Can Altering US Prostitution Law Decrease Sex Trafficking and Promote the Well-Being of Sex Workers?

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Abstract: Despite hundreds of thousands of individuals currently living in modern slavery within the United States, there are relatively few active human trafficking cases in the United States, and efforts to combat trafficking tend to overemphasize the trafficking of foreign nationals and focus too intensely on prosecution, and not prevention, efforts. In order to more effectively reduce sex trafficking within the United States, states should move away from the criminalization of sex work, which prevents victims from seeking assistance from or offering information to authorities. Rather than full decriminalization, which could lead to an inflation of demand for trafficking along with all commercial sex in general, states should instead explore regulatory policies which would protect the rights of sex workers and reduce the stigma surrounding sex work, while also actively working against an increase in the incidence of trafficking. However, in order for this to be a viable policy option for decision-makers, there needs to be a shift in the American public away from examining prostitution as a “morality policy,” either through an acknowledgment that commercial sex is not an inherently immoral act or that personal moral bounds should not dictate law. Overall, this paper seeks to demonstrate the failure of the United States’ current actions against sex trafficking and highlight how prostitution policy can be altered to combat this issue.

Keywords: sex trafficking, sex workers, prostitution, morality policy, human rights

Introduction

According to the Slavery Index, in 2016, there were over 400,000 people enslaved within the United States, including conditions of forced labor and forced commercial sex. However, there were only 700 active criminal cases for human trafficking in the United States in 2017 reported by the Human Trafficking Institute, with nearly all of them involving sex trafficking.¹ These alarming statistics thus raise crucial questions when examining sex trafficking within the United States: what conditions in the United States allow for the prevalence of human trafficking? Why are there less than a thousand criminal cases against human traffickers, if there are several hundred thousand people living in modern slavery? What institutions within the United States’ government could lead to such inconceivable failures, and how is there such little public attention or criticism?

Human trafficking is a crisis within the United States, yet current laws and policies are failing to adapt to our changing understandings of human trafficking and the sex work industry. Traditionally, the United States has focused efforts towards trafficking reduction on enacting stricter penalties for offenders through clear and specific legal definitions and minimum

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sentencing requirements. Therefore, the United States’ primary tactic in combatting human trafficking is prosecuting individual offenders. However, an emphasis on prosecution alone is insufficient when combating such a complex and elusive industry. Thus, the United States needs to rethink and amend current anti-trafficking strategies to develop more comprehensive and effective policies that can lead to the emancipation of modern slaves within the United States.

With the exception of Nevada, the United States fully criminalizes prostitution, with both customers and sex workers subject to arrest. However, criminalization is counterproductive to efforts to reduce trafficking as it forces sex workers to operate under secretive and poor working conditions and weakens relationships between law enforcement and sex workers, making them less likely to report their own or others’ trafficking and other forms of violence. In order to successfully reduce the presence of sex trafficking, law enforcement must promote a line of communication between themselves and those involved in the sex industry who have advanced knowledge of its members and practices. The most practical way to foster this cooperation would be through the decriminalization of sex work, as sex workers would no longer fear arrest when reporting concerns to law enforcement.

Thus, in order to more effectively combat sex trafficking, the United States should adopt a policy of sex industry regulation, also known as the “Dutch model.” Under this system, the United States would license and govern sex work, only criminalizing customers who purchase sex from unlicensed sex workers, thus decreasing the demand for trafficked persons. Adopting this policy would destigmatize sex workers, while promoting institutional barriers that safeguard against an increased demand for sex trafficking victims as a result of an increased demand to the sex industry as a whole through decriminalization.

In order to properly demonstrate the failures of the current legal system and policies in combatting sex trafficking, one must first describe and define the legal framework. Thus, in the first section, I will examine the federal laws prohibiting sex trafficking and state laws regarding prostitution. For the purpose of this study, I will describe and compare Maryland and Nevada statutes in order to establish both the standard US prostitution law in addition to the atypical decriminalization within Nevada. Following this, the paper will outline three policy alternatives to the present full criminalization model: full decriminalization, the Swedish model (which penalizes only consumers of commercial sex), and the Dutch model. There will then be a brief discussion of prostitution as a morality policy and how this contributes to the stigmatization of sex work, even in Nevada’s regulated commercial sex industry. This section will also address how prostitution’s status as a morality policy poses a substantial obstacle for proponents of decriminalization and what alterations to the general mindset of Americans must occur in order for this to be a viable policy option. The next section will detail the debate surrounding the substitution and scale effects on demand for sex trafficking with relation to legalization. Finally, I will show that full criminalization, full decriminalization, and the Swedish model are inadequate in deterring sex trafficking within the United States and, thus, why the United States should adopt the Dutch model.

