001), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>.

³⁵⁶ *Men's Accountability*, ORG. FOR PROSTITUTION SURVIVORS, <http://seattleops.org/what-we-do/mens-accountability/> (last visited Sept. 22, 2015).

2. Law Enforcement & Criminal Justice

The Nordic model concurrently decriminalizes prostituted women while providing robust social services coordinated across multiple sectors by the social prostitution units. Although Seattle has seen a shift in policy and perceptions, the emphasis remains on punitive measures with enforcement of criminal codes used as an intervention opportunity by police.³⁵⁷ Intervention opportunity means that when SPD arrests women, they can choose to go to jail or talk with victim and survivor advocates either from within the police department or from non-profit service providers.³⁵⁸ No official threshold exists for the number of arrests a woman requires to trigger the filing of charges.³⁵⁹ The city attorney's 2013 policy states that all prostituted women will receive the option of community court "unless extraordinary circumstances exist."³⁶⁰ The policy also says all prostituted individuals will receive a conditional dismissal regardless of their criminal history.³⁶¹ Community court is for low-level offenses and offenders, who often receive community service and classes instead of jail time.³⁶²

It is important to note that a shift in enforcement practices is not equivalent to the Nordic model. Seattle has not implemented the Nordic model, although Sweden's approach informs current practices. The Nordic model explicitly decriminalizes those sold in prostitution, and law enforcement is available as a resource for prostituted individuals to report criminal activity such as pimping, trafficking, and abuse by buyers. In Seattle, laws criminalizing prostituted women remain in place; prostitution is a misdemeanor offense.³⁶³ Following Seattle's 2012 policy directive to

³⁵⁷ Kroman, *supra* note 305.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ SEATTLE MUNI. CODE § 12A.10.020 (2012).

target buyers instead of prostituted women, prosecution of prostituted individuals dropped dramatically, from nearly 200 in 2011, to three in 2012, and five in 2013.³⁶⁴ However, in 2014, that number increased to 43 as the city began using criminal laws as intervention opportunities to connect prostituted women with social services.³⁶⁵

While arrests of prostituted women are used to guide them toward victim support services, the majority of punitive efforts are directed toward the power holders—buyers and pimps—in the burgeoning local sex industry.³⁶⁶ Unlike legalization/decriminalization models, which formally sanction prostitution, or the traditional criminalization model, which tacitly condone male access to prostituted women, Seattle and King County are actively discouraging unfettered growth of the sex industry and the grey market economy. Leaders in this effort include King County Prosecuting Attorney Dan Satterberg, Assistant City Prosecutor Heidi Sargent, King County Deputy Prosecutor Val Richey, and Seattle City Attorney Pete Holmes, all of whom have advocated for enforcement tactics that hold men accountable for fueling demand.^{367 368}

IV. CONCLUSION

Prostitution discourse in criminalization, decriminalization, and legalization regimes focuses predominantly on women in prostitution; the choices they make, the amount of money they earn, and the number of men by which they have been purchased. Conversely, there is a significant gap in research on the socio-demographics of those who buy prostitution sex,

³⁶⁴ Kroman, *supra* note 305.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ Joanna Sappenfield, *Sex trafficking survivors push for bill they say would help victims start over*, TVW (2016), <http://www.tvw.org/blog/2016/01/sex-trafficking-survivors-push-for-bill-they-say-would-help-victims-start-over/>.

³⁶⁸ *Local Jurisdictions Join Together Launch New Approach to Reduce Demand for Prostitution*, *supra* note 307.

pimps, and brothel owners—including the choices they make, their earning capacity, the number of women and children they have purchased, and their marriage status. This imbalanced discourse ignores the significantly greater freedom of choice exercised by male prostitution buyers, pimps, operators of prostitution venues, and pro-prostitution governments. This imbalanced scrutiny is striking when one considers that women and youth in prostitution are usually from significantly lower socioeconomic backgrounds,³⁶⁹ are disproportionately women and youth from marginalized ethnicities³⁷⁰ and developing countries, and are women and youth with predisposing vulnerabilities such as experiences of childhood sexual abuse and homelessness.³⁷¹ The overwhelming majority of women and youth do not have the option to leave prostitution or are under varying degrees of coercion. The Nordic model has begun to internationally shift what has been an imbalanced scrutiny of the degree of choice made by women to be in prostitution to the rarely discussed motivations of, and power held by, prostitution buyers, pimps, and brothel owners.

