

# **Principles over People: Abolitionist Feminism and Human Trafficking**

## **Abstract**

Abolitionist feminism is a movement that is deeply flawed in its current guise. Abolitionist feminists approach the practice of prostitution having already decided that it is inherently wrong and then find studies (or conduct them) that match their assumptions about the effects of prostitution. Abolitionist feminists then apply this moral certainty to policy – basing policy not on results or empirical evidence, but on social, political, and ideological beliefs. As a result, they create policy that hinders the fight against human trafficking and makes sex workers more vulnerable to violence, disease, and stigmatization, all for the sake of furthering their agenda. Given the gravity of the problem of human trafficking, such approaches only serve to oversimplify the dynamics associated with human trafficking and instead the health and well being of society's most vulnerable people are being sacrificed in the promotion of principles.

**Ryan Beck Turner**

**M.A. Candidate**

**Josef Korbel School of International Studies**

“Despite its prohibition, prostitution continues to occur widely; in fact, one might now reasonably

question whether these laws have a purpose beyond simply controlling some aspects of the practice – mainly those that offend middle-class sensibilities – while underwriting a moralistic disdain for those who engage in it.” (Scott A. Anderson, 2002, pg. 789)

## Introduction

Human trafficking is the fastest growing criminal enterprise in the world. The scale and horror of the abuses caused by human trafficking are nearly unimaginable. Since the late nineties, as awareness of the problem began to spread, governments, NGOs, International Organizations, faith-based organizations, civic society, and academics have all grappled with the best way to approach this seemingly intractable problem. So far, there have been no clear answers.

Despite the uncertainty that surrounds both the practice of human trafficking and the solutions for the problem, a movement has emerged that is marked by an absolute assurance of the righteousness of its convictions and approach to human trafficking. The movement, abolitionist feminism, has had an over-sized impact on human trafficking discourse and policy. While abolitionist feminists are far from the majority in the anti-trafficking community, they have had a significant influence on domestic and international anti-trafficking law. Their singular focus on the issue of sex trafficking has had potentially irreversible effects on the global discourse surrounding modern slavery.

While there is a great deal of literature documenting the influence of abolitionist feminism on policy, very few academics have taken an explicitly ethical and philosophical tact in critiquing abolitionist feminism (with a few notable exceptions, namely Martha Nussbaum). In this article I intend to take a more holistic approach. I will examine the philosophical underpinnings and *a priori* assumptions of the abolitionist feminist movement, show how it is applied in understanding the harms of prostitution, and demonstrate how it has shaped anti-trafficking policy.

When one is attempting to compare and critique a diverse set of beliefs, opinions, and strategies, it is necessary to group authors and trends into general schools of thought – in this case, abolitionist feminism and harm-reduction. These generalizations are not meant to be representative of everyone who claims to be either an abolitionist feminist or a harm-reduction advocate. The views presented here are drawn from the most emblematic sources of the

movements. There will always be authors who resist such simple categorization – authors on both sides of the divide who take a more nuanced and balanced approach to the issues of human trafficking and prostitution. For the sake of this paper, I will not be focusing on these authors. While I identify as a harm-reduction advocate, I intend to provide a fair, albeit highly critical, interpretation of the dominant abolitionist feminist thought and policy.

## **I. The Philosophy of Prostitution**

The discourse surrounding human trafficking, and specifically sex trafficking, has become so polarized that it is often possible to tell the bias of the author within the first paragraph simply by the basic terminology employed. Abolitionist feminists use the terms “prostituted woman,” “women in prostitution,” or “people exploited in prostitution,” to refer to any woman who sells any form of sex (Farley, 2005; Waltman, 2011; Raphael and Shapiro, 2005; Svantstrom, 2005; SOU, 2010). Harm-reduction authors use the term “sex worker” when referring to a person who consents to working in the sex industry and may use “trafficking victim” or “sex slave” when the person has not consented to working in the sex industry (Weitzer, 2005; Berger, 2012; Gould, 2001). While harm-reduction advocates differentiate between sex work, prostitution, and sex trafficking, abolitionist feminists tend to use the terms “prostitution” and “sex trafficking” interchangeably. These differences in terminology are not merely semantic quibbles. They reflect fundamentally different understandings of the nature of sex, consent, agency, and prostitution. More importantly, the definitions of these terms have very real impacts on policy. As we will see, the arguments over definitions have been critical to the formulation of anti-trafficking policy. In order to understand the often diametrically opposed approaches to anti-trafficking policy reflected in the use of different terminology, we must first understand the underlying assumptions and philosophies that inform these approaches to anti-trafficking policy.

### **1. The Nature of Sex**

Modern abolitionist feminist philosophy can be traced back to the early radical feminist work of authors such as Andrea Dworkin and Catharine A. MacKinnon. While the focus of radical feminist thought has shifted and the rhetoric has been toned down, many of the core assumptions

of early radical feminism remain highly influential in abolitionist feminist thought.

Abolitionist feminists define all prostitution as “violence against women” (Svantsrom, 2005; Gould, 2001). For Dworkin (87), nearly all heterosexual sex in the context of a patriarchal society is violence against women. Dworkin is particularly worried about the objectification of women by male desire. Women are not viewed as humans, but rather as sexual objects to be ravaged and possessed by men. As she emphasizes, “In a world of male power – penile power – fucking is the essential experience of power and potency and possession” (1987, pg. 79). Women have little to no control over their sexuality. What women may perceive as sexual freedom and agency is an illusion. Women are as bound to the patriarchal understanding of sex as men. “Being female meant tiny boundaries and degraded possibilities; social inferiority and sexual subordination; obedience to men; surrender to male force or violence; sexual accessibility to men or withdrawal from the world; and civil insignificance” (Dworkin, 1987, pg. 85). In a society where patriarchal values are so pervasive and binding, does “consent” have any meaning? For Dworkin, sex is never just for pleasure (not mutual pleasure anyway), but is always an expression of male dominance. Sex without love is simply men using women, not regarding them as individuals and humans, not loving them and becoming one with them, but just *fucking* them. From this perspective, it is easy to see why radical feminists would regard prostitution as the most abhorrent manifestation of a culture that perpetuates and endorses violence against women.

Dworkin's critique of heterosexual sex in a patriarchal society is a legitimate one. The objectification of women is ubiquitous. Women's bodies have been commodified to sell cars, soaps, life styles; sex is just one more item to buy in our highly materialistic society. Sexual double standards dominate our cultural discourse surrounding sex. Men are praised for “getting” lots of women, while women are considered cheapened for having “given” themselves to so many men; it is as if female sexuality were some finite resource or prize to be protected by women and seized by men. However, while there is a great deal of truth to Dworkin's critique, it is also a very reductive narrative of human sexuality. Sex, like all human activities, is diverse and is done in a vast array of ways for a plethora of reasons. If Dworkin's account of heterosexual sex in a patriarchal society is taken to be an account of *all* heterosexual sex in a patriarchal society, then she does a disservice to both men and women. Women are reduced to victims and men to vile aggressors. This is a dichotomy we will see throughout abolitionist feminist literature. While

Dworkin's narrative is an insightful critique into patriarchal sexuality, it does not work philosophically. The aspects of sex she describes are not inherent to sex itself but are the result of social constructions of sex. It is vitally important to be aware of these social constructions when formulating policy, as policy can reinforce and perpetuate the worst of these social constructions, especially when we are unaware of them. However, it is equally important to remember that social constructions are mutable and not inescapable.

