


Winter 2008

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Recommended Citation

Iris Yen, Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation, 98 J. Crim. L. & Criminology 653 (2007-2008)

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OF VICE AND MEN: A NEW APPROACH TO ERADICATING SEX TRAFFICKING BY REDUCING MALE DEMAND THROUGH EDUCATIONAL PROGRAMS AND ABOLITIONIST LEGISLATION

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In the last few decades, trafficking in humans for the purpose of sexual exploitation has exploded into a sophisticated industry that generates billions of dollars in profit every year yet devastates the lives of millions of innocent victims. Many of the trafficked victims are impoverished girls and young women from economically depressed countries who are forced to work as prostitutes under brutal conditions in a foreign country. To date, most of the scholarly, legislative, and law enforcement attention has focused on the "supply" side of the sex trafficking equation, namely the traffickers and the victims. This Comment focuses on the "demand" side of the problem, namely the male clients of the prostitutes. The Comment first explains how the male demand for commercial sexual services sustains and grows the sex trafficking industry, and then examines various demand-side educational programs and legislative approaches and assesses their impact on minimizing and eradicating the demand. The Comment concludes by suggesting a comprehensive, demand-oriented approach to fighting sex trafficking.

I. INTRODUCTION

At the age of four, "Andrea" was sold to a child sex-trafficking ring that operated in both Mexico and the United States. She was enslaved for twelve years, servicing mostly American men. To keep the children obedient, her traffickers frequently abused them psychologically and physically. To cater to their customers' preferences, the ring offered children of various ages from toddlers to teens. Permanently traumatized

* JD-MBA, May 2008, Northwestern University School of Law and Kellogg School of Management. I would like to thank my family, friends, and Professor Len Rubinowitz for their strong encouragement, careful review, and thoughtful comments.

after years of abuse, Andrea sees herself as “way too damaged . . . [and] no good.”¹

There is a thriving modern-day slave trade of shocking magnitude and brutality: every year, over 700,000 people are trafficked across international borders.² Human trafficking affects every country in the world.³ To better understand the pandemic of human trafficking, one must first establish a clear definition of this term. In 2000, 117 nations (including the United States) adopted the United Nations’ new anti-trafficking protocol, which defined “trafficking in persons” as the “recruitment, transportation and harboring of another person for the *purpose of exploitation*.”⁴ Eighty percent of the trafficked victims are women and up to fifty percent are minors.⁵ Impoverished women and girls from developing countries are vulnerable to all forms of human trafficking and exploitation, but they are especially vulnerable to sex trafficking.⁶ “Sex trafficking” is the recruitment, transportation, and harboring of persons—primarily women and children—for the purpose of sexual exploitation into prostitution, pornography, sex tourism, and other commercial sex activities.⁷

¹ Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25, 2004, available at <http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html>.

² Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 88 (2005).

³ Kara C. Ryf, Note, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. 45, 47 (2002).

⁴ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, at Article III(a), U.N. Doc. A/55/25 (2000) [hereinafter 2000 Trafficking Protocol], available at http://uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (emphasis added). Exploitation includes, but is not limited to, “prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or [similar] practices.” *Id.* In contrast to previous protocols, the 2000 Protocol focuses on the exploitation element in trafficking, making the victim’s consent to exploitation irrelevant. *Id.* Some commentators approve of the U.N.’s strategic decision to steer away from the victim’s consent and instead focus on the exploitation element. See ANGELA BORTEL, ENDING TRAFFICKING IN WOMEN: A VICTIM-CENTERED APPROACH TO LEGISLATION (2001), available at http://www.prof.msu.ru/publ/book5/c5_3_1.htm (contending that the main feature of adopting a victim-centered law is the irrelevance of consent).

⁵ U.S. DEP’T OF STATE, THE LINK BETWEEN PROSTITUTION AND SEX TRAFFICKING 1 (2004), available at <http://www.state.gov/documents/organization/38901.pdf> [hereinafter PROSTITUTION AND SEX TRAFFICKING REPORT].

⁶ See Ryf, *supra* note 3, at 46 (noting that “trafficking in persons can take many forms, with the most prevalent and fastest growing [form] being the commerce of women and children for sexual exploitation”).

⁷ Kandathil, *supra* note 2, at 88; see 2000 Trafficking Protocol, *supra* note 4, at art. III(a) (defining trafficking in terms of exploitation of its victims).

Sex trafficking is a complex global problem that has attracted much attention from legal scholars; in particular, the supply side of the problem (namely, the traffickers and the victims of trafficking) has been discussed at length.⁸ Until recently, however, one critical aspect of the problem has largely evaded the scrutiny of scholars, anti-trafficking activists, and law enforcement alike: the role of male demand for commercial sexual services in perpetuating and growing the sex trafficking industry.⁹ There is now an emerging consensus that strategies which solely address the supply side of sex trafficking are insufficient and ultimately ineffective.¹⁰

This Comment assumes that sex trafficking is fundamentally an economic problem, and that appropriate incentives can impact both the supply and the demand drivers.¹¹ Given this premise, this Comment examines how the male demand for commercial sexual services stimulates

⁸ See, e.g., Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 *FORDHAM L. REV.* 2977 (2006); Susan W. Tiefenbrun, *Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 *T. JEFFERSON L. REV.* 161 (2002) [hereinafter Tiefenbrun, *Sex Sells*]; Susan W. Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 *UTAH L. REV.* 107 (2002) [hereinafter Tiefenbrun, *Saga*]; Theresa Barone, Note, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 *TEMP. INT'L & COMP. L.J.* 579 (2003); Katrin Corrigan, Comment, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 *FORDHAM INT'L L.J.* 151 (2001); Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 *HOUS. J. INT'L L.* 551 (2002); Ryf, *supra* note 3; see also Mohamed Y. Mattar, *Trafficking in Persons: An Annotated Legal Bibliography*, 96 *LAW LIBR. J.* 669 (2004) (an annotated bibliography of articles related to human trafficking).

⁹ Mattar, *supra* note 8, at 671 (noting that “[a]lthough many articles on the topic [of trafficking in persons] have been published[,] . . . several areas have yet to receive adequate coverage. In my judgment, these areas include . . . the issue of demand . . .”); see DONNA M. HUGHES, *BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF TRAFFICKING 1-2* (2004), available at http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf (“Over the past decade . . . efforts to combat trafficking have aimed to stop trafficking on the supply side In comparison, there have been few campaigns or efforts aimed at reducing the demand for victims.”).

¹⁰ See HUGHES, *supra* note 9, at 2. Hughes believes “the movement to abolish trafficking and sexual exploitation needs a more comprehensive approach, one that includes analyses of the demand side of trafficking, and develops practices to combat the demand in receiving countries.” *Id.*

¹¹ See generally Tiefenbrun, *Sex Sells*, *supra* note 8 (contending that the problem of sex trafficking must be addressed from an economic perspective by increasing the cost of doing the business of sex trafficking and by decreasing the economic benefits of this lucrative industry). This Comment extends Tiefenbrun’s argument to the male clients of prostitutes as well, in that the cost (e.g., incarceration, fines) of engaging in commercial sexual exploitation must outweigh the benefits (e.g., physical pleasure, “cheap” sex) in order to change the men’s behavior.

and sustains the mushrooming sex trafficking industry. Furthermore, this Comment argues it is both feasible and effective to fight sex trafficking through educational and legislative measures aimed at reducing the male demand for commercial sexual services. These methods include educating the men who use prostitutes, changing misguided male attitudes toward commercial sexual services and prostitutes, and enacting and enforcing legislation that criminalizes the purchase of sex.

Part II introduces and defines the problem of sex trafficking. Part III discusses the economic incentives underlying, and the human impact of, sex trafficking. Part IV assesses the most recent anti-trafficking protocol and laws adopted by the United Nations and by the United States. Part V analyzes the importance of male demand in perpetuating sex trafficking and reveals some insights on the men who use prostitutes (also known as “johns”). Part VI discusses the efficacy of various educational programs targeted at johns. The next Part compares two different legislative approaches and their impact on curbing prostitution and sex trafficking. The concluding section, Part VIII, recommends a more effective approach to combating sex trafficking: a comprehensive strategy that entails both educational and legislative initiatives to reduce male demand.

II. THE INVISIBLE HAND OF GREED, POVERTY, AND MISERY: UNDERSTANDING THE SUPPLY SIDE DRIVERS AND HUMAN IMPACT OF SEX TRAFFICKING

A. ONE WAY-TICKET TO HELL: HOW WOMEN BECOME SEX SLAVES

Sex trafficking is often appropriately described as “sexual slavery.”¹² Owned by their pimps, brothel owners, and customers for the “purpose of financial gain, sexual gratification and/or power and domination,”¹³ trafficked victims are essentially slaves. Trafficked women typically earn little or no money for their services, and they must often acquiesce to any

¹² Landesman, *supra* note 1. In discussing four Mexican girls who were trafficked: “They were sex slaves . . . [T]hese girls weren’t working for profit or a paycheck. They were captives to the traffickers and keepers who controlled their every move.” *Id.*

¹³ DORCHEN LIEDHOLT, PROSTITUTION: A CONTEMPORARY FORM OF SLAVERY (2004), available at <http://action.web.ca/home/catw/readingroom.shtml?x=16727>. Liedholt defines slavery as “the domination and control by an individual or group over other individuals or groups through violence, the threat of violence, or a history of violence.” *Id.* However, prostitution is different from “traditional forms of slave ownership in which the person enslaved was regarded as a capital investment, to be maintained and guarded over a long period of time” in that the owners of prostitutes often view the women as a “temporary, disposable commodity, to be consumed and discarded.” *Id.*

and all of the sexual demands of the customer.¹⁴ Given this grim reality, how and why do so many women and girls end up becoming sex slaves?

The most common factors that promote sex trafficking include: an increase in poverty and unemployment in developing countries, the lack of educational and economic opportunities for women and the consequent feminization of poverty, the rise of globalization and increased mobility, the expansion of transnational organized crime, the widening economic gap between developing and developed countries, and gender-based social inequalities.¹⁵ Armed conflict in the victims' home countries and the subsequent military occupation by peacekeeping troops is another major reason.¹⁶ The combined effect of these factors significantly increases the vulnerability of destitute women and children to the traffickers' sophisticated recruiting techniques.¹⁷ Trafficked children are often sold by their family or abducted, while many naïve girls and women also fall prey to deceptive job advertisements placed by cunning traffickers.¹⁸

Traffickers primarily target girls and young women who live in economically depressed countries and who are desperate for any employment opportunity.¹⁹ These girls and women are often trafficked into foreign countries because it is much more challenging for trafficked victims living in foreign countries to escape from their traffickers given the significant language, legal, and cultural barriers.²⁰ In addition,

¹⁴ Landesman, *supra* note 1.

¹⁵ Cynthia Sheperd Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT'L & COMP. L. 503, 505 (2006).

¹⁶ See JANICE G. RAYMOND & DONNA M. HUGHES, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS REPORT 15 (2001), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>.