**Current Legal Frameworks**


In 2000, Congress passed The Trafficking Victims Protection Act (TVPA 2000). This law enacted a three-fold plan with the goal of eradicating human trafficking in the US, often called the three P’s: protection, prosecution, and prevention. In order to protect victims of sex
trafficking, the federal government created T-Visas, which could be given to potential victims of trafficking to prevent them from facing deportation. However, only 5,000 T-Visas may be issued each year, with an average of only 1,500 issued per year. In addition to the T-Visas, the TVPA 2000 mandates federal agencies dealing with human trafficking to offer benefits and services to all trafficking victims, regardless of their immigration status. Thus, the TVPA 2000 focused primarily on protecting foreign-born victims of sex trafficking, not victims who are also US citizens. While undocumented immigrants are a particularly vulnerable group for trafficking, this intense focus on foreign nationals fails to assist victims who are United States citizens and perpetuates misconceptions that a majority of sex trafficking victims are international.

The TVPA 2000 also narrowed the legal framework, creating “new provisions prohibiting forced labor, trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, and sex trafficking of children or by force, fraud, or coercion.” The law required that convicted traffickers pay restitution to their victims and expanded the minimum sentences for those convicted of human trafficking. Thus, the TVPA 2000 expanded the legal definitions of what trafficking was and enacted harsher punishments for traffickers in the hopes of reconciling previous legal inadequacies. This demonstrated an insistence on updating the legal system to be compliant with the developing scholarship on sex trafficking.

Finally, the TVPA 2000 created multiple new offices to research and prevent human trafficking. The Office to Monitor and Combat Trafficking in Persons within the State Department publishes the annual Trafficking in Persons (TIP) report each year with the goal of engaging states in discussions of human trafficking and related issues. The Interagency Task Force to Monitor and Combat Trafficking (PITF) also arose out of the TVPA 2000 with a similar goal of evaluating the ability of the US and other states to address the “three P’s.” This organization consists of “cabinet-level officers chaired by the Secretary of State.” Through these organizations, the United States is able to reflect on its own progress and the progress of other states in eradicating human trafficking and channel this research into constructive conversations regarding effective policies.

While the TVPA claimed to work towards prevention, prosecution, and protection, prosecution was by far the most emphasized pillar of the TVPA. Although new offices were created to research human trafficking and visa laws were altered to reduce the threat of deportation, the TVPA perpetuated beliefs that human trafficking is something that does not happen in the United States and that American-born victims are an insignificant demographic by primarily targeting foreign victims and focusing research on trafficking outside of the United States.


The TVPA has undergone many amendments since its passage. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) focused primarily...

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4 The United States Department of Justice, “Key Legislation.”
5 The United States Department of Justice, “Key Legislation.”
6 The United States Department of Justice, “Key Legislation.”
on strengthening the prevention and prosecution of human trafficking. This act offered a variety of important changes that narrowed the legal framework, including removing the justification by the defendant of ignorance of the victim’s age when the defendant had a “reasonable opportunity to observe the victim;” penalizing all-knowing beneficiaries of human trafficking, even if their involvement was indirect; and requiring that all unaccompanied undocumented children be flagged as at high-risk of potential trafficking and screened. These conditions promoted increased protection of minor sex trafficking victims and established the precedent that financial beneficiaries of sex trafficking are also subject to legal consequences. These changes have greatly expanded the government’s ability to prosecute traffickers and their affiliates, but it still contains some of the major short-comings of the original TVPA law in that it primarily focuses on trafficking entering the United States from other countries).

