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## Vocation or Victimization: An Analysis of Legal Models Addressing Prostitution

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VOCATION OR VICTIMIZATION:  
AN ANALYSIS OF LEGAL MODELS ADDRESSING PROSTITUTION

by

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**Abstract**

This discussion of legal models addressing prostitution evaluates the three predominate models currently implemented worldwide: criminalization, legalization/full decriminalization, and partial decriminalization (also termed the Nordic Model). Specific focus is given to each model's capacity to maintain nations' human rights obligations to people in prostitution, specifically the right to free choice of employment, and the right to safe working conditions free of exploitation and coercion. Along with evaluating the origins, structure, strengths, and weaknesses of each, case studies of all three models in practice are incorporated to transition from theoretical to practical evaluation. Each model's unique design, purported outcomes, and various failures to fulfill certain aspects of the state's human rights mandates is explicitly discussed with particular attention to the unintended consequences which exacerbate impacts of systemic inequality worldwide.

*Keywords:* prostitution, legal model, policy, human rights

## Introduction

The common trope of the “oldest profession” is what many initially think of when asked to describe prostitution. However, the notion of a static, timeless trade could not be further from the reality experienced by the millions who work in prostitution. It is a changing, highly sophisticated field with dozens of platforms, definitions, and settings under which it operates. Yet, there are striking commonalities across the sex industry, which transcend national and cultural boundaries. It is both the similarities and the diversity within the sex trade which comprise the focus of this study, with special emphasis on how these changes affect the lives and outcomes of the prostitutes themselves.

The legal status of prostitution has been radically disparate in various cultures and throughout history. From state-sponsored Ancient Greek *hetairai*, sexual servants dedicated to the goddess Aphrodite,<sup>1</sup> cis-gendered women and trans-women working in the 330 windows in Amsterdam’s red-light district,<sup>2</sup> to the over 19,000 victims of sex trafficking in Pakistan in 2019,<sup>3</sup> prostitution’s status in society continues to evolve. Yet the public is consistently unaware of the personal experiences and impact of these differences on the lives of sex workers. Today, the status of prostitution varies across political and ideological spectrums, spanning from countries enforcing its illegality and subsequent stigma, to a taxed public industry accepted and celebrated within society. The end of the 20<sup>th</sup> century witnessed radical shifts in political thought and public discourse concerning prostitution’s status and acceptance in society. The advent of legalized prostitution zones, opposition to criminal penalties against sex workers, and the rise of the internet as a new commercial medium, are just a few examples of the recent phenomena

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<sup>1</sup> Strabo, “Book VII,” 189 – 191.

<sup>2</sup> Nugent, “Amsterdam’s Red Light District.”

<sup>3</sup> United States Department of State, “Trafficking in Persons Report: Pakistan” under “Protection.”

changing the landscape of the sex industry. While these changes have brought much-needed attention to the lives, backgrounds, and experiences of sex workers, more investigation is required to evaluate the effects beyond increased visibility. This knowledge gap must be interrogated, as too often systemic injustices are concealed within this hidden community.

Determining whether policy actions truly cause their intended help or instead create accidental harm is a necessary step to generate tangible progress that will produce lasting positive change. Current debates surrounding prostitution often center on whether its status should be regarded as criminalized immorality; legitimate employment; or as a symptom of systemic gender-based violence and disproportionate exploitation of women. These three ideological classifications leave the status of the prostitutes affected as either criminal actors, persecuted workers, or exploited victims – drastically different positions with highly varied ideological, legal, and social outcomes. It is arguable that perhaps the realized outcomes for the people in the sex industry ought to have more weight than their ideological origination. However, evaluating what is considered a “positive” or “negative” result in this context is extremely difficult because there is disagreement about what the state’s opinion and subsequent role in prostitution should comprise. Even simple categories such as “health and safety” have complex implications in terms of what is included in the definitions and which metrics should be used to evaluate results. What is agreed upon is the necessity of the state to treat prostitutes as people – deserving of rights, protection, and freedom of opportunity. These standards are enshrined in the internationally recognized Universal Declaration of Human Rights, authored by the United Nations. Despite disagreement concerning prostitution itself or a state’s obligation in its regulation, it is indisputable under international law that every person, regardless of identity, beliefs, or occupation, are entitled to the conditions and opportunities stipulated in the 1948

document. Therefore, it serves as an objective backdrop with which to evaluate the effects of different approaches and changes to the sex industry.

Article 23 of the United Nations' Universal Declaration of Human Rights stipulates that all people have the right to free choice of employment, fair working conditions, and protection against unemployment.<sup>4</sup> In the context of prostitution, this article is often juxtaposed with the UN's 1979 declaration from the Convention on the Elimination of All Forms of Discrimination against Women. This declaration calls for states to take any appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation through prostitution of women.<sup>5</sup> These two documents call on states to uphold the right to free choice of employment and maintain safe working conditions, free of exploitation and coercion. The question subsequently arises as to whether it is possible for states to achieve this balance posed by both UN declarations – ending sexual exploitation of women while simultaneously ensuring safe working conditions for those involved in the sex trade.

Subsequent policies and decisions designed to achieve this aim have dire consequences for the over 40 million prostitutes around the globe,<sup>6</sup> directly affecting their access to law enforcement protection, healthcare, and social services. Given prostitution's status as a highly dangerous occupation, with studies showing the lifetime prevalence of workplace violence experienced by people in prostitution ranging from 45%-75%,<sup>7</sup> it is especially vital that prostitutes enjoy the ability to exercise their fundamental human rights: specifically, the right to work in fair and safe conditions, the right to social protection, the right to an adequate standard

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<sup>4</sup> United Nations, "The Universal Declaration of Human Rights," under "Article 23."

<sup>5</sup> United Nations, "Convention on the Elimination of Discrimination" under "Article 6."

<sup>6</sup> Goldman, "Current Assessment of Prostitution," page 8.

<sup>7</sup> Deering, et al., "Review of the Correlates of Violence", under "Abstract."

of living, and the right to the highest attainable standards of physical and mental well-being.<sup>8</sup> Moreover, people from marginalized communities worldwide are subject to disproportionate levels of violence within the sex industry. One study conducted in 2011 clearly demonstrated this reality of constrained choice with few alternatives for prostituted Native women in Minnesota; 75% of interviewees reported selling sex in exchange for food, shelter, or drugs.<sup>9</sup> The study also revealed the intensity and prevalence of violence in prostituted Native women's lives. 98% of the interviewees had experienced homelessness at some point; 92% of the interviewees reported being raped in prostitution; 84% of interviewees reported assault at some point during their time in prostitution; and 79% of the interviewees identified themselves as victims of sexual abuse as children.<sup>10</sup> The authors contrasted these statistics to their global counterparts and found that although the Native women had experienced much higher rates of abuse, women working in prostitution in other parts of the world had frequently been the victims of similar crimes. In studies examining a global sample population, 57% of prostituted women reported experiencing rape during their time in prostitution, 75% reported experiencing assault, and 63% reported victimization of sexual abuse as children.<sup>11</sup> These shocking reports demonstrate just one iteration of a common pattern found in any community or country worldwide: prostitutes are targeted for exploitation based on their identity, specifically in terms of gender, race, ethnic, and immigration status. With the intense prevalence of violence and exploitation, it is essential for the global community to engage in conversation surrounding the efficacy of current models, and the exploration of possible change and innovation, in order to better intervene.

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<sup>8</sup> United Nations, "International Covenant on Rights", under "Article 6," "Article 11," and "Article 12."

<sup>9</sup> Farley, Matthews, et al., "The Garden of Truth," 25.

<sup>10</sup> Farley, Matthews, et al., "The Garden of Truth," 3.

<sup>11</sup> Farley, Matthews, et al., "The Garden of Truth," 28.

Guided by a combination of international standards, policies, and cultural norms, approaches to maintaining prostitutes' human rights is as varied as it is complicated. This paper will examine the three most common legal approaches to prostitution currently implemented around the globe and evaluate how well each model enables the state to fulfill its responsibility of maintaining the human rights outcomes of free choice of employment and safe working conditions free of exploitation and coercion, as stipulated by the United Nations. By using these internationally agreed upon standards concerning a state's obligation to its citizens, it is possible to objectively compare disparate ideologies and realized outcomes against a common, accepted metric of success. This analysis employs significant complexity, since this metric is impossible to measure with only percentages or statistics. Instead, various trade-offs and compromises are compared to the value they bring toward achieving the overarching goals previously determined – analysis that often results in disagreement between authors and commentators alike. Considering the clear intersectionality within prostitution concerning violence, freedom of choice, economic opportunity, and marginalized communities, the equity of both the proposed and realized outcomes in the models discussed should be paramount in any analysis regarding prostitution's legal status.

While there are variances in each model's implementation between countries, every iteration is united by a core assumption concerning whether prostitution ought to be considered criminal activity, sex work, or exploitation. These assumptions correspond respectively with the legal models of criminalization, full decriminalization and legalization, and partial decriminalization, (also termed the Nordic Model). Discussion around these approaches typically concern the ideological and moral soundness of the assumptions on which each model is based, and decidedly less analysis is directed toward their efficacy. This research is designed to occupy



this space, specifically asking the question: which model provides the best outcome for the prostitutes themselves as determined by these internationally agreed upon human rights objectives?

Both statistical and anecdotal inputs are key to understanding the lived experiences of prostitutes globally and thus both will be considered in this review. These two distinct inputs allow for both quantitative and qualitative inputs to be considered – essential when evaluating a field long overshadowed by stigma, criminality, and poverty, in addition to being part of the shadow economy by necessity. As a result, while many studies and narratives cannot provide exact data or details, the amount of literature available over long periods of time provides enough input to consider and draw reliable conclusions from concerning both developed and emerging patterns. This study will use the terms “prostitute,” “people in prostitution,” and “sex worker” to refer to people selling sexual services in exchange for monetary gain or other forms of compensation. While there is political disagreement about the appropriateness of one term over another, each term equally fits this definition and therefore will be used in that context. Also note that prostitution in this study refers to adults in prostitution. Child prostitution is a systemic, tragic problem facing the global community. However, it constitutes an entirely different social and legal context in terms of public attitudes and policy response. Therefore, this paper will focus on the practical and legal experience of adults in prostitution, and the distinct, equally important issue of child prostitution warrants separate discussion.

## **Criminalization**

The criminalization model is one of the more familiar models to the public, as it is the second most common model internationally (behind legalization).<sup>12</sup> This approach characterizes the historical policies of many governments, which take a broad stance on the criminality of prostitution and approach it similarly to any other illicit activity. The philosophy guiding criminalization regimes is a moral rejection of prostitution, which leads to categorizing it as illegal, with the aim of eradicating the practice.<sup>13</sup> This motivation can stem from a variety of social circumstances including religious beliefs, political motivations, or cultural norms. Regardless of the origin, the criminalization model is characterized by a broad designation of all actors participating in prostitution as engaging in criminal activity and therefore subject to prosecution. The exact anatomy of these penalties, how often they are enforced, and inequalities in whom they are applied to exhibit wide variation across different implementations. However, there are distinctive features foundational to every criminalization regime – criminal penalties punishing those in prostitution, criminal penalties punishing pimps and traffickers, active prosecution against these crimes, and few retributive actions against buyers of prostitution. These features often result in adverse consequences, particularly at the expense of the safety of prostitutes operating under this model. They also significantly impair the ability of the state to successfully maintain the human rights of free choice of employment and fair and safe working conditions free from exploitation.

Perhaps one of the simplest arguments in favor of a criminalization policy model is that it makes the trade of the final good (sexual services) significantly more difficult to sell or obtain.

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<sup>12</sup> ProCon.org, “Countries and Their Prostitution Policies.”

<sup>13</sup> Vanwesenbeeck, “Sex Work Criminalization” under “Introduction.”

