

# ARTICLE

## THE AMERICAN NIGHTMARE-DREAM: HOW BLURRED LINES BETWEEN HUMAN TRAFFICKING AND SEX WORK FUEL EXPLOITATION AND MODERN SLAVERY\*

### TABLE OF CONTENTS

I.	INTRODUCTION.....	18
II.	THE BLURRED LINES BETWEEN HUMAN TRAFFICKING AND SEX WORK.....	18
III.	APPROACHES TO THE MODERN SLAVERY PROBLEM .....	21
	A. <i>The Morality View Approach:</i> <i>Complete Criminalization</i> .....	21
	B. <i>Liberty View Approaches</i> .....	22
	1. <i>Full Decriminalization</i> .....	23
	2. <i>Nevada’s Legal Brothels</i> .....	24
	3. <i>The Nordic Model</i> . .....	25
	C. <i>An Alternate Proposal: the</i> <i>Anti-Exploitation Focus</i> .....	26
	1. <i>The Liberty View Approach: Anti-Exploitation</i> <i>Plus Decriminalization</i> .....	27
	2. <i>The Morality View Approach: Anti-Exploitation</i> <i>Plus the Nordic Model</i> . .....	28
IV.	CONCLUSION .....	29

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## I. INTRODUCTION

Sex work and human trafficking are unquestionably linked.<sup>1</sup> Some believe there is no line between them while others find the distinction incredibly important.<sup>2</sup> The competing values of individual freedom and traditional moralities only serve to make the line blurrier and fuel the social stigmas that trafficking victims internalize and traffickers abuse. These stigmas can become so pronounced that they twist reality in a victim's mind and pervert the concept of the American Dream. Any effective solution to combat the modern slavery problem must account for this grey, blurry area and prioritize punishment and deterrence of the trafficker, not the victim.

## II. THE BLURRED LINES BETWEEN HUMAN TRAFFICKING AND SEX WORK

Much of the blurriness between human trafficking and sex work comes from competing views of what counts as “good.” Human trafficking is known as modern slavery, the epitome of “bad.” On the other hand, some view voluntary sex work as “good” or freeing. But in practice, it is difficult for the public—and sometimes for the victims themselves—to differentiate between sex work and trafficking. Traffickers take advantage of these blurred lines to further their coercive strategies and exploitative purposes. One of the most straightforward ways human trafficking perverts the American Dream is through fraudulent promises of employment.<sup>3</sup> This tale, sadly, is incredibly common, both at home and in the international context.<sup>4</sup> But perhaps just as common and even more

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1. Ashleigh M. Kline, *The Fallacy of Free Will in Prostitution: Encouraging Prostitution Reform to Prevent the Repeated Victimization of Vulnerable Persons*, 25 MICH. ST. INT'L.L. REV. 665, 681 (2017).

2. *Id.*

3. See *United States v. Butler*, 477 F. App'x 217, 218 (5th Cir. 2012) (considering teenagers who were trafficked from Latin America with the promise of waitressing jobs in Houston). See also DEPARTMENT OF HOMELAND SECURITY, *Human Interest Stories, False Promises of the American Dream*, <https://www.dhs.gov/blue-campaign/human-interest-stories> (last updated April 13, 2022).

4. See *Adhikari v. Kellogg Brown & Root, Inc.*, 845 F.3d 184, 190 (5th Cir. 2017) (Nepali men were lured to a war zone with the promise of work in Jordan.). But not all victims struggle to see through the exploitation. For a fascinating success story and testimony from a trafficking survivor who describes her own experience as an “American Nightmare” see Shandra Woworuntu, *Trafficking survivors and the American Dream*, THE HILL (June, 21, 2014, 9:00 AM), <https://thehill.com/blogs/congress-blog/civil-rights/210007-trafficking-survivors-and-the-american-dream/>. For a similar tale in the labor trafficking

difficult to fight is the exploitation of the American Dream through the psychological coercion of victims.<sup>5</sup>

Psychological coercion is so effective that many victims do not even identify as victims until after the fact.<sup>6</sup> In some situations, this cognitive dissonance stems from a coercive relationship with the trafficker. But in human trafficking, this subtle coercion can also come from internalized cultural stigmas.<sup>7</sup> Using these stigmas, traffickers have become masters at exploiting the very concept of the American Dream.<sup>8</sup>

There are two important perspectives to keep in mind: the public and the victim. The public perspective of sex work is important because it feeds social stigmas that victims internalize and traffickers take advantage of. It is also important because the philosophies that shape how people see sex work contribute to how governments approach the problem of human slavery. The victim's perspective is important because coercion is such a hard concept to pin down. When the public and government do not listen to the victim's perspective, the battle against human trafficking can become completely ineffective.