**Maryland Prostitution Laws**

In order to demonstrate typical US state prostitution law, I have selected Maryland to use as an example of specific state laws against sex work. Like the majority of states within the United States, prostitution is fully criminalized within Maryland, meaning that all parties engaging in the sale of sex are subject to prosecution. According to Maryland Criminal Law §11–303, “a person may not knowingly: (1) engage in prostitution or assignation by any means; or (2) occupy a building, structure, or conveyance for prostitution or assignation.” In Maryland, prostitution is defined as “the performance of a sexual act, sexual intercourse, or vaginal intercourse for hire.” Assignation is defined as “the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.” These are considered misdemeanor offenses and any party convicted of prostitution or assignation may face imprisonment, a fine of no more than $500, or both. This is reflective of the majority of the United States, where the sale of sex is a misdemeanor offense punishable with a fine or a brief prison sentence.

**Nevada Prostitution Laws**

Unlike Maryland, there are areas of Nevada in which sex work is regulated, not criminalized, representing the only state within the US where sex work is not a crime. In Nevada, “prostitution” is defined as “engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.” A prostitute is defined as someone who “for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.” Unlike in other areas of the United States, including Maryland, sex workers can lawfully engage in sex work if they work in “a licensed house of prostitution.” In order to obtain a license, the building must be in a county with a population of less than 700,000 and must undergo an investigation by the county’s licensee board. There are currently 20 businesses licensed for prostitution in Nye, Storey, Mineral, Mineral,
White Pine, Lander, and Elko counties. Thus, the presence of legal prostitution in Nevada is highly limited, and the majority of the state reflects the full criminalization of the rest of the US.

Models of Prostitution Law

**Full Decriminalization**

The full decriminalization of sex work is supported by several renowned international human rights-based organizations, including Human Rights Watch and Amnesty International. For proponents of full decriminalization, the legalization of sex work is a rights-based issue and they are primarily concerned with preserving the well-being and agency of sex workers. According to Human Rights Watch, the criminalization of sex work is a violation of the rights to privacy and personal autonomy, arguing that governments should not interfere with the sexual choices of consenting adults. The basic assumptions of this perspective also contends include the argument that poverty and limited economic means do not undermine a sex worker’s agency, suggesting that women in poverty can actively consent to engaging in sex work as long as there is no coercion.

Supporters of full decriminalization also view criminalization of prostitution as more harmful to sex workers than beneficial, citing health and safety concerns. Sex workers are at greater risk of STDs, including HIV/AIDS, which has been exacerbated by policies allowing condoms to be used as evidence against sex workers. Proponents of decriminalization also argue that criminalization of prostitution marginalizes sex workers, forcing them to operate “in clandestine and dangerous environments with little recourse to safety or state protection.” By forcing sex workers into these less secure environments, the criminalization of sex work is putting sex workers at greater risk of abusive situations. Worse still, this marginalization often prevents sex workers from seeking assistance when they are victims of violence or abuse due to fears of discrimination or even arrest on the basis of their sex worker status. Overall, the perspective in support of full decriminalization asserts that criminalizing prostitution is more problematic and dangerous than prostitution itself.

**The Swedish Model**

The Swedish Model of prostitution was adopted in Sweden in the late 1990s and consists of criminalized prostitution on the demand-side only and social welfare programs for both buyers and sellers of sex work. Since 2010, purchasers of commercial sex face a possible fine or up to one year in prison (an increase of 6 months from the original law), while sex workers face no

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such punishment. This model developed out of the Swedish feminist movement of the 1970s, in which it was determined that “prostitution was incompatible with the values of Swedish society, such as individual freedom and gender equality.” Thus, the Swedish Model assumes that prostitution inherently demonstrates an irreparable power imbalance between buyers and sellers that demonstrates an intersectionality of class and gender. This model views prostitution as a social rather than criminal problem, thus encouraging rehabilitation programs for sex workers and their customers. Due to these gender-based foundational assumptions, the Swedish model attempts to reduce gender inequalities produced through prostitution by penalizing only the male-dominated demand-side, as all sex-workers, coerced or not, are victims of their gender- and class-discriminating society. Within this context, prostitution is seen as “an inherently violent form of patriarchal oppression that, irrespective of the circumstances in which it takes place, is harmful to women both inside and outside the sex industry.” Thus, the ultimate goal of the Swedish model is to eradicate prostitution, a societal ill, by removing demand while at the same time mitigating harm towards the “victims” of the transactions (the sex workers).