This theoretically discourages prostitutes, pimps, and traffickers from supplying these services, thereby reducing trafficking and overall prostitution.<sup>14</sup> This is accomplished through the criminalization of all aspects of prostitution, including brothel keeping or pandering (defined as encouraging or compelling a person to sell sexual services in exchange for monetary compensation), pimping (receiving something of value while knowing it was obtained through prostitution), the act of prostitution (engaging in sex acts in exchange for monetary compensation), and the purchase of sexual services.<sup>15</sup> Criminalizing each of these related aspects of prostitution individually attempts to reduce any and all profit from the sex industry by creating disincentives to maximize risk and minimize potential gain. Throughout the world, the criminalization model follows this basic blueprint in any iteration.

The primary drawbacks to the implementation of a criminalization model, demonstrated by numerous studies, center around its inability to reduce incidences of violence and coercion. Evidence also shows the propensity of criminalization regimes to increase the violence experienced by prostitutes especially when compared to other legal models. The criminalization model's perpetuation of violence is the main motivation behind the growing movement (including organizations such as the World Health Organization, the United Nations guidelines, and the Global Commission on HIV and Law) calling for the removal of criminal penalties against those who sell sexual services. Such criminalization, its opponents argue, functionally serves as a barrier to protecting the basic health, safety, and rights of prostitutes.<sup>16</sup>

A consistent issue within any criminalization implementation is the antagonistic relationship between sex workers and law enforcement. Prostitutes are subject to significantly

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<sup>14</sup> Lee and Persson, "Human Trafficking and Regulating Prostitution," 13.

<sup>15</sup> Mathieson, Branam and Noble, "Prostitution Policy," 372.

<sup>16</sup> Deering, et al., "Review of the Correlates of Violence," under "Key Correlates."

higher rates of violence, abuse, and crime than the general population, and yet are unable to seek justice or protection from law enforcement due to their status as illegal workers. This inaccessibility creates a power-imbalance between prostitutes and police officers, as officials can simply arrest prostitutes in contact with law enforcement instead of responding to reports of crime or abuse. A 2014 systematic review of correlates of violence against prostitutes found that the percentage of people in prostitution who had experienced any kind of violence stemming from their occupation ranged from 45% to 75%, with 32% to 55% reporting they had experienced violence within the previous year.<sup>17</sup> The study found significant evidence of a correlation between the incidence of both physical and sexual violence towards prostitutes, and the presence of policing practices, specifically arrests, violence, coercion, etc.<sup>18</sup>

The police practice of threatening arrest for possession of condoms as evidence for prostitution activity poses an especially acute risk to prostitutes in terms of their protection, health, and well-being.<sup>19</sup> Several studies highlight the issue of discouraging condom use, with particular emphasis on its propensity to undermine HIV and STI prevention efforts and subsequently put prostitutes at greater risk for these health hazards.<sup>20</sup> An additional complication of the criminalization model is found in the barriers it poses to prostitutes' access to law enforcement protection – an especially critical issue considering most prostitutes experience some form of violence while working. Under criminalization regimes, access to law enforcement can be difficult if prostitutes are fearful of charges being brought against them when reporting assault, rape, robbery, or other crimes. Even if contact with law enforcement is made, officials

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<sup>17</sup> Deering, et al., “Review of the Correlates of Violence,” under “Summary of Included Studies.”

<sup>18</sup> Deering, et al., “Review of the Correlates of Violence,” under “Risk Contexts of Violence.”

<sup>19</sup> Deering, et al., “Review of the Correlates of Violence,” under “Legal Policies.”

<sup>20</sup> Human Rights Watch, “Sex Workers at Risk;” Amnesty International, “Harmfully Isolated,” 32.

consistently fail to register violence against prostitutes as an offense, particularly if the violence is perpetuated by the police.<sup>21</sup>

With high incidences of violence, abuse, trauma, and chemical dependency, prostitutes are often in need of access to social services including healthcare, housing, and mental health support, among others. Unfortunately, many similar barriers to those with law enforcement are present with access to these services also. The criminal records and repeated incarcerations prostitutes incur under criminalization regimes prevent access to many necessary services and opportunities, especially education, legally permissible employment, and loans.<sup>22</sup> This either causes or accentuates severe economic disadvantages for prostitutes, making it increasingly difficult for them to exit prostitution as their access to services and alternative employment is severely limited.

Criminalization models also tend to cause the most hidden subsections of the prostitution population to move further underground, and subsequently make the women involved harder to access, due to fear of prosecution. Street-based prostitutes are especially vulnerable to being pushed underground by police sweeps and increased arrests. Many street-based prostitutes are in acute need of a wide range of social services addressing chemical dependency treatment, mental health and counseling/support, vocational training, healthcare, and other needs, but are reluctant to seek support due to stigma, penalties, or lack of confidence that a change in lifestyle could improve their situation.<sup>23</sup>

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<sup>21</sup> Deering, et al., “Review of the Correlates of Violence,” under “Legal Policies.”

<sup>22</sup> Mathieson, Branam and Noble, “Prostitution Policy,” 377.

<sup>23</sup> Thukral, Ditmore and Horowitz, “Revolving Door,” 79.

Research in New York City found that street-based prostitutes often had relationships with “pimps” resembling those found in domestic violence situations, in which the abuser exerts a level of psychological control over the abused.<sup>24</sup> This controlling relationship can make it difficult for street-based prostitutes to work together or take advantage of any services offered. These findings support the conclusion that arrests may not be an effective tool in reducing street-based prostitution, compared with providing assistance to sex workers addressing the underlying causes and circumstances related to why they engage in prostitution, (which include high rates of homelessness, chemical dependency, poverty, and desperation).<sup>25</sup> Criminal prosecution does not address the prevalent abusive patterns or relationships, but instead only temporarily removes the prostitute from the situation, depositing them into an unchanged environment upon release with the added barrier of a criminal record.

Criminalization policies also have the capacity to subject trafficking victims to a double form of victimization, suffering first at the hands of traffickers and second to a criminal justice system unwilling to address the circumstances underlying their situation.<sup>26</sup> Similar to the experiences of street-based prostitutes, trafficking victims acutely require a wide range of specialized social services, particularly in the areas of trauma and mental health. However, their access to most services is limited under criminalization regimes as fear of stigma, arrest, and prosecution, in addition to the abovementioned barriers presented by the traffickers themselves through control and coercion, can prevent trafficking victims from seeking assistance when needed. The added barrier of criminal records further reduces victims’ access to social services that could intervene to assist with exiting prostitution.

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<sup>24</sup> Thukral, Ditmore and Horowitz, “Revolving Door,” 79.

<sup>25</sup> Thukral, Ditmore and Horowitz, “Revolving Door,” 5.

<sup>26</sup> Lee and Persson, “Human Trafficking and Regulating Prostitution,” 26.

Ironically, criminalization, although it is a costly framework, fails to accomplish its primary goal of reduced trafficking. The lack of return (in terms of reduced trafficking rates and reduced crime) under a criminalization model serves as a severe discouragement to its implementation. Combined with the increased health risks and prevalence of police abuse, use of the model raises serious concerns regarding its ability to fully address the main issues of crime, health, and safety, which are tantamount to any prostitution policy discussion. For these reasons, among others, the European Parliament has determined that criminalization regimes are less effective at reducing trafficking than other policy models. It has officially called for the criminal burden to be shifted away from sellers of sex onto the purchasers to reduce demand and decrease prostitution's profitability for criminal organizations and actors.<sup>27</sup>

One example of a country operating a criminalization regime is Hong Kong. While technically the sale of sexual services is legal, most activities associated with conducting prostitution are illegal. These illegal activities include (among other things) solicitation for an "immoral purpose," loitering for the purpose of solicitation, publicly displaying advertisements for prostitution, running a "vice establishment" of two or more people, allowing property to be used as a "vice establishment" or for habitual prostitution, and living off the earnings of the prostitution of others.<sup>28</sup> The practical reality of navigating this legal situation is complex. While it is technically legal for prostitutes to sell sexual services, the law restricts them from initiating contact for sales; advertising; conducting prostitution in a building they do not personally own; and sharing a working environment with any other prostitute. This complex web of legal nuances

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<sup>27</sup> Honeyball, "Report on Sexual Exploitation," 12.

<sup>28</sup> Amnesty International, "Harmfully Isolated," 9; Government of Hong Kong, "Cap. 200 Crimes Ordinance."

often results in confusion on the part of prostitutes and allows for loose interpretations on the part of government officials, resulting in unduly harsh consequences.

For example, the law specifically prohibiting solicitation utilizes the term “immoral purposes,” which courts have interpreted as including prostitution itself.<sup>29</sup> Therefore, the person who initiates contact for the purpose of offering or purchasing sexual services is held criminally responsible, facing fines of up to 100,000 Hong Kong dollars (\$12,900 USD) and imprisonment for as long as six months.<sup>30</sup> The definition of “vice establishment” extends to two prostitutes sharing the same apartment or property for the purpose of selling sexual services, and essentially forces prostitutes to work in isolated conditions where they are much more vulnerable to abuse from clients and other criminal actors.<sup>31</sup> Further, Hong Kong law does not include any corresponding legal protections for prostitutes to address their safety concerns, fueling pervasive stigma and discrimination. This lack of protection forces sex work underground, where prostitutes are subject to aggressive policing, and significantly increased risk for violence with little access to necessary social, healthcare, or legal services.

A report published by Amnesty International in 2016 employed broader analysis of prostitutes’ experiences in Hong Kong, as well as individual interviews. A pervasive theme throughout each prostitute’s reported experience was the presence of police manipulation for the purpose of arresting and filing criminal charges against them.<sup>32</sup> Amnesty International’s report detailed numerous instances of undercover law enforcement officials approaching prostitutes on the street to inquire about sexual services. After going back to an apartment or beginning to

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<sup>29</sup> Amnesty International, “Harmfully Isolated,” 17.

<sup>30</sup> Amnesty International, “Harmfully Isolated,” 17.

<sup>31</sup> Amnesty International, “Harmfully Isolated,” 17; Government of Hong Kong, “Cap. 200 Crimes Ordinance.”

<sup>32</sup> Amnesty International, “Harmfully Isolated,” 23.



negotiate with the prostitute, the law enforcement official would arrest them and bring criminal charges. Numerous prostitutes reported that even though police officers often (illegally) initiated contact for sexual services, they rarely admitted to this in court. Instead, they ascribed solicitation to the prostitutes, who were then charged with the crime. Their testimonies were rarely believed in court, where police and official reports presented contrary accounts.<sup>33</sup> Other first-person accounts given by prostitutes in Hong Kong reported that, sometimes, a law enforcement official would request multiple prostitutes to attend an appointment or would bring another official to ensure two prostitutes would be present, in order to arrest and charge both prostitutes (present and working on the same property) with managing a vice establishment.<sup>34</sup>

These kinds of tactics force prostitutes to work in isolated conditions to avoid arrest, making them much more vulnerable to crime and exploitation. One interviewee reported that all crimes perpetrated against prostitutes occur because they are alone, and that if more than one person were present for mutual protection, they would be better protected from abuse.<sup>35</sup> However, as living off the wages earned by someone else's prostitution is illegal, prostitutes are unable to hire anyone for security. This extreme vulnerability further increases their likelihood of being victims of violence, as clients or other individuals who are inclined to rob or physically abuse prostitutes are given an easier opportunity to do so with the assurance that the victims are unlikely to go to the police for fear of criminal retribution themselves.

Additional Hong Kong police investigative tactics used included the seizure of physical evidence for criminal charges, which often includes "nearly everything" used for sexual services,

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<sup>33</sup> Amnesty International, "Harmfully Isolated," 26.

<sup>34</sup> Amnesty International, "Harmfully Isolated," 27.

