Freedom or Slavery?

The Harm in Legalizing Prostitution

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 *The legality of prostitution has been subject to controversy in liberal democracies for decades. In recent years, Sweden and The Netherlands have adopted very different legal approaches toward prostitution, both rooted in a liberal conception of freedom. The Netherlands permits the sale and purchase of sexual services and seeks to regulate the sex trade. Sweden uniquely prohibits the purchase of sexual services while decriminalizing the sale, treating prostitutes as the victims of sexual crime. Using J.S. Mill’s “harm principle” as an ethical standard, this paper analyzes the consequences of both approaches for sex trafficking, the enslavement of women and children to work in the sex trade. Research suggests that the demand for sex trafficking in a given region increases when prostitution is legal or widely tolerated. If so, Mill’s harm principle justifies the Swedish approach to prostitution.*

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 Few people would argue that prostitution is a harmless trade. The risks for women who engage in prostitution include STD and AIDS, unwanted pregnancy, battery, rape, and psychological trauma, among others. Some claim that the sex trade is associated with organized crime and violence, while others maintain that it undermines gender equality. In recent years, the Netherlands and Sweden have adopted very different strategies to limit the harms caused by prostitution. The Netherlands, which has long tolerated prostitution, formally lifted its ban on brothels and pimping in 2000. One year earlier, Sweden became the first country to prohibit the purchase of sexual services while decriminalizing the sale, treating prostitutes as victims of sexual crime. Proponents of the Dutch approach argue that prostitution is an unavoidable facet of society, and the best way to improve health and reduce violence in the sex trade is to legalize and regulate it. Those who favor the Swedish model argue that prohibition is a necessary step toward abolishing an inherently coercive, violent, and misogynistic sex trade. Both sides claim that their strategy is the best way to combat sex trafficking, the enslavement of women and children[[1]](#footnote-1) to work in the sex trade.

 Despite their differences, both approaches are rooted in a liberal conception of freedom, a conception owing much credit to the political philosopher, John Stuart Mill. In 1859, Mill penned his most influential work, *On Liberty*, in which he sought define a standard of freedom that could be used to judge all laws. He argued that men were free to think and live as they please until their actions harmed, or violated the rights, of others; only then could society restrict individual freedoms. Mill’s so-called “harm principle” has long been invoked to justify the legalization of narcotics use, prostitution, and other “victimless crimes.” This argument rests on the assumption that individuals willingly take part in such activities and society suffers no direct harm on account of their actions. However, when the sex trade’s relationship to sex trafficking is considered, prostitution proves to be far from victimless.

 Using Mill’s harm principle as an ethical standard, this paper analyzes how the Dutch and Swedish approaches to prostitution have influenced sex trafficking. I will argue that the legalization of prostitution actually violates the harm principle because it stimulates demand for victims of trafficking. Furthermore, countries attempting to combat sex trafficking should emulate Sweden’s demand-side model and criminalize the consumer of paid sex rather than the victim.

**I. Mill and the Harm Principle**

 In *On Liberty*, Mill argues that society, or its ruling class, has traditionally sought to impose its own definitions of morality upon its people. In general, laws have reflected the “likings and dislikings of society,” which are never unanimously shared. Intellectuals, he argues, have failed to question the morality of *imposing* morality: “They have occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals” (Mill 1982, 13). Mill’s purpose in *On Liberty* is to establish a fundamental, objective principle “to govern absolutely the dealings of society with the individual” – an ethical standard by which all laws can be judged:

That principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. (Mill 1982, 15-16)

Mill’s eloquently articulated harm principle is a rejection of paternalism, or the restriction of an individual’s freedoms out of concern for his or her “best interests.” In a free society, Mill argues, the individual is sovereign. Government can only restrict a person’s freedoms if his or her actions harm, or violate the rights, of others.

 In order to justify such a broad definition of freedom, Mill argues that alternative beliefs and lifestyles, even those considered deviant and immoral, are actually valuable to society. Mankind is not infallible, he states; many ideas that were once considered divine truths have been proven wrong. Yesterday’s deviants, i.e. Christians, have become today’s majority (Mills 1982). If a society were arrogant enough to claim a monopoly on truth, real truth would never be discovered. Thus, if alternative beliefs and lifestyles were not to some extent allowed to exist, society would become stagnant. Practices considered immoral should be tolerated because a) they may actually contain some truth, and b) they serve to reinforce why we choose to observe the prevailing standards. Because, Mill writes, “There is only too great a tendency in the best beliefs and practices to degenerate into the mechanical” (Mill 1982, 73). If the dominant faction is so convinced of the moral truth in its own lifestyle, then it should allow other lifestyles to be tested and to fail accordingly: “the worth of different modes of life should be proved practically, when any one thinks fit to try them”(Mill 1982, 65).