The Dutch Model

Within the Dutch Model of prostitution policy, sex work is fully decriminalized, with the exception of prostitution of minors and coerced prostitution (human trafficking), and the industry is subject to government regulation. This government regulation makes this approach differ from full decriminalization, as it demonstrates prostitution existing outside of “legitimate labor,” thus justifying government interference. There can be several motivations for a state or municipality to institute the regulation of prostitution. On the one hand, regulation suggests that prostitution is morally reprehensible, but unavoidable. Therefore, since it is impossible for the government to dispose of prostitution in its entirety, the government should regulate the industry in order to protect society from as much of its harm as possible. However, it can also be argued that regulation from prostitution may arise not out of moral implications of the validity of sex work, but due to concerns in regard to the nature of sex work. Under this assumption, prostitution is not a social ill, but is nonetheless a danger to those participating in the transaction as well as the greater public. Ultimately, the Dutch Model only attempts to monitor sex work and make it safe for consumers and sex workers, not reduce the demand and eliminate the industry. For these reasons, the Dutch model acknowledges the validity of sex work as a personal choice while also maintaining the safety of those involved.

Moral Implications of Prostitution Law

Despite this wide array of policy alternatives, the United States has failed to seriously consider deviating from a rigid stance of prohibition. One of the primary difficulties in moving

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21 Post, Brouwer, & Vols, “Regulation of Prostitution,” 114.
22 Post, Brouwer, & Vols, “Regulation of Prostitution,” 114.
the United States away from full criminalization of sex work is the status of prostitution as a “morality policy.” According to Hubbard, Sanders, and Scoular, the term morality policy “typically describes any policy field where emotion and ideology rules over rationality and reason.”

Thus, research and clear evidence is not enough to sway public opinion and policymakers in favor of sex work legalization, as its criminalization is underpinned by strong moral convictions that paid sex is wrong, unethical, and sinful. Additionally, in order to be characterized as a morality policy, there must be a significant and vocal opposition to the morals imposed within the law, thus distinguishing the prohibition of murder (in which most people acknowledge its immorality) from the prohibition of prostitution, abortion, drugs, and other morality policies.

This undercurrent of ethical questioning is apparent in the above models as much as in the argument for criminalization. The argument for full legalization rests largely on contextualizing human rights into the commercial sex industry. The Swedish model views paid sex as degrading for women and thus an unethical practice. Due to this morality policy status, little government research has been conducted into sex work as evidence is not the primary motivation for policy change.

Even in Nevada, where sex work is regulated, there are still strong moral convictions surrounding the policy, which also contributes to the stigma surrounding prostitution. Perhaps the clearest demonstration of the moral implications intertwined within Nevada’s prostitution law is that it falls under the section of Nevada criminal law dealing with “Crimes against Public Decency and Good Morals.” Thus, even in the state with the most progressive of prostitution law, the idea that prostitution is immoral and harmful to the greater public is blatant. These moral implications continue to marginalize sex workers even in regulatory systems, thus failing to alleviate the problems that arise out of stigma, including law enforcement harassment and avoidance, lack of equal health care access, and instances of violence.

Leading up to the 2018 election, there was a significant movement within Nevada to hold a referendum that would severely limit the presence of legalized prostitution within the state. Jason Guinasso, a leader within this movement, argues that prostitution encourages men to view women as merely a commodity to be bought and sold and “skews the male perspective, leading to more domestic violence and rape.” The moral underpinnings of the movement away from regulatory commercial sex are apparent; Guinasso relies not on statistics or research to support his claims, but on an ethical argument regarding the status of women and the possible implications of sex work on society. While policy debate does have room for discussions of morality and immorality, resting the entire argument on subjective moral grounds ignores the realities of sex work and could place both voluntary sex workers and sex trafficking victims in greater danger.

Scale v. Substitution Debate

In 2013, researchers Seo-Young Cho, Axel Dreher, and Eric Neumayer published an economic study analyzing the effect of prostitution legalization on the degree of human trafficking. This study has become crucial to the policy debate surrounding sex work as it

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25 Legislative Council Bureau, “Chapter 201 – Crimes Against Public Decency and Good Morals.”
26 Montero, “Must Reads.”
introduced one of the cornerstone dilemmas regarding the decriminalization of prostitution: the scale versus substitution debate. The scale effect assumes that legalizing prostitution will lead to greater demand for the entire sex work industry, thus increasing the scale of human trafficking as traffickers coerce more victims in order to meet this demand. Thus, the scale effect implies that decriminalization should not be implemented as it would only exacerbate the problem of sex trafficking. On the other hand, the substitution effect implies that legalizing prostitution would decrease the degree of human trafficking, as consumers would prefer to purchase sex from voluntary sex workers rather than victims of trafficking. The substitution effect regards legalization as an ideal solution to at least lessen the extent of trafficking. The study concluded that, in legalized contexts, the scale effect “dominates” the substitution effect. However, it should be noted that the study’s dependent variable (degree of human trafficking) is not calculated in absolute terms, so the magnitude and extent of the effects are not certain.