The reduction of prostitution discourse to a neoliberal debate about “choice” distracts from the greater work that must be done to facilitate full societal inclusion of women with the least amount of choices. Choice debate detracts from the greater socioeconomic power held by the drivers of the sex industry—men—and individualizes women’s experiences, removing them from the context of structural injustice. If an honest job description were written for prostitution, it would call for applicants living in society’s most vulnerable and intersectional categories: the majority of individuals in the sex industry entered as youth,³⁷² are women,³⁷³ particularly women of

³⁶⁹ WALTMAN, *supra* note 23, at 452.

³⁷⁰ *Id.* at 452.

³⁷¹ DERIVIERE, *supra* note 60, at 369–70.

³⁷² WALTMAN, *supra* note 23, at 451.

³⁷³ *Id.*

color,³⁷⁴ women from the Global South,³⁷⁵ and are disproportionately LGBT youth.³⁷⁶

In the United States, despite the criminalization of prostitution, the commercial sex trade flourishes. Each US state is responsible for developing policy and passing legislation addressing prostitution. Nearly all US states criminalize prostitution entirely. Policies that criminalize both the exploiter and those exploited by this industry have proven to be ineffective. Criminalization of those sold in prostitution has proven to be an un-nuanced policy that, rather than preventing the conscription of women and girls into prostitution, has actually contributed to trapping them within it. As stated by Catharine MacKinnon, “Criminal prostitution laws make women into criminals for being victimized as women.”³⁷⁷ Punishment of the prostituted individual fails to acknowledge that conscription into prostitution is driven by a combination of coercive factors. It is also a policy model that has come to favor the pardon of prostitution exploiters, often erroneously perceived by the criminal justice system as the victims in this industry. These misunderstandings of the nature of prostitution and trafficking have further entrenched this grey market industry.

A country dedicated to challenging exploitation and violence against women must level the political and socioeconomic power between women and men by facilitating women’s greater access to social goods such as the labor market, education, housing, childcare, and financial support. Social equality is neither advanced nor achieved in countries that implement policies either normalizing prostitution through legalization/

³⁷⁴ *Id.* at 452.

³⁷⁵ *Id.*

³⁷⁶ WASH. STATEWIDE COORDINATING COMM. ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN, 2014 INITIAL REPORT TO THE LEGISLATURE 30 (2014), available at http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2014/2014-CSEC-Committee-Report.pdf.

³⁷⁷ MACKINNON, *supra* note 50, at 152.

decriminalization or which criminalize women for their own exploitation. Rather than economically segregating women and girls in the sex industry, it is the responsibility of the government and its social work systems to facilitate women's equal participation in the broader labor market. It is a conflict of interest for the government to earn money off an industry that stems from social inequality.

No country will fully address the issues of prostitution and trafficking without the cooperation of an international community that shares a vision for a world that views the lives of all humans as equally valuable. Sexual exploitation is of concern to all nations, and it will require long-term, transnational efforts to eradicate. Swedish politicians, shelter advocates, social workers, activists, and law enforcement have implemented major improvements to social policies supporting survivors of prostitution through advocacy, and they have educated the Swedish public about the gendered nature of prostitution. They have successfully moved the underground violence perpetrated against women and children in the sex industry to the forefront of Swedish politics. The success of these policies in reducing prostitution and trafficking in Sweden has set new precedents for the international community. This precedence has catalyzed Norway, Iceland, South Korea, Ireland, France, Great Britain, and Scotland to make similar policy changes. Washington State could be next to make a commitment to ending the violence and exploitation inherent in prostitution.

A grassroots movement is underway in Washington State. Feminist activists are advocating for legislative changes to current Washington prostitution policies, for more informed services for prostitution survivors, and for community education to change social norms. Those in Sweden developing and implementing prostitution policies generously share their work and knowledge. This knowledge could profoundly contribute to the development of prostitution policy development in Washington State and potentially the United States as a whole. Lasting impact on trafficking and prostitution requires committed international networking and collaboration.

Prostitution norms and the sizeable prostitution industry will not change overnight. But, as demonstrated by Sweden, these changes are possible. By making important changes at the policy level, forging international alliances, organizing on a community level, and actively educating communities, Washington State can begin to make advances in gender equality similar to those achieved in Sweden.