 Any society that refuses to tolerate alternative beliefs and lifestyles, Mill argues, will lead to a “tyranny of the majority” – when the majority of people imposes its moral will on the minority. In free, liberal societies, the harm principle serves as a check on majority will. Mill famously wrote, “The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it” (Mill 1982, 19). Thus, we are wholly free and sovereign individuals until we interfere with another’s sovereignty

 Mill makes several important qualifications to the harm principle relevant to a debate on prostitution policies. First, the harm principle does not encompass all kinds of “harm” – only the violation of individual “rights.” Mill is unspecific regarding what constitutes a right, but we will assume that Mill had certain, basic rights – life, liberty, and property – in mind. The harm principle inherently promotes freedom of choice, the right to “pursue our own good in our own way.” Secondly, society can and should adopt paternalistic measures (in violation of the harm principle) in the interests of protecting children, since they have not yet reached a state of reason. Mill writes, “Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury.” (Mill 1982, 16) Finally, Mill argues that society has a right “to ward off crimes against itself by antecedent precautions” (Mill 1982, 110). If experience warns us that certain freedoms tend to produce certain harms, the harm principle enables society to proactively restrict those freedoms.

 The many harmful aspects of prostitution – disease, rape, violence, etc. – are considered serious enough by some to warrant government interference in the sex trade. However, these reasons alone are not enough to justify regulation or prohibition based on Mill’s harm principle. It should be noted that proponents of the Dutch and Swedish approaches to prostitution both use paternalistic arguments. The Dutch argue that their approach is in the “best interest” of the prostitute, that legalization and regulation will minimize the dangers of sex work. The Swedish unsuccessfully attempt to avoid accusations of paternalism by deeming prostitution “inherently coercive,” sidestepping the fact that some women willingly choose to sell their bodies. Any law that restricts prostitution based on potential risks to consenting parties is paternalistic, and it violates the rights of women who voluntarily seek employment in the sex trade. Mill would argue that prostitution is an alternative lifestyle that should be tolerated even if society deems it immoral. In order to justify prohibition based on the harm principle, prostitution must violate the rights of a non-consenting party. This involuntary party consists of the women and children forced into sexual slavery through sex trafficking.

**Sex Trafficking – An Overview**

 In February, 2009, the United Nations Office on Drugs and Crime released its *Global Report on Trafficking in Persons*. Antonio Maria Costa, Executive Director of the UNODC, acknowledges a sober reality in its preface: “The term *trafficking in persons* can be misleading: it places emphasis on the transaction aspects of a crime that is more accurately described as enslavement. Exploitation of people, day after day. For years on end” (UNODC 2009, 6). Unlike Costa, many people hesitate to call trafficking what it is. Human trafficking[[2]](#footnote-2) is one among many terms used today to conceal the face of modern-day slavery. Trafficking is only the *act of enslavement*, the transit and transaction of human beings as commodities.

 According to the U.S. State Department’s 2005 *Trafficking in Persons Report*, an estimated 600,000 to 800,000 human beings are trafficked across international borders every year; of these, 80 percent are female and as many as 50 percent are children (USSD 2005). This data does not account for the millions trafficked within their national borders each year.

Although men, women, and children can be trafficked into forced labor, a majority of trafficking victims, particularly women and children, are destined for sexual slavery. According to the 2009 *Trafficking in Persons Report*, “When a person is coerced, forced, or deceived into prostitution, or maintained in prostitution through coercion, that person is a victim of [sex] trafficking” (USSD 2009, 21). The report also defines any child (under the age of 18) engaged in prostitution as a victim of sex trafficking, regardless of consent, reflecting Mill’s philosophy that children must be protected against their own actions.[[3]](#footnote-3) UNICEF estimates that over one million children (under the age of 18) have entered the sex trade each year for the past thirty years (UNICEF 2004).