<sup>35</sup> Amnesty International, "Harmfully Isolated," 44.

such as lubricant, cream, towels, tissues, and, most significantly, condoms.<sup>36</sup> Regular policing tactics focus specifically on searching for and seizing condoms as evidence in both “vice establishment” and “solicitation” charges. Despite international discouragement of the use of condoms as evidence, this practice is perpetuated with the subsequent consequences of discouraging condom possession and usage among prostitutes, putting them at greatly increased risk for contracting HIV and STIs.<sup>37</sup> Combined with harsh immigration penalty enforcement (an important factor as a large percentage of prostitutes in Hong Kong are migrants), the reality of the legal environment and fear of deportation causes prostitutes to be hesitant or fearful to go to the police when they are victims of violence. Prostitutes interviewed in Amnesty International’s report stated that police officers rarely followed up on their reports of violence, and often berated them with insults while they were taking their statements.<sup>38</sup> This in turn encouraged prostitutes to refrain from reporting abuse at all, rather than facing “the police blam[ing]” them for crimes providing little to no safety benefits.<sup>39</sup> Prostitutes in Hong Kong experience similar stigma when attempting to receive healthcare services, specifically in their ability to access timely professional help and receive comprehensive care.<sup>40</sup>

Hong Kong’s legal environment for prostitution poses significant risk to those operating within the country, as it heightens the already present danger. From policies forcing prostitutes to work in isolation, where they are far more vulnerable to violence from clients and other actors, to policing practices discouraging the use of condoms and therefore increasing HIV and STI risk, to societal stigma that affects prostitutes’ ability to access key services such as healthcare and law

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<sup>36</sup> Amnesty International, “Harmfully Isolated,” 44.

<sup>37</sup> Amnesty International, “Harmfully Isolated,” 32.

<sup>38</sup> Amnesty International, “Harmfully Isolated,” 49.

<sup>39</sup> Amnesty International, “Harmfully Isolated,” 49.

<sup>40</sup> Ma and Loke, “Female sex workers’ experience” under “Conclusion.”

enforcement, significant concerns related to Hong Kong's ability to maintain human rights under its current legal model exist. Specifically, the right to just and favorable conditions of work and the right to equal protection under the law<sup>41</sup> are compromised as law enforcement's role in arresting and charging prostitutes leads to an environment which provides no prevention or aid to victims of crime, violence, and exploitation from prostitution.

The criminalization model strives to eradicate the commodification of persons through discouraging participation in the sex industry via criminal penalties. While a seemingly simple approach on paper, the practical reality of implementing a criminalization model demonstrates a complex web of unintended consequences. Criminalization regimes across the world incorporate similar, harmful policing tactics – relying on utilizing condoms and other physical items related to sexual services to bring criminal charges against prostitutes, complicating their access to law enforcement protection, as well as social and healthcare services, and creating widespread societal stigma against sex workers. Participants in the sex industry who are victims of exploitation are unable to receive assistance from law enforcement, as their criminal status and imposed social stigma create significant barriers. This distance from law enforcement creates an environment where prostitutes are more likely to become victims of additional violent crimes, whether from pimps, clients, or other actors, as they receive little to no help criminal justice services. The criminalized environment also impedes any social services or further outreach from effectively operating in the local sex industry, particularly in the healthcare sector working to prevent the spread of STIs. These realities demonstrate the failure of criminalization models to adequately satisfy the requirement to uphold safe working conditions free of exploitation and coercion. Additionally, there is little evidence that the criminalization model effectively provides

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<sup>41</sup> United Nations, "The Universal Declaration of Human Rights," under "Article 23" and "Article 7" respectively.

free choice of employment, as it restricts entry into the sex industry through criminalizing participation and does not demonstrate any capacity for significant trafficking reduction. Based on this evidence, the criminalization model fails to satisfy the human rights obligations states are required to uphold and therefore should not be considered a viable legal approach toward prostitution.

### **Full Decriminalization and Legalization**

Growing alarm over the environment of fear, abuse, and intimidation characterizing the experience of prostitutes under a criminalization regime caused many activists to start exploring alternatives to a system of repression in the late 20<sup>th</sup> century. Feminist groups advocated for a new legal approach toward prostitution, transitioning away from moral condemnation and criminal restrictions in favor of regarding the sex industry as just another type of business, subject to regulation and tax obligations.<sup>42</sup> Concern over the failure of previous policy approaches to maintain human rights standards, particularly in upholding the safety and freedom of choice of employment afforded to prostitutes, provided considerable motivation to advocates for change. A consistent focus in these efforts centered on reducing the stigma associated with prostituted people and providing legal resources and protection to support their equal participation in society as workers. This change in status is reflected in part by advocacy for the linguistic transition from the terms prostitute and prostitution to sex worker and sex work, effectively legalizing and legitimatizing the sex industry in its totality within a consensual context.

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<sup>42</sup> Outshoorn, "Policy Change in Prostitution," 235.

The result from these efforts was a new model toward prostitution characterized by the practice of discontinuing criminal prosecution against actors in the sex industry, including prostitutes, buyers, or managers. The implementation of this approach can be generally divided into two similar but distinct variants – full decriminalization and legalization. Though the differences are acknowledged and explored in further sections, the assumption full decriminalization and legalization share, regarding the acceptance of the sex industry as a legitimate source of employment and industry allows them to be analyzed in tandem in terms of their effects on human rights outcomes. This is due to the nominally similar legal environment created by both models – both permit prostitutes to operate without fear of retribution from law enforcement. Additionally, both variants demonstrate similar drawbacks arising from this legal status, which impede their ability to maintain the human rights objectives of free choice of employment and fair and safe working conditions equally across population groups – consequences that will be explored further in more detail.

Implementations of the full decriminalization model bear the distinction of removing all laws which criminalize or prohibit any aspects of exchanging sexual services for monetary compensation, eliminating law-enforcement officials’ authority to intervene in prostitution-related activities unless other laws apply.<sup>43</sup> The elimination of the threat of prosecution and arrest is also intended to couple with new laws and policies providing protection for prostitutes from acts of exploitation and abuse.<sup>44</sup> However, the main purpose of the full decriminalization model is to remove legal barriers toward engaging in the industry for any and all actors. While generally the same regulatory laws applying to businesses also apply to prostitution under a

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<sup>43</sup> ProCon.org, “Countries and Their Prostitution Policies.”

<sup>44</sup> Amnesty International, “Sex Workers at Risk,” 19.

decriminalized regime, and acts of abuse are still subject to legal penalties, the purpose of a decriminalization approach is to eliminate government, regulatory, and law enforcement interference in the sex industry.<sup>45</sup>

This approach is subtly contrasted with the legalization variation of this model; while both advocate for an end to the criminal prosecution of sex work actors, the models accomplish this goal through different methods. Instead of full decriminalization's total removal of laws that criminalize or limit sex work, the legalization method introduces laws and policies specific to the sex industry with the purpose of formally regulating it.<sup>46</sup> This often includes processes whereby prostitutes are licensed, registered, required to undergo health checks, and obligated to work in certain areas – among other possible regulations.<sup>47</sup> A legalization approach allows governments more control over the location, operational methods, and working conditions in which prostitution occurs, with the desired outcome of increasing prostitutes' safety through regulated work environments.

Though these nuanced differences are consequential in terms of the specific policies enacted and broader legal framework, their overarching goal of eliminating criminal charges against actors within prostitution remains fundamentally the same. Additionally, both approaches share a foundational ideological framework concerning prostitution which stipulates consensual prostitution-related activity between two adults does not constitute sexual violence and therefore should not be subject to any legal penalties.<sup>48</sup> These key similarities allow them to be considered together as a cohesive, general ideological and legal approach toward prostitution as they share a

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<sup>45</sup> Amnesty International, "Sex Workers at Risk," 20.

<sup>46</sup> Amnesty International, "Sex Workers at Risk," 20.

<sup>47</sup> Klinger, "Perspectives on Prostitution."

<sup>48</sup> Human Rights Watch, "Sex Work Should Be Decriminalized."

definition, desired outcome, and overarching goal toward the sex industry: enabling its presence through reducing social stigma, legal barriers, and intervention by law-enforcement save for when necessary, such as in instances of abuse.

Both full decriminalization and legalization regimes seek to reduce the violence, stigma, and hardship experienced daily by prostitutes. The model prioritizes access to social services and a decreased police presence within prostitution overall, thereby encouraging prostitutes to participate in society through the elimination of both barriers and threats posed by the dangers of criminality. These models aim, through regulation akin to other business industries in the case of the legalization variation, to normalize the sex work industry with the purpose of allowing sex workers to exercise free choice in their decision to work in prostitution; freedom from retribution from law enforcement, protection against abusive clients and managers; and access to social services – rights enjoyed by workers in other industries. While these goals align with ensuring “the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,” whether this model can achieve these aims is a debated question.<sup>49</sup>

The importance of analyzing the effectiveness of a legalization regime in providing healthcare, specifically in HIV and STI prevention, cannot be overlooked. Legalization models, when compared with criminalization models, are better able to effectively lower HIV risk and improve health outcomes for prostitutes, as criminalization “creates significant barriers to developing targeted HIV prevention efforts.”<sup>50</sup> A 2017 study assessed the potential structural determinants of HIV risk to prostitutes, specifically analyzing whether criminal laws concerning

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<sup>49</sup> United Nations, “The Universal Declaration of Human Rights,” under “Article 23.”

<sup>50</sup> Freeman, “Legalizaiton of Sex Work,” 606.

sex work had an association with HIV prevalence in female prostitutes.<sup>51</sup> The study concluded that countries legalizing even some aspects of sex work demonstrated significantly lower HIV prevalence among prostitutes when compared with countries criminalizing all aspects of sex work. This was true even when controlling for disparate economic development levels and the proportion of prostitutes who were also injection drug users.<sup>52</sup> The authors concluded that the legalization of at least some aspects of sex work might help reduce the prevalence of HIV in an already high-risk group, and that the relationship between prostitution policy and HIV prevalence among prostitutes might be partly moderated by the effectiveness and fairness of enforcement.<sup>53</sup> These findings supported previous conclusions drawn from a 2015 study which examined the same population from a global perspective and also concluded that decriminalization was a necessary structural factor for achieving a reduction in HIV.<sup>54</sup>

These healthcare benefits are not restricted to HIV prevalence: the legalization model increases prostitutes' ability to access healthcare services, creating a significant positive impact on overall well-being. The imposition of legal penalties on prostitutes often leads to an environment of pervasive discrimination, stigma, and ill-treatment in social institutions and services from healthcare workers, law enforcement officials, and the broader public.<sup>55</sup> Instances of healthcare providers refusing to treat sex workers after discovering their occupation can result in deterring prostitutes from seeking any kind of healthcare or social services out of fear, a sense of rejection, and possible legal ramifications.<sup>56</sup> The legalization and full decriminalization

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<sup>51</sup> Reeves, et al., "National Sex Work Policy and HIV," under "Introduction."

<sup>52</sup> Reeves, et al. "National Sex Work Policy and HIV," under "Discussion."

<sup>53</sup> Reeves, et al. "National Sex Work Policy and HIV," under "Discussion."

<sup>54</sup> Shannon, et al., "Global Epidemiology of HIV," 67.

<sup>55</sup> Freeman, "Legalization of Sex Work," 601.

<sup>56</sup> Avert.org, "Sex Workers, HIV And AIDS" under "Social and Legal Factors."



models remove this fear and combat stigma through treating prostitution like any other form of work, thereby encouraging full societal participation from sex workers.

As part of bringing prostitution into the economic fold with other industries, legalization, and full decriminalization attempt to increase workplace safety for prostitutes. Decriminalization and legalization regimes enable more effective prostitute-led community organizing and outreach programs than do criminalization regimes, where stigma and fear of arrest or harassment deter such behavior.<sup>57</sup> Allowing prostitutes to organize creates an environment more conducive to group negotiation and advocacy, whether for enforcement of their legal rights, bringing assault cases to law enforcement, or facilitating access to social services. Increased workplace safety is also accomplished through the removal of any legal penalties to both prostitutes and their clients, which changes the relationship between prostitutes and law enforcement officials from adversarial to cooperative and refocused on protecting prostitutes from violence.<sup>58</sup>

A plethora of clear evidence exists demonstrating that the legalization model effectively serves people in prostitution who are in control of their own financial means, clients, and well-being. However, the actual percentage of the prostitution population represented in this self-empowered image is disputed. Studies suggest there are significantly varying degrees of autonomy enjoyed by sex workers under a legalization model, and that these degrees are heavily influenced by immigration status and racial identity, as well as other attributes. Several longitudinal studies have analyzed the prevalence of these degrees of autonomy, examining the effects of legalized and fully decriminalized regimes on direct actors in prostitution, and on instances of trafficking. One study published in 2013 examined whether countries that operated

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<sup>57</sup> Shannon, et al. "Global Epidemiology of HIV," 57.