¹⁷ See *id.* at 8. As an example, the economic collapse of Russia has resulted in a quarter of the Russian population living below the poverty level, and a surge in the number of trafficked women from Russia. *Id.* at 17-18. Despite the fact that 98% of the women are literate and many are highly trained professionals (e.g., doctors, professors, scientists, etc.), women account for two-thirds of those unemployed. *Id.* at 18. Driven by the economy, the collapse of Russian social services, market-based sex discrimination, and sexual harassment to leave Russia to seek jobs abroad, many women have unfortunately ended up in traffickers' networks and sold to strip clubs and escort services in the United States, primarily in the New York and New Jersey area. *Id.*

¹⁸ Traffickers use four primary strategies for obtaining victims: (1) offering false promises of seemingly legitimate job opportunities such as nannying or waitressing; (2) obtaining the victim's consent to work in the modeling, dancing, or sex industries but then forcing them to work in slave-like conditions; (3) kidnapping, drugging, or forcing consent through psychological coercion; and (4) purchasing women from family, husbands, or friends. Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2576 (2006).

¹⁹ See VICTOR MALAREK, THE NATASHAS 9-13 (2003).

²⁰ Kandathil, *supra* note 2, at 91-92.

entrepreneurial traffickers have increased their importation of foreign women into affluent, developed countries in order to satisfy the increasing demand for commercial sexual services in those countries.²¹ The magnitude of human trafficking is alarming: the United States Department of State estimates that 14,500 to 17,500 people (including men) are trafficked into the United States every year, but other sources estimate the number may be as high as 50,000 to 100,000 women and children alone.²²

B. "REUSE, RESELL OR DISPOSE": THE BUSINESS MODEL AND BILLION-DOLLAR PROFITS OF THE SEX TRAFFICKING TRADE

In the sex trafficking business model, the victims are merely "expendable, reusable, and resalable cheap commodities"²³ to be exploited for the sole profit of their owner.²⁴ Sex trafficking is the perfect criminal business; unlike drugs or guns, which can only be sold once to any particular party,²⁵ the sexual services of trafficked victims can be sold again and again.²⁶ Depending on the demands of the local market and her individual characteristics, a trafficked woman can cost anywhere from \$14,000 to \$40,000.²⁷ However, the financial return for purchasing her body is unbelievably lucrative: she can earn \$75,000 to \$250,000 or more each year for her pimp.²⁸ One trafficker commented, "You can buy a woman for \$10,000 and you can make back your money back in a week if

²¹ *Id.* at 96.

²² U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter 2004 TIP REPORT] (stating 14,500 to 17,500 people are trafficked into the United States every year). *But see* AMY O'NEILL RICHARD, U.S. DEP'T OF STATE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3 (2000), available at <http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA380601&Location=U2&doc=GetTRDoc.pdf> (estimating that 50,000 women and children are trafficked into the United States every year). Some estimate that the number could be as high as 100,000. Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 71 (2001). The most recent 2007 Trafficking in Persons Report did not report the numbers of victims trafficked into the United States, but it did report that approximately 800,000 people are trafficked across national borders. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 8 (2007), available at <http://www.state.gov/documents/organization/82902.pdf>.

²³ Note, *supra* note 18, at 2590.

²⁴ Winston P. Nagan & Alvaro de Medeiros, *Old Poison in New Bottles: Trafficking and the Extinction of Respect*, 14 TUL. J. INT'L & COMP. L. 255, 256 (2006).

²⁵ Tiefenbrun, *Saga*, *supra* note 8, at 140.

²⁶ Tiefenbrun, *Sex Sells*, *supra* note 8, at 212.

²⁷ Tiefenbrun, *Saga*, *supra* note 8, at 126.

²⁸ DONNA M. HUGHES, THE DEMAND FOR VICTIMS OF SEX TRAFFICKING 12 (2005), http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf.

she is pretty and she is young. Then everything else is profit.”²⁹ Indeed, global profits from sex trafficking are estimated to be \$7 to \$12 billion dollars annually and growing rapidly.³⁰ In fact, profits from the international sex trade are second only to those from the drug trade.³¹

Moreover, until the United States passed the Trafficking Victims Protection Act in 2000 which stiffened criminal penalties for trafficking,³² the federal penalties for sex trafficking were much lighter than those for drug dealing. Prior to passing the 2000 Trafficking Victims Protection Act, the statutory maximum for dealing in ten grams of LSD or a kilo of heroin was a life sentence, while the maximum statutory punishment for forcing someone to engage in involuntary servitude was only ten years.³³ Hence, given its low investment costs, quick returns, very high profit margins, low risk of arrest, and relatively light penalties, sex trafficking has a very high profit-to-cost ratio among comparable criminal activities such as drug trafficking.³⁴ As a result, sex trafficking has emerged as the new crime of choice for international organized criminal rings.³⁵

C. DEVASTATED LIVES: THE IMMEASURABLE HUMAN COST OF SEX TRAFFICKING

While the traffickers reap enormous profits, it is the victims who must bear the immeasurable human cost of sex trafficking.³⁶ To maximize their profits, traffickers typically force their victims to work ten to eighteen hours each day.³⁷ Traffickers routinely beat, rape, starve, confine, torture, and

²⁹ MALAREK, *supra* note 19, at 57.

³⁰ Norma Hotaling & Leslie Levitas-Martin, *Increased Demand Resulting in the Flourishing Recruitment and Trafficking of Women and Girls: Related Child Sexual Abuse and Violence Against Women*, 13 HASTINGS WOMEN'S L.J. 117, 119 (2002).

³¹ Tiefenbrun, *Sex Sells*, *supra* note 8, at 199.

³² Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466, 1466-69 (2001) [hereinafter TVPA 2000].

³³ Tiefenbrun, *Sex Sells*, *supra* note 8, at 215-16.

³⁴ See Tiefenbrun, *Saga*, *supra* note 8, at 141.

³⁵ See Tiefenbrun, *Sex Sells*, *supra* note 8, at 216.

³⁶ See generally Symposium, *Human Trafficking in the United States: Expanding the Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 398-406 (2005) (noting that many trafficking victims live in a continuous state of fear of threats to their bodies and lives, and consequently suffer from chronic traumatic stress that profoundly impacts their personality and emotional and mental well-being).

³⁷ Nelson, *supra* note 8, at 555; see Janice G. Raymond, *Prostitution on Demand: Legalizing the Buyers as Sexual Consumers*, 10 VIOLENCE AGAINST WOMEN 1156, 1170 (2004). Depending on the customers' or pimps' demand, women may have to service anywhere from ten to more than twenty customers each day. *Id.*

psychologically and emotionally abuse the women.³⁸ The buyers, too, are sometimes violent and often force the women to engage in degrading or abusive sexual acts.³⁹ If the victim does attempt to escape, she bears a high risk of being caught and severely beaten or even killed by her trafficker.⁴⁰

Not surprisingly, these harsh conditions cause victims to develop severe and often permanent physical, mental, emotional, and psychological trauma.⁴¹ Many victims will contract HIV/AIDS or other sexually transmitted diseases.⁴² Anxiety, low self-esteem, depression, and severe post-traumatic stress disorder are common psychological manifestations.⁴³ Most trafficked victims only survive for two to four years before they die as a result of homicide, suicide, HIV/AIDS, or other factors.⁴⁴ Even if the victims are rescued by the police, in most countries, they are jailed in detention centers awaiting deportation due to their illegal immigrant status.⁴⁵

Thus, contrary to the erroneous perception that prostitution is a victimless crime (a belief which is still widely accepted in some places),⁴⁶ too many victims have paid for their crime of poverty with devastated lives.⁴⁷ In response to the egregious human rights abuses from the sex

³⁸ *Developments in the Law—The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2185 (2005) [hereinafter *Developments*]. Some traffickers force victims to take drugs in order to debilitate them. MALAREK, *supra* note 19, at 19.

³⁹ Raymond, *supra* note 37, at 1174-75. Some buyers like violent or sadistic sexual acts including slashing, burning, or whipping the women. *Id.*

⁴⁰ Landesman, *supra* note 1.

⁴¹ See Symposium, *supra* note 36, at 382. Child victims in particular also suffer from myriad psychological, neurological, growth, and development problems. *Id.*

⁴² *Id.*

⁴³ *Id.* Post-traumatic stress syndrome can have lifelong debilitating effects. *Id.* at 398-402.

⁴⁴ Landesman, *supra* note 1.

⁴⁵ See Anna Marie Gallagher, *Triply Exploited: Female Victims of Trafficking Networks—Strategies for Pursuing Protection and Legal Status in Countries of Destination*, 19 GEO. IMMIGR. L.J. 99, 99-100 (2004). Traffickers may exact retribution against women who are deported to their home countries or their families, as women who have returned to their hometown have been murdered in some cases. *Id.* In other cases, women who return to their home country are shunned by their community. See Vidyamali Samarasinghe, *Confronting Globalization in Anti-Trafficking Strategies in Asia*, 10 BROWN J. WORLD AFF. 91, 97 (2003) (noting that many cultures view prostitution as a “shameful and degenerate” occupation and assign blame to the victim).

⁴⁶ See MORRISON TORREY & SARA DUBIN, CONFERENCE REPORT: DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 60 (2003), available at http://www.law.depaul.edu/institutes_centers/ihrl/_downloads/demand_dynamics.pdf. Images from popular culture and the media that glamorize and romanticize prostitution, lap dancing, and stripping have influenced popular perception that “prostitution is a victimless crime.” HUGHES, *supra* note 9, at 2-3.

⁴⁷ Tiefenbrun, *Saga*, *supra* note 8, at 110.

trade, international human rights activists, the United Nations, and the U.S. government have joined forces to enact legislative and regulatory schemes to penalize traffickers and offer some measure of protection for victims.⁴⁸

III. OUTLAWING SEXUAL SLAVERY: THE ANTI-TRAFFICKING LAWS ADOPTED BY THE UNITED NATIONS AND THE UNITED STATES

A. INTERNATIONAL ANTI-TRAFFICKING LAW: THE UNITED NATIONS PROTOCOL OF 2000

In November 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children ("Trafficking Protocol").⁴⁹ The Trafficking Protocol is a milestone in international anti-trafficking law for several reasons. It is the first anti-trafficking agreement adopted by the United Nations that takes a "comprehensive international approach"⁵⁰ to eradicating sex trafficking by punishing the traffickers and by aiding their victims.⁵¹ Moreover, it was the first time the United Nations officially recognized poverty as an important contributing factor in that poverty forces many desperate girls and women into accepting deceiving job offers from seemingly respectable employers, who often turn out to be sex traffickers and pimps.⁵²

Most noteworthy, however, is that the Trafficking Protocol explicitly highlights the factor of male demand and calls upon the Member States to adopt or strengthen measures that would "discourage the demand" that fosters sexual exploitation.⁵³ In spite of its progressive policies, there is one serious flaw with the Trafficking Protocol: its cursory suggestion of "discourag[ing] the demand" is too weak and unenforceable to capture the

⁴⁸ See discussion *infra* Part III.A-B.

