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**THE INFLUENCE OF HARD LINE POLICIES ON VICTIMLESS CRIME:
BY ANALYZING INFLUENCE OF THE ANTI PROSTITUTION LAW OF
SOUTH KOREA**

A Thesis in

Criminal Justice

by

Hoan Suk Choi

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The thesis of Hoan Suk Choi was reviewed and approved* by the following:

James M. Ruiz
Professor of Criminal Justice
Thesis Advisor and Program Chair

Jennifer C. Gibbs
Assistant Professor of Criminal Justice

Joongyeup Lee
Assistant Professor of Criminal Justice

*Signatures are on file in the Graduate School

ABSTRACT

This study examines the relationship between hard line policies on victimless crimes (The Anti Prostitution Law) and its influence (deterrent effect). Since hard line policies against victimless crimes such as Prohibition and The War on Drugs were not successful but caused various side effects, serious budget problems and prison issues, it needs to be determined whether or not The Anti Prostitution Law in South Korea achieved its goal or made the same mistakes as did prior hard line policies.

The data analyzed in this study were drawn from a variety of sources, included the number of sexual traffic (prostitution) from the Korean Supreme Public Prosecutor's Office (KSPPO), the number trafficking from KSPPO, the number of new illegal sex businesses from the Korean Department of Statistics (KDS), and the number of sex crime from KSPPO within South Korea after the enactment of The Anti Prostitution Law.

The paired samples *t*-test results show that The Anti Prostitution Law was not effective in preventing any of these activities. The results suggest that the Korean government may want to consider alternative ways to control victimless crime with the limited law enforcement resources that they have available. This study also indicates that those hard line policies against victimless crimes share a common side effect such as The Balloon Effect. Ultimately, the findings calls for further discussion and more research on the victimless crime issue.

KEY WORDS: Deterrence Theory, Feminism, Functionalism, Hard line Policy against Victimless Crime, Prostitution, The Anti Prostitution Law, The Balloon Effect.

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Chapter 1

INTRODUCTION

Statement of Problem

Victimless crime has been one of the most debated issues in the field of criminal justice since the 1960s. Schur (1965), in his book *Crimes without Victims*, defined victimless crime as “an illegal activity, which involves consenting adults and lacks a complaining participant” (p. 171).¹ However, there is no consensus on whether victimless crime has a harmful effect on society as do other crimes, or whether, in fact, it has no victim. Mill’s (1895) “harm principle” held that certain conditions and basic criteria must be present to ascribe certain activities as crime or deviance. The harm principle posited that if the actions are harmful to other citizens, only then can government restrict individual freedoms. The only purpose for which power can rightfully be exercised over citizens against their will is to prevent harm to others.

Nations have been searching for the solutions to victimless crime. However, approaches have been significantly different depending upon each individual nation’s perspective on victimless crime. For example, in the 1920s and early 1930s, the United States took a strong stance on victimless crime when the manufacture and sale of alcohol was prohibited; the enactment of The War on Drugs in 1970s is another example of hard

¹ The term “victimless crime” or “crime without victim” is not used in jurisprudence.

line policy against victimless crime. However, those laws and policies failed to achieve their goals. While most states in the United States still take a strong stance on victimless crime, such as illegal drug use and prostitution, other countries do not. For example, the Netherlands adopted a much more liberal policy on marijuana use and Germany adopted a more liberal policy on prostitution (The United States Department of State, 2013).²

South Korea appears to be following the lead of the United States in this regard. The South Korean government enacted The Anti Prostitution Law which strengthened punishment in 2004, replacing the Law against Morally Depraved Behaviors (LMDB, 1961) that regulated prostitution, but did not stop prostitution efficiently. The goal of the new law was to deter prostitution with increased severity and certainty of sanctions. Since then, law enforcement agencies in South Korea began a crackdown on the sex industry utilizing this new law, targeting brothels, prostitutes, and their clients (Korean Ministry of Justice, 2007). However, The Anti Prostitution Law has been criticized because it did not eradicate prostitution, but instead forced it further underground and made women vulnerable to violence (Kim, 2007; Park, 2007). In addition, according to *The National Investigation of Prostitution* (2010) published by the Ministry of Gender Equality and Family in South Korea (MGEF), it generated a new form of prostitution utilizing the Internet. Further, a shift in prostitution areas was indicated after the enactment of The Anti Prostitution Law in 2004 (Korean Ministry of Justice, 2007).

Laws and policies banning victimless crimes based on deterrence, on their surface, do not seem to be successful. They appear to achieve only temporary success, at

² France, Hong Kong, Poland, Slovakia, Spain, and the United Kingdom legalized prostitution. Austria, Germany, Netherlands, Turkey and the U.S. state of Nevada regulate prostitution (U.S. Department of State, 2013).

best, and result in undesirable side effects. Moreover, most of the hard line policies against victimless crimes have caused serious budget problems and unwanted prison issues (Feinberg, 1984; Taylor, 2001). Thus, The Anti Prostitution Law is in need of research to identify whether it influences its intended outcomes or has the same problem as previous laws and policies did.

Purpose of Study

The primary purpose of this study is to identify the relationship between a hard line policy on victimless crime and deterrence against such crime. In this study, the deterrent effect of The Anti Prostitution Law of South Korea was examined. Historically, in spite of hard line policies and laws that were developed to eradicate victimless crime, such as alcohol, illegal drug use, gambling, and prostitution, little impact was realized. Considering the huge budget and other resources dedicated to enforcing hard line policies such as Prohibition, The War on Drugs and anti-prostitution, hard line policies appear to have been ineffective.

In this study, the effectiveness of The Anti Prostitution Law of South Korea was evaluated by analyzing data supplied by institutions of the South Korean government. This analysis reviewed changes in the volume of sexual traffic (prostitution), related crimes, and any shift in forms of illegal sexual businesses after the enactment of The Anti Prostitution Law. The ultimate goal of this study is to determine, since The Anti Prostitution Law was enacted in 2004, whether or not the law deters prostitution

effectively. First, background of the hard line policies against victimless crimes in the prior research is reviewed in the next chapter.

Chapter 2

BACKGROUND ON HARD LINE POLICIES AGAINST VICTIMLESS CRIMES

Nations around the world have attempted to search for solutions to victimless crime. Many countries including the United States and South Korea have adopted hard line policies with increasingly severe sanctions to eradicate victimless crimes. The enactment of The Anti Prostitution Law of South Korea was one such policy, implemented to deter victimless crime through increased sanctions. However, like with other hard line policies, critics of The Anti Prostitution Law claim that, even with strengthened punishment, the law failed to stop the either demand or supply of the sex industry and did not achieve its goal (Kim, 2007; Park, 2007). This demonstrates there are still debates over effectiveness of the hard line policies against victimless crimes. In this section, debates and background (historical and ideological) of hard line policies against victimless crimes are presented.

Debates on Hard Line Policies against Victimless Crimes

The debates on hard line policies against victimless crime center on three issues. The first issue is whether or not a government power can restrict freedom of individuals for upholding moral standards. Scholars such as Mill (1859) and Feinberg (1984) argued that if certain activity is a product of consenting adults, even though the act might appear to be unwise, it should not be prohibited by government authority. On the contrary, other scholars argued that a government should regulate activities that are inconsistent with the

ethical principles (Devlin, 1965) or have potential harm to the general public (MacKinnon, 1993; Wilson & Kelling, 1982).

A second issue is whether or not victimless crime contains harm to participants and others. During these debates, which began in the 1960s, it was and continues to be controversial as to whether the concept of *harm* of victimless crime should be restricted to any harm that affects participants or if the term should be expanded to include harm to society as well. In much of the prior research, victimless crimes are considered harmful to society, not just to the individuals involved (Harcourt, 1999; Meier & Geis, 1997). For example, Meier and Geis insisted that it is wrong to assume that victimless crimes hurt only the participants because there could be other victims influenced by the activities such as a participant's family and unwilling victims related to them. They argued that the harm of prostitution is not limited to consenting adults because prostitution not only leads to the spread of sexually transmitted diseases, but can cause disrespect to women. On the contrary, Miethe (1982) found that the general public perceived victimless crime as an activity which generates only minor problems; later, Veneziano and Veneziano (1993) showed the public considered victimless crime as ranking quite low in crime seriousness. They argued that, in a democratic society, immoral activities should not be criminalized unless the acts have caused direct harm to society.

The third topic of the victimless crime debate is whether or not the laws and policies banning victimless crime are cost-effective. Feinberg (1984) and Taylor (2001) pointed out that, when taking into account the huge resources put into the policies on relatively minor crimes, hard line policies do not seem to be an effective way to control victimless crimes. The prison over-crowding crisis and budgetary drains within law

enforcement agencies of the United States have been regarded typical examples.

According to Feinberg (1984), the prison crisis and budget problem caused by prohibiting marijuana use can produce more damage to a society than the act of marijuana use does.

However, in the 1980s, there was a significant change in the direction of victimless crime policies with the emergence of Wilson and Kelling's (1982) Broken Windows Theory, which holds that if minor disorderliness is not prohibited, such activities could lead to more serious crimes. Wilson and Kelling (1982) also insisted that if prostitution were to be left unregulated, not only would it invite other serious crime, but it would also impact the quality of life of citizens and the economy. They argued that prostitution caused more than just harm to consenting participants but to women in general, thus the activity should be regarded as a crime. Their assertion has been the underlying basis of the laws and policies banning prostitution in the United States. In accordance with this theory, Rudolph Giuliani, former Mayor of New York City in 1996, insisted that a disorderly street would be vulnerable to invasion of criminals and, in the long run, the devastation of the economy of the city while enforcing hard line policies against minor deviance (Harcourt & Ludwig, 2006). Based on that theory, many hard line policies against victimless crimes were enacted in major cities in the United States and other countries around the world, like South Korea, in order to improve citizens' quality of life, protect their businesses, and to promote tourism, and many of these policies targeted prostitution. However, the question is still remaining that prostitution generates harm to justify the hard line policies established to regulate it.

Does Prostitution Generate Harm to Justify Government Regulation?

There are still debates over the hard line policies against victimless crimes, but, as seen in the previous section, no agreement has been drawn. However, many countries including the United States and South Korea regulate prostitution with strong laws and policies. Thus, it needs to be studied whether or not prostitution generates harm to justify government regulation. Prior research suggested that moralism and feminism have served as background idea of hard line policies against prostitution (Kim, 2007; Park, 2007; Weitzer, 2007). The Anti Prostitution Law of South Korea also seems to be based on the ideas. In this section, perspectives of moralists and feminists on prostitution are presented.

Moralist Perspective

From the point of view of moralists, upholding the moral standards is crucial to keep society safe and to protect citizens. Devlin (1965) emphasized that a government should exert authority to regulate activities that are inconsistent with the ethical principles of a society; therefore, there should be laws prohibiting prostitution because the activity is morally wrong. Devlin noted that every society has set standards to determine whether certain activities can be morally accepted or not; thus, the laws and policies that are inconsistent with the standards would weaken social cohesion and consensus about morality resulting in damage to society. He believed that the nature of prostitution was exploitation of human weakness because a customer of a prostitute exploits the poor situation of the woman and the prostitute also exploits the customer's immoral desire. He concluded that prostitution should be prohibited by the laws and policies of a morally

sound society. Although replaced by The Anti Prostitution Law in 2004, the previous Law against Morally Depraved Behaviors (LMDB, 1961), which defined prostitution as an act out of moral corruption, represents this line of thinking – the moralistic perspective of the South Korean government.

However, Kenney and Finkenauer (1995) pointed out the problem of the intervention of the morality movement. They suggested that the social classes that had led the movement against prostitution were white, middle and upper class Protestants; thus, anti prostitution laws and policies had been influenced by their values. According to Kenney and Finkenauer, these groups attempted to regulate prostitution not because the activity was harm to society, but it was against their value. They viewed the temperance movement in the early 1900s as a typical example of social movement led by white Protestants. This social class considered alcohol as sin and became a supporting group of Prohibition, which ultimately failed to achieve its goal. The gap between the view of those groups and the general public led to failure of the hard line policies (Kenney & Finkenauer, 1995).

Carline (2009) also criticized the morality movement, writing that many governments pushed the women who are engaged in prostitution into more vulnerable situations in an unethical manner in order to uphold a moralistic agenda. She argued that women in the sex industry have been victimized in the name of upholding moral standards. The previous LMDB of South Korea also had been challenged because it is based on the moral standard which is ultimately a function of male domination (Kim, 2007). Under the LMDB, the act of selling a body for the purpose of sexual intercourse was considered more heinous as a moral depravity than purchasing it. For these reason,

The Anti Prostitution Law that replaced LMDB shifted from the moralist perspective to the feminist perspective as a background of the law.

Feminist Perspective

During the legislative process, the feminist perspective of South Korean women's rights groups was largely reflected by The Anti Prostitution Law (Kim, 2007; Lee, 2006; Park, 2007; Yun, 2005).³ The mainstream feminist groups in South Korea are composed of radical and social feminists (Kim, 2007). Radical feminism is a branch of feminism that holds that patriarchy is a system of power that organizes society in which men oppress women in general (Willis, 1984). Social feminism is a perspective of feminism which insists that liberation of women can only be obtained by ending both the economic and cultural sources which oppresses women (Curthoys, 1988). Liberal feminism, on the other hand, is an individualistic perspective of feminism which holds that women should achieve their equality through their own actions and choices (Tong, 2009).

From the perspective of radical feminism, prostitution is categorically evil. Many radical feminists considered prostitution as a product of patriarchy. They argued that any type of prostitution is male domination and exploitation of women across the ages and cultures (Barry, 1995; Jeffrey, 1997; MacKinnon, 1987). Radical feminists describe prostitution as an infringement on human rights and perceive prostitution as exploitation and violence against women caused by patriarchy. This perspective is in accordance with

³ The mainstream South Korean women's rights groups represented by Korean Women's Associations United (KWAU) also view prostitution as a product of patriarchy or economical difficulty in capitalistic systems (Kim, 2007; Park, 2007).

mainstream feminist groups in South Korea which are based on radical and social feminism.⁴ MacKinnon (1989), a feminist, argued that prostitution is inevitably accompanied by violence against and exploitation of women, and there is no voluntary prostitution without coercion and domination. She supported laws and policies against prostitution emphasizing the harm of prostitution. In her book, *Only Words*, MacKinnon insisted that prostitution must be considered rape, battery, and sexual harassment and should, therefore, be prohibited, because the harm of prostitution was the same as those illegal activities. MacKinnon (1993) maintained that the harm of prostitution not only affected prostitutes, but it also impacted the rights of every woman in society.

The perspective of radical feminists that regards prostitution as an inevitable evil has been criticized, even by other feminists. Overall (1992) disagreed with the opinion of the radical feminists. She insisted that not all types of prostitution inherently victimizes and exploits women, and prostitution can be organized with the welfare and interests of prostitutes. She also suggested that, if eradication of prostitution is impossible, the effort to create a safe and hygienic environment for the women involved in prostitution should be considered.

Moreover, the studies conducted by radical feminists have been criticized for their biased sample (see Barry, 1995; Jeffrey, 1997; MacKinnon, 1987). According to Weitzer (2005), their research emphasized violence and exploitation in prostitution. However, most of the participants were prostitutes wanting to escape from extremely miserable situations or were in rehabilitation institutes. Most of the interviewed participants were

⁴ Radical feminists believe that prostitution can be eradicated by breaking down patriarchy (Willis, 1984), while social feminists argue that the prostitution issue can be solve by reforming the capitalistic system (Curthoys, 1988).

prostitutes in the streets or in jails who were very vulnerable to violence or already had experienced it. Weitzer (2005) pointed out that the interview with prostitutes in these situations can skew the result of research on prostitution. Nevertheless, radical feminists have concluded that victimization and exploitation are inherent in prostitution. Their research has been a theoretical background for anti prostitution laws and policies, but those studies lack scientific validity and impartiality (Weitzer, 2007). Nelson (1993) also pointed out that an emergence of radical feminism led to the expansion of laws and policies against prostitution. He stated that the assertion of radical feminists in the 1970s failed to explain the harm of prostitution to the general public. However, their ideas caused the expansion of anti-prostitution laws and policies.

There are other research results contrary to the assertion that prostitution is necessarily accompanied by violence. Monto (2004) conducted interviews with 2,300 arrested customers of prostitutes regarding the relationship between prostitution and violence. He posited that the majority of arrested male customers neither accepted nor agreed with the “rape myth” supporting the assertion that prostitution was simply another form of sexual attack or abuse toward women, or “prevalent violence” in their activities. Monto found that only a small proportion of those arrested had engaged in any form of violence during the sexual encounter.

Kurtz, et al. (2004) also criticized the perception of radical feminists that prostitution is another form of rape. They found that women who were engaged in prostitution did not perceive themselves as victims of prostitution or as survivors; rather they perceived themselves as “working women” in the sex business. They argued that most of the prostitutes interviewed preferred the terms “sex work” or “working woman”

to “prostitute.” They insisted that the radical feminists, however, do not accept the term “working woman in the sex industry” or “working woman” because this term could justify the activity and legitimize prostitution.

During the legislation of The Anti Prostitution Law, the Korean Women’s Associations United (KWAU), the largest feminist group in South Korea, strongly argued that prostitution should be eradicated with strengthened punishment on customers and brokers. They also view prostitution as a product of patriarchy, exploitation of women, and by-product of capitalistic systems. Moreover, key figures of the feminist groups were appointed to the important position in the Ministry of Gender Equality and Family which controls prostitution policies and influenced the direction of prostitution policy (Kim, 2007). In the next chapter, the legislation and related issues of The Anti Prostitution Law of South Korea are examined.

Chapter 3

THE ANTI PROSTITUTION LAW OF SOUTH KOREA

The Enactment of The Anti Prostitution Law

The South Korean government enacted a strong Anti Prostitution Law in 2004.⁵

The Anti Prostitution Law is composed of two parts: (1) Punishment Act; and (2) Protection Acts (see Table 1). The Punishment Act is about punishment of purchasers, procurers⁶ and traffickers, while the Protection Act focuses on protecting and supporting women engaged in illegal sex industry. The purpose of the Punishment Act is to eradicate sexual traffic and human traffic aimed at sexual traffic and to protect the human rights of victims of sexual traffic, while the purpose of the Protection Act is to prevent sexual traffic and protect victims of sexual traffic.

Table 1-1. The Anti Prostitution Law of South Korea (Oct 23, 2004)

Punishment Act	Protection Act
<ul style="list-style-type: none"> · Purpose of the act: To eradicate sexual traffic (prostitution), acts of sexual traffic and human traffic. · Strengthened punishment for purchasers, procurers and traffickers from previous law. · Sexual traffic (prostitution): sexual intercourse and pseudo-sexual intercourse using other parts of the body for receiving money or other property gains · Human traffic: transferring targeted persons to a third person while holding them under control and managing them to sell sex or do obscene acts 	<ul style="list-style-type: none"> · Purpose of the act: To protect victims of sexual traffic and person and support their self-reliance · Established supporting institutions that provide accommodations, meals and rehabilitation programs · Victims of sexual traffic: a person compelled to engage in sex traffic or has been trafficked aimed at sexual traffic · Provides complementary training program and counseling services to victims of sexual traffic

⁵ Previous Law against Morally Depraved Behaviors (LMDB, 1961) which regulated prostitution was replaced by The Anti Prostitution Law in 2004.

⁶ A procurer is defined as a "person who are arranging, soliciting for, enticing or coercing to engage in prostitution" (Punishment Act, art. 2, 2004)

However, the Anti Prostitution Law still regards the women engaged in prostitution without coercion or threat as criminal. It means that if the women who engaged in the illegal sex industry fail to prove themselves as victims of prostitution they are punished by the law (Punishment Act, art. 2).

The Anti Prostitution Law has changed the perspective of the previous Law against Morally Depraved Behaviors (LMDB) that views prostitution as an immoral activity to be regulated by the government authority. In LMDB, prostitution was defined as a “Yullak”, which means the activity of selling a body for the purpose of sexual transaction caused by moral corruption. The Anti Prostitution Law removed the idea in the previous law that prostitution is an act resulting from women's moral depravity. Instead, the law provided the eligible status of victim to the women engaged in illegal sex businesses (Protection Act, art. 2). The Anti Prostitution Law not only increased the level of punishment for diverse forms of sexual traffic and extended the definition of sexual traffic to the pseudo act,⁷ but it also included the jurisdiction over human traffic (Punishment Act, art. 2 & art. 18). This law was established by the Ministry of Gender Equality and Family and a vast amount of resources have been dedicated for the related policing (Park, 2007).

⁷ The Anti Prostitution Law extended the range of definition of sexual intercourse to pseudo-sexual intercourse to eradicate diverse forms of sexual services in South Korea (Punishment Act, art. 2, 2004).

Political and Ideological Background of the Legislation

South Korea belongs to Confucianism cultural area that demands a high standard of morality of its members. In the perspective of Confucianism, male members have dominant power in the family while female members should be chaste and forced to be faithful to the male members. This cultural background resulted in gender inequality within South Korean society (Lee, 2005). Also, this different moral standard is combined with the traditional culture of "Geisha" in Confucianism cultural area that provides entertainment and sexual services; even though married women were required to be chaste, men had been allowed to seek sexual pleasure outside marriage with Geishas (Choi, 1997; Downer, 2006). However, a Geisha was regarded as one of the lowest classes in this cultural area and women engaged in prostitution were stigmatized by other members of the society (Lee, 2005). As reflected in the previous LMBD, this cultural background of South Korea produced the perception that prostitution is an immoral activity and women engaged in prostitution should be punished because they are morally corrupt (Choi, 1997).

The Korean Women's Associations United (KWAU), the largest women's rights civil group, led the amendment of LMBD to the new Anti Prostitution Law. The group defied the principles in LMBD that viewed prostitution is act of morally corrupted women. A position of KWAU on prostitution reflected a mixed perspective of radical feminism that views prostitution as a product of patriarchy and exploitation of women and social feminism that regards prostitution as a product of economical difficulty in capitalistic systems (Kim, 2007). Key figures of KWAU also have been appointed to

leadership positions in the government, including having a minister in the Ministry of Gender Equality and Family. This position is in charge of developing policies on prostitution. Thus, during the legislation, the views of KWAU served as basic doctrines of the Anti Prostitution Law (Yun, 2005). The KWAU has argued that prostitution is a form of exploitation of women and product of capitalism but defies the notion of liberal feminism that women have right to choose sex worker as a job (Kim, 2007). On this ideological background, the Anti Prostitution Law defines a non-voluntary woman engaged in illegal sex businesses as a victim who needs protection, not as a morally corrupt person, while it regulates a procurer and purchaser as a criminal. This law also stipulates that the South Korean government has a responsibility to provide support programs and protection facilities for the women who are seeking escape from the sex industry (APL, Protection Act, art. 3).

However, this law faced resistance from the women in the sex businesses whom the law intended to provide protection and support. In November 2004, around 3,000 women in the sex business protested the enactment of the law and crackdown of brothels and claimed that they have the right to choose a job. They argued that the Anti Prostitution Law deprived their means of living and pushed them into vulnerable situations. Some of the protesters went on hunger strike and shaved their heads as expressions of resentment (Jun, 2004).⁸ The protesters also blamed the views of KWAU and MGEF that denies the women's right to choose prostitution as a job and defined the women only as a victim (Cho, 2008). However, mainstream South Korean women's

⁸ According to Jun (2004), most of the women who participated in the protest were working in brothels on which the police crackdown was focused.

rights groups represented by KWAU disagreed with the notion of “sex worker” and refused to change their stance viewing prostitution as a patriarchal crime (Lee, 2006). This law, on the contrary to the expectation of the feminist groups and the South Korean government, not only failed to stop prostitution, but also caused unwanted problems.

Problems of The Anti Prostitution Law

Undesirable Side Effects: *The Balloon Effect*

Prostitution seems to continue in South Korea, suggesting The Anti Prostitution Law did not successfully eradicate it. High demand for sexual services in South Korea led to diverse forms of sexual business even after enactment of the Anti Prostitution Law. Conventionally, a brothel was considered a typical form of sex business in South Korea and 69 clusters of brothels had been practicing before the crackdown in 2004 by the enactment of APL (MGEF, 2007). However, after the crackdown, other forms of illegal sex business such as massage parlors and karaoke bars emerged as dominant supplier of the sexual industry. The Korean Institute of Criminal Justice Policy (KICJP, 2004) found that 37.9 % of massage parlors in South Korea provided illegal sexual services.

According to *John School Report* of the Korean Ministry of Justice (2007), massage parlors have been identified as being the supplier of the largest volume of sexual traffic (48.3 %) after the crackdown on brothels. Other diverse forms of prostitution have also spread to residential areas. The Korean Supreme Public Prosecutor's Office (2012) expressed concern over the situation that prostitution had gone underground and had

become harder to detect. The owners of the illegal sex businesses and the women working in the business have adapted to the changing environment by using the Internet and disguising their sex business as a residence or business office. According to *The National Investigation of Prostitution* published by the Ministry of Gender Equality and Family (2010), the sex industry in South Korea has flourished in other forms in other places despite The Anti Prostitution Law. The report noted that every time the government enforced a crackdown on the targeted illegal sex businesses, others quickly replaced them, because demand has been strong and the businesses are quite lucrative. KICJP (2004) estimated the number of Korean women working in the illegal sex businesses were 330,000 while the Korean Women's Development Institute (KWDI) announced 540,000 women engaged in the market.⁹ However, no government institution of South Korea presented exact data of the women engaged in the illegal sexual market, because those businesses went underground after the implementation of The Anti Prostitution Law.

Moreover, after the crackdown on brothels in South Korea, many Korean women working in the sex businesses went abroad. *The National Investigation of Prostitution* issued by The MGEF (2010) stated that approximately 8,000 Korean women were working for sex businesses in overseas countries such as the United States, Japan and Australia. In the United States, there are reportedly approximately 3,000 the Korean women working in illegal sex businesses (MOFAT, 2010). The majority of South Korean women working in illegal sex businesses were located in Los Angeles, which had the

⁹ The number 540,000 is around 10% of South Korean women in their 20s and early 30s. However, according to MGEF (2007), majority of women engaged in prostitution worked as a side line not as full time job.

largest concentration of Koreans in the United States. However, after the massive crackdown of the Los Angeles Police Department (LAPD) in 2005, those women moved to other cities such as New York City, Houston and Atlanta (Korea Times, 2012).

The Korean sex worker problem created diplomatic friction between South Korea and the Australian government. Because prostitution is allowed in Australia, many Korean women moved there using “Working Holiday Visa” programs.¹⁰ According to the Korean Ministry of Foreign Affairs and Trade (MOFAT, 2010), the number of Korean women working in the Australian sex business was more than 1,000, accounting for 17% of the approximately 6,000 foreign women. In 2009, the Australian government requested that the Korean government take proper measures to fix the Korean prostitute problem. High ranking officers of MOFAT flew to Australia to discuss recurrence prevention measures. The number Korean women working for sex businesses increased drastically after the crackdown in South Korea, in accordance with the enactment of The Anti Prostitution Law in 2004 (MOFAT, 2010).

The Conflict between Punishment Act and Protection Act

There is another problem with The Anti Prostitution Law. The Anti Prostitution Law is designed to protect the female victims engaged in prostitution. However, if the

¹⁰ According to MOFAT (2010), most of South Korean women working in the Australian sex industry abused Working Holiday Visa program which was designed to encourage cultural exchange and closer ties between young adults (ages 18-30) of two countries.

women failed to prove their status as a victim, they are punished by the law. When considering the fact that the most prevailing form of bribery cases for police officers in South Korea is taking money from owners of illegal sex businesses (KSPPO, 2012), it is questionable whether the women in the businesses trust law enforcement agencies and report exploitation and manipulation from procurers to obtain the status of victim. It is also hard to expect that police officers believe that the women who engaged in illegal activity for profit are merely victims of prostitution. Indeed, the conflict between Punishment Act and Protection Act makes police investigation more difficult. Moreover, because the Anti Prostitution Law does not specify the definition of force or coercion that pushed the women into the sex industry, it is questionable whether the women can identify their situations as qualifying as victimization. Most of all, even though there is an opportunity to obtain the status of victim and avoid the punishment, it is also questionable whether the women in the sex businesses seek law enforcement agencies' help to escape from the sex industry that provides relatively large incomes. For example, according to The National Investigation of Prostitution (2007), the number of women who entered the protection facilities (2005-2007) was around 3,500. However, considering the number of women engaged in the sex industry during the period was about 330,000 (Korean Institute of Criminal Justice, 2004), only about 1% of the women sought the government's help (Kim, 2007). For these reasons, The Anti Prostitution Law has been criticized that it only jeopardized the health and safety of women in the sex businesses and criminalized male customers.

Critics of The Anti Prostitution Law claim that eradicating prostitution is unachievable and only puts the women engaged in prostitution in more dangerous

situations. Opponents of the Anti Prostitution Law argue that the government and radical or social women's rights groups have ignored the reason why women sell their bodies (Kim, 2007). The main purpose of women in the sex industry is making money, and that is the universal motivation behind the women entering prostitution (Freeman, 1990). They argued that historically, punishing purchasers, procurers and prostitutes failed to stop the either demand or supply of the sex industry and does not seem to achieve its goal but jeopardizes the women's safety.

To solve the prostitution issue, proponents of the hard line policy in South Korea which are represented by MGEF and KWAU have attempted to revise The Anti Prostitution Law. They insisted that the reason why prostitution is not eradicated is that the high demand for prostitution is still strong. According to their idea, to reduce the demand and protect women whom they view as victims of prostitution, only customers and brokers should be punished by the law. Thus, the revised bill of The Anti Prostitution Law that punishes only customers and brokers was tabled in the Legislation and Judiciary Committee in 2013. This legislation follows the Swedish demand reduction model which is presented in the next section.

Demand Reduction Policy on Prostitution

An Emergence of Demand Reduction Policy

Conventionally, anti-prostitution laws and policies have been more focused on eradicating or reducing the number illegal sex businesses. However, prior researchers

have found that the efforts of supply reduction strategies from the 1980s to early 2000s have not been successful (DeMuth & Steffensmeier, 2004). Thus, proponents of anti-prostitution laws and policies have sought to eradicate prostitution by reducing the demand for sexual services. They argued that the illegal sex industry has been driven by demand, and as long as demand is strong, interfering with the supply chain would not succeed. This “demand reduction” policy has focused on criminalizing or punishing male clients rather than women offering sex services (Hughes 2005; Raymond, 2004).

A typical example of the demand reduction policy is the “Swedish model.” The Swedish anti-prostitution policy was established after the enactment of The Sex Purchase Act of Sweden in 1999. The law was based on the assumption that prostitution is a product of patriarchy and gender inequality, and it inherently encourages and promotes violence against women. Claude (2010) explained that the underlying premise of The Swedish Sex Purchase Act was that the demand for sexual services not only drives the illegal sex industry, but it also causes trafficking. As such, the law should punish the buyers rather than the providers of sexual services. In the Swedish model, male clients or purchasers are punished for buying sexual services, while the women or providers (not brokers) offering the services are protected and deemed to be victims of prostitution (Ekberg, 2004). DeMuth and Steffensmeier (2004) viewed the demand reduction policy against prostitution as primary prevention because it stops the activity before it occurs. From their points of view, traditional supply reduction policy within the illegal sex industry had been ineffective because arresting and prosecuting suppliers are difficult and costly, and convictions for the violations are not proper. Thus, anti-prostitution policy should be focused on reducing demand.

Limitation of the Demand Reduction Policy

However, this demand reduction model also revealed its limitation. Opponents of a demand reduction policy have criticized this approach declaring that it is too simple to properly address the problem of prostitution. Miriam (2005) insisted that the illegal sex market had not been created merely by the demand of male clients, but by myriad factors that included such considerations as money, gender, and power. Anderson and Davidson (2009) maintained that the supply segment in the sex industry also stimulated demands by providing apparent, affordable and enticing sexual services. Civil groups such as The Urban Justice Center Working Group established in New York City (UJCWG, 2012) suggested that economic environments and social conditions such as unemployment and low income are important factors that contribute to the supply of sexual traffic (Ditmore & Thukral, 2012).

The Coalition Against Trafficking in Women (CATW, 2006), one of the leading opponents against prostitution, supports a demand reduction policy. The group also considers prostitution to be encouraged violence against women. By reducing the demand for the sexual services provided by prostitutes, a reduction in violence against women should be realized. On the contrary, Dodillet and Ostergren (2011) insisted that a demand reduction policy that criminalizes male clients makes sex workers more vulnerable because a demand reduction policy may reduce the pool of “good” clients. They also characterized the demand reduction approach as being a simplistic and misguided policy. According to their assertion, preventing violence by eradicating demand in prostitution would follow the same or similar concept as preventing domestic violence by abolishing

the institution of marriage. Dodillet and Ostergren (2011) emphasized that eradicating prostitution by reducing demand is not a proper solution for preventing violence and trafficking since those hard line policies against prostitution only make women move to another place where demand exists and lacks protection for them. Weitzer (2007) also pointed out that proponents of the demand reduction model have been using media sources and segments that highlight the most miserable situations of prostitutes and disseminate misinformation for generalizing all women in the sex businesses as victims and male customers as predators.

The anti-trafficking policy of the United States, which supports a demand reduction model, has also been criticized. Jordan (2007), Director of the Initiative against Trafficking in Persons, argued that the U.S. anti-trafficking policy has been based on the conception that views all commercial sexual transaction as trafficking or violence. She insisted that proponents of this policy seem to simply believe that if all the clients were in prison, all the victims of trafficking and violence would disappear.

The effectiveness of the Swedish model has also been questioned. In 2010 the Swedish government announced that after the implementation of The Sex Purchase Act in 1999, which punishes only clients of prostitution, the number of prostitutes, clients and trafficking were reduced. However, the evaluation of the Swedish government has been repudiated by many researchers and civil rights groups. Dodillet and Ostergren (2011) argued that the evaluation not only lacked sound research methods, but that the data used in the evaluation was unreliable. They also pointed out that the women working in the sex industry in Sweden who considered themselves as sex workers as opposed to being victims had not been given enough opportunity to participate in the government's

evaluation. The Sweden National Board of Health and Welfare (2008) reported that the volume of street-based prostitution decreased by 50% at the commencement of The Sex Purchase Act, but the number returned to about 70% of the pre-legislation level by 2008.

Some researchers insisted that the evidence which supported the effectiveness of the demand reduction model was weak, and the collateral side effects of the model were often obscured or hidden by governments. Wilcox, et al. (2009) pointed out that the demand reduction policy has produced negative side effects. They found that the majority of women involved in prostitution showed more concern over losing their jobs than over being victims of violence, and that the hard line policies against prostitution only served to make them relocate to more secretive and vulnerable places. Proponents of the hard line policy against prostitution in South Korea, especially feminist groups attempt to solve prostitution issue with the Swedish model. However, many prior studies showed that demand reduction approaches not only failed to eradicate prostitution or reduce trafficking and violence, but also produced negative health and safety consequences and more serious infringement of human rights.

In contrast with the previous LMBD (1961), which punished offenders with a relatively light penalty for their immorality, The Anti Prostitution Law was enacted to deter sexual traffic (prostitution) with increased severity and certainty of the punishment. This legislation appears to be based on deterrence theory, which is described in the next chapter. In the framework of deterrence theory, this study evaluated the effectiveness of The Anti Prostitution Law.

Chapter 4

THEORETICAL FRAMEWORK

Deterrence Theory

Laws and policies are designed to have a deterrent effect. Deterrence is defined as the prevention of crime through a threat of punishment (Beccaria, 1764[1986]; Gibbs, 1968; Wright, 2010; Zimring & Hawkins, 1973). According to deterrence theory, individuals are affected by both the costs and rewards when they make decisions regarding their actions (Beccaria, 1764[1986]; Zimring and Hawkins, 1973). In other words, people tend to behave based on the expectation that they will receive some type of reward for their actions while hoping to avoid some type of punishment for not doing a certain action or doing something else (Gibbs, 1968; Wright, 2010; Zimring & Hawkins, 1973). Therefore, governments provide disincentives, such as punishment through the criminal justice system, in order to discourage crime (Zimring & Hawkins, 1973). Deterrence theory holds that only when potential offenders perceive that the criminal justice system works properly in their society and acts against the law will be punished by the system (perceptual properties of punishment), they decide not to commit crime (Beccaria, 1764[1986]; Zimring & Hawkins, 1973).

Modern deterrence theories are significantly influenced by Beccaria's work *On Crimes and Punishments* (1764 [1986]). Beccaria's theory is based on three assumptions. First, all human beings have freewill and make a choice using their freewill. Second, all human beings pursue their personal satisfaction in a rational way. Third, acts of human

beings are based on rational thought; thus the acts are predictable and controllable.

Beccaria insisted that the role of government power is to control all deviant acts caused by pursuit of pleasure. According to his idea, government power has the right to establish criminal justice system punishments and regulate behavior through laws, which work as the basic framework of society. By this system, the acts of society's members are encouraged or prohibited. He suggested that because individuals made a rational choice to live in a society, their rights can be restricted for the safety and comfort of the society. Beccaria also asserted that criminal laws should be clear enough to be known to the general public because if members of society do not know the certain act is prohibited by law, they cannot make a rational choice. He argued that the more people recognize how unpleasant the repercussions of the law are, the fewer deviant acts and crimes will occur. Beccaria insisted that in order for a government to keep society secure and safe, it should have rational form of punishment in its criminal justice system.

The concepts of proportionate severity, certainty and celerity were also outlined by Beccaria. He argued that punishments should be proportionally severe, certain and swift. First, according to his idea, the level of punishment should be only necessary or severe enough for the crime. Beccaria asserted that the level of punishment should only just exceed the pleasure from the deviant acts and should not be more severe than necessary to prevent the activity. He pointed out that a level of punishment that significantly or even slightly exceeds the necessary level to stop the crime would be regarded as unjust. Second, Beccaria emphasized the importance of certainty. He stated that "the certainty of a punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of

impunity” (Beccaria, 1764 [1986], p. 58). According to Beccaria, certainty is the extent to which the threat of punishment is realized in practice. In other words, punishment should take place whenever a crime is committed. Third, Beccaria posited that “the more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be” (Beccaria, 1764 [1986], p. 55). Zimring and Hawkins (1973) elaborated on Beccaria’s concept that celerity of punishment sends a signal to potential offenders that crime does not pay because the prompt punishment will lead criminals to associate the punishment with the crime. They insisted that if punishment does not follow a criminal act swiftly, it will prohibit criminals from associating their act to the punishment.

Based on Beccaria’s work, modern deterrence theories posit severity, certainty and celerity as three key components of punishment that deter crime (Gibbs, 1968; Tittle 1980; Wright, 2010; Zimring & Hawkins, 1973). That is, deterrence theory posits that the risk of punishment can cause a change in mind of potential offenders. Also the existence of the threats of punishment not only creates conformity and builds respect for the criminal justice system but also induces law-abiding attitudes that observing the law is matter of habit (Zimring & Hawkins, 1973).

However, there have been disagreements on roles and influence of the severity and certainty of punishment among modern deterrence theories.¹¹ Traditionally,

¹¹ There are few studies on the celerity of sanctions. First, modern criminal justice systems are designed to provide defendants with the opportunity to defend at least several times, and it often delays punishment (Nagin & Pogarsky, 2000). Also, the deterrence effect of celerity, which is based on psychological experiment such as classical (Pavlovian) conditioning, can be limited to the person who would prefer to delay punishment (Gibbs, 1975). Thus, prior and current studies have generally avoided including in a measurement of celerity.

philosophers such as Beccaria (1764), Bentham (1789) and Montesquieu (1748) insisted that certainty of punishment has more deterrent effect than severity of punishment. It is understandable when considering the cruelty of the Ancient Regime – the setting in which they were writing. In the eighteenth century, punishment was extremely severe compared to the crime, and they wanted to reform criminal justice systems. Since then, there have been many debates about which component of punishment is more crucial to prevent crime. However, no agreement has been drawn on the issue yet. Researchers such as Mendes and McDonald (2001) insisted that even though severity of punishment does not have same deterrent effect as the certainty of punishment does, ignoring the deterrent effect of severity undermines the fundamentals of deterrence theories. They argued that the two components operate in conjunction with one another to produce a deterrent effect. Becker (1968), while agreeing with the classical idea that the certainty of sanction has more deterrent effect than severity does, insisted that the deterrence effect of the components works differently depending on perception of individuals on the components. He argued that there is a relative influence of the severity and certainty of sanctions that operates variously by different persons. However, few deny the assumption that if both severity and certainty of the punishment are increased, the punishment would have better deterrent effect. Therefore, if both proportional severity and certainty of The Anti Prostitution Law were more stringent than the previous law, according to the deterrence theories, The Anti Prostitution Law should have stronger deterrence effect than previous one did.

Deterrence Theory Applied to The Anti Prostitution Law

The Anti Prostitution Law in South Korea was enacted in 2004 to eradicate prostitution. This law seems to have been designed with deterrence in mind, as it meets each of the three elements of deterrence theory. First, The Anti Prostitution Law has been regarded to have higher level of severity than the previous Law against Morally Depraved Behaviors (LMDB) that regulated prostitution before the new legislation (Kim, 2007; Park, 2007). The new law not only increased the level of punishment for prostitution but also extended the definition of sexual intercourse (prostitution) to the pseudo act. The law even has jurisdiction over human traffic and authority to supervise protection facilities for victims of sexual traffic (Punishment Act, art. 2 & art. 18; Protection Act, art. 2). For example, this law added new penalty clauses such as a maximum of three years in prison to a person who places advertisements for selling sex, a maximum of ten years in prison to a procurer and a minimum of five years in prison to a person engaged in trafficking.

Second, the level of certainty of The Anti Prostitution Law is about the same as – but not significantly lower than – other criminal laws in South Korea. The prosecution rate (2004-2007) of prostitutes and clients was 42.6% and that of procurers was 71.9% (Korean Supreme Public Prosecutor's Office [KSPPO], 2007). When considering the mean prosecution rate of other criminal cases during the same period was 44.3% (KSPPO, 2007), the level of certainty of The Anti Prostitution Law is not lower, on average, than other criminal laws.

Third, there are few studies about deterrence theory that measured the celerity of

criminal law and policy. However, when considering 97% of prostitutes and customers (2004-2007) were summarily indicted, and the trial for the summary indictment progresses more swiftly than formal trial, the level of celerity of The Anti Prostitution Law seems higher than other criminal laws (KSPPO, 2007). According to the deterrence theory, The Anti Prostitution Law has components to deter prostitution; thus it theoretically should reduce prostitution and related crime including human traffic.

However, it also needs be considered that the severity and certainty can be perceived differently depending on the individuals (Becker, 1968; Decker & Kohfeld, 1990; Ehrlich, 1973; Eide, 1994; Witte, 1983). For example, one can be influenced by the probabilities of arrest and conviction while others are more concerned about the amount of penalty or term of imprisonment. There also have been studies that showed threats of sanctions have varying degrees of deterrence depending on characteristics of the population (Kennedy, 2009; Kleiman, 2009; Nagin, 1998). For example, temporarily impaired individuals who are under the influence of drugs and alcohol may not be deterred by threats of sanctions when committing crime. According to *John School report* (2007), 73.5% of male offenders of The Anti Prostitution Law in South Korea, were under influence of alcohol when they violated the law (Korean Ministry of Justice, 2007). Moreover, some scholars argued that not all people would weigh the pleasure of committing the crime with the risk of the pain of punishment (Beckert, et al., 2008; Durkheim, 1947; Fish, 2005). They pointed out that moral inhibition also can be an important reason people obey rules. According to their ideas, people observe laws of society not only by self-interest but also by their moral obligation. In other words, people follow the rules because it is the right things to do. McPherson (1984) also emphasized

the importance of moral obligation. He insisted that moral condemnation on certain behaviors can moderate the deterrence effect of punishment. In this perspective of deterrence theory, to the population who will never violate laws because of a moral code, it does not matter what the punishment is. By diverse external and internal factors, individuals may not be deterred by certainty, proportionate severity or celerity of the punishment. This may have affected the deterrent effect of The Anti Prostitution Law.

The Role of General Deterrence in The Anti Prostitution Law

Deterrence theory also suggests two types of deterrence: general and special. General deterrence refers to the inhibiting effect of sanctions that prevents crime in the general population (Zimring & Hawkins, 1973). By punishing law offenders, government power can prevent criminal activities of potential offenders in the general population. Special deterrence, on the other hand, refers to the deterrent effect of punishment only on the law offenders to prevent the offenders from committing crime again (Zimring & Hawkins, 1973). Regarding these concepts of deterrence theory, The Anti Prostitution Law, like other laws, is designed not only to deter offenders for committing another crime regulated by this law but also prohibit potential offenders in the general public from violating the law. While research has found that the general public is often unaware of enactment of laws and specific sentencing and people usually underestimate the severity of the punishment (Williams & Hawkins, 1986), after the enactment of The Anti Prostitution Law, a nationwide crackdown on the illegal sex industry enforced by the South Korean government was broadcasted by numerous mass media (MGEF, 2007).

Also, special articles over the enactment of The Anti Prostitution Law were reported on every South Korean newspaper (Kim, 2007). Moreover, the Ministry of Gender Equality and Family which was established in 2001¹² was pushing ahead with policies focused on preventing prostitution and human trafficking. Thus, when the Anti Prostitution Law was passed in 2004, the newly launched MGEP was focusing its campaigns on the law and related policies (The Korean Board of Audit and Inspection, 2004). The general public should be well aware of the new legislation. Therefore, according to deterrence theory, The Anti Prostitution Law should have general deterrence over the general public and reduce the number of sexual traffic and human trafficking.

Alternate Explanations

While The Anti Prostitution Law should, in theory, have a deterrent effect on prostitution and related crimes, criticisms of the law indicate this may not be the case. Accordingly, two alternative explanations for changes in crime following the implementation of The Anti Prostitution Law are presented in this section: The Balloon Effect and functionalism. First, The Balloon Effect is a negative side effect which has occurred during the enforcement of laws against victimless crime. The Balloon Effect is a phenomenon that happens when temporary supply reductions lead to higher prices and result in greater supply production. Some researchers regarded this phenomenon as an explanation for the failure of laws and policies banning victimless crime (Bagley,

¹² The Korean name of Ministry of Gender Equality and Family was "Yeo Seong Bu" (meaning Ministry of Women) when it was established and focused only on women policies. It was renamed "Yeo Seong Kajok Bu"(meaning Ministry of Women and Family) in 2010 and began to manage family related tasks such youth problems and childcare issues, too.

2012; Friesendorf, 2005; Mora, 1996). According to these researchers, deterrent effect of laws and policies against victimless crimes can be offset by The Balloon Effect. Second, functionalism, which posits each part of society has its own function to help sustain the whole system (Davis, 1937; Durkheim, 1947; Ringdal, 2004), can be an explanation for the decrease in deterrence effect of laws and policies banning victimless crime.

According to the theories of functionalists, a society should have an institution that satisfies basic needs of its members, and any law and policy that suppresses these needs would fail to achieve its goal.

The Balloon Effect

The Balloon Effect was originally an economic term used to describe a phenomenon that happens when temporary supply reductions lead to higher prices, and, in the long run, result in greater supply production. The Balloon Effect was originally an economic term which was named after what happens to the air inside of a latex balloon when it is squeezed. This phenomenon has also occurred as a result of enforcing policies against victimless crimes. In the field of criminal justice, this term is used to describe the tendency of illegal activities to shift to another form or area when prohibited by law enforcement or a government policy, rather than disappearing (Bagley, 2012; Friesendorf, 2005; Mora, 1996).

An example of The Balloon Effect occurred during Prohibition. There are no exact records for the sales or consumption of alcohol during Prohibition, though The National Commission on Marijuana and Drug Abuse (NCMDA, 2013) estimated that

alcohol consumption decreased during Prohibition to approximately 60% of the pre-prohibition consumption rate at the beginning of Prohibition. However, the level of consumption rebounded up to 80% by 1930. Alcohol related deaths and diseases increased during Prohibition. Jabloner (1997) pointed out that during Prohibition, while manufacture and sales of alcohol were prohibited, the number of malt and hop stores increased and former breweries turned to selling malt extract syrup for beverage-making purposes. According to the record of the Prohibition Commissioner (1930), Americans spent \$17 per year in 1919 for alcohol consumption. However, spending increased up to \$35 by 1930. The increase was a result of the escalating price of alcoholic beverages caused by a government crackdown (Free, 1930).

The same or a similar phenomenon occurred when the United States began conducting The War on Drugs. Peru was a major supplier of refined cocaine to the United States by the mid-1980s and captured 65% of the global coca leaf market. However, Peru lost its market share during the early 1990s when the Peruvian government adopted a hard line policy on illegal drug supported by the U.S. government. Peruvian law enforcement, in accordance with The War on Drugs strategy, shut down local coca growing areas and laboratories. This hard line policy of the Peruvian government decreased coca production in that country, but resulted in the growth of Colombian suppliers during the 1990s (Bagley, 2012; Friesendorf, 2005) – a balloon effect. The United States and Colombian governments, then, established an eradication program entitled “Plan Colombia” in 1998. The aim was to stop the growth of the Colombian cocaine market. About \$5 billion was injected into the plan during the 2000s by the United States government (Hearn, 2012). This anti-drug policy seemed successful

because, during the implementation of the plan (2002-2008), illegal drug trafficking and related crimes such as murder and kidnappings were significantly reduced (Boot & Bennet, 2009). Under Plan Colombia, the security situation in Colombia had improved and the Colombian government had regained the power to control its territory from the organized trafficker groups and armed rebels. Owing to hard line policies in Colombia, Peru regained its position as the largest coca leaf producer in 2000s (United Nations Office on Drugs and Crime [UNODC], 2013) – again, evidence of The Balloon Effect. According to the UNODC report, these hard line policies have focused on eradication and interdiction measures. Thus, they have failed to solve the fundamental problem of the countries of the Andes such as the deteriorating economic system and social factors that drive the illegal drug industry. Drucker (2003) also criticized The War on Drugs enacted by the United States stating that it is a typical hard line policy that relies on law enforcement to seize drugs and arrest drug users. He emphasized that during The War on Drugs, the number of arrested offenders and the incarceration rates have increased. However, the death rate caused by drug abuse also increased 540% and drug-related problems have worsened.

In South Korea, The Balloon Effect seemed to have occurred with the anti prostitution policy. According to the *National Investigation of Prostitution* published by The Ministry of Gender Equality and Family (2010), after the crackdown of brothels in South Korea in accordance with the enactment of The Anti Prostitution Law, new sexual businesses replaced brothels and many Korean women working in the sex business have gone to underground sex businesses or abroad. Thus, in this study, The Balloon Effect of The Anti Prostitution Law was examined to evaluate effectiveness of the law as

alternative explanation to deterrence theory which is main theoretical framework of the study. When Korean people perceived that The Anti Prostitution Law does not prevent the activity and produce new forms of prostitution, according to deterrence theory, it can moderate the deterrence effect of sanctions. If hard line policies against victimless crimes inevitably demonstrate The Balloon Effect, when considering the huge resources put into the policy, revision of those policies should be considered.

Functionalism

The theory of functionalism also can be the explanation for a failure of prior hard line policies against victimless crimes. Functionalism posits that each part of society has its own function to help sustain the whole system. Functionalists believe that the stability of the whole society can be maintained when each part of society functions properly. Functionalism holds that society is not merely the sum of its parts, but rather an organism made up of numerous parts where each part functions to fulfill different needs. Durkheim (1947) viewed every social institution as a necessary component of the society for the maintenance of order. He likened society to the human body, so that, every part of society include positive, value-free, and negative social capital, has a contribution, or function, necessary to sustain the society as a whole. Thus, if any of the components do not function or become damaged, the whole structure of the society would be affected. Durkheim's idea has been adopted by a number of social scientists, creating functionalism.

In keeping with the perspective of functionalism, prostitution has been a part of nearly every society since ancient times and should be considered as an accepted component of social structure. Davis (1937) insisted that prostitution is a function of the society to maintain order, especially one with capitalism. He asserted that prostitution is a unique form of sexual interaction that embodies neither emotion nor reproductive purposes. In his evaluation, prostitution is solely an activity by and between consenting adults based on a commercial contract, even if said contract is nonverbal though mutually understood that distinguishes it from more socially accepted sexual behaviors. He also argued that prostitution is not merely a deviant form of sexual transaction but an economic function between customers and prostitutes. He believed that sexual need is one of the basic needs of mankind, and society should have an institution that satisfies sexual desire. According to Davis, men have always had a tendency toward commercial sexual transactions because all men in society do not have a legitimate sexual outlet due to sexual preferences, the competitive nature of male and female attraction and economic status.

Ringdal (2004) and Raymond (2004) also viewed prostitution as a function of the society. Ringdal even argued that prostitution has a therapeutic function for the individual who lacks the ability to fulfill personal sexual desires through conventional means within the institution of society. In the view of functionalists, prostitution has long functioned as a social outlet for the needs and sexual desires of a certain population and no other institution has been developed to successfully replace it. Raymond (2004), emphasizing the universality of prostitution, insisted that blocking the only outlet for desperate sexual demands would produce a chaotic mental status among men. He suggested that trying to

force men, who are in a chaotic state of mind, to be law-abiding and to simply dismiss their desire is extremely optimistic.

Most victimless crimes are closely related to basic needs. Historically, hard line policies that suppress the needs did not achieve their goals because these basic needs and demands are hardly reduced by policies. According to *John School Report (2007)*, 31.8 % of male offenders admitted that they purchased sexual services for their uncontrollable sexual desires even though they knew about the enactment of The Anti Prostitution Law (Koran Ministry of Justice, 2007). Those basic needs can offset the threats of sanctions and damage the deterrent effect of criminal laws. Moreover, from a functionalist's point of view, if The Anti Prostitution Law suppresses the basic desire excessively, it could result in an increase in the rate of sex crimes (Jang, et al., 2012). This may impact negatively on effectiveness of The Anti Prostitution Law. Thus, it needed to be acknowledged that there was a significant increase in sex crimes in South Korea following the enactment of The Anti Prostitution Law in 2004.

Chapter 5

METHODS

Hypotheses

The purpose of this study is to identify the deterrent effect of a hard line policy (The Anti Prostitution Law) against victimless crime (prostitution). The following hypotheses are examined to determine whether The Anti Prostitution Law has deterrent effect against prostitution or it is related to side effects. First, if The Anti Prostitution Law in South Korea is to be considered successful, there should be evidence of a significant decrease in the number of prostitution since the law was enacted in 2004. When compared to the previous Law against Morally Depraved Behaviors (LMDB) that regulated prostitution, the level of severity, certainty, and celerity of punishment specified in The Anti Prostitution Law had increased. Thus, according to deterrence theory, the new law should have an improved deterrent effect. Accordingly, the first hypothesis is:

H1. The Anti Prostitution Law of South Korea reduces prostitution.

Second, the primary purpose of The Anti Prostitution Law is to eradicate sexual traffic (prostitution) and human traffic aimed at sexual traffic (Punishment Act, art. 1-2). Moreover, when the Anti Prostitution Law was passed in 2004, the Ministry of Gender Equality and Family (MGEF) was focusing its campaigns on the law and related policies. MGEF (2007) also insisted that 93.2 % of South Korean people acknowledged the

illegality of prostitution. According to the deterrence theory, The Anti Prostitution Law should have the general deterrent effect against prostitution related crimes. Therefore, if The Anti Prostitution Law in South Korea is to be considered a successful deterrent, there should be evidence of a decrease in the number of trafficking rate following the enactment of the law. The second hypothesis is:

H2. The Anti Prostitution Law of South Korea reduces trafficking for prostitution.

Third, according to *John School Report* of the Korean Ministry of Justice (2007), massage parlors have been identified as being the supplier of the largest volume of sexual traffics (48.3%) after the crackdown on brothels. In other words, instead of having a deterrent effect, The Anti Prostitution Law may have moved the problem of prostitution elsewhere. This is known as The Balloon Effect, which is the third hypothesis:

H3. The Anti Prostitution Law of South Korea led to the Balloon Effect

There are three ways to assess whether The Balloon Effect is present, so there are three parts to this hypothesis:

H3A. The number of massage parlors increased after the implementation of The Anti Prostitution Law of South Korea

H3B. The number of women working in the massage parlors increased after implementation of The Anti Prostitution Law of South Korea

H3C. The number of South Korean women working in the Australian sex industry increased after the implementation of The Anti Prostitution Law of South Korea

Fourth, deterrence theory might posit that tougher penalties for prostitution may generalize to other sex-related crimes, and, therefore, the number of sex assaults may decrease after the implementation of The Anti Prostitution Law. However, the alternative may be true. From the functionalist's perspective, if society blocks the social outlet for sexual desires, it would cause more serious sex crimes, and there is some evidence that this may be the case. Jang, et al. (2012) found that the rape rate of South Korea abruptly increased by 2008 after enactment of The Anti Prostitution Law. Here, the scope of sex-related crime is expanded to "sexual assaults" including rape, sexual molestation, sexual harassment, and the final hypothesis is:

H4. The Anti Prostitution Law of South Korea increased sexual assaults.

Data

The data used to test these hypotheses were drawn from sources available to the public. Specifically, data were obtained from official websites of South Korean government institutions such as the Korean Supreme Public Prosecutor's Office (KSPPO) and the Korean Department of Statistics (KDS). The data collected by Sydney Sexual Health Centre (SSHC) were also utilized for the analysis. Each source is described below.

The Korean Supreme Public Prosecutor's Office (KSPPO)

Yoon and Joo (2005) have deemed *The Analytical Report on Crime* published by KSPPO to be the most reliable and comprehensive compilation of data in the criminal justice field in South Korea. This report includes crime rates, police activity, and the dispositions of violations. Each crime category is prepared on a monthly or yearly basis, covering the years 2000 through 2012. These longitudinal data can be influenced by the changes of related law and collection methods. However, there was no major revision of The Criminal Law of South Korea since 1988 (Korean Ministry of Justice, 2013) and no changes in data collection methods of KSPPO (Jang, et al., 2009). The data analyzed in this study such as the number of monthly sexual traffic (prostitution), the number of monthly trafficking (including abduction, coercion, and confinement), the number of monthly sexual assaults (including rape, sexual molestation, and sexual harassment) were retrieved from *The Analytical Report on Crime* (2000-2012).

The Korean Department of Statistics (KDS)

The data in the *Monthly Service Industry Survey* created by the Korean Department of Statistics (KDS) include the number of massage parlors and women working in the massage parlors (2001-2011). These data of *Monthly Service Industry Survey* have been widely used for researches in the field of economics, social science, and criminal justice in South Korea (Korean Institute of Criminal Justice Policy, 2004; Korea Institution for Industrial Economics and Trade, 2012). *Monthly Service Industry Survey* provides basic data required for the establishment of various policies and for researchers by obtaining in-depth understanding of the management status and statistical changes of service businesses in South Korea (KDS, 2012). According to the Korean Ministry of Justice (KMJ, 2006), the massage parlors were deemed as major illegal sex businesses (48.3%) in South Korea after the crack down on brothels. KDS uploaded the data to its website for public use.

Sydney Sexual Health Centre (SSHC)

SSHC provides data of women working in the Australian sex industry. These data include information such as age, ethnicity, and nationality of women engaged in Australian sex businesses. The data also include the number of foreign women working in the Australian sex industry who visited SSHC (1992-2010). These data show changes in the number of Korean women who visited SSHC after the enactment of The Anti Prostitution Law. Since SSHC provides free medical service for the foreign women in the sex business in Sydney, Australia, the number of women visiting SSHC has been used for

the researches on foreign sex worker issue (Donovan & Harcourt, 2012).¹³ However, because the data released to the public are collected on a yearly basis, data retrieved from SSHC were used for descriptive analysis, not for a paired samples *t*-test in this study.

Measures

The data analyzed in this study include the number of sexual traffic (prostitution), the number of trafficking, the number of massage parlors, the number of women working in the massage parlors, the number of South Korean women who visited SSHC, and the number of sexual assaults within South Korea before and after the enactment of The Anti Prostitution Law.

The Anti Prostitution Law

The implementation of The Anti Prostitution Law of South Korea is the independent variable of this study. The implementation of Anti Prostitution Law is considered an intervention of “pre-test and post-test design” used for data analysis. Since the independent variable is a dichotomous variable, it is coded as “0= before implementation of anti-prostitution law in month” and “1= after implementation of anti-prostitution law in month”.

¹³ Donovan and Harcourt (2012) used the data to address demographics of female sex workers and related problems in Sydney.

Sexual Traffic (Prostitution)

The dependent variable used in the first hypothesis is the number of sexual traffic (prostitution) before and after the enactment of The Anti Prostitution Law. Sexual traffic is defined as “doing a sexual act in return for receiving or the promise to receive money, valuables or other property gains” (Punishment Act, article 1). The number of sexual traffic that occurred between 2000 and 2009 was retrieved from *The Analytical Report on Crime* published by the Korean Supreme Public Prosecutor’s Office (KSPPO, 2000-2009).

Trafficking

The number of trafficking is the dependent variable in the second hypothesis. Trafficking is defined as “transferring targeted persons to a third person while holding them under control and managing them to sell sex or do obscene acts” by The Anti Prostitution Law (Punishment Act, art. 2). In this study, the number of trafficking (monthly) that occurred within South Korea before and after the enactment of The Anti Prostitution Law (2001-2008) is compared. The monthly trafficking number within South Korea was compiled from KSPPO’s data.

Massage parlors

The change in the number of massage parlors (monthly) within South Korea is the dependent variable in hypothesis 3a. Running a massage parlor is not illegal in South Korea. However, the Korean Institute of Criminal Justice Policy indicated that 37.9 % of massage parlors in South Korea provided illegal sexual services (KICJP, 2004). The

change in the number of massage parlors before and after enactment of The Anti Prostitution (2001-2008) is compared to test the hypothesis. The data were drawn from *Monthly Service Industry Survey (2001-2008)* created by the Korean Department of Statistics (KDS).

Women working in massage parlors

The change in the number of women working in massage parlors (monthly) within South Korea is the dependent variable in hypothesis 3b. Since 37.9 % of massage parlors provide illegal sex service and 48.3 % of The Anti Prostitution Law offenders purchased sex services in the massage parlors (Korean Ministry of Justice, 2007), a large number of women working in the massage parlors would be engaged in illegal sex services. To verify the hypothesis, the change in the number of women working in massage parlors before and after enactment of The Anti Prostitution Law (2001-2008) is analyzed. The data were also drawn from *Monthly Service Industry Survey* created by the KDS (2001-2008).

Women working in the Australian sex industry

The number of South Korean women working in the Australian sex industry is the dependent variable in hypothesis 3b. For the verification of hypothesis, the number of South Korean women who visited Sydney Sexual Health Centre (SSHC) before and after the enactment of The Anti Prostitution Law (2000-2009) is compared. The data were drawn from the *Report to the NSW Ministry of Health* (Donovan & Harcourt, 2012).

Sexual assaults

The dependent variable for hypothesis 4 is the number of sexual assaults (monthly) that occurred within South Korea before and after the enactment of The Anti Prostitution Law. This measure includes rape, sexual molestation, and sexual harassment that occurred within South Korea before and after enactment of The Anti Prostitution Law (2001-2008). A prior study used the rape rate retrieved from *The Analytical Report on Crime* published by KSPPO (Jang, et al., 2012). In this study, expanded scope of the number of sex crimes drawn from KSPPO data (2001-2008) are used to verify the hypothesis.

Total Crimes

The total number of crime (monthly) within South Korea is utilized as a reference variable. The number of total crimes (except the crime of each dependent variable) that occurred within South Korea before and after the enactment of The Anti Prostitution Law (2000-2009) was analyzed for the comparison to the number of prostitution, trafficking, and sexual assaults in the hypotheses. The number of total crime within South Korea was retrieved from KSPPO's data.

Estimation Methods

The framework for this study is a “pre-test and post-test design”, examining the effectiveness of The Anti Prostitution Law as an intervention. Meaningful changes in variables before and after the intervention (The Anti Prostitution Law) are examined by

using paired-samples t -tests. A paired samples t -test is appropriate when determining whether or not there is a significant difference between the means of the same variables under two different conditions. The formula for a paired samples t -test is following:¹⁴

$$t = \frac{\sum d}{\sqrt{\frac{n(\sum d^2) - (\sum d)^2}{n-1}}}$$

SPSS was used to compute the paired-samples t -tests.

¹⁴ "d" is the difference between the two means.

Chapter 6

RESULTS

This chapter presents the results of this study. Four hypotheses were tested to assess the deterrence effect of The Anti Prostitution Law (APL). A series of paired samples *t*-tests were conducted to identify relationships between the independent variables (the implementation of APL) and dependent variables of each hypothesis. Through the test, the deterrent effect of intervention (APL) and alternative explanations for the prostitution issue were examined. The following are the results of these tests.

Describing the Data

Table 2-1 describes the variables of hypotheses in this study. The number of prostitution within South Korea increased after the enactment of The Anti Prostitution Law. While the mean number of prostitution during the pre-APL period (monthly, January 2000 to September 2004, $N=57$) was 283.38, that of the post-APL period (monthly, October 2004 to June 2009, $N=57$) was 832.80 (increased by 193.9 %). The number was almost triple during the post-APL period.

The number of trafficking within South Korea between the pre-APL period (monthly, January 2001 to September 2004, $N=45$) and post-APL period (monthly, October 2004 to June 2008, $N=45$) are also compared by paired samples *t*-test. The mean number of trafficking during the pre-APL period was 61.91, while that of the post-APL period was 63.95, an increase of 3.29 %.

Table 2-1. Descriptive Statistics

Variable	The average of pre-APL	The average of post-APL
The number of prostitution (monthly, 2000-2009)	283.38 (<i>n</i> =57)	832.80 (<i>n</i> =57)
The number of trafficking (monthly, 2001-2008)	61.91 (<i>n</i> =45)	63.95 (<i>n</i> =45)
The change in the number of massage parlors (monthly, 2001-2008)	7.06 (<i>n</i> =45)	16.00 (<i>n</i> =45)
The change in the number of women working in massage parlors (monthly, 2001-2008)	9.35 (<i>n</i> =45)	22.46 (<i>n</i> =45)
The number of South Korean women who visited SSHC (yearly, 2000-2009)	5.67 (<i>n</i> =5)	63 (<i>n</i> =5)
The number of sexual assaults (monthly, 2001-2008)	803.20 (<i>n</i> =45)	1094.26 (<i>n</i> =45)
The number of total crime (monthly, 2000-2009)	167,918.98 (<i>n</i> =57)	166,309.22 (<i>n</i> =57)

Table 2-1 also depicts the monthly change in the number massage parlors and women working in the massage parlors between the pre-APL period (monthly, January 2001 to September 2004, *N*=45) and post-APL period (monthly, October 2004 to June 2008, *N*=45). The change in number of massage parlors during the pre-APL period was 7.06, while that of the post-APL period was 16.00 (an increase of 126.62%). The change in number of women working in the parlors of the pre-APL period (monthly, January 2001 to September 2004, *N*=45) was 9.35, while that of the post-APL period (monthly, October 2004 to June 2008, *N*=45) was 22.46 (increased by 140.21 %).

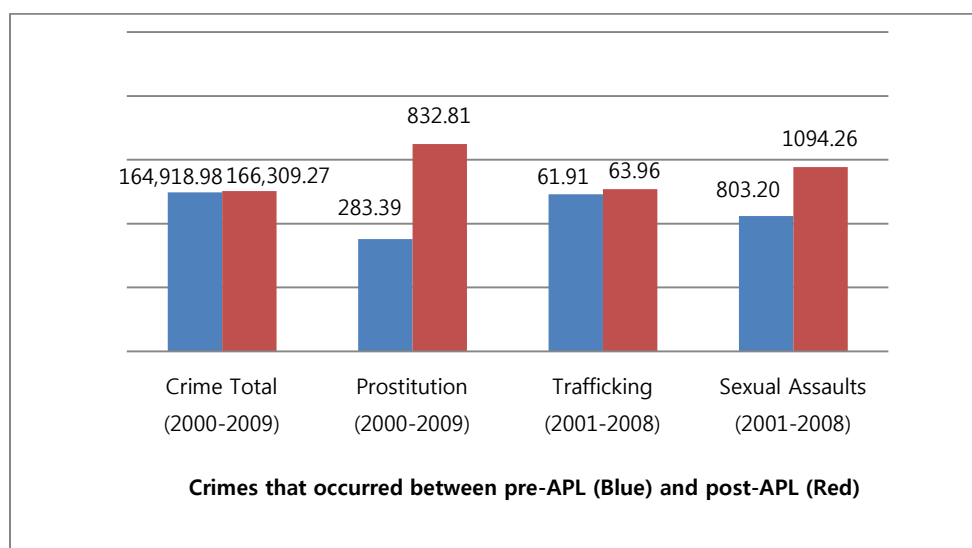
The number of South Korean women (yearly) who visited Sydney Sexual Health Centre (SSHC) between the pre-APL period (2000-2004, *N*=5) and post-APL period (2005-2009, *N*=5) are also analyzed. The mean number of the pre-APL period (1998-2003) was 5.67, while that of the post-APL period (2004-2009) was 63 (increased by 1,011 %). According to the Korean Ministry of Foreign Affairs and Trade (MOFAT,

2010), the number of Korean women working in the Australian sex business was more than 1,000, accounting for 17% of the approximately 6,000 foreign women. The number of South Korean women working in the Australian sex industry who visited Sydney Sexual Health Centre increased after 2004. Taken together, this suggests that The Anti Prostitution Law may have produced The Balloon Effect, which will be confirmed through hypothesis tests in the next section.

The number of sexual assaults (including rape, sexual molestation and sexual harassment) between the pre-APL period (monthly, January 2001 to September 2004, $N=45$) and post-APL period (monthly, October 2004 to June 2008, $N=45$) are also variables of this study. While the mean number of sexual assaults during the pre-APL period was 803.20, that of the post-APL period was 1094.26 (increased by 36.23%).

Figure 1-1 compares the number of crimes analyzed in this study to the number of total crimes within South Korea. For the same study period, the number of all crimes that occurred within South Korea was 164,918.98 in pre-APL period (monthly, January 2000 to September 2004, $N=57$), and 166,309.22 in post-APL period (monthly, October 2004 to June 2009, $N=57$). The mean number of total crimes increased by 0.84 %. However, the magnitude was minimal as compared to the increase of prostitution and sexual assaults (see Figure 1-1).

Figure 1-1 The Mean Number of Crimes within South Korea



In the next section, the hypotheses of this study are tested by a series of paired samples *t*-tests.

Hypothesis Tests

Several paired-samples *t*-tests were performed to determine whether The Anti Prostitution Law with increased severity and certainty of punishment has a deterrent effect against sexual traffic (prostitution) and trafficking. It was also tested whether the implementation of The Anti Prostitution Law is related to The Balloon Effect and increased sexual assaults.

H1: The Anti Prostitution Law of South Korea reduces prostitution

First, whether the Anti Prostitution Law reduced the number of sexual traffic (prostitution) was examined (see Table 2-2). A paired-samples *t*-test was conducted to

compare the number of prostitution (monthly) between pre-APL period ($M=283.38$, $SD=107.66$, $N=57$) and post-APL period ($M=832.80$, $SD=848.97$, $N=57$). While the results of this test indicated that the null hypothesis must be accepted ($t(56) = -4.71$, $p < 0.01$), the difference between the means would have been significant had this been a two-tailed test.¹⁵ Contrary to the hypothesis, the difference indicated that the number of prostitution increased after the enactment of The Anti Prostitution Law.

Table 2-2. Paired Samples *t*-test Comparing the Number of Prostitution before and after APL

Variable	M	SD	df	t	p
The number of prostitution before APL (monthly, from JAN 2000 to SEP 2004)	283.38	107.66	56	-4.712	.000**
The number of prostitution after APL (monthly, form NOV 2004 to JUN 2009)	832.80	848.97			

** $p < .01$

H2: The Anti Prostitution Law of South Korea reduces trafficking for prostitution

To verify whether The Anti Prostitution Law has a deterrent effect against trafficking, a paired-samples *t*-test was performed (see Table 2-3). The number of trafficking (monthly) between pre-APL period ($M=61.91$, $SD=21.74$, $N=45$) and post-APL period ($M=63.95$, $SD=20.21$, $N=45$) were compared for the test. There was no significant difference in the number of trafficking between pre-APL and post-APL, $t(44) = -0.49$, $p = 0.63$. The test result indicated that the number of trafficking did not noticeably change after the implementation of The Anti Prostitution Law. Therefore, the null hypothesis is accepted.

¹⁵ The paired samples *t*-test for this hypothesis was a one-tailed test.

Table 2-3. Paired Samples *t*-test Comparing the Number of Trafficking before and after APL

Variable	M	SD	df	t	p
The number of trafficking before APL (monthly, from JAN 2001 to SEP 2004)	61.91	21.74	44	-.485	.630
The number of trafficking after APL (monthly, form NOV 2004 to JUN 2008)	63.95	20.21			

H3: The Anti Prostitution Law of South Korea led to the Balloon Effect

This is the general hypothesis, so there are three parts to this hypothesis. Thus, three tests were run to assess this hypothesis.

H3A. The number of massage parlors increased after the implementation of The Anti Prostitution Law of South Korea

In the first part of the hypothesis, the change in the number of massage parlors (monthly) before and after the implementation of The Anti Prostitution Law was compared (see Table 2-4). A paired-samples *t*-test was conducted to compare means of change in the number of massage parlors before ($M=7.06$, $SD=11.52$, $N=45$) and after ($M=16.00$, $SD=16.57$, $N=45$) The Anti Prostitution Law. There was a significant increase in the number of massage parlors between the pre-APL and post-APL periods; $t(44)=-3.02$, $p = 0.004$. Therefore, the null hypothesis is rejected.

Table 2-4. Paired Samples *t*-test Comparing the Monthly Change in the Number of Massage Parlors before and after APL

Variable	M	SD	df	t	p
The change in the number of massage parlors before APL(monthly, from JAN 2001 to SEP 2004)	7.06	11.52	44	-3.048	.004
The change in the number of massage parlors after APL (form NOV 2004 to JUN 2008)	16.00	16.57			

H3B. The number of women working in the massage parlors increased after implementation of The Anti Prostitution Law of South Korea

Second, to identify occurrence of The Balloon Effect, the change in the number of women (monthly) working in the massage parlors before and after the implementation of The Anti Prostitution Law was compared by a paired samples *t*-test (see Table 2-5). The results showed that there was also significant increase in the number of women working in the massage parlors during the pre-APL period ($M=9.35$, $SD=15.45$, $N=45$) and post-APL period ($M=22.46$, $SD=33.74$, $N=45$); $t(44)=-2.25$, $p = 0.029$. Therefore, the null hypothesis is rejected.

Table 2-5. Paired Samples *t*-test Comparing the Monthly Change in the number of Women Working in the Massage Parlors before and after APL

Variable	M	SD	df	t	p
The change in the number of women working in the massage parlors before APL(from JAN 2001 to SEP 2004)	9.35	15.45	44	-2.255	.029
The change in the number of women working in the Massage Parlors after APL (form NOV 2004 to JUN 2009)	22.46	33.73			

H3C. The number of South Korean women working in the Australian sex industry increased after the implementation of The Anti Prostitution Law of South Korea

To verify the hypothesis, the number South Korean women who visited Sydney Sexual Health Centre (SSHC, 2000-2009) were analyzed. However, the data were collected on a yearly basis, thus not enough observations were available for conducting a paired samples *t*-test. Therefore, descriptive analysis was used to explain the relationship between variables.

Figure 2-1. Changes in the Number of Women in the Australian Sex Industry who Visited Sydney Sexual Health Centre

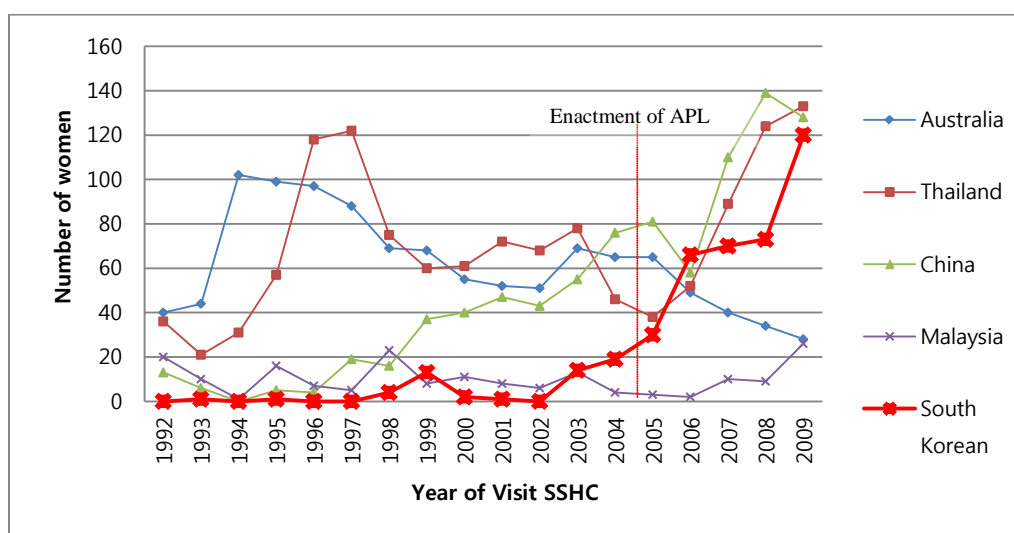


Figure 2-1 depicts that the mean number of South Korean sex workers who visited SSHC annually during pre-APL period (2000-2004) was 5.67, while that of post-APL period (2005-2009) was 63 (increased by 1,011 %). The figure shows that the number increased sharply after enactment of The Anti Prostitution Law.

Figure 2-1 also indicates that the number of Chinese and Thai women working in the Australian sex industry is also on an increasing trend. However, the number of Chinese sex workers decreased between 2005 and 2006. The number of Thai sex workers also decreased between 2003 and 2005. Only the number of South Korean sex workers

drastically increased after 2004 and kept increasing. An increase of the number started before the enactment of The Anti Prostitution Law, so the increase of South Korean sex workers may not be related to The implementation of Anti Prostitution Law. However, knowing the The Anti Prostitution Law was coming may have prompted sex workers to plan ahead and resulted in increase of South Korean sex workers in Australia between 2002 and 2004 (pre-APL period).

A health concern among sex workers, increased access to health care and more awareness of the health center may have prompted this increase. However, when considering the fact that SSHC has been providing free medical service for sex workers since 1992, and the number of Thai sex workers who visited SSHC was in its second highest in 1997, the health concern of the sex workers or awareness of the health center does not seem to be the explanation for the abrupt increase of South Korean sex workers after 2004.¹⁶

Most importantly, the number of South Korean sex workers in the Australian sex industry was around 3,000 (17 % of foreign sex workers in Australia) in 2009 (MOFAT, 2010), and the increasing pattern of South Korean sex workers is consistent with those of massage parlors and women working in the massage parlors which are analyzed in the previous hypotheses (H3A and H3B) tests. Thus, the increase in the number of South Korean sex workers who visited SSHC can be regard as The Balloon Effect of The Anti Prostitution Law.*H4: The Anti Prostitution Law of South Korea increased sexual assaults*

¹⁶ According to Donovan and Harcourt (2012), the education levels of sex workers from East Asian countries such as China and South Korea were much higher than that of Thai sex worker.

In this hypothesis, a paired-samples *t*-test was also conducted to compare the number of sexual assaults (monthly) before ($M=803.20$, $SD=187.23$, $N=45$) and after ($M=1094.26$, $SD=216.61$, $N=45$) the implementation of the APL period (see Table 2-6). The test results showed that there was a significant increase in the number of sexual assaults during the pre-APL period and post-APL period; $t(44)=-7.76$, $p < 0.01$. Therefore, the null hypothesis can be rejected.

Table 2-6. Paired Samples *t*-test Comparing the Number of Sexual Assaults before and after APL

Variable	M	SD	df	t	p
The number of sexual assaults before APL(monthly, from JAN 2000 to SEP 2004)	803.20	187.23	44	-7.764	.000**
The number of sexual assaults after APL(monthly, form NOV 2004 to JUN 2008)	1094.26	210.61			

** $p < .01$

Summary

In the perspective of deterrence theory, The Anti Prostitution Law with increased severity and certainty of punishment should have strengthened the deterrence effect against prostitution and related crimes. However, the outcomes tested in this research were consistently counter to what the Anti Prostitution Law would have predicted. On the contrary, evidence supporting The Balloon effect was found, as sexual crimes in South Korea increased instead of decreased like the APL would have predicted. It needs to be addressed why The Anti Prostitution Law did not effectively prevent prostitution while exposing the same problems as prior hard line policies against victimless crimes caused. In the last chapter, further discussion is made over the factors that damage the deterrent

effect of The Anti Prostitution Law and indicated side effects of the law. How these research results can be applied to the prostitution policy of South Korea is also discussed.

Chapter 7

DISCUSSION AND CONCLUSION

A summary of the results of the paired samples *t*-tests for the hypotheses presented in the previous section are as follows. First, the result indicated that ***H1, "the Anti Prostitution Law of South Korea reduces prostitution" should be rejected.*** Contrary to the hypothesis, the result showed that the number of prostitution of South Korea significantly increased after the implementation of The Anti Prostitution Law. Second, ***H2, "the Anti Prostitution Law of South Korea reduces human trafficking"*** was also rejected. According to the test results, the number of trafficking did not significantly change after the enactment of the Anti Prostitution Law. Third, ***H3, "the Anti Prostitution Law of South Korea led to the Balloon Effect"*** was supported by the test results. The results showed that the number of massage parlors, women working in the massage parlors, and South Korean women working in the Australian sex industry significantly increased after the enactment of The Anti Prostitution Law. Fourth, ***H4, "the Anti Prostitution Law of South Korea increased sexual assaults"*** was also supported by the test. The number of sexual assaults within South Korea increased significantly after the implementation of The Anti Prostitution Law. In this section, discussion, limitations, and the conclusion of this study are presented.

Discussion

Damaged Deterrent Effect of The Anti Prostitution Law

There seems to be diverse external and internal factors within South Korean society that moderate the deterrent effect of The Anti Prostitution Law. First, according to modern deterrence theory, even though a punishment has proper severity and certainty, low risk of informal sanction can offset the deterrent effect (Nagin & Pogarsky, 2001). The traditional cultural background in Confucianism cultural countries including South Korea that allowed men to seek sexual pleasure from prostitution while mandating women's chastity (Choi, 1997; Downer, 2006) may lower the risk of informal sanctions. According to the *John School Report* (2007), 53.5 % of male clients did not change their mind about seeking illegal sexual services after recognizing the implementation of The Anti Prostitution Law (Korean Department of Justice, 2007). This can be regarded as factors that weaken the threats of formal sanctions. Moreover, in this report, 49.3 % of the male clients perceived that they would not be caught for purchasing sexual services. Further, according to the *John School Report* (2007) survey, 73.5 % of male clients admitted that they were under the influence of alcohol, and 22.1 % of them answered that they purchased sexual services for uncontrollable sexual desire. These survey results are consistent with the deterrence theories that temporarily impaired individuals may not be deterred by certainty, proportionate severity or celerity of the punishment (Becker 1968; Mumola, 1999), and the present oriented person is more likely to embrace immediate rewards (Zimring & Hawkins, 1973).

Second, the general deterrent effect of The Anti Prostitution Law does not seem to work as desired. The purpose of The Anti Prostitution Law is to eradicate sexual traffic (prostitution) and human trafficking, and to protect the women's rights of victims of sexual traffic (Punishment Act, art. 1). Moreover, the Ministry of Gender Equality and Family focused its campaigns on the law and related policies (The Korean Board of Audit and Inspection, 2004). Nationwide crackdown on the illegal sex industry enforced by the South Korean government was broadcasted by numerous mass media. Special articles over the enactment of The Anti Prostitution Law were also reported in every South Korean newspaper (Kim, 2007). In addition, the Ministry of Gender Equality and Family (2007) reported that 93.2 % of South Korean people acknowledged the illegality of prostitution, and 80.9 % of females approved of The Anti Prostitution Law. Therefore, according to the deterrence theory, the strengthened Anti Prostitution Law should also have general deterrence over the general public and reduce the number of trafficking and related crimes. However, the test results showed that The Anti Prostitution Law did not significantly reduce the human trafficking and related crimes. On the contrary, the trafficking rate increased slightly. During the same period (2004-2008), the rate of prostitution in South Korea significantly increased (198 %) after The Anti Prostitution Law. It may represent that the increase in the illegal sex industry did not mean the increase in trafficking for prostitution in South Korea. In other words, the majority of women in the sex industry might be voluntarily engaged in the business. It may also reflect that enforcement of The Anti Prostitution Law in South Korea actually focused on arresting prostitutes and customers, but not on preventing human trafficking. Proponents of a hard line policy against prostitution have argued that prostitution invite more serious

crime, thus it should be prohibited (Wilson & Kelling, 1982). However, in this study, prostitution related crimes such as rape, sexual molestation, and sexual harassment did not significantly decrease after the implementation of The Anti Prostitution Law. Furthermore it produced undesirable side effects which are discussed in the next section.

Undesirable Side Effects of The Anti Prostitution Law

First, The Balloon Effect, which occurred during the enforcement of prior hard line policies against victimless crimes, was also supported by the test results. The test results showed that after the enactment of The Anti Prostitution Law, the number of massage parlors significantly increased. Since massage parlors have been the supplier of the largest volume of sexual traffic (48.3%) after the crackdown on brothels (Korean Department of Justice, 2007), increase in the number of massage parlors indicated that The Balloon Effect occurred during enforcing The Anti Prostitution Law. The paired-samples *t*-test also showed that the number of women working in the massage parlors also significantly increased after the crackdown of brothels by enforcement of The Anti Prostitution Law. Moreover, the analysis of SSHC data indicated that banning policies on prostitution did not stop supply or demand of the activity. After the implementation of The Anti Prostitution Law, The Balloon Effect occurred in diverse forms. The phenomenon demonstrated that The Anti Prostitution Law forced the South Korean women in the sex industry to go underground and abroad where government's protection did not reach. It is contrary to the important purpose of this law, "to prevent sexual traffic and protect victims of sexual traffic" (Protection Act, article 1). Prior hard line policies

against victimless crimes such as Prohibition and The War on Drugs resulted in The Balloon Effect and failed to achieve their goal. The hard line policies against victimless crimes seem to share common problem for their failure.

Second, the research results suggested that the number of sexual assaults significantly increased after the enactment of The Anti Prostitution Law. The rate of sex crime such as rape, sexual molestation, and sexual harassment increased during the implementation of The Anti Prostitution Law, while average crime rate of South Korea showed little difference during the same period. This result is consistent with the viewpoint of functionalism that prostitution is a function of the society to maintain order, and society should have an institution that satisfies sexual desire (Davis, 1967). This *t*-test result also corresponds with the idea that blocking the outlet for desperate sexual demands would produce a chaotic mental status among men (Raymond, 2004). The test results indicate that The Anti Prostitution Law may damage social function of South Korea.

Policy Implication

Every government in the world struggles to find the best solution for victimless crime issue. Many countries have attempted to stop victimless crime by increasing the deterrent effect of laws and policies against the activities. However, prior hard line policies against victimless crimes such as Prohibition and The War on Drugs did not prevent the acts and produced undesirable side effects. The test results of the current study also showed that The Anti Prostitution Law did not effectively eradicate

prostitution, and related, unwanted side effects persisted after the implementation of the law. After the enactment of this law (2004-2009), 150,480 male customers and 34,594 women engaged in prostitution were arrested by South Korean law enforcement agencies (KSPPO, 2010). The Anti Prostitution Law produced a huge number of criminals, but prostitution did not significantly decrease after 2004. There seems to be still many potential criminals because of this law who are seeking an outlet for their sexual desire and means of living in the South Korean society. When considering the prostitution rate after the implementation of The Anti Prostitution Law and the huge resources put into related policies, the South Korean government should reconsider the alternative way to solve this problem.

It is time for South Korean society to have further discussion over the influence of The Anti Prostitution Law and the direction of related policy including criminalization, decriminalization, and legalization. First of all, a proper debate on the harm of prostitution to South Korean society must take place among all interest groups of prostitution issue. There have been criticisms against mainstream feminist groups with radical and social feminism that dominated the debate over the prostitution issue in South Korea. Their ideological backgrounds have significantly influenced the direction of the prostitution policy and led to the enactment of The Anti Prostitution Law. However, the political bias and gender impartiality in The Anti Prostitution Law not only caused lack of support from the general public but also endangered women in the sex business. Mass protests from women in the sex businesses in 2004 against The Anti Prostitution Law indicated the huge gap between the view of feminist groups and the women whom they intended to protect. The South Korean government should open up dialogue among all

stakeholders of prostitution to find an impartial and effective solution for the prostitution problem. In-depth discussion on the harm of prostitution to South Korean society should be conducted during the dialogue.

Second, the South Korean government should reconsider the direction of the prostitution policy including criminalization, decriminalization, and legalization. The South Korean government criminalizes prostitution. The Anti Prostitution Law attempts to prevent victimless crime with the strengthened deterrence of a sanction and protects women victimized by prostitution. The law defines procurers and customers as criminals, while it provides opportunity for prostitutes to prove the status of victim. However, if the women failed to prove their status as a victim, they are punished by the law.

Criminalization of prostitution has interfered with protection of women in the sex industry. To solve this problem, the radical and social feminist groups have been lobbying to members of the Korean National Assembly to provide immunity to prostitutes. As a result, the revised bill of The Anti Prostitution Law that punishes only brokers and customers was tabled in the Legislation and Judiciary Committee in 2013 (Korean National Assembly, 2013). However, this bill is exactly the same as the Swedish demand reduction model that failed to eradicate prostitution and pushed prostitutes into more dangerous places where demand exists. Pro-prostitution groups including liberal feminist groups that believe that women have right to choose prostitution as their job, have argued that prostitution should be decriminalized. They insisted that decriminalization would solve the women's problem of proving victim status and being stigmatized as criminals. However, decriminalization of prostitution may put the women engaged in sex businesses out of government protection and into more vulnerable

situations. Tax evasion of sex businesses and health issues such as the spread of STDs and AIDS are expected as problems of decriminalization. It is also questionable that the South Korean people would support decriminalization of prostitution overnight because it that has been crime since 1961 by related laws. Therefore, legalization of prostitution can be the realistic alternative of The Anti Prostitution Law and related polices. Allowing prostitution in a designated zone and creating small cooperative networks of brothels could be a practical way both to control the businesses and protect women in the sex industry. Opponents of the legalization of prostitution have argued that regulation over women such as compulsory registration for working in the sex businesses would label the women as prostitutes during their lifetime and deprive them of the chance to escape from the businesses (Kim, 2007). However, legalization of prostitution is based on the assumption that women can freely and voluntarily choose their job, and have the same responsibility as other laborers. The government should also have the responsibility to protect their personal information so that the women in the sex industry would not be stigmatized. Changes in perception of the general public on prostitution would be the key factor of success, if the government wants to solve the prostitution issue by legalizing it.

Many prior policies banning victimless crimes failed to achieve their goal. They did not reduce either supply or demand for the activity. Victimless crime is closely related to basic human desire, and it is hard to measure the harm of the victimless crime. As long as the general public perceives a certain activity is not so harmful to society, a policy that prevents people from doing the activity would not effectively work or obtain support from them. Law enforcement officers would also exercise their discretion while enforcing the law. Simply increasing the deterrent effect of the laws and policies does not

solve the problem. For the South Korean government to avoid the same mistake as prior hard line policies against victimless crimes had, further discussion which is not politically or ideologically biased is needed.

Limitation of the Study

This study analyzed the data of institutions (2000-2009) of the South Korean government to identify the deterrent effect of The Anti Prostitution Law. The test results showed that the prostitution was not reduced after implementation of the law, and prostitution related crimes may have been displaced instead. However, a future analysis on the data that will be collected by the same institutions of the South Korean government in future decades may show results which are contrary to the current study. In other words, The Anti Prostitution Law may need more time to produce the deterrent effect against prostitution. There is also a possibility that other hard line policies against victimless crimes across the world which are not covered by this study may effectively prevent victimless crimes. Most importantly, this study was designed to assess a relationship between a hard line policy against victimless crime (The Anti Prostitution Law) and its influence (deterrent effect) on the crime; it cannot determine causation — whether The Anti Prostitution Law had any casual effect on any of the outcome measures. In addition, perhaps one or more of the elements of deterrence are not being met or communicated to potential offenders. This study does not assess this.

Moreover, the data sets are in fact official data of targeted enforcement. Meaning, it might as well be just a track of police activities rather than actual change in the magnitude of the problem. In this regard, Australian facility data is perhaps more reliable than crime data retrieved from law enforcement agencies in South Korea.

Arguably, the best value of this study would be a wake-up call for the South Korean government to reconsider the current law and policies against prostitution and seek better solutions for the prostitution problem without wasting the limited resources of the criminal justice system.

Conclusion

It may be impossible to develop a perfect policy to solve the victimless crime problem. However, the current analysis of the South Korean government data showed that The Anti Prostitution Law and policies against prostitution may not be an effective solution for the problem. The current test results are also consistent with the deterrence theory that simply increasing the level of punishment does not prevent crime. Although the punishment by the law for customers, procurers and prostitutes became stronger than the previous law, it did not eradicate or reduce the activity. Thus, further studies that will examine whether or not The Anti Prostitution Law has a proper deterrent effect to eradicate prostitution are needed. In addition, more alternative explanations for the prostitution problem in South Korea also need to be studied through future studies.

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