<sup>58</sup> Amnesty International, "Rights of Sex Workers," 2.

under a legalization or full decriminalization model exhibited statistically significant higher rates of trafficking. The authors predicted that legalizing prostitution would expand the entire market for prostitution services, thereby increasing the instances of trafficking from a numerical standpoint in a given country. However, they also proposed that it was possible this effect would be contradicted by a substitutionary effect away from trafficking as both clients and sex businesses would be disincentivized from employing trafficked prostitutes since it would endanger their new legal status.<sup>59</sup> Upon conducting their quantitative empirical analysis for a cross-section of up to 150 countries, their findings indicated that the scale effects of the expansion of prostitution markets after legalization totally dominated the proposed substitution effects away from human trafficking.<sup>60</sup> Thus, the overwhelming increase in the overall prostitution market so dominated any motivation to employ legal prostitutes over illegal ones that the trafficking market experienced significant increases regardless of the positive incentive posed by the possibility of legitimized workers.

When the sample was divided into low-income and high-income countries, the effect of the expanded market became more nuanced. Change in the trafficking data from low-income countries, which are not significant destinations for international traffickers, was difficult to attribute to the isolated variable of legalized prostitution.<sup>61</sup> This was not the case for the high-income country sample: the coefficient of legal prostitution was statistically significantly larger, indicating the effect of legalized prostitution is stronger in high-income countries.<sup>62</sup> These findings present compelling evidence suggesting a statistically significant increase in human trafficking within countries implementing a legalization model, especially those that are

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<sup>59</sup> Cho, Dreher and Neumayer, "Does Legalized Prostitution Increase Trafficking?" 10.

<sup>60</sup> Cho, Dreher and Neumayer, "Does Legalized Prostitution Increase Trafficking?" 25.

<sup>61</sup> Cho, Dreher and Neumayer, "Does Legalized Prostitution Increase Trafficking?" 17.

<sup>62</sup> Cho, Dreher and Neumayer, "Does Legalized Prostitution Increase Trafficking?" 16.

attractive destinations for traffickers. The researchers corroborated these quantitative findings with brief case studies on the differing prostitution regimes of Denmark, Germany, and Sweden. While all three countries transitioned out of a criminalization model several years prior, Denmark and Germany operated a legalization model during the time of observation while Sweden had a partial decriminalization model (this approach is discussed later). Analyzing the changes in trafficking patterns before and after the new policies were enacted in each country, the authors found that Denmark and Germany experienced large increases in trafficking while Sweden did not. Even when controlling for the numerical increase in instances of trafficking, which could be anticipated due to an increase in demand for the sexual services resulting from its legalization, the increase in trafficking still far outpaced expectations. Though the authors had hypothesized that legalized regimes could create a dominant substitution effect over a scale effect on trafficking, where the availability of legalized prostitutes with no criminal penalties would reduce traffickers' incentives to pursue trafficking victims illegally since legal options were available, this did not occur. Instead, any realized substitution effect was completely dominated by the scale effect. In other words, the massive influx of new trafficking victims caused any evidence of preference for legal prostitutes to become undetectable, not only disproving the theory that a legalized sex industry would disincentive the use of trafficking victims in prostitution but instead providing evidence that the opposite is true. This massive increase in trafficking caused the authors to draw the overarching conclusion of correlating countries with legalized prostitution to experiencing larger reported incidences of trafficking inflows.<sup>63</sup>

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<sup>63</sup> Cho, Dreher and Neumayer, "Does Legalized Prostitution Increase Trafficking?" 25.

The findings of this larger study replicated those seen in previous studies which limited their evaluations to specific regions. After the Netherlands enacted a legalization model in 2000, an early efficacy study published in 2002 evaluated the social position of prostitutes after the change. The study found that prostitutes themselves had considerable autonomy but noted the possibility of coerced answers from interviewees due to controlling behavior by managers, possibly skewing the reported data.<sup>64</sup> They also discovered that legalization led to the creation of two separate sectors of prostitution. The first sector consisted of the licensed portion where the presence of minor and undocumented prostitutes dramatically decreased due to the new licensing system paired with regular inspections by local authorities.<sup>65</sup> The prostitutes working in this sector were predominately white, Dutch citizens and other Western European women. In contrast, the second category comprised the non-licensed sector where pimping and coercion remained and many prostitutes working were minors, or otherwise “illegal.”<sup>66</sup> The prostitutes working in this sector were predominately “foreign,” originating from Eastern Europe and West Africa, which contrasted with the general trend of foreign prostitutes coming from Thailand and the Philippines in earlier years.<sup>67</sup> A separate study estimated that half of all prostitutes working in Amsterdam at the time were members of the second sector and predominately driven to the sex industry as a result of economic factors – therefore willing to accept poor working conditions and low wages.<sup>68</sup> Exiting prostitution was difficult for most non-licensed workers as many either did not speak Dutch or had debts to pay, both of which constrained their ability to procure other employment.<sup>69</sup> Due to these vulnerabilities, many of these prostitutes were either actively victims

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<sup>64</sup> Outshoorn, “Policy Change in Prostitution,” 237.

<sup>65</sup> Outshoorn, “Policy Change in Prostitution,” 236.

<sup>66</sup> Outshoorn, “Policy Change in Prostitution,” 236.

<sup>67</sup> Outshoorn, “Policy Change in Prostitution,” 236.

<sup>68</sup> Outshoorn, “Policy Change in Prostitution,” 238.

<sup>69</sup> Outshoorn, “Policy Change in Prostitution,” 238.

of traffickers or driven into trafficking by exploiters who took advantage of their tenuous position within society.<sup>70</sup> Additionally, a considerable number of challenges stemming from chemical dependency, the medical risks of contracting STDs, unwanted pregnancies, and a lack of health insurance, posed considerable danger to prostitutes while working in the sex industry, and acted as additional barriers to exiting.

Perhaps the most famous example of the legalization model in practical experience is found in the Netherlands. Against a historical backdrop of the strict Morality Laws of 1911, which in addition to banning prostitution, also banned contraceptives, homosexuality, and abortion, the 1999 legalization of prostitution represented the culmination of a radical shift in Dutch feminism which began in the 1980s.<sup>71</sup> Distinguishing between “forced” and “voluntary” prostitution, the latter was legalized and classified as work, with regulation and authority delegated to local jurisdictions.<sup>72</sup> Sex clubs and brothels were involved in a new licensing system, which policymakers hoped would rid the larger sex industry of criminal elements, and make it similar to other industries, in terms of tax contributions and participation in government regulation. Human trafficking, or forced prostitution, remained a criminal offense, and only European Union (EU) citizens could legally work as prostitutes.<sup>73</sup> People from outside the EU were not allowed to receive work permits and therefore became undocumented workers without any legal protection once their temporary visas expired.<sup>74</sup> Legal sex workers, by contrast, were now entitled to the same social rights and obligations as other workers, which included paying taxes and making social security contributions. The goal of these policies was to integrate prostitution into the

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<sup>70</sup> Wagenaar, “Democracy and Prostitution,” 226.

<sup>71</sup> Outshoorn, “Policy Change in Prostitution,” 234.

<sup>72</sup> Outshoorn, “Policy Change in Prostitution,” 233.

<sup>73</sup> Outshoorn, “Policy Change in Prostitution,” 233.

<sup>74</sup> Outshoorn, “Policy Change in Prostitution,” 233.

larger society by treating prostitutes as workers and brothels as businesses, thereby increasing prostitutes' access to essential healthcare and social services.

An example of a full decriminalization model in practice is found in New Zealand, which passed its Prostitution Reform Act (PRA) in 2003. This law eliminated all criminal penalties and regulations regarding prostitution, aside from instances of violence, abuse, and exploitation. To assess the new model's effectiveness, the Prostitution Law Review Committee conducted a sweeping 2008 review of the Act's outcomes on prostitutes' experience in the workplace and society. The evaluation revealed that more than 90% of the prostitutes interviewed were aware they had legal rights and employment rights under the new law.<sup>75</sup> Additionally, two-thirds of prostitutes felt the law "gave them more leverage to refuse a client or the client's requests."<sup>76</sup> This was a by-product of the change from prostitutes having to negotiate with clients as quickly as possible (in order to avoid police contact for fear of arrest), to having adequate time to discuss price, condom usage, and other variables before agreeing to sell sexual services.<sup>77</sup>

A study published in 2015 revealed similar findings under legalization variations. Researchers found that opening decriminalized "safe zones" for street prostitution in nine Dutch cities was associated with a 30% – 40% decrease in sexual abuse and rape in the first two years.<sup>78</sup> However, the data did not distinguish between victim types, a relevant piece of data for determining whether this new rate is entirely attributed to a decrease in violence against prostitutes, specifically. It is also left open the question of whether sexual abuse went down or simply moved locations: evidence suggested the introduction of a licensing system some years

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<sup>75</sup> Prostitution Law Review Committee, "Report on Prostitution Reform Act," 53.

<sup>76</sup> Prostitution Law Review Committee, "Report on Prostitution Reform Act," 14.

<sup>77</sup> Freeman, "Legalization of Sex Work," 599.

<sup>78</sup> Bisschop, Kastoryano and van der Klaauw, "Street Prostitution Zones and Crime," 28.

after opening, which in effect forced a significant share of illegal prostitutes to move outside of the decriminalized zone, led to an increase in *citywide* sexual abuse.<sup>79</sup> Nevertheless, the findings were compelling and suggested that sex crime did reduce in certain neighborhoods after prostitution was legalized in those areas. Numerous other studies, including a United Nations 2007 review, also demonstrated that legalizing prostitution generally leads to better health-care services for sex workers and increased protection against unsafe working conditions, human trafficking, and violence.<sup>80</sup>

It is generally agreed that legalizing prostitution is conducive to empowering prostitutes who freely choose to work in the sex industry, giving them better access to the human rights stipulated in Article 23 of the Universal Declaration of Human Rights pertaining to the right to safe and favorable working conditions.<sup>81</sup> However, the model's ability to guarantee these same rights to prostitutes who are victims of coercion or trafficking, and its ability to prevent this population from increasing, is subject to debate. In 2005, an Amsterdam councilor – herself a former sex worker – asserted that one of the effects of the new legalization model was the resulting difficulty for law enforcement to identify and pursue cases in which prostitutes were subjected to violence.<sup>82</sup> Interviewees working in the legalized environment describe the gap between the *intention* of introducing workplace rights for prostitution and a *reality* in which prostitutes remained subjected to pimps who exhibited the same brutal behavior as before the law was enacted – but were now reclassified as businessmen, as opposed to abusers.<sup>83</sup> Support for women to leave prostitution has dwindled, even though the newly increased market, driven by

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<sup>79</sup> Bisschop, Kastoryano and van der Klaauw, “Street Prostitution Zones and Crime,” 53.

<sup>80</sup> The United Nations, “On Prostitution, Domestic Violence, Human Trafficking.”

<sup>81</sup> United Nations, “The Universal Declaration of Human Rights,” under “Article 23.”

<sup>82</sup> Bindel, *The Pimping of Prostitution*, 92.

<sup>83</sup> Bindel, *The Pimping of Prostitution*, 92.

sex tourism, has resulted in an industry where two-thirds of working prostitutes are foreign, most often illegal, and typically not registered in the new system.<sup>84</sup>

Failure to provide exit services is an issue in other legalization regimes, most notably in Germany and New Zealand, where prostitutes are left subject to violence or coercion with little support for escape. In a 2007 interview, the then-mayor of Amsterdam stated: “Since the legalization in 2000, things have changed. The law was created for voluntary prostitution but these days we see trafficking of women, exploitation and all kinds of criminal activity.”<sup>85</sup> The full decriminalization regime in New Zealand has caused similar adverse consequences since its implementation in 2003.<sup>86</sup> In 2004, New Zealand was declared a trafficking destination by the US Department of State, but no human trafficking convictions were secured until 2016.<sup>87</sup> The 2008 evaluation report concerning the effects of the PRA on prostitutes and the sex industry in New Zealand cited that the majority of prostitutes interviewed felt the PRA “could do little about violence that occurred.”<sup>88</sup> Other findings indicated brothels that had “unfair management practices continued with them” after the PRA’s implementation.<sup>89</sup> The report concluded that the status of the workplace environment for prostitutes had exhibited some improvement, but the improvements were not universal and the general circumstances regarding management practices had changed little since the Act was passed.