 In *A Crime So Monstrous*, investigatory journalist E. Benjamin Skinner describes how women and children are deceived into prostitution.Most women[[4]](#footnote-4) at risk for sex trafficking live in desperate economic situations. Victims of trafficking in Western Europe come from former Soviet bloc countries like Moldova and Romania, or African and Southeast Asian countries where job opportunities for young women are extremely limited. “Recruiters” lure women into leaving their homes with the prospect of a high-paying job in a restaurant or hotel in a foreign country. In some cases, a charming, attractive, well-off young man called a “lover-boy” develops a romantic relationship with a woman over the course of several weeks, even months. He promises her a better life in his country if she would come home with him. In both cases, the woman is betrayed upon reaching her destination – the recruiter or lover-boy (trafficker) sells her into a brothel. The brothel owner or pimp informs her that he spent several thousand dollars to bring her overseas, and she must have sex with clients in order to repay her “debt.” If the woman resists, he rapes her into submission. With added “interest” to her debt and the constant threat of violence, she will never be able to escape the brothel. She has become a slave in every sense of the word (Skinner 2008).

 Mill’s harm principle protects individual freedoms until those freedoms harm, or interfere with the rights of others. If the freedom to “pursue our own good in our own way” is an inalienable human right, sex trafficking should be considered a most heinous harm. The victim is forced to pursue another’s good by selling her most private possession to complete strangers. It is nothing short of slavery – the complete deprivation of freedom – a menace to women and children worldwide. Trafficking in persons is now the third largest and fastest growing criminal enterprise in the world behind drug and weapons trafficking (Ekberg 2004). Some estimates place the global yearly value of modern-day slavery as high as $32 billion (Skinner 2008). The 2009 *Trafficking in Persons Report* claims that “human trafficking undermines the health, safety, and security of all nations it touches” (USSD 2009, 5). Sex trafficking violates Mill’s harm principle to an inhuman extreme. Therefore, if legalizing prostitution is shown to increase demand for sex trafficking, prohibiting the purchase of sexual services can be justified based on the harm principle. We will now examine recently adopted legal approaches toward prostitution in The Netherlands and Sweden in order to identify a relationship between prostitution and demand for sex trafficking.

**III. The Netherlands – Legalization and Regulation**

 In October of 1999, the Dutch Senate amended the Dutch penal code to lift the general ban on brothels and pimping. The new law became effective on October 1, 2000 (Daalder 2007). Although law enforcement authorities in the Netherlands had semi-officially tolerated prostitution for years, this legislation required prostitutes and brothels to obtain municipal licenses in order to operate legally. According to A.L. Daalder, Program Leader at the Dutch Justice Department’s Research and Documentation Centre, “The licence obligation has enabled the local government to make demands on sex establishments on all sorts of terrains, such as safety, hygiene, transparent management, and so on” (Daalder 2007, 42). The Dutch approach to prostitution argues that the sex trade is an unavoidable fact of society, and acknowledging it as a legitimate livelihood helps the government mitigate the dangers faced by women in prostitution. In a regulated, legal system of prostitution, women would be more inclined to report violent crimes to the authorities. Legalization would grant sex workers access to health care and contraceptives, improving the health of prostitutes and their clients (Bindel and Kelly 2003). It has also been argued that women have a natural right to sell their body for sex, a claim that Mill could reasonably make so long as their decision did not interfere with others’ freedoms.

Proponents of the law claim that legalizing voluntary prostitution allows law enforcement to focus its efforts on sex trafficking. The 1999 legislation increased the severity of punishments for sex trafficking, raising the maximum sentence for “exploitation of involuntary prostitution and the employment of minors in the sex industry” to six years imprisonment, or eight to ten years in case of “aggravating circumstances” (Daalder 2007, 40). Daalder explains how the law reconciled legalized prostitution and increased trafficking penalties:

Implicitly, the legislator presumes that more severe penalties will help the fight against these forms of prostitution. One of the suppositions behind the amendment of the law is that, through a partial regulation of the sector, the enforcement and detection capacity for combating trafficking in human beings can be deployed more effectively. This will make the combat against trafficking in human beings more successful; the assumption being that a larger capacity for enforcement and detection will generate an increased chance of arrest. Finally, the legislator presumes that the combination of a potentially increased chance of arrest and heavier punishment might result in a decrease of this form of crime. (Daalder 2007, 42).

So rather than punishing consenting adults, the justice system would be able focus on the arrest and prosecution of rapists, violent pimps, and traffickers. Dutch legislators hoped that by lifting the brothel ban, they could shed some light on the more nefarious aspects of the sex trade.