This study has broad implications for policy research regarding prostitution law, as it implies that full legalization, despite its attempts to protect sex workers, could inadvertently increase the degree of involuntary and coerced sex work in a state or municipality. Therefore, the presence of the scale effect warrants serious consideration by lawmakers proposing legalization and should be actively counteracted in policy. For these reasons, the scale v. substitution debate introduces economic dimensions to the ethical debate. Proponents of full decriminalization cannot rest their argument solely on rights protections but must also demonstrate the ability of their policy to account for and counteract demand for trafficked persons.

It must be considered, however, that the scale versus substitution debate requires more research in order to be fully understood. For example, Simon Hedlin argues that Cho, Dreher, and Neumayer’s study is inadequate as it sticks to a binary classification of states as either legalizing or criminalizing prostitution. This ignores the nuances and potential differentiation between the four primary models of prostitution law. In order to truly understand the influence of legalization of sex work on the demand for prostitution, further research should attempt to quantify this relationship and should account for the full spectrum of policies.

Policy Proposal

In order to protect sex workers and their human rights while also actively attempting to curb and combat human trafficking, I propose that Maryland and the rest of the United States should adopt a more regulatory policy regarding prostitution. Sex workers should be licensed and provided social welfare benefits and consumers should only be arrested should they choose to purchase sex from an unlicensed sex worker. In order to demonstrate why I feel that this is the most effective policy option, I will first outline my reasoning for discarding the other policy options.

Criminalization

Criminalization is an inadequate policy to combat human trafficking as it furthers the stigmatization and marginalization of sex workers, thus limiting the resources available to

potential victims or those who may have information helpful to law enforcement. As stated by Tamara O’Doherty, “the enforcement of the criminal laws results in sex workers being forced to adopt oppositional roles in relation to the police and therefore being unable or unwilling to turn to police for protection.”30 Sex workers who may have knowledge that could assist sex trafficking investigations are reluctant to pass this information on to law enforcement officials due to fears of their own arrest or implication. A lack of open dialogue between sex workers and law enforcement cultivates feelings of mistrust between the two parties, thereby also feeding into the cycle of marginalization. Thus, criminalization is counterproductive to efforts to reduce human trafficking, despite any potential decrease in demand as a result of the criminal risk.

Additionally, criminalization makes sex workers more vulnerable to physical violence and abuse. The threat of arrest forces sex workers into discrete locations and situations where they are vulnerable to violence in an attempt to avoid police detection. Tragically, when a sex worker is a victim of assault, rape, or another act of violence, they are unlikely to report the incident to police.31 This reluctance to report violent crimes often stems from fear of having charges pressed against them as well as for engaging in sex work and of police harassment. Even if the victims report the crime against them, their complaint and case is less likely to be viewed as credible simply due to their sex workers status.32 Thus, not only does criminalization harm the well-being of sex workers themselves, it also becomes a public safety issue when violent offenders are not being reported or charged.

The clandestine nature of the prostitution industry also prevents sex workers from labor rights provided within other industries, including the ability to organize, receive fair wages and safe working conditions, and against discriminatory financial practices, such as increasing rent for sex workers.33 Thus, they are vulnerable to financial manipulation and abuse, which further marginalizes them. The fines attached to prostitution convictions pose another financial dilemma for those convicted of prostitution ($500 in Maryland), as it could force them further into poverty. An inability to find alternative employment due to a history of prostitution arrests and convictions also forces sex workers to remain in the industry or in poverty.

Legalization

The primary drawback of full legalization of sex work is the potential for the unchecked expansion of the human trafficking industry. While legalization would better protect voluntary sex workers from the marginalization and exploitation perpetuated and exacerbated by the criminalization and policing of sex work, it would open the opportunity for an increase in demand within the human sex trade. Thus, until further research can demonstrate quantitatively the dominance of the substitution effect, it is necessary to implement a policy with the same goals and motivations as legalization, but that accounts for and actively works against an increase in human trafficking.