While it is true that legalization and full decriminalization models generally improve prostitutes’ access to social services and reduces their fear of retribution from law enforcement,

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<sup>84</sup> Bindel, *The Pimping of Prostitution*, 117.

<sup>85</sup> Bindel, *The Pimping of Prostitution*, 110.

<sup>86</sup> Bellamy, “Prostitution Law Reform in New Zealand,” 7.

<sup>87</sup> Bindel, *The Pimping of Prostitution*, 111.; Miko, “Trafficking in Persons,” 16.

<sup>88</sup> Prostitution Law Review Committee, “Report on Prostitution Reform Act,” 14.

<sup>89</sup> Prostitution Law Review Committee, “Report on Prostitution Reform Act,” 17.



there is considerable room for debate as to whether these positive changes outweigh their subsequent negative impacts. Legalization is well equipped to advocate for prostitutes who can exercise free choice in deciding when and why they choose to work in the sex industry. But legalization regimes also contain a tendency, elucidated by numerous research studies, to create an environment in which there is a considerable increase in the number of prostitutes not able to make these choices. These constraints come as a direct result of trafficking and coercion where prostitutes are targeted for vulnerabilities stemming from their nationalities, gender identities, ethnic identities, or immigration status.

Indeed, a 2006 report on the human rights of trafficking victims, the United Nations Special Rapporteur explicitly noted "State parties with legalized prostitution industries have a heavy responsibility to ensure that ... [they] are not simply perpetuating widespread and systematic trafficking." The report further stated that countries presently maintaining legalization models were "far from satisfying this obligation," as attested to by global trafficking conditions at the time of the report.<sup>90</sup> As a result, it is difficult to conclusively determine whether the legalization and full decriminalization models effectively maintain the human rights objectives of free choice of employment and safe working conditions, as they do not do so equally, and this inequality is exacerbated along racial, socioeconomic, and immigration status lines. The tension between creating a safer environment for some whilst expanding an exploitative market for others creates a complex problem, which must be considered when evaluating the overall effectiveness of the legalization and full decriminalization models.

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<sup>90</sup> Huda, "Integration of the Human Rights of Women," 9.

### **Partial Decriminalization – “The Nordic Model”**

Common criticism of the full decriminalization/legalization models, especially from international organization such as the United Nations, centers around its propensity to ignore the political economy of the international and domestic sex trade(s), and the ways in which gender, ethnicity, sexual orientation, class, and nationality, intersect to create particular patterns of trafficking and exploitation.<sup>91</sup> Often discussions surrounding the legalization of prostitution can focus on questioning the validity of the “right” to purchase sexual labor without dedicating space to examining the reasons behind the growth of the international sex trade and the conditions that lead (predominately) women into prostitution.<sup>92</sup> This lack of discussion can create inaccurate images of reality in terms of prostitutes’ background, daily experience, and ability to exercise free choice in their work.

Alarm over this inattention to prostitutes’ lived experience and increases in human trafficking and exploitation are the foundational motivations behind the partial decriminalization model. Its advocates are especially concerned with recognizing and addressing systemic exploitation in trafficking and prostitution at large. Proponents of this model suggest the best way to ensure free choice of employment and safe working conditions for all is to acknowledge the exploitative nature of the sex industry and reduce its scale with the goal of subsequently reducing the number of its victims.

Partial decriminalization is often termed the “Nordic Model” or the “Swedish Model” due to its original conceptualization and founding in Sweden in 1999 and subsequent adoption by

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<sup>91</sup> Limoncelli, *The Politics of Trafficking*, 154.

<sup>92</sup> Limoncelli, *The Politics of Trafficking*, 154.

Norway and Iceland soon after.<sup>93</sup> The Nordic Model is based on the assumption that prostitution is a symptom of gender-based male violence against women and children and is therefore officially recognized as a form of exploitation.<sup>94</sup> This view is supported by data demonstrating a power imbalance between the sellers and purchasers of sex: the average age of entry into prostitution is estimated at 12-14 years for females – a shocking statistic, since the prostitution population is overwhelmingly and disproportionately comprised of women.<sup>95</sup> By contrast, the vast majority of prostitution *users* are males, of various ages, typically married or in a relationship with children, who are often well-educated and medium to high income earners.<sup>96</sup>

Additional literature demonstrates several unequal and abusive aspects of the sex industry. One study interviewed prostitutes across nine countries (Canada, Columbia, Germany, Mexico, South Africa, Thailand, Turkey, United States, and Zambia) and found 70% to 95% of interviewees had experienced physical assault in prostitution, and 63% to 75% were raped.<sup>97</sup> A full 68% of those interviewed met diagnostic criteria for Post-Traumatic Stress Disorder (PTSD), and the severity of PTSD symptoms was strongly associated with the instances of physical and sexual violence across their lifetime.<sup>98</sup> The same research uncovered other common significant stressors at play. For example, 89% of the same respondents reported that they wanted to leave prostitution but did not have any other options for survival.<sup>99</sup> 75% of interviewees had experienced homelessness at some point,<sup>100</sup> and 63% to 84% were victims of sexual assault as

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<sup>93</sup> Amnesty International, “Sex Workers at Risk.”

<sup>94</sup> Gutiérrez, “Prostitution and Gender-Based Violence,” 100.

<sup>95</sup> Gerassi, “From Exploitation to Industry,” 595.

<sup>96</sup> Ekberg, “Swedish Laws on Prostitution,” 3.

<sup>97</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 34.

<sup>98</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 43-44.

<sup>99</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 51.

<sup>100</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 34.

children.<sup>101</sup> Other research supported a link between symptoms of PTSD and Disorders of Extreme Stress Not Otherwise Specified (DESNOS) even when childhood sexual abuse (CSA) was controlled. Women who had experienced both CSA and prostitution, however, demonstrated the highest levels of traumatic stress.<sup>102</sup> More significant trends included the prevalence of chemical dependency as a motivating factor for engaging in prostitution, particularly among street-based prostitutes, and a lack of alternative employment opportunities.<sup>103</sup>

Proponents of the Nordic Model hold that gender equality will remain unattainable so long as these harmful, abusive patterns in prostitution continue, and argue that the majority of prostitutes are drawn into the industry by trauma and exploitation rather than by ideology or free economic choice.<sup>104</sup> This is perhaps the greatest point of distinction between partial decriminalization and full decriminalization advocates, as the former view prostitution as exclusively exploitation disguised as labor, while the latter views prostitution as labor which is exploited due to the lack of protections available to workers.

The Nordic Model is a unique blend of criminalization and decriminalization, as it approaches prostitution from two distinct angles. Implementing the Nordic Model involves a set of laws and policies aimed at criminalizing the demand for commercial sex – meaning those who are purchasing sex are subject to criminal charges and prosecution.<sup>105</sup> This policy is paired with decriminalizing the sale of sexual services. (In other words, discontinuing the practice of prosecuting prostitutes themselves.)<sup>106</sup> However, activities around the organization and

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<sup>101</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 43.

<sup>102</sup> Choi, et al., “PTSD and DESNOS Following Prostitution,” 945.

<sup>103</sup> Thukral, Ditmore and Horowitz, “Revolving Door,” 9.

<sup>104</sup> Bindel, *The Pimping of Prostitution*, 4.

<sup>105</sup> Bindel, *The Pimping of Prostitution*, xxxii.

<sup>106</sup> Farley, *Prostitution, Trafficking, and Traumatic Stress*, 180.

promotion of selling sex – particularly, pimping and advertising the sale of sexual services remain criminalized.<sup>107</sup> The purpose of this two-pronged approach is to substantially reduce (with the aim of eradicating) prostitution by criminalizing only the demand side of the sex industry, while liberating those who provide the supply from criminal charges.<sup>108</sup> An equally important aspect of this model is providing exit services to prostitutes who make contact with law enforcement, equipped to assist them in leaving prostitution and finding other sources of income and employment.<sup>109</sup>

The purpose of the Nordic Model’s multi-faceted approach is not only to conduct arrests and prosecutions against sex buyers, but also to change broad societal behaviors of exploitation and subsequent violence against women. Therefore, the reduction and elimination of prostitution and the support of former victims of prostitution are necessary components to achieving this broader goal. The Nordic Model demonstrates promising results in terms of reducing the rates of prostitution, trafficking, and sex-buying. Since the Nordic Model’s implementation in Sweden over 20 years ago, and its introduction into several other countries and jurisdictions during that time, longitudinal studies have examined this model’s effects on the prostitution market. Particularly when indexed against neighboring countries functioning under different models, the deliberate shifts in the prostitution market become increasingly clear.

Separate case studies in Norway and Sweden, respectively, found that partial decriminalization laws reveal similar effects on quantitative results: both countries demonstrated a lower prevalence of trafficking after implementing the Nordic Model.<sup>110</sup> Norway passed

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<sup>107</sup> Amnesty International, “Sex Workers at Risk.”

<sup>108</sup> Amnesty International, “Sex Workers at Risk.”

<sup>109</sup> The European Parliament Press Room, “Punish the Client Not The Prostitute.”

<sup>110</sup> Jakobsson and Kotsadam, “Prostitution Laws and Trafficking,” 16.

measures to criminalize sex buying in 2009, after which street prostitution declined and there was no reported increase in the indoor market.<sup>111</sup> Additionally, the presence of escort internet advertising decreased, and no new or replacement public spheres of prostitution were discovered.<sup>112</sup> After Sweden's implementation of the Nordic Model in 1999, the number of women involved in street prostitution declined between 30% - 50%, and the number of buyers decreased by as much as 75% - 80% in the next seven years.<sup>113</sup> Other estimates suggest the realized decrease in street prostitution was even higher, falling 62% - 68% between 1995 to 2014,<sup>114</sup> and still others estimate the overall prostituted population decreased by 74% - 78%.<sup>115</sup> Moreover, researchers concluded that almost no foreign women worked in street prostitution and that the new law had limited the amount of trafficking to Sweden in the early 21<sup>st</sup> century.<sup>116</sup> This stood in contrast to the circumstances neighboring countries using different prostitution models, such as Denmark, experienced during the same approximate timeframe.<sup>117</sup> A 2008 study found that despite its much smaller size (Denmark's population size being less than two-thirds of Sweden's), Denmark's prostituted population was ten times higher.<sup>118</sup>

Due to concerns that the criminalization of purchasing sexual services might have caused an adverse, accelerated effect of prostitution transitioning from occurring on the street to occurring indoors, online, or through other hidden forms, the Swedish government conducted an internal review concerning the Model's effectiveness. The 2010 report determined this to not be the case, as there was no evidence of a replacement effect in any other arenas. Though there was

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<sup>111</sup> Jakobsson and Kotsadam, "Prostitution Laws and Trafficking," 16

<sup>112</sup> Jakobsson and Kotsadam, "Prostitution Laws and Trafficking," 16

<sup>113</sup> Jakobsson and Kotsadam, "Prostitution Laws and Trafficking," 15.

<sup>114</sup> Mujaj and Netscher, "Prostitution in Sweden 2014," 7.

<sup>115</sup> Waltman, "Prohibiting Sex Purchasing," 147.

<sup>116</sup> Jakobsson and Kotsadam, "Prostitution Laws and Trafficking," 15.

<sup>117</sup> Ekberg, "Swedish Laws on Prostitution," 36.