⁴⁹ Nelson, *supra* note 8, at 569; see also 2000 Trafficking Protocol, *supra* note 4. Sex trafficking is not a new problem; the International Agreement for the Suppression of White Slave Traffic was enacted in 1904 to prohibit the procurement of women and girls for immoral purposes abroad. Tiefenbrun, *Sex Sells*, *supra* note 8, at 145. For a brief overview of all the international anti-trafficking conventions that have been passed since 1904 (including their key provisions), see, for example, Tiefenbrun, *Saga*, *supra* note 8, at 144-56; Corrigan, *supra* note 8, at 161-203; Nelson, *supra* note 8, at 557-70. Unfortunately, the effectiveness of these conventions has been hampered by weak or non-existent enforcement mechanisms, ambiguous or undefined terms, lack of political will, and unrealistic or infeasible legal remedies. See Nelson, *supra* note 8, at 563-66.

⁵⁰ Nelson, *supra* note 8, at 570.

⁵¹ 2000 Trafficking Protocol, *supra* note 4, at 2.

⁵² Nelson, *supra* note 8, at 570.

⁵³ See 2000 Trafficking Protocol, art. 9, Provision 5, *supra* note 4, at 6-7 (emphasis added).

full attention and compliance from its Member States. An explicit resolution requiring its signatories to implement policies aimed at substantially reducing the demand for commercial sexual services would be more effective.

Similarly, federal law in the United States has historically ignored the role of male demand in fostering sex trafficking and prostitution. Male buyers are therefore able to escape accountability and responsibility for their central role in perpetuating the sex slave trade.⁵⁴

B. UNITED STATES ANTI-TRAFFICKING LAWS: THE TRAFFICKING PROTECTION ACT OF 2000 AND ITS SUBSEQUENT REAUTHORIZATIONS

Before 2000, U.S. prosecutors were required to laboriously build cases against traffickers using a combination of federal criminal statutes.⁵⁵ However, it soon became clear that the inadequacies of existing laws, the difficulties of prosecuting and penalizing traffickers, and the burgeoning problem of human trafficking required a strong and comprehensive anti-trafficking law that would impose stiffer criminal penalties on the perpetrators.⁵⁶

On October 28, 2000, the first comprehensive anti-trafficking statute in the United States, the Trafficking Victims Protection Act of 2000

⁵⁴ See Raymond, *supra* note 37, at 1157 (“[T]here is meager legislation that penalizes the male customer . . . [T]he buyer has largely escaped examination, analysis, censure and penalty for his actions.”).

⁵⁵ Prosecutors typically used one or a combination of laws prohibiting involuntary servitude, such as the Thirteenth Amendment, labor laws under the Federal Fair Labor Standards Act, laws regulating organized crime under the Racketeer Influenced and Corrupt Organizations Act, civil rights laws, immigration laws, or laws regulating the sex industry. Corrigan, *supra* note 8, at 180-90. The White-Slave Traffic Act (also known as the “Mann Act”) was enacted in 1910 and became the first federal anti-trafficking statute to address the problem of interstate prostitution of white women. *Id.* The Mann Act punishes traffickers who coerce or knowingly transport an individual into prostitution in interstate or international commerce; convicted traffickers can be imprisoned a maximum of ten years. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as 18 U.S.C. §§ 2421-2424 (1994)).

⁵⁶ Kandathil, *supra* note 2, at 96. Prosecutors disliked trafficking cases because the benefit of securing a conviction was grossly disproportionate to the cost of prosecution. *Id.* The cases tended to be very time-consuming and labor-intensive because they often involved many victims and the full-time devotion of numerous attorneys and prosecutors. *Id.* In addition, the ten-year statutory maximum penalty for convicted traffickers is disproportionately light compared to the maximum penalty of a life sentence for drug offenders; the lucrative profits and minimum legal risks and penalties have provided a perversely huge incentive for more criminals to get into sex trafficking. Tiefenbrun, *Saga*, *supra* note 8, at 159.

("TVPA"), was signed into law.⁵⁷ The TVPA intended to combat trafficking through a three-pronged approach: (1) prevention of trafficking, (2) prosecution of traffickers, and (3) protection of victims.⁵⁸ To deter trafficking, the TVPA authorized the President to carry out initiatives to stimulate economic and educational opportunities for foreign girls and women living in impoverished communities.⁵⁹ The TVPA also significantly increased the penalties for trafficking by raising the statutory maximum imprisonment from ten to twenty years; in certain circumstances, traffickers could be sentenced to life imprisonment.⁶⁰ Medical, psychological, social, and economic services were allocated to assist rescued trafficking victims.⁶¹ Finally, the TVPA established a special T-visa that allows eligible victims to reside legally in the United States.⁶²

Initially, the TVPA received an enthusiastic response.⁶³ The TVPA also resulted in stronger enforcement: between 2001 and 2004, the Department of Justice ("DOJ") tripled the number of trafficking investigations, doubled the number of convicted defendants, and provided economic assistance and T-visas to hundreds of victims.⁶⁴ However, the TVPA has myriad weaknesses which have been criticized by several scholars.⁶⁵ Critics contend that the TVPA does not have the intended deterrent value because the chance of traffickers actually being discovered and prosecuted remains quite low compared to the magnitude of the

⁵⁷ *Developments, supra* note 38, at 2188.

⁵⁸ TVPA 2000, *supra* note 32, at 1466-69.

⁵⁹ *Id.* § 106 (Prevention of Trafficking). These initiatives include (1) microcredit lending programs, training in business development, skills training, and job counseling; (2) programs to promote women's participation in economic decision-making; (3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking; (4) development of educational curricula regarding the dangers of trafficking; and (5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries. *Id.* § 106(a).

⁶⁰ *Id.* § 112 (Strengthening Prosecution and Punishment of Traffickers). If the violation involved attempted or actual murder, kidnapping, aggravated sexual abuse, or a minor under fourteen years old, the new penalty allows for life imprisonment. *Id.*

⁶¹ *Id.* § 107 (Protection for Victims of Trafficking).

⁶² *Id.*

⁶³ Scholars initially applauded the new law's tough penalties against traffickers and its attempt to protect the victims through provision of social services and special visas. See Tiefenbrun, *Saga, supra* note 8, at 165 ("This new law is tough on sex traffickers and generous to victims of trafficking."); Nelson, *supra* note 8, at 578 ("As a comprehensive approach, the Trafficking Act promises to seriously diminish sex trafficking.")

⁶⁴ Chacón, *supra* note 8, at 3019-20.

⁶⁵ See, e.g., *id.* at 2978 (claiming that there is almost universal consensus that the TVPA has failed to make sufficient strides in addressing the problem of human trafficking domestically and internationally).

problem.⁶⁶ The TVPA has also been criticized for emphasizing the prosecution of traffickers at the expense of protecting the victims.⁶⁷

Ultimately, the most significant flaw of the TVPA is its failure to address and penalize the demand side.⁶⁸ The TVPA ignores the reality that unless demand for commercial sexual services severely diminishes, illegal trafficking in women and children for the purpose of sexual exploitation is unlikely to cease.⁶⁹ Congress responded to some of these criticisms when it revised the TVPA in 2003.⁷⁰ The Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA 2003") enabled victims to bring federal civil suits against traffickers for actual and punitive damages,⁷¹ but TVPRA 2003 still failed to address the demand side.

The real legislative breakthrough was the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA 2005").⁷² For the first time, Congress specifically addressed the critical factor of demand.⁷³ TVPRA 2005 authorized a \$50 million grant for local law enforcement and social services agencies to develop and execute programs targeted at reducing male demand and to investigate and prosecute buyers of commercial sex acts.⁷⁴ It also required the Secretary of Health and Human

⁶⁶ *Id.* at 3019 (noting that the increased number of investigations, convictions, and T-visas are dwarfed by the magnitude of the problem, even if one believes the conservative estimate that 14,000 individuals are trafficked into the United States every year).

⁶⁷ *Id.* at 3025. Chacón argues that the enforcement measure has been overemphasized while rehabilitative care for victims has been underemphasized. *Id.* For example, a victim of severe sex trafficking who is seeking a three-year legal residency through the T-visa must first comply with the reasonable request for assistance in the investigation or prosecution of acts of trafficking in person. TVPA 2000 § 107(e)(1). To obtain permanent legal residency status upon expiration of her T-visa, she must cooperate with law enforcement or demonstrate that she would suffer "unusual and severe harm." *Id.*

⁶⁸ See Kandathil, *supra* note 2, at 111 (contending that the TVPA is neglecting an important dimension of the crime by failing to deal with the buyer-side of the crime and attach penalties to buyers).

⁶⁹ *Id.*

⁷⁰ Trafficking Victims Protection Reauthorization Act, Pub. L. No. 108-193, 117 Stat. 2875 (2003).

⁷¹ *Id.* § 4(a)(3).

⁷² Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005) [hereinafter TVPRA 2005].

⁷³ Press Release, House of Representatives website, Rep. Smith's Trafficking Victims Protection Act to Become Law (Dec. 22, 2005), http://www.house.gov/list/press/nj04_smith/prtraffickingsenatepassage.html (stating that "[f]or the first time, programs geared toward reducing the demand for commercial sex in the United States and preventing human trafficking of U.S. citizens within our own borders are authorized").

⁷⁴ TVPRA 2005, *supra* note 72, § 204.

Services and the Attorney General to research and prepare reports on the best practices for reducing demand for commercial sex acts.⁷⁵

TVPRA 2005's recognition of and initial efforts to tackle the demand factor is highly commendable. Nonetheless, more efforts need to be made to understand and effectively combat male demand because it is the primary driver of the sex trafficking industry.⁷⁶

IV. THE CRITICAL "XY" FACTOR: UNDERSTANDING AND ADDRESSING THE ROLE OF MALE DEMAND IN PERPETUATING SEX TRAFFICKING

A leading anti-sex trafficking activist once remarked that "[t]he root cause of trafficking is demand for commercial sexual services, without which trafficking for purposes of sexual exploitation would dissolve."⁷⁷ Thus, the significance of demand for commercial sexual services must be recognized in order to understand the sex trafficking equation. This Comment makes two assumptions in analyzing the demand factor. First, it is virtually impossible to distinguish commercial sexual services provided by trafficked women from those provided by women who voluntarily engage in the commercial sex industry;⁷⁸ so this Comment will discuss strategies to decrease the male demand for commercial sexual services in general. Second, the sexual desires and preferences of the male customers who purchase commercial sexual acts (hereinafter "johns") influence and direct all aspects of sex trafficking, from the type of girls that are recruited to the location of the brothels.⁷⁹

⁷⁵ *Id.* § 201.

⁷⁶ See Raymond, *supra* note 37, at 1160 (citing that male demand is the most immediate and proximate cause of the expanding sex trafficking industry).

⁷⁷ TORREY & DUBIN, *supra* note 46, at ix.

⁷⁸ This Comment recognizes that sex worker unions and pro-prostitution organizations have made arguments in favor of prostitution as "chosen" profession, and that there are women who do voluntarily choose to be prostitutes. However, even porn stars and prostitutes who supposedly engage in the sex trade industry "voluntarily" and defend the practice are often abused and controlled by pimps or domineering husbands or forced by economic constraints to engage in the industry. *Id.* at 4. Worn down by abuse and degradation and fear of their pimps, many women finally submit to their fate and that submission is erroneously viewed as their "consent" or "choice" to engage in the industry. See *id.* at 4-5. Although interesting and important issues, the moral, legal, and economic arguments regarding prostitution as a chosen profession is beyond the scope of this Comment. For different perspectives on prostitution, see PROSTITUTION AND SEX TRAFFICKING: OPPOSING VIEWPOINTS SERIES (Louise Gerdes ed., 2006). This Comment does not consider all female prostitutes "victims" necessarily as it recognizes that some women voluntarily choose to be sex workers. However, this Comment maintains that forced prostitution as a result of sex trafficking is not defensible morally or legally.