Criminalization of Purchase

The criminalization of the purchase of sex still marginalizes sex workers and perpetuates the clandestine nature of current prostitution. Because sex work remains partially illegal, stigma

would still surround the idea of prostitution, still complicating relationships between law enforcement and sex workers, even if the threat of arrest is no longer an immediate concern. In addition, the customers would still be under the threat of arrest, so the policy fails to challenge the working conditions and dangerous situations faced by the sex workers. Finally, the goal of this model, which is ultimately to reduce the presence of prostitution by removing the demand and, thus, reducing the size of the industry as a whole, places sex workers in financial constraints and could further impoverish vulnerable people.\(^{34}\) Criminalization of prostitution in any form, whether partial or full, is damaging to the sex worker’s safety and contributes to the stigma surrounding sex work, preventing the realization of sex workers’ rights.

Additionally, partial criminalization fails to recognize the agency of the sex workers. The idea that sex work is in all forms gender violence undermines the personal autonomy of women who voluntarily chose to enter the industry. The imposition of the exploitation narrative (all women engaged in sex work are victims of gender exploitation and prostitution is an expression of gender discrimination and violence) within the Swedish model makes it incompatible with the rights-based perspective on sex work. Viewing all sex workers as victims of a patriarchal society implies that the women could not make the choice for themselves to engage in sex work and that the option was forced upon them. This assumption that women who choose to engage in sex work are making that decision only due to maligned gender dynamics undermines female agency and the ability to make personal decisions regarding health and employment. Ultimately, all humans have the right to determine with whom they would like to engage in sexual activity as long as all participants are fully consenting adults.

**Regulation**

It is necessary to implement a policy that regulates sex work in order to distinguish between trafficking victims and voluntary sex workers. Within my proposed policy framework, the substitution effect could strongly counteract the scale effect, as men would face legal repercussions only if they were to purchase sex from unregistered sex workers. Thus, the demand for sex would be moved away from potential victims of human trafficking without endangering the financial prospects of voluntary sex workers. Thus, regulation could potentially curb sex trafficking, but maintain the agency and employment of voluntary workers who register.

Additionally, as criminalization would only occur in the context of sex trafficking/potential sex trafficking, a decrease in stigmatization and discrimination against sex workers could appear over time. Decriminalization may also lead to more positive relationships between law enforcement and sex workers as well, leading to greater accountability in cases victimizing sex workers and more cooperation against sex trafficking between the two. Sex workers would also no longer be forced to operate in clandestine situations, thus promoting their general well-being and health. Overall, regulation best protects the rights of sex workers without compromising the safety of trafficking victims.

However, there are some drawbacks to this policy that need to be addressed. First, in a practical sense, instituting regulatory policies would require expensive and burdensome bureaucratic alterations. While there remains contradicting evidence on whether regulation assists female sex workers financially or hinders their income, enforcing the licensing of all current sex workers would be a daunting task, especially considering the stigma that currently

surrounds sex work. In addition to the issue of stigma, many female sex workers may be reluctant to give up their untaxed income.\(^{35}\) In order to resolve these practical issues, I would suggest offering registered sex workers social benefits or other incentives.

Overall, the biggest difficulty in instituting this policy would be to convince Americans that sex work is not an inherently immoral act that deserves legal punishment or that they should not impose arbitrary legal restrictions on others based solely on their bounds of morality. Thus, it is important to encourage general acknowledgement and understanding of the role that stigmatization and marginalization play in silencing at-risk groups, and laws should better reflect the agency and rights of all vulnerable groups, including sex workers. According to Burns, Rojas, Delgado, and Watkins, “agency can be understood as the ways that sex workers negotiate power in a highly stigmatized career and/or occupation” and “negating such agency often results in increased rates of both stigma and marginalization of individuals working in the sex industry.”\(^{36}\) In this way, marginalization and a loss of agency work in a cyclical manner for sex workers, as they face limited autonomy due to stigmatization, which then further marginalizes them. Instituting this policy, although necessary, would require a restructuring of the American understanding of sex workers and the sex industry.