<sup>118</sup> Waltman, "Prohibiting Sex Purchasing," 146.

a slight increase in Internet prostitution activity, the researchers attributed this to being a result of the development and adoption of technology over time as opposed to an effect of the law's implementation.<sup>119</sup>

The report further stipulated that despite other significant increases in prostitution within neighboring countries during the previous 10 years, Sweden had not experienced a similar increase, likely because the criminalization of purchasing sexual services had discouraged market growth.<sup>120</sup> In addition to deterring the buyers of sexual services, the report referenced evidence found by Sweden's National Police that the law served as both a deterrent and a barrier to pimps and traffickers in Sweden.<sup>121</sup> Moreover, the overall number of men in national population samples who reported purchasing sexual services demonstrated a significant decrease, from 12.7% in 1996 (before the Nordic Model was implemented) to 7.6% in 2008.<sup>122</sup> When asked about their own purchase of sex in 2008, these respondents stated they had not increased their purchase of sex, had not begun purchasing sex outside of Sweden, and had not engaged in purchasing sex in "non-physical" forms.<sup>123</sup> More recent evaluations conducted in 2014 found only 0.8% of Swedish men purchased sexual services sometime in the previous 12 months.<sup>124</sup>

The corresponding decreases in prostitution and sex buying in Sweden demonstrate the Nordic Model's effectiveness in reducing both the supply and demand in the prostitution market, and subsequently addressing the gender inequality exhibited in the interactions between the people who mostly comprise both sides of every transaction – typically a wealthier man

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<sup>119</sup> Ekberg, "Swedish Laws on Prostitution," 36.

<sup>120</sup> Ekberg, "Swedish Laws on Prostitution," 16.

<sup>121</sup> Ekberg "Swedish Laws on Prostitution," 36.

<sup>122</sup> Waltman, "Prohibiting Sex Purchasing," 148.

<sup>123</sup> Waltman, "Prohibiting Sex Purchasing," 149.

<sup>124</sup> Olsson, "Prostitution Policy in Sweden," 9.

demanding sexual services from a vulnerable or coerced woman. In a 2014 report, the European Parliament's Committee on Women's Rights and Gender Equality concluded the Nordic Model was the "most effective way of combating the trafficking of women and underage females for sexual exploitation and improving gender equality."<sup>125</sup> The Nordic Model's ability to reduce the size of the prostitution market is seen in other countries as well, demonstrated through both quantitative reports and international recognition. However, while the Nordic Model can achieve its primary goals of reducing the prostitution market and gender inequality, it has proven less effective at achieving its secondary goals, while also causing unintended, adverse consequences for those remaining in prostitution.

Despite its unique and unmatched ability to curtail violence, coercion, and trafficking within the sex industry, most implementations of the Nordic Model suffer from harmful side effects like those accompanying full criminalization. Though the act of selling sex is not itself a crime, the criminality of buying and marketing sex acts shrouds the prostitution work environment in dangers like those imposed by full criminalization. This can limit prostitutes' access to health care and social services, as well as law enforcement protection, despite the model's intent to promote access to victim services. Studies have cited concerns regarding clients threatened with criminal charges being among the leading causes of prostitutes' increased vulnerability to violence and limited access to social services – a direct result of the limited negotiation time between clients and prostitutes, due to concerns over law enforcement intervention. Pimps and traffickers face similar criminal penalties and thus are also motivated to reduce screening time, which heightens the danger of violence against women.

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<sup>125</sup> Honeyball, "Report on Sexual Exploitation and Prostitution," 12.



A longitudinal study published in 2020 studied the impact of Canada's Protection of Communities and Exploited Persons Act (PCEPA) (legislation implementing a Nordic Model system in Vancouver, Canada) on prostitutes' access to healthcare, violence support, and sex-worker/community-led services suggested similarly disappointing consequences.<sup>126</sup> The data were compiled from surveys administered to 900 cis-gendered and trans-women prostitutes, producing time-updated measures of their access to these services. The study compared the results of the post-PCEPA period (2015-2017) versus the pre-PCEPA period (2010-2013)<sup>127</sup>, and found that although the prostitutes were not themselves subject to criminal charges, the criminalization of prostitution itself perpetuated widespread violence, stigma, and discrimination against prostitutes. Comparisons of the pre-PCEPA and post-PCEPA periods demonstrated no increase in prostitutes' access to healthcare, violence, and sex worker-led support services. In fact, the report found a decrease in the odds of prostitutes accessing necessary services in some cases.<sup>128</sup>

One factor linked to this outcome was the restriction in prostitutes' ability to collectivize, due to the criminalization of sex work in general under the PCEPA. The lack of formal organization apparently hindered prostitutes' ability to work together to negotiate workplace safety, advocate for human rights, and ensure access to healthcare and safety.<sup>129</sup> The authors of the study concluded the PCEPA model could not be recommended for replication in other jurisdictions due to its failure to secure increased access to necessary services, and its propensity to inhibit prostitutes from advocating for themselves through collective action. It is worth noting

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<sup>126</sup> Argento, et al., "Impact of End-Demand Legislation," 1.

<sup>127</sup> Argento, et al., "Impact of End-Demand Legislation," 3.

<sup>128</sup> Argento, et al., "Impact of End-Demand Legislation," 6.

<sup>129</sup> Argento, et al., "Impact of End-Demand Legislation," 2.

that the study did not evaluate the effectiveness of the exit services provided or law enforcement's rate of successfully intervening in cases of violence or coercion.

Additional literature proposes that the Nordic Model's inclusion of *any* aspect of criminalization creates harmful effects on the workplace safety of prostitutes, even when individuals are not targeted by criminalization measures. The prohibition of formal brothel-keeping or pimping is correlated with prostitutes choosing to work alone, resulting in their increased isolation and subsequently higher risks for experiencing violence and abuse.<sup>130</sup> Criminalizing clients makes prostitutes' regular safety measures (such as condom use) more difficult to put into practice, thereby making client interactions and the workplace environment more hazardous.<sup>131</sup> Clients are hurried and less willing to reveal information about themselves (for fear of facing criminal charges), leaving little time for prostitutes to negotiate or screen potential client interactions to determine boundaries and evaluate risk.<sup>132</sup>

The Nordic Model's limitations are not confined to the workplace environment. Other studies have shown that social services, intended under the Model to be offered to prostitutes under all circumstances, are often only provided on the condition the sex worker leave prostitution.<sup>133</sup> As a result, only ex-prostitutes who recognize themselves as victims are eligible, leaving few options for current prostitutes to receive services. Importantly, other studies have shown that legalization and full decriminalization are not fully effective at eliminating stigma against people in prostitution among healthcare workers, service providers, and law enforcement

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<sup>130</sup> Vanwesenbeeck, "Sex Work Criminalization," 1634.

<sup>131</sup> Vanwesenbeeck, "Sex Work Criminalization," 1634.

<sup>132</sup> Vanwesenbeeck, "Sex Work Criminalization," 1634.

<sup>133</sup> Vanwesenbeeck, "Sex Work Criminalization," 1635.

officials, as seen in the case of New Zealand where active prostitutes still expect to regularly encounter stigma.<sup>134</sup>

Critics of the Nordic Model accuse its proponents of wrongly conflating all prostitution and sex work with sex trafficking.<sup>135</sup> Many organizations and individuals object to the Nordic Model's sweeping categorization of all prostitution as gender-based violence and exploitation, eliminating any possibility of consent or free choice. This argument begs wider examination of the ideological backdrop from which all the models discussed are implemented. The Nordic Model rests on a foundational assumption that recognizes prostitution as symptomatic of larger, systemic issues of exploitation and gender-based violence, especially targeting women and children as victims of male violence. As a result, the Nordic Model's ability to effectively curb the rate of both trafficking and overall prostitution is viewed as a successful reduction in instances of exploitation of women by men. Recognizing this view of prostitution is necessary to understanding this model as effective or successful.

By contrast, those who accept prostitution as a legitimate industry believe the Nordic Model's main outcome suppresses a legitimate labor market. Those who reject prostitution on moral grounds criticize the Nordic Model for unequally criminalizing only one party participating jointly in an illegal activity. Establishing what is considered equality within prostitution is crucial to examining any of the discussed models, as each pursues widely disparate goals: equal punishment, equal access to labor rights, and gender equality. Objective evaluation cannot take place without recognizing each model's distinct ideology, assumptions, and desired outcomes. From this perspective, the Nordic Model effectively achieves many of its

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<sup>134</sup> Abel, et al., *Taking the Crime out of Sex Work*, 127. See also page 21 for stigma in the healthcare industry.

<sup>135</sup> The Global Network of Sex Work Projects, "Challenging the Nordic Model," 20.

main objectives, especially reducing instances of trafficking and prostitution, though its secondary goals of providing effective social and exit services could benefit from further evaluation and perhaps innovation to better serve both current and former prostitutes effectively.

Perhaps the most famous example of the Nordic Model is found in its place of origin: Sweden. In 1999, the Swedish government passed legislation prohibiting the purchase of sexual services, the first of a series of preventative laws and measures specifically aimed at the protection of vulnerable women and children against acts of sexual violence.<sup>136</sup> The larger, long-term aim of the legislation sought to reform society, so that the culture of domination realized in prostitution would be transformed into a culture in which the human rights of all women and children are protected.<sup>137</sup> The Swedish government explicitly outlined this aim in the bill, stating its purpose as protecting both individual and societal interests.<sup>138</sup> Thus, prostitution is treated as a crime against not only affected individuals, but also public order and society at large.

Importantly, while the legislation is designed to intervene against prostitution through the discouragement of purchasing sexual services, Sweden's bill also stipulates that municipalities must provide specialized exit support and protection to those exploited through prostitution.<sup>139</sup> It articulates a responsibility on the part of the social welfare committee to ensure both victims and "next of kin" (implying children and dependents) are supported through means which may include shelter accommodations, financial assistance, interpretation services, and psychosocial support.<sup>140</sup> Notably, in a previously mentioned study prostitutes across nine countries were clear about which services they needed: 89% responded that they desired to leave prostitution; 76%

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<sup>136</sup> Ekberg, "Swedish Laws on Prostitution," 7.

<sup>137</sup> Ekberg, "Swedish Laws on Prostitution," 7.

<sup>138</sup> Ekberg, "Swedish Laws on Prostitution," 14.

<sup>139</sup> Ekberg, "Swedish Laws on Prostitution," 14.

<sup>140</sup> Ekberg, "Swedish Laws on Prostitution," 18.

needed job training; 75% needed a home or safe place; 61% needed healthcare; 56% needed individual counseling; 51% needed peer support; 47% needed drug/alcohol treatment; and 44% needed childcare.<sup>141</sup> Many of these needs are addressed in Sweden's service model, which also includes services directed at assisting sex buyers in ending their harmful behaviors.<sup>142</sup>

Sweden's comprehensive approach implements the multi-pronged strategy that characterizes the Nordic Model, simultaneously dedicating resources to arrests and prosecution of sex buyers while also providing recovery resources to both victims and perpetrators. Both prongs focus on the long-term goal of permanently ending exploitation through broad-sweeping changes in societal thought and behavior. In 1996, only 45% of women and 20% of men in Sweden were in favor of criminalizing sex buyers.<sup>143</sup> By 2008, nine years after the Nordic Model was passed into law, its approval rating had increased to 79% of women and 60% of men in favor of partial decriminalization.<sup>144</sup> Swedish law enforcement has confirmed that the Nordic Model has had a deterrent effect on trafficking for sexual exploitation – further supported by the previously mentioned decreases in Sweden's prostituted population.<sup>145</sup> However, continuing stigma against prostitutes, particularly in the social services and healthcare sectors, presents barriers to further progress in successfully eliminating gender inequality.

The Nordic Model represents what could be termed a “middle-ground” between the previously discussed models. It shares an ideological rejection of the sex industry with the criminalization model, and it shares a focus on the safety of prostitutes with the legalization and full decriminalization models. However, the specific motivations behind these common

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<sup>141</sup> Farley, Cotton, et al., “Prostitution in Nine Countries,” 48-49.

<sup>142</sup> Ekberg, “Swedish Laws on Prostitution,” 14.

<sup>143</sup> Committee on Women's Rights and Gender Inequality, “On Sexual Exploitation and Prostitution.”

<sup>144</sup> Committee on Women's Rights and Gender Inequality, “On Sexual Exploitation and Prostitution.”

<sup>145</sup> Committee on Women's Rights and Gender Inequality, “On Sexual Exploitation and Prostitution.”

convictions differ between the models and serve as the basis for what makes the Nordic Model distinct. The Nordic Model rejects the sex industry as it recognizes the exploitative patterns accompanying prostitution on a global level: individuals are targeted for coercion and exploitation because of their identity, specifically based on gender, racial, ethnic, and immigration status. Because of this rejection, the Nordic Model regards people in prostitution as victims of systemic exploitation and seeks to attain both restoration and retribution on behalf of these victims through providing social services to prostitutes and prosecuting their clients and pimps.