 Others claim that legalization offers a taxable solution to illegal immigration. Dutch diplomat, Carel Hofstra, has argued that legalization would allow the government to regulate demand for “migrant sex workers”: “The demand is already there. We can’t eradicate the demand. We will regulate it. Grant permits. Make them pay taxes... Other countries may have women with working skills that will benefit the Netherlands. We could create special permits that will allow foreign nationals to engage in prostitution” (as qtd. in Thompson 2005, 5). Hofstra’s argument parallels that of some in the U.S. who argue that illegal immigrants should be granted workers’ visas, acknowledging demand for cheap labor in agriculture and various service industries. However, Hofstra rests on the assumption that women freely migrate to The Netherlands to work in the sex industry.

 Despite the humanitarian concerns of its advocates, the Dutch law legalizing prostitution has done little to improve the lives of Dutch sex workers. Multiple studies show that the majority of brothels and prostitutes have not come forward to obtain licenses, so they continue to operate illegally. Reporting of violent crimes and health factors in the sex industry have not shown significant improvement (Bindel and Kelly 2003). Although these effects are relevant to a discussion on legalizing prostitution, the focus of this paper (in accordance with Mill’s harm principle) is the relationship between prostitution and sex trafficking.

 In 2002, University of Rhode Island Professor Donna Hughes testified about this relationship before a congressional hearing on the 2002 *Trafficking in Persons Report*. She reported that the Dutch sex industry was worth U.S. $1 billion annually, or 5 percent of the overall Dutch economy – an increase of 25 percent over the past decade[[5]](#footnote-5) (Hughes 2002). At a similar hearing in 2005, Lisa Thompson, the Salvation Army’s Liaison to Abolish Sexual Trafficking, reported that The Netherlands “is a major destination country for trafficked women in Western Europe, with 2000 brothels and numerous escort services, using an estimated 30,000 women. Moreover, 68% of women in its sex industry are from other countries. Other estimates put this figure as high as 80 percent” (Thompson 2005, 5). In a 2003 study of prostitution policies in four countries, Julie Bindel and Liz Kelly wholly rejected Carl Hofstra’s contention that foreign women freely migrate to The Netherlands with the purpose of seeking work in the sex trade; they argue that the term “migrant sex workers” is a horrendous euphemism for “trafficked women”:

Some argue that a large proportion [of foreign women] are ‘migrant sex workers’, who are forced to use traffickers, since there are no legal migration routes available. This argument neatly sidesteps the issue of demand: why are sex businesses choosing to recruit/use foreign women? Where we are talking about an industry, the obvious answer is that they are more profitable, and the most profitable are those who have been trafficked. (Bindel and Kelly 2003, 8)

Foreign women are more profitable to brothel owners than local women in the same sense that African slaves were more profitable to plantation owners than wage-earning laborers. A 2003 study of the Dutch National Rapporteur found that one sex slave could earn a Dutch pimp $250,000 per year (as cited in Skinner 2008). If the majority of foreign women in the Dutch sex trade have been trafficked against their will, upwards of 68 to 80 percent of Dutch prostitutes are working in a state of sexual slavery.

Some organizations report that child prostitution has also increased. Amsterdam-based NGO ChildRight estimates that there were more than 15,000 children (mostly girls) in the sex industry as of 2003, eleven thousand more than there were in 1996 (as cited in Bindel and Kelly, 2003). Based on these estimates, half of all prostitutes in The Netherlands are under 18 years of age. Even allowing for the possibility that some of these children willingly choose to sell their bodies for sex, they are still considered victims of sex trafficking in the eyes of Dutch law. Mill argues that society can and should restrict the rights of children; they require protection from their own actions because they have not yet reached a state of reason. The sheer number of children in the Dutch sex trade alone could be enough to justify the prohibition of prostitution based on the harm principle.

Finally, rather than freeing up law enforcement to fight sex trafficking, as the law intended, legalization has made it even more difficult. Traffickers find it easier to hide under the guise of legality. Law enforcement officials often overlook brothels where women and children are held captive because the purchase and sale of sex is itself perfectly legal. The law also makes it difficult to successfully prosecute accused traffickers. Hughes writes, “Legalized prostitution makes it difficult to hold traffickers accountable for their activities. According to a Netherlands based NGO, traffickers evade prosecution by claiming the women consented, and prosecutors generally have a hard time establishing the line between voluntary and forced prostitution” (Hughes 2002). Establishing that line becomes particularly difficult because most trafficked women, though deceived, willingly migrate to The Netherlands. Prosecutors find it difficult to prove where consent stops and coercion begins.

 Even Dutch officials, recognizing prostitution’s relationship to trafficking, are beginning to scale back the scope of legalized prostitution. The city of Amsterdam has cracked down hard on its famous red-light district in recent years. In December of 2008, Amsterdam mayor Job Cohen announced plans to close half of Amsterdam’s 400 prostitute windows (displaying women for sale) and several sex clubs, reducing the sex district to just two main streets (Charter 2008). Though he has not denounced the policy of legalized prostitution, Cohen noted, “In the last few years we have also seen a lot of women-trafficking and women forced to be prostitutes against their will, and therefore we want to have more control” (Charter 2008). Cohen’s plans came after Karina Schaapman, a city councilor and former prostitute, reported on an Amsterdam “police file of 80 violent pimps, of whom only three were Dutch-born. She said that more than three quarters of the city's 8,000 to 11,000 prostitutes were from Eastern Europe, Africa and Asia” (Charter 2008). Schaapman’s report concurred with an extensive police study directed by city councilor Lodewijk Asscher which estimated that at least 50 percent of prostitutes in Amsterdam’s inner-city were working against their will; “Amsterdam is becoming the centre of the sex-slavery industry,” said Asscher (Stuijt 2008). In January of 2009, the Dutch Justice Ministry announced that it would be closing 300 prostitution windows in Amsterdam – an even more drastic reduction than Mayor Cohen proposed (Stuijt 2009).

 Evidence from The Netherlands strongly suggests that there is a relationship between prostitution and demand for sex trafficking. A long policy of toleration and recent legalization of prostitution has created a vibrant and growing sex trade in The Netherlands. The high percentage of foreign women engaged in prostitution indicates that many are victims of trafficking. Data before and after the brothel ban was lifted indicate that child prostitution has rapidly increased. And contrary to lawmakers’ intentions, legalization has obscured the line between voluntary and coerced prostitution. In response, Dutch officials have sought to drastically reduce the scope of prostitution in Amsterdam. The burden of evidence, however, still rests on proponents of the Swedish approach to justify prohibition based on Mill’s harm principle.

**IV. Sweden – Criminalization of Demand**

 On January 1, 1999, the “Act Prohibiting the Purchase of Sexual Services” became effective in Sweden. The law made Sweden the first country in the world to prohibit the purchase of sexual services while decriminalizing the sale, treating all prostitutes as the victims of male violence[[6]](#footnote-6) (Bindel and Kelly 2003). Chapter 6 of the Swedish penal code states, “A person who... obtains a casual sexual relation in return for payment shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months” (Ministry of Justice 2005, 2). Chapter 6 also prohibits “procuring,” which includes pimping and brothel ownership. Subsequent legislation made it a crime to purchase sex on behalf of someone else or knowingly lease property to a sex establishment. On July 1, 2002, Sweden formally criminalized all forms of sex trafficking (Ministry of Integration and Gender Equality 2009).

 Gunilla Ekberg has been one of the law’s most outspoken proponents. She was formerly a special adviser to the Swedish government on issues of prostitution and trafficking and is currently the Executive Director of the Coalition Against Trafficking in Women. In a 2004 article in *Violence Against Women*, Ekberg discussed the rationale behind the Swedish law and its effects, explaining that it views prostitution as inherently violent, misogynistic, and inseparable from the problem of sex trafficking. The law seeks to eradicate the sex trade by attacking its root cause, demand:

 In Sweden, prostitution is officially acknowledged as a form of male sexual violence against women and children. One of the cornerstones of Swedish policies against prostitution and trafficking in human beings is the focus on the root cause, the recognition that without men’s demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able flourish and expand. Prostitution is a serious problem that is harmful, in particular, to the prostituted woman or child but also to society at large. Therefore, prostituted women and children are seen as victims of male violence who do not risk legal or other penalties. Instead, they have a right to assistance to escape prostitution. (Ekberg 2004, 2)

The Swedish approach, unlike the Dutch, believes that eradicating prostitution and sex trafficking is a distinct possibility. According to Donna Hughes, “The purchasers of sex acts are the primary actors and constitute the primary level of demand. Without them making the decision to buy sex, prostitution would not exist (Hughes 2004, 2). The decision to buy sex is indicative of “continued inequality between women and men, and men’s sense of entitlement to sex” (Bindel and Kelly 2003, 76). Thus, the Swedish approach seeks not only to deter men with punitive threats, but to change the underlying culture of male domination that encourages their behavior.

 The Swedish approach is reinforced by studies on men’s behavior and attitudes toward buying sex. Hughes cites an international, cross-cultural study of male consumers in which some men did not see consent as an issue at all for women in prostitution. “They viewed all women and girls in prostitution as objects or commodities over which they had temporary powers of possession after they paid their money” (Hughes 2004, 8). Most of the men interviewed knew that sex trafficking existed in the sex trade, and some of them even claimed that they prefer women and girls who have been trafficked. They viewed trafficking victims as easier to control, or imagined that victims would feel greater emotional attachment to them. 75 percent of the men said that they preferred women under the age of 25, and 22 percent preferred younger than 18 (as cited in Hughes 2004). Hughes concludes, “An almost universal preference among men for young women leads many men to purchase sex acts from underage girls, whether intentional or not” (Hughes 2004, 8). Another study showed that 55 percent of men who had bought sex in London believed that “a majority of women in prostitution were lured, tricked or trafficked,” and some of them reported that they had knowingly used trafficked women (Farley, Bindel, and Golding 2009, 16). A remarkable 84 percent of the men claimed that the threat of time in prison would deter them from buying sex. “It’s about the enforcement,” said one man. “If I’d get in trouble for doing it, I wouldn’t do it. In this country, the police are fine with men visiting prostitutes” (as qtd. in Farley, Bindel, and Golding 2009, 23). The Swedish approach views such findings as evidence that demand for prostitution is directly linked to sex trafficking and can be prevented by rigorous enforcement of the law.

According to Ekberg, the Swedish law has taken significant effect in a short period of time. T. Ekman, director for the Anti-Trafficking Group at the Police Authority in Gothenburg, reported that the total number of prostitutes in Sweden had dropped from an estimated 2,500 in 1999 to no more than 1,500 in 2002. Street prostitution had dropped 30 to 50 percent, from about 650 prostitutes in 1999 to less than 500 operating at least once per year in 2002 (as cited in Ekberg 2004). A 2007 government report stated that prostitution was most prevalent in Sweden’s three largest cities, but total estimates for these cities combined amounted to just 300 prostitutes (as cited in Ministry of Integration and Gender Equality 2009). Ekberg also claimed that the presence of foreign women in street prostitution has almost completely evaporated (Ekberg 2004). Recall that foreign women in prostitution have most likely been trafficked.

 Some critics argue that this decrease in street prostitution only shows that the sex trade has been driven underground. Even if this is true, Swedish law enforcement has had great success in rooting out prostitution. In the first five years (1999-2003), 234 men had either pleaded guilty or been convicted of purchasing sexual services under the Swedish law (Ekberg 2004). According to Bindel and Kelly, the law has also made it easier for law enforcement to investigate and arrest traffickers. In 2003, a major investigation into a gang of traffickers who advertised on the internet resulted in charges against 575 men (Bindel and Kelly 2003). Finally, the Swedish law has created incentive for some women to leave prostitution. The Prostitution Unit in Stockholm, an organization assisting women in the industry, reported in 2002 that 60 percent of their clients since 1999 had permanently left prostitution, “and many of these women point to the Law as an incentive in their having sought assistance.” More women have also come forward to report crimes including rape, battery, and child sexual exploitation (Ekberg 2004, 14). Thus, the Swedish law has accomplished much of what the Dutch law only intended to do through legalization.

According to the U.S. State Department’s 2009 *Trafficking in Persons Report*, Swedish police estimate that 400 to 600 people are trafficked into Sweden each year, primarily women and children for forced prostitution (USSD 2009). Ekberg compares this number with neighboring Denmark: of the 5,500 to 7,800 women and children in Danish prostitution, an estimated 50 percent are trafficked. Denmark’s population is half that of Sweden, but it has no law prohibiting the consumption of sexual services (Ekberg 2004). It was mentioned earlier that 68 to 80 percent of The Netherlands’ 30,000 women and children in prostitution were foreigners, most of them trafficked. Despite these compelling facts and figures, the most convincing evidence for a direct relationship between Sweden’s prostitution law and human trafficking is word on the street – or rather, in the slave trade:

 The NCID [National Criminal Investigation Department] has received signals from Europol and national police forces in other European countries that Sweden no longer is an attractive market for traffickers. Traffickers and pimps are businessmen who calculate profits, marketing factors, and risks of getting caught when they decide in which countries they will sell women into prostitution. In conversations recorded during crime investigations, pimps/procurers and traffickers have expressed frustration about setting up shop in Sweden and attracting customers who are willing to buy these women for prostitution purposes. (Ekberg 2004, 10)

Traffickers, like any other businessmen, calculate the risks and benefits of any venture. The Swedish law criminalizing the consumption of sexual services has created a situation in which the risks of operating in Sweden greatly outweigh any benefits. In tapped phone conversations, traffickers have noted three barriers to profit-making in Sweden. First, pimps must escort women to buyers in order to preserve secrecy, affording “less time to fewer buyers.” Secondly, Swedish consumers are expressing greater fear and demanding that the pimps use greater “discretion.” And finally, pimps and traffickers “are forced to operate apartment brothels in more than one location and to change locations regularly” (Ekberg 2004, 10). The entire industry is slow and inefficient, hampered with fear and secrecy. Traffickers prefer countries where prostitution is legal or widely tolerated. In The Netherlands, traffickers can sell women and children en masse to brothels that can operate in the same location for years with little fear of the authorities. A 2004 NCID report concludes that the Swedish law “continues to function as a barrier against the establishment of traffickers in Sweden” (as qtd. in Ekberg 2004, 11).

 The criminalization of demand is just the cornerstone of Sweden’s comprehensive strategy to combat prostitution and sex trafficking. In July 2008, the government adopted an action plan that would invest SEK 203 million (over 28 million U.S. dollars) in 36 anti-prostitution/trafficking measures through 2010 (Ministry of Integration and Gender Equality 2009). Among these are support and rehabilitative services for victims of the sex trade, particularly those who suffer from drug addictions induced by pimps and traffickers. The Swedish approach offers women in the prostitution the health care, resources, and training they need to leave the sex trade permanently. The 2008 action plan also funds the group KAST (translated Purchasers of Sexual Services) which encourages men who buy sex to seek help in changing their behavior (Ministry of Integration and Gender Equality 2009). Swedish sociologist Sven Axel Månsson argues that men cannot be ignored in the fight against prostitution and trafficking. “Prostitution must be defined as a male issue,” he has said. “Prostitution is about men’s sexuality, not women’s” (as qtd. in Hughes 2004, 57).

 In just a few years, the Swedish law prohibiting the purchase of sexual services had succeeded in greatly reducing demand for sex trafficking, and it continues to function as a deterrent today. The total number of women in prostitution and street prostitution has significantly decreased, as well as the number of foreign women involved in street prostitution. The law has been used vigorously to investigate, arrest, and prosecute male consumers of sexual services and it has made it easier for authorities to identify and prosecute traffickers. Most importantly, the law has created an inhospitable market for trafficking in Sweden. Ekberg concludes that the Swedish law “is a fundamental step in abolishing prostitution and trafficking in women and girls for sexual exploitation” (Ekberg 2004, 19). Based on this analysis of legal approaches to prostitution in The Netherlands and Sweden, we can now make conclusions about the relationship between prostitution and sex trafficking based on Mill’s harm principle.

**V. Conclusions**

In her testimony to Congress, Professor Hughes faulted the State Department’s *Trafficking in Persons Report* for not considering the legality of prostitution in its assessment of foreign countries: “Trafficking is a modern form of slavery. To not understand the relationship between prostitution and trafficking is like not understanding the relationship between slavery in the Old South and the kidnapping of victims in Africa and the transatlantic shipment of them to our shores” (Hughes 2002, 166). Strong evidence from The Netherlands and Sweden supports that there is a relationship between prostitution policy and human trafficking. The Netherlands legalized prostitution in 2000, and its billion dollar sex industry has continued to grow and prosper. A majority of The Netherlands’ 30,000 women in prostitution are foreigners, indicating that a large percentage has been trafficked. Legalization has blurred the lines between voluntary and coerced prostitution, making it difficult to prosecute traffickers. By contrast, Sweden criminalized the consumption of sexual services in 1999. It has seen a rapid decrease in the number of women in the sex trade, and a near disappearance of foreign women in street prostitution. Sweden has drastically fewer trafficked woman than its less populous neighbors with legalized prostitution, and international police intelligence has confirmed that Sweden is becoming an inhospitable market for traffickers.

 According to Hughes, trafficking begins with demand in destination countries with legal or tolerated prostitution. “Where insufficient numbers of local women can be recruited,” she explains, “brothel owners and pimps place orders with traffickers for the number of women and children they need” (Hughes 2002, 165). Then, traffickers send recruiters to impoverished countries in Eastern Europe and elsewhere to entice desperate women and children with the dream of a good job and a better life. Once they arrive in countries like Germany, Italy, Spain, Denmark, and The Netherlands, women and children are sold into the hell of sexual slavery. “In destination countries, pimps, organized crime groups, corrupt officials, and even governments devise strategies to protect the profits derived from the sale of women and children, which depends on maintaining the flow of foreign women to the brothels” (Hughes 2002, 166). When the Dutch government legalized prostitution, it created a vibrant, expanding, safe market for traffickers.

 The 2009 *Trafficking in Persons Report* states that“Any successful effort to combat human trafficking must confront not only the supply of trafficked humans, but also the demand for forced labor and commercial sex that fuels it” (USSD 2009, 32). Bindel and Kelly conclude that any legalization of prostitution will increase demand in both the legal and illegal sectors (Bindel and Kelly 2003, 31). Multiple studies have found that legalizing prostitution can only increase demand for sex trafficking. Therefore, I find that the legalization of prostitution is strictly in violation of John Stuart Mill’s harm principle. Mill argued that as sovereign individuals, we are free to live however we please until our actions harm, or violate the rights of others. Sex trafficking is an extreme violation of human rights; it strips women and children of their innocence, their dignity, and their freedom. If we lived in a perfect world – without poverty, violence, coercion, and slavery – a woman ought to have the right to *choose* to sell her body for sexual services. If this were the case, prostitution could be considered what Mill called “an experiment in living.” However, in this imperfect world, the freedom to enter prostitution cannot be protected. We cannot rationally assume that no woman has ever willingly chosen to enter the sex trade, free from violent coercion. But one woman’s freedom to sell her body for sex should never interfere with another woman’s freedom *not to*. Based on Mill’s harm principle, prohibiting the purchase of sexual services is an entirely just and necessary action.

 Furthermore, the Swedish law prohibiting the purchase of sexual services is the best model thus far developed for addressing the relationship between prostitution and sex trafficking. Governments should criminalize and vigorously prosecute the consumer of sexual services and the middlemen (pimps, brothel owners, and traffickers). Prostitutes, however, should be considered the victims of sexual exploitation. They should in no circumstance face legal penalties for engaging in acts of prostitution. Instead, the government should implement programs to rehabilitate victims of the sex trade and help them develop job skills, offering a viable way out of prostitution. After studying prostitution law in four different countries, Bindel and Kelly conclude, “The most coherent approach in terms of philosophy and implementation is that adopted by Sweden, and interestingly it is the only one where no one who sells sex is subject to the criminal law”(Bindel and Kelly 2003, 31).

 Gunilla Ekberg, proponent of the Swedish law, concludes that prostitution and sex trafficking will never be abolished unless other countries adopt similar measures. Unfortunately, studies show that some Swedish men are visiting nearby European countries that tolerate the sex trade, like The Netherlands, in order to buy sex from prostitutes. Ekberg writes, “If more countries would address the demand for prostituted women, by criminalizing not only the pimps and the traffickers but also the buyers, then the expansion of the global prostitution industry would be seriously threatened” (Ekberg 2004, 19). Eventually, sex tourists would have no place to go to gratify their desires without the threat of legal action and social stigma. In the spirit of John Stuart Mill, liberal democracies around the world must live up to their hallowed principles and take a stand against prostitution. Prohibiting the purchase of sexual services is a significant step on the road to justice for trafficked women and children worldwide.

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1. Men can, but rarely do, fall victim to sex trafficking. In this paper, victims of sex trafficking are referred to as women and children. [↑](#footnote-ref-1)
2. The term “human trafficking” encompasses forced prostitution (sex trafficking) as well as forced labor. [↑](#footnote-ref-2)
3. This definition of sex trafficking was established by the U.S. Trafficking Victims Protection Act of 2000 (USSD 2009). Most countries with anti-trafficking laws (including The Netherlands and Sweden) consider any form of child prostitution to be sex trafficking. [↑](#footnote-ref-3)
4. Includes girls under the age of 18. “Women” is used for brevity. [↑](#footnote-ref-4)
5. Unfortunately, I could not find more recent data on prostitution as a percentage of the Dutch economy. Keep in mind that prostitution was widely tolerated prior to 2000, so the market has been growing for many years. [↑](#footnote-ref-5)
6. The Swedish law does not discriminate – male prostitutes are considered victims and female consumers are considered criminals. [↑](#footnote-ref-6)