However, creating a legal framework wherein women can freely choose to engage in sex work without fear of legal consequences is necessary to promote the human rights of sex workers. In particular, the legalization of sex work protects women’s right to health and personal autonomy. The health of sex workers is directly related to the stigma surrounding sex work, as many sex workers claim to avoid disclosing their sex worker status, even when it could impact diagnosis, due to concerns of “having insensitive or abusive language used towards them, being treated disrespectfully or humiliated in public health care spaces, experiencing physical marginalization within the health care setting, denial of care, and breaches of confidentiality.”\(^{37}\) In addition to leading to incorrect or uninformed diagnoses, fear of stigmatization from health care providers can also eventually cause sex workers to avoid medical professionals entirely, harming their long-term health.\(^{38}\) The decriminalization of sex work can contribute to breaking down these health care barriers and ensure that sex workers receive accurate and adequate health care.

Stigmatization of sex work, which is compounded through its criminalization, also erodes sex workers’ legal rights. As previously discussed, many sex workers face discrimination from law enforcement due to the criminal nature of their industry, making them more prone to violent encounters and forcing them into dangerous situations. Decriminalized sex work would additionally protect sex workers’ right from “verbal harassment, public humiliation, excessive force, invasive searches, and unwarranted arrests.”\(^{39}\) Often, the legal rights of sex workers protecting them from abuses by the justice and law enforcement systems are disregarded because of their criminal status or activity. This is a rights violation that harms not only sex workers, but potentially also sex trafficking victims of whom sex workers may have knowledge. Only


\(^{38}\) Benoit, Jansson, Smith, and Flagg, “Prostitution Stigma,” 463.

\(^{39}\) Benoit, Jansson, Smith, and Flagg, “Prostitution Stigma,” 462.
decriminalization and demarginalization can lessen the power abuses between officers and sex workers, which would allow law enforcement officials to better combat human trafficking through more accurate information while also promoting the well-being and safety of sex workers.

Ultimately, the only reason that I endorse regulation as opposed to full decriminalization is concern of increased trafficking due to a larger market scale. While this effect requires more research to fully understand, the only viable option to counteract this effect would be the implementation of a barrier to the sex trafficking industry to make purchase less desirable. Thus, imposing harsh punishments for purchasers of sex from unlicensed sex workers would act as a check on the market by increasing the risk for purchasers of sex trafficking victims. Although more research into the relationship between the scale of the demand for sex and regulation is necessary, there is promising early research that suggests that this may be a successful tactic. For example, studies out of Australia, in which some states regulate prostitution, suggest that scale of demand does not increase under regulatory policies.40 However, it is crucial that more studies from various regulatory systems explore this relationship and effectively demonstrate that the scale of the sex industry remains consistent. While regulation could still contribute to stigma by suggesting that sex work is different from other industries, it is necessary to establish some form of regulation to maintain greater control over the industry to reduce sex trafficking.

Conclusion

The traditional means of reducing sex trafficking has involved increasing the punishment for convicted traffickers and preventing individuals from entering the sex industry or situations that could leave them vulnerable to trafficking. However, in order to more effectively combat human trafficking, American society must rethink how our culture and laws allow trafficking to permeate society. Rather than view it as something that comes from outside of the United States and outside of American society, sex trafficking is thriving within the United States because of the cultural attitude of dismissal towards sex workers and the belief that sex work is not something to be discussed within proper society. Sex traffickers thrive on the American avoidance of this issue and the belief that it is a non-issue in the United States. Thus, the promotion of greater dialogue surrounding the sex industry and the alteration of societal attitudes towards sex work are necessary to improve the quality of life of sex workers and to reduce sex trafficking.

The comparison of American prostitution law to international alternative models additionally addresses one of the challenges to traditionalist American legal thinking, which includes a rejection of foreign legal interpretations as being unrepresentative of the American situation. However, prostitution is a cross-cultural phenomenon, which thus makes the comparative analysis of international policy relevant to the United States’ domestic policy. The use of foreign law analysis or reference in the creation of US policy “does not mean directly borrowing or applying such law,” but it instead demonstrates “an open exchange of ideas aimed at preserving and enriching the corpus of the law.”41 Thus, in order to create laws that respect the rights of all Americans and promote the public good, American policymakers must investigate foreign alternative policy models and devote quantitative research into the consequences of these policies.

40 Hubbard, Sanders, & Scoular, “Prostitution Policy,” 198.
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