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The Injustice of Sex Trafficking and the Efficacy of Legislation

Grace Robertson

Sex trafficking has become a preponderant epidemic in today's society. Due to its underground nature, it escaped the public eye for a long time until it emerged as one of the top industries in the black market. Sex trafficking has also begun to make an appearance in the media, whether in the popular Hollywood film, *Taken*, or in informative documentaries such as *Nefarious* and *Sex Slaves*. The sex trafficking industry itself is a multibillion dollar business that transports and enslaves hundreds of thousands women each year (*Sex Slaves*). In some cases the families will actually sell their daughters into sex slavery. In other cases the traffickers will lure girls from low economic standing with promises of employment in foreign countries. Once the girls are in the foreign country instead of going to their respective promised jobs, they are sold to a pimp. In this entire process, a woman is exposed to a range of emotional, psychological and physical abuse. In the 'prepping' stage of trafficking, the traffickers will take it upon themselves to regularly beat and rape the women as well as addict them to drugs (*Nefarious*). The pimps will frequently continue to rape and beat the women in an effort to control them as well as force them to work ten to eighteen hour days in which the customers themselves may enforce abuse of their own. Sadly, the majority of these women will only live an additional two to four years after being trafficked (Yen 659-660). Yet both the traffickers and the pimps will make incredible profit from the exploitation and slavery of these women and children, which is why the industry continues to thrive. In order to combat this epidemic, I submit that the criminalization of the purchase of sex through individual state legislation is the most effective way to eradicate the growing injustice of sex trafficking.

Terms

To provide a foundation for this paper that will allow a clear and precise analysis, it is critically important to define the term "sex trafficking." The Department of Health and Human

Services in the United States defines sex trafficking as the “modern-day form of slavery in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is under the age of 18 years” (US Department of Health & Human Services). This definition identifies sex trafficking for the injustice that it is, and it also highlights the growing trend of sexual exploitation among minors including child prostitution and child sex trafficking. However, it is critical to clarify that sex trafficking is a crime despite the age of the victim, but in the case of minors, it is still illegal for anyone under the age of eighteen as well as the persons involved with a minor whether that be prostitution (potentially voluntary) or sex trafficking (assumedly involuntary). The definition put forth by the United Nations in the *Trafficking Protocol* released in 2000, and Iris Yen in her article, “Of Vice and Men” also stand as valid. In these texts, sex trafficking is defined as the “recruitment, transportation, and harboring of persons – primarily women and children – for the purpose of sexual exploitation into prostitution, pornography, sex tourism, and other commercial activity” (United Nations). This definition encompasses the entire process of sex trafficking as criminal. It is broad enough because it includes the exploitation that occurs in the “before” process (recruitment, transportation, and harboring) as well as the “after” process (prostitution, pornography, sex tourism, etc.). The entire process is inexcusable.

The Economy of Sex Trafficking

The argument for the criminalization of sex deals directly with the economy of the sex trafficking industry. Sex trafficking is one of the fastest growing underground industries in the black market. The appeal of sex trafficking is so great because of its economic benefits. In a pure cost-benefit analysis, the industry is high-profit and low-cost to a potential sex trafficker. This is because for the potential sex trafficker the industry is relatively low risk, since the prosecution of

traffickers and legislation against trafficking is comparable to drug trafficking. Until the *Trafficking Victims Protection Act* was passed in the United States in 2000, the highest sentence for dealing drugs, such as ten grams of LSD or a kilo of heroin, was a life sentence whereas the forced involuntary servitude was only ten years (Yen 659). According to CNN, “the perpetrators of this new form of modern slavery in America can sell girls for sex without fear or punishment. As incomprehensible as it seems, today trafficking girls brings in more profits and results in less prison time than dealing crack” (Saar). Yet sex trafficking is highly profitable compared to drug sales. In drug trafficking, a trafficker buys the supply, it is depleted in one transaction, and the trafficker must replenish the supply. However in sex trafficking, a trafficker buys the supply (a human being) and instead of being depleted in one transaction, the trafficker is able to continually use them. To quote the infamous modern slave trader Ludwig Fainberg, “You can buy a woman for \$10,000 and you can make your money back in a week if she is pretty and she is young. Then everything else is profit” (Irving). Quite a high profit it is; each year a pimp can gain a profit anywhere from \$75,000 to \$250,000 or more from a trafficked woman (Yen 658). The entire international industry itself extracts a profit of \$7 to \$12 billion each year. This figure continues to grow quickly (Yen 658-659). Analyzing sex trafficking from an economic point of view reveals the large appeal of the industry and gives explanation for its preponderance in the recent years. Thus, when combating sex trafficking we must approach the fight against sex trafficking from an economic point of view.

In the economy of sex trafficking, typically the supply is comprised of women and the demand results from men. The fight against sex trafficking is most effective when the male demand is targeted because demand often dictates the existence and the type of the supply. This dictation of sex trafficking by male demand is exemplified in the case of Southeast Asia, where

sex trafficking and prostitution were virtually nonexistent before the 1960s. However with the entrance of American soldiers, the industry boomed. Here it is clear how the male demand dictates the existence of the supply and now it will be examined how it dictates the type. When a john (name given to male clientele) asks for something “more exotic”, this inherently encourages the trafficking of girls from foreign countries to meet this demand. Another specification is when the johns desire ‘clean girls’ or virgins; this demand heavily influences the trafficking of children (Yen 666). In essence, supply will always rise to meet demand. In the words of Donna Hughes, “without men’s demand for prostitute women, there would be no such women.” Because the male demand has such an extensive influence over the supply, and thus the sex trafficking industry, the male demand must be targeted in efforts to combat sex trafficking. As the demand is targeted, it will necessarily decrease and thus the supply will inherently drop as well. Reasons for targeting male demand will be further explored throughout the paper, yet the simple economics of the industry provide a logical approach to eradicating sex trafficking.

The Legislation of Sex Trafficking

Additional support for the initiative to target the male demand for sex slaves instead of the female supply is also due to the failure of past legislation that has targeted the female supply: punishment of the victims of sex trafficking has been ineffective. A number of scholars severely criticize the practice of targeting the supply side¹. An important distinction must be made in the criminalization of sex between the sale of sex and the purchase of sex. Accordingly so, the way to distinguish between targeting the male demand or female supply in legislation is by analyzing what sex act the law criminalizes. If legislation criminalizes the sale of sex, this holds the female

¹ For further reference, these articles include *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking* by Jennifer M. Chacon, *Sex Sells but Drugs Don’t Talk: Trafficking of Women Sex Workers and an Economic Solution* by Susan W. Tiefenbrun, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, by Michelle M. Dempsey, and *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, by Iris Yen.

supply responsible. However if legislation criminalizes the purchase of sex, this holds the male demand responsible. If the supply side of the industry is targeted, then this punishes the prostitutes who very well may be sex trafficking victims. If these prostitutes are from foreign countries, which is a very common practice in the sex trafficking trade, then the victims are treated as illegal immigrants and deported back to their home country (*Nefarious*). Alternatively, the legislation that targets the demand side of the market punishes men who voluntarily participate in the industry by buying sexual services and the legislation often provides care and treatment for the prostitutes and possible sex trafficking victims (Ekberg 1192). In addition, demand-focused legislation such as the First Offender Prostitution Program in San Francisco places an emphasis on education and offers a punishment proportional to the crime. This program offers either a day long educational and rehabilitation program or \$500 fee (Yen 676). While it is unfair to hold clientele responsible for acts that they did not do, such as the actual trafficking of women, a fine or educational program is a just way to decrease the demand as well as educate the clientele about the consequences of their actions. The legislation that targets the male demand of sex trafficking is a more effective way to eradicate the industry itself because it targets willing participants with proportional fines or educational programs instead of punishing possible sex trafficking victims with further trauma like deportation or imprisonment.

The Legislation of Sex Trafficking: Legalization, Prohibition, & Abolition

An analysis of the different kinds of legislation that address the underground industry of sex trafficking and its correlation with prostitution reveals insight into what type of legislation may be most effective when attempting to eradicate this injustice. According to Phil Hubbard, Roger Matthews, and Jane Scoular², there are mainly three types of legislation. These include legalization, exemplified by the Netherlands; prohibition, exemplified by Sweden; and abolition,

² *Regulating Sex Work in the EU: Prostitute Women and New Spaces of Exclusion*

exemplified by the UK (Hubbard 137). In the 1990s, nine Dutch cities began to allow street soliciting in specified areas deemed as Toleration Zones, or Toppelzones, under the Law of Municipalities passed in the Netherlands. This law was passed under the assumption that this method was a more pragmatic way to deal with prostitution because it offered law enforced surveillance as well as “living rooms”, where prostitutes could receive sexual health and psychological counsel and support. While this method was put in place with the hopes that it would create a safer space for women, instead it created a top destination for the sex trafficking industry. The Netherlands was “identified as one of the main destinations within Europe for trafficked women” with an “increasing visibility of non-EU nationals in Dutch prostitution” (Hubbard 141). This increased presence of non-European prostitutes testifies to the increasing industry of sex trafficking of foreign women.

Another example of the legalization of prostitution and its dangerous effects is the state of Victoria in Australia. With the intentions of decreasing crime and the prominence of the black market, prostitution was legalized in 1984. This decision has had ironic and devastating results. In addition to the growth of organized crime and sex trafficking, the legalization of prostitution has also had social and cultural consequences. Prostitution is considered a socially acceptable practice and with this acceptance of prostitution, the violence and degradation of women is being inherently reinforced as commonplace in Australian cultural values (Yen 682). These findings confirm that legalizing prostitution creates a greater demand for women, and the sex trafficking industry will rise to meet that demand.

In Sweden the legislation reflects the opposite end of the spectrum, where the law has prohibited prostitution in efforts to eradicate sex trafficking. Sweden holds a unique position among the international community as being the first and currently only country to criminalize

the purchase of sex in efforts to eradicate sex slavery. The *Violence Against Women Act* was passed in July of 1998, declaring “a person who obtains a casual sexual relation in return for payment will be sentenced...for the purchase of a sexual service to a fine or term of imprisonment not exceeding six months” (Hubbard 143). In addition to its legislation, Sweden launched a nationwide educational campaign about sex trafficking to inform citizens and warn potential violators (Yen 678). In a society that displays high levels of equality between men and women, prostitution itself is seen as an offense to women and detrimental to equality. Women in Sweden represent 50 percent of the population in government, 40 percent in Parliament, 48 percent in County Councils, and 41 percent in municipalities (Farley). The legislation itself reflects these views of equality;

Gender equality will remain unattainable so long as men buy, sell and exploit women and children by prostituting them...Prostituted persons are the weaker party, exploited by both the procurers and the buyers...By adopting the legislation Sweden has given notice to the world that it regards prostitution as a serious form of oppression of women and children and that efforts must be made to combat it. (Sweden, Kvinnofrid)

In comparison to the booming preponderance of the sex trafficking industry in the Netherlands, the prohibition of prostitution has resulted in as few as 200 to 400 women and children being trafficked into Sweden annually. This figure continues to shrink in comparison to its neighboring country, Finland, where approximately 15,000 to 17,000 sex trafficking victims are transported across its borders each year (De Santis). In essence Sweden has created a ‘bad’ market for sex trafficking that creates complexities for the pimps and less of an economic opportunity for the traffickers. As a result, traffickers will take their women elsewhere (*Nefarious*). That is why it is essential that each nation state take on its own form of demand-focused legislation so that there may be no ‘good’ market for the sex trafficking industry. Only a comprehensive, international effort to combat sex trafficking will be truly effective. Until then, sex traffickers will simply

move from bad markets to good markets. Legislation that criminalizes the purchase of sex promotes the idealistic goals of equality as well as the logistical goals of dramatically reducing the number of women being trafficked into a certain state to meet the male demand.

The United Kingdom has come to adopt the practice of abolition, where prostitution was once legal and regulated, but now the country is in transition to criminalize it. The goal of abolitionism is to stop prostitution in addition to sex trafficking, while non-abolitionists strive only to stop sex trafficking. This new practice of abolition in the UK is due to the legislation that previously regulated prostitution. This legislation condensed prostitution into central urban areas where it became more or less accepted, known as “de facto tolerance zones”. However after time, the community living in and around these tolerance zones became intolerant of the side effects that came with the territory. Currently both state and general opinion have begun to transition in favor of the abolition of prostitution. This view is expressed in the Home Office’s *Coordinated Prostitution Policy* released in 2006, stating “We fail our communities if we simply accept the existence of street prostitution” (Hubbard 144). Yet instead of punishing the supply side of the industry, local enforcement is “most effective when accompanied by diversion programs offering women ‘routes out’ of prostitution through education and compulsory drug rehabilitation” (Hubbard 144). This crackdown on prostitution is reflective of the growing concern about the correlation between prostitution and sex trafficking in the United Kingdom. The line in the sand that separates prostitution from sex trafficking is becoming increasingly blurred as the problem is viewed as endemic, found among a particular people in a certain area. Thus where there is one, the other closely follows. The *Coordinated Prostitution Policy* also recognizes that the purchase of sex results in the abuse and slavery of women and children (Hubbard 145). But with the criminalization of the purchase of sex, the country can begin to

combat these injustices. Therefore, in the study of the United Kingdom it is evident that the legalization of prostitution simply leads to a net of further complexities, while the criminalization of prostitution through the purchase of sex effectively combats the industry without further exploiting the victims. Individual state legislation is the most effective way to eradicate sex trafficking because each state has the sovereignty needed to enforce its own respective policies, acts, and protocols. Ideally, however, each individual state will adopt a policy of anti-sex trafficking and demand-focused legislation that will corporately work together to eliminate sex trafficking internationally.

Literary Analysis

In her article³, Michelle Dempsey argues for an approach of feminist abolitionism against sex trafficking and the unconditional relevancy of this approach. Non-abolitionists are of the opinion that prostitution may be a sincere consensual and desirable option for both parties involved, and thus there is no point in its prohibition. However, Dempsey's article provides two arguments that still stand regardless of whether or not prostitution is a sincere consensual and desirable option or not, and this is what is meant by unconditional relevancy (Dempsey 1729-1732).

First, Dempsey builds her arguments on the understanding that while prostitution may not be harmful to all, the harm that it does cause outweighs the value of prostitution (Dempsey 1746). The two arguments of unconditional relevancy that she provides are complicity and endangerment. The argument of complicity says that the purchaser is responsible in part for the harm caused because it creates the demand for prostitution and thus sex trafficking. However some contest that while the purchasers may create a demand, they are not rendered responsible for the harms of prostitution and sex trafficking they do not incur themselves (Dempsey 1752).

³ Scholar, "Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism"

Dempsey acknowledges this rebuttal: By criminalizing the purchase of sex, the purchaser is held accountable for creating a demand yet the punishment is proportional, resulting in only a fine or an educational program. The complicity argument also criminalizes the purchase of sex, because if the buyer had not purchased sex, the seller would not be at risk to suffer from pimping, sex trafficking, or other forms of sexual abuse. In her second point, Dempsey emphasizes implicit endangerment rather than explicit endangerment; in explicit endangerment it is necessary that the buyer is fully aware that the women have been subject to force or harm, whereas in implicit endangerment the buyer's presence creates a risk for harm (Dempsey 1765). The reality of the situation is that there are many women who are in the industry of prostitution and sex trafficking who do not freely sell sex and men are not able to accurately determine whether these women are choosing freely. Thus both the argument of complicity as well as the argument of endangerment acknowledges that some prostitution may be consensual but the presence of a high male demand places more and more women in danger of being harmed for sexual exploitation.

While Dempsey's argument is highly pertinent, it runs the risk of focusing so much on the gender injustice of sex trafficking that it undercuts the basic human injustice of sex trafficking. Dempsey specifically supports feminist abolitionism, which supports the goals of abolitionism, but its reason for fighting sex trafficking and prostitution is the belief that sex trafficking and prostitution reinforce a patriarchal view of society (Dempsey 1733). While I concede to this opinion and agree to its dangerous effects, sex trafficking is not simply a gender injustice; rather it is an injustice that violates the basic rights of all human beings. The acts of sex trafficking are criminal regardless of gender. The societal and gender implications then are just one facet of the many problems and effects of sex trafficking and prostitution. While in some countries prostitution is legal and therefore not criminal in definition, prostitution and sex

trafficking are so closely related that to eliminate one, i.e. prostitution, is to have disastrous effects on the other, i.e. sex trafficking. Thus the benefit of discouraging and decreasing sex trafficking through criminalizing the purchase of sex far exceeds the cost of eliminating prostitution.

In Iris Yen's article⁴, she provides support for many of the arguments that have already been established. However this support is highly relevant for the purposes of this paper because it offers examples of the sex trafficking and prostitution legislation already in existence and analyzes its efficacy. In November of 2000, the UN enacted the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, otherwise known as the *Trafficking Protocol* (Yen 661). One major accomplishment of this protocol was that it was the first legislation to take an international approach to sex trafficking. This was a breakthrough for the anti-trafficking community because although sex trafficking has grown into one of the most prominent transnational industries, there was not any legislation that took a comprehensive approach to addressing this problem. Each country addressed it as an isolated incident, failing to recognize that sex trafficking requires a cooperation among states, albeit underground, in order to function. In fact, sex traffickers actually utilize this transportation of persons to 'foreign' countries to their advantage because women are much less likely to escape when they are brought in as illegal citizens, do not speak the language, and have no other connections. Another major accomplishment of the protocol was that it recognized the condition of poverty as a chief target for traffickers (Yen 657). In countries such as Thailand, the line between sex trafficking and prostitution become easily blurred due to this reason. It has become a cultural phenomenon for daughters to enter into the sex industry as a way to provide for their families. In fact, when a

⁴ Scholar, "Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation"

girl is born in Southeast Asia, it is commonplace to hear congratulatory remarks to the family because it is ensured that the family will always have a way out of financial troubles by prostituting her. (*Nefarious*). Is this prostitution or sex trafficking? It is prostitution forced by the condition of poverty, yet any forced prostitution is sex trafficking. It is this issue that legislators may not be able to fully address, but that they are starting to recognize.

Finally, the male demand is specifically addressed in the *Trafficking Protocol*. The UN calls for states to “discourage the demand” in the industries of sex trafficking and prostitution (United Nations). While this final accomplishment is the one that is most pertinent to the purpose of this argument, Yen feels that it is “too weak and unenforceable to capture the full attention and compliance from its Member States,” rather “an explicit resolution requiring its signatories to implement policies aimed at substantially reducing the demand for commercial sexual services would be more effective” (Yen 662). Thus Yen calls for legislation that demands even more of its members to more effectively combat sex trafficking.

The *Trafficking Victims Protection Act* (TVPA) of 2000 is another piece of legislation that Yen highlights in her article and it is perhaps one of the most prominent and applicable policies that tackles prostitution and sex trafficking. TVPA focuses on three main approaches that include prevention, prosecution, and protection. The act hopes to prevent sex trafficking through the prosecution of traffickers while still maintaining the protection of victims. It achieves this by providing “economic and educational opportunities for foreign girls and women in living impoverished conditions,” offering “medical, psychological, social and economic services” to rescued traffic victims, increasing “penalties for trafficking by raising the statutory maximum imprisonment from ten to twenty years” and in some cases life imprisonment and finally establishing “a special T-visa that allows eligible victims to reside legally in the United

States” (Yen 663). And this policy has not passed without results. In the following three years after its ratification, there were three times the number of trafficking investigations, twice the number of defendants found guilty, and much financial aid as well as T-visas (Yen 663). Yet even with this overwhelming amount of positive results, Yen is still not convinced that the act does enough to address the male demand. Other critics agree that even though this is a definite improvement, the statistics are quite low when compared to the massive epidemic of sex trafficking. Yen is relentless in her attack on sex trafficking, demanding “unless demand for commercial sexual services severely diminishes, illegal trafficking in women and children for the purpose of sexual exploitation is unlikely to cease” (Yen 664). Progress was made with the second revision of the act when Congress targeted male demand by authorizing social services and local law enforcement to create educational programs as well as to investigate and prosecute the purchasers through a \$50 million grant. Even with this improvement, Yen says that “more efforts need to be made to understand and effectively combat male demand because it is the primary driver of the sex trafficking industry” (Yen 665). By analyzing some of the most contemporary legislation, the criminalization of the purchase of sex is the most effective way to eradicate sex trafficking but more strides need to be taken.

Conclusion

In conclusion, sex trafficking is a modern form of slavery that abuses women and children throughout the world. It is an injustice that must be intentionally targeted in order for it to be eliminated. The most effective way to eradicate the injustice of sex trafficking is through the criminalization of the purchase of sex. The criminalization of the purchase of sex will illegalize prostitution but this illegalization is necessary because where prostitution is legal, the industry of sex trafficking flourishes. The criminalization of the purchase of sex targets the male

demand of the industry and by doing so inherently decreases the female supply. This power play between the demand and supply directly addresses the economy of sex trafficking. Sex trafficking loses its economic appeal when the male demand is targeted because it creates a bad market for both traffickers and pimps alike. For sex trafficking to truly cease to exist, every nation state must adopt a policy of abolition that leads to every market becoming a bad market. In addition, the legislation of sex trafficking must target the male demand because past legislation that has targeted female supply exploits potential sex trafficking victims. The case studies of the Netherlands, Sweden, and the United Kingdom provide statistic examples of the efficacy of their respective legislation. From these examples Sweden has been the most effective in terms of their legislation combating sex trafficking. In the scholarly articles, Dempsey makes a case for the abolition of both sex trafficking and prostitution by utilizing the argument of complicity and the argument of endangerment. These arguments are relevant for the abolition of prostitution even under the assumption that prostitution may be a consensual act. Yen analyzes the legislation already in place battling against sex trafficking but thinks even greater severity is needed if sex trafficking is truly going to be stopped. Finally, the research collected as well as the analysis of this research support that the criminalization of the purchase of sex through individual state legislation is truly the most effective way to eradicate the growing injustice of sex trafficking.

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