The same cognitive dissonance that confuses the issue for victims can be seen in public discourse. The picture of sex trafficking in American society is still largely something that happens "over there" to a woman in chains.<sup>9</sup> But human trafficking isn't just forceful, it can involve fraud or coercion too.<sup>10</sup> The public has a hard time understanding how coercion works in real-life situations of human trafficking.<sup>11</sup> Part of the public's cognitive dissonance in the West also stems from two diametrically opposed philosophies,

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context see David Gonzalez, *When American Dream Leads to Servitude*, NEW YORK TIMES (Apr. 24, 2007), <https://www.nytimes.com/2007/04/24/nyregion/24citywide.html>.

5. See Susie B. Baldwin et al., *Psychological Coercion in Human Trafficking: An Application of Biderman's Framework*, 25 QUALITATIVE HEALTH RSCH. 1171, 1176–77 (2015) <https://www.aum.edu/sites/default/files/Biderman%20Coercion%20and%20HT%20Article.pdf> (using the psychology of degradation to understand coercion in human trafficking).

6. Polaris Project, *Understanding Human Trafficking* (2022), <https://polarisproject.org/understanding-human-trafficking/> (last visited Dec. 2, 2022).

7. See Pamela Alquitran Counts, *Self-concept recovery: the effects of stigma on survivors of sex trafficking*, PEPPERDINE DIGITAL COMMONS (Dec. 2014) (Ph.D. dissertation, Pepperdine University) <https://digitalcommons.pepperdine.edu/etd/516>.

8. *Id.*

9. See generally Catholic Relief Services, *7 Things You May Not Know About Human Trafficking, And 3 Ways To Help*, <https://www.crs.org/stories/stop-human-trafficking> (last visited Dec. 2, 2022).

10. Trafficking Victims Protection Act, 18 U.S.C. § 1591 (2000).

11. See Catholic Relief Services, *supra* note 9.

both supported by a significant number of reasonable people.<sup>12</sup> On one hand is the view that all sex work is inherently evil or that consensual sex work is impossible, which this Article terms the Morality View.<sup>13</sup> On the other hand is the idea of liberty rights and voluntary sex work as a morally neutral choice,<sup>14</sup> which this Article terms the Liberty View. The split among these public views contributes to the blurred lines between human trafficking and sex work because both views fail to account for the gray realities of exploitation.

One issue that divides the Morality View and the Liberty View is the question of consent. If consensual prostitution were impossible, that would very conveniently decide the debate. There is no liberty if there is no free choice. Unfortunately, the consent question has no clear answer.<sup>15</sup> Available statistics and data on sex work and trafficking industries are unreliable at best.<sup>16</sup> There is also the sticky issue of what some scholars call the “Compromised Choice,” when a sex worker’s choice is based on coercive factors that do not come from a trafficker, like doing it for the paycheck in the same way one might take a job as a fry cook for the money.<sup>17</sup>

However, considering the sexist and racist origins of the anti-trafficking movement,<sup>18</sup> the Liberty View’s counterpoint that

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12. Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 95 (1998) (“Some argue that whether forced by a lack of money, housing, or employment, or threat of violence, these women would not otherwise choose to prostitute themselves. Others insist that . . . although prostitution may presently seem to be an undesirable occupation since prostitution, as with other societal institutions, has been rendered exploitative by social and political inequality, prostitution as a profession is not inherently or necessarily exploitative.”).

13. See generally Tesla Carrasquillo, *Understanding Prostitution And The Need For Reform*, 30 Touro Law Rev. 697 (2014).

14. And even if it is an immoral choice, proponents of this view take the position that people should have the freedom to make immoral choices. See Chuang, *supra* note 12.

15. See Chuang, *supra* note 12.

16. Maggie McNeill, *Lies, damned lies and sex work statistics*, WASHINGTON POST (Mar. 27, 2014, 4:46 PM) <https://www.washingtonpost.com/news/the-watch/wp/2014/03/27/lies-damned-lies-and-sex-work-statistics/> (explaining the difficulties of recovering reliable data when the only sources are police officers and politicians).