⁷⁹ HUGHES, *supra* note 9, at 24.

A. HOW MALE DEMAND STIMULATES AND DIRECTS THE SEX TRAFFICKING INDUSTRY

Sex trafficking is an efficient market that is very responsive to its clients' needs. For example, in areas around the world where sex trafficking and prostitution were previously non-existent, abundant male demand but insufficient supply has resulted in an exploding commercial sex industry.⁸⁰ In the 1960s, the influx of American soldiers in Southeast Asia suddenly and rapidly increased the demand for commercial sexual services.⁸¹ As demand exceeded supply, traffickers started to kidnap women and girls from various countries in the region and force them into the commercial sex industry.⁸² The prevalence of prostitution in areas with heavy military presence is evidence that male demand directly impacts sex trafficking patterns and the location of brothels.⁸³

Male demand also plays a pivotal role in determining the characteristics of the trafficked victims.⁸⁴ Johns typically do not explicitly ask for trafficked women, but they often demand "something different," meaning they desire "exotic" foreign women.⁸⁵ The current trend among johns is a preference for Eastern and Central European women; these women now comprise almost 25% of the global sex trade.⁸⁶ The male demand for virgins or "clean girls" has caused child prostitution to increase

⁸⁰ See Cory Rennell, *Saving the Youngest Workers: The Struggle Against the Southeast Asian Sex Trade*, 26 HARV. INT'L REV. (2004), available at <http://www.harvardir.org/articles/1255/>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See BORTEL, *supra* note 4 (contending that male demands drive sex trafficking patterns, as sites of military conflict with heavy concentrations of male troops, such as Kosovo, are popular destinations for sex trafficking victims). In one study, a task force on sex trafficking found that 30% of international troops in the Balkans region had purchased sex acts from trafficked women and children. HUGHES, *supra* note 9, at 52. Similarly, the presence of U.S. military personnel in the Philippines and South Korea has "promote[d] and facilitate[d] the trafficking and exploitation of women." *Id.* at 55.

⁸⁴ Traffickers often target women or girls with certain age, racial, ethnic, and language characteristics based on the market in which they operate. For example, many brothels in the United States cater to men of one type of ethnic or racial background. See HUGHES, *supra* note 28, at 24.

⁸⁵ Melissa Farley, *The Demand for Prostitution, Captive Daughters*, <http://www.captivedaughters.org/demanddynamics/demandforprostitution.htm> (last visited June 13, 2008); see also Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN'S STUD. 387, 402 (2004). Similarly, men's desire for more pliable and exotic women also contributes to more trafficked women or mail-order brides from Russia and Asia. *Id.*

⁸⁶ See MALAREK, *supra* note 19, at 4-6.

at alarming rates.⁸⁷ As a result, sex trafficking victims are getting increasingly younger; it is now common to find girls thirteen years old or younger among trafficked victims.⁸⁸ The demand for novelty and variety has prompted national and regional sex industry circuits where victims are rotated among cities.⁸⁹

Over the last twenty years, the global sex trafficking industry has rapidly expanded due to the increased mobility of both the johns (who often travel abroad for sex tourism purposes) and of the victims (who are often trafficked to foreign countries).⁹⁰ Since the mid-1970s, an estimated thirty million girls and women have been sold worldwide.⁹¹ The most common purpose for trafficking women and girls is forced prostitution; thus, most of the trafficked girls and young women are extremely likely to be sexually exploited.⁹² It is very difficult to clearly distinguish between women who are forced into prostitution due to force, coercion, or poverty from those who truly choose to engage in it free from any coercive force, but one thing is clear: “[W]ithout men’s demand for prostitute women, there would be no such women.”⁹³

It is hard to ascertain exactly how much male demand exists. Accurate statistics are difficult to obtain and verify given the clandestine nature of buying sex and the different research methodologies and definitions used.⁹⁴ Several studies have found that the reported percentage of men who have purchased sex acts varies widely, from a low of 7% in Great Britain to a high of 73% in Thailand, although one should be careful about drawing cross-country comparisons given different research methodologies.⁹⁵

⁸⁷ Landesman, *supra* note 1; see Sara K. Andrews, Comment, *U.S. Domestic Prosecution of the American International Sex Tourist: Efforts to Protect Children from Sexual Exploitation*, 94 J. CRIM. L. & CRIMINOLOGY 415, 422-23 (2004) (noting that the high demand in some cultures for sex with virgins—based on their youth, purity, and supposed lack of sexually transmitted diseases—has caused child prostitution to become more prevalent).

⁸⁸ Landesman, *supra* note 1. In a five-country study, 22% of the interviewed men preferred girls aged eighteen or under. BRIDGET ANDERSON & JULIA O’CONNELL DAVIDSON, *IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN?: A MULTI-COUNTY PILOT STUDY* 19 (2003), available at <http://www.compas.ox.ac.uk/about/publications/Bridget/Anderson04.pdf?event=detail&id=2932>.

⁸⁹ TORREY & DUBIN, *supra* note 46, at 13.

⁹⁰ ANDERSON & DAVIDSON, *supra* note 88, at 11.

⁹¹ Hotaling & Levitas-Martin, *supra* note 30, at 119.

⁹² Stacey Antimone, Note, *Sexual Trafficking: The United States’ Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT’L L. REV. 149, 154 (2000).

⁹³ HUGHES, *supra* note 9, at ii.

⁹⁴ *Id.* at 6.

⁹⁵ *Id.* at 6-7 (noting that statistics may also vary widely by region—for example, British men seem to be on the low end within Europe, while the number is as high as 39% in Spain).

Estimates for the percentage of American men who have bought sexual acts also show a dramatic variance, from 16%⁹⁶ to 69%.⁹⁷ These differences highlight the need to understand the definitions and research methodologies used in each study before drawing any inferences.

Regardless of actual incidences across countries, one can reasonably infer that a considerable number of men have purchased some form of commercial sex act in every country. This phenomenon reflects the extent to which cultural socialization and personal rationalization has promoted and ingrained the concept of buying commercial sex as acceptable and normal male behavior.⁹⁸ The next section explores the validity of the premise that the purchase of commercial sexual services is normal and inevitable male behavior.

B. UNDERSTANDING THE PSYCHOLOGY OF MALE DEMAND

The billion-dollar sex trafficking industry is based on one unspoken assumption: purchasing commercial sex acts from females should be tolerated, accepted, and legitimized as a “necessary evil” because the biological male need for sexual intercourse is potent and uncontrollable.⁹⁹ Trumpeting the unquestioned justification that “men will be men” has too often allowed johns to escape critical examination, censure, and penalties from scholars, legislators, and law enforcement.¹⁰⁰

Contrary to the defeatist attitude that “men will be men,” the truth is that the supposed male “need” for commercial sexual services is a malleable and socialized concept.¹⁰¹ While men’s (and women’s) biological need for sexual intimacy is innate, buying sex from strangers to fulfill their needs is not.¹⁰² Societal notions about masculinity and strong

⁹⁶ *Id.* at 7.

⁹⁷ Raymond, *supra* note 37, at 1166.

⁹⁸ *See id.* at 1157 (criticizing the justification that “men will be men,” thus the male urge to purchase commercial sexual acts should be unquestioned and legitimized).

⁹⁹ Samarasinghe, *supra* note 45, at 101.

¹⁰⁰ Raymond, *supra* note 37, at 1157. Trafficking victims often incur legal punishment, such as arrest, imprisonment, and possible deportation, as well as the psychic consequences of becoming sick, drug-addicted, unemployed, unemployable, and filled with shame and fear. *Id.*; *see also* Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451, 472 (2005) (noting that too often governments have treated victims as criminals and let traffickers go free).

¹⁰¹ ANDERSON & DAVIDSON, *supra* note 88, at 58. For some men, the idea of buying sex from forced or coerced prostitutes is repulsive because having sex with a forced prostitute is a sexual turn-off. *Id.* at 25. It contradicts the men’s fantasy that the prostitute loves him or enjoys the sex, and destroys the thin façade of emotional intimacy. *Id.*

¹⁰² *Id.* at 58. The reality is no man is born wishing to buy commercial sexual services, yet through suggestive and sophisticated marketing techniques by the commercial sex

peer pressure result in the acceptance of purchasing sex acts as normal male behavior.¹⁰³ For example, bachelor and fraternity parties that patronize strip clubs and prostitutes are one way in which men define "normal" male behavior.¹⁰⁴ Similarly, a study of migrant Mexican male workers in the United States found that only 5% of them had ever bought sex when they were living in Mexico.¹⁰⁵ However, because the migrant workers were now surrounded by other men and isolated from their wives and girlfriends back home in Mexico, 40% to 46% of these workers had resorted to purchasing sex in the United States.¹⁰⁶ For Thai men, using prostitutes has become a culturally accepted rite of passage and male bonding ritual.¹⁰⁷ As seen in these examples, the purchase of commercial sexual services is largely motivated by societal expectations of what "real men" do and peer pressure to conform to these norms.¹⁰⁸

While the desire for sexual intimacy in both men and women is a biological imperative,¹⁰⁹ johns confuse the need for sexual intimacy with the need to purchase commercial sexual acts, and they rationalize buying sexual services as a natural activity.¹¹⁰ Johns feel their gender and money entitle them to have sex whenever, wherever, however, and with whomever they wish.¹¹¹ Johns often justify their actions by trivializing prostitution as a mere commodity exchange¹¹² and dehumanizing prostitutes as "sluts" and "whores" who deserve degrading treatment since the women's only purpose is to satisfy the johns' sexual demands.¹¹³

The combination of cultural socialization and personal rationalization thus engenders an environment where sex trafficking and prostitution becomes acceptable and even deemed inevitable.¹¹⁴ However, since the

industry, men are induced to believe that it would be pleasurable or desirable to pay a stranger for sex. *Id.*

¹⁰³ See HUGHES, *supra* note 28, at 24.

¹⁰⁴ TORREY & DUBIN, *supra* note 46, at 56.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ ANDERSON & DAVIDSON, *supra* note 88, at 17-18.

¹⁰⁸ *Id.*

¹⁰⁹ See John Bancroft, *Biological Factors in Human Sexuality*, 39 J. SEXUAL RES. 15 (2002) (stating that the human sexual experience is fundamentally tied to biological factors involved in sexual arousal and response).

¹¹⁰ MALAREK, *supra* note 19, at 79.

¹¹¹ TORREY & DUBIN, *supra* note 46, at 23 (noting one scholar defined a "john" as a man "who believes he is entitled by virtue of his gender and money to have sex on demand"); see also MALAREK, *supra* note 19, at 79.

¹¹² MALAREK, *supra* note 19, at 79.

¹¹³ TORREY & DUBIN, *supra* note 46, at 53.

