

Speak for Yourself, Don't Speak for Me:
Democratizing Discourse and Sex Work Reform

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Introduction

Often, deliberations about regulating sex work take place in stuffy legislative hearings, NGO conferences, and the hallowed halls of academia. This cacophony of debate has drowned out the voices of sex workers. The right to speak is reserved for seasoned bureaucrats and concerned philanthropists. From time to time, politicians or NGO leaders will employ the ‘reformed prostitute’ as a prop for their argument. One faction of feminists may rally around the redeemed woman, freed at last from the shackles of patriarchy. Simultaneously, another camp of feminists will delight in the notion of sex work as empowerment. In either case, the input of sex workers is not given much regard. Deemed as ‘misrepresentation’ in Nancy Fraser’s social justice theory, “powerful groups such as neo-abolitionists monopolize their experience by determining who can and who cannot speak on the issue of prostitution” (Lister, 2018, p. 4). As a result, there is a dissonance between the trenchant politics driving legislation and the appeals of sex workers. This process silences sex workers by refusing them access to the democratic process. Those who face the consequences of criminalizing sex work are overlooked, with sanctimonious and patronizing decisions made on their behalf.

Unsurprisingly, this condescending approach to legal reform has not yielded its desired results (agency, safety, labor regulations). Oftentimes, these attempts at reform have done more harm than good, exacerbating the exploitation of sex workers. Evidently, there is a disjuncture between the body of organizations shaping policy and the communities facing its ramification.

Considering the discursive influence of legal and political actors in catalyzing policy, the position of sex workers should take precedence in determining the legitimacy and regulation of their labor. Designing policy conducive to safe and equitable work conditions can only be actualized with the contribution of the communities in mind. Foundational to understanding recent policy trends is an outline of the socioeconomic imperatives and ideological perspectives underpinning contemporary sex work legislation. A review of current literature on sex work, salient critiques of legislation, and social theories on the laws policing sexuality offers a sense of the political climate engendering reform. Upon identifying the role of recent anti-trafficking initiatives and radical feminist discourse in shaping prohibitive sex work policies, this research aims to emphasize the value of reorienting legal discourse to center the exigencies of sex workers.

The Moral Basis of Policing Sex Work: Subjectivity of Choice

Much of the discourse surrounding sex work and its regulation is centered on the morality of sex work itself. Between the lines of humanitarian rhetoric and an insistence on protecting women from a violent industry, there lies the incentive of regulating morality. Sex work still maintains a disreputable status, floating in limbo between a form of empowerment and subjugation but always tainted by stigma. An anthology of short stories and essays submitted by sex workers and compiled by Annie Oakley, *Working Sex: Sex Workers Write About a Changing Industry*, features a short essay by Janelle Galazia on the issues that shroud the debate about sex work:

The exchange between worker and customer is a complicated negotiation of need, illusion, denial, boundaries, and specific neuroses; but central to the exchange is cash. By keeping the debate about sex work focused on sex, and not work, the true nature of the issue is obscured. The arguments range around ideas of obscenity, appropriate and inappropriate sexualities, representations of femininity, notions of morality: Important issues in their own right, but in the context of sex work debate function more as a smoke screen that keeps us from confronting what's really going on. In this framework women are sluts instead of workers, or victims instead of cognizant participants in an economy. The real question here is, why are our options so lame? What are the economic realities that make the sex industry the most viable choice for many people? (Oakley, 2007, p. 88-89)

Galazia highlights how current discourse detracts from issues of economic disparity and labor regulations by emphasizing morality.

A defining schism in third-wave feminism, the debate about sex work prompts moral deliberation, derision, pity, condescension, condemnation, and cries of empowerment. Most of all, the issue of sex work is an embodiment of sexual politics and an unruly variable in a regulated economy, both of which are inextricable from morality. It follows that determining the legitimacy of sex work as labor and regulating it accordingly takes place within a moral framework, consciously or unwittingly. In efforts to contain the moral enigma and subversive capacity of sex work,