17. Terry Coonan, *Anatomy of A Sex Trafficking Case*, 5 INTERCULTURAL HUM. RTS. L. REV. 313, 315 (2010) (explaining the idea of “Commercial Sex as a Compromised Choice” and seeking to more accurately delineate the role of consent in prostitution and sex trafficking cases.”).

18. Melissa Ditmore, *Today’s Efforts to Combat Human Trafficking Reflect Historical Racism and Sexism*, REWIRE NEWS GROUP (Jan. 11, 2011, 10:22 AM), <https://rewirenews-group.com/article/2011/01/11/todays-efforts-combat-human-trafficking-reflect-historical-racism-sexism/>. For a fascinating explanation of the history of the anti-trafficking movement and its connections to slavery abolition and the British Contagious Diseases Act see Julia Laite, *The irony of criminalising prostitution as a form of ‘modern slavery,’*

governments shouldn't be telling women what to think and feel, does have some merit.<sup>19</sup> Numerous people claim to have made the sex work choice voluntarily<sup>20</sup> and to tell them they do not know their own mind is pernicious and patronizing. While this point sounds strong in theory, it begins to erode in practice. Because even if it were possible to voluntarily consent to sex work, there still exist sex workers who are clearly victims of human trafficking and yet have spent decades of their lives believing they were living the American Dream. The nearly impossible task of distinguishing between true consent and successful coercion makes the Liberty View's goals much harder to accomplish.

### III. APPROACHES TO THE MODERN SLAVERY PROBLEM

Most of the world agrees that sex trafficking is bad, but different governments have tried vastly different approaches to solve the problem. The divide between these approaches stems from the same diametrically opposed philosophies that plague the general public and fuel social stigmas about sex work.

#### A. *The Morality View Approach: Complete Criminalization*

In all U.S. states except for Nevada, there is a blanket ban on the commercialization of sex.<sup>21</sup> In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), which aimed to prevent human trafficking by protecting victims and prosecuting traffickers through important partnerships between law enforcement and outreach charities.<sup>22</sup> The TVPA also took the important step of defining adult sex trafficking as a commercial sex act induced by force, fraud, or coercion.<sup>23</sup> This was a major improvement on the previous strategy, which mostly just punished the victims for prostitution and promoted the false narrative of force-only victimization.<sup>24</sup> While the government and anti-trafficking organizations

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OPENDEMOCRACY (Aug. 11, 2015), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/irony-of-criminalising-prostitution-as-form-of-modern-slavery/>.

19. As one scholar put it, "Deeming consent impossible and treating prostitution as an inherently exploitative physical act risks dismissing the fact that some women actually do choose to engage in prostitution." Chuang, *supra* note 12.

20. Chuang, *supra* note 12.

21. *Prostitution*, CORNELL LEGAL INFORMATION INST., <https://www.law.cornell.edu/wex/prostitution> (last updated July 2020).

22. Trafficking Victims Protection Act, 18 U.S.C. § 1591 (2000).

23. *Id.*

24. International Women's Human Rights Clinic, *Criminalization of Trafficking Victims*, UNITED NATIONS UNIVERSAL PERIODIC REVIEW OF UNITED STATES OF AMERICA (2015), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/hrgj/publications/Criminalization-of-Trafficking-Victims.pdf>. Much of the world still allows traffickers

have changed their advertising strategies, the image of the beaten woman in chains as the definition of sex trafficking has done its damage.<sup>25</sup>

The biggest problem with the Morality View approach is that complete criminalization simply hasn't worked as well as one might hope. The Mann Act was enacted over a century ago and the TVPA is old enough to be graduating college.<sup>26</sup> Yet, despite the noble and dedicated work of law enforcement and victim outreach charities, the problem of modern slavery has not seemed to improve much.<sup>27</sup> A lot of Americans who hold the Morality View have an internal struggle of not wanting to be seen endorsing prostitution, despite recognizing that blanket criminalization has not worked.<sup>28</sup> But proponents of the Morality View may need to ask themselves if reducing sex trafficking under one of the Liberty View approaches would be worth the cost of increased consensual sex work.