## **2. The Nature of Agency and Consent**

The abolitionist feminist's conception of consent is heavily shaped by Dworkin's narrative of sex in a patriarchal society. In a system in which every aspect of a woman's life is constrained by male dominance, consent has little meaning. When referring to people in the sex industry, abolitionist feminists prefer the term "prostituted woman" because it implies that prostitution is always, and in every case, something done *to* the woman, as opposed to something done *by* the woman. Abolitionist feminists start with the assumption that no person could "choose" to sell their bodies (Svanstrom, 2005; Gould, 2001). Rather, in a patriarchal society, women are forced into prostitution either through violence, coercion, or lack of other options (Berger, 2012; Raymond, 2004). Women who claim to have chosen to engage in prostitution only believe they have freely chosen it because they have internalized gender inequality and patriarchal norms and have taken on a false-consciousness, or have disassociated as a survival strategy (Berger, 2012; Raymond, 2004). Because it is not possible to choose to engage in prostitution, women in prostitution lack agency by definition.

First, it is important to note that when harm-reduction advocates argue for the possibility of consent in sex work, they are not dismissing the fact that for many women in prostitution, consent is never an option. Where force, fraud, or coercion is present, any pretense of consent is void. With this in mind, the debate over the possibility of consent in sex work hinges on two questions: If someone chooses sex work because of a complete lack of other options, does this still qualify as consent? And, is it possible for someone, who has other options that are at least equally beneficial or harmful, to choose sex work? The first question is a difficult one to answer. If someone's arm is trapped under a boulder and the only two options are to saw his own arm off or die, does that person choose to saw his own arm off? Most people's intuition would be that in a

situation of life or death, choosing life is not much of a choice. It is basic human instinct. Therefore, a woman who “chooses” sex work rather than starvation can't really be said to have made a choice. There is certainly some truth to this claim. However, this understanding of consent may have consequences we are not willing to accept. The choice between exploitative labor and dire, life-threatening poverty is a choice that billions of people must make. These kinds of choices are more the product of poverty than patriarchy (Anderson, 2002). If work without consent is slavery, and consent to work is not possible, then our estimates of the number of people trapped in slavery are extremely conservative. Many forms of labor that we previously may have considered merely unjust or unfortunate would have to be considered slavery. Such a broad definition of slavery undermines the gravity and horror of the situation faced by people in real slavery, “the condition of being under the control of another person, in which violence or the threat of violence, whether physical or mental, prevents a person from exercising her/his freedom of movement or free will” (Human Trafficking Clinic, 2010).

The second question, whether someone with equal alternative options can consent to engage in sex work, is complicated only if we are willing to completely disregard the testimony of people who claim to have chosen to engage in sex work. To completely disregard someone's agency, and her own belief in her agency, is to make her something less than human; to disregard her agency is to de-legitimize her mind. For abolitionist feminists to make the argument that even women who believe that they have chosen sex work did not in fact choose it, they will need a stronger argument than “Women in prostitution are victims and their minds have been warped by it.” There is no other job or life situation that would automatically negate someone's input and opinions, with the exception perhaps of being a cult member or sadist or having a psychological disorder such as dementia, schizophrenia, psychopathy. The abolitionist feminist might respond that women in prostitution are not unlike women in abusive relationships (Raymond, 2004). Both are involved in violent situations that permeate the most intimate aspects of their lives. Similar to the battered woman, a woman in prostitution might convince herself that she is happy and chooses to stay in the situation out of love, not fear – a kind of Stockholm syndrome. In some circumstances, one could see how this would be the case. However, people in the sex industry cannot be so broadly dismissed, especially when the sex industry is as broadly defined as Abolitionist feminists define it. A “prostituted woman” might be a woman that is occasionally paid

to have her feet massaged by a foot fetishist for a little extra money. Does this exchange of money for physical contact have some magical property that erases agency and consent? If a woman has her feet massaged by a man and enjoys it, the act is acceptable. However, if a woman has her feet massaged by a man and is paid for it, she only thinks she enjoyed the act? Further, when is agency magically returned to the woman in sex work? Abolitionist feminists are more than willing to listen to and promote the testimonies of former sex-workers who now hate prostitution (SOU, 2010; Farley, 2005). How can we be sure that these anti-prostitution former sex-workers are not still self-deluded and are instead under the control of their social and class superiors, the professional Abolitionist feminists?

### **3. The Inherent Morality of Prostitution**

For the abolitionist feminist, there is no moral ambiguity regarding prostitution. All prostitution is violence against women. No woman can truly consent to being involved in prostitution. Therefore, prostitution is morally equivalent to rape. The social institution of prostitution is nothing but an aspect of the systemic oppression of women. Legalization of prostitution is tantamount to the societal endorsement and normalization of the rape of women on a mass scale. If one accepts the abolitionist feminist's *a priori* assumptions about the nature of prostitution and consent, the above are logical conclusions. However, as we have seen, there is ample reason to question such assumptions.

For the harm-reduction advocate, the question of the inherent morality of prostitution is far more complicated. Many harm-reduction advocates do not feel the need to engage in speculation about the morality of prostitution at all. They choose to remain agnostic on the morality of prostitution for a variety of reasons. The most common reason for refusing to take a stance on the morality of prostitution is strictly pragmatic: "...adopting an anti-prostitution stance compromises programming because gaining access to stigmatized and vulnerable populations such as prostitutes requires a 'non-judgmental' attitude on the part of the service providers" (Chuang, 2010, pg. 1686). In addition to the fact that a moral stance against prostitution may directly inhibit one's ability to work with prostitutes, taking a moral stance on prostitution may be beside the point. The ultimate aim of any policy addressing prostitution should be focused on the rights and well-being of people involved in prostitution. It has yet to be shown how the belief that all

prostitution is wrong is in any way beneficial to people who are actually in prostitution. In fact, having and promoting such a belief may actually be harmful to sex workers – further stigmatizing, shaming, and alienating them (Destafano, 2007). The ubiquitous, global, and seemingly eternal practice of prostitution has been condemned and criminalized throughout history, and yet it is now stronger than ever. Rather than bickering about the philosophical and ethical implications of prostitution, we should be working to mitigate its harms. John Miller, the former Director of the Office to Monitor and Combat Trafficking in Persons, has compared this kind of thinking to the “regulationism” of original abolitionism and the harm-reduction approach to prostitution as being morally equivalent to advocating for “getting better mattresses in slave ships” (Skinner, 2008, pg. 183). This kind of argument has a certain emotional appeal to it. However, I think a more apt analogy is comparing the war against prostitution to the war on drugs. Both consume an inordinate amount of resources, are based on outdated and puritanical morality, have proven to be ultimately fruitless, have provided a significant source of income for organized crime, and have ruined countless lives in their execution.

## **II. Harms of Prostitution**

Both abolitionist feminists and harm-reduction advocates have extensively studied the harms of prostitution and prostitution policy. The harms of prostitution and prostitution policy can be grouped into societal and individual harms. Societal harms are those that affect the culture in which prostitution is embedded, shaping and contributing to gender inequality and patriarchy and affecting individuals not directly involved in prostitution. Individual harms include the mental, emotional, and social impacts of prostitution on those involved in the sex industry, as well as the physical risks and dangers associated with prostitution.

### **1. Societal Harms**

Much of the abolitionist feminist literature is concerned with the impact prostitution and the policies we create to deal with it have on gender inequality and the patriarchal system that shape every aspect of our social relations. They consider prostitution to be the cause, indicator,



and epitome of the subordination of women (Anderson, 2002). For abolitionist feminists, prostitution is only possible because of patriarchy. This works in several ways. First, only in a patriarchal system is the idea of buying a woman's sexuality even conceivable (Dempsey, 2010). Women are thought of as second-class citizens whose purpose is to please men. They do this through sex, procreation, and traditional gender-roles as caretakers and domestic servants. Male sexuality is thought of as imperative and rapacious. It is women's responsibility to be an outlet for male desire. Men are entitled to have access to women's sexuality. In a patriarchy, women must live in the dichotomous framework of virgins and whores. Since "good" women must be protected, whores are thought to provide a necessary function in placating men's needs. Prostitution is defined as "violence against women." Only in a patriarchal system would violence against women, and therefore prostitution, be acceptable. Second, prostitution is only considered an option by some women because of the social and economic oppression faced by women. Women are more likely to be solely responsible for the care and support of children. Women may also face diminished job options because of social prejudice against women having certain kinds of jobs. These factors all work together to force some women into prostitution as a desperate attempt to survive. Third, only in a patriarchal society would prostitution of women be tolerated as anything more than systematic "paid rape." This is why even in societies in which prostitution is criminalized, the laws are disproportionately used to prosecute women in prostitution, rather than the men who buy them (Chuang, 2010). Because prostitution reinforces patriarchy by reducing women to sexual objects, it hurts all women, not just those directly involved in prostitution. Any form of legalization or decriminalization is considered normalization of violence and rape against women.

Harm-reduction advocates do not deny the existence of patriarchy. They fully acknowledge that women have been oppressed for thousands of years and still face significant disadvantages in almost every facet of society. That the vast majority of prostitution is men buying women is surely a result of this gender inequality, as opposed to a reflection of some inherent difference in the sexual desires and needs of men and women. This may be supported by the fact that as women have become more professionally successful and financially independent, there has been an increasing trend of women buying men in prostitution, using the economic inequality between the global North and the global South to their advantage through "romance tourism," also known as female sex-tourism (Taylor, 2006). However, while harm-reduction advocates acknowledge that

the conditions that force many women into prostitution are a result of patriarchy and that the violence and stigma faced by women in prostitution are products of rampant misogyny, they deny that this is inherent to the practice of prostitution (Nussbaum, 1998). Some women choose prostitution despite having other options. People who buy the services of prostitutes do so for a variety of reasons (Berger, 2012); not all “johns” hate women and desire to control and abuse them. Most importantly, criminalizing prostitution actually reinforces patriarchy rather than fights it. Nussbaum (1998) argues that the criminalization of prostitution is a reflection of the patriarchal desire to control the sexuality of women. The Abolitionist feminist approach to prostitution is actually more harmful to women in general because by reducing women in prostitution to victims and objects in need of saving, we undermine the agency and strength of women everywhere. If prostitution were re-framed so that it was no longer thought of as a “dirty” or “shameful” profession, but rather one which requires skill and care (a sort of “erotic therapy” similar to that proposed by Sybil Schwarzenbach), then it would no longer contribute to gender inequality and patriarchy (Nussbaum, 1998). Rather than viewing legalization as a tacit approval of violence against women, it might be better to consider it an attempt to reduce the stigma against women in prostitution and be a positive affirmation of people's freedom to do what they like with their own bodies. The prejudice against prostitution is a product of a more pervasive and general fear and distaste of sexuality (Nussbaum, 1998).

## **2. Individual Harms**

The dangers and harms of prostitution for individuals are widely studied and rarely disputed. The practice affects every aspect of a person's life. The most obvious harms are the physical ones. People in prostitution are especially vulnerable to violence. Women in all forms of prostitution report having been physically assaulted at some point. Women in prostitution are far more likely to be raped, murdered, tortured, and beaten than the average woman (Farley, 2004). Because prostitution is generally illegal, women in prostitution often have no legal recourse against their attackers. Prostitutes are considered “unrapeable” or deserving of rape (Svanstrom, 2005). People in prostitution are also highly at risk of contracting STIs and HIV. Prostitutes may have very little control over the use of condoms and so may be unable to protect themselves against disease. If a disease is contracted, lack of resources and access to health services may

make HIV and STI treatment impossible, which can lead to severe health problems and death. Involvement in prostitution may itself be the result of previous violence. Many women are forced into prostitution through threats and use of violence. Further, women in prostitution are significantly more likely to have been sexually abused as children. After experiencing years of rape and abuse, some women turn to prostitution because if they are going to be raped and abused, they “might as well get paid for it” (Raymond, 2004). Finally, people in prostitution also face high rates of drug and alcohol abuse. Some of this is a result of self-medication due to the emotional harms of prostitution. Others are forced into addiction by pimps as a way of controlling them (Gould, 2001).

The psychological and emotional impacts on people in prostitution are often just as pervasive and severe as the physical. Women in prostitution regularly report experiencing symptoms of post-traumatic stress disorder (PTSD) (Farley, 2003; Farley, 2004). PTSD is a common condition for survivors of rape, assault, severe accidents, and war. The symptoms include depression, anxiety, flashbacks, difficulty forming intimate relationships, fear, nightmares, and psychosomatic physical ailments such as nausea, tremors, and panic attacks. People in prostitution often experience disassociation as a result of their experiences. Disassociation is an unconscious survival mechanism in which the person separates herself from the things that are happening to her body. Some experience it as actually being “out of body,” floating above themselves while they are being raped, while for others it is just the sensation of being “somewhere else.” The effects of disassociation are not limited to occurrences of violence. This disassociation can affect women in prostitution even when they are trying to be intimate with their loved ones (Farley, 2004). Disassociation also affects women's conception of themselves. They may feel as if their bodies are not really their own, or that they do not really exist; they are merely objects that other people use (Farley, 2004). Finally, women suffer from the shame and stigma associated with prostitution. They may feel rejected from family, friends, and society. They may feel “dirty” or “tainted” from their participation in prostitution. Eventually, the societal stigma against prostitution may become internalized. Women sometimes think of themselves as “just a whore,” as deserving of violence and unworthy of any other kind of work (Farley, 2004). The internalization of the stigma and resignation to prostitution are aspects of a coping mechanism that can provide a kind of meaning and justification for the terrible things that they have experienced.

Abolitionist feminists and harm-reduction advocates all agree that violence and

psychological harms are common to prostitution. However, there is a great deal of disagreement about how wide-spread these harms are and to what extent they are present in the various forms of prostitution. Abolitionist feminists claim that all prostitution is inherently harmful to the women involved and that the harm is impossible to avoid. If prostitution is defined as violence against women, then any woman in prostitution is a victim of violence, regardless of whether she believes this to be true. Such conclusion is, to some extent, backed up by evidence. Numerous studies have shown that even women in legalized prostitution or escort prostitution experience violence and negative psychological and emotional effects, though the methodology and broad applicability of these studies have been questioned (Weitzer, 2005). Abolitionist feminist authors expend a great deal of energy trying to show that even the forms of prostitution thought most safe are harmful to the women involved (Farley, 2005). Even in the rare occasions in which they are willing to admit that some forms of prostitution are safer than others, they dismiss the fact as a possible argument for legalization. No violence against women is acceptable; therefore, legalization is wrong. Some authors have acknowledged that criminalization of prostitution may exacerbate the harms of prostitution for women who are in prostitution willingly, but claim that these short-term harms are an acceptable trade-off for the long-term good of social change (Dempsey, 2010).

Harm-reduction advocates deny that the physical and psychological harms for all forms of prostitution are the same. While it may be true that there are individuals in every form of prostitution who have experienced violence or depression, the frequency and severity of these harms vary widely. The violence and PTSD a young girl in a Mumbai brothel experiences are likely far more severe than anything the Bollywood actress/part-time escort will encounter. Different forms of sex work have varying degrees of risk and impact on sex workers. The highly diverse nature of sex work means that studies on the harms of sex work are rarely generalizable (Weitzer, 2005). Varying degrees of access to health services and legal protection also affect the degree to which these harms can be mitigated.

While abolitionist feminists claim that the harms endemic to prostitution are inherent to prostitution, harm-reduction advocates argue that many of these harms are a result of societal prejudice and the legal status of prostitution (Nussbaum, 1998). The violence and disease faced by sex workers could easily be alleviated through legalization. Criminalization forces prostitution underground, to the fringes of society, where women are significantly more vulnerable to violence.

When prostitution is illegal, it is run by criminals. Pimps have little incentive to control their prostitutes without violence when the prostitutes are as likely to be arrested as they themselves are. Sex workers are more reliant on third-parties to arrange clients when sex work is illegal. Sex workers then have less discretion over the clients they take (Gould, 2001). In order to compete for customers, sex workers have less control over the acts they perform with clients (Gould, 2001). Even women in street prostitution report that being able to conduct their business in the open gives them more safety. Women will make a show of writing down license plates numbers as other women get into cars (Farley, 2004). Sex workers in legal brothels can have safety measures put in place to reduce their risk of violence. Brothels in the Netherlands and Nevada have panic buttons installed in the rooms, cameras to monitor activity, and security guards (Farley, 2004).

By legalizing prostitution, it is possible to put health regulations into place for the testing and treatment of STIs and HIV. In regulated brothels it is possible to enforce strict condom policies. Farley has criticized the fact that even within legalized brothels there is not a 100% adherence to condom policies; however, even if not fully enforced, any condom policy is better than none. With easy access to treatment for STIs and HIV, most of the physical harms can be reduced, if not completely negated. Health services provided to sex workers could also include substance abuse counseling and therapy to treat PTSD.

Legalization could go a long way to reduce violence and disease for sex workers, but addressing the emotional and psychological harms is not as easy. It is not clear to what extent these harms are a result of the prostitution itself; a bi-product of the criminalization of prostitution; societal stigmatization of and prejudice against sex work; and/or sex worker's internalization of that stigma. By legalizing prostitution and thereby mitigating the violence that sex workers face, many of the forms of psychological harm are reduced. PTSD and its cluster of associated problems make up a great deal of the psychological harm of prostitution and are a direct result of violence. With the psychological trauma addressed, we are still left with the depression, low self-esteem, shame, and disassociation that are common to sex work. The pressing question, then, is whether these particular emotional harms are inherent to prostitution.

Rather than dwelling on the normative and ethical question of whether shame and degradation are inherent in prostitution, the most pertinent question is whether the emotional harms of prostitution can be alleviated. Is it possible for someone to be as emotionally affected by sex work as one would be by any other job? The two dominant arguments at work are that it is

never possible for someone to be engaged in sex work without experiencing some degree of emotional or psychological harm (whether the individual is aware of it or not) and, on the other hand, that sometimes people are not harmed by sex work and may actually enjoy it. The downside to absolute arguments is that they are easy to defeat. All that is required is one good counter-example. If there is one woman who is no more harmed by sex work than by folding jeans at the Gap, or perhaps even enjoys it more than folding jeans at the Gap, then hers is not a case in which sex work is emotionally harmful.

One would not realize it, reading through the abolitionist feminist literature, but there is a wealth of just such testimonies. Across the world there are sex worker collectives and activists that fight for their rights and the ability to do what they love with dignity, freedom, and security. There are blogs and websites written by articulate, strong, and intelligent women who choose to engage in the sex industry. There is even a growing market of feminist pornography which features non-traditional sexuality and gender expression. Of course, the words “feminist” and “pornography” would be completely meaningless side by side to writers such as Dworkin and Farley. The most extreme abolitionist feminists would quickly declare these feminist sex workers to be deluded in some state of “false-consciousness.” Or worse, they could be collaborators: puppets of the patriarchy selling out their own gender. More moderate abolitionist feminists might acknowledge that some women genuinely embrace sex work, but insist that they are a slim minority. If a few liberated sex workers are hurt by criminalization, it is a small sacrifice to make in ending the awful practice of prostitution and taking down the patriarchy. I would argue that denying the agency or mind of a sex worker because she disagrees with you dehumanizes and re-victimizes her. The voices of sex workers are absolutely crucial in any discussion about prostitution. Abolitionist feminists too often seem to be trying to speak for all sex workers while simultaneously putting their hands over sex worker’s mouths.

### **III. Prostitution and Anti-Trafficking Policy**

Abolitionist feminists have had an undue influence over prostitution and human trafficking policy since the late nineties. From international policy to Internet freedom fights, the abolitionist feminists have shaped every major policy and program on human trafficking and sex work. I intend to show that beyond being a philosophically unsound school of thought grounded in

rhetoric and ideology, it has led to poor policy that has in many cases done more harm than good. We will see that abolitionist feminist policy is marked by a strict insistence on moral purity that ignores empirical evidence. Its primary concern is often making normative statements rather than protecting the rights and well-being of sex workers. In fact, the opinions and thoughts of sex workers are completely absent from the policy making process; their input is either dismissed or ignored.

The signature abolitionist feminist policy has been the partial-decriminalization of prostitution (criminalizing the buying of sex, but not the selling of sex). Initially instituted in Sweden, it has since spread to Norway, Denmark, and South Korea. It is promoted as being an ideal model that reduces demand while offering an opportunity for women in prostitution to exit the trade. The global acceptance of the “Swedish model” of partial-decriminalization warrants a good deal of skepticism. I will begin by examining the Swedish model at length before moving onto the role of abolitionist feminism in shaping the US Trafficking Victims Protection Act and the UN Trafficking Protocols.

## **1. Swedish Model**

After losing the pornography wars of the 1980s, the Swedish model represented the successful return of radical feminism to the policy arena (Skinner, 2008). Eventually passed in 1998, the process that led to the Women's Sanctuary Bill, which partially decriminalized prostitution, began with the legislative and cultural discussion in Sweden sparked by the release of a national report on prostitution in 1993. The Official Report of the Swedish Government (SOU) detailed the harms caused by prostitution and then recommended full-criminalization based on three arguments: 1) tolerance of any form of sex trade is incompatible with gender equality; 2) in countries where prostitution was legalized (Holland and Germany) there was an increase in prostitution; and 3) that the effects of prostitution in terms of disease and drugs were detrimental to Swedish society (Gould, 2001). In the ensuing debate, full criminalization was not popular. Of the many actors involved in the debate, the most influential voices were those of the powerful radical feminist movement (Waltman, 2011). ROKS, a radical feminist group in Sweden whose members include many female legislators of all parties, was largely responsible for putting the issue of criminalization on the agenda (Gould, 2001). They did not disagree with the central

arguments of SOU; they only insisted that since any woman involved in prostitution was a victim, it would be wrong to criminalize her as well (Gould, 2001).

Critics feared that by criminalizing the purchasing of sex, prostitution would merely be pushed farther underground (Gould, 2001; Berger, 2012; Weitzer, 2005). The sex trade would move to wherever the customers were. If the customers were scared of the law, they would only purchase sex in increasingly remote and less visible venues. Regardless of the legal status of women in prostitution, they would be forced to work wherever the money was. If the “johns” were criminalized, that would be online, on transnational ferries, in closed brothels, and so on. This argument has been made for a variety of different reasons. Some, especially the early critics of the law, agreed that the ultimate aim of any policy should be the total prohibition of all sex trade, but thought that partial-decriminalization was not the best way to achieve it (Gould, 2001). Others were primarily concerned with the health and well-being of women in prostitution and argued that by pushing prostitution farther underground, women in prostitution would be more vulnerable to violence, have less access to health services and legal protection, and be more reliant on pimps. Still other critics took the liberal view that any form of criminalization of prostitution was a violation of the rights of people in sex work (Gould, 2001). They argued that people should be free to do with their bodies whatever they pleased and that advocates for criminalization were just the most contemporary manifestation of patriarchal, misogynistic, and puritanical beliefs. One former sex worker referred to the radical feminists as “Neo-Moralists” (Gould, 2001, pg. 446).

### *The Impacts of the Swedish Model*

The huge gulf in terms of definitions, assumptions, and approach to empirical evidence means that assessments of the effects of the Swedish Model vary wildly. Further, what would define a successful policy is highly contentious. One way to evaluate the success of the Swedish model would be to find to what extent it accomplished what those who promoted it hoped it would. The Swedish radical feminists that advocated so strongly for the partial decriminalization policy had several aspirations for it. They considered prostitution to be a social evil that is symptomatic of patriarchy. The purpose of the Swedish policy was first and foremost to abolish all forms of prostitution. Nearly as important was that the policy would serve as a normative statement, expressing that prostitution is inconsistent with Swedish social values. Finally, the hope was that by abolishing all prostitution, they would reduce sex trafficking within and through



Sweden.

The most complete set of data available is the report by the Swedish National Board of Health and Welfare (SOU), “The Ban Against the Purchase of Sexual Services. An evaluation 1999 – 2008.” The report is the result of collected surveys from Swedish police, social workers, non-profits working with women in prostitution, and a very limited survey of current and former sex workers. Most of the data regards street prostitution, the most visible and easily studied form of prostitution. Very little data exists on indoor prostitution: prostitution in spas, massage parlors, hotels, restaurants, and “sex clubs.”

Of the three primary aims of the policy, the most successful and easily verifiable result is the change in public attitudes toward prostitution. This is the only measure for which a randomly selected survey is possible, and therefore, may be the most reliable measure of the success of the program. In this respect, the Swedish model achieved one of its goals (though direct causation is difficult to prove). Four quantitative studies conducted in 1996, 1999, 2002, and 2008 show a radical shift in support for the criminalization of purchasing sex immediately following the ban. In 1996, 67% of those interviewed felt that buying sex should not be considered a criminal act. Just three years later, the effect was dramatic. In 1999, 76% of those surveyed felt that the purchasing of sex work should be criminalized. Radical feminists viewed the results as an example of an unqualified success in changing Swedish social norms. However, the reported change in attitude may have a dark side. Women in prostitution report feeling significantly more stigmatized and shamed for the work they do. This is not a concern for the SOU (this will be discussed in detail below).

Due to lack of data, it is extremely difficult to assess the extent to which the Swedish model has been successful in its primary aim: abolishing all prostitution. Following the criminalization of purchasing sex, there was an immediate and significant drop in street prostitution. Although data is not available for every year from 1999 – 2008, the data available shows that street prostitution in the three major cities of Sweden dropped by 50% and has remained fairly stable thereafter. Further, Sweden has shown none of the rapid growth of prostitution seen in the demographically and geographically similar Denmark and Norway. Finally, a survey of Swedish men highlighted a 5% drop from 1996 to 2008 in the amount of men who reported purchasing sex.

This would prima facie seem like evidence of the success of the policy. However, the most

significant evidence, the drop in street prostitution, was anticipated by critics of the policy. In fact, this huge drop in street prostitution was perceived as being a potential harm. The concern of critics was that prostitution would be forced underground by the criminalization of purchasing sex. People involved in sex work would be forced to move their trade to more remote and less visible venues. Illegal indoor prostitution is widely regarded as being more dangerous for sex workers as they have less access to outreach workers and are more vulnerable to violence (Farley, 2005).

The SOU report addresses the above concern, albeit not very convincingly. Throughout the report, the authors claim that there is no evidence to support the claim of an increase in indoor prostitution. This is somewhat deceptive language. The careless reader might assume the claim means that the evidence does not show an increase in indoor prostitution. What it actually means is that there is no evidence at all regarding indoor prostitution. From section 4.3.1 of SOU (2010): “When it comes to indoor prostitution in which contact is made at restaurants, hotels, sex clubs or massage parlors, the available information on the extent to which this occurs is limited. We have not been able to find any in-depth studies of these forms of prostitution in the past decade.” A few pages later, in section 4.3.5, the report refers to a 1998 survey of restaurants and hotels asking whether prostitution occurred within their establishments. Seven percent reported that it did. No similar survey has been done since, though surveys have shown that prostitution does still occur in these settings. The section ends with the statement, “There is no more detailed information about the extent to which prostitution occurs in hotels and restaurants or similar businesses, but there is no indication that it has increased in recent years.” Apparently, the absence of evidence should be understood as the evidence of absence.

How should we interpret this complete lack of information on indoor prostitution? The ostensible aim of the policy is the complete eradication of prostitution within Sweden. According to a 1993 Swedish inquiry into prostitution, indoor prostitution may be twice as large as street prostitution (SOU, 2010, pg. 18). If this is the case, why wouldn't the Swedes investigate the largest venues of prostitution that may have grown even larger as a result of the 50% decrease in street prostitution? A charitable explanation would be that illegal indoor prostitution is by definition a hidden and illicit activity and is therefore exceedingly difficult to study and measure (Bales, 2005; SOU, 2010). However, the report includes a figure from a survey of restaurants and hotels

regarding prostitution within their establishments. This hardly seems like a difficult thing to replicate. So why hasn't it been done in 12 years, despite the fact that numerous and extensive studies have been done on other effects of the ban? One reason may be that indoor prostitution and the attendant harms are not really a concern for advocates of the Swedish model. Such a conclusion would support critics' claims that the policy is just moralistic agenda thinly disguised as an effort to help women and reduce human trafficking. As long as prostitution is safely swept into the dark recesses of society and out of the view of upstanding citizens, it is no longer a concern. Another, slightly more charitable, explanation might be that the Swedish government is highly invested in the success of this policy. They take great pride in the fact that Norway, Iceland, and to some extent South Korea have all adopted similar policies (SOU, 2010). Perhaps they just are not interested in funding surveys that might undermine the purported success of the policy.

The third aim of the policy is to discourage sex trafficking in and through Sweden. The problems of studying prostitution in general are even more pronounced in the study of sex trafficking. However, from the limited data available, sex trafficking may have been hindered by the policy. Data shows that the percentage of foreign women in street prostitution has increased, but less so than in other Nordic countries. The increase of foreign women in prostitution is not surprising as it has been a global trend. The strongest evidence that the Swedish model has had a deterrent effect on sex trafficking is not quantitative, but comes from the Swedish police who claim that human traffickers now perceive Sweden as being unfriendly to human trafficking (ibid.) As the Swedish police provide no evidence to support the statement, it must be taken at face value.

#### *The Effects on People in Prostitution*

One of the biggest concerns for critics of the Swedish model was that it would have a detrimental effect on the health and well-being of people in prostitution. Opponents feared that by criminalizing the purchasing of sex, sex workers would be further stigmatized, forced into riskier prostitution venues and have less access to health workers and legal protection. Moreover, they feared that the decrease in demand could result in sex workers having reduced ability to discern between customers and force them to engage in riskier sexual behaviors in order to have business in a more competitive market (Dempsey, 2007; Waltman, 2001; Gould, 2001; Berger, 2012; SOU, 2010). The SOU report claims that there is no evidence that violence has increased against women in prostitution. This is another case of the absence of evidence being interpreted as

evidence of absence. In section 4.6.3, the report includes these two potentially contradictory statements back to back, “As far as we can tell from the written material and the contacts we have had with authorities and people with experience of prostitution, these fears have not been realized. There are no statistics about cases reported to the police and criminal proceedings regarding assaults against people involved in prostitution.” So, if there is no statistical data on reports of violence against people in prostitution, how do the authors come to the preceding conclusion? This conclusion is the result of anecdotal evidence provided by police and women formerly involved in prostitution. The report further elucidates that women in street prostitution have not seen decreased access to health services or legal protection. However, the issue was never whether women still in *street prostitution* would have less access to services; rather, the concern was over the access to services for women forced into *indoor prostitution*.

It quickly becomes obvious that the testimonies of police and former sex workers are heavily privileged over the accounts of current sex workers. The report concedes that a 2003 report states that street prostitution has become riskier and more dangerous after the ban. This is quickly discounted as being potentially correlated with an increase in heroin use. This is apparently done without irony, only paragraphs after acknowledging the criticism of Swedish prostitution studies that “people in prostitution are described as socially deprived and often drug addicts” (SOU, 2010, pg. 32). The report acknowledges that women currently in prostitution hate the ban and report that their lives have become more difficult as a result. These claims are dismissed as a product of the fact that these women are still in prostitution. This is consistent with the abolitionist feminist belief that no woman could possibly choose prostitution and that those who do are either deluded or in some sort of “false-consciousness.” The following paragraph details the self-described harms of the ban from women in prostitution:

“People who are currently being exploited in prostitution state that the criminalization has intensified the social stigma of selling sex. They describe having chosen to prostitute themselves and do not consider themselves to be unwilling victims of anything. Even if it is not forbidden to sell sex, they feel they are hunted by the police. They feel that they are being treated as incapacitated persons because their actions are tolerated but their wishes and choices are not respected. Moreover, they state that there is a difference between voluntary and forced prostitution.”

(Section 4.6.2)

The women describe themselves as having agency and having chosen to be involved in prostitution. They feel that the Swedish government takes a condescending and paternalistic approach to their life choices. These claims are introduced by describing the women as “people who are currently exploited in prostitution” (SOU, 2010, pg. 34), which is a clear expression of a normative bias that refuses to describe the sex workers as they describe themselves. The term, “people exploited in prostitution,” is used consistently throughout the report. Section 4.6.2 concludes with a cavalier disregard for the concerns of sex workers, “For people who are still being exploited in prostitution, the above negative effects of the ban that they describe must be viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution.” One can only assume that the authors of the study are more than comfortable with making the lives of sex workers miserable so long as it discourages them from continuing to engage in sex work.

The above quote seems to illustrate a logical contradiction in abolitionist claims about the individual causal mechanisms that lead people into prostitution. The typical claim is that a lack of better options, financial desperation, drug addiction, previous sexual abuse, and a patriarchal system all play a part in forcing some women into prostitution. However, if making sex workers’ lives more difficult is positive because it contributes to the end of prostitution, it would seem that the implication is that women are in prostitution because it is easy or profitable. If the former causal explanation is true, then making the lives of sex workers more difficult would only increase their reliance on prostitution since increased social stigma and decreased revenue would further marginalize sex workers and make them more financially desperate. If the latter causal implication is true, then prostitution is in fact a choice that some people make when the benefit is higher than the cost. This would contradict abolitionist feminists’ most basic assumptions about consent and the agency of sex workers.

The indifference to the testimony of current sex workers highlights a fundamental difference between abolitionist feminists and harm-reduction advocates on how to assess the success of the Swedish model. The opinions and feelings of sex workers are often only accepted as legitimate if they fit the ideological bias of the abolitionist feminists. “It is clear, and seems logical, that those who have extricated themselves from prostitution take a positive view of

criminalization, while those who are still exploited in prostitution are critical of the ban” (SOU, 2010, pg. 10). This is logical only if one believes that all women in sex work are deluded or in a state of false-consciousness due to their involvement in sex work – or – if the only former sex workers interviewed belong to an organization called “Prostitutes Revenge in Society” which has the exact same political agenda as the advocates of the Swedish model (ibid., pg. 18.; PRIS, 2012).

## **2. US Trafficking Victims Protection Act of 2000**

Beginning in the late nineties, there was increasing awareness that human trafficking was a serious and rapidly expanding global problem. Stories of girls and women exploited by evil pimps were popular in the news media (Destefano, 2007). Sex trafficking became a cause du jour for evangelical Christians (Zimmerman, 2010). Radical feminists saw the nascent anti-trafficking movement as an opportunity to continue the anti-pornography and anti-prostitution war that they had lost in the eighties. These two cultural forces came together to shape the Trafficking Victims Protection Act of 2000.

The first iteration of the TVPA was proposed by Sen. Paul Wellstone (D – MN). While his proposal included a definite focus on sex trafficking, the bill used an inclusive definition of human trafficking that included forced labor, domestic servitude, and slavery. The proposed bill laid out several specific aims of the policy:

1. The bill would criminalize all forms of trafficking in persons and establish a system of punishment ranging up to life in prison for offenders involved in trafficking children.
2. It would revamp immigration procedures so that victims would be allowed to remain in the United States to testify in criminal cases. This provision would allow immigration officials to circumvent laws requiring them to deport illegal immigrants.
3. It would establish programs and skills training to integrate trafficking victims into their communities.
4. It would establish mental and physical health programs for victims.  
(Destefano, 2008, pg. 33)

The proposed bill also included a provision for monitoring and evaluating foreign states in regards to their anti-trafficking efforts. States that did not meet the minimum standards for anti-trafficking efforts would be punished with sanctions. This would become the “Tier” system that is currently in place (Destefano, 2007; Skinner, 2008).

Released around the same time was an alternate version of the TVPA promoted by Congressman Chris Smith (R – NJ). While sharing many of the most important features of Wellstone's bill, Smith's version was far more focused on the sex trafficking of underage girls (Destefano, 2007). Whereas Wellstone realized that sex trafficking is only part of the larger phenomenon of human trafficking, Smith, and other conservative critics such as David Horowitz, believed that sex trafficking was a special kind of harm and that the best way to stop trafficking in general was to focus exclusively on sex trafficking. “If you want to end the enslavement of those in debt bondage in the brick factories in India, the best thing you can do is put all sex-traffickers in jail, and just drive a stake through the heart of that system,” claimed Horowitz (Skinner, 2008, pg. 53). This kind of reasoning is common throughout abolitionist feminist's defense of focusing exclusively on sex trafficking, but it is backed up with neither quantitative data to support the claim nor any sort of qualitative reasoning beyond vague causal assertions. Horowitz refers to a “ripple effect” that would impact other forms of trafficking if sex trafficking were completely abolished (Skinner, 2008, pg. 53).

The debate surrounding the formulation of the TVPA focused heavily on whether sex-trafficking warranted special attention and mirrored much of the dualistic imagery common to the more general debate on prostitution. “As Professor Jayashri Srikantiah notes, '[t]he image that permeated the legislative record reflected the abolitionist/conservative perspective, centering on the female 'innocent victims' of sex trafficking whose participation was 'involuntary' and who would 'face retribution or other serious harm upon return'” (Chuang, 2011, pg. 1678).

In the end, Smith compromised and agreed to an expanded definition that included all forms of human trafficking (Chuang, 2010). However, in this expanded definition, sex trafficking was still given special attention. In the TVPA's definition of “severe forms of trafficking in persons,” sex trafficking is the only form of forced labor listed separately:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking is also separately defined in the bill as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” (Chuang, 2010). The inclusion of a definition for sex trafficking that did not include the requirement of force, fraud, or coercion would prove to be crucial for abolitionist feminists’ later attempts to focus all US anti-trafficking policy toward the abolishment of all forms of prostitution, consenting or otherwise (Chuang, 2010).

The 2000 Trafficking Victims Protection Act was a significant step in US efforts to end human trafficking and included many desperately needed provisions. First, it codified federal law on human trafficking, which did not exist before. Second, it created visas for survivors of trafficking so that they would not be deported into situations where they might be re-victimized. Third, it changed the legal paradigm regarding trafficking so that people who had been trafficked would be recognized as victims as opposed to being treated as criminals collaborating with traffickers. Finally, it led to the creation of the “Tier” system by which the State Department grades foreign states on their anti-trafficking efforts. The Tier system has been an important, although perhaps over-rated, tool in pressuring states to take effective steps toward combating human trafficking.

However, the fact that the TVPA was so grounded in a discourse obsessed with sex-trafficking meant that other forms of human trafficking were overshadowed. While forced labor was acknowledged in the language of the TVPA, it was rarely mentioned either in the discussion and debate leading up to the bill, or in the text of the bill itself. This bias has been reflected in enforcement of the TVPA (Chuang, 2010). Though less than half of people in slavery in the US are sex slaves, over 75% of trafficking convictions have been related to prostitution (Skinner, 2008). Skewing the entire discourse around human trafficking to focus on one aspect is problematic in itself; however, the concessions made to right-wing



conservatives and abolitionist feminists in the original TVPA led to even greater problems down the road.

### *Re-Authorizations of the TVPA*

The TVPA was reauthorized in 2003, 2005, and 2008. Each time the TVPA has come before Congress for re-authorization, conservatives and abolitionist feminists have used the opportunity to change and expand the TVPA to include more explicit anti-prostitution requirements and to attach other moral and ideological provisions.

In the 2003 Trafficking Victims Protection Reauthorization Act (TVPRA), several important changes were made. Some of these were helpful in strengthening enforcement of the TVPA and in making other US policies more consistent with anti-trafficking goals. These include: the policy that government contracts might be canceled if the contractor is shown to engage in sex trafficking or forced labor; expansion of the eligibility for trafficking visas, which had been under-utilized; provisions for more services for trafficking victims through the Department of Health and Human Services; and the addition of trafficking offenses to Racketeer Influenced and Corrupt Organizations (RICO) statute, a statute popular in combating organized crime (Destefano, 2007). However, the most important and harmful change was the new requirement of the “Prostitution Loyalty Oath,” or “Anti-Prostitution Pledge.”

The Anti-Prostitution Pledge requires that “no funds . . . may be used to implement any program . . . through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution,” (Zimmerman, 2010). This led to a great deal of protest from human rights, public health, and anti-trafficking organizations. Many were concerned that the requirement would “both increase stigma and make it harder to work effectively with the vulnerable populations they are trying to reach” (Destafano, 2007, pg. 110). It is easy to see how this might be the case. Any organization working to improve the health and security of sex workers is likely to provide condoms and health services to sex workers. If the provision of these services is not dependent on the sex worker leaving the sex industry, it could be said that the organization is “supporting” sex work. In fact, abolitionist feminists have made these very arguments in criticizing non-abolitionist organizations

(Chuang, 2010). In an open letter to President Bush in 2005, a diverse group of academics, NGOs, AIDS programs, faith-based organizations, and physicians claimed that the legal restrictions of the Anti-Prostitution pledge were contrary to “best practices in public health and will undermine efforts to stem the spread of HIV and human trafficking” (Destefano, 2007, pg. 110).

As a result of this policy, organizations which had no official policy on prostitution were quickly forced to adopt one, even if it was not under the purview of their work (Zimmerman, 2010). Organizations that were agnostic about the morality of prostitution and refused to take a stance were denied funding. Organizations which did not receive funding due to their refusal to adopt the absolutist morality of the pledge were some of the most experienced and reputable anti-trafficking organizations in the world, for instance, Anti-Slavery International. Another organization which was denied funding on these grounds was the Tahirih Justice Center. “Executive Director Layli Miller-Muro recounted, ‘We were told flat out [that this was why our grant application was denied]’ She continued, ‘I happen to be a religious person. I hold moral views. But it’s not relevant to helping victims. The policy against prostitution is a distraction” (Zimmerman, 2010, pg. 96).

The ostensible aim of the Anti-Prostitution pledge, beyond making a normative statement and linking prostitution to human trafficking, was “to apply the restriction to organizations and NGOs working with prostitutes under the control of traffickers” (Destefano, 2007, pg. 107). However, in reality, this requirement applied to all organizations working in the field of anti-trafficking, as well as organizations working to fight the spread of HIV. Consequently, rather than federal funds going to the most experienced and effective programs, funds were granted only to organizations that met the government’s test of ideological purity.

This myopic focus on prostitution resulted in enforcement strategies that completely ignored other forms of human trafficking, such as forced labor, and were not even effective in stopping prostitution. The US anti-trafficking efforts focused on busting pimps, a sort of “whack-a-mole” approach that targeted individual pimps rather than addressing the systemic causes of human trafficking (Skinner, 2008, pg. 283).

In 2005, the TVPA came before Congress for re-authorization. Yet again,

conservatives and abolitionist feminists used the opportunity to inject their strict ideological beliefs into US anti-trafficking policy. “The 2005 Reauthorization adds to the minimum standards for the elimination of trafficking 'measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals in the country” (Berger, 2011, pg. 554). This is consistent with the Abolitionist feminist arguments that prostitution is indistinguishable from sex trafficking; demand for prostitution is the primary driver for sex trafficking; and sex trafficking is the primary force driving human trafficking world-wide. None of these claims can be defended with empirical evidence. Despite the highly questionable legitimacy of these arguments, they have been blindly accepted and reinforced in US treatment of trafficking issues. See, for instance, the 2011 report by the Department of State's Office to Monitor and Combat Trafficking in Persons, “Prevention: Fighting Sex Trafficking by Curbing Demand for Prostitution” (Berger, 2011). This conflation of prostitution and sex trafficking is consistent throughout Abolitionist feminist literature and has been widely criticized as being overly reductive and counter-productive to anti-trafficking efforts.

The most recent efforts to inject the TVPA with a political agenda have kept the TVPA from being reauthorized, despite the fact that it lapsed in 2011. The re-authorization has stalled in Congress due to two changes that Congressman Smith has attempted to put in place. The first is shifting the funding of services and care for trafficking victims from the Department for Health and Human Services (DHHS) to the Justice Department. DHHS is far better prepared to handle trafficking victim services and has been doing so since the TVPA passed in 2000. The apparent reason for this proposed shift is not based in efficacy, but in conservative disagreement with the DHHS over contraception and insurance. The second change was the inclusion of a “conscience clause” that would bar the government from denying funding to organizations based on their religious or moral objection to providing certain services, namely abortion. In light of the already existent requirement that organizations commit to the Anti-Prostitution pledge and the history of providing funding to organizations that are grossly unprepared to deal with human trafficking, one wonders if this clause could allow organizations that follow a strict abstinence only, or “rescue and restore” approach, to receive government funding even though their anti-

trafficking strategies have no empirical basis.

The brief history of the TVPA demonstrates many of the problems endemic to the Abolitionist feminist approach to human trafficking. Abolitionist feminists are far more concerned with ideological debates than they are with forming effective policy. Instead of focusing on how services and protections for trafficking victims are implemented, they would rather debate whether all prostitution should be included in the definition of trafficking. Rather than form policy that addresses all forms of human trafficking, including forced labor and domestic servitude, they prefer to obsess over sex trafficking to the exclusion of all other forms of slavery. Rather than seeking out empirically based solutions and organizations with expertise in the field of anti-trafficking, they insist on an ideological litmus test that insures only right-wing religious organizations and like-minded abolitionist zealots receive federal funding.

### **3. UN Trafficking Protocol**

The negotiations that resulted in the UN Trafficking Protocol happened around the same time as the debate that led to the formulation of the TVPA. Many of the same actors were involved in both processes and many of the same problems arose. For these reasons, I won't be spending as much time analyzing the Palermo Protocol as I have with the policies discussed above.

In November of 2000, the UN General Assembly adopted the UN Convention against Transnational Organized Crime. The convention included two protocols: the first dealing with the smuggling of migrants and the second with the trafficking in persons (Davidson, 2005). The protocol dealing with trafficking in persons has come to be known as the "Palermo Protocol," because it was written in Palermo, Italy.

The process of settling on a definition of "trafficking" for the Palermo Protocol was as fraught with controversy as the discussion happening in the US around the TVPA. The International Labor Organization (ILO) and the UN Office of the High Commissioner for Human Rights (UNHCHR) intended to maintain a legal distinction between trafficking and prostitution and as a result were labeled "pro-prostitution" by Abolitionist feminists,

namely the Coalition against the Trafficking of Women (CATW) – an organization closely tied to Melissa Farley (Chuang, 2010). Meanwhile, Abolitionist feminists were pressuring diplomats to include the total prohibition of prostitution in the protocol (Davidson, 2005). The Abolitionist feminists hoped to accomplish this by removing the requirement of force, fraud, or coercion from the definition of sex trafficking (Chuang, 2010). Sex workers were concerned that a UN Protocol that did not distinguish between prostitution and sex trafficking would lead to policies that would harm sex workers while hindering the fight against modern slavery.

“Historically, anti-trafficking measures have been more concerned with protecting women's 'purity' than with ensuring the human rights of those in the sex industry. This approach limits the protection afforded by these instruments to those who can prove that they did not consent to work in the sex industry. It also ignores the abusive conditions within the sex industry, often facilitated by national laws that place (migrant) sex workers outside the range of rights granted to others as citizens and workers.” Network of Sex Work Projects (Chuang, 2010, pg. 1674)

Eventually, the two sides, CATW with neo-abolitionist states on one side and the Human Rights Caucus with every UN agency but one on the other side, were able to compromise. In the end, the Palermo Protocol used the following definition of “trafficking”:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

This definition of “trafficking” serves as an umbrella term that includes a whole host of varied practices (Davidson, 2005; Chuang, 2010). The vagueness of the language allowed both sides to claim victory (Berger, 2011; Chuang, 2010). Abolitionist feminists praised the supposed irrelevance of consent within the definition as a victory for including all prostitution under the definition of trafficking (Chuang, 2010). The non-abolitionists claimed that the inclusion of the requirement of force, fraud, or coercion meant that consenting prostitution was not included in the definition and that the irrelevance of consent was included only so that traffickers could not manufacture consent to avoid prosecution (Chuang, 2010).

Establishing a UN protocol on human trafficking was an important and necessary measure in the fight against modern slavery. However, the intentional vagueness of the definition of trafficking has made it difficult to enforce. Further, the protracted debate over the terms of trafficking meant that very little attention was paid to establishing substantive rights for victims of trafficking (Chuang, 2010). Once again, we find that ideological debates have gotten in the way of actually helping trafficking victims and ending modern slavery.

### **Conclusion**

Abolitionist feminism is a movement that starts with the conclusion and then seeks out evidence to defend it. Abolitionist feminists approach the practice of prostitution having already decided that it is inherently wrong and then find studies (or conduct them) that match their assumptions about the effects of prostitution. They interview sex

workers, having already decided that all sex workers are harmed by their work, and then simply disregard the testimony of sex workers that does not fit that assumption. Abolitionist feminists then apply this moral certainty to policy – basing policy not on results or empirical evidence, but on social, political, and ideological beliefs. As a result, they create policy that hinders the fight against human trafficking and makes sex workers more vulnerable to violence, disease, and stigmatization, all for the sake of furthering their agenda.

The problem of human trafficking is far too grave and complex a problem to allow the policy and discourse surrounding it to be completely over-run by those who would grossly oversimplify the issue and use it as a means of accomplishing their own political agenda. Ideology is not a sound basis for policy. When anti-trafficking policy is formed without regard to results, the health and well being of society's most vulnerable people are being sacrificed in the promotion of principles.

### **Bibliography**

Anderson, Scott A. "Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution." *Ethics* 112, no. 4 (07, 2002): 748.

Bales, K. (2005). *Understanding Global Slavery: A Reader*. Berkley, CA : University of California Press.

Barrows, Jeffrey. "An Ethical Analysis of the Harm Reduction Approach to Prostitution." *Ethics & Medicine: An International Journal of Bioethics* 24, no. 3 (Fall2008, 2008): 159-66.

Berger, Stephanie M. "No End in Sight: Why the "End Demand" Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking." *Harvard Journal of Law & Gender* 35, no. 2 (2012): 523.

- Bernstein, Elizabeth. "The Sexual Politics of the "New Abolitionism."." *Differences: A Journal of Feminist Cultural Studies* 18, no. 3 (Fall2007, 2007): 128-51.
- Brysk, Alison. "Sex as Slavery? Understanding Private Wrongs." *Human Rights Review* 12, no. 3 (2011): 259-70.
- Chuang, Janie A. "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy." *University of Pennsylvania Law Review* 158, no. 6 (05, 2010): 1655-728.
- Cotton, Ann, Melissa Farley, and Robert Baron. "Attitudes Toward Prostitution and Acceptance of Rape Myths." *Journal of Applied Social Psychology* 32, no. 9 (09, 2002): 1790-6.
- Day, Sophie. "Renewing the War on Prostitution: The Spectres of 'trafficking' and 'slavery'" *Anthropology Today*. Vol. 25. Wiley-Blackwell, 2009.
- Dempsey, Michelle Madden. "Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism." *University of Pennsylvania Law Review* 158, no. 6 (05, 2010): 1729-78.
- DeStefano, Anthony. *The War on Human Trafficking : U.S. Policy Assessed: U.S. Policy Assessed*. Piscataway: Rutgers University Press, 2007.
- Farley, Melissa. "The New Abolitionists." *Ms.* 18, no. 2 (Spring2008, 2008): 24-6.
- . "'Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized." *Violence Against Women* 10, no. 10 (10, 2004): 1087-125.
- Farley, Melissa, Ann Cotton, Jacqueline Lynne, Sybille Zumbeck, Frida Spiwak, Maria E. Reyes, Dinorah Alvarez, and Ufuk Sezgin. "Prostitution and Trafficking in Nine Countries: An Update on Violence and Post-traumatic Stress Disorder." *Journal of Trauma Practice* 2, no. 3 (07, 2003): 33-74.
- Gauthier, Jeffrey. "Prostitution, Sexual Autonomy, and Sex Discrimination." *Hypatia* 26, no. 1 (02, 2011): 166-86.



- Gould, Arthur. "The Criminalization of Buying Sex: The Politics of Prostitution in Sweden." *Journal of Social Policy* 30, no. 3 (2001): 437-56.
- Hayes-Smith, Rebecca and Zahra Shekarkhar. "Why is Prostitution Criminalized? an Alternative Viewpoint on the Construction of Sex Work." *Contemporary Justice Review* 13, no. 1 (03, 2010): 43-55.
- MacKinnon, Catharine A. *Are Women Human?: And Other International Dialogues*. Cambridge, Mass: Belknap Press of Harvard University Press, 2006.
- Nussbaum, Martha C. "'Whether from Reason Or Prejudice': Taking Money for Bodily Services." *The Journal of Legal Studies* 27, no. S2 (1998): 693-723.
- O'Connell Davidson, Julia. *Children in the Global Sex Trade*. Malden, MA: Polity, 2005.
- Raymond, Janice G. "Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution." *Journal of Trauma Practice* 2, no. 3-4 (2004): 315-32.
- Skinner, E. Benjamin. *A Crime So Monstrous: Face-to-Face with Modern-Day Slavery*. New York: Free Press, 2008.
- Socialstyrelsen (SoS: The National Board of Health and Welfare), *The Ban Against the Purchase of Sexual Services. An Evaluation 1998 - 2008*.  
[http://s3.amazonaws.com/zanran\\_storage/www.dublinpact.ie/ContentPages/2470369900.pdf#page=45](http://s3.amazonaws.com/zanran_storage/www.dublinpact.ie/ContentPages/2470369900.pdf#page=45) 11/1/2012
- Svanström, Yvonne. "Through the Prism of Prostitution: Conceptions of Women and Sexuality in Sweden at Two Fins-de-Siècle." *NORA - Nordic Journal of Feminist and Gender Research* 13, no. 1 (2005): 48-58.
- Taylor, Jacqueline Sanchez. "Female Sex Tourism: A Contradiction in Terms?" *Feminist Review* 83, no. 83 (2006): 42-59.
- Waltman, Max, Stockholms universitet, Samhällsvetenskapliga fakulteten, and Statsvetenskapliga institutionen. "Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and

Potential." *Women's Studies International Forum* 34, no. 5 (2011): 449-74.

Weitzer, Ronald. "Flawed Theory and Method in Studies of Prostitution." *Violence Against Women* 11, no. 7 (2005): 934-49.

———. "Rehashing Tired Claims about Prostitution: A Response to Farley and Raphael and Shapiro." *Violence Against Women* 11, no. 7 (2005): 971-7.

Zimmerman, Yvonne C. "From Bush to Obama: Rethinking Sex and Religion in the United States' Initiative to Combat Human Trafficking." *Journal of Feminist Studies in Religion* 26, no. 1 (2010): 79-99.