respective legislation is a means of regulating the economic influence of the sex industry and the morality of society. Different models of legislating sex work reflect a multitude of moral approaches; the Nordic model with its aims of limiting the demand for sex work, or partial legalization's prohibition of brothels and public solicitation, both reflect varying sentiments about morality and choice. At the injunction of race, sex, class, and economy, the dilemma of regulating sex work encompasses a range of social issues. The economic exigencies that have forged a billion-dollar commercial sex industry are not to be taken for granted. Wealth disparities, racial inequality, and individual circumstances converge into the complex decision of choosing sex work. Discounting the multitude of circumstances, intersectional experiences, and individual stories that shape the sex industry to apply a blanket of victimization is reductive at best. The prohibitionist approach projects an idea of women's liberation from a one-dimensional perspective, often from a position of socioeconomic privilege. Painting the experience of sex workers with a broad brush, suggesting that only internalized misogyny and vulnerability could entice people enough to choose what is considered inherently violent and exploitative work, implies a morally inferior conception of sex work - distinguishing one form of economic survival as less dignified than other forms of physically taxing labor. What's more, radical feminists' prohibitive stance undermines their longstanding discursive object; promoting a woman's right to choose. The issue of agency has been a focal point of feminist discourse, touted since the inception of the suffrage movement and sustained through 2nd feminism. Actualizing a narrow vision of appears to be at odds

with the notion of agency. The attitude towards choice becomes ambivalent when feminism arrives at the issue of sex work. In a translated interview with *Público* about her essay, *El sentido de consentir*, Clara Serra mentions how sex work is treated exceptionally regarding agency and consent. A researcher at the University of Barcelona, philosopher, and feminist, Clara brings a blended perspective to the discussion of sex work:

I think one of the interesting questions is what kind of democratic anomalies there are in the area of women and sex. It seems to me that the legal invalidation of consent is a breach of the liberal principles of our democracies. That is, in principle, we have decided that an adult, unless he is subject to coercion by another, is someone who knows what he does with his life. In the field of prostitution, we are allowed to say that consent is not valid and, by the way, this is said by those who say they are putting consent at the center. (Serra, 2024)

She posits that the push towards prohibitive sex work policies distinguish the treatment of sex work as a “democratic anomaly.” In a Western political arena that champions agency and self-determination, the prohibition of sex work is an outlier. What compels this exceptional treatment of sexual labor is not just the concern for safety but a moral imperative to police sexuality. It’s fair to ask what warrants this undermining of an adult’s agency. Sex workers are not less equipped than others to determine their choice of labor. In their uncanny reproduction of patriarchal power, are the women who promote criminalizing sex work exempt from subjugating other women? The subjectivity of choice shades perceptions of sex work. Many generalize the experience

of coercion and try to understand sex work by making a clean demarcation between liberated choice and a desperate means of survival, as though financial security and survival become coercive factors only when applied to sex work. In a time where many resort to precarious labor; working in factories, other physically demanding jobs, and conceding to long hours to survive, financial insecurity is not a factor unique to sex work. Considering this, why is sex work subject to more scrutiny as a choice of labor? If financial pressure obscures personal choice for many, it's compelling to explore why sex work is construed as an outlier.

Discursive Power and Deviance

Following a protracted history of discourse around sex that served to regulate, categorize, and codify illicit form of sexuality, sex work legislation today reflects a Foucauldian synthesis of how discursive control is obscured, lends to stigma and criminalization; supporting the analysis that discursive power is contingent on debates about agency:

Power is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms. Would power be accepted if it were entirely cynical? For it, secrecy is not in the nature of an abuse; it is indispensable to its operation. Not only because power imposes secrecy on those whom it dominates, but because it is perhaps just as indispensable to the latter: would they accept it if they did not see it as a mere limit placed on their desire, leaving a measure of freedom however slight-intact? Power as a pure limit set on freedom is, at least in our society, the general form of its acceptability. (Foucault, 1990, p. 86)

Materializing as a form of discursive power, the stigmatization of sex work often leveraged by pimps is echoed by the derision and condemnation of sex work in political and feminist discourse. This subtle influence seeps into most sex work-related conversation, impels legislation, and exacerbates the marginalization of sex workers.