### B. Liberty View Approaches

There are two significant areas where both the Morality View and the Liberty View agree. First, on the grand scale of evil, most people would place sex trafficking on the most egregiously evil side and consider consensual, adult sex work at least some degree of not-quite-as-evil. Second, sex workers, like all people, have a right to health and safety.<sup>29</sup> The Liberty View approaches address these

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to deflect punishment onto their victims. United Nations Office on Drugs and Crime, *Exploited and Prosecuted: When Victims of Human Trafficking Commit Crimes* (Dec. 16, 2020), [https://www.unodc.org/unodc/en/frontpage/2020/December/exploited-and-prosecuted\\_-when-victims-of-human-trafficking-commit-crimes.html](https://www.unodc.org/unodc/en/frontpage/2020/December/exploited-and-prosecuted_-when-victims-of-human-trafficking-commit-crimes.html).

25. United Nations Office on Drugs and Crime, *supra* note 24.

26. Mann Act, 18 U.S.C. § 2421 (1910); Trafficking Victims Protection Act, 18 U.S.C. § 1591 (2000).

27. Amy D. Lauger & Matthew R. Durose, *Human Trafficking Data Collection Activities, 2021*, U.S. BUREAU OF JUSTICE STATISTICS (Oct. 2021), <https://bjs.ojp.gov/library/publications/human-trafficking-data-collection-activities-2021> ("From 2011 to 2019, the number of defendants charged with human trafficking in cases terminated in U.S. district courts increased by 79%, while the number of defendants convicted increased by 80%, and the number sentenced to prison increased by 82%.")

28. Even in areas where sex work is legal, American politicians are willing to forgo additional tax revenue for fear of just the appearance of endorsing prostitution. Michelle Rindels, *Indy Explains: How legal prostitution works in Nevada*, THE NEVADA INDEPENDENT, (May 27, 2018, 2:10 AM), <https://thenevadaindependent.com/article/the-indy-explains-how-legal-prostitution-works-in-nevada>.

29. See also John Oliver, *Sex Work: Last Week Tonight with John Oliver (HBO)*, YOUTUBE, (Feb. 28, 2022), [https://www.youtube.com/watch?v=-gd8yUptg0Q&ab\\_channel=LastWeekTonight](https://www.youtube.com/watch?v=-gd8yUptg0Q&ab_channel=LastWeekTonight). Even the counties that once made it a crime for sex workers to carry condoms have since rolled back those laws after public outcry that the law was ridiculous amid concerns over public health and safety. Megan Guza, *Allegheny County halts criminalizing of condoms in prostitution cases*, TRIB LIVE (June 21, 2018, 4:12 PM),

areas in a better way than the complete criminalization approach, but they are far from perfect.<sup>30</sup>

1. *Full Decriminalization.* In 2003, New Zealand fully decriminalized adult, consensual sex work both on the street and in brothels.<sup>31</sup> The biggest benefits the country has seen so far have been in the realm of the sex worker's rights, with some even able to obtain legal recourse for sexual harassment.<sup>32</sup> Working conditions and individual autonomy have also improved for the New Zealand sex worker.<sup>33</sup>

However, the effectiveness of the law in the areas of exploitation and underage prostitution is less clear.<sup>34</sup> Increased legal protections and decreased public stigmas incentivize trafficking victims to come forward.<sup>35</sup> But sex work and sex trafficking go hand in hand and there doesn't seem to be much focus in New Zealand on issues of coercion either from traffickers or on the sticky issue of the Compromised Choice.<sup>36</sup> Sex workers in New Zealand may have more liberty from the law, but there is no evidence of increased liberty from traffickers. Strides made in the liberty of sex workers have "not been shown to be an effective measure against sex trafficking."<sup>37</sup> This version of the full decriminalization approach merely masks coercive trafficking instead of solving the exploitation problem.

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<https://archive.triblive.com/local/allegheeny-county-halts-criminalizing-of-condoms-in-prostitution-cases/#:~:text=The%20Trib%20analysis%20showed%20police,po-lice%20seized%20condoms%20as%20evidence.>

30. These approaches only consider the legalization of adult, consensual sex work. Child prostitution and rape are outside of the scope of this paper.

31. Fraser Crichton, *Decriminalising sex work in New Zealand: its history and impact*, OPENDEMOCRACY (Aug. 21, 2015), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/>.

32. *Id.*

33. New Zealand Parliament, *Prostitution law reform in New Zealand* (Jul. 10, 2012), [https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand#footnote\\_65\\_ref](https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand#footnote_65_ref).