¹¹⁴ *Id.*; see also MALAREK, *supra* note 19, at 79.

male demand for *commercial* sex is a malleable and socialized concept, theoretically re-education of more positive male norms (e.g., norms that do not consider purchasing commercial sex acts acceptable or desirable) and appropriate punitive measures should persuade johns to stop patronizing the commercial sex industry. Before one can begin the process of re-educating johns and reshaping male norms, however, it is necessary to understand the motivations, characteristics, and behaviors of the heterogeneous john population.

C. WHO ARE THE JOHNS? UNDERSTANDING, SEGMENTING, AND TARGETING THE MALE BUYERS

Who is a john? What does he look like? Despite their critical contribution to the sex trafficking problem, johns have traditionally remained faceless, nameless, and blameless entities while the weight of law enforcement and societal opprobrium has fallen on the prostitutes.¹¹⁵ In contrast to the prostitutes, johns can remain anonymous and can maintain a façade of being “respectable” men.¹¹⁶ Anonymity encourages men to seek out commercial sex,¹¹⁷ and it protects the johns from accountability and culpability for their behavior and its consequences.¹¹⁸

Unveiling the faces and names of the johns reveals that most are surprisingly ordinary men.¹¹⁹ One British study found that the typical john is around thirty years old, married, and employed full-time with no previous criminal record.¹²⁰ Interviews with forty domestic and foreign prostitutes revealed more information about the johns.¹²¹ First, johns come from all nationalities and races.¹²² Johns also come from all age groups; the age of buyers ranged from fifteen to ninety.¹²³ A significant proportion—about 70% to 90%—were married.¹²⁴ Buyers also came from all occupational

¹¹⁵ HUGHES, *supra* note 9, at 6.

¹¹⁶ TORREY & DUBIN, *supra* note 46, at 116.

¹¹⁷ Barbara C. Kryszko & Janice G. Raymond, Good Practices: Targeting the Demand for Prostitution and Trafficking Chart, <http://action.web.ca/home/catw/readingroom.shtml?x=71327> (last visited Nov. 11, 2006).

¹¹⁸ TORREY & DUBIN, *supra* note 46, at 107.

¹¹⁹ See Duncan Walker, *Beer, Banter . . . and a Brothel* (BBC television broadcast Oct. 3, 2006), available at <http://news.bbc.co.uk/1/hi/uk/5360624.stm>.

¹²⁰ *Id.*

¹²¹ RAYMOND & HUGHES, *supra* note 16, at 69.

¹²² *Id.* Due to the ethnic diversity in the United States, customization of commercial sexual services based on ethnicity has proliferated. Brothels housing international women often cater to buyers from the women’s ethnic communities. *Id.*

¹²³ *Id.* at 70.

¹²⁴ *Id.*

backgrounds, ranging from working class to professional men, and included prominent community members such as politicians and doctors.¹²⁵

Despite their diverse backgrounds, johns tend to share similar perceptions about prostitution.¹²⁶ Many johns also believe common myths about prostitutes such as: “she does it because she likes it,” “she chooses to do it,” and “prostitutes make a lot of money.”¹²⁷ Johns also feel entitled to any sexual service they desire because they dehumanize the prostitutes, and instead view them as cheap sex objects.¹²⁸ Some johns refuse to take responsibility for their own actions even if they know that the prostitute was forced into commercial sexual exploitation. In particular, one john commented:

If [the prostitute] takes money and does not perform what she is expected to, then the customer will get angry. . . . I understand that the prostitute is there in the first place because she has no choice or is forced there. I feel bad about this, especially if she is forced or sold. But the fact is she is in the flesh market. The rules of the market apply to her as well as to one who has come out of her own choice. . . . [T]he fact is she is a commodity offering a service and she should accept that. We should all.¹²⁹

However, johns are not homogenous in their attitudes, motivations, and behaviors. For example, johns are often believed to be lonely, shy, and socially inept bachelors who are sexually frustrated.¹³⁰ In truth, johns seek prostitutes for a multitude of reasons, including the desire to have a certain type of sexual activity which they are unable to have with their primary partner, the thrill of the illicit adventure, the desire to realize a sexual

¹²⁵ *Id.*

¹²⁶ A study of 1342 men arrested for soliciting prostitution found that johns have similar attitudes and misperceptions regarding prostitution and men's sexuality. See Noël Bridget Busch et al., *Male Customers of Prostituted Women: Exploring Perceptions of Entitlement to Power and Control and Implications for Violent Behavior Toward Women*, 8 VIOLENCE AGAINST WOMEN 1093, 1101-04. (2002). For example, johns believe prostitution is not harmful and that prostitutes enjoy and choose their work. *Id.* at 1103.

¹²⁷ TORREY & DUBIN, *supra* note 46, at 33. In contrast to the myths that prostitutes choose to be prostituted and that they enjoy their profession, researchers who interviewed 475 prostitutes across five countries found that the vast majority of them, ranging from 88% to 99%, said they wanted to leave prostitution. Melissa Farley et al., *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, 8 FEMINISM & PSYCHOL. 405 (1998), available at <http://www.prostitutionresearch.com/fempsy1.html>. In addition, 73% had been physically assaulted in prostitution. It is also a fallacy that prostitutes make a lot of money; in reality, they rarely keep any of the money as their pimps will generally confiscate all their earnings. TORREY & DUBIN, *supra* note 46, at 4.

¹²⁸ Farley, *supra* note 85 (stating that johns like to demand sexual acts where they have 100% control over what happens); see also ANDERSON & DAVIDSON, *supra* note 88, at 24. One john stated that violence can ensue if the prostitute insists that the client uses condoms, and if there is violence, it is her fault. *Id.*

¹²⁹ ANDERSON & DAVIDSON, *supra* note 88, at 24-25.

¹³⁰ See HUGHES, *supra* note 9, at 14.

fantasy or to unleash their anger and misogynistic beliefs, and the need to have ultimate power and control over another person.¹³¹ By understanding the unique beliefs and motivations of the diverse segments within the heterogeneous john population, one can gain insight into effective ways to address male demand based on their differential segments.

Johns can be segmented into four groups based on their motivations.¹³² First, Negative Compulsive men do not enjoy sex with prostitutes but still solicit commercial sex.¹³³ Second, Positive Compulsive men enjoy the sex but have attempted to stop.¹³⁴ Third, Positive Accepting men enjoy sex with prostitutes, do not try to stop, and generally support legalization of prostitution.¹³⁵ Fourth, Socially Inadequate men are the stereotypical johns who are shy and socially awkward.¹³⁶

Johns also report a considerable range in frequency of prostitution usage.¹³⁷ Numerous studies have found that a subgroup of hard-core, habitual users account for a disproportionate share of the demand for prostitution.¹³⁸ One U.S. study found that 11% of men who had ever purchased sexual acts did so more than 100 times.¹³⁹ Changing the behavior of these habitual buyers will certainly be very challenging, since they tend to have psychological problems and sexual addictions such that they can only relate to women in sexualized or extremely violent and degrading ways.¹⁴⁰ Habitual users are less susceptible to legal measures and would continue their behavior regardless of the law,¹⁴¹ but targeting these habitual buyers is a worthwhile challenge because effecting a behavioral change within this group would significantly reduce the number of sex acts purchased overall.¹⁴²

¹³¹ *Id.* at 18.

¹³² *Id.* at 15.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 13.

¹³⁸ *Id.*

¹³⁹ *Id.* In the same study, 22% of men had purchased sex up to four times; this is the occasional buyer group. *Id.*

¹⁴⁰ *Id.* In one study, 86% of U.S. prostitutes endured physical violence by their buyers, 80% had experienced sexual assault, and 40% had been forced into sadistic sex. RAYMOND & HUGHES, *supra* note 16, at 75.

¹⁴¹ HUGHES, *supra* note 9, at 14.

¹⁴² *Id.* Habitual buyers constitute a disproportionate share of prostitution usage, and reducing their demand would have a more significant impact on reducing the overall supply of prostitutes. *Id.*

In contrast, occasional buyers are more likely to respond to legal measures since they are afraid of public prosecution.¹⁴³ Moreover, in one study, researchers found a significant portion of the men who had sought out prostitutes (even those who were repeat buyers) said they were dissatisfied with the experience and wanted to stop.¹⁴⁴ In another study, a majority of the men who had purchased sex acts had tried to stop going to prostitutes, suggesting that a significant proportion of the men are troubled by their sex addictions.¹⁴⁵ This finding is encouraging as it suggests that certain types of johns may be amenable to changing their behavior, and so a carefully designed program that utilizes educational programs, sex addiction counseling, and/or appropriate legal remedies could diminish the demand for commercial sex.¹⁴⁶

D. TARGETING MALE DEMAND IS FEASIBLE AND EFFECTIVE

Effecting changes in male demand, attitudes, and behaviors is feasible for several reasons. First, psychological studies have indicated that attitudes toward acceptable norms of sexual behavior are malleable, as evidenced by one experiment, which showed that desensitization to the sexual objectification of women can occur quickly through repeated exposure to pornography.¹⁴⁷ In one study, researchers found that increased pornography exposure resulted in more callousness towards violence against women and more acceptance of unusual sexual behavior, such as violent sex.¹⁴⁸ Second, some segments of the heterogeneous john population would be deterred from buying commercial sexual services if

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 15.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ TORREY & DUBIN, *supra* note 46, at 27. In reference to buyers who buy child prostitutes in foreign countries but would never do so in their home countries, two researchers commented: "It is depressing how malleable most people are in terms of their morality in any market, and how quickly they can adjust to the practices that before they would have considered exploitative, provided that no one stopped them and others appeared to be behaving similarly." ANDERSON & DAVIDSON, *supra* note 88, at 42. Other studies have found that the more often men purchased sex acts, the more likely they were to accept the idea that sex is a commodity. HUGHES, *supra* note 9, at 16. Even more troubling, the more the men thought sex was a legitimate commodity, the more likely they had attitudes that justified violence against women, such as believing in rape myths (e.g., women are responsible for rapes, invite rapes, and are not hurt by them). *Id.*

¹⁴⁸ TORREY & DUBIN, *supra* note 46, at 27 (finding the research results were true of both male and female subjects). Pornography is often a stepping stone for trafficked women who eventually end up in prostitution. *Id.* Analyzing the effect of pornography on sex trafficking is beyond the scope of this Comment; however, an analysis of the effect of pornography on sex trafficking and prostitution can be found in Adelman, *supra* note 85, at 405-07.

they fully understood the harmful effects on society and serious criminal consequences of purchasing sexual services.¹⁴⁹

Therefore, one should reject the erroneous belief that purchasing sex is natural male behavior, which too conveniently allows johns to escape responsibility for their actions.¹⁵⁰ Targeting male demand is a more effective way to address sex trafficking because unlike their trafficked partners, the majority of johns voluntarily choose to engage in commercial sex.¹⁵¹ Many johns are smart and rational buyers; they will purchase commercial sex only if the physical and psychological benefits of doing so outweigh the financial costs, legal risks, and social stigma.¹⁵² Patronizing prostitutes can threaten and destroy the johns' own freedom, health, social standing, and perhaps even their lives—once the johns understand the sobering ramifications of their purchase decision, many will choose to make different choices.¹⁵³

Male demand causes sex trafficking, yet it is also the weakest link in the sex trafficking chain.¹⁵⁴ Reducing or eradicating sex trafficking is very difficult yet not impossible, but it does require combating male demand and changing deep-rooted cultural norms and practices that devalue women.¹⁵⁵ The norms, attitudes, and resultant behavior can be positively changed through patient re-education of johns and effective enforcement of demand-oriented legislation.

¹⁴⁹ See HUGHES, *supra* note 9, at 15.

¹⁵⁰ See Raymond, *supra* note 37, at 1157.

¹⁵¹ HUGHES, *supra* note 9, at 9. Arguably, those with sexual addictions may be compelled to solicit prostitutes. However, relative to the trafficked and enslaved victim who is given the "choice" of engaging in prostitution or suffering torture/abuse by her pimp, the john has more freedom of choice. Moreover, as with any addiction, the decision to fight and eliminate the addiction is ultimately up to the addicted person.

¹⁵² See TORREY & DUBIN, *supra* note 46, at 95. The co-founder of an educational/rehabilitation school for johns noted that in her work with 6000 johns, she has found that men will change their behavior if they are given the correct message backed by severe consequences and they believe they have a lot to lose if they engage in prostitution. *Id.*

¹⁵³ *Id.* at 15.

¹⁵⁴ *Id.*

¹⁵⁵ See HUGHES, *supra* note 9, at 23. Even assuming a utopian world where everyone had jobs and was financially secure, male demand for commercial sex would still result in the trafficking and prostitution of women and children. *Id.*

V. SCHOOLING THE JOHNS: CURBING MALE DEMAND THROUGH
EDUCATION

A. CATW CASE STUDY: RE-EDUCATING YOUNG PHILIPPINE TRUCK
DRIVERS

Several years ago, the Philippines-based chapter of the Coalition Against Trafficking in Women (“CATW”) started an educational program targeted at males between the ages of seventeen and eighteen in twelve different communities with high levels of prostitution.¹⁵⁶ The three-year project aimed to prevent sex trafficking by changing the sexual attitudes and behaviors of boys and young men, and thereby discouraging the demand for prostitution, through educational workshops that highlight the harm of prostitution and trafficking, men’s roles in perpetuating sexual exploitation and trafficking, and men’s roles as catalysts for change.¹⁵⁷ Former victims of sex trafficking helped develop the curriculum and also helped teach the men, particularly about the harms of sex trafficking and prostitution.¹⁵⁸ Although it is too early to assess the long-term results of this program comprehensively, preliminary responses from male participants before and after they enrolled in the three-day camp have been encouraging.¹⁵⁹

In one group of low-income, urban truck drivers, almost all of the men had bought a sexual act from a prostitute before.¹⁶⁰ Initially, the men’s attitudes towards prostitution were cavalier and nonchalant.¹⁶¹ These attitudes began to change as the men learned more about prostitution and men’s roles in perpetuating the practice.¹⁶² In discussion groups, some men even made suggestions about how to change attitudes, behaviors, and patterns in the male-dominated trucking environment.¹⁶³ Upon completion of the program, both the men and the facilitators recognized that

¹⁵⁶ Raymond, *supra* note 37, at 1178-79.

¹⁵⁷ *Id.* at 1179.

¹⁵⁸ *Id.* at 1178.

¹⁵⁹ *Id.* at 1179-80. The actual workshops with the young men began in March 2004. *Id.* at 1179. CATW Philippines intends to follow up with the men who have participated in the program for a period of five years. HUGHES, *supra* note 9, at 51. Based on the CATW website, this educational program appears to be ongoing in the Philippines, and a similar program has also been launched in Mexico. Coalition Against Trafficking in Women Home Page, <http://www.catwinternational.org/campaigns.php#curb> (last visited Feb. 7, 2008).

¹⁶⁰ Raymond, *supra* note 37, at 1180.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

“significant learning” had occurred.¹⁶⁴ To understand whether there was a long-term change in the participants’ attitudes and behaviors, CATW intends to follow up with the participants for a period of five years.¹⁶⁵ These initial findings indicate that educational programs that raise men’s awareness of the tragic plight of sex slaves and of the johns’ role in perpetuating human rights abuses can be an effective way to deter men from patronizing the commercial sex industry.¹⁶⁶

B. PROSTITUTION 101: A CRASH COURSE FOR JOHNS

In 1995, San Francisco became the first city to focus its law enforcement on the demand side of prostitution through the First Offender Prostitution Program (“FOPP”).¹⁶⁷ In lieu of criminal prosecution, first-time johns receive citations and then are offered the opportunity to pay a \$500 fee and attend FOPP, a day-long educational and rehabilitation program.¹⁶⁸ The fines are then funneled back into social and health services for former or current prostitutes.¹⁶⁹

FOPP has several pedagogical goals.¹⁷⁰ First, it aims to expose the ugly truth of the commercial sex industry to the men, from the highly lucrative profits for the pimps to the appalling abuse of the girls and women who are forced into the industry.¹⁷¹ Second, FOPP aims to teach men about the health hazards of prostitution; many johns are high sexual risk-takers yet are surprisingly ignorant about sexually transmitted diseases.¹⁷² Finally, in an appeal to the men’s consciences about the harms of prostitution, FOPP makes it clear the johns sustain and support a brutal system of sexual

¹⁶⁴ *See id.* The CATW organizers are cautiously optimistic about the results of the program. *See id.* They are not suggesting that there was a mass conversion among the participants, but the male participants’ feedback suggests that significant learning did occur and that consciousness-raising programs for men are an important tool in addressing the demand side. *Id.*

¹⁶⁵ Raymond, *supra* note 37, at 1180.

¹⁶⁶ *Id.*

¹⁶⁷ Hotaling & Levitas-Martin, *supra* note 30, at 120. One of the co-founders of FOPP is Standing Against Global Exploitation (“SAGE”), an organization by and for survivors of abuse, prostitution and trauma. *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 121.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 122. Most of the men are high sexual risk-takers in that they tend to have between five and ten sexual partners each year. *Id.* Interviews with prostitutes reveal that 30% to 50% of customers do not want to use condoms with their partners or prostitutes and would be willing to pay extra for sex without protection. *Id.* The FOPP participants’ knowledge and attitudes about sexually transmitted diseases and HIV match those who enter the public health system for sexually transmitted diseases. *Id.*

exploitation.¹⁷³ Former prostitutes are heavily involved in the entire process, from developing the curriculum to sharing their personal testimonies on the harmful impact of prostitution.¹⁷⁴

Reactions to FOPP and its initial results have been very encouraging.¹⁷⁵ In one survey conducted among 747 participants, 100% said they learned something new and 97% said it is unlikely they would solicit a prostitute again.¹⁷⁶ Qualitative responses from FOPP participants reveal that their attitudes toward prostitutes have changed for the better.¹⁷⁷ Most importantly, the johns' behavioral change has been confirmed by the police department's recidivism data.¹⁷⁸ Of the 2200 men who attended FOPP between 1997 and 2001, only eighteen were rearrested for soliciting prostitutes.¹⁷⁹ This recidivism rate of 0.008% is extremely low in comparison to the general 33% recidivism rate for all misdemeanor offenders.¹⁸⁰

In sum, a comprehensive educational program targeted at the right male audience can have a powerful impact on reducing demand. Generally, john schools such as the FOPP program have found that the occasional buyer segment is a good target for education because habitual buyers tend to be less likely to change their behavior based on education or moral persuasion.¹⁸¹ Motivating behavioral change in the habitual buyers will likely require some combination of stiffer criminal penalties and fines, education, sex-addiction rehabilitation and counseling services, and financial or other disincentives.¹⁸² While segment-based programs targeted

¹⁷³ HUGHES, *supra* note 9, at 33.

¹⁷⁴ *Id.* at 34.

¹⁷⁵ *See id.* at 38-39.

¹⁷⁶ *Id.* at 36.

¹⁷⁷ *See id.* at 39. One FOPP participant remarked that when he learned what the women went through when they were young, his perspective changed as he realized that "they have feelings, too, like everyone else." *Id.* Another said he will never be able to solicit the services of a prostitute without remembering the pain in the voices of the former prostitutes. *Id.*

¹⁷⁸ *See* Hotaling & Levitas-Martin, *supra* note 30, at 122.

¹⁷⁹ *Id.*

¹⁸⁰ HUGHES, *supra* note 9, at 40.

¹⁸¹ *Id.* at 39-40. In a survey conducted in the Toronto-based John School Diversion program, sex-trade veterans (also known as "habitual buyers"), defined as those who have bought sex acts five or more times in their life, made up 22% of the participants and they were significantly more likely to say they would continue to purchase sex acts. *Id.* In another study, 76% of habitual buyers said they would continue buying sex even after attending the john school. *Id.*

¹⁸² *Id.* at 29. Several U.S. cities have implemented a car confiscation program for arrested johns. *Id.* at 29-30. In West Palm Beach for example, an arrested john must pay a \$500 fee to retrieve his car. *Id.* at 29. He is then offered a plea agreement; if he successfully

at individual johns are effective, it is also important to stimulate broader societal change in male norms. One way of facilitating widespread change in male behaviors is through legislation.

VI. ABOLISHING VERSUS LEGALIZING PROSTITUTION: COMPARATIVE STUDY OF TWO LEGISLATIVE MODELS

A. ZERO-TOLERANCE FOR THE OPPRESSION OF WOMEN: SWEDEN'S ABOLITIONIST LAW AND ITS EFFECTS ON SEX TRAFFICKING

In 1998, Sweden enacted the "Act Prohibiting the Purchase of Sexual Services" (hereafter the "Prohibition Act") and became the first country to exclusively criminalize the buyers of commercial sex.¹⁸³ Swedish legislators considered prostitution a serious form of male violence and oppression against women, and one that grossly violated the integrity, dignity, and rights of women and girls.¹⁸⁴ The Prohibition Act regards prostitution and sex trafficking as inseparable and equally harmful practices; thus, by targeting male demand for commercial sex, legislators hoped to eliminate both sex trafficking and prostitution.¹⁸⁵ Simultaneously, Sweden launched a nationwide anti-sex trafficking public awareness campaign to inform citizens and warn potential johns about the new law.¹⁸⁶

completes john school and testing for sexually transmitted diseases, his sixty-day jail sentence can be reduced to time served. *Id.* These innovative enforcement measures have been challenged in court on the basis that the state's seizure of a john's vehicle violated the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment, but the Supreme Court has thus far upheld this practice. *See Bennis v. Michigan*, 517 U.S. 1163 (1996) (upholding the majority opinion which defended the state's right to deter illegal activity by abating the Bennis automobile, which was used by Mr. Bennis to have sex with a prostitute).

¹⁸³ The Act is codified in 1997/98:55 (4) of the Violence Against Women Government Bill, which prohibits and penalizes the purchase of sexual services. *See* Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution: And a Legal Response to the Demand for Prostitution*, 2 J. TRAUMA PRACTICE 315 (2003), available at <http://action.web.ca/home/catw/attach/Ten%20Reasons%20for%20Not%20Legalizing%20Prostitution.pdf>. The law stipulates that anyone who buys sexual services is subject to a fine or statutory maximum imprisonment of six months. *Id.*

¹⁸⁴ *See* HUGHES, *supra* note 9, at 25-26 (noting that focusing on the "breach of women's integrity" is a novel legislative policy that reflects a sophisticated and progressive understanding of the effects of repeated violations against women's integrity).

¹⁸⁵ *See* Raymond, *supra* note 183, at 10.

¹⁸⁶ *Id.* at 10-11. Promoting the anti-trafficking campaign at high-profile events such as the Solvalla Racetrack or through a nationwide poster campaign have been noted as one of the "most inventive best practices" to raise public awareness about the new law. *Id.* Many racing fans often celebrate their winnings at a brothel, so in 2000, the Solvalla racetrack dedicated its first race of the evening to the campaign against prostitution and trafficking. *Id.*

Since the Prohibition Act was passed, stiffer criminal penalties and aggressive enforcement have considerably impacted the conviction rate and the number of johns.¹⁸⁷ In one year, the conviction rate for johns rose almost 40%, from a conviction rate of 32% in 2000 to 44% in 2001.¹⁸⁸ Within two years after the passage of the new Act, the number of johns fell by 75%.¹⁸⁹ This sharp drop in male demand precipitated a similar decline in the supply: the number of female prostitutes dropped by 50%.¹⁹⁰

The Prohibition Act thus had a "chilling effect" on sex trafficking.¹⁹¹ Without the law, Sweden would most likely be a major destination country for trafficked Russian women, much like its neighbors, Finland and Norway.¹⁹² However, Swedish criminal intelligence units have intercepted conversations between traffickers which indicate that Sweden is considered a "bad market" for trafficking because the buyers are very afraid of being caught.¹⁹³ Buyers demand that the illegal acts be conducted very discreetly, which incurs additional logistics and operational costs for the pimp.¹⁹⁴ Rising costs and a decreasing number of clients have eroded the traffickers' profitability, making Sweden an increasingly unattractive place for traffickers to do business.¹⁹⁵ These findings were corroborated by former sex-trafficked victims who worked in Sweden.¹⁹⁶

Furthermore, criminalizing the purchase of sex has positively influenced the cultural values of Swedes.¹⁹⁷ Surveys of public opinion conducted in 2001 and again in 2002 reveal that 80% of Swedes support the Prohibition Act.¹⁹⁸ In addition, a generation of young Swedes has grown up indoctrinated with the belief that prostitution is not socially desirable and is innately harmful to women, and this has influenced their views and

¹⁸⁷ HUGHES, *supra* note 9, at 26. Between 1999 and 2001, 249 men were charged under the Prohibition Act and seventy-seven were convicted. *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ PROSTITUTION AND SEX TRAFFICKING REPORT, *supra* note 5, at 2.

¹⁹⁰ Raymond, *supra* note 183, at 10.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ HUGHES, *supra* note 9, at 27.

¹⁹⁴ *Id.* at 26 (noting that the crackdown on street prostitution has made it necessary for pimps to escort the prostitutes to meet johns in various apartments or other indoor premises).

¹⁹⁵ *Id.* at 26-27.

¹⁹⁶ *Id.*

¹⁹⁷ *See id.* at 28. The author notes that the Swedish law and philosophy has positively influenced the attitudes of young people in the few years since the Prohibition Act has been in effect. *Id.*

¹⁹⁸ SWEDISH MINISTRY OF INDUSTRY, EMPLOYMENT AND COMMUNICATIONS, PROSTITUTION AND TRAFFICKING IN WOMEN (2004), available at <http://www.sweden.gov.se/content/1/c6/01/87/74/6bc6c972.pdf> [hereinafter SWEDISH PROSTITUTION AND TRAFFICKING IN WOMEN].

responses towards sexual exploitation of women.¹⁹⁹ As an example, on a recent friendship mission to Kenya, a group of Swedish teenagers reported their teachers to the authorities because the teachers had solicited local prostitutes.²⁰⁰

The Swedish law is not without its critics.²⁰¹ One unintended externality from the Prohibition Act has been an increase in sex trafficking in neighboring countries like Finland and Norway.²⁰² Since sex trafficking is a well-organized and highly adaptable industry, eradicating it requires the political commitment, enforcement muscle, and cooperation of every country.²⁰³ Sweden is cognizant of this coordination problem; thus, its Ministry for Gender Equality Affairs has worked with other Nordic and Baltic countries to launch a series of anti-sex trafficking campaigns.²⁰⁴

B. LEGITIMIZING THE OPPRESSION OF WOMEN: THE STATE OF VICTORIA'S LEGALIZATION OF PROSTITUTION AND ITS EFFECTS ON SEX TRAFFICKING

In contrast to Sweden's abolitionist model, the state of Victoria in Australia decided to legalize prostitution in 1984.²⁰⁵ Victoria's "harm minimization" decision assumed that regulating the commercial industry would result in: (1) the containment of the highly visible street prostitution trade, (2) the elimination of organized crime, and (3) the end of child prostitution and sex trafficking.²⁰⁶ However, twenty years later, a study examining the effects of legalizing prostitution in Victoria revealed that

¹⁹⁹ HUGHES, *supra* note 9, at 28.

²⁰⁰ *Id.* at 28.

²⁰¹ *Id.* at 27 (noting that critics contend that the bill would only force prostitution to go underground, thereby subjecting women to more violence).

²⁰² Samarasinghe, *supra* note 45, at 102. However, Sweden may have positively influenced its neighboring countries to adopt similar laws, as Finland passed a new law in October 2003 that criminalized the buying of sex services in public places. HUGHES, *supra* note 9, at 28. Previously, selling sex acts was illegal but purchasing them was not. *Id.*

²⁰³ Moises Naim, *Five Wars of Globalization*, 18 AM. U. INT'L L. REV. 1, 16-17 (2002) (citing the war on trafficking as one of the five wars of globalization and noting that, as such, fighting it requires a global effort). Naim holds that given the "global nature of these wars . . . no government, regardless of its economic power, political influence, or military superiority, will make much progress acting alone." *Id.* at 15-16.

²⁰⁴ SWEDISH PROSTITUTION AND TRAFFICKING IN WOMEN, *supra* note 198.

²⁰⁵ MARY SULLIVAN, WHAT HAPPENS WHEN PROSTITUTION BECOMES WORK? AN UPDATE ON LEGALIZATION OF PROSTITUTION IN AUSTRALIA 3 (2005), available at http://action.web.ca/home/catw/attach/Sullivan_proof_01.pdf. In some ways, Victoria is a more interesting case study than the Netherlands (which only lifted the ban on prostitution in 2000) because one can assess the long-term impact of prostitution in Victoria. Prostitution in the Netherlands, Wikipedia, http://en.wikipedia.org/wiki/Prostitution_in_the_Netherlands.

²⁰⁶ SULLIVAN, *supra* note 205, at 3.

legalization has actually exacerbated the harms it was meant to minimize as well as created new problems.²⁰⁷

First, organized crime and sex trafficking have actually increased because legalization stimulated a surge in male demand, which required a steady supply of women.²⁰⁸ Never one to miss a lucrative business opportunity, organized crime solved the problem of supply shortage by trafficking women and children.²⁰⁹ Although the actual numbers are difficult to ascertain, it is estimated that at least 1000 victims have been trafficked into Victoria.²¹⁰ Second, prosecuting sex traffickers is more challenging in environments where prostitution is legal.²¹¹ Third, legalization has not provided the better working conditions for prostitutes as expected.²¹² The problem is that legal prostitution makes it harder to distinguish between women who are forced into prostitution from those who voluntarily chose to become prostitutes, and thus it becomes more challenging for sex-trafficked women to escape the industry and to receive much-needed health and social services as well as to seek justice against their pimps and traffickers.²¹³

More troubling is the social and cultural impact of legalization. When legal barriers to prostitution are eliminated, social and ethical barriers to treating women as sex objects are quickly discarded as well.²¹⁴ The

²⁰⁷ *Id.* Whether legalization has led to safer sex is also questionable. With increased competition from the expansion of the industry, prostitutes are finding themselves at a bargaining disadvantage. *See id.* at 18-23. Clients tend to be extremely demanding, and even legal prostitutes often find themselves consenting to sexual acts they do not want to perform, such as anal or unprotected sex, in order to get a booking. *Id.*

²⁰⁸ *Id.* at 4.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 14.

²¹¹ *See id.* at 15 (noting that, in a system of legalized prostitutes, trafficked women working in a licensed brothel are technically "legitimate workers" and police have little power to question them; even if their situation is revealed, the women are charged as illegal immigrants and deported back home immediately).

²¹² *Id.* Many recent cases of sexual slavery have involved legal brothels. In one case, a group of trafficked Thai women were indentured to pay off debts of 35,000 to 40,000 Australian dollars; they were required to work six to seven days each week, servicing up to 500 buyers. *Id.* They were kept imprisoned in a squalid hotel, windows barred and shuttered from outside view. *Id.* For all their work, they never received a dime. *Id.*

²¹³ Tiefenbrun, *Saga, supra* note 8, at 147-48. Regulation of brothels marginalizes prostitutes and makes it virtually impossible for women to escape because they are viewed as deviants even by themselves. *Id.*; *see also* TORREY & DUBIN, *supra* note 46, at 48 (reporting that former prostitutes are generally against legalization, believing that legislation will only serve as a shield for slavery).

²¹⁴ *See* Raymond, *supra* note 183, at 9. Raymond argues that legalization of prostitution "sanitizes the reality of prostitution" (e.g., the harms of prostitution to women who were forced into the trade), and transforms pimps into "legitimate businessmen and ordinary

commercial sex industry has used its vast financial power to gain substantial political clout and widespread acceptance from mainstream society.²¹⁵ Consequently, men who would not ordinarily engage in illegal prostitution may be encouraged to solicit prostitutes; the legality of prostitution indicates that it is a socially acceptable practice.²¹⁶ With increased demand but inadequate local supply, a market in sex trafficking has naturally developed to fill the gap.²¹⁷ This phenomenon is not unique to Victoria; wherever prostitution has been legalized, the consequent surge in demand has directly resulted in more trafficked women.²¹⁸

VII. ADOPTING A COMPREHENSIVE DEMAND-ORIENTED APPROACH TO FIGHTING SEX TRAFFICKING

Given its low labor costs, minimum legal barriers, billion-dollar profits, and abusive working conditions, sex trafficking is an example of unfettered free-market capitalism at its worst. If the global sex trade is allowed to operate unhindered by moral or ethical considerations and legal restrictions, the trade will be regulated only by the market forces of supply and demand.²¹⁹ Given the multi-billion dollar profits of the international sex trade industry, a growth in demand often results in an increase of sex

entrepreneurs" whose dirty money suddenly becomes clean money. *Id.* Decriminalization also lures men who would formerly not have considered purchasing a prostitute into thinking that if the practice is legal, "it must be ok." *Id.*

²¹⁵ SULLIVAN, *supra* note 205, at 5-6. In Victoria, sex-based industries are the financial equals of the top fifty publicly traded companies and are growing at 4.6% annually, higher than GDP. *Id.* at 5. Industry revenue has grown from A\$1525 million in 1999 to A\$1780 in 2004, representing a 17% increase. *Id.* The Australian government reaps significant tax revenues and licensing fees from the sex industry, which is a significant disincentive for the government to support any criminalization efforts. *Id.* See Adelman, *supra* note 85, at 407 (commenting that it is not a coincidence that a society which fosters sexual objectification of women is also one whose economy thrives on the legal commercial sex industry).

²¹⁶ SULLIVAN, *supra* note 205, at 6. Legalization has enabled the sex industry to become more mainstream. See Raymond, *supra* note 37, at 1162-64.

²¹⁷ See Raymond, *supra* note 183, at 3-4.

²¹⁸ PROSTITUTION AND SEX TRAFFICKING REPORT, *supra* note 5, at 1. To cite other examples, the Netherlands and Germany are two countries where prostitution is legal, yet both have experienced higher rates of women illegally trafficked into the country for prostitution. Tiefenbrun, *Saga*, *supra* note 8, at 147; see also Raymond, *supra* note 183, at 2 (noting that in the Netherlands, since lifting the ban on brothels, eight Dutch victim support organizations reported an increase in the number of trafficking victims. One report found that 80% of the women in the Netherlands brothels were trafficked from other countries, predominantly Central and Eastern Europe. Similarly, it was found that 75% of the prostitutes in Germany were poor women from South America; thus it is unlikely the women could have migrated to Germany on their own).

²¹⁹ See Alex Y. Seita, *The Role of Market Forces in Transactional Violence*, 60 ALB. L. REV. 635, 640 (1997).

trafficking if there is insufficient local supply.²²⁰ Sexual exploitation of women and girls provides handsome profits for the traffickers and instant sexual gratification for the johns, while the victims are the ones who pay the steep price of sex trafficking with their freedom, their health, and sometimes even their lives.²²¹

In the arduous and ongoing war against sex trafficking, there are glimmers of hope and victory: more traffickers are being investigated and prosecuted in every country, and vulnerable girls and women in developing countries are receiving critical economic and educational opportunities.²²² While commendable, efforts that solely address the supply side of the sex trafficking equation are insufficient and ultimately ineffective to stop the rapid growth of the sex trade²²³ because it is the male demand for commercial sexual services that stimulates, sustains, and expands the sex trade.²²⁴

Contrary to the defeatist attitude that “men will be men,” this Comment has argued that it is both feasible and effective to reduce male demand by changing the attitudes and behaviors of boys and young men towards prostitution and sex trafficking.²²⁵ As rational persons, johns will make different decisions if they learn that the financial, legal, and health costs of their actions outweigh the momentary physical benefit they gain from prostitution.²²⁶ Therefore, if the United States is serious about eradicating sex trafficking, the most effective way is to adopt a comprehensive, multi-stage, demand-oriented strategy that includes both educational programs and legal incentives.²²⁷

²²⁰ See HUGHES, *supra* note 9, at 1-2. The transnational flow of the global sex trade often starts in the sending countries where poverty, unemployment, or political instability often forces victims to seek work and opportunities in other countries. *Id.* at 1. There are actually three components of demand, all of which work together to support and promote sex trafficking. *Id.* at 2. The johns who purchase sex acts are the primary actors and thus the primary component of demand. *Id.* The second component of demand are the profiteers—including the pimps, traffickers, brothel owners, and corrupt officials—who make money from sex trafficking and prostitution. *Id.* The third component of demand is the culture and media which indirectly creates a demand for victims by normalizing, romanticizing, or glamorizing prostitution. *Id.*

²²¹ *Developments*, *supra* note 38, at 2185.

²²² See generally U.S. DEP'T OF STATE, 2006 TRAFFICKING IN PERSONS REPORT (2006), available at <http://www.state.gov/documents/organization/66086.pdf>.

²²³ See HUGHES, *supra* note 9, at 1-2.

²²⁴ Raymond, *supra* note 37, at 1157.

²²⁵ HUGHES, *supra* note 9, at 51.

²²⁶ Car confiscations, public “outings” on local TV stations or the internet, or increased financial penalties or jail time are other measures that can be used to increase the costs of prostitution for the johns. *Id.* at 29.

²²⁷ TORREY & DUBIN, *supra* note 46, at ix.

The first stage of this demand-oriented strategy is for the United States to enact a federal abolitionist law similar to Sweden's Prohibition Act. The immediate and long-term results of Sweden's Prohibition Act prove that criminalizing the purchase of commercial sex and vigorously enforcing this criminalization statute is a strong deterrent to johns and traffickers: within two years of passing the Prohibition Act, Sweden experienced a 75% decrease in the john population and 50% decline in the number of female prostitutes.²²⁸

Furthermore, the legalization of prostitution is a failed policy and not one the United States should consider. In stark contrast to Sweden's success in curbing prostitution and sex trafficking,²²⁹ Victoria's experiment with legalizing prostitution has only served to facilitate and stimulate the rapid growth of the commercial sex industry in the state.²³⁰ Moreover, domestic supply shortages but increased demand has precipitated an increase in sex trafficking of foreign women to Victoria.²³¹

The second stage of the strategy is to combat male demand through the re-education of johns and the reshaping of male norms in general. Innovative male-oriented educational programs such as CATW's educational workshops in the Philippines and various john schools such as FOPP in San Francisco have revealed some promising preliminary results in effecting changes in male attitudes and behaviors.²³² Graduates of john schools typically have recidivism rates around 1% or less, which is significantly below the average recidivism rate for misdemeanors.²³³ These success rates prove that education and rehabilitation are an effective deterrent, at least for certain segments of the john population.²³⁴

The U.S. government should also implement a high-profile, nationwide public awareness campaign.²³⁵ Sweden launched a nationwide

²²⁸ PROSTITUTION AND SEX TRAFFICKING REPORT, *supra* note 5.

²²⁹ *See id.*

²³⁰ SULLIVAN, *supra* note 205, at 4; *see, e.g.*, Raymond, *supra* note 37, at 1163. Legalization has engendered a culture of increased tolerance for prostitution in Victoria, which has had the effect of vastly increasing the demand and thus increasing sex trafficking as a steady flow of girls and women are need to fulfill the demand. SULLIVAN, *supra* note 205, at 4. Indeed, legalization of prostitution has only served to drastically increase the illegal sex trade; Victoria has an extensive illegal prostitution trade despite the fact that prostitution has been illegal since 1984. *Id.* at 13.

²³¹ Raymond, *supra* note 37, at 1164; *see also supra* note 220.

²³² *See* HUGHES, *supra* note 9, at 31-35.

²³³ *Id.* at 40.

²³⁴ *Id.* In addition to significantly lower recidivism rates, johns who attended the schools were more likely to accept responsibility for their actions, more likely to admit they have a sex addiction, and less likely to report favorable attitudes towards prostitution. *Id.* at 39.

²³⁵ In June 2007, the State Department launched the second annual "Summer of Anti-Trafficking in Persons Movie" outreach program. Eric Green, *State Department Offers Film*

public education campaign in conjunction with their passage of the Prohibition Act.²³⁶ As a result of the Prohibition Act and the public awareness campaign, the number of Swedes who support the law has increased, and there is now heightened national consciousness about the harmful effects of trafficking.²³⁷ To influence a positive change in male attitudes and norms among impressionable teenaged boys, the United States should consider incorporating age-appropriate discussions of sex trafficking and exploitation into high school sex education curriculums.

In addition to its domestic efforts to address male demand, the United States must initiate and lead a global effort to combat sex trafficking through demand-oriented measures. The main drawback of Sweden's law has been the negative externality effect of increasing sex trafficking and prostitution in neighboring countries.²³⁸ Since no country is immune from the harms of sex trafficking,²³⁹ it is imperative that every country stands firm and united in a global commitment to eradicate sex trafficking.²⁴⁰ A first step in this endeavor would be for the United Nations to adopt a revised protocol, one that accurately reflects the significance of the demand factor by requiring Member States to adopt abolitionist legislation and to ensure its enforcement.

This emphasis on the demand side is not meant to negate the good intentions of current efforts that address the poverty and paucity of economic opportunities for women and girls in developing countries. Eliminating the continuing gender inequality and reducing destitute women's economic incentives to take risky jobs abroad are critical, but very long-term, solutions. Even increasing the penalties and conviction rates for sex traffickers is unlikely to significantly deter the sex trade since the

Program on Trafficking in Persons, June 8, 2007, <http://www.america.gov/st/washfile-english/2007/June/20070608130830X1eneerg0.3753168.html>. U.S. embassies and consulates worldwide arranged screenings of several films that vividly display the evils of trafficking in persons. *Id.* The Trafficking in Persons film outreach program received a "tremendous response" from foreign audiences and has been "very effective" at raising awareness of the trafficking issue. *Id.*

²³⁶ Raymond, *supra* note 183, at 10-11.

²³⁷ SWEDISH PROSTITUTION AND TRAFFICKING IN WOMEN, *supra* note 198, at 1.

²³⁸ Because Sweden is no longer considered a good market for trafficking, other markets such as Denmark, Germany, Holland, and Spain have become more attractive to traffickers. HUGHES, *supra* note 9, at 27.

²³⁹ MALAREK, *supra* note 19, at 5.

²⁴⁰ Based on her travels around the world, Secretary of State Condoleezza Rice has noted a greater desire by other countries to fight the trafficking problem and to protect its victims. Eric Green, *Public Awareness of Human Trafficking Increasing, Rice Says*, June 12, 2007, available at http://usinfo.state.gov/gi/global_issues/human_trafficking/human_trafficking_archive.html. She also noted that the United States is helping to lead a global movement "not just to confront this crime, but to abolish it." *Id.*

extremely lucrative profits are too enticing. Thus, the most effective way to drive immediate and long-term change is to apply pressure on the “weak link” in the sex trafficking chain: the male demand.²⁴¹ Male buyers must be held responsible and liable for their role in perpetuating and sustaining this modern-day slave trade.²⁴²

By patronizing the sexual services of trafficked women, johns are “debas[ing] themselves and deepen[ing] the misery of others” as President Bush described in an address to the United Nations.²⁴³ Trafficking is “a special evil” because it abuses and exploits the most innocent and vulnerable members of society.²⁴⁴ All human beings have inherent dignity and are deserving of respect, hence they should never be reduced to “objects of power or commerce.”²⁴⁵ The unfortunate reality is that sex-trafficked victims are often stripped of their humanity and seen only as expendable commodities, living everyday in an “underground of brutality and lonely fear.”²⁴⁶ Sadly, too many sex-trafficked victims will end their short lives as sex slaves, never breaking free of the brutality and lonely fear.²⁴⁷

In spite of the bleak picture, there is still hope. By addressing the key driver of the global sex trade—male demand for commercial sexual services—one hopes that the rampant sex slavery trade of today will soon follow the path of the African slave trade into the dark chapters in the annals of human history. It is too late to save many girls like Andrea from permanent and irreversible damage,²⁴⁸ but one sincerely hopes that vigorous efforts to eradicate sex trafficking now will save a future generation of girls from becoming like Andrea.

²⁴¹ TORREY & DUBIN, *supra* note 46, at 15.

²⁴² See Raymond, *supra* note 37, at 1157.

²⁴³ George W. Bush, U.S. President, Address to the United Nations General Assembly (Sept. 23, 2003) (transcript available at <http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ See Landesman, *supra* note 1.

²⁴⁸ *Id.*