

Legal Efforts to Curb Trafficking

For more than a century, sex trafficking has been a concern of international leaders. In 1904 twelve nations, including the United States, ratified a treaty called the International Agreement for the Suppression of the White Slave Trade. Responding to the widespread abduction of girls for the purposes of sexual exploitation in Europe and Asia, this agreement urged governments to prohibit “procurement of women and girls for immoral purposes abroad.”

After World War I, the League of Nations adopted a broad-reaching document against slavery that essentially affirmed the 1904 treaty but added children to the agenda. The League also replaced the term “white slave trade” with the term that enjoys currency today: “trafficking in women and children.”

Then, in 1949, the United Nations General Assembly set out to establish a legal framework to stop the traffic. Known formally as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, it declared that the enslavement of women and children for the purposes of sexual exploitation was incompatible with fundamental human rights. It called on governments to adopt procedures for punishing any person who sexually exploits another individual or who runs a commercial enterprise that profits from such activity.

Under the terms of the convention, the consensual contract between two individuals would be honored as a matter of free choice. All the same, the convention deemed prostitution to be unfitting the dignity of a human being and encouraged nations to offer public education and material assistance to persuade individuals not to sell their bodies for sex.

Unfortunately, the convention was ratified by fewer than half of the member states of the United Nations (72 out of a total of 185). Today, nearly half a century later, its translation into policy yields widely divergent legal strategies.

The United States took a very narrow interpretation of the convention. All of the states except Nevada criminalize prostitution and make all parties liable for prosecution—prostitutes, customers, traffickers, and commercial exploiters. In actual application, the U.S. public justice system has addressed the supply side of the equation (prostitutes and brothel owners) much more aggressively than the demand side (johns).

Rather than seek to prohibit sexual commerce, western European nations make a more concerted effort to regulate it. The best policies for accomplishing that goal, and their consequences for sex trafficking, are matters of heated debate.

The Netherlands, for example, has historically maintained an open tolerance for the commercial sale of sex. In October 2000 it went a step farther and officially legalized prostitution. The German government followed suit two months later.

The lawmakers of these nations were persuaded that exploitation thrives in environments of illegality. If prostitution will always be with us—and lawmakers in Germany and the Netherlands presume that to be the case—then criminalizing it will create a black market where the mob underworld makes the rules. The fact that 70 percent of prostitution in the United States is linked to organized crime would seem to support that argument.

In Germany and the Netherlands, sex workers are offered legal protection from commercial exploitation and receive social service benefits. But these laws do not apply to individuals who are not residents of the European Union. To the chagrin of law-makers, a booming underground sex trade has emerged in both countries. A 2003 survey found that foreign-born women make up 65 percent of the sex market in the Netherlands and 50 percent of the market in Germany.

Most abolitionists vehemently argue that legalizing prostitution engenders a broader social acceptance of brothels for sexual entertainment. That kind of cultural environment, in turn, leads to a greater demand for young girls that will be filled by sex traffickers. Ongoing research should be able to determine whether prohibition or legalization does spawn higher levels of sex trafficking into a country.

At the very least, the legalization of the sex trade makes the prosecution of traffickers, pimps, and brothel owners almost impossible. They can use the defense that the girl consented to work as a prostitute, and the burden of proof will be on the girl to prove otherwise. If at any point the girl actually did consent to work as a prostitute, all subsequent forms of coercion will find legal cover.

Sweden has moved in a unique direction. In 1999 the Swedish government became the first in the world to prosecute the buyer of sex, the john, while legally treating the woman as a victim. The Swedish government also established a comprehensive outreach program that encourages sex workers to change their livelihood.

The maximum sentence in Sweden for a convicted john is six months in prison. In the first five years following passage of the law, about 750 men had been charged, and two-thirds were sentenced. As a result, street prostitution in Sweden has dropped dramatically, as has the influx of trafficked women.

“What differentiates us from the Netherlands and Germany. . . is that we link the ‘slave trade’ with prostitution and pornography,” explains Marianne Eriksson, a Swedish member of the European Parliament and a strong proponent of her country’s legal strategy on sex trafficking. “Everyone in the European Union is against human trafficking, of course,” she clarifies, “but we know that 90 percent of this commerce has to do with sexual exploitation.”

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