34. The New Zealand government didn't consider if the decriminalization laws had the effect of increasing overall involvement in prostitution and contends inflated media coverage about under-age prostitution is the source of any increased feelings on the issue. *Id.*

35. *Id.*

36. *Id.*

37. Human Trafficking Search, *Sex Trafficking vs. Sex Work: What You Need to Know* (July 25, 2017), <https://humantraffickingsearch.org/2017725sex-trafficking-vs-sex-work-what-you-need-to-know/>.

2. *Nevada's Legal Brothels*. Another approach that a few counties in the state of Nevada have tried is to legalize prostitution only in tightly controlled, licensed brothels.<sup>38</sup> However, mounting evidence indicates that this approach is not only unhelpful in eliminating human trafficking, it may actually make the problem worse.<sup>39</sup>

Nevada has the highest rate of sex trafficking of any state in America, adjusted for population. It is 63% higher than the second-place state, New York.<sup>40</sup> And human trafficking red flags have been found in at least 30% of the women actively working in these legal brothels.<sup>41</sup> One could argue that the legal brothels in Nevada are even more exploitive than criminalized trafficking in other parts of the country. The male owners of the Nevada brothels can take 50% of their female worker's earnings, but unlike the pimp on the street, they don't cover any of the costs for housing, food, or healthcare.<sup>42</sup> Nevada's female brothel workers also tend to be the same at-risk types of women with abusive pasts.<sup>43</sup> It is hard to see much of a difference between the criminal pimps on the street and the legal brothel owners of Nevada.

Many Nevada trafficking victims would agree that Nevada's legalization scheme has done nothing to improve the modern slavery problem.<sup>44</sup> As one survivor alleged in a 2019 lawsuit following 10 years of victimization, "the brothel industry in Nevada openly and notoriously persuades, induces, entices, and coerces individuals" to engage in human trafficking.<sup>45</sup> Unfortunately, that survivor ultimately lost on standing grounds.<sup>46</sup> But she is not the only one sounding the warning bells on Nevada's legal prostitution scheme. Recently, the effort to shed light on the illegal sex trafficking

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38. Neetha K, *Sex & Modern Slavery: Why human trafficking thrives in Nevada despite legalized prostitution*, MEAWW (July 23, 2020, 7:30 AM), <https://meaww.com/sex-and-modern-slavery-why-human-trafficking-thrives-in-nevada-legal-prostitution>.

39. *Id.*

40. *Id.*

41. *Id.*

42. Rindels, *supra* note 28.

43. Rindels, *supra* note 28. One such Nevada brothel owner was Dennis Hof, who owned 7 of Nevada's 20 legal brothels and authored books with titles like "The Art of the Pimp." Dennis Hof, WIKIPEDIA, [https://en.wikipedia.org/wiki/Dennis\\_Hof](https://en.wikipedia.org/wiki/Dennis_Hof) (last visited May 4, 2022). Even while expounding the freedom in his brothels Hof admitted, "I've had plenty of girls who were abused." Rindels, *supra* note 28.

44. Ken Ritter, *Advocates, 2 Women Sue in Bid to Close Nevada Legal Brothels*, ASSOCIATED PRESS (Sept. 13, 2021, 8:17 PM), <https://www.usnews.com/news/best-states/nevada/articles/2021-09-13/advocates-2-women-sue-in-bid-to-close-nevada-legal-brothels>.

45. *Charleston v. Nevada*, 423 F. Supp. 3d 1020, 1024 (D. Nev. 2019), *aff'd*, 830 F. App'x 948 (9th Cir. 2020).

46. *Id.* at 1023.

fueled by Nevada's legal brothels gained new traction and bipartisan support.<sup>47</sup>

Nevada's brothel laws legalized sex work but forgot to criminalize exploitation. Unlike New Zealand, Nevada's sex workers are independent contractors who do not have access to employer-sponsored healthcare and their access to legal protections under Title VII is shaky at best.<sup>48</sup> The tightly controlled licensed brothel approach only serves to make the grey area blurrier and does nothing to address the exploitation inherent in the modern slavery problem.

3. *The Nordic Model.* The Nordic Model criminalizes the buying of sex, but not the selling of it.<sup>49</sup> Demand reduction is a crucial element in the fight against human trafficking.<sup>50</sup> That is exactly what the Nordic Model aims to achieve. There is evidence that the Nordic Model has been highly effective at deterring sex trafficking.<sup>51</sup> However, because the Nordic Model only targets sex buyers, its effect on human trafficking is merely secondary. Lowering the total volume of sex workers may have the incidental effect of lowering sex trafficking rates, but it does not do enough to address the exploitation that fuels the evils of modern slavery.

Under the Nordic Model, sex workers have less to fear from the law and perhaps traffickers have less opportunity to coerce sex workers into exploitation. But it comes at the cost of an increased risk of physical harm from the sex buyers. Some people have raised concerns about sex worker safety under this model because it makes sex buyers jumpy.<sup>52</sup> This in turn requires sex workers to make split-second decisions that could put them in danger.<sup>53</sup> Neither demand reduction nor trafficking deterrence matters much to the sex worker who is seriously injured or killed because of this split-second decision side-effect. The critical flaw in the Nordic Model and other Liberty View models is that none of them focus

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47. Ritter, *supra* note 44.

48. See *Byars v. W. Best LLC*, No. No. 2:19-CV-1690, 2020 WL 8674195, at \*1 (D. Nev. July 6, 2020) (staying a case about a brothel's status as an "employer" under Title VII).

49. Oliver, *supra* note 29.

50. Abigail L. Kuzma, *Demand Reduction: Critical Next Step in the Fight Against Sex Trafficking*, 42 INTERNATIONAL L. NEWS 27 (2013), [https://indysb.org/wp-content/uploads/2020/07/demand\\_reduction-critical\\_next\\_step\\_in\\_fight\\_against\\_sex\\_trafficking.pdf](https://indysb.org/wp-content/uploads/2020/07/demand_reduction-critical_next_step_in_fight_against_sex_trafficking.pdf).

51. Claire Mooney, *Overrepresented Yet Overlooked: Lgbtq Survivors of Trafficking and the Imperative for the Nordic Approach to Sex Trafficking Laws in the United States*, 26 CARDOZO J. EQUAL RTS. & SOC. JUST. 261, 272 (2020). It also may be the best way to protect LGBTQ victims. *Id.* at 278–79.

52. Oliver, *supra* note 29.

53. Oliver, *supra* note 29.

on the exploitative nature of human trafficking. They are combating the symptom, not the disease.

*C. An Alternate Proposal: the Anti-Exploitation Focus*

It is striking how little of the conversation about future human trafficking reform focuses on the traffickers. The most successful efforts in curtailing human trafficking in America have involved an increased focus on the traffickers instead of punishing victims.<sup>54</sup> So why is talk of future reforms so focused on either the sex buyer or the sex worker? The sex trafficker should be the primary target of human trafficking laws.

Slavery of all types has always been about the financial gains that come from exploitation.<sup>55</sup> “Human traffickers are in it for the money, with estimated annual global profits of \$150 billion.”<sup>56</sup> But what if traffickers simply were not able to make money off their victims? What if the only people who could make money from sex were sex workers? Two approaches to what this Article terms the Anti-Exploitation Model show that trafficker-focused reform can help reduce modern slavery, no matter which philosophical view one takes.

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54. Trafficking Victims Protection Act, 18 U.S.C. § 1591 (2000).

55. See generally Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899 (2019).

56. Cardell T. Morant, *A Message from the Director of the DHS Center for Countering Human Trafficking*, U.S. DEPT. HOMELAND SECURITY CENTER FOR COUNTERING HUMAN TRAFFICKING (2021) at ii, <https://www.dhs.gov/sites/default/files/2022-02/CCHT%20Annual%20Report.pdf>.

1. *The Liberty View Approach: Anti-Exploitation Plus Decriminalization.* The first approach embraces full decriminalization but with an important caveat. The Anti-Exploitation Model is simple in theory, though potentially more complicated in practice. It would require that 100% of the proceeds from a sex act go to the fully consenting adult who participated in that specific act. It is of course already illegal in the United States to financially benefit from commercial sex induced by force, fraud, or coercion.<sup>57</sup> But the Anti-Exploitation Model expands this provision of the TVPA to encompass all third-party financial gain, for any reason. For example, under the Anti-Exploitation Model, brothels would be illegal, but independent sex workers would be left alone. Lessons from Nevada show that legal brothels can be extremely exploitative. And though the brothels of New Zealand have a better track record on basic human rights, there is still significant evidence of exploitation that can and should be addressed.

Practical complications could come from questions about how to deal with taxes or secondary services like hotels.<sup>58</sup> There would still be plenty of traffickers who try to evade the law, but this bright-line rule could make catching and prosecuting them easier. For example, even though trafficking is currently an absolute defense, right now trafficking victims who want to report to law enforcement still must weigh the risk of encountering an unsupportive police officer and roll the dice on an imperfect and overburdened legal system.<sup>59</sup> A bright-line rule that ensures the system will exclusively target the trafficker and not the victim could address these concerns.

The Anti-Exploitation Model also provides brighter lines for sex buyers and the sex workers themselves. By creating a clear way for sex buyers to reliably choose only consensual, non-coercive encounters, the overall demand for trafficking victims will be reduced. Additionally, those sex workers who feel compelled to a Compromised Choice stemming from factors other than a trafficker's coercion would have the means to better self-evaluate if they are victims of human trafficking. They would also have more tools to navigate the internalized stigmas that traffickers use to keep control over them. If the law told trafficking victims that they

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57. Trafficking Victims Protection Act, 18 U.S.C. § 1591 (2000).

58. Careful legislation could probably address these issues and advancements in technology could help ensure the system isn't abused.

59. As one survivor said, "I'll get raped a hundred times before I deal with the cops." Oliver, *supra* note 29.

are entitled to 100% of their earnings as a sex worker, perhaps they would see their story for the nightmare that it is.

The Anti-Exploitation Model combined with full decriminalization addresses the individual freedom concerns under the Liberty View. It also addresses the concerns about consent under the Morality View by removing sources of coercion. However, it does not address the Morality View's concerns about the inherent evils of prostitution.

2. *The Morality View Approach: Anti-Exploitation Plus the Nordic Model.* Some proponents of the Morality View may conclude that the reduction in the greater evil of trafficking is worth the possible endorsement of the lesser evil of consensual sex work. However, it is unlikely most will ever support a model that encourages prostitution of any type. And they have a theoretical point. In a perfect world, a blanket ban on prostitution would cure all issues of sex trafficking. If only criminals would follow the law. That reality plus the practical complications of implementing the Anti-Exploitation Model makes success unlikely without a broader deterrence on prostitution.

Given this mountain of competing interests, political obstacles, and the nature of criminal behavior, perhaps the best solution is a combination of the Anti-Exploitation Model and the Nordic Model. This is a two-pronged approach that targets sex buyers and sex traffickers, while still providing the victims freedom from fear of recrimination. Under this approach, prosecutors would be able to hold traffickers accountable under the objective fact of financial gain instead of the more subjective proof of force, fraud, or coercion.<sup>60</sup>

The Anti-Exploitation and Nordic Model combination would provide the best of both worlds. It would incorporate the Nordic Model's effectiveness in reducing prostitution. It would implement additional broad protections against exploitation, targeted the very heart of the trafficker's goals. And most importantly, it would provide blanket protections for victims that would encourage reporting and better enable law enforcement to catch the true villains of the human trafficking nightmare.

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60. But perhaps proof of force, fraud, or coercion could merit a higher penalty or be required for restitution purposes. Additionally, because victims would have the same blanket protection from prosecution as consenting sex workers, practical complications could arise in distinguishing sex workers from trafficking victims for the purposes of obtaining T-Visas and other immigration issues. But perhaps the force, fraud, or coercion guidelines could be useful there as well.

## IV. CONCLUSION

Thanks to the TVPA and better training, law enforcement officials have made significant strides in targeting traffickers instead of victims. But the Morality View's complete criminalization approach hasn't been as effective as one might wish. In other parts of the world, the Liberty View's partial or full decriminalization efforts have helped ensure basic human rights for sex workers but have not done enough to curtail the exploitative nature of modern slavery and its ties to sex work.

Perhaps a happy medium could be laws targeted against sex traffickers through focused reduction of exploitation by eliminating any possible means of financial gain for anyone other than the sex worker. When combined with full decriminalization, this Anti-Exploitation Model would best reduce human trafficking by bringing light to sex work and making it nearly impossible to financially benefit from force, fraud, or coercion. When combined with the Nordic Model, the Anti-Exploitation Model would best reduce the total amount of prostitution while still providing a safe haven for trafficking victims. No matter one's philosophical position or preferred approach, clearing up the blurred lines between human trafficking and sex work is an essential component of putting a stop to the American nightmare-dream that is modern slavery.

*Amanda Dorman*