The moral framing of sex work as disreputable labor or a form of gendered violence, has precipitated a flurry of legislation criminalizing the purchase of sex and a broadening legal scope of what constitutes trafficking. In a strange twist, secular feminists advocate for criminalization working alongside conservative politicians and Evangelical NGOs to propel what Angela Davis coined carceral feminism, referenced in Elizabeth Bernstein's discursive ethnography *Brokered Subjects*. Working from a framework that identifies sex work as a menace to egalitarian heterosexual marriages, "feminist family values" have become an impetus behind promoting and utilizing the carceral state to secure the neoliberal family unit. "In 2007, NOW-NYC and Equality Now, prominent feminist organizations, sponsored a rally on behalf of a New York State law that would increase the criminal penalty against men convicted of purchasing sex from 90 days to a year in person." (Bernstein, 2018, p. 43) This pivot from grassroots feminist activism in the 1970s, that sought social justice solutions for gendered issues, to modern advocacy for harsher penalties through the criminal justice system have defined a new era of feminism and sex work legislation.

Akin to the conservative sentiments of the Victorian era, sex work today is identified by some as a threat to securing an insular

middle class. Once again, regulating sex work “becomes an integral part of the bourgeois order.” (Foucault, 1990, p. 5) What does this mean for legislation? The staunchest proponents of harsher sentencing for purchasing sex are those who champion “family values” and construct sex work as a threat to the secure family unit. This framework positions normative, heterosexual partnership as an essential function of securing socioeconomic status. Extramarital sex, ostensibly encouraged by the pesky temptation of sex workers, is consequently disruptive to this social order. Outside of feminist discourse, the ubiquitous societal fixation on sex predates the stigma and concerns shaping contemporary legislation, sex work retains the status of a morally dubious and unconventional form of labor. The pitfall of some organizations that advocate for decriminalization is enabling discourse that lingers on morality, legitimizing the deliberation over policing morality by merely entertaining it. The relentless need for advocates to justify the nature of sex work itself has rendered the dilemma of decriminalization a moral question rather than recognizing and subverting the criminalization of sex work for what it is: exploiting legal power to exert control over sexuality and morality.

A sustained imperative to moderate and regulate sex has taken many forms over the years. Foucault’s *History of Sexuality* outlines how public discourse has served to promote the regulation of sex, reflected in the unrelenting infatuation with analyzing and talking about sex over the years. A proliferation of conversations surrounding sex and repression can be traced from the late 18th century through contemporary history. During the Counter-Reformation, detailed and sordid confessions to priests

about sexual temptation, desire, and illicit acts were a way of proving piety and naming temptation in efforts to resist it. Conversely, Foucault posits that those who spoke about sex openly and liberally, ostensibly in rebellion against repression, were unwittingly serving the same power mechanisms. This obsession with talking about sex to demystify and categorize it - even when driven by the desire to subvert Victorian values - made discourse surrounding sex increasingly utilitarian. Perhaps unwittingly, discourse served as the driving force behind codifying and labeling private sexual lives. Today, conversations surrounding sex have saturated public and academic discourse; both the renouncement and celebration of ‘illegitimate’ modes of sexuality work towards the same ends: vitalizing its moral value and empowering efforts to regulate and contain it.

Foucault details how efforts to repress and categorize “illegitimate” modes of sexuality relegated certain groups to the fringes of society and to institutions:

If it was truly necessary to make room for illegitimate sexualities, it was reasoned, let them take their infernal mischief elsewhere: to a place where they could be reintegrated, if not in the circuits of production, at least in those of profit. The brothel and the mental hospital would be those places of tolerance: the prostitute, the client, and the pimp, together with the psychiatrist and his hysteric - those “other Victorians” as Steven Marcus would say - have surreptitiously transferred the pleasures that are unspoken into the order of things (Foucault, 1990, p. 4)

Thus, the deviant status of sex work consolidated into fixed

public perception and continues to be treated as such. It's telling to witness Victorian-era sentiments invoked in defense of contemporary sex work legislation. Since the midst of the 20th century, we've witnessed a tendency to pathologize these "illegitimate modes" of sexuality. Homosexuality, for instance, was characterized as a mental illness in the DSM manual as of 1952 and identified as a sociopathic personality disturbance. After much contention, it was removed in 1973, yet countless paraphilias still remain. Modes of sexuality that exist outside the utility of reproduction or heterosexual norms are still targeted. This can be seen in recent legislative trends; the decision to overturn *Roe v. Wade*, 410 U.S. 113 (1973) and its implications for reproductive rights, the jeopardization of trans rights and access to gender reassignment surgery, and a longstanding history of criminalizing sex work. As Alice Miller succinctly noted, "use of criminal law to regulate sex, gender, and reproduction is decidedly not new; it's a hallmark of the modern state." (Lauren, 2023, p. 6)

When recreational or alternate modes of sexuality are displaced to the margins of society, including these communities in deliberations become essential to shaping public opinion and legislation. In her interview, Serra details the importance of democratizing discourse about sex, "What seems to me to be democratic anomaly is this kind of collective veto by which the voices of sex workers do not appear" (Serra, 2024). The inclusion of their voices is pivotal to shifting discourse away from the moral debate about sex itself, and towards addressing labor regulations. Leveraging discursive control to address sex workers' concerns about legislation demystifies the sexual politics appropriated by conservatives and different factions of feminism.

Sex work and Sex Trafficking; The Dangers of Conflation

Beginning in the mid-1990s, immigration concerns in conjunction with a drive to control sex manifested as increasingly widespread feminist lead anti-sex work and anti-trafficking discourse. Detailed in her book, *Brokered Subjects*, Elizabeth Bernstein analyzes how the discourse surrounding sex-trafficking came to prevail in humanitarian, secular feminist, and Evangelical groups. Bernstein explores how disparate groups converged behind the cause of vilifying sex work. During this period, anti-trafficking laws reflected a tendency in political and humanitarian discourse to conflate most forms of prostitution with sex trafficking. Flexible criteria for what constituted trafficking left sex workers vulnerable to public derision and harsher penalties for selling sex. In their support of border control state agendas and anti-trafficking campaigns, “feminist activism unwittingly supports the deportation of migrant sex workers under the guise of securing their protection.” (Bernstein, 2018, p. 37) Radical feminism’s shift towards carceral politics also coincides with women (particularly from the global south and women of color) becoming the fastest-growing segment of the prison population, with a “2,800% increase in incarcerated women between 1970 and 2001.” (Bernstein, 2018, p. 41)

Following the lead of feminists who advocate for the Nordic model, anti-trafficking laws are pushed by activists and politicians who aim to limit demand for sex work by criminalizing clients and treating workers as victims. Their working theory is that limiting demand for sexual labor would shrink the sex trafficking industry. However, the phrasing of these laws unequivocally conflates all migratory sex work with sex trafficking:

The US Trafficking Victims' Protection Act (TVPA) OF 2000 is similarly vague in its definitions...According to section 103 of the original act, "sex trafficking" is defined as "the recruitment, harbor, or transportation, provision, or obtaining of a person for the purpose of a commercial sex act" (here the presence or absence of force is left unspecified)..Although "trafficking" is explicitly equated with all forms of sexual commerce, the act later specifies that only "severe forms of trafficking" are subject to official state sanction...(Bernstein, 2018, p. 15)

In practice, recent anti-trafficking laws cause some of the same issues as implementation of the Nordic model. Brothel raids, harsher sentencing for clients, and fear of law enforcement all lend to the mounting pressure and dangerous circumstances for engaging in sex work. In addition, constructing all sex workers as victims and conflating their experiences with that of trafficking victims, "anti-trafficking laws" enable a condescending approach to sex work by aiming to push consenting adults out of sex work and impeding on their right to work.

This is not to say that sex trafficking is not a problem, certainly a sizable portion of human trafficking takes the form of sexual exploitation, employing debt bondage and coercion to trap victims into sex work. As of 2014, the Global Report on Trafficking in Persons (TIP) was the only extant global mechanism with the endeavor of measuring the magnitude of human trafficking and combating it. "A 2014 TIP report found that more than 60% of trafficking victims are foreigners in the country in which they're identified. In East Asia, South Asia, and the Pacific, cases related to sexual exploitation comprise 26% of

all trafficking; and 66% in Europe and Central Asia.” (Swanson, 2016, p. 594-95). In this respect, advocating for decriminalization is by no means a reason to minimize the issue of sex trafficking, but there is a crucial distinction to be made between chosen labor and trafficking. That being said, no other labor sector or industry linked with trafficking is targeted for dissolution as in the case of sex work. Domestic servants, factory workers, and childcare workers are also vulnerable to exploitation or trafficking, but we don’t see campaigns to criminalize childcare or domestic labor despite the exploitative potential in those sectors. More importantly, workers in these sectors enjoy a presumption of agency not afforded to sex workers.

Recognizing that the exploitation of labor can occur in many forms, what remains contested in the case of sex work is the element of morality. Considering a recent global awareness of the trafficking issue, contention over the existing relationship between human trafficking and sex work has fueled the debate about criminalizing sex work. The argument for prohibiting prostitution is buttressed by sex trafficking panic and moral sentiment. In widening the scope of what constitutes trafficking, hasty anti-trafficking laws are complicit in contributing to growing incarceration rates and the imposition of harsher sentences on clients and sex workers. This onslaught of conservative legislation concerning sex work has had harmful consequences on sex workers, in the United States and abroad. Many countries deemed noncompliant with efforts to minimize sex trafficking, wherein noncompliance can be flexibly defined, encounter diplomatic sanctions and repercussions.

In this way, prominent countries impose international standards for regulating sex work. Bernstein denotes the impact of this pressure abroad: “Responding to related concerns, Cambodia introduced anti-trafficking legislation ostensibly designed to suppress human trafficking and sexual exploitation. On the basis of observational research with female sex workers, Lisa Maher and her colleagues found that following the introduction of the law, there was an escalation in police crackdowns and brothel closure, with sex workers being displaced to streets and guesthouses, impacting their ability to negotiate safe sex and increasing their exposure to violence.” (Bernstein, 2018, p. 61)

The reactionary nature of existing laws is a response to a global moral panic and is shaping the contours of sex work reform internationally.

In light of Capitalism: The Limitations of Agency

In the throes of late-stage capitalism, exploitative labor practices and dispensable employment have already muddied the waters concerning what it means to sell one's body. The distinction between sex work and other forms of labor as exceptional and inherently more exploitative is rooted in a moralist argument, the last bastion of the Puritan tradition. While other forms of migratory labor are viewed as benign, the label of “trafficking” is more liberally applied to instances of migratory sex work. Indeed, if activists and politicians alike are worried about the economic conditions that push people to opt for exploitative work to survive, they're pursuing the wrong cause. The strenuous labor conditions in Amazon factories and the circumstances that leave workers with limited labor options raise questions about agency.

Are these factory workers more inclined to choose their form of labor than sex workers? Their form of labor certainly does not evoke the same moral upheaval or push for criminalization as the issue of sex work. Perhaps it is easier to decry sex work than it is to confront the insatiable consumer demand that feeds exploitative labor practices across the board. Criminalizing sex work will not mean the economic pressure to sell sex ceases to exist, rather, criminalization makes the means of survival become significantly more dangerous once sex work is branded with its illicit status.

Carceral Feminism

Perhaps the most surprising alliance in recent years has been between far-right politicians, evangelical organizations, and secular feminists. This unlikely coalition has been working towards the objective of imposing harsher sentences on sex traffickers and clients to mitigate the growth of the commercial sex industry and to a larger extent, the sex trafficking industry. Far from the grassroots approach of 1970s feminism, modern carceral feminism seeks solutions to social problems such as gendered violence through harsher criminal penalties and carceral justice. Neo- abolitionist feminists have colluded with far-right politicians and campaign to the benefit of the prison industrial complex. In her book, *Brokered Subjects*, Elizabeth Bernstein notes that: “Although a decade of feminist research and activism has addressed the role of the neoliberal state in criminalizing the survival strategies of poor women of color in particular, the significance of feminism’s own widening embrace of the neoliberal carceral state has only begun to come into focus.” (Bernstein, 2018, p. 43)

Modern carceral feminism constructs sex work as a threat to gender equality, securing privatized income, and the neoliberal family unit. Utilizing the platform of feminism to push punitive legislation mostly caters to women of a particular social strata. This iteration of feminism has fashioned the activist into a sentinel for private interests. The proliferation of pornography and the commercial sex industry have been marked by some feminists as a threat to (usually heterosexual), long-term, amative relationships. Constructing sex work as a threat to secure, traditional relationships and forming laws accordingly, this sect of radical feminism rebrands conservative beliefs about the family unit as women's empowerment.

Analysis of Legislative Models: Structure v Agency

For the purposes of this analysis, legislative models can be subsumed into two camps: Structure and Agency oriented theories. Structural theories behind sex work legislation include various modes of criminalization; driven by an ideology of determinism and limited agency within structural systems. For instance, feminist theory that advocates abolishing prostitution would stem from this emphasis on structural pressures; positing that patriarchal oppression and violence exert enough control that it dilutes a woman's choice to engage in sex work. In contrast, theories of agency give precedence to free will and hold that individual actors can actualize change despite structural limitations. Regarding sex work legislation, this usually entails legalization and decriminalization with the aims of mitigating structural obstacles through stringent policy and labor regulations. The former orientation is comprised of Full Criminalization, partial criminalization, and partial decriminalization.

The latter orientation: Complete decriminalization and legalization. The debate between structure and agency has been a prominent topic in sociology and in discourse concerning sex work; cultural attitudes, stigma, and legislation have reflected a prevailing, structural orientation.

Structure-Oriented Models

Full criminalization is the model most prevalent in North America, Russia, South Africa, and Croatia. Apart from Nevada, sex work is fully criminalized in the United States.

Criminalization is a model of legal recourse characterized by persecuting all parties involved in the solicitation and purchase of sex work. This model of legislation is often supported by a theory of deterrence, the argument that criminal punishment will keep people from buying and selling sex. Consequences for sex workers, pimps, suspected traffickers, and clients are driven by retributive punishment. This has proven ineffective; since the passage of the Mann Act in 1910, sex work has grown into a \$14 billion industry with an estimate of 2 million sex workers in the US alone (Sawicki et al., 2019). The notion that criminalization will mitigate the dangers of sex work or push workers into different labor sectors has long been discredited. Instead, criminalizing sex workers effectively makes it more difficult to leave the industry, and effectively makes for untenable and desperate labor conditions; with the impediment of a criminal record limiting the ability to pursue another career.

In Kenya, South Africa, and New York, simply carrying condoms is sufficient evidence for selling sex and can lead to arrest. Endangering the sexual health of workers by instilling a fear of carrying protection, this is an apt example of how criminalization puts sex workers at further risk. In addition, criminalizing sex workers makes them vulnerable to mistreatment by the state itself. Police officers exploit this vulnerability and leverage the fear of arrest for sexual favors. According to a study by Urban Justice Center “17% of sex workers interviewed in a New York study reported harassment and abuse, including rape, by police” (Urban Justice Center, 2003). While stringent anti-trafficking regulation on the federal level has had far-reaching consequence on sex work, there are variations in penal severity for soliciting and buying sex from state to state. Even at the city level, prosecutors exercise their own discretion in dismissing or trying prostitution cases. In Baltimore and Manhattan, there have been gradual steps towards decriminalizing sex workers. In December of 2021, the Manhattan District Attorney’s Office announced it would stop prosecuting those arrested for prostitution while still prosecuting clients. (Porterfield, 2021) Informally modeling its approach after the Nordic model, this distinction between the criminality of clients and workers is a growing policy trend. The issue inherent in criminalizing one party and not the other is almost intuitive, it destabilizes the status of sex work as a whole and a crash course in economics can point to the interplay of supply and demand. Partial criminalization is the model of legislating sex work in the UK, France, and most prevalent in Central and South America.

This legislative model does not explicitly criminalize sex work but includes caveats to legislation that inhibit and indirectly condemn sex work. In Canada, this entails a de facto form of prohibition through laws that prohibit loitering, “procurement” of clients, and brothel keeping (or “bawdy houses”). (Lewis, 2010) In the UK, a similar policy of de facto prohibition permits prostitution but criminalizes surrounding activities such as soliciting sex publicly and brothel keeping. Selling sex alongside another sex worker in the same location meets the criteria for brothel keeping. This caveat in legislation leaves sex workers to weigh two options: taking the legal risk of working in a brothel or jeopardizing their personal safety by working alone. In some cases, clients leverage the criminality of brothel keeping, coercing or threatening sex workers. In the UK, the English Prostitutes Collective has criticized the government’s regulation of sex work because it has created a de facto system of partial legalization wherein workers still face the dangers of criminalization if they don’t comply with the guidelines for legal work.

In her qualitative study, Billie Lister employed a Participatory Research Action framework to address the “...longer-term ramifications of raids and criminal sanctions on sex workers” (Lister, 2018, p. 25). In 2017, she collaborated with English Prostitute’s Collective to formulate a research design and questions that explored the issues legislation posed for sex workers who worked in brothels and independently at the time.

Noting the contribution of sex workers, “I decided that following their lead with regard to what needed to be addressed was the best strategy. I used participatory Action Research (PAR) as my research design because it can empower sex workers as co-producers of knowledge in research (Lister, 2018, p. 26).”

Employing a sex worker as a project researcher who conducted interviews with a sample population of 10 women, Lister’s research yielded earnest responses to the issue of criminalization.

Speaking on the impact of brothel raids, one participant stated “The police raids make it worse because places close down which are known to be safe and friendly, so we can’t work in them. I know some girls work on the street after that, or they had to move town, and their lives were disrupted. You don’t know if the new place will be okay, and also if you expect the police to come around people are more nervous, the manager puts the prices up, you have to pay more money, the tension goes up.” (Lister, 2018, p.30). Brothel raids and closures in the UK displace sex workers, often compelling workers to find new work in brothels with more exploitative practices and less earning potential. This mode of legislation creates precarious work conditions for sex workers and limits their options. Lister’s study also highlights how criminalization traps women who wanted to engage in sex work temporarily. One participant lamented, “I can’t do what I was doing before...because you’ve got the DBS check so that one night [of the police raid] just changed my life. So now it means I have to work by myself and it also means I can’t do the things I was doing before...what was a part-time sex working gig...has now turned into a full-time sex working gig. Because I can’t do what I want to do.” (Lister, 2018, p. 33). Evey’s interview pinpoints the

counterproductive consequences of criminalization. If the aim is to encourage sex workers to leave the industry, criminalization only limits earning potential of workers once branded with a record.

Since the passage of Sweden's sex purchase criminalization act (sexköpslagen) in 1999, the 'Nordic Model' has become a mainstay of the discourse around sex work legislation. (Levy, 2018, p.1)

Replicated in Ireland, France, and gaining traction in many parts of the global north, the Nordic model represents a prominent position in the debate surrounding sex work legislation. The Nordic model aims to abolish sex work by criminalizing only the client, its unfaltering proponents are neo-abolitionist feminists, who construct sex work as a form of violence against women. This model aims to eliminate the demand for sex work by criminalizing the clients. Of course, this premise acts on several contentious suppositions. One being that heterosexual sex in and of itself constitutes an act of control and subjugation of women by men, with sex work serving as another iteration of violence against women. The dogmatic stance against sex work taken by radical feminism echoes conservative sentiments about sex. This brand of feminist advocacy discounts the voices of sex workers in the very conversations that determine the safety and equity of their work conditions. Furthermore, the assumption that no one can choose sex work of their own volition is patronizing. Discounting the experiences of women who choose to sell sex and effectively pathologizing all men who choose to buy sex, the Nordic model is subsumed under structural orientation.

Aside from its ethical shortcomings, the fatal flaw of the abolitionist model is its consequence on sex workers. To protect clients from prosecution, sex workers are compelled to put themselves in more compromising positions. For the sake of a client's discretion, they may solicit in isolated areas or visit clients without taking personal information.

Agency-Oriented Models

Alternatively, the conditional legalization of sex work in many countries is contingent on registration and compulsory health checks. This approach falls under agency-oriented legislation and aims to mitigate structural violence by implementing stringent regulations. In Germany, prostitution has been legal since the end of World War 2 but its legal status as a legitimate service was established in 2002. This legislation enabled sex workers to enroll in state-funded health insurance and benefit from social services. Pensions and unemployment benefits were ensured to promote labor rights for sex workers on par with other industries. Since the passage of Germany's 2017 Prostitution Protection Act, sex workers have been required to register with authorities to work or face fines and criminalization. Critics have identified the drawbacks of this approach by noting that licensing and approved venues are not accessible to all workers, acknowledging how regulating access to legal working status fosters inequality in the industry.

Pursuing this route entails a rigorous and expensive process, leaving rich, well-connected brothels or financially advantaged workers with access to legitimate status. This has resulted in a two-tiered system, often referred to as backdoor

criminalization, where part of the industry operates above board while a greater portion still must navigate the risks of working illegally. To mitigate structural obstacles and promote agency, stringent regulation has reproduced some of the restrictions and limitations on workers found in other models. Overregulation displaces agency from workers to bureaucratic bodies. Much like full criminalization, this endangers sex workers' health and safety by pushing part of the commercial sex market into the shadows. Independent sex workers who cannot afford to pursue the registration process

or workers apprehended without registration papers on hand are still left to navigate the risks of engaging in illicit work. There have also been attempts to apply restorative justice practices to sex work legislation with disappointing results. In Canada, a restorative justice approach to prosecuting clients offers lenient sentencing for participants if they participate in treatment and diversion programs. This approach has its drawbacks. In an almost comical imitation of counter-reformation confessions, defendants are sent to a community hearing to hear how their purchase of sex has been detrimental to the community.

As sex work-related RJ-D programs have a community-as-victim orientation, the community is often involved in some way in these programs, typically through a form of community conferencing. This component of the program provides members of the community with a forum for publicly airing or venting their feelings about what they perceive to be the negative effects of the industry (including those who work in and use it) on the surrounding community. The public moralizing/shaming/condemning aspect of prostitution

RJ-D programs, resulting in part from such community conferencing, is meant to help clients. (Lewis, 2010, p. 290).

In the wake of these public shame-fests, one must wonder if we've really come so far from Victorian-era ideas about sex. Although this application of restorative justice to sex work legislation is a far cry from the aspirations of restorative justice, it lays the groundwork for alternative interventions for sex workers. The concept of harm reduction, integral to restorative justice practice, could be directed at sex workers who would like to leave the industry of their own volition. Through offering resources for those who would like to leave sex work instead of shaming clients and workers, restorative justice might be employed in targeting systemic barriers instead of punishing clients and workers.

Model for Policy Reform and Participatory Action Research

On the issue of trafficking, a more effective legislative approach to support victims wanting to escape trafficking would center on the removal of prostitution laws from the criminal code and providing conviction relief for trafficking survivors. 90% of trafficking survivors have been arrested at some point, a concerning statistic given that a criminal record makes it less likely that they can leave sex work and go into another field of work. (Lauren, 2023, p. 8) To make matters worse, traffickers are more likely to target marginalized communities and a criminal record makes women more vulnerable to exploitation. In Kristina Lauren's "Case for Expanding Vacatur and Decriminalizing Sex Work in response to Human Trafficking in Virginia and the United States", she asserts that "Criminalizing sex workers turns them into targets who have already been exploited by the criminal justice system" (Lauren,

2023). In her thesis, she denotes the dangers of weaponizing criminal justice against marginalized groups and makes a case for conviction relief.

Perhaps a sensible approach to engendering sex work related policy reform would involve a pragmatic analysis of what legalization entails for sex workers, an effort to recognize and deconstruct the systems of exploitation that render sex work dangerous, and an exploration of what the ideal model for decriminalization looks like in the eyes of sex workers. Billie Lister's Participation Action Research included suggestions from sex workers in terms of legislation they would like to see:

Sex workers argued that the current criminalization agenda was problematic and made suggestions regarding what they thought needed to occur for them to be able to work freely and safely. This begins with decriminalization and the formation of sex-work specific policies. The sex workers who participated in the study argued that the only option to offer safety is the complete decriminalization of prostitution (Lister, 2018, p. 34).

Lister also emphasized that “decriminalization alone is insufficient. Our study found that sex workers did not support any changes to the employer-based relationship – they preferred to be self-contracted workers. Legal independents argued they should be permitted to obtain the same rights as other self-contracted workers given they were tax-payers” (Lister, 2018, p. 35).

Of the few countries that serve as a prototype for decriminalization, there's a lot to be learned from New Zealand's 2003 Prostitution Reform Act. The Act dissolved the criminal status of both buying and selling sex but in an important distinction from other models of legalization, does not require the stringent registration process of sex workers. Most importantly, the law was formulated in collaboration with the New Zