

**NO END IN SIGHT: WHY THE “END DEMAND”  
MOVEMENT IS THE WRONG FOCUS  
FOR EFFORTS TO ELIMINATE  
HUMAN TRAFFICKING**

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#### INTRODUCTION

There is no dispute that human trafficking is a pervasive problem. The International Labor Organization and the United States State Department estimate that there are more than 12 million people in “forced labor and sexual servitude” worldwide.<sup>1</sup> The State Department estimates that between 14,500 and 17,500 people are trafficked into the United States annually.<sup>2</sup> Sex trafficking, specifically, undoubtedly occurs in the United States—all one needs to do is read the local newspaper to find horrific accounts of women and children<sup>3</sup> enslaved and abused in major cities across the country.<sup>4</sup> However,

<sup>1</sup> U.S. DEP’T OF STATE, BUREAU OF PUB. AFFAIRS, *TRAFFICKING IN PERSONS: COERCION IN A TIME OF ECONOMIC CRISIS* (2009), available at <http://www.state.gov/r/pa/scpl/fs/2009/124871.htm>.

<sup>2</sup> U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 23* (June 2004), available at <http://www.state.gov/documents/organization/34158.pdf>.

<sup>3</sup> This Article focuses on trafficking of adult women. Although men and transgender people are also trafficked, the majority of data and scholarship available pertains to the trafficking of women and children. See, e.g., Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women’s Health*, 34 HARV. J.L. & GENDER 225, 240 (2011) (describing the relative “invisibility of transgender and male sex workers”). This Article therefore reserves commentary on male and transgender sex workers for future scholarship. In addition, although the Author acknowledges that large numbers of children are trafficked for both labor and sex work worldwide, this Article focuses on adult women under the assumption that all sex work by children is forced. However, the possibility of voluntary sex work by adult women can and has been debated:

Although both adult and child prostitution are part of the commercial sex sector and have strong economic and social foundations, the position on child prostitution is unequivocal, whereas there could be different considerations for adult prostitution. Children are victims of prostitution, whereas adults could choose sex work as an occupation. International conventions all treat child prostitution as an unacceptable form of forced labour; the goal is its total elimination. In the case of adults, the position is less obvious because it is possible to make a distinction between enforced and voluntary prostitution.

INT’L LABOUR ORG., *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 211 (Lin Lean Lim ed., 1998).

<sup>4</sup> See, e.g., Editorial, *Senate should move ahead on greater penalties for pimps*, BOSTON GLOBE, June 21, 2011, at A10 (describing the arrest of a Dorchester man for “abducting a 15-year-old girl and forcing her into prostitution”); David Chanen, *Woodbury*

there is no way to know exactly how many trafficking victims in general and sex trafficking victims specifically exist in the United States, in part due to the United States' problematic conflation of human trafficking and prostitution.<sup>5</sup> This conflation has enshrined the ideals of abolitionist feminists, who believe that prostitution is inherently coercive and abusive, and has refused to acknowledge the pro-work position that views prostitution on a spectrum including both forced and voluntary sex work.<sup>6</sup> Abolitionist ideals have most recently taken hold in End Demand efforts, which focus on criminalizing, punishing, and shaming men who buy sex as purported solutions to both prostitution and human trafficking.<sup>7</sup> This Article takes a pro-work position and aims to demonstrate the potential harms of End Demand policies. It also proposes more productive methods for addressing human trafficking in the United States.

Part I of this Article examines the fundamental feminist debates over prostitution and human trafficking. It looks at the abolitionist versus pro-work positions regarding prostitution and discusses how those viewpoints have informed the development of international and U.S. definitions of trafficking. It then discusses the problem of conflating prostitution and all forms of trafficking when attempting to develop a framework for dealing with sex trafficking and labor migration. Part II.A examines End Demand laws and programs, beginning with a discussion of conflicting studies on whether men who buy sex are disproportionately deviant, violent, and abusive. It argues that sex trafficking cannot be reduced to a simple supply and demand equation, but rather that sex trafficking requires complex analysis

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*man gets 11 years in sex trafficking case*, MINNEAPOLIS STAR TRIB., Jan. 13, 2012, <http://www.startribune.com/local/east/137292453.html> (describing the conviction of a man for interstate sex trafficking); Elizabeth Aguilera, *Human trafficking on the rise in border region*, SAN DIEGO UNION TRIB., Jan. 12, 2012, <http://www.utsandiego.com/news/2012/jan/12/human-trafficking-on-the-rise-in-border-region> (describing a rise in women trafficked from Mexico to the U.S.); Annie Sweeney, *Bolingbrook man charged in sex trafficking case*, CHICAGO TRIB., Jan. 3, 2012, [http://articles.chicagotribune.com/2012-01-03/news/chi-bolingbrook-man-charged-in-sex-trafficking-case-20120103\\_1\\_bolingbrook-man-trafficking-case-federal-charges](http://articles.chicagotribune.com/2012-01-03/news/chi-bolingbrook-man-charged-in-sex-trafficking-case-20120103_1_bolingbrook-man-trafficking-case-federal-charges) (describing a man who has been arrested for forcing a 17-year-old to work in the sex trade).

<sup>5</sup> See *infra* Part I.B.2.

<sup>6</sup> See *infra* Part I.A. This Article uses the terms “sex work” and “prostitution” fairly interchangeably, with “sex work” favored out of respect for the preference of many sex worker rights organizations. See, e.g., GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, MOVING BEYOND ‘SUPPLY AND DEMAND’ CATCHPHRASES: ASSESSING THE USES AND LIMITATIONS OF DEMAND-BASED APPROACHES IN ANTI-TRAFFICKING 11 (2011), available at [http://www.gaatw.org/publications/MovingBeyond\\_SupplyandDemand\\_GAATW2011.pdf](http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf) [hereinafter GAATW MOVING BEYOND CATCHPHRASES] (discussing the preference for the term “sex work” over “prostitution”). Where appropriate, however, “prostitution” is used for clarity or to preserve the language used by the position or organization being discussed. In addition, although this Article seeks to acknowledge that sex work exists on a spectrum and that many women who enter the sex trade do so because of undesirable and often dire circumstances including extreme poverty, see *infra* Part I.A, this Article sometimes uses the terms “voluntary” and “noncoercive” to describe sex work that is not forced by third parties.

<sup>7</sup> See *infra* Parts II–III.

that does not lend itself to the conclusion that johns' demand for sex directly causes women to be trafficked for sexual abuse.<sup>8</sup> Part II.B then examines different End Demand legal frameworks and programs, including laws in Canada and the United Kingdom that embrace punishing johns without criminalizing the actual purchase and sale of sex, and the Swedish model, which criminalizes the buyers but not the sellers of sex. This Part also examines the growing use of programs such as "john schools," shaming methods, "Dear John" letters, and social marketing campaigns. This Part argues that these efforts to target johns are not only ineffective in reducing sex work and trafficking, but also actually harm women in sex work because these efforts push sex workers' activities further underground, where the potential for safe sex decreases and for violence increases.

Part III of this Article addresses the growing popularity of the End Demand movement in the United States, beginning with the federal government's inclusion of anti-prostitution ideals in the 2005 Trafficking Victims Protection Act Reauthorization, the 2003 Anti-Prostitution Pledge, the 2011 Trafficking In Persons Report, and the recent State Department literature. This Part then studies current End Demand efforts at the state level, including abolitionists' successful campaigns to make buying and selling sex illegal in Rhode Island and to create a definition of trafficking in Massachusetts that is dangerously overbroad and has the potential to be ineffective due to its strong focus on ending prostitution. As recent and well-publicized End Demand efforts, Rhode Island and Massachusetts are strong examples of the impact that abolitionist attitudes can have on problematic connotations of trafficking and prostitution in state laws.

Finally, Part IV of this Article makes recommendations for more productive approaches to reducing trafficking and improving the lives of sex workers. It suggests ways in which pro-work feminists can respond directly to End Demand advocates' claims, using the example of the Work Rights Initiative's recent letter to the State Department questioning its unsupported acceptance of End Demand rhetoric. This Article concludes with suggestions for moving away from the abolition versus decriminalization debate on sex work and toward more on-the-ground responses to trafficking and to problematic conditions in sex work. It proposes that efforts be refocused on identifying and reducing instances of exploitive labor practices, which in-

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<sup>8</sup> This Article often refers to men who buy sex as "johns." Catharine MacKinnon notes that referring to buyers of sex as "johns" gives them a "common real man's name," which she believes problematically gives buyers of sex the "true privacy of anonymity." Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 282 (2011) [hereinafter Mackinnon, *Trafficking, Prostitution, and Inequality*]. Different cultures have different slang for male sex buyers—in the U.K., they are called "punters" and "kerb crawlers." *Id.*; see generally Rosie Campbell & Merl Storr, *Challenging the Kerb Crawler Rehabilitation Programme*, 67 FEMINIST REV. 94 (2001) (discussing the development of the U.K. "Kerb Crawler Rehabilitation Programme"). Because "john" and "sex buyer" are both common terminology in literature surrounding the End Demand movement in the U.S., this Article uses both interchangeably.

clude both exploitive labor and sex work. It also suggests that advocates focused solely on prostitution should consider the possibility of providing aid to sex workers and education to sex buyers in an unbiased manner as a means, albeit unconventional, of reducing the number of exploited women in the sex trade.

### I. FRAMING THE DISCUSSION: THE FEMINIST DEBATES

Efforts to end the demand for prostitution are based on an endorsement of longstanding feminist theories that conflate sex work with trafficking and view sex work as inherently harmful and exploitive.<sup>9</sup> These theories have been influenced by ongoing feminist debates that have played an important role in shaping international law.<sup>10</sup> These debates can largely be divided into arguments made by two camps of feminists: abolitionists and pro-work advocates. As Prabha Kotiswaran articulates:

Abolitionists adopting a sexual subordination approach are against the commodification of sex and view sex work as a paradigmatic form of violence against women, embodying gender inequality. For them, sex workers are victims and lack agency in the context of pervasive institutional violence. Sex work advocates . . . are agnostic to the commodification of sex per se and, while cognizant of the circumstances under which women take to it, view sex workers as agents with some ability to negotiate within the sex industry. Thus, their emphasis is on protecting and promoting the rights of sex workers.<sup>11</sup>

Kotiswaran calls this latter approach the “work position.”<sup>12</sup> This Article advocates against End Demand strategies through the lens of acceptance of the work position as the best approach to addressing the harms of sex work while respecting women’s agency. However, this Author acknowl-

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<sup>9</sup> See *infra* Part II.

<sup>10</sup> The role of feminist perspectives in shaping international law has been called “Governance Feminism,” defined as “the incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power.” Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 340 (2006).

<sup>11</sup> PRABHA KOTISWARAN, DANGEROUS SEX, INVISIBLE LABOR: SEX WORK AND THE LAW IN INDIA 10 (2011). See also Halley et al., *supra* note 10, at 347 (discussing abolitionist versus “‘individualist’ or liberal/libertarian approaches that contemplate the possibility that some prostitution is consensual and therefore not slavery and not the result of trafficking, and consequently . . . are amenable to greater decriminalization or legalization.”).

<sup>12</sup> KOTISWARAN, *supra* note 11, at 10. This Article refers to the adherents of the work position as pro-work advocates/feminists and work position/approach advocates/feminists.

edges that elevating the work position as an either-or choice over the abolitionist approach has inherent flaws, among them the “risk of oversimplification.”<sup>13</sup> Of course, no theory can exist in a vacuum: “it [is a] given that it would be rare to find any of the ‘ideal typical’ sex work regimes operating in its pure form, and inconceivable that [International Humanitarian Law] will ever operate as a pure sovereigntist command.”<sup>14</sup> For this reason, this Article stops short of advocating specifically for decriminalization in all situations, arguing instead that efforts to reduce exploitive sex work and trafficking should focus on providing assistance to those traditionally seen as “victims” instead of focusing on punishing sex buyers.<sup>15</sup> In addition, this Author acknowledges the deeply divisive and illuminating perspectives that can come from personal experience and interaction with trafficking victims, traffickers, sex workers, and sex buyers—perspectives that can also differ widely depending on where and when one’s interactions occurred.<sup>16</sup>

A. *What is Prostitution? Perspectives Behind Different Legal Frameworks for Sex Work*

Legal schemes to regulate sex work have been divided into three major categories. (1) *Complete criminalization* criminalizes all aspects of sex work including penalties for the sale of sex by the sex worker, the purchase of sex by the john, and third-party involvement by pimps, brothel owners, and transporters.<sup>17</sup> While there do not appear to be any feminist organizations that advocate for this model due to its imposition of penalties on sex workers themselves,<sup>18</sup> most countries and every U.S. state but Nevada follow

<sup>13</sup> *Id.* Kotiswaran uses this language to describe the typical interaction between the two feminist positions on sex work.

<sup>14</sup> Halley et al., *supra* note 10, at 340 (explaining why Governance Feminism favors examining “complex law-in-action/law-in-the-books contingency” instead of solely polarizing points of view).

<sup>15</sup> See Part IV.B for an explanation of why this Author does not believe taking a strong stance on partial versus full decriminalization is particularly helpful in reducing harm to exploited people.

<sup>16</sup> This Author has not yet benefitted from such personal experience in this area and will save such reflection for future scholarship. Abolitionists have criticized pro-work feminists for such lack of experience: “Probably the most disturbing aspect of the international prostitutes’ rights movement is the way in which a hierarchy built on race and class privilege informs its ideology. The overwhelmingly white leadership of this well-funded movement is comprised of academics and attorneys who *don’t have to do sex work* . . .” Vednita Carter & Evelina Giobbe, *Duet: Prostitution, Racism, and Feminist Discourse*, 10 HASTINGS WOMEN’S L.J. 49–50 (1999).

<sup>17</sup> Halley et al., *supra* note 10, at 338.

<sup>18</sup> *Id.* at 339 (“As far as we know, there is no [Governance Feminism] project in sex trafficking/prostitution to promote complete criminalization”); KATHARINE T. BARTLETT & DEBORAH L. RHODE, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 563–64 (5th ed. 2010) (“Most women’s rights advocates and sex workers agree on two points: criminal penalties for workers are not appropriate, and more strategies are necessary to ensure their safety.”).

this model,<sup>19</sup> with law enforcement typically focused on penalizing sex workers.<sup>20</sup> (2) *Complete decriminalization* removes all criminal penalties surrounding the buying and selling of sex<sup>21</sup> and sometimes includes regulating aspects of sex work.<sup>22</sup> (3) *Partial decriminalization*, the model increasingly advocated by abolitionists,<sup>23</sup> decriminalizes the activities of sex workers but criminalizes the involvement of others, including the customers.<sup>24</sup> This is the model used in Sweden<sup>25</sup> and promoted by growing End Demand efforts.<sup>26</sup>

Abolitionists argue that “prostitution is intrinsically abusive . . . [because it] in and of itself is an abuse of a woman’s body.”<sup>27</sup> Abolitionists claim that prostitution is necessarily physically and mentally damaging:

In prostitution, no woman stays whole. It is impossible to use a human body in the way women’s bodies are used in prostitution and to have a whole human being at the end of it, or in the middle of it, or close to the beginning of it . . . . And no woman gets whole again later, after.<sup>28</sup>

Abolitionists, such as anti-prostitution activist Melissa Farley, have amassed and summarized a great deal of research that supports these claims, including studies that demonstrate the following: sexual and physical abuse against sex workers is common, severe, and widespread;<sup>29</sup> sex workers suffer “dev-

<sup>19</sup> See BARTLETT & RHODE, *supra* note 18, at 559.

<sup>20</sup> See *id.* at 560.

<sup>21</sup> See Halley et al., *supra* note 10, at 339.

<sup>22</sup> “The typical options include labor law, employment law, zoning of sex businesses, compulsory medical check-ups, licensing of sex workers, etc.” *Id.* However, some sex workers argue that any regulation of sex work is problematic—restrictions on sex worker autonomy may lead to lower wages, higher stigma, an increase in unsafe “underground” work by sex workers seeking to avoid these side effects, and trafficking by pimps seeking to exploit unregistered workers. See BARTLETT & RHODE, *supra* note 18, at 564.

<sup>23</sup> See MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 276 (noting that abolitionists increasingly favor laws criminalizing sex buyers while decriminalizing sex sellers).

<sup>24</sup> See Halley et al., *supra* note 10, at 338.

<sup>25</sup> See *infra* Part II.B.2.

<sup>26</sup> See *infra* Part III.

<sup>27</sup> Andrea Dworkin, *Prostitution and Male Supremacy*, 1 MICH. J. GENDER & L. 1, 2–3 (1993) (further stating, “Let me be clear: I am talking to you about prostitution per se, without more violence.”).

<sup>28</sup> *Id.* at 3.

<sup>29</sup> See Melissa Farley, “*Bad for the Body, Bad for the Heart*”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1094–96 (2004) (citing, *inter alia*, J. RAYMOND ET AL., A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS 54–75 (2002), available at <http://action.web.ca/home/catw/readingroom.shtml?x=17062>; Jody Miller, *Gender and Power on the Streets: Street Prostitution in the Era of Crack Cocaine*, 23 J. CONTEMP. ETHNOGRAPHY 427 (1995); Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91 (1993) (discussing risks of violence against sex workers)).

astating” effects on their physical and mental health;<sup>30</sup> buyers of sex have heightened violent inclinations and dangerous attitudes toward women;<sup>31</sup> and the vast majority of women enter prostitution as children because of abuse and rape in their pasts<sup>32</sup> and want nothing more than to leave prostitution.<sup>33</sup> Abolitionists believe that a “prostituted woman”<sup>34</sup> can never freely give consent for paid sex,<sup>35</sup> and that if she believes she has consented, it is because she has “dissociated,” or convinced herself that she is acting voluntarily in order to survive.<sup>36</sup> As a result of viewing sex work as inherently harmful, abolitionists do not believe that decriminalization, even with extensive regulation, can remedy the problems associated with prostitution.<sup>37</sup> However,

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<sup>30</sup> Farley, *supra* note 29, at 1097; *see also id.* at 1098–99, 1104–05 (citing, *inter alia*, J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY, 778 (2004) (describing increased risk for cancer, sexually transmitted diseases, HIV, traumatic brain injury, post traumatic stress disorder, and other health problems)); *id.* at 1105–09 (describing increased risk for other mental health problems, including sexual dysfunction and dissociation).

<sup>31</sup> *See id.* at 1102 (citing Suzanne Daley, *New Rights for Dutch Prostitutes, but No Gain*, N.Y. TIMES, Aug. 12, 2001, [www.nytimes.com/2001/08/12/international/12DUTC.html](http://www.nytimes.com/2001/08/12/international/12DUTC.html)) (“A brothel owner in the Netherlands complained about an ordinance requiring that brothels have pillows in the rooms: ‘You don’t want a pillow in the [brothel’s] room. It’s a murder weapon’ . . . Familiar with how customers treated women in prostitution, this Dutch pimp understood that johns are regularly murderous toward women.”). *See also infra* Part II.A.1.

<sup>32</sup> *See, e.g.*, MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 278–81 (describing when and why young girls enter prostitution).

<sup>33</sup> *See, e.g., id.* at 289–90 (“Across cultures, at all levels of economic development, whether street or house, when asked, ‘What do you need?’, the answer of 89% of people in prostitution is to ‘[l]eave prostitution.’ It is the most frequently mentioned reply. They want to leave but feel they cannot or do not know how.”).

<sup>34</sup> Many abolitionists prefer to refer to sex workers as “prostituted women,” because it implies that prostitution is something that is done to a woman against her will. *See id.* at 273 (“Prostitute, the noun, is seen to misleadingly and denigratingly equate who these people are with what is being done to them; the past participle verb form, by contrast, highlights the other people and social forces who are acting upon them.”).

<sup>35</sup> *See, e.g.*, *An Introduction to CATW: Philosophy*, COAL AGAINST TRAFFICKING IN WOMEN, <http://www.catwinternational.org/about/index.php> (last visited Jan. 14, 2012) (“All prostitution exploits women, regardless of women’s consent.”); CATHARINE A. MACKINNON, *SEX EQUALITY* 1240 (2d ed. 2007) [hereinafter MACKINNON, *SEX EQUALITY*] (citing JANICE G. RAYMOND, COAL AGAINST TRAFFICKING IN WOMEN, REPORT TO THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN 7 (1995) (money in prostitution “merely redefines as prostitution the rape, sexual abuse and battery that [the customer] commits.”)).

<sup>36</sup> Farley, *supra* note 29, at 1107–09 (describing disassociation using the example of Angie, a pro-sex work advocate who was the self-described “poster child” for decriminalization until her repressed memories of sexual abuse surfaced).

<sup>37</sup> *See, e.g., id.* at 1089 (“When prostitution is understood as violence, however, unionizing prostituted women makes as little sense as unionizing battered women.”); *id.* at 1094 (“It is a cruel lie to suggest that decriminalization or legalization will protect anyone in prostitution.”); *id.* at 1109–15 (citing, *inter alia*, Karim et al., *Reducing the Risk of HIV Infection Among South African Sex Workers: Socioeconomic and Gender Barriers*, 85 AM. J. PUB. HEALTH 1521 (1995) (arguing that public health programs encouraging condom use among sex workers do not work and may even increase rates of infection by increasing prostitution)); *see also* MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 283–84 (arguing that the effect of decriminalization, which is to move prostitution indoors, does not make it any safer); *id.* at 286 (criticizing decriminalization



many anti-prostitution works—especially those of Melissa Farley—have been criticized for their faulty methodology and sensationalism.<sup>38</sup> Anti-abolitionist advocate Ronald Weitzer, for example, has called Farley and other anti-prostitution activists’ work “nonpeer-reviewed,” stating that it contains “sweeping generalizations” that “tend to select or accent the most disturbing instances of abuse and present them as representative and indicative of intrinsic problems.”<sup>39</sup> Weitzer also points out that anti-prostitution studies are often subject to “selection bias” due to the impossibility of random sampling in surveys of sex workers and buyers, and that anti-prostitution studies frequently utilize “opaque and biased data collection” and downplay findings that do not match their preferred positions.<sup>40</sup> Although criticism of methodology is common in all polarizing debates, it holds particular weight in this context because abolitionist feminists rely foremost on research demonstrating harms resulting from prostitution as the primary support for their stance.

Pro-work advocates argue that sex workers enter prostitution for a variety of reasons and that an approach that looks at sex work on a spectrum—from the most involuntary and forceful (such as rape and enslavement) to the more voluntary (influenced by extreme poverty, lack of other options, or preference for sex work over other job options available<sup>41</sup>)—better suits the needs of sex workers.<sup>42</sup> Pro-work advocates argue that treating all sex work

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for harm reduction because “[e]veryone supports less harm to the women. But harm *elimination* is not part of the sex work agenda because it is inconsistent with sex for sale.”); *id.* at 304–05 (arguing that decriminalization can make sex work more dangerous because men who do not want to use condoms and who want to have violent sex will simply create a market for these practices).

<sup>38</sup> See, e.g., Ronald Weitzer, *The Mythology of Prostitution: Advocacy Research and Public Policy*, SEX RES. & SOC. POL’Y 15, 17 (2010) (describing sensationalism and selective use of “[a]necdotal horror stories” in abolitionist writings).

<sup>39</sup> *Id.* at 18; see also *id.* at 18–22.

<sup>40</sup> *Id.* at 19–21; see also Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution and Antitrafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1707 (2010) (describing difficulties with accurate data collection on trafficking because “countries and organizations define trafficking differently, some conflating trafficking with other phenomena, including smuggling, illegal migration, and prostitution.”).

<sup>41</sup> For an example of an argument that sex work can be voluntary, see MACKINNON, SEX EQUALITY, *supra* note 35, at 1266 (citing Melissa Ditmore, *Addressing Sex Work as Labour*, in TRAFFICKING AND THE GLOBAL SEX INDUSTRY: NEED FOR HUMAN RIGHTS FRAMEWORK 34 (Geneva, June 21–22, 1999) (“Sex work is not inherently degrading or a violation of a woman’s human rights simply because the work is distasteful to some. Many people opt for sex work because it is less degrading, better paying, and provides more freedom than other available options.”)).

<sup>42</sup> See, e.g., Weitzer, *supra* note 38, at 16, 26 (2010) (describing rigid abolitionist views as an “oppression paradigm, which depicts prostitution as the epitome of male domination and exploitation of women regardless of historical period, societal context, or type of prostitution,” and advocating instead for what he calls a “polymorphous paradigm, [which] holds that a constellation of occupational arrangements, power relations, and worker experiences exist within the arena of paid sexual services and performances.”); Elizabeth Bernstein, *What’s Wrong with Prostitution? What’s Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 HASTINGS WOMEN’S L.J. 91, 102–17 (1999). Bernstein discusses the wide variety of circumstances and conditions of

as forced removes women's agency and infantilizes them.<sup>43</sup> Although contemporary definitions of prostitution are typically gender-neutral, historically, regulation of prostitution was based on restrictive attitudes regarding female sexuality, which aimed to prevent "promiscuous unchastity."<sup>44</sup> Anti-sex work advocacy has traditional roots in the belief that non-procreative sex outside of marriage is immoral.<sup>45</sup> These beliefs have been enshrined in U.S. law for over one hundred years.<sup>46</sup> Those opposed to criminalization argue that:

[T]here are no good moral arguments for criminalizing consensual adult commercial sex, and that its punishment is a violation of the rights of the person. . . . [Criminalization is] an illegitimate vindication of unjust social hatred and fear of autonomously sexual women and their rights to define and pursue their own vision of the good.<sup>47</sup>

Pro-work approach advocates believe that the harmful aspects of sex work result not from selling sex in and of itself, but instead from external factors.<sup>48</sup> They believe they can minimize those factors by focusing anti-sex trafficking efforts on locating the victims of truly forced prostitution and by reducing the stigma against, providing services to, and improving the condi-

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sex workers in San Francisco, after having completed "eighteen months of fieldwork and interviews amongst San Francisco prostitutes working at a variety of levels." *Id.* at 93.

<sup>43</sup> See, e.g., GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 130 (2007), available at [http://www.gaatw.org/Collateral%20Damage\\_Final/singlefile\\_CollateralDamagefinal.pdf](http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf) [hereinafter GAATW COLLATERAL DAMAGE] (discussing "paternalistic" efforts to restrict women's migration to prevent them from being trafficked); see generally David A. J. Richards, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 U. PA. L. REV. 1195, 1204 (1979) (explaining the roots of and arguing against a moralistic condemnation of sex work). For an abolitionist response, see MACKINNON, SEX EQUALITY, *supra* note 35, at 1236 ("Work for [prostitution's] abolition is no more insulting to prostitutes than work to end any other form of discrimination insults victims. On this analysis, prostitution is a practice of gender inequality seldom so named and a violation of human rights.").

<sup>44</sup> See Richards, *supra* note 43, at 1204.

<sup>45</sup> *Id.* at 1210–13 (discussing traditional religious views on sex outside of marriage).

<sup>46</sup> See *id.* at 1219. The Court made this stance clear in its opinion in *United States v.*

*Bitty*:

[Prostitutes] are in hostility to the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization, the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.

208 U.S. 393, 401 (1908) (internal citation omitted).

<sup>47</sup> Richards, *supra* note 43, at 1279.

<sup>48</sup> Weitzer, *supra* note 42, at 16 ("In contrast to the prostitution-as-violence notion, an alternative, evidence-based perspective would characterize victimization differently—that is, as a factor that varies across time, place, and echelon. Violence is by no means endemic throughout the sex trade.").

tions and health of voluntary sex workers.<sup>49</sup> Pro-work advocates frequently reference research that refutes common abolitionist claims.<sup>50</sup> Although not all pro-work advocates call for decriminalization,<sup>51</sup> a body of research exists that supports decriminalization as an effective method for harm reduction.<sup>52</sup> Many pro-work advocates argue that, although harms will always exist in prostitution, efforts to eliminate prostitution—especially outdoor/street sex work—do not encourage women to leave sex work. Rather, it pushes the most desperate women further underground into more dangerous, less controllable situations where harm is even more likely.<sup>53</sup>

However, it is important to note that anti-abolitionist advocates like Weitzer are also criticized for not making their views transparent and for examining sex work from the buyers' point of view, which is more sympathetic toward legalization than the point of view of the prostituted woman herself.<sup>54</sup>

### B. *What is Human Trafficking?*

As Catharine MacKinnon notes, “No one defends trafficking. There is no pro-sex-trafficking position any more than there is a public pro-slavery position for labor these days. The only issue is defining these terms so nothing anyone wants to defend is covered.”<sup>55</sup> Although differing feminist views on prostitution have indeed helped shape the definition of trafficking in international and U.S. law,<sup>56</sup> this issue is far from settled: the conflation of prostitution and trafficking is still being debated<sup>57</sup> and has played an important role in the recent prioritization of End Demand strategies.<sup>58</sup>

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<sup>49</sup> See generally Valerie Jenness, *From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem*, 37 SOC. PROBS. 403 (1990) (discussing the history of pro-sex worker advocacy and positions taken by sex workers on prostitution); see also Elya Maria Durisin & Emily van der Meulen, *Why Decriminalize? How Canada's Municipal and Federal Regulations Increase Sex Workers' Vulnerability*, 20 CAN. J. WOMEN & L. 289, 310 (2008) (listing recommendations for improving sex workers' conditions in Canada).

<sup>50</sup> See, e.g., Weitzer, *supra* note 38, at 17–18 (describing research refuting claims that the majority of women enter prostitution as minors and desperately want to leave the sex trade).

<sup>51</sup> See, e.g., GAATW MOVING BEYOND CATCHPHRASES, *supra* note 6, at 42.

<sup>52</sup> See, e.g., Weitzer, *supra* note 42, at 23–25 (discussing research that finds that decriminalization makes prostitution safer and helps reduce trafficking).

<sup>53</sup> See Part II.B.1 and II.B.2 for discussions of the Canadian and Swedish anti-prostitution laws' effects on outdoor sex work.

<sup>54</sup> See Melissa Farley, *Prostitution Harms Women Even if Indoors: Reply to Weitzer*, 11 VIOLENCE AGAINST WOMEN 950, 952 (2005) (explaining that Weitzer claims to take a neutral stance, when in reality, he is pro-indoor prostitution and “views prostitution from the community's perspective.”).

<sup>55</sup> MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 271.

<sup>56</sup> See *infra* Part I.B.1.

<sup>57</sup> See *infra* Part I.B.2.

<sup>58</sup> See *infra* Parts II–III.

### 1. *International and U.S. Law Define Trafficking*

International, federal, and state laws govern the definition of human trafficking in the United States.<sup>59</sup> The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”),<sup>60</sup> to which the United States is a signatory,<sup>61</sup> has the stated purpose of “prevent[ing] and combat[ing] trafficking in persons, paying particular attention to women and children”<sup>62</sup> and “protect[ing] and assist[ing] the victims of such trafficking, with full respect for their human rights.”<sup>63</sup> “Trafficking in persons” is defined as:

[T]he 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.<sup>64</sup>

Consent to be trafficked is considered irrelevant if any of the means set forth in the definition are used.<sup>65</sup>

Feminist groups played a large role in shaping this definition, with intense debates taking place over several aspects of the definition.<sup>66</sup> Interestingly, social conservatives have also played a role in this debate, siding with abolitionist feminists and creating an unlikely alliance “to fight what they

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<sup>59</sup> See, e.g., Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 326 (2007) (discussing the United Nations Trafficking Protocol and the U.S. Trafficking Victims Protection Act (“TVPA”)); Laura J. Lederer, *Addressing Demand: Why and How Policymakers Should Utilize Law and Law Enforcement to Target Customers of Commercial Sexual Exploitation*, 23 REGENT U. L. REV. 297, 300–05 (2011) (discussing state laws designed to address human trafficking).

<sup>60</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25 (II), Annex, U.N. GAOR, 55th Sess. Supp. No. 49 (Vol. I), UN Doc. A/45/49, at 53 (Dec. 25, 2003) [hereinafter Trafficking Protocol].

<sup>61</sup> *Signatories to U.N. Trafficking Protocol*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Jan. 14, 2012).

<sup>62</sup> Trafficking Protocol, *supra* note 60, at Art. 2(a).

<sup>63</sup> *Id.* at Art. 2(b).

<sup>64</sup> *Id.* at Art. 3(a).

<sup>65</sup> See *id.* at Art. 3(b).

<sup>66</sup> See ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 25–42 (2010) (discussing the debates over the Trafficking Protocol’s definitions).

label human trafficking.”<sup>67</sup> United States-based conservative and religious organizations such as the Heritage Foundation, the Campus Crusade for Christ, the Ethics and Religious Liberty Commission, and the Institute on Religion and Democracy were active alongside abolitionist feminists during the debates over the Trafficking Protocol and the U.S. Trafficking Victim Protection Act (“TVPA”).<sup>68</sup> This alliance has been limited to addressing sex trafficking and prostitution; it does not extend to other forms of trafficking or exploitation.<sup>69</sup>

According to Gallagher, while some nongovernmental organizations (“NGOs”) argued that “any distinction between forced and voluntary prostitution was false and morally unacceptable”<sup>70</sup> and that an acknowledgement that trafficking could occur “irrespective of the consent of the person”<sup>71</sup> should be included, others countered that non-coerced adult prostitution was possible and that the inclusion of means in the definition preserved this distinction.<sup>72</sup> Advocates also differed over whether the end purposes of trafficking should include a specific reference to prostitution, with those in favor calling for explicit mention that would “confirm international legal opposition to all prostitution.”<sup>73</sup> Their opponents were concerned that such mention would divert important attention and resources away from real trafficking problems and toward efforts to abolish all forms of prostitution, including voluntary sex work.<sup>74</sup> Gallagher argues that the United Nations’ definition’s “clumsy handling of the consent issue has generated considerable confusion,”<sup>75</sup> and its reference to prostitution refrains from taking a clear stance on whether voluntary sex work is possible.<sup>76</sup> The Trafficking Protocol’s definition was initially hailed as a victory for abolitionists and a defeat for pro-work advocates.<sup>77</sup> But, both sides have since claimed that the lack of clarity in the Trafficking Protocol’s definition should be interpreted as favorable to their position: advocates for sex worker rights argue that the definition should not include prostitution that is not forced,<sup>78</sup> while abolition-

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<sup>67</sup> Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT’L & COMP. L. 269, 272 (2006).

<sup>68</sup> See Halley et al., *supra* note 10, at 357 (discussing conservative and religious groups’ role in the trafficking debates).

<sup>69</sup> See Berman, *supra* note 67, at 272; see generally *id.* for a comprehensive analysis of how social conservatives and abolitionist feminists have worked together on antitrafficking policy in the United States.

<sup>70</sup> GALLAGHER, *supra* note 66, at 26.

<sup>71</sup> *Id.* at 27.

<sup>72</sup> See *id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *id.*

<sup>75</sup> *Id.* at 28.

<sup>76</sup> See *id.* at 29. The *travaux préparatoires* to the Trafficking Protocol clarifies that it addresses the issue of prostitution only in the context of trafficking and is not meant to prejudice how state parties address sex work in their domestic laws. *Id.*

<sup>77</sup> See *id.* at 28.

<sup>78</sup> See, e.g., GAATW COLLATERAL DAMAGE, *supra* note 43, at 13:

ists claim that the definition includes all prostitution due to prostitution's inherently coercive nature.<sup>79</sup>

According to Gallagher, the U.S. TVPA not only clarified what the U.S. considers to be trafficking, but also helped set the tone for the international definition of trafficking.<sup>80</sup> Signed into law two months before the Trafficking Protocol,<sup>81</sup> the TVPA applies only to "severe forms of trafficking," which it defines as:

- (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.<sup>82</sup>

"Sex trafficking" is further defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."<sup>83</sup>

Notably different than the Trafficking Protocol, the TVPA does not require the crossing of an international border,<sup>84</sup> meaning that for the purposes of sex trafficking in the U.S., a person who forces anyone into prostitution—regardless of whether the victim is a citizen or a migrant—can be prosecuted.<sup>85</sup> In addition to establishing the criminal law under which traffickers

[E]ven in countries which have ratified the UN Trafficking Protocol, either the law or instructions given to law enforcement officials imply that recruitment into sex work is generally tantamount to trafficking—even when it does not involve any acts of coercion or deception. . . . As the UN Trafficking Protocol does not repeat the explicit condemnation of prostitution contained in the earlier UN Suppression of Traffic Convention, or suggest that prostitution should be stopped, it seems reasonable to suppose that sex workers should suffer less ill-effect from measures taken to implement the UN Trafficking Protocol than from measures taken under the terms of earlier international agreements. However, there is little evidence so far that this is the case.

<sup>79</sup> See, e.g., MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 299–300 (arguing that the inherent aspects of prostitution necessarily meet the means requirements of the Trafficking Protocol's definition of trafficking).

<sup>80</sup> GALLAGHER, *supra* note 66, at 22 ("While a number of governments were debating and passing trafficking legislation throughout the 1990s, it was the United States that had the greatest single impact on the evolution of an international consensus on the definition of trafficking.")

<sup>81</sup> See *id.* at 23.

<sup>82</sup> Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 (2000), § 103(8)(a)–(b).

<sup>83</sup> *Id.* § 103(9).

<sup>84</sup> See GALLAGHER, *supra* note 66, at 23.

<sup>85</sup> For example, the 2011 Trafficking in Persons Report uses "Victims' Stories" to "illustrate the many forms of trafficking and the wide variety of places in which they occur." The story of Alissa demonstrates how the TVPA's trafficking definition can be applied to citizens and does not require movement of the victim:

may be prosecuted in the U.S.,<sup>86</sup> the TVPA also establishes requirements for victim assistance.<sup>87</sup>

Additionally, the TVPA creates an annual reporting system under which the U.S. Department of State evaluates whether other countries meet the TVPA's minimum standards for eliminating trafficking,<sup>88</sup> a system that has functioned largely as a shaming mechanism and has had a noticeable (though not necessarily beneficial) effect on the dialogue around policies in those countries receiving problematic evaluations.<sup>89</sup>

## 2. *The Problem with Conflating Prostitution and Trafficking*

Many work approach and human rights advocates take the position that the Trafficking Protocol and TVPA's focus on sex trafficking conflates trafficking with prostitution<sup>90</sup> and that this has produced a "chilling effect" on the public discourse around sex work.<sup>91</sup> Trafficking and prostitution are conflated when efforts to end human trafficking focus almost entirely on (1) sex trafficking and (2) ending prostitution. This conflation does not adequately acknowledge trafficking for other purposes (like labor exploitation) or the possibility of non-coerced sex work.<sup>92</sup> Abolitionists like MacKinnon believe

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Alissa, 16, met an older man at a convenience store in Dallas and after a few dates accepted his invitation to move in with him. But soon Alissa's new boyfriend convinced her to be an escort for him, accompanying men on dates and having sex with them for money. . . . He rented hotel rooms around Dallas and forced Alissa to have sex with men who responded to the ads. The man, who kept an assault rifle in the closet of his apartment, threatened Alissa and physically assaulted her on multiple occasions. The man later pled guilty to trafficking Alissa.

*Victims' Stories: Trafficking In Persons Report*, U.S. DEP'T OF STATE (2011), <http://www.state.gov/j/tip/rls/tiprpt/2011/164225.htm> [hereinafter *TIP Victims' Stories*] (last visited Mar. 4, 2012).

<sup>86</sup> See 22 U.S.C. § 7101, § 112.

<sup>87</sup> See *id.* § 107.

<sup>88</sup> See *id.* § 104, § 108.

<sup>89</sup> See Sabrina Feve & Christina Finzel, Recent Development, *Trafficking of People*, 38 HARV. J. ON LEGIS. 279, 287 (2001) (describing the Trafficking In Persons Country Reports as "shame sanctions"); GALLAGHER, *supra* note 66, at 485 (identifying the "in-disputable" contribution that the TIP Reports have made on the international dialogue about trafficking, but noting that "some of these responses have been highly problematic in human rights terms, a side effect that is not explored or even acknowledged in the U.S. Department of State's reports themselves.").

<sup>90</sup> See LENORA M. LAPIDUS, NAMITA LUTHRA & EMILY J. MARTIN, *THE RIGHTS OF WOMEN: THE AUTHORITATIVE ACLU GUIDE TO WOMEN'S RIGHTS* 94–95 (Eve Carey ed., 4th ed. 2009) (offering a simplistic differentiation between sex trafficking and prostitution under the TVPA: "[S]ex trafficking is any commercial sex act induced by force, fraud, or coercion. Prostitution, however, is any commercial sex act that an individual chooses to perform."); Chuang, *supra* note 40, at 1079 (discussing the problematic results of the current conflation between trafficking and prostitution).

<sup>91</sup> Halley et al., *supra* note 10, at 370.

<sup>92</sup> See generally LIN LEAN LIM, *TRAFFICKING, DEMAND AND THE SEX MARKET* (2007), available at <http://lastradainternational.org/lsidocs/334%20Lin%20Lean%20Lim%20TraffickingDemand%20Sex%20market.pdf> (discussing the complex relationship between trafficking and prostitution and the problems with their conflation).

that efforts to end trafficking and prostitution cannot be separated.<sup>93</sup> Those advocating for a human rights approach, however, believe that equating trafficking and prostitution is problematic because “[p]rostitution per se as the exclusive purpose of trafficking is an untenable definition as not all victims are prostitutes and nor have all the prostitutes been trafficked.”<sup>94</sup> This Article embraces a more nuanced approach to examining sex work and trafficking in an effort to best address the non-monolithic character of the sex industry and the multiplicity of players and diversity of harms and benefits.<sup>95</sup> Lin Lean Lim of the International Labor Organization (“ILO”) identifies two human rights approaches to addressing trafficking and sex work: (1) viewing migration for sex work as existing on a spectrum encompassing a variety of circumstances and eliminating the causes of exploitive trafficking:

The challenge we face is to address the real root causes of trafficking—the reasons why people migrate and are trafficked and the reasons why other people are able to traffic them. It is not enough merely to regulate the sex market; we need to address the areas of vulnerability. At the same time, the related—and perhaps more difficult—challenge is to place the respect for and protection of human rights at the centre of all measures to combat trafficking and to disentangle human rights concerns from morality biases concerning prostitution.<sup>96</sup>

And; (2) providing effective aid to sex workers: “Even for those prostitutes who have not been trafficked, the priority concerns should still be for the protection of their human and labour rights, including safe and healthy

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<sup>93</sup> See, e.g., MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 299–300:

[A] strategic concession of the sex work approach has been to criticize trafficking while defending prostitution. But what is trafficking? . . . [It] is transportation, transfer, harboring, or receipt of a human being for purposes of sexual exploitation: it is straight-up pimping. . . . The sine qua non of trafficking is thus neither border crossing nor severe violence. It is third-party involvement. . . . You cannot traffic yourself, which separates it from prostitution. Sexual exploitation can also be slavery. Right there, in the international definition, is what is sometimes criticized as a ‘conflation’ of slavery with trafficking. You cannot enslave yourself either.

<sup>94</sup> LIM, *supra* note 92, at 1.

<sup>95</sup> See Halley et al., *supra* note 10, at 407:

[A Governance Feminism approach] allows the wide range of incentives (including those of the women themselves) to come into view. . . . As a methodology, such an analysis can supply a fresh new realist and pragmatic vision of the regulation of sex work; it can induce [governance feminists] to break away from the limited view of law as capable of either prohibition or permission . . . and enable a complex, nuanced perception of choice, agency, and consent.

<sup>96</sup> LIM, *supra* note 92, at 1.



working conditions, freedom of association and the right to organize, access to health care and social protection, etc.”<sup>97</sup>

In addition, human rights advocates are identifying a growing need to address exploitive trafficking for other purposes, especially for labor and domestic work.<sup>98</sup> Experts have estimated that “at least one-third of those trafficked are for economic purposes other than sexual exploitation.”<sup>99</sup> Although the U.S. State Department has recently recognized the need to focus more attention on non-sex trafficking,<sup>100</sup> this Article argues that more should be done to redirect resources to these instances of migrant worker abuse that have thus far largely been ignored.<sup>101</sup>

## II. THE RISE OF END DEMAND LEGAL REFORM

Several kinds of partial decriminalization frameworks and programs exist internationally that focus, in varying degrees, on shaming and punishing johns in an effort to discourage them from buying sex. These efforts often refer to the pressing need to end demand for prostitution as the best way to combat human trafficking: “[T]he male demand for . . . prostitution is the most immediate cause of the expansion of the sex industry without which it would be highly unprofitable for pimps and traffickers to seek out a supply of women. It is indisputable that a prostitution market without male consumers would go broke.”<sup>102</sup> Abolitionists make—and work approach advocates question—these assumptions that underlie end demand efforts.

### A. *What is Demand?*

#### 1. *Who Buys Sex?*

Numerous studies have been completed in the last decade, both in the U.S. and abroad, in an attempt to understand which men buy sex and why;

<sup>97</sup> *Id.* at 9.

<sup>98</sup> *See id.* at 1–2:

There is ample evidence of trafficking into construction work, agriculture and food processing, fishing, domestic and care work, sweatshops in the manufacturing industry, hotels and hospitality and for the purposes of organized begging, the exploitation of petty crime and benefit fraud. In activities or sectors prone to exploitation, the demand is for employees who are invisible, unprotected, excluded, vulnerable and disempowered.

<sup>99</sup> *Id.* at 2.

<sup>100</sup> *See, e.g., TIP Victims' Stories*, *supra* note 85 (including, out of fourteen total examples of international trafficking, eight stories about labor trafficking).

<sup>101</sup> *See infra* Part IV for discussion of recommendations for the U.S. to redirect the focus of trafficking enforcement on coercive labor abuses.

<sup>102</sup> COAL. AGAINST TRAFFICKING IN WOMEN, PRIMER ON THE MALE DEMAND FOR PROSTITUTION 15–16 (Ilvi Jõe-Cannon ed., 2006), available at <http://action.web.ca/home/catw/attach/PRIMER.pdf> [hereinafter CATW, PRIMER ON THE MALE DEMAND FOR PROSTITUTION].

these studies agree that men across all ages, races, and socioeconomic backgrounds buy sex.<sup>103</sup> Estimates of how many men have bought sex vary dramatically based on geographic area and sample size<sup>104</sup>—in some countries it may be a small minority, while in other countries, up to two-thirds of men have paid for sex at some point in their lives.<sup>105</sup> Abolitionists like Farley cite to studies demonstrating that men who buy sex are dangerous and violent.<sup>106</sup> Not surprisingly, as is the case with research demonstrating harms to sex workers, a conflicting body of research also exists that instead portrays johns as buying sex for a variety of non-violent reasons.<sup>107</sup> It is important to note that most of the research on johns suffers from data limitations, since studies of johns who voluntarily participate or who have been identified through criminal sanctions may not be entirely truthful or representative of sex buyers at large.<sup>108</sup>

Research on demand for sex embraced by abolitionists portrays johns as abnormal.<sup>109</sup> They are more likely to be criminals,<sup>110</sup> commit rape more often,<sup>111</sup> and use pornography more often.<sup>112</sup> Johns are also unmoved by the

<sup>103</sup> See, e.g., Belinda Brooks-Gordon, *Bellwether Citizens: The Regulation of Male Clients of Sex Workers*, 37 J.L. & Soc'y 145, 151–53 (2010) (describing the wide variety of characteristics that sex buyers possess).

<sup>104</sup> See, e.g., *id.* at 151–52 (discussing the variety in percentage of men who have purchased sex across different geographic locations); BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, SAVE THE CHILDREN, TRAFFICKING—A DEMAND LED PROBLEM? A MULTI-COUNTRY PILOT STUDY 29 (2002) (noting a “good deal of variation” across countries and regions in the percentage of men who admit to having paid for sex).

<sup>105</sup> See ANDERSON & O'CONNELL DAVIDSON, *supra* note 104, at 29.

<sup>106</sup> See generally MELISSA FARLEY ET AL., PROSTITUTION RESEARCH & EDUCATION, COMPARING SEX BUYERS WITH MEN WHO DON'T BUY SEX (2011), available at <http://www.prostitutionresearch.com/pdf/Farleyetal2011ComparingSexBuyers.pdf> [hereinafter FARLEY ET AL., COMPARING SEX BUYERS] (comparing surveys of 101 men who buy sex with 100 who do not and concluding that sex buyers have overall more violent tendencies); JAN MACLEOD ET AL., WOMEN'S SUPPORT PROJECT, CHALLENGING MEN'S DEMAND FOR PROSTITUTION IN SCOTLAND (2008), available at <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf> (concluding from surveys of 100 men who buy sex that they have overall more violent tendencies).

<sup>107</sup> See ANDERSON & O'CONNELL DAVIDSON, *supra* note 104, at 29–30 (discussing non-violent reasons for buying sex).

<sup>108</sup> See, e.g., Steven Sawyer et al., *Attitudes Towards Prostitution Among Males—A “Consumers’ Report,”* 20 CURRENT PSYCHOL. 363, 375 (2001–2002) (“These data are self-report data and may be subject to response bias, particularly since the men surveyed had been arrested and under legal scrutiny.”); John Lowman & Chris Atchison, *Men Who Buy Sex: A Survey in the Greater Vancouver Regional District*, 43 CAN. REV. SOC. & ANTHROPOLOGY 281, 290 (2006) (“Needless to say, we have no way of knowing if or how much our respondents underreported their own violent behaviour.”).

<sup>109</sup> See FARLEY ET AL., COMPARING SEX BUYERS, *supra* note 106, at 4 (“The common myth that ‘any man’ might buy sex (i.e., that a sex buyer is a random everyman, an anonymous male who deserves the common name, john) [is] not supported.”).

<sup>110</sup> See, e.g., *id.* at 4 (discussing self-reported criminal status).

<sup>111</sup> See, e.g., *id.* (discussing self-reported sexually coercive behavior by sex buyers); MACLEOD ET AL., *supra* note 106, at 14 (discussing higher acceptance of “rape myths” among sex buyers, including that “once he pays for it, the customer is entitled to do whatever he wants to the woman he buys.”).

<sup>112</sup> See, e.g., FARLEY ET AL., COMPARING SEX BUYERS, *supra* note 106, at 4 (discussing increased pornography use as problematic because “[o]ver time, as a result of their

plight of the prostitutes they buy sex from, acknowledging but not caring that these women are homeless, drug-addicted, abused, and trafficked.<sup>113</sup> This research portrays sex buyers as having damaging attitudes toward women, including the beliefs that they are entitled to have constant access to sex<sup>114</sup> and that pleasure comes from dominating women.<sup>115</sup>

In contrast, other research identifies that while some sex buyers may suffer from psychological issues, the majority do not.<sup>116</sup> Instances of violence by johns against sex workers may be limited in scope to “a relatively small proportion of very violent men” who prey predominately on street sex workers.<sup>117</sup> Clients of sex workers may purchase sex for a wide variety of reasons: because they are disabled,<sup>118</sup> travelers,<sup>119</sup> addicted to sex,<sup>120</sup> or have the “desire for a particular kind of sexual experience; the desire for particular kinds of sexual partners; the desire for control over when and how to have sex . . . [or are] in search of companionship and what they take to be intimacy.”<sup>121</sup> There may be a link between the social constructs of “masculine” identity and sex work that leads men to buy sex when they feel their

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prostitution and pornography use, sex buyers reported that their sexual preferences changed such that they sought more sadomasochistic and anal sex.”); MACLEOD ET AL., *supra* note 106, at 16 (“One interpretation of this finding is that more frequent use of pornography supports and stimulates men in their use of women in prostitution.”).

<sup>113</sup> See, e.g., CHICAGO COAL. FOR THE HOMELESS, *BUYING SEX: A SURVEY OF MEN IN CHICAGO* 7 (May 2004), available at [http://www.enddemandillinois.org/sites/default/files/Buying\\_Sex.pdf](http://www.enddemandillinois.org/sites/default/files/Buying_Sex.pdf) (“Large numbers of the men appeared indifferent to the plight of the women from whom they are purchasing sex-acts.”); FARLEY ET AL., *COMPARING SEX BUYERS*, *supra* note 106, at 4 (“Sex buyers had significantly less empathy for prostituted women . . . .”); *id.* at 5 (Sex buyers “observed that a majority of women are lured, tricked, or trafficked into prostitution. Many of the men had an awareness of the economic coercion and the lack of alternatives in women’s entry into prostitution.”).

<sup>114</sup> See, e.g., MACLEOD ET AL., *supra* note 106, at 19; RACHEL DURCHSLAG & SAMIR GOSWAMI, *CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX* 18 (2008), available at <http://www.sapromise.org/pdfs/deconstructing.pdf> (“Some interviewees believed that being born male provided them the right to buy sex. When asked why he purchases sex, one interviewee looked the interviewer in the eye and responded ‘Because I can.’”).

<sup>115</sup> See, e.g., MACLEOD ET AL., *supra* note 106, at 20; DURCHSLAG & GOSWAMI, *supra* note 114, at 18 (“Men who expressed feeling powerless in their own lives described the feelings of power they acquired when they bought sex.”).

<sup>116</sup> See Sawyer et al., *supra* note 108, at 373–74 (identifying one-third of men studied as having “significant psychopathology”).

<sup>117</sup> Lowman & Atchison, *supra* note 108, at 293.

<sup>118</sup> See Brooks-Gordon, *supra* note 103, at 153 (describing disabled clients).

<sup>119</sup> See ANDERSON & O’CONNELL DAVIDSON, *supra* note 104, at 29 (noting that “those who travel either for business or leisure are also more likely to buy sex”).

<sup>120</sup> See DURCHSLAG & GOSWAMI, *supra* note 114, at 2 (“83% [of men surveyed] considered purchasing sex an addiction [for them]”).

<sup>121</sup> ANDERSON & O’CONNELL DAVIDSON, *supra* note 104, at 29; see also DURCHSLAG & GOSWAMI, *supra* note 114, at 2 (discussing study results showing that men may purchase sex in order to obtain sexual acts that they either typically feel uncomfortable asking for or their regular partner will not perform, and because they seek to avoid commitment).

masculinity is threatened.<sup>122</sup> It is unlikely that many johns specifically seek out sex with trafficked women, as it is typically impossible for them to tell whether a sex worker is selling sexual services voluntarily or is being coerced.<sup>123</sup>

At the very least, the variety in outcomes of studies of sex buyers demonstrates that no accurate profile of a typical john exists. Efforts to end the harms of prostitution by shaming and punishing men who buy sex therefore suffer from their reliance on the faulty premise that all—or at least the majority—of johns are deviants who either are complicit in or derive pleasure from the exploitation of women.

## 2. *Do Sex Buyers Drive Sex Trafficking?*

Many abolitionists discuss End Demand efforts as obvious, logical outgrowths of efforts to end human trafficking. In their view, sex trafficking specifically—and therefore the majority of human trafficking—could not exist without a market for sex work, which in turn could not exist without male demand for sex with prostitutes.<sup>124</sup> These advocates make simplistic statements about supply and demand to support their claims:

Without the demand for commercial sex, there would be no market forces producing and sustaining the roles of pimps and traffickers as ‘distributors,’ nor would there be a force driving the production of a ‘supply’ of people to be sexually exploited. *Supply and distribution are symptoms; demand is the cause.*<sup>125</sup>

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<sup>122</sup> See ANDERSON & O’CONNELL DAVIDSON, *supra* note 104, at 29. This may also be linked to the social devaluation of women: “[I]n the sense that the more a society devalues ‘femininity,’ the more important it is for men to distance themselves from the ‘feminine’ by asserting their ‘masculinity.’” *Id.*

<sup>123</sup> *Id.* at 31 (discussing how even within a single setting, it is often possible to buy sex from both “free” and “trafficked/unfree” sex workers and that clients will not necessarily know the difference between them); see also LIM, *supra* note 90, at 4 (noting that the majority of johns do not specifically demand sex with trafficked women and cannot identify which women are trafficked and which are not).

<sup>124</sup> See, e.g., MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 281–82 (“I speak here of the demand . . . [Johns] are why this industry exists. Because of johns . . . women are in prostitution.”); Kenneth Franzblau, *What Governmental Policies or Practices Enable the Actions of Those Who Create Demand?*, in DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 67, 72 (Morrison Torrey ed., 2004) (“I fear that if we do not educate boys about the violence of prostitution and pornography and how women are trafficked to satisfy the demand they create, we will never defeat the form of slavery that is human trafficking.”); DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF SEX TRAFFICKING 6 (2004) (“The new focus on the demand requires that we consider men’s responsibility for the existence and continuation of prostitution, and how they create the demand for women and children to be used in prostitution.”).

<sup>125</sup> ABT ASSOCS. INC., DEVELOPING A NATIONAL ACTION PLAN FOR ELIMINATING SEX TRAFFICKING 5–15 (2010), available at [http://www.demandabolition.org/wp-content/uploads/2011/07/2000\\_abtnatactplan.pdf](http://www.demandabolition.org/wp-content/uploads/2011/07/2000_abtnatactplan.pdf) [hereinafter ABT ASSOCS. NATIONAL ACTION PLAN].

Those who advocate for the End Demand strategy see increased law enforcement and rehabilitation programs for johns as the most effective method to stop both prostitution and sex trafficking.<sup>126</sup>

A more nuanced view of trafficking rejects the economic supply and demand model as applying to this complex problem. Human rights advocates find that a complex set of factors, not just male demand for sex, drives sex trafficking.<sup>127</sup> In the trafficking context, “demand and supply factors are closely intertwined,”<sup>128</sup> with strong supply-side factors playing a role. Demand may be fueled by “an abundant supply of vulnerable women and girls whose services and labour can be exploited.”<sup>129</sup> Due to poverty, chronic unemployment, discrimination and inequality, these women may migrate voluntarily, be trafficked involuntarily, or experience a combination of both voluntary decisions and coercive circumstances that lead them to work in abusive situations.<sup>130</sup> Ignoring supply-side factors commodifies workers and “ignores the very real fact that trafficked persons, migrants and workers are people who are trying to access labour and migration opportunities for themselves and their families, and who often try to resist or escape exploitative situations.”<sup>131</sup>

Demand-side factors are also more complex than just desire of the men who buy sex. “‘Demand’ in the context of trafficking is an ideologically loaded term for which there is no precise agreed upon definition and understanding.”<sup>132</sup> Traffickers’ and some pimps’ desire for women who they can exploit—victims who do not require wages, safe working conditions, or the ability to choose their clients—may more significantly contribute to the demand for trafficked women.<sup>133</sup> Criminalization of sex work, as opposed to decreasing demand, may create a stronger underground market that enables trafficking:

The highly organized institutional structures, the networks of dependencies, the widespread linkages with many other types of le-

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<sup>126</sup> See Iris Yen, Comment, *Of Vice & Men: A New Approach to Eradicating Sex Trafficking By Reducing Male Demand Through Education Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 686 (2008) (noting that because going after actual sex traffickers is too difficult, “the most effective way to drive immediate and long-term change is to apply pressure on the ‘weak link’ in the sex trafficking chain: the male demand.”); see generally Lederer, *supra* note 59 (discussing why and how policy-makers should utilize law enforcement to target customers of sex workers).

<sup>127</sup> See generally LIM, *supra* note 92 (discussing the need to understand the complex factors that affect the demand side of trafficking and the sex market and explaining that trafficking cannot simply be eliminated by controlling the demand side).

<sup>128</sup> *Id.* at 3.

<sup>129</sup> *Id.* at 3–4.

<sup>130</sup> See *id.* (explaining the spectrum of conditions contributing to and inherent in trafficking and migration).

<sup>131</sup> GAATW MOVING BEYOND CATCHPHRASES, *supra* note 6, at 16.

<sup>132</sup> LIM, *supra* note 92, at 3.

<sup>133</sup> See *id.* at 4 (discussing the “much more direct role” in trafficking of employers and third parties).

gitimate economic activities, [and] the many vested interests . . . are not easy to dismantle. The powerful commercial and sometimes political as well as criminal elements will not willingly give up this lucrative line of business. Clamping down on some segments of the sex market may only lead to less visible and harder-to-regulate activities. Research has shown that the market can adapt and adjust and that it is increasingly varied and sophisticated.<sup>134</sup>

Despite this lack of certainty that ending demand for sex work is possible, desirable, or effective in reducing trafficking, an increasingly strong movement to utilize End Demand strategies is mobilizing, especially in the United States.<sup>135</sup>

### *B. Legal Frameworks and Programs that Punish Demand*

Several countries have implemented legal frameworks that have served as important models encouraging and popularizing End Demand efforts in the U.S. in recent years, despite the lack of empirical evidence suggesting that they are effective and despite the growing protests from sex workers and human rights advocates that these policies harm the very women they are designed to help.<sup>136</sup>

#### *1. Legal Frameworks Embracing End Demand Efforts Without Criminalizing the Actual Buying and Selling of Sex*

Canada and the United Kingdom are two countries in which a vigorous debate about End Demand policies exists and in which prostitution is technically legal, though many of the circumstances surrounding prostitution—such as brothel ownership and soliciting—are not.<sup>137</sup> In these countries, enforcement of laws prohibiting the activities ancillary to prostitution can be used as a proxy for explicit anti-prostitution laws in order to punish sex workers and johns.<sup>138</sup>

In Canada, although the actual buying and selling of sex is not illegal, several sections of the federal Criminal Code regulate sex work activities, including the following: “bawdy-house” or anti-brothel provisions which

<sup>134</sup> *Id.* at 8.

<sup>135</sup> *See infra* Part III.

<sup>136</sup> *See infra* Part III.

<sup>137</sup> *See 100 Countries and their Prostitution Policies*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000772> (last visited Jan. 16, 2012) (noting that in addition to the U.K. and Canada, countries such as Argentina, Brazil, and Finland have legal prostitution but also have laws prohibiting activities surrounding prostitution).

<sup>138</sup> *See, e.g.*, Durisin & van der Meulen, *supra* note 49, at 295–96 (discussing how Canada’s laws are used against street-based sex workers); Brooks-Gordon, *supra* note 103, at 146–50 (discussing how the U.K.’s laws are used against clients).

criminalize the habitual use of a fixed location (including a home or any other indoor location) for engaging in prostitution;<sup>139</sup> “procuring” or pimping laws that criminalize third parties who influence, support, or live off the income of a sex worker;<sup>140</sup> and a “communicating” law which prohibits stopping a person or a car for solicitation as well as all other conversations in a public place (or place open to public view) for the purposes of initiating prostitution.<sup>141</sup> Section 213 of the Criminal Code, the communicating law, has been the most utilized, representing more than 90% of all prostitution-related offenses reported by police since the law’s passage in 1985.<sup>142</sup> Although arrests under the communicating law have been fairly gender-equal, conviction rates and sentencing have not been: 68% of women charged have been found guilty, while 70% of charges against men have been stayed or withdrawn; men have been far more likely to be penalized with fines, while women have been more likely to be given prison sentences.<sup>143</sup>

Canadian sex worker organizations argue that the existence and enforcement of the communicating law and the other sections of the Criminal Code are not only disproportionate and unfair, but also make their work more dangerous.<sup>144</sup> Advocating for the decriminalization of buying and selling sex,<sup>145</sup> sex worker organizations point to the negative effects that even partial criminalization can have on sex workers: it makes their work less safe by isolating them and therefore makes it difficult for them to evaluate clients before agreeing to have sex;<sup>146</sup> it leads to less police protection from abusive clients and more harassment from police officers themselves;<sup>147</sup> and it removes sex workers’ ability to negotiate effectively for safe sex in a safe environment.<sup>148</sup> Pro-work advocates argue that the best way to aid sex work-

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<sup>139</sup> See Canada Criminal Code, C-46 §§ 210–211 (Can.).

<sup>140</sup> See *id.* § 212.

<sup>141</sup> See *id.* § 213.

<sup>142</sup> See ART HANGER & JOHN MALONEY, CAN. HOUSE OF COMMONS, STANDING COMM. ON JUSTICE & HUMAN RIGHTS & SUBCOMM. ON SOLICITATION LAWS, *THE CHALLENGE OF CHANGE: A STUDY OF CANADA’S CRIMINAL PROSTITUTION LAWS* 52 (2006), available at <http://www.nswp.org/sites/nswp.org/files/SSLR-REPORT-06E.pdf>.

<sup>143</sup> See *id.* at 52–53.

<sup>144</sup> See generally PIVOT LEGAL SOC’Y SEX WORK SUBCOMM., *VOICES FOR DIGNITY: A CALL TO END THE HARMS CAUSED BY CANADA’S SEX TRADE LAWS* (2004), available at [http://www.plri.org/sites/plri.org/files/Voices\\_for\\_dignity.pdf](http://www.plri.org/sites/plri.org/files/Voices_for_dignity.pdf) [hereinafter PIVOT, VOICES FOR DIGNITY] (discussing how the Criminal Code unfairly targets sex workers and explaining ways that partial criminalization makes sex work more dangerous for sex workers); Durisin & van der Meulen, *supra* note 49 (discussing how the Canadian Criminal Code increases sex worker vulnerability).

<sup>145</sup> See PIVOT, VOICES FOR DIGNITY, *supra* note 144, at 2.

<sup>146</sup> See *id.* at 17 (discussing how the communicating laws require sex workers to make arrangements with clients quickly without evaluating them for problematic signs); HANGER & MALONEY, *supra* note 142, at 62–65 (discussing how isolation leads to more interaction with “bad dates and other aggressors” and an inability to assess clients).

<sup>147</sup> PIVOT, VOICES FOR DIGNITY, *supra* note 144, at 17–18, 24–26 (discussing distrust of, negative experiences with, and harassment by police leading sex workers to less frequently report violent incidents).

<sup>148</sup> See *id.* at 19 (discussing how legal, indoor prostitution would enable sex workers to better negotiate for condom use); HANGER & MALONEY, *supra* note 142, at 65–66

ers is not to target *all* of their clients,<sup>149</sup> but to “protect sex workers from exploitation, violence and extortion by pimps”<sup>150</sup> and those clients who *are* violent,<sup>151</sup> and to:

[increase] access to fundamental benefits and services. Poverty, inadequate housing, violence, poor health, addiction and [corrupt] law enforcement are major areas of concern. There is an urgent need for policy change in each of these areas as part of a comprehensive approach to improving the lives of sex workers and ensuring alternatives for those who wish to leave this occupation.<sup>152</sup>

Some Canadian sex workers also believe anti-prostitution laws are overly moralistic, and they reject being seen as victims.<sup>153</sup> They believe that anti-prostitution stigma exposes them to violence and discrimination,<sup>154</sup> and they advocate for public education and law reform to reduce its negative effects.<sup>155</sup>

Advocates for decriminalization in Canada have recently won at least a temporary victory: the Ontario Superior Court ruled in 2010 in *Bedford v. Canada* that the bawdyhouse and communicating laws, as well as the restrictions on “living on the avails” of sex work, violate three Sections of the Canadian Charter of Rights and Freedoms—Sections 1 (guarantees of certain freedoms within reasonable limits), 2(b) (freedom of expression), and 7 (right to life, liberty, and security)—because they materially contribute to dangers for sex workers.<sup>156</sup> Although this opinion has been stayed pending the outcome of its appeal,<sup>157</sup> it is important because it recognizes that the constitutionality of laws regulating the sex trade must be determined in the context of the effect those laws have on sex workers and that “in a just society a government is not entitled to jeopardize the health and physical safety of sex workers for the sake of reducing public nuisance.”<sup>158</sup> Another challenge to the Canadian Criminal Code’s provisions on prostitution was

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(discussing how bawdy-house provisions keep sex workers from working in secure environments).

<sup>149</sup> See PIVOT, VOICES FOR DIGNITY, *supra* note 144, at 12 (expressing a desire for clients not to be prosecuted).

<sup>150</sup> *Id.* at 10.

<sup>151</sup> See *id.* at 12 (expressing a desire to be protected from those clients who are violent and exploitive).

<sup>152</sup> *Id.* at 2.

<sup>153</sup> See HANGER & MALONEY, *supra* note 142, at 31 (discussing sex worker attitudes toward their work).

<sup>154</sup> See *id.* at 67 (discussing sex worker perceptions of their work).

<sup>155</sup> See PIVOT LEGAL SOC’Y, BEYOND DECRIMINALIZATION: SEX WORK, HUMAN RIGHTS & A NEW FRAMEWORK FOR LAW REFORM 222–24 (2006), available at <http://www.pivotlegal.org/sites/pivotlegal.org/files/BeyondDecrimLongReport.pdf> (discussing a “call to action” to reduce stigma against sex workers).

<sup>156</sup> *Bedford v. Canada*, [2010] O.J. No. 4057 (Can. Ont. Sup. Ct.) (QL).

<sup>157</sup> See Sam Pazzano, *Anti-hooker laws still stand. . . for now*, TORONTO SUN, June 17, 2011, <http://www.torontosun.com/2011/06/17/prostitution-still-illegal—for-now>.

<sup>158</sup> Elaine Craig, *Sex Work By Law: Bedford’s Impact on Municipal Approaches to Regulating the Sex Trade*, 16 REV. CONST. STUD. 97, 97 (2011).



appealed based on standing issues to the Supreme Court of Canada<sup>159</sup> where it was heard in January 2012, and judgment was pending as of the publication of this Article.<sup>160</sup>

Abolitionists in Canada, however, advocate for End Demand strategies including the Swedish model, which would further criminalize buying sex<sup>161</sup> and increase the use of “john school” education programs for sex buyers.<sup>162</sup> One vocal advocate of harsh criminal penalties for johns is Parliament Member Joy Smith, who calls for increased “focus on tackling the demand for the purchase of commercial sex.”<sup>163</sup> The Women’s Coalition for the Abolition of Prostitution (“WCAP”), an umbrella group of interveners in the *Bedford* case, also filed a factum encouraging selling sex to be fully decriminalized and buying sex to be fully criminalized.<sup>164</sup> The WCAP makes the typical simplistic arguments that sex buyers fuel a demand for trafficking: “It is not possible to completely separate trafficking from domestic prostitution. Trafficking into and within Canada is encouraged by the domestic demand for prostitution.”<sup>165</sup> The 2011 Miss Canada, Tara Teng, even launched an abolitionist cross-country tour called “Ignite the Road to Justice,”<sup>166</sup> which has circulated a petition stating, “the demand for commercial sex with women and children is the root cause for prostitution and trafficking for sexual purposes” and has called for criminalization of buying and decriminalization of selling sex as the solution to end trafficking.<sup>167</sup>

In the United Kingdom, a similar fight between pro-work advocates and abolitionists has occurred. Although buying and selling sex in the United Kingdom are legal, activities such as soliciting and “kerb-crawling” (the act of searching for and picking up a sex worker in car) are not.<sup>168</sup> The Policing and Crime Bill of 2009 also made it illegal to pay for services from a prostitute whom a third party has subjected to force, threats, coercion, or decep-

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<sup>159</sup> See *Downtown Eastside Sex Workers United Against Violence Soc’y v. Att’y Gen. (Canada)*, 2008 B.C.S.C. 1726 (Can.) (*standing denied*); *Downtown Eastside Sex Workers United Against Violence Soc’y v. Canada (Att’y Gen.)*, 2011 B.C.C.A. 515 (Can.) (*standing granted on appeal*); *Downtown Eastside Sex Workers United Against Violence Soc’y v. Atty. Gen.*, 2011 SCC 19610 (Can.) (*appeal to Supreme Court granted*).

<sup>160</sup> See *Scheduled Hearings*, SUPREME COURT OF CAN., <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/hear-aud-eng.aspx?ya=2012&ses=02&sr=Search> (last visited Mar. 26, 2012).

<sup>161</sup> See *infra* Part II.B.2.

<sup>162</sup> See *infra* Part II.B.3.

<sup>163</sup> Joy Smith, *Human Trafficking June 2011 Update*, JOY SMITH.CA, [http://www.joy-smith.ca/main.asp?fxoid=FXMenu,3&cat\\_ID=27&sub\\_ID=106&sub2\\_ID=45](http://www.joy-smith.ca/main.asp?fxoid=FXMenu,3&cat_ID=27&sub_ID=106&sub2_ID=45) (last visited Jan. 17, 2012).

<sup>164</sup> Factum of the Intervener Women’s Coalition at 3, *Bedford v. Canada*, [2010] O.J. No. 4057 (Can. Ont. Super. Ct.) (QL).

<sup>165</sup> *Id.* at 8.

<sup>166</sup> Press Release, *Ignite the Road to Justice*, Miss Canada, Tara Teng, takes the fight for justice across Canada (Aug. 3, 2011), *available at* <http://ignitetheroadtojustice.com>.

<sup>167</sup> *Petitions*, IGNITE THE ROAD TO JUSTICE, <http://ignitetheroadtojustice.com/resources> (last visited Jan. 17, 2012).

<sup>168</sup> See Brooks-Gordon, *supra* note 103, at 146–48 (describing British anti-prostitution laws).

tion to perform those services. It is irrelevant whether the customer knew or could have known about this exploitation.<sup>169</sup> Although a 2010 bill to criminalize the buying of all sex was rejected,<sup>170</sup> abolitionists in the U.K. have focused much effort on “kerb-crawler rehabilitation programs” and other methods to shame sex buyers.<sup>171</sup> Advocates against these programs cite many of the same critiques mentioned by the Canadian groups, including the potential of End Demand efforts to push sex workers into more exploitive conditions,<sup>172</sup> and the need to instead “promote the health, safety, civil and human rights of sex workers, including their rights to live free from violence . . . to engage in the work as safely as possible, and to receive high quality health and other services.”<sup>173</sup>

## 2. *Criminalizing the Buyers and Decriminalizing the Sellers: The Swedish Model*

In 1999, Sweden passed the Sex Purchase Act, which made it a crime to buy sex but decriminalized selling sex.<sup>174</sup> The law also pledged money and assistance for women who are victims of violence, including prostitution.<sup>175</sup> Due to its explicit position on the need to combat violence against women and its promotion of gender equality, the law was hailed as groundbreaking at the time of its passage.<sup>176</sup> Since then, a growing number of abolitionists have called for adoption of the Swedish model in other countries,<sup>177</sup> in part due to Sweden’s aggressive marketing of its law as a model to be exported to other countries.<sup>178</sup> The law’s focus on punishing johns and providing aid to

<sup>169</sup> Policing and Crime Act, 2009, c. 26, § 14–15, (Eng.).

<sup>170</sup> Simon Johnson, *Plan to Criminalize Buying Sex from Prostitutes Rejected*, THE TELEGRAPH, Apr. 20, 2010, <http://www.telegraph.co.uk/news/uknews/scotland/7611369/Plan-to-criminalise-buying-sex-from-prostitutes-rejected.html>.

<sup>171</sup> See *infra* Part II.B.3.

<sup>172</sup> See Brooks-Gordon, *supra* note 103, at 166 (discussing how making it harder for sex workers to find clients can make their economic situation worse and can lead them into destructive relationships with pimps).

<sup>173</sup> *Our Mission Statement*, U.K. NETWORK OF SEX WORK PROJECTS, <http://www.uknswp.org/about/our-mission-statement> (last visited Jan. 17, 2012).

<sup>174</sup> See Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1191–92 (2004) (explaining the Swedish law).

<sup>175</sup> See *id.* at 1192.

<sup>176</sup> See *id.* at 1188–91 (discussing the principles behind the Swedish law); Iain McDonald, Current Developments, *Criminalising ‘Punters’: evaluating the Swedish position on prostitution*, 26 J. SOC. WELFARE & FAM. L. 195, 195 (2004) (calling the Swedish law “noticeably bold”).

<sup>177</sup> See MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 276 (“In a growing list of jurisdictions, the Swedish model is one initiative that, having shown promise, is increasingly favored by abolitionists at the principled and practical forefront of this movement.”).

<sup>178</sup> SUSANNE DODILLET & PETRA ÖSTERGREN, THE SWEDISH SEX PURCHASE ACT: CLAIMED SUCCESS AND DOCUMENTED EFFECTS 2 (2011), available at <http://www.chestella.org/docs/etude-suede-2011.pdf> (discussing the marketing of the law as a model for other countries at its outset).

sex workers as “victims” of prostitution appeals to abolitionists who believe targeting the demand side will best combat trafficking.<sup>179</sup> But evidence on the actual impact of the Swedish law is mixed. Studies conducted within a few years of the law’s passage, and scholarship that cite those studies, tout the law’s success in dramatically reducing the number of women in prostitution in Sweden<sup>180</sup> and in decreasing trafficking into Sweden.<sup>181</sup> They claim that the law has persuaded more sex workers to come forward and seek assistance to leave sex work, and has kept women considering sex work from entering it.<sup>182</sup>

But other studies of the Swedish law have been skeptical of its purported success. These works have questioned the methodology of previous studies of the Swedish law, claiming among other flaws that these studies were not objective and were ideologically biased:<sup>183</sup>

When reviewing the research and reports available, it becomes clear that the Sex Purchase Act cannot be said to have decreased prostitution, trafficking for sexual purposes, or had a deterrent effect on clients to the extent claimed. Nor is it possible to claim that public attitudes towards prostitution have changed significantly in the desired radical feminist direction or that there has been a similar increased support of the ban.<sup>184</sup>

In addition, and even more alarmingly, a recent study claims that the Swedish law has had serious adverse affects on the health and wellbeing of sex workers.<sup>185</sup> This study claims that the law isolates sex workers from each other and makes it more difficult for health initiatives to reach them,

<sup>179</sup> See, e.g., CATW, PRIMER ON THE MALE DEMAND FOR PROSTITUTION, *supra* note 102, at 17–19 (discussing the success of the Swedish law in reducing demand).

<sup>180</sup> See, e.g., Ekberg, *supra* note 174, at 1193 (2004 article noting a 30–50% reduction in women in prostitution and claiming, as a result, there are only 500 women left in the country in street prostitution and “the recruitment of new women has come almost to a halt”).

<sup>181</sup> See *id.* at 1200 (“Sweden no longer is an attractive market for traffickers.”); CATW, PRIMER ON THE MALE DEMAND FOR PROSTITUTION, *supra* note 102, at 18 (2006 report stating, “It is clear that the Law acts as a deterrent.”).

<sup>182</sup> See, e.g., Ekberg, *supra* note 174, at 1204 (describing an increase in former sex workers seeking rehabilitative services).

<sup>183</sup> DODILLET & ÖSTERGREN, *supra* note 178, at 2:

The criticism has primarily been focused on the evaluation’s lack of scientific rigor: it did not have an objective starting point, since the terms of reference given were that the purchase of sex must continue to be illegal; there was not a satisfying definition of prostitution; it did not take into account ideology, method, sources and possible confounding factors; there were inconsistencies, contradictions, haphazard referencing, irrelevant or flawed comparisons and conclusions were made without factual backup and were at times of a speculative character.

<sup>184</sup> *Id.* at 3; see also ELIZABETH BERNSTEIN, TEMPORARILY YOURS: INTIMACY, AUTHENTICITY, AND THE COMMERCE OF SEX 142, 153 (2007) (claiming that the Swedish law simply moved sex workers off the street and indoors, utilizing the Internet and cell phones to solicit clients).

<sup>185</sup> See DODILLET & ÖSTERGREN, *supra* note 178, at 3.

increasing the likelihood that they will contract a sexually transmitted disease, including HIV/AIDS.<sup>186</sup> Conducting their business even further underground makes street sex workers more vulnerable: with fewer women on the street, buyers have more power to demand unsafe sex practices and lower prices.<sup>187</sup> When negotiations must be hurried and in secretive areas, sex workers also have less time to evaluate clients in order to get a sense of whether they seem dangerous, leading to an increase in violent encounters.<sup>188</sup> Some sex workers have reported increased reliance on third parties like pimps, since finding clients has become more difficult.<sup>189</sup> The law may also promote stigma against sex workers and stereotypes of them as weak and passive victims.<sup>190</sup> This study argues that the Swedish law has in reality lead *fewer* sex workers to seek help due to distrust of authorities.<sup>191</sup> Finally, some scholars have criticized the law's true motivations, claiming that Sweden's focus on promoting homogeneity led it to pass the law as an effort to clamp down on migration by foreigners, as opposed to the nobler goal of ending trafficking.<sup>192</sup>

In the end, the debate over the success of the Swedish model and the desirability of its extension to other countries appears to be as divisive as the pro-work versus abolition argument itself, with a similar lack of *definitive* empirical evidence to properly fuel the arguments of feminists on either side. However, assuming studies citing adverse effects on sex workers are valid, other locations—including the U.S.—should be more hesitant to embrace End Demand strategies as the best method to improve the conditions of women in the sex trade.

### 3. *Growing Use of John Schools and Other Shaming Methods to Curb Demand*

In addition to laws that target buyers of sex, other programs have been implemented in jurisdictions worldwide with the goal of educating the public about the problem of demand, and shaming johns into stopping their be-

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<sup>186</sup> See *id.* at 24 (discussing the possibility that more Swedish sex workers may now have HIV/AIDS due to a decrease in preventative services reaching them).

<sup>187</sup> See *id.* at 22.

<sup>188</sup> See *id.* at 22–23 (discussing the increase in these problematic side effects of the Swedish law); McDonald, *supra* note 176, at 200 (discussing decreases in wages and safety of sex workers for those continuing to work on the streets).

<sup>189</sup> See DODILLET & ÖSTERGREN, *supra* note 178, at 22 (demonstrating that making it more difficult for clients to buy sex does not lead women to leave the sex industry).

<sup>190</sup> See *id.* at 21; BERNSTEIN, *supra* note 184, at 152 (noting that Swedish criminologists Toby Pettersson and Eva Tiby concluded that the Swedish law did little to remove stigma from sex workers or place more stigma on sex buyers).

<sup>191</sup> See DODILLET & ÖSTERGREN, *supra* note 178, at 21–22.

<sup>192</sup> See McDonald, *supra* note 176, at 198–99 (discussing Sweden's “fear of the foreign”); BERNSTEIN, *supra* note 184, at 150–51 (discussing the passage of the Sex Purchase Act as a reaction to Swedish “fear of an incursion of foreign sex workers” upon its entry into the European Union).

havior. The most common of these programs are so-called “john schools,” pioneered in San Francisco in 1995,<sup>193</sup> and now used in over 40 U.S. cities<sup>194</sup> and several other countries including the U.K.<sup>195</sup> and Canada.<sup>196</sup> These education programs target first offenders—men who have been arrested for the first time for soliciting a prostitute.<sup>197</sup> Most of these programs operate similarly to driver’s safety courses for those who have received tickets: for a fee, a john attends a class or series of classes on the deleterious effects of prostitution, and in return, the charges against him are dropped.<sup>198</sup> Some john schools, as opposed to being diversionary programs, are conditions of sentencing.<sup>199</sup> In class, johns learn about the health and legal consequences of buying sex, and often learn about trafficking and hear from former victims who talk about the horrors of their experience and the errors of the johns’ ways.<sup>200</sup> Although advocates admit that many john schools “could rightly be described as intending to humiliate or embarrass the men, or make them feel ashamed of themselves,” they claim that this shame is a natural extension of the men’s problematic behavior.<sup>201</sup> In addition, advocates claim that john schools help johns avoid the stigma that would be associated with a prostitution-related conviction.<sup>202</sup> Critics counter that treating clients as “dehumanized, dirty and animalistic . . . perpetuates stereotypes that obscure the complex social, economic and cultural relationships in which commercial sex takes place.”<sup>203</sup> They also take issue with the lack of involvement of active sex workers in developing the curricula.<sup>204</sup>

Not surprisingly, feedback on whether john schools legitimately change johns’ behavior is mixed. Only a few very small studies of john schools in the U.S. have been conducted, and they have been inconclusive in determin-

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<sup>193</sup> See Lederer, *supra* note 59, at 305 (discussing the development of San Francisco’s “First Offender Prostitution Program” john schools).

<sup>194</sup> *Id.*

<sup>195</sup> See Campbell & Storr, *supra* note 8, at 94–95 (discussing the development of the U.K.’s “Kerb Crawler Rehabilitation Programme”).

<sup>196</sup> See Benedikt Fischer et al., *The socio-legal dynamics and implications of ‘diversion’: The case study of the Toronto ‘John School’ diversion programme for prostitution offenders*, 2 CRIM. JUST. 385, 389–91 (2002) (discussing the development of john schools in Canada).

<sup>197</sup> See Lederer, *supra* note 59, at 305 (describing the typical john schools model).

<sup>198</sup> See *id.* at 305–06 (further describing the typical john schools model).

<sup>199</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-19 (noting that two thirds of john schools are diversionary).

<sup>200</sup> See Lederer, *supra* note 59, at 306; ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-19 (discussing john school curricula).

<sup>201</sup> ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-28 to 7-29.

<sup>202</sup> See *id.* at 7-29.

<sup>203</sup> Campbell & Storr, *supra* note 8, at 98.

<sup>204</sup> See *id.* (quoting, as an example, one sex worker against such programs: “A programme that taught clients about the problems women face and a true picture of sexual health is what is really needed.”); *id.* at 102 (noting that some sex workers oppose the programs because they may dissuade more peaceful clients, leaving only more dangerous and violent clients).

ing whether attendees' recidivism rates have declined.<sup>205</sup> In addition, while surveys of johns after completion of these programs seem to demonstrate a change in attitudes toward prostitution,<sup>206</sup> this may be due largely to the johns being more aware of the "correct" answers to the questions after having participated in the program, regardless of whether their own attitudes have really changed.<sup>207</sup> Yet, these programs are gaining media attention<sup>208</sup> and becoming more common in the U.S.,<sup>209</sup> and have been encouraged as an important tool by End Demand advocates.<sup>210</sup>

Many johns are recruited for john schools through "reverse stings" in which female police officers act as decoys, arresting male customers after they solicit them for prostitution.<sup>211</sup> Beyond the basic arguments that johns should not be arrested for buying sex, critics of reverse stings claim that they make prostitution more dangerous for sex workers, who are pushed further underground and into less safe situations because clients are afraid of being arrested.<sup>212</sup> Other End Demand methods for identifying and shaming sex buyers include police releasing the names of accused johns. Media outlets then run these lists in local newspapers, revealing johns' identities to family, friends, neighbors, and coworkers.<sup>213</sup> In Omaha, Nebraska, the names of men arrested for soliciting sex have even been posted on billboards.<sup>214</sup> Buyers of sex who have been surveyed have reported that public shaming tactics

<sup>205</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-27 to 7-28 (discussing the inconclusive results of the only two small known U.S. studies).

<sup>206</sup> See HUGHES, *supra* note 124, at 38-40 (discussing self-reported changes in attitudes following john school attendance).

<sup>207</sup> See Alexis Kennedy et al., *Attitude Change Following a Diversion Program for Men Who Solicit Sex*, 40 J. OFFENDER REHABILITATION 41, 58 (2004) (describing potential limitations on drawing conclusions from self-reported attitudes).

<sup>208</sup> See, e.g., Neal Conan, *John School Teaches About Ills of Sex Solicitation*, NAT'L PUB. RADIO (May 24, 2011), <http://www.npr.org/2011/05/24/136617710/john-school-teaches-about-ills-of-sex-solicitation> (discussing a Nashville john school); Stephanie Chen, *'John schools' try to change attitudes about paid sex*, CNN (Aug. 27, 2009), [http://articles.cnn.com/2009-08-27/justice/tennessee.john.school\\_1\\_prostitutes-victimless-crime-john-schools?\\_s=PM:CRIME](http://articles.cnn.com/2009-08-27/justice/tennessee.john.school_1_prostitutes-victimless-crime-john-schools?_s=PM:CRIME) (discussing a Nashville john school); Aina Hunter, *School for Johns*, VILLAGE VOICE, May 3, 2005, <http://www.villagevoice.com/2005-05-03/news/school-for-johns/> (discussing a Brooklyn john school).

<sup>209</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-21 ("On average, about four new programs have begun [in the U.S.] each year from 1997 to 2009.")

<sup>210</sup> See generally *id.* (report, which lays out a comprehensive, nationwide End Demand strategy, frequently notes the importance and desirability of john school programs).

<sup>211</sup> See *id.* at 7-9 (these operations are called "reverse stings" because they focus on arresting male customers instead of traditional stings, in which male police officers arrest female prostitutes after they are solicited); Lederer, *supra* note 59, at 307-08 (describing reverse sting operations in which police officers posing as customers seek sex for hire).

<sup>212</sup> See Campbell & Storr, *supra* note 8, at 99-100 (discussing policing and sex worker safety).

<sup>213</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-12 to 7-13 (describing public shaming tactics); *Belleville police to publish names of accused 'johns'*, CBC NEWS (Aug. 26, 2008, 6:30 PM), <http://www.cbc.ca/news/canada/ottawa/story/2008/08/26/ot-belleville-080826.html> (discussing a new shaming campaign in Ontario).

<sup>214</sup> See HUGHES, *supra* note 124, at 42-43.

such as these might deter them from buying sex.<sup>215</sup> However, there has been no empirical evidence to demonstrate that this method really decreases sex buying or recidivism among those reported.<sup>216</sup> Civil rights activists have also raised due process concerns about this method, as the names of *accused* johns who have not yet had their day in court are typically released.<sup>217</sup>

Another End Demand tactic has been the use of “Dear John” letters, which involves sending letters to the registered owners of vehicles that have been seen “cruising” in known prostitution areas.<sup>218</sup> The letters do not accuse the vehicle owners of engaging in prostitution, but rather warn them of the dangers of prostitution.<sup>219</sup> Other related tactics may include seizing the vehicles of men found cruising for sex and geographic restraining orders prohibiting these men from entering known areas of prostitution.<sup>220</sup>

Finally, End Demand public awareness campaigns have become increasingly common. Examples include a Swedish campaign in conjunction with the passage of the Sex Purchase Act that placed posters in public locations around the country,<sup>221</sup> a 2006 “Dear John” campaign in Atlanta, Georgia, that ran print ads in local media discouraging men from buying sex,<sup>222</sup> and recent campaigns in Rhode Island and Massachusetts.<sup>223</sup> As is the case with all social media campaigns, while it is possible to estimate the number of impressions that these campaigns have made and therefore hail them as a success, it is not possible to determine whether they have made a tangible impact on public opinion about prostitution and trafficking among former or potential sex buyers.<sup>224</sup>

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<sup>215</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-13 (noting that although shaming methods are empirically unproven, 87% of men in one survey responded that the possibility of their name and photo being published in the local paper would deter them from buying sex).

<sup>216</sup> See *id.*

<sup>217</sup> See *id.* (describing critiques of shaming methods).

<sup>218</sup> See *id.* at 7-14 (describing “Dear John” letters).

<sup>219</sup> See *id.* at 7-15.

<sup>220</sup> See *id.* at 7-15 to 7-16 (discussing vehicle seizures and “Stay Out of Areas with Prostitution” orders).

<sup>221</sup> See Ekberg, *supra* note 174, at 1202–03 (describing the posters):

Poster #1 depicts a well-dressed man in a business suit and displays a prominent wedding band on his hand. It asserts: ‘Time to flush the johns out of the Baltic.’ The specific reference is to Swedish men traveling as sex tourists to their favorite prostitution havens in Baltic countries. Poster #2 is a close-up of 11 different men looking directly into the camera, accompanied by the message, ‘One man in eight has bought sex.’ Poster #3 states, ‘More and more Swedish men do their shopping over the Internet.’ On this poster, a young man is surfing the Net on his computer, supposedly to find pornography and Web sites that direct men to where they can buy prostituted women.

<sup>222</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 6-38 to 6-42 (discussing the Georgia campaign); Lederer, *supra* note 59, at 309–10 (discussing the same campaign).

<sup>223</sup> See *infra* Part III.B–C.

<sup>224</sup> See, e.g., Ekberg, *supra* note 174, at 1202–03 (estimating that more than one million people saw the Swedish posters). *But see* DODILLET & ÖSTERGREN, *supra* note 178,

### III. THE END DEMAND MOVEMENT GAINS TRACTION IN THE U.S.

Ever since the passage of the Swedish Sex Purchase Act and the early implementation of john schools and other sex buyer-focused programs blazed the trail, abolitionists have seized onto and promulgated End Demand efforts as their primary focus. As discussed previously, the use of reverse stings, john schools, “Dear John” letters, and social marketing campaigns are on the rise in the U.S.<sup>225</sup> This Part of this Article focuses specifically on how End Demand sentiments have been incorporated into U.S. federal law and then examines two states—Rhode Island and Massachusetts—where End Demand efforts have had a major influence on state lawmaking, to the chagrin and detriment of human rights advocates and sex workers.

#### A. U.S. Federal Law’s Enshrining of End Demand Ideals

The 2000 U.N. Trafficking Protocol requires state parties to “adopt or strengthen legislative or other measures, such as educational, social, or cultural measures . . . to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”<sup>226</sup> It was not until the 2005 Reauthorization of the Trafficking Victims Protection Act (“2005 Reauthorization”), however, that the United States interpreted this provision as support for inclusion of explicit End Demand sentiments in U.S. law.<sup>227</sup> 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 of the country.”<sup>228</sup> In its section on prevention of domestic trafficking in persons, the 2005 Reauthorization establishes a “program to reduce trafficking in persons and demand for commercial sex in the United States.”<sup>229</sup> The program:

[A]uthorized a \$50 million grant for local law enforcement and social services agencies to develop and execute programs targeted at reducing male demand and to investigate and prosecute buyers of commercial sex acts. It also required the Secretary of Health and Human Services and the Attorney General to research and pre-

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at 17–20 (noting that by several measures, attitudes did not change after the passage of the Swedish law).

<sup>225</sup> See *supra* Part II.B.3.

<sup>226</sup> Trafficking Protocol, *supra* note 60, at Art. 9(5).

<sup>227</sup> See Yen, *supra* note 126, at 664 (describing inclusion of End Demand provisions in the 2005 Reauthorization as a “real legislative breakthrough”).

<sup>228</sup> Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 104(b)(1)(A), 119 Stat. 3558, 3564 (2005).

<sup>229</sup> *Id.* at § 201(a).



pare reports on the best practices for reducing demand for commercial sex acts.<sup>230</sup>

The 2005 Reauthorization noticeably conflates “trafficking in persons” and “demand for commercial sex,” lumping them together as the same issue and authorizing funding toward ending demand for sex work as a fulfillment of the Trafficking Protocol’s requirement to take measures to “discourage the demand . . . that leads to trafficking.”<sup>231</sup> This conflation was made clear by President Bush’s comments upon signing the Act:

Yet we cannot put the criminals out of business until we also confront the problem of demand. Those who pay for the chance to sexually abuse children and teenage girls must be held to account. So we’ll investigate and prosecute the customers, the unscrupulous adults who prey on the young and innocent.<sup>232</sup>

Although abolitionists have encouraged these funds to be spent on End Demand programs such as john schools, as of summer 2010, Congress had not appropriated funds for the program established by the 2005 Reauthorization.<sup>233</sup> However, the 2005 Reauthorization still serves as an important endorsement of abolitionist End Demand sentiments in U.S. law. This is particularly problematic in light of the federal government’s continued reticence in taking measures to identify and protect legitimate trafficking victims in the U.S.<sup>234</sup> For example, the U.S. has lagged in providing T Nonimmigrant Status Visas (“T Visas”) to trafficking victims. The T Visa is designed to provide nonimmigrant status to victims of trafficking who comply with reasonable requests from law enforcement in the investigation and prosecution of their traffickers and can demonstrate that they will suffer extreme hardship if they were removed from the United States.<sup>235</sup> However, victim advocates have argued that these standards are too stringent; they are especially troubled by the requirement that the victim cooperate in the prosecution of her traffickers, which fewer than half of victims may be willing to

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<sup>230</sup> Yen, *supra* note 126, at 664–65.

<sup>231</sup> Trafficking Protocol, *supra* note 60, at Art. 9(5).

<sup>232</sup> Press Release, White House, President Signs H.R. 972, Trafficking Victims Protection Reauthorization Act, 2006 (Jan. 10, 2006), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2006/01/20060110-3.html>.

<sup>233</sup> See ABT ASSOCS. NATIONAL ACTION PLAN, *supra* note 125, at 7-23.

<sup>234</sup> See generally April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231 (2007) (discussing the failures of the TVPA and the need to provide better assistance and social services to migrants coming forward as abused and exploited); Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337 (2007) [hereinafter Haynes, *(Not) Found Chained to a Bed in a Brothel*] (discussing the flawed ideology behind the TVPA and the need for more flexibility in identifying and providing aid to victims of exploitive migration).

<sup>235</sup> See Rieger, *supra* note 234, at 252–53 (describing the process to obtain a T Visa).

do due to fear and trauma.<sup>236</sup> In addition, if victims cooperate but law enforcement decides not to go through with the prosecution, the T Visa is not available.<sup>237</sup>

U.S. law enforcement also may not be adequately trained to identify illegal immigrants as victims rather than criminals.<sup>238</sup> This is especially true when these immigrants are victims of forms of labor abuses other than sexual exploitation, since politicians and the media have “sexified” trafficking.<sup>239</sup> Border control sentiments play into this lack of identification, as it is easier to deport a non-citizen than to recognize her coercive conditions and begin the process to provide her support and services.<sup>240</sup> Interestingly, while up to 5,000 T Visas are available each year<sup>241</sup> and the Department of State has estimated between 14,500 and 17,500 people are trafficked into the United States annually,<sup>242</sup> fewer than 1,900 T Visas have even been *requested* between 2005–2009, and over 40 percent of these have been denied.<sup>243</sup> If U.S. law enforcement were encouraged to reconceptualize their idea of what a victim looks like, acknowledging that most trafficking does not involve victims “found chained to a bed in a brothel, but rather who toil as indentured servants with no pay and in debt,”<sup>244</sup> it is likely that more T Visas would be applied for and approved.

If there was any remaining doubt that the U.S. government was staunchly anti-sex work, the 2003 United States Leadership Against HIV/

<sup>236</sup> *Id.* at 250–51. Tying victim assistance to prosecution is problematic because many victims will refuse to cooperate due to fear of retaliation against them or their family members. In addition, victims who cooperate may still be denied assistance if the investigator or prosecutor decides not to move forward with the case. *Id.*

<sup>237</sup> See Haynes, (*Not*) *Found Chained to a Bed in a Brothel*, *supra* note 234, at 359–60 (explaining law enforcement’s discretion whether to certify a victim).

<sup>238</sup> See Rieger, *supra* note 234, at 245–47 (discussing the difficulty of initially identifying an immigrant as having been trafficked).

<sup>239</sup> See Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1, 52 (2009) [hereinafter Haynes, *Exploitation Nation*]:

Not only are real victims of human trafficking shortchanged . . . but this false and “sexified” vision of human trafficking then trumps and obscures the myriad problems surrounding “guestworker” programs. Real victims of human trafficking do not look too different from exploited “guestworkers.” Neither politicians nor the media have an interest in pointing that out, however, because both are enamored of the vision of rescuing victims from horrible and sexualized crimes while keeping the economy strong and the borders secure against the tide rising up against the floodgates.

<sup>240</sup> See *id.*

<sup>241</sup> 22 U.S.C. § 7105(e)(2)(B)(2) (2000).

<sup>242</sup> See TRAFFICKING IN PERSONS REPORT (June 2004), *supra* note 2.

<sup>243</sup> See USCIS National Stakeholder January Meeting, U.S. CITIZENSHIP & IMMIGRATION SERVS., (last updated Jan. 27, 2010), <http://www.uscis.gov/portal/site/uscis/menu.item.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=74adc3531a176210VgnVCM10000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD> (last visited Mar. 4, 2012).

<sup>244</sup> Haynes, *Exploitation Nation*, *supra* note 239, at 52.

AIDS, Tuberculosis, and Malaria Act (“Global AIDS Act”)<sup>245</sup> makes this position clear. In pledging \$15 billion towards addressing the global HIV/AIDS epidemic, it prohibits the use of funds to “promote or advocate the legalization or practice of prostitution and sex trafficking” and prohibits funding for organizations that do not have a policy “explicitly opposing prostitution and sex trafficking.”<sup>246</sup> Known as the Anti-Prostitution Pledge, this policy—still formally in place today—has been vehemently opposed by pro-work organizations, and circuit courts are split on whether it violates the free speech rights of U.S.-based organizations.<sup>247</sup>

Finally, the Department of State’s most recent Trafficking in Persons Report lauds the United States’ End Demand efforts in its Country Narrative:

State and local jurisdictions also engaged in a number of efforts to reduce demand for commercial sex. Some jurisdictions tested various combinations of arrests, shaming, and education of apprehended purchasers of prostitution. NGOs devoted to ending demand for commercial sex developed school curricula, conducted outreach campaigns, and worked with law enforcement. Reports continued to reflect significant numbers of arrests for commercial sexual activity.<sup>248</sup>

However, the report goes on to note that “[d]ata continued to reflect the arrests of more women than men for such activity; state and local law enforcement arrested 38,593 women versus 16,968 men for prostitution offenses and commercialized vice in 2009, the year for which the most recent data is available.”<sup>249</sup>

Recent literature released by the Department of State furthers its endorsement of End Demand ideals. In June 2011, the Department of State’s Office to Monitor and Combat Trafficking in Persons published a “fact sheet” titled “Prevention: Fighting Sex Trafficking by Curbing Demand for Prostitution.”<sup>250</sup> Without providing support for its claims, the “fact sheet” makes several problematic statements:

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<sup>245</sup> United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C.A. § 7601 (West 2010).

<sup>246</sup> 22 U.S.C.A. § 7631(e)–(f).

<sup>247</sup> See *DKT Int’l Inc. v. U.S. Agency for Int’l Dev.*, 477 F.3d 758 (D.C. Cir. 2007) (holding that Prostitution Pledge did not violate a corporation’s free speech rights because it did not compel advocacy of the government’s position). *But see Alliance for Open Soc’y Int’l, Inc. v. U.S. Agency for Int’l Dev.*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006), *aff’d*, 651 F.3d 218 (2d Cir. 2011), *rehearing en banc denied*, No. 08-4917-CV, 2012 WL 313988 (2d Cir. Feb. 2, 2012) (holding that the Prostitution Pledge does violate an organization’s free speech rights by compelling speech). See also Ahmed, *supra* note 3, at 242–52 (discussing these cases).

<sup>248</sup> *Country Narratives: Countries N through Z: Trafficking In Persons Report*, U.S. DEP’T OF STATE (2011), <http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm> (last visited Mar. 4, 2012).

<sup>249</sup> *Id.*

<sup>250</sup> U.S. DEP’T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, PREVENTION: FIGHTING SEX TRAFFICKING BY CURBING DEMAND FOR PROSTITUTION

But the fact remains: if there were no demand for commercial sex, trafficking in persons for commercial sexual exploitation would not exist in the form it does today. This reality underscores the need for continued strong efforts to reduce demand for sex trafficking by enacting policies and promoting cultural attitudes that reject the idea of paying for sex. . . . A prostituted person may have initially consented, may believe that she or he is in love with her or his trafficker, may not self-identify as a victim, may not be operating in the vicinity of the pimp, or may have been away from the pimp's physical control with what seemed to be ample opportunity to ask for help or flee. None of these factors, taken alone or in sum, means that she or he is not a victim of a severe form of trafficking. . . . [R]educing demand for sex trafficking . . . can only be achieved by rejecting long-held notions that regard commercial sex as a "boys will be boys" phenomenon, and instead sending the clear message that buying sex is wrong. Lawmakers have the power to craft effective anti-trafficking legislation, but they also have a responsibility to represent values that do not tolerate abuses of commercial sex.<sup>251</sup>

These problematic conflations of trafficking and sex work and moralistic condemnations of sex work typify the most recent efforts to End Demand in the United States.<sup>252</sup>

### *B. End Demand Efforts End Legal Sex Work in Rhode Island*

With federal law on their side, abolitionists set their sights on Rhode Island, where until 2009—similar to the legal framework in the United Kingdom and Canada—prostitution was legal though associated activities were not. Rhode Island and Nevada were the only states at the time without criminal penalties for buying and selling sex indoors.<sup>253</sup> After a vigorous campaign by abolitionists facing vehement opposition by pro-sex worker organizations, Rhode Island Governor Donald Carcieri signed legislation closing this "loophole," making both buying and selling sex illegal on November 3, 2009.<sup>254</sup> Citizens Against Trafficking, a coalition co-founded by well-known abolitionist and University of Rhode Island professor Donna

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(June 2011), available at <http://www.state.gov/g/tip/rls/fs/2011/167224.htm> [hereinafter STATE DEPARTMENT FACT SHEET].

<sup>251</sup> *Id.*

<sup>252</sup> For a more thorough critique of this State Department "fact sheet" by work approach feminists, see *infra* Part IV.A.

<sup>253</sup> See *Rhode Island: New Prostitution Law*, N.Y. TIMES, Nov. 4, 2009, [http://www.nytimes.com/2009/11/04/us/04brfs-NEWPROSTITUT\\_BRF.html](http://www.nytimes.com/2009/11/04/us/04brfs-NEWPROSTITUT_BRF.html) (discussing the passage of Rhode Island's new prostitution laws).

<sup>254</sup> See *id.*; H.B. 5044 (R.I. 2009); S.R. 0596 (R.I. 2009) (codified as R.I. CODE R. § 11-34.-1-2-1-3 (LexisNexis 2009)).

Hughes, supported the law.<sup>255</sup> Testifying on behalf of her organization in front of the Rhode Island Senate Judiciary Committee six days before the bill became law, Professor Hughes cited the “growing sex industry and sex trafficking” and encouraged the bill’s passage.<sup>256</sup> Despite its creation of penalties for both sellers and buyers of sex, the law includes a provision creating an affirmative defense for a sex seller against prosecution if he or she has been forced to commit a commercial sexual activity by threats, physical harm, physical restraint, or intimidation.<sup>257</sup>

Sex workers and organizations such as New York’s Urban Justice Center and the American Civil Liberties Union lobbied against the law’s passage.<sup>258</sup> They argued that criminalization was in reality more likely to harm trafficking victims than help them: “[the law] is likely to cause severe harm to victims of human trafficking by subjecting them to repeated arrest, incarceration, and retraumatization, without increasing the likelihood of locating, identifying, or assisting trafficking victims.”<sup>259</sup> They also argued that the law would harm women engaging in sex work because of extreme poverty by reducing their options further due to the stigma of a prostitution conviction.<sup>260</sup> The Urban Justice Center pointed out the problematic conflation of trafficking and sex work:

Advocates in support of the bill state that the goal is to end trafficking, but the real focus of the bill is clearly on prostitution. If the goal of this bill is to end prostitution itself, we would caution Rhode Island legislators to consider whether this goal will actually be met. Criminalization of prostitution decreases choices available to people engaged in sex work rather than increasing their options to leave the industry or a trafficking situation.<sup>261</sup>

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<sup>255</sup> *About Citizens Against Trafficking*, CITIZENS AGAINST TRAFFICKING, <http://www.citizensagainstrafficking.com/About.html> (last visited Jan. 18, 2012).

<sup>256</sup> *Testimony on Prostitution B. Before the R.I. Senate Judiciary Comm.* (Oct. 28, 2009) (statement of Donna M. Hughes, Co-Founder, Citizens Against Trafficking), *available at* [http://www.citizensagainstrafficking.com/uploads/Hughes\\_\\_Testimony\\_Prostitution\\_Bill\\_\\_Oct\\_2009.pdf](http://www.citizensagainstrafficking.com/uploads/Hughes__Testimony_Prostitution_Bill__Oct_2009.pdf).

<sup>257</sup> See R.I. CODE R. 11-34.-1-2(d) (LexisNexis 2009).

<sup>258</sup> See Steve Peoples, *Prostitutes speak out against bill to close loophole*, THE PROVIDENCE J., Oct. 26, 2009, at A1 (discussing Providence, Rhode Island sex workers advocating for sex work as a career choice); Memorandum in Opposition from the Urban Justice Ctr. on Opposition to R.I. H.B. 5044 (June 8, 2009), *available at* <http://sexworker-project.org/downloads/2009/20090608-swp-hb5044a-memo-in-opposition.pdf> [hereinafter Urban Justice Center Memorandum]; Press Release, R.I. ACLU, National Project Joins Local Organizations in Opposing Legislative Effort to Further Criminalize Prostitution (June 10, 2009), *available at* <http://www.riaclu.org/News/Releases/20090610.htm> [hereinafter R.I. ACLU Press Release].

<sup>259</sup> R.I. ACLU Press Release, *supra* note 258 (quoting Andrea Ritchie of the Urban Justice Center); Urban Justice Center Memorandum, *supra* note 258, at 1.

<sup>260</sup> R.I. ACLU Press Release, *supra* note 258; Urban Justice Center Memorandum, *supra* note 258, at 3.

<sup>261</sup> Urban Justice Center Memorandum, *supra* note 258, at 3.

They urged the state to utilize more productive methods:

Examples of effective responses to human trafficking include community education campaigns and forging partnerships with communities most affected, including immigrant communities and sex workers themselves. Improving access to employment, housing, legal services, and other essential services, helping undocumented persons obtain immigration status so they can work legally, and eliminating the barriers for transitioning out of sex work and into living wage forms of work are all initiatives that get at the root causes of trafficking in persons without penalizing its victims.<sup>262</sup>

However, pro-sex work organizations' pleas went unheard in light of typical End Demand rhetoric. It should come as no surprise that by the end of 2009, of fourteen arrests for prostitution in Rhode Island, six were of women, including one 17-year-old girl.<sup>263</sup>

In addition, since the passage of its new prostitution law, Rhode Island has entrenched itself further in End Demand strategies by launching a 2011 "Dear John" social marketing campaign to shame johns.<sup>264</sup> Four different anti-prostitution messages plastered on the side of public buses all include the tagline: "Without you and your cash, sex trafficking would not exist!"<sup>265</sup>

### C. *New Trafficking Law in Massachusetts Focuses Extensively on Ending Demand for Prostitution*

Abolitionists also focused efforts on Massachusetts, which, until November 2011, was one of only three states without a state law making trafficking a crime.<sup>266</sup> The state received much criticism for its lack of an anti-trafficking law from organizations such as the Polaris Project, which helped bring attention to Massachusetts Attorney General Martha Coakley's proposed trafficking legislation.<sup>267</sup> Although a previous attempt to pass trafficking legislation had been unsuccessful—possibly due to its lack of a strong

<sup>262</sup> *Id.* at 4.

<sup>263</sup> See Karen Lee Ziner & Tom Mooney, *14 nabbed for prostitution under new law*, THE PROVIDENCE J., Dec. 12, 2009, at A1.

<sup>264</sup> See Gregory Smith, *Campaign castigates the 'johns,'* THE PROVIDENCE J., Oct. 25, 2011, at A4.

<sup>265</sup> *Id.*

<sup>266</sup> See MASS. GOVERNOR'S COUNCIL TO ADDRESS DOMESTIC VIOLENCE & SEXUAL ASSAULT, ASSESSMENT OF POLICIES & PROGRAMS TO COMBAT HUMAN TRAFFICKING 10 (2011) [hereinafter MA TRAFFICKING REPORT].

<sup>267</sup> See Press Release, Att'y Gen. Martha Coakley, Massachusetts Given Negative National Ranking for Its Legal Tools to Combat Human Trafficking: Coakley Encourages Passage of Human Trafficking Bill Currently in Conference Committee (Aug. 29, 2011), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2011/ma-criticized-in-human-trafficking-report.html> (discussing the Polaris Project's negative 2011 ranking of Massachusetts and the Attorney General's response).

sponsor<sup>268</sup>—Coakley’s legislation was signed into law by Governor Deval Patrick on November 21, 2011.<sup>269</sup> Although the new law includes some important provisions—it treats juvenile prostitutes as victims instead of criminals, creates a cause of action for victims to sue their traffickers, and establishes a Victims of Human Trafficking trust fund to aid trafficking victims<sup>270</sup>—it also contains some problematic End Demand provisions. These include increased penalties for johns.<sup>271</sup> Previously, both buying and selling sex had carried the same criminal penalties—one year in prison and a \$500 fine.<sup>272</sup> Now, soliciting a prostitute carries the potential of up to two-and-a-half years imprisonment or a \$1,000 to \$5,000 fine.<sup>273</sup> In addition, the law creates the crime of “trafficking for sexual servitude,” defined as:

(a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i) . . . .<sup>274</sup>

“Entice” is defined as “to lure, induce, persuade, tempt, incite, solicit, coax or invite.”<sup>275</sup> The penalties for this crime of “trafficking for sexual servitude” are severe: imprisonment for five to twenty years and a fine of up to \$25,000.<sup>276</sup> Even harsher penalties—up to life in prison—are outlined if the victim is a minor.<sup>277</sup> A crime of “trafficking for forced services”—or labor trafficking—has also been created, and holds the same penalties as the crime of “trafficking for sexual servitude.”<sup>278</sup>

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<sup>268</sup> See MA TRAFFICKING REPORT, *supra* note 266, at 10 (discussing potential weaknesses of the previous bill).

<sup>269</sup> See Steve LeBlanc, *Gov. Patrick signs bill against human trafficking*, ASSOCIATED PRESS, Nov. 21, 2011, available at [http://www.boston.com/news/local/massachusetts/articles/2011/11/21/gov\\_patrick\\_signs\\_anti\\_human\\_trafficking\\_bill/](http://www.boston.com/news/local/massachusetts/articles/2011/11/21/gov_patrick_signs_anti_human_trafficking_bill/).

<sup>270</sup> See *id.*; see also Press Release, Governor of Mass., Governor Patrick Signs Anti-Human Trafficking Legislation (Nov. 21, 2011), available at <http://www.mass.gov/governor/pressoffice/pressreleases/2011/111121-antihuman-trafficking-bill.html> (describing the bill’s provisions for assisting trafficking victims, especially children).

<sup>271</sup> See LeBlanc, *supra* note 269 (discussing increased penalties for johns).

<sup>272</sup> MASS. GEN. LAWS ch. 272, § 8 (2011), *amended by* 2011 Mass. Legis. Serv. ch. 178, § 24–25 (2011).

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at ch. 178, § 23.

<sup>275</sup> *Id.* at ch. 178, § 22.

<sup>276</sup> *Id.* at ch. 178, § 23.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

The new law has been hailed as an innovative success, with much praise being given to its End Demand focus on increased penalties for johns. In her testimony on the bill, Attorney General Coakley stated: “To stem the demand side, the bill increases penalties for current ‘john’ crimes. Simply put, if no one were buying sex, traffickers and pimps wouldn’t be supplying an endless stream of victims.”<sup>279</sup> Suffolk County District Attorney Daniel Conley, a vocal advocate of the bill, also spoke of the focus on johns: “We have to lift the veil of anonymity that protects the pimps and johns who exploit [women], and we have to commit ourselves to a long-term policy that protects the true victims and holds the true offenders accountable.”<sup>280</sup> In addition to these conflation of reducing demand for purchased sex with reducing human trafficking—predictable because of the United States’ history of tying prostitution and trafficking together without distinguishing sex trafficking from other forms of trafficking or acknowledging the possibility of voluntary sex work—news stories have neglected to mention that despite a claimed increased focus on sex buyers, selling sex remains a crime. Beyond statements of public officials like Attorney General Coakley that the new law will be “a real lens change,” focusing on sex workers as victims instead of defendants,<sup>281</sup> this law does nothing to ensure that prosecutions of sex workers will not continue.

In addition, perhaps because the law purports to be focused on trafficking as opposed to prostitution, there has been no critique of the law’s vague definitions. Although the crime of “trafficking for sexual servitude” could clearly be used against the most abusive and exploitive of traffickers, its references to “recruit[ing], entic[ing], harbor[ing], transport[ing], [and] provid[ing]”<sup>282</sup> could also be used to target a variety of other activities and players involved in sex work. These could include sex workers who encourage friends to join the sex trade or recommend a friend to a client (enticing and recruiting) or who help run a brothel (harboring). It could even include johns (obtaining). The law provides no parameters for enforcement beyond this vague definition, which should be a cause of major concern for pro-sex work feminists who believe that some women in Massachusetts may choose sex work out of preference or necessity. While local women’s and immigrants’ advocacy groups and organized labor backed the bill,<sup>283</sup> very

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<sup>279</sup> *Testimony on S. 827/H. 2850, An Act Relative to the Commercial Exploitation of People, Before the Mass. Judiciary Comm.*, 2011 Leg. Sess. (Mass. 2011) (statement of Martha Coakley, Att’y Gen. of Mass.), available at <http://www.mass.gov/ago/docs/testimonies/ht-testimony-for-judiciary.pdf>.

<sup>280</sup> LeBlanc, *supra* note 269.

<sup>281</sup> John J. Monahan, *New law aims to shut down sex trade traffickers*, WORCESTER TELEGRAM & GAZETTE, Nov. 22, 2011, at A1.

<sup>282</sup> MASS. GEN. LAWS ch. 272, § 8 (2011), amended by 2011 Mass. Legis. Serv. Ch. 178, § 23 (2011).

<sup>283</sup> See Press Release, Att’y Gen. Martha Coakley, Growing List of Supporters Back Anti-Human Trafficking Bill (June 17, 2011), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2011/supporters-back-anti-human-trafficking-bill.html>.



few critics have publicly voiced concern, and have done so only to say that the law does not do enough to provide aid to women in prostitution and that its penalties for johns will clog up local prisons.<sup>284</sup> Although these are worthy concerns, they have been hard to evaluate seriously among the widespread praise for Massachusetts' new law.

In addition, Massachusetts launched an End Demand public awareness campaign in September 2011.<sup>285</sup> A coalition of state and local government officials, police, and advocacy organizations including the Family Justice Center of Boston has placed posters in city trains and buses "to raise awareness about human trafficking and the commercial exploitation of children."<sup>286</sup> The four posters depict what look like Craigslist ads for sexual services accompanied with messages from the "victims" being advertised.<sup>287</sup> Although two of the four ads in the campaign focus on exploitation of children, one focuses on a former sex worker who "escaped to a women's shelter" and the fourth focuses on the need to crack down on johns.<sup>288</sup> Its text reads:

I'm the "sweetheart" who placed this ad. I'm an undercover detective and I arrest johns who respond to these ads. These guys meet girls in nice hotel rooms. They never see the poverty, the pimps, and the beatings the girls get when they don't meet their quotas. Men who pay for sex support this criminal enterprise. It's that simple.<sup>289</sup>

While there is nothing nefarious about seeking to reduce the number of sex workers who are in violent and exploitive conditions, the campaign goes too far in conflating abolitionist goals with efforts to end trafficking. Although the campaign is referred to as a "human trafficking campaign," the Family Justice Center's description of its purpose declares: "The sex trade is an industry that has no place in our City or in the many cities throughout the Commonwealth where internet-based solicitation, street prostitution, escort services, massage parlors, strip clubs, brothels in apartments, and local hotel

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<sup>284</sup> See Renee Loth, *Human Trafficking Bill Stops Short*, BOSTON GLOBE, June 11, 2011, at A11 (critiquing the law for "stinting on help for the victims—almost always women and girls who are desperate, poor, abused, homeless, or addicted."); Editorial, *Senate Should Move Ahead on Greater Penalties for Pimps*, BOSTON GLOBE, June 21, 2011, at A10 ("While exposing those who use prostitutes to the threat of some prison time is necessary for deterrence, they shouldn't be tying up prison space that could go to violent offenders.").

<sup>285</sup> See *DA Conley and Partners Announce Human Trafficking Awareness Campaign*, SUFFOLK CNTY. DIST. ATTORNEY MASS., <http://www.suffolkdistrictattorney.com/front-page-highlights/da-conley-introduces-safe-harbor-bill> (last visited Jan. 19, 2012).

<sup>286</sup> See *id.*

<sup>287</sup> *Human Trafficking Campaign*, BOSTON PUB. HEALTH COMM'N, <http://www.bphc.org/programs/cafh/violenceprevention/fjc/humantrafficking/Forms%20%20Documents/CampaignSigns.pdf> (last visited Mar. 4, 2012).

<sup>288</sup> See *id.*

<sup>289</sup> *Id.*

rooms are fronts for profit from sex crimes.”<sup>290</sup> District Attorney Conley’s remarks on the campaign reiterate its End Demand goals:

Ask any police officer and they’ll tell you—making prostitution arrests is easy. We could make hundreds of those cases a week if we approached it on the supply side. But this isn’t a supply-side industry. Sexual trafficking exists because of a demand. That demand is aided and abetted by websites and newspapers with advertisements for sexual services. . . . Sexual trafficking isn’t a victimless crime. It’s not liberating or glamorous.<sup>291</sup>

These remarks demonstrate how second-nature and nonsensical the conflation of sex work and trafficking has become in common usage: if “sexual trafficking” was given its meaning under the TVPA, then pointing out that it is not “liberating or glamorous” would be laughably obvious because those who are “induced by force, fraud, or coercion”<sup>292</sup> clearly do not fall into the category of voluntary sex workers that this description seeks to demonstrate do not exist. If efforts to end sex trafficking focused, as they should, on those cases in which women have been forced into prostitution against their will or have been subjected to abusive and exploitive conditions even if they initially consented, then declaring that “[s]exual trafficking isn’t a victimless crime” would be redundant to the point of absurdity. As the jurisdiction with the newest law and campaign focused on trafficking and sex work, Massachusetts demonstrates that End Demand strategies have fully taken hold in the United States and continue to place us at serious risk of moving even further away from productively confronting human trafficking in our country.

#### IV. DEMANDING AN END TO THE RHETORIC: RECOMMENDATIONS FOR A MORE PRODUCTIVE APPROACH TO REDUCING TRAFFICKING AND IMPROVING THE LIVES OF SEX WORKERS

This Part seeks to move beyond current ineffective End Demand strategies and arguments to provide suggestions for work approach feminists and human rights advocates seeking to redirect anti-trafficking energies to more productive methods for change.

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<sup>290</sup> *Human Trafficking Public Awareness Campaign*, FAMILY JUSTICE CTR., BOSTON PUB. HEALTH COMM’N, <http://www.bphc.org/PROGRAMS/CAFH/VIOLENCEPREVENTION/FJC/Pages/Home.aspx> (last visited Jan. 19, 2012).

<sup>291</sup> *DA Conley Remarks on Human Trafficking Awareness Campaign*, SUFFOLK CNTY. DIST. ATTORNEY MASS., <http://www.suffolkdistrictattorney.com/?p=3566> (last visited Jan. 19, 2012).

<sup>292</sup> 22 U.S.C. § 7101 (2000), § 103(8)(A).

A. *Fighting Fire with Fire: The Need for Work Approach Feminists to Respond Directly to End Demand Strategies*

Although work approach feminists have played a vocal role in the debate over decriminalization versus abolition and have spoken out against conflating sex work with trafficking,<sup>293</sup> we have not seen enough of their response directed at the heightened focus on End Demand efforts. A good example of a direct confrontation of the new End Demand movement is the Rights Work Initiative's response to the Department of State's highly problematic June 2011 "fact sheet" on "Fighting Sex Trafficking By Curbing Demand for Prostitution."<sup>294</sup> Rights Work is a project of the Program on Human Trafficking and Forced Labor at the American University Washington College of Law's Center for Human Rights and Humanitarian Law that "seeks to promote evidence-based research, rights-based policies and lively debate on issues relating to human trafficking and forced labor."<sup>295</sup> They responded to the "fact sheet" in the form of a September 2011 letter to Ambassador-at-Large Luis CdeBaca, Director of the Office to Monitor and Combat Trafficking in Persons.<sup>296</sup> The letter, signed by fifteen prominent researchers and policy advocates,<sup>297</sup> asks for factual support for the State Department's claims about End Demand strategies.<sup>298</sup> It asks for a clarification of the State Department's uses of terms like "sexual exploitation" and "sex trafficking"<sup>299</sup> and evidentiary support for its endorsement of the End Demand approach,<sup>300</sup> and questions the assumptions that this approach will

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<sup>293</sup> See *supra* Part I.

<sup>294</sup> See *supra* notes 250–252 and accompanying text for a description of this "fact sheet." To read the response by The Rights Work Initiative, see Ann Jordan, *US State Department Fails to Produce Evidence for its "Fact Sheet,"* RIGHTS WORK INITIATIVE (Nov. 8, 2011), <http://rightswork.org/2011/11/us-state-department-fails-to-produce-evidence-for-its-'fact-sheet'/>.

<sup>295</sup> *About Rights Work*, RIGHTS WORK INITIATIVE, <http://rightswork.org/about-2/> (last visited Jan. 19, 2012).

<sup>296</sup> See Letter from Rights Work Initiative to Ambassador-at-Large Luis CdeBaca (Sept. 22, 2011), available at <http://rightswork.org/wp-content/uploads/2011/10/Ambassador-CdeBaca.9.11.pdf>.

<sup>297</sup> *Id.* at 4–9.

<sup>298</sup> *Id.* at 1 (pointing out the "Obama Administration's commitment to the use of rigorous evidence to drive policy.").

<sup>299</sup> *Id.* at 2–3.

<sup>300</sup> *Id.* at 3–4:

[The fact sheet] implies that there is a unique relationship between prostitution and trafficking that does not exist between, for example, domestic work and trafficking, farm work and trafficking or fishing and trafficking. So, if you believe that eliminating the sector is the best solution to ending trafficking into the sex sector, is it not also logically the case that if there is no domestic work there can be no trafficking into domestic work? Does your office propose criminalizing the purchasing of services for domestic work (or farm work or fishing) in order to stop trafficking?

best aid sex workers<sup>301</sup> and that trafficking is actually caused by a demand for sex.<sup>302</sup> It also points out evidence that End Demand strategies are not effective.<sup>303</sup>

The State Department's October 2011 letter in response was predictably void of any meaningful engagement with Rights Work's critiques, and included boilerplate-type conciliatory language: "I am grateful for your collective commitment to this issue, and I look forward to continued partnership in our effort to fight this scourge."<sup>304</sup> However, Rights Work's efforts stand as an important inquiry against the growing support surrounding End Demand ideology. Their well-reasoned, point-by-point critique directly confronts the faulty reasoning in the State Department's document, refusing to accept wholesale claims made without empirical evidence. As abolitionists make End Demand statements with increasing frequency, it has become important for pro-work advocates to address these claims head-on in order to create public debate on this issue.

*B. Refocusing the Lens: Moving Away from the Abolition Versus Decriminalization Debate Toward Real Progress*

In order to make real progress toward combating human trafficking, however, advocates should also expend less time and resources on tired, old divisive debates. The Global Alliance Against Traffic in Women's ("GAATW") 2011 report on "Moving Beyond Supply and Demand Catchphrases" provides a comprehensive assessment of End Demand efforts and the complex link between trafficking, sex work, and exploitive labor practices.<sup>305</sup> The report encourages anti-trafficking efforts to move beyond debating supply and demand to look more seriously at the conditions that enable and encourage trafficking to occur, and the best ways to improve the lives of sex workers and laborers while acknowledging these realities.<sup>306</sup> This includes refocusing End Demand efforts on ending what GAATW calls "the demand for exploitative labour practices," defined as labor in both sex work and other sectors that is: "Low cost—including non-payment or underpayment; [e]asy to control—including keeping workers from leaving abusive situations; and [u]nprotected—including social attitudes that

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<sup>301</sup> See *id.* at 4 ("What evidence supports the unstated assumption that sex sellers will be able to find other means to earn a living?").

<sup>302</sup> See *id.* at 5–6 (discussing the imperfect relationship between supply and demand in human trafficking).

<sup>303</sup> See *id.* at 3–4 (discussing the "failure" of the Swedish model); *id.* at 6–7 (discussing the lack of evidence to support the establishment of john schools).

<sup>304</sup> See Letter from Luis CdeBaca, Ambassador-at-Large, Office to Monitor & Combat Trafficking in Persons, to Rights Work Initiative 3 (Oct. 28, 2011), <http://rightswork.org/wp-content/uploads/2011/11/Ambassador-CdeBaca.pdf>.

<sup>305</sup> See generally GAATW MOVING BEYOND CATCHPHRASES, *supra* note 6, at 43 (exploring the need to move beyond the prostitution debate to address exploitive labor in all sectors).

<sup>306</sup> See *id.* at 67–68.

normalise or justify exploitation and discrimination, [and] unregulated labour.”<sup>307</sup> Exploitive labor practices are undoubtedly widespread in the sex work sector, but they also happen frequently in domestic, agricultural, and sweatshop work, among other sectors.<sup>308</sup> The ILO and some scholars advocate for this exploitative labor-focused approach.<sup>309</sup> These advocates argue that the majority of people suffering from exploitive labor practices do not fit the mold of a “perfect victim” who can tell a story of being fully coerced and forced.<sup>310</sup> Coming to a consensus on the need to focus on exploitive labor does not require taking a stance for or against decriminalization: “It is [ ] important to emphasize that legalization is not the same as legitimization; it is not about morally condoning or sanctioning.”<sup>311</sup> Feminists advocating for both abolition and decriminalization should agree that more people in need of aid could be identified and assisted if advocates would move beyond trying to rigidly define who has been “trafficked.”

For those who wish to focus their efforts exclusively on prostitution reform, perspectives will continue to differ on which legal scheme—partial or full decriminalization—will best protect sex workers from harm. The experiences of Canadian, British, and Swedish sex workers seem to demonstrate that legal sanctions against sex buyers cause further harm to sex workers.<sup>312</sup> Some studies have demonstrated that legalized sex work is safer.<sup>313</sup> However, abolitionists have pointed to studies that demonstrate that full decriminalization has not shaped up to be the panacea that pro-sex work feminists have suggested.<sup>314</sup> This Article does not aim to guess which model would work best in a perfect society where other factors such as sex inequality and poverty do not play a role. However, the End Demand focus—in its current form—is incapable of addressing the real needs of sex workers. Harm reduction and public health initiatives will make a bigger impact on

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<sup>307</sup> See *id.* at 8.

<sup>308</sup> See *supra* Part I.B.2 (discussing the existence of exploitive labor in other sectors as a reason why the conflation of trafficking and prostitution is particularly problematic).

<sup>309</sup> See LIM, *supra* note 92, at 7 (advocating for a recognition of both sex work and labor exploitation).

<sup>310</sup> See generally Haynes, (*Not*) *Found Chained to a Bed in a Brothel*, *supra* note 234 (discussing how the Trafficking Victim’s Protection Act does not do enough to provide aid for exploited workers who cannot tell the perfect “victim story”); Robert Uy, *Blinded By Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the “Perfect Victim Paradigm,”* 26 BERKELEY J. GENDER L. & JUST. 204 (2011) (discussing the need to move focus away from sex trafficking to labor trafficking and to create workable solutions on the ground to help victims and prevent further trafficking).

<sup>311</sup> See LIM, *supra* note 92, at 9 (explaining that the ILO does not take a stance on decriminalization).

<sup>312</sup> See *infra* Part II.B.1–2.

<sup>313</sup> See, e.g., Barbara G. Brents & Kathryn Hausbeck, *Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy*, 20 J. INTERPERSONAL VIOLENCE 270, 29–94 (2005) (discussing findings that indoor, regulated brothel prostitution reduces the risk of violence against sex workers).

<sup>314</sup> See, e.g., MacKinnon, *Trafficking, Prostitution, and Inequality*, *supra* note 8, at 305 (“legalization is a failed experiment”).

improving the lives of women who sell sex.<sup>315</sup> Promoting and engaging with sex worker collectives provides the opportunity to reduce the incidence of HIV/AIDS and other health problems among sex workers in a non-judgmental atmosphere.<sup>316</sup>

Even those feminists who oppose sex work and see it as intrinsically harmful should support this approach. Imagine a setting in which non-coercive services were provided for women in sex work. Those expressing a desire to leave sex work could be provided education, housing, domestic violence and addiction counseling, and job services to make their desires a reality. This model has been embraced by some programs, such as the Urban Justice Center's Sex Worker Project ("SWP") in New York City, which aims to provide unbiased "legal services, legal training, documentation, and policy advocacy for sex workers. Using a harm reduction and human rights model, the SWP protects the rights and safety of sex workers who by choice, circumstance, or coercion remain in the industry."<sup>317</sup> Other programs, such as Kim's Project in Boston, offer non-coercive services, but operate under a fundamentally anti-prostitution stance.<sup>318</sup> By operating under this ideology, these programs may alienate sex workers who do not perceive themselves as being interested in leaving the sex trade. If abolitionists truly believe that the vast majority of women want to leave sex work, then allowing them to make the transition on their own terms with the full support of both current and former sex workers would be their best method for accomplishing their goal. Although identifying and assisting a woman's authentic desires will be difficult in light of the many factors playing into entrance into sex work, this should not make a model that respects sex worker agency any less desirable. This model would turn the supply and demand paradigm on its head: without a supply of coerced sex workers, johns seeking sex would have to either go without, or satisfy their desires in safe and fairly-negotiated ways with sex workers who freely choose the profession.

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<sup>315</sup> *But see generally* Joanna Erdman, *Access to Information on Safe Abortion: A Harm Reduction and Human Rights Approach*, 34 HARV. J.L. & GENDER 413 (2011) (explaining, in the abortion context, the tension between harm reduction and human rights approaches because of "their underlying 'moral warrants.'"). *Id.* at 416. Erdman continues: "Human rights are set against the normative neutrality of harm reduction, which is characterized by a pragmatic (not principled) approach to health outcomes (not social justice)." *Id.*

<sup>316</sup> *See* Ahmed, *supra* note 3, at 258 (explaining the benefits of supporting sex worker programs).

<sup>317</sup> Projects: *Sex Workers*, URBAN JUSTICE CTR., <http://www.urbanjustice.org/ujc/projects/sex.html> (last visited Feb. 15, 2012).

<sup>318</sup> *See* KIM'S PROJECT, <http://www.kimsproject.org> (last visited Feb. 15, 2012) (describing the goal of the program as: "to provide positive alternatives, especially for young adults, ensure their safety and raise awareness since engaging in prostitution or related activities is often about poverty, as well as race and gender inequalities."). *But see Testimony at Online Sexual Exploitation Hearing* (Oct. 19, 2010) (statement of Cherie Jimenez, Kim's Project Coordinator), *available at* <http://www.mass.gov/ago/docs/community/testimony/kims-project.pdf> (testifying on the cycle of abuse in prostitution and against it as a "vocational choice" for most women).

The question remains: what, if anything, should be done about johns? If police and public officials were fully on board with an approach that respected the autonomy of women, then the remaining pimps, johns, and traffickers who are violent and abusive could be swiftly identified by sex workers—who without stigma and fear, would be more willing to assist law enforcement. These violent and exploitive men could then be dealt with by the criminal justice system. In addition, laws that punish men who *knowingly* buy sex from trafficked and exploited women may be a beneficial tool for combating the harms of prostitution. However, many of these laws as they currently exist are dangerously overbroad, leaving sex buyers—who typically will not know whether the women they buy sex from have been trafficked<sup>319</sup>—to the mercy of prosecutorial discretion.<sup>320</sup> Because a prosecutor could likely convince a judge that the definition of “trafficking” in laws like these cover women in any kind of coercive situation—even those at the relatively harmless end of the spectrum—such laws should be redrafted to prevent the prosecution of men without genuinely malicious intent.

If we are willing to acknowledge that not all men who buy sex are evil, perverted, or strange, then we can also refocus efforts to educate them. Johns can be allies in identifying women in forced prostitution.<sup>321</sup> Although the success of public awareness campaigns is difficult to measure,<sup>322</sup> efforts to teach men signs to look for that indicate a woman may be selling sex against her will would help bring anti-sex trafficking efforts to the forefront in a productive way. General efforts to educate men—starting at a young age—to respect women’s autonomy and to obtain full and freely-given consent before any sexual contact would also reduce the number of men who would be willing to buy sex from women who are exploited or coerced.

#### CONCLUSION

Efforts to combat human trafficking in the United States are fraught with ideological divides that halt meaningful identification and provision of aid to victims. Moralistic debates over sex work lead to a conflation of sex work and trafficking that informs anti-trafficking efforts, to the detriment of both true victims and voluntary sex workers, both of whom desperately need

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<sup>319</sup> See *supra* note 123 and accompanying text (explaining that most men cannot identify whether a prostitute has been trafficked).

<sup>320</sup> See *supra* Part III.C for a discussion of Massachusetts’ overbroad antitrafficking law.

<sup>321</sup> Cf. DODILLET & OSTERGREN, *supra* note 178, at 21 (discussing how the Swedish law makes clients less willing to participate in prosecution of “profiteers who exploit the sexual labor of others”); Brooks-Gordon, *supra* note 103, at 163 (discussing how full criminalization of purchasing sex in the U.K. would lead “the clients who currently contact the police if they have concerns about a sex worker’s situation [to] not do so for fear of being criminalized.”).

<sup>322</sup> See *supra* Part II.B.3 (explaining that End Demand public awareness campaigns have not had measurable results).

assistance. The End Demand movement makes assumptions about sex buyers, characterizing them as deviants and the root of the trafficking problem. Legal frameworks and programs designed to punish and shame these buyers divert what scarce resources exist into unproven methods. Despite a lack of reduction in either trafficking or sex work, abolitionists have continued to push End Demand strategies, leading to changes in federal and state law which will continue to at best maintain the status quo and at worst harm sex workers by making their conditions worse. Although work approach feminists and human rights advocates have begun to respond directly to End Demand rhetoric, an even stronger counter-effort will be necessary to prevent problematic policies focused on eliminating sex work and punishing johns from taking further hold. In addition, work approach feminists should make efforts to refocus anti-trafficking energies onto three main initiatives: combating exploitive labor practices for people in all sectors of work, including sex work; providing comprehensive assistance to women in sex work to help improve their health and conditions and enable them to leave the sex trade if they so desire; and educating men on ways to avoid and prevent the purchase of sex from exploited women. Although advocates will likely face an uphill battle in convincing abolitionists that these goals are most desirable, even small victories will give these efforts the attention they need to gain traction against the current trend toward embracing End Demand strategies.