The adverse consequences of these objectives complicate the analysis of the Nordic Model's ability to uphold the human rights objectives of free choice of employment and safe working conditions free of exploitation, as it effectively serves the victims of exploitation at the expense of free actors. Certainly, for victims of human trafficking, coercion and abuse, the Nordic Model's offer of freedom from exploitation through prosecution of one's abusers, social services to assist with healthcare, education, and vocational training, and freedom from societal stigma, effectively restores these human rights previously taken away. However, for prostitutes working of their own volition, the intense pursuit of their clients creates an environment of fear in which their livelihoods are threatened by law enforcement intervention and their choice of vocation is not acknowledged by the government or society – eliminating their free choice of employment. Whether the restoration of human rights for one group previously wronged at the expense of the reduction of choice for another should be considered more valuable than maintaining current human rights is the central question at stake when evaluating the Nordic Model's ability to uphold human rights obligations.

## Conclusion

The philosophical and practical debate over differing legal models of prostitution will not be conclusively solved through the efforts of one paper, project, or study. Each of the three models discussed rests on a distinct set of assumptions, are designed to achieve divergent outcomes, and result in differing, unintended consequences. Further, due to the hidden nature of prostitution stemming from stigma, criminality, and violence, there continues to be room for new studies and analyses to create more accurate pictures of the reality of this industry, and its socioeconomic impacts. But amidst information gaps, controversies, and disagreements, it is certain that the presence of disproportionate violence and the deprivation of access to basic human rights, particularly regarding personal safety and equal protection under the law, permeates the daily experience of millions of prostitutes around the globe.<sup>146</sup>

The impact of systemic racism on prostitution and the sex industry cannot be ignored or understated as it relates to human rights impacts. Case studies in cities and countries around the world reveal a consistent pattern of disproportionate representation of marginalized communities and minority populations in trafficking victims. Two studies conducted in the early 21<sup>st</sup> century found 50% – 67% of all streetwalking prostituted minors in New York City were Black.<sup>147</sup> In comparison, Black communities comprised 25.5% of New York City’s population as of the 2010 census.<sup>148</sup> These studies are representative of a national pattern of inequality. A National Juvenile Prostitution Study published in 2013 found that 36% of all child trafficking cases examined in the review period were Black victims.<sup>149</sup> Black children are also trafficked at

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<sup>146</sup> United Nations, “The Universal Declaration of Human Rights,” under “Article 7.”

<sup>147</sup> Gragg, et al, “New York Prevalence Study,” 28; Spangenberg, “Prostituted Youth in New York City,” 5.

<sup>148</sup> NYU Furman Center, “Changing Makeup of New York City,” 31.

<sup>149</sup> Mitchell, Finkelhor and Wolak, “Sex Trafficking Cases Involving Minors,” 5.

younger ages than children in other racial groups.<sup>150</sup> This pattern is not confined to child victims: the Bureau of Justice Statistics found that between 2008 and 2010, 40% of sex trafficking victims with known racial identities were Black.<sup>151</sup> Considering that only 13% of the US population identifies as Black, this disproportionate representation is painfully obvious.<sup>152</sup>

These trends are demonstrative of larger societal inequality stemming from historic and present effects of systemic racism, which socially and economically disadvantages people of color and increases vulnerability to victimization. These same victims often have limited economic alternatives to prostitution and thus face significant barriers to exiting sex work, despite studies showing the significant percentages of prostitutes who desire to exit.<sup>153</sup> The previously mentioned 2011 study on prostituted Native women in Minnesota highlighted the pervasive inequalities faced by prostitutes from marginalized communities.<sup>154</sup> The overwhelming presence of violence and homelessness in these women's experiences clearly indicates the lack of alternatives presented to Native women in the Minnesota case study and for people in prostitution at large, where trauma and abuse are rife, social services limited, and the majority of victims already experience marginalization and discrimination due to their racial or ethnic identities. This disproportionate representation of marginalized populations is also seen outside the United States – previous case studies from the Netherlands demonstrate the disproportionate representation of immigrant communities and racial minorities amongst the illegal sector of prostitution in Amsterdam.<sup>155</sup>

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<sup>150</sup> Butler, "The Racial Roots of Human Trafficking," 1489.

<sup>151</sup> US Department of Justice, "Characteristics of Suspected Human Trafficking Incidents," 1.

<sup>152</sup> United States Census Bureau, "2010 Census Black Population."

<sup>153</sup> Farley, Cotton, et al., "Prostitution in Nine Countries," 48.

<sup>154</sup> Farley, Matthews, et al., "The Garden of Truth," 3. See page 4.

<sup>155</sup> Outshoorn, "Policy Change in Prostitution," 237.



The racial implications of sexual exploitation are also present in law enforcement's approach to cases involving victims from marginalized communities. Prostituted women of color are targeted by law enforcement for the purposes of harassment and arrested more often than prostituted white women.<sup>156</sup> Prostituted juveniles of color are more likely to be perceived as criminals by law enforcement than as victims of sexual abuse or assault.<sup>157</sup> In these ways and others, the roles of stereotyping and discrimination prevent community stakeholders such as social services and law enforcement from accurately identifying sex trafficking and sexual assault victims of color. Barriers posed by harmful assumptions and inequality perpetuated by ongoing racism cause people of color to be disproportionately victimized by traffickers and abused by other actors within prostitution.

This intersectionality of gender, race, and economic inequality is receiving growing recognition within the international community, specifically in the U.N. Report to the World Conference Against Racism which identifies that: "when attention is paid to which women are most at risk of being trafficked, [a] link of this risk to their racial and social marginalization becomes clear."<sup>158</sup> The then UN High Commissioner for Human Rights, Mary Robinson, was quoted as identifying trafficking as: "... inherently discriminatory. In the case of trafficking into the global sex industry, we are talking about men from relatively prosperous countries paying for the sexual services of women and girls – and sometimes men and boys – from less wealthy countries...It is a basic human rights issue because it involves such a massive and harmful form of discrimination."<sup>159</sup> The report further stated that racist ideology fuels trafficking and the "commodification" of women's sexuality, and called on world leaders to pay specific attention to

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<sup>156</sup> Butler, "The Racial Roots of Human Trafficking," 1499.

<sup>157</sup> Butler, "The Racial Roots of Human Trafficking," 1499.

<sup>158</sup> The United Nations, "The Race Dimensions of Trafficking in Persons," 2.

<sup>159</sup> The United Nations, "The Race Dimensions of Trafficking in Persons," 2.

the intersection of gender discrimination and racial discrimination in their trafficking policies.<sup>160</sup>

Though trafficking is distinct from prostitution as a whole, numerous studies examined in this paper and outside the scope of this research demonstrate similar patterns of disproportionate participation within prostitution where people of color are subject to high rates of abuse, trauma, and coercion – experiences tragically common in the sex industry.

None of the current models perfectly address all the complexities and intersections presented by the sex work industry, as each one sacrifices addressing some crucial area in order to benefit some specifically identified specific primary concern. The model of criminalization disadvantages prostitutes' access to services and safety in favor of increased control and access to related shadow-economy activities and discouraging further criminal activity. Legalization, while it is best equipped to provide equal access to healthcare services and reduce social stigma, sacrifices law enforcement's ability to identify victims of trafficking and exploitation while also causing the size of that population to increase. The partial decriminalization model, or Nordic Model, is best able to prevent exploitation through increased penalties and accountability for pimps, traffickers, buyers, and other agents of exploitation. However, it creates barriers to access to law enforcement protection, healthcare services, and other needs due to the increased control exerted by pimps who fear intervention from law enforcement. These differing results leave policymakers and members of the public alike to question which positive results they find most important, and whether these outcomes are worth the costs of their chosen model's drawbacks.

Certainly, the status of prostitutes varies country to country in terms of their ability to practice self-determination, free choice, and consent. However, a clearly identified common

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<sup>160</sup> The United Nations, "The Race Dimensions of Trafficking in Persons," 2.

theme found in every culture, country, and even in individual cases, is the specific exploitation of minorities within prostitution. In a field where those marginalized by their racial and gender identities are specifically preyed upon because of their vulnerabilities, it seems clear these at-risk groups ought to remain a priority when choosing desired policy outcomes. Prostitutes who identify as ethnic minorities are at disproportionate risk levels for being victims of violence, coercion, and exploitation. Of equal note is that people from marginalized communities comprise a significant proportion of the entire prostitution population. While the exact percentage of consenting versus nonconsenting prostitutes will likely never be known, multiple studies have indicated that nonconsenting individuals comprise a disturbing majority of all people engaged in prostitution. Additionally, the general characteristics of this same population point to a strong indication they are being targeted for exploitation on account of their race, gender, sexual identity, immigration status, and other vulnerabilities. When considering human rights outcomes, if the ethical imperative of ensuring equal opportunity and access to the right to work, free choice of employment and fair and favorable working conditions is impossible to guarantee equally across a diverse population, then it cannot be upheld at all.<sup>161</sup>

For these reasons, the partial decriminalization model/Nordic Model must be considered the most favorable model when indexing to these human rights outcomes. The main argument for this conclusion lies in the failure of the other two examined models to address the systemic inequality ingrained into the sex industry at a global level. The criminalization model's double victimization of trafficking victims, first at the hands of their traffickers and second at the hands of law enforcement, disproportionately affects victims whose gender, racial, or ethnic identity or immigration status present additional barriers to accessing assistance from law enforcement.

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<sup>161</sup> United Nations, "The Universal Declaration of Human Rights," under "Article 23."

Similarly, the legalization/full decriminalization models do not provide adequate assistance to victims of abuse, exploitation, and trafficking as their pimps are protected under the sex industry's legal status. These conditions further exacerbate the exploitative environment as the lack of legal penalties causes prostitutes from marginalized communities to become more vulnerable targets for traffickers, as they are less likely to go to law enforcement due to fear of deportation, language barriers, and other reasons. To accept the increased incidences of trafficking, a consequence in both the criminalization and legalization/full decriminalization alternatives, is to accept racialized exploitation for the benefit of consenting sex workers – a less vulnerable population.

This is a trade which cannot be morally accepted in the name of upholding human rights as it works against the core concept of what human rights ought to be – equality for all, irrespective of one's identity or experience. Privileging the needs of a less vulnerable fraction of the prostitution community in the form of legalization appears to usurp specifically Article 2 of the Declaration of Human Rights – “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without any distinction of any kind, such as race, color, sex, language, religion, political or any other opinion, national or social origin, property, birth, or other status.”<sup>162</sup> The studies examined in this paper, as well as many others, display a clear trend indicating these factors remain directly related to one's risk of exploitation within prostitution.

This relationship between racial, ethnic, and gender identity and immigration status and significantly higher incidence of exploitation cannot be ignored by policymakers. Rather, it should be at the forefront of conversation when considering the most ethical and equitable

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<sup>162</sup> United Nations, “The Universal Declaration of Human Rights,” under “Article 2.”

approaches to upholding the human rights of people in prostitution. Recognizing the immediate needs and injustices experienced by prostitutes must involve protection from violence, exploitation, and intimidation, in addition to access to exit services they can choose to access. The Nordic Model puts these needs at its center, by focusing on making people in prostitution more visible to law enforcement without the barriers of licensing or open control by a pimp. While it is true that increased penalties on traffickers and sex buyers can cause some exploiters to become more controlling, the alternative of having no effective legal ramifications with which to adequately reprimand and remove exploitative actors ultimately results in a worse outcome, in which vulnerable prostitutes become even more invisible under the eyes of the law. Partial decriminalization best allows for the possibility of justice and the advancement of liberty for the millions of prostitutes coerced into powerlessness around the world.

### **Further Research**

This study comprises an overview of three predominant legal models presently used to address prostitution. Though the general structures and characteristics are outlined, there remains opportunity for further exploration into the differences between implementations of each model across specific countries and jurisdictions, and even within the same broader model framework. Understanding the differences between individual policies, relationships, and funding models could provide further insight into the reasons behind each models' strengths and weaknesses. Further research could include more perspectives from the prostitution population itself. Though often difficult to access due to the criminality of their occupation under many regimes, the direct experiences of multiple prostitutes and their opinion on what policies best serve their needs would add a level of depth and authenticity to the existing literature. While specific, numerical data points provide objectivity and certainty to discussion surrounding this issue, direct,

qualitative experience from the very community studies like this are designed to serve is necessary to retain a concrete understanding of the applications and outcomes of the policies discussed. A particular focus on prostitutes from marginalized communities is especially necessary as current literature describes a wide discrepancy in the experience of current, predominate legal models across gender, racial, sexual orientation, and class-based divisions. Especially as governments seek to involve more prostitutes and survivors in their policy development, decisions, and execution, expanding in this area of research appears a present need.

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## Appendix

In my second year of college, I began an internship with the King County Prosecuting Attorney's Office, working with a senior deputy prosecuting attorney in the Special Assault Unit. Besides working on cases, part of my role included attending meetings concerning King County's relatively new policy of discontinuing the prosecution of people charged with selling sexual services, or prostitution. This policy is paired with an increase in prosecuting those purchasing sexual services – a more common term being sex buyers. The reason for this shift lies in recognizing prostitution as a symptom of a larger societal issue of systemic gender-based violence. The practical evidence supporting this assumption is found in the disproportionate number of women, especially from marginalized communities, selling sexual services to predominately medium to high income men of varied ages who are often married with children. Though this disparity was blatantly obvious in our local data, I found myself wondering how our office was sure that our legal approach toward prostitution would not produce harmful, adverse consequences that we had not sufficiently considered.

It was this question that spurred my research presented today. This study is a comparative analysis between the three main legal models currently used to address prostitution around the globe. Each model incorporates a vast array of historical context, political convictions, and philosophical assumptions, though the analysis presented here today will comprise a brief overview of the structure, implementation, and adverse consequences of all three approaches. Understanding the advantages and consequences of each is of paramount importance, as prostitution is a highly dangerous occupation, particularly for participants from marginalized communities who bear disproportionate levels of the shocking amounts of violence and exploitation that characterize the daily experience of people in prostitution. One study conducted

in 2011 clearly demonstrated this reality of constrained choice with few alternatives for prostituted Native women in Minnesota; 75% of interviewees reported selling sex in exchange for food, shelter, or drugs and 98% of the interviewees had experienced homelessness at some point.<sup>163</sup> The study also revealed the intensity and prevalence of violence in prostituted Native women's lives, as seen in this graph; 92% of the interviewees reported being raped in prostitution; 84% of interviewees reported assault at some point during their time in prostitution; and 79% of the interviewees identified themselves as victims of sexual abuse as children.<sup>164</sup> The authors contrasted these statistics to their global counterparts and found that although the Native women had experienced much higher rates of abuse, women working in prostitution in other parts of the world had frequently been the victims of similar crimes. In studies examining a global sample population, 57% of prostituted women reported experiencing rape during their time in prostitution, 75% reported experiencing assault, and 63% reported victimization of sexual abuse as children.<sup>165</sup> These shocking reports demonstrate just one iteration of a common pattern found in any community or country worldwide: prostitutes are targeted for exploitation based on their identity, specifically in terms of gender, race, and ethnicity, as well as their immigration status. With the intense prevalence of violence and exploitation, it is both urgent and essential for the global community to engage in conversation surrounding the efficacy of the current models in use while also exploring the possible need for change and innovation, in order to better intervene in these trends.

Unsurprisingly, there is substantial disagreement among academics and the general public alike concerning what the role of prostitution should be in society, what a government's

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<sup>163</sup> Farley, Matthews, et al., "The Garden of Truth," 25.

<sup>164</sup> Farley, Matthews, et al., "The Garden of Truth," 3.

<sup>165</sup> Farley, Matthews, et al., "The Garden of Truth," 28.

role in its regulation should be, and how this intervention should proceed. Entering these debates with data and metrics is a complex task, as by nature this population is hidden due to criminality and societal stigma. However, as I began my research, I realized that one metric of success that is a commonality between any position is found in agreement concerning the right of prostitutes to enjoy internationally agreed upon human rights standards without exception, as stipulated in internationally accepted Universal Declaration of Human Rights. Specifically, Article 23 stipulates that all people have the right to free choice of employment, fair working conditions, and protection against unemployment.<sup>166</sup> Evaluating how well each policy model maintains these standard, mandatory requirements serve as an objective backdrop to examining this complex issue which combines the intersectionality of government authority, systemic inequality, and public discourse. Under this standard, it is possible to examine the effectiveness of each of the three predominate legal models currently in use to address prostitution around the globe in terms of their ability to adequately uphold these universal human rights obligations. While we will examine a brief overview of each model in comparison to this standard, I would encourage anyone who is interested in further detail concerning each model's structure and complex relationship with human rights law to read my written research which will be uploaded to Digital Commons.

The first model we will discuss is legalization, where all aspects of the consensual sale and purchase of sexual services are legalized. This model strives to destigmatize prostitution, viewing it as a labor industry subject to unfair discrimination under the law and in society. Through integrating sex work into wider society by treating it similar to other industries, legalization best serves the prostituted population through increased access to social services,

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<sup>166</sup> United Nations, "The Universal Declaration of Human Rights," under "Article 23."

healthcare, and law enforcement aid when needed since there is no fear of criminal retribution. However, because of the increased demand for sexual services caused by its legalization, this model does suffer from increased trafficking and exploitation. As with human trafficking anywhere in the world, this disproportionately impacts women from marginalized communities as they are targeted for exploitation due to their gender, racial, ethnic, and immigration identities and statuses. This reality stands in direct contrast with the purpose of human rights, which is to uphold life and well-being for all people irrespective of their identity, and as a result it is challenging to evaluate the legalization model's ability to uphold human rights obligations, as while it does maintain safe working conditions for some in prostitution, it increases the amount of people who do not have the ability to exercise these rights, and it distinguishes between these groups in inequitable ways.

The second model is the partial decriminalization, also termed the Nordic Model due to its founding in Sweden in 1999. This model decriminalizes the sale of sexual services, while maintaining criminal penalties for the action of purchasing sexual services. In practical terms, law enforcement transitions from arresting and charging prostitutes with crimes to instead offering them victim services and charging the sex buyers involved with the criminal penalties. This shift in criminal burden is resulting from the Nordic Model's classification of prostitution as a symptom of gender-based violence due to the disproportionate representation of medium to high income men purchasing sexual access to young women and minor girls, often from low-income backgrounds and marginalized communities. To decrease these instances of exploitation, the Nordic Model strives to decrease the demand for sexual services by penalizing buyers and traffickers, while also providing exit and recovery services to prostitutes. This structure has been proven to be successful, with the European Parliament recently classifying the Nordic Model as

the best method for reducing human trafficking. However, it must be noted that research has shown that this method can be restricting for sex workers still involved in prostitution, as clients anxious to avoid arrest are more hurried and less willing to reveal information about themselves. This makes prostitutes' regular safety processes more difficult to conduct, such as screening and negotiating boundaries with clients before agreeing to sell sexual services. Thus, while the Nordic Model is effective at increasing safety and decreasing instances of exploitation, it fails to completely create a safer workplace environment for prostitutes still working in the sex industry since the threat of criminal penalties for their clients is still present.

The final model is the criminalization model, which is arguably the simplest approach as both the sale and purchase of sexual services is completely illegal. The hope behind this approach is to disincentive participation in the sex industry by increasing the risk through criminal penalties. However, in practice this usually affects only the supply side, with prostitutes subject to arrests and charges from law enforcement whether or not they are engaging in sex work by free economic choice and very few penalties aimed at the buyers. While the previous models discussed each accomplished maintaining some aspect of human rights at the expense of sacrificing another, the criminalization model completely fails to provide any positive trade-off to counterbalance the human cost of its implementation. Prostitutes operating under a criminalization model face statistically significantly more violence and drastically less access to necessary law enforcement, healthcare, and social services aid. In many cases, these services designed to serve instead engage in entrapment and produce false testimony against people in prostitution for the purpose of their arrest and imprisonment, preventing sex workers from trusting these services despite how desperate the need might be. Additionally, trafficking victims under this model are subjected to a double form of victimization – first at the hands of their



traffickers and second at the hands of a criminal justice system that is ill-equipped to recognize the complexity of their situation beyond their initial criminal status. For these reasons, the criminalization model cannot be considered a viable model to addressing prostitution as it does not adequately maintain human rights as required by international law.

Thus, we are left with two models – the comparison of which begs a larger question concerning the regime of value which governs our collective decision making. The choice between legalization and partial decriminalization asks whether it is more important to restore the human rights of one group (in this case, human trafficking victims) than to best maintain the rights of the whole, even if these efforts will be inequitably realized. Is it better to spend resources on serving the wronged, or should we focus on reducing harm? Where we derive the answers to these questions strongly depends on who is in the room where these decisions get made. Whose life, whose body, whose experience is more valuable and should be listened to are key factors in how we make decisions as a society, whether in the jury room, in the media, or in everyday conversation. All decisions considering between trade-offs are rooted in assumptions concerning what is valuable, what is truth, and what is good. These assumptions must be recognized and interrogated and their conclusions tested against other assumptions to accurately assess the trade-offs they necessitate. In this study's example, the tension posed between partial decriminalization's assumption of prostitution as exclusively exploitation disguised as labor verses legalization's view of prostitution as labor which is exploited due to the lack of protections available to workers, provides the necessary background with which to analyze their results. The Nordic Model's effective suppression of demand for sexual services is certainly a positive result if prostitution is viewed as gender-based violence. However, when examining it under the legalization assumption, it simply becomes police-driven suppression of a legitimate

labor market and obvious violation of the human right to free choice of employment.

Contrastingly, while legalization's facilitation and support for prostitutes' working in a safe environment is successful under its own assumptions, the Nordic Model's assumption reveals a massive continuation and expansion of exploitation to an unacceptable degree, especially toward women from marginalized communities. The differences in perception between these two lenses are applicable to far more than policy or legal models. Indeed, differing perspectives, informed by either political convictions, social position, ethnic background, cultural understanding, or any other variable, are perhaps the greatest influence on what we perceive as valuable. Without considering the intersections between differing perspectives and their role in assessing outcomes, progress in the form of compromise is impossible.

My research has led to me to the conclusion that the Nordic Model ought to be considered the best, though certainly far from perfect, model for addressing prostitution on a global scale. The relationship between racial, ethnic, and gender identity and immigration status with significantly higher incidence of exploitation cannot be ignored by policymakers. Rather, it should be at the forefront of the conversation when considering the most ethical and equitable approaches to upholding the human rights of people in prostitution. Former United Nations human rights commissioner, Mary Robinson, said as much in a UN conference on racism, commenting that "...when attention is paid to which women are most at risk of being trafficked, [a] link of this risk to their racial and social marginalization becomes clear."<sup>167</sup>

Recognizing the immediate needs and injustices experienced by prostitutes must involve protection from violence, exploitation, and intimidation, in addition to access to exit services

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<sup>167</sup> The United Nations, "Race Dimensions of Human Trafficking."

they can choose to use. The Nordic Model puts these needs at its center, by focusing on making people in prostitution more visible to law enforcement without the barriers of licensing or open control by a pimp. While it is true that increased penalties on traffickers and sex buyers can cause some exploiters to become more controlling, the alternative of having no effective legal ramifications with which to adequately reprimand and remove exploitative actors ultimately results in a worse outcome, in which vulnerable prostitutes become even more invisible under the eyes of the law. Partial decriminalization best allows for the possibility of justice and the advancement of liberty for the millions of prostitutes coerced into powerlessness around the world.

However, I would invite you to consider whose voices are perhaps being left out, where this knowledge comes from, how the hierarchy of value is derived, and what context this position is coming from. Academic scholarship at its best should strive to create a plurality of voices to invite greater conversation to spur deeper knowledge, improved understanding, and equip us to ask better questions to elucidate complex answers. It is my hope that this presentation has shed light on a problem and population that otherwise might go unseen and spur you on to ask more questions and hear more perspectives, hopefully adding in your own for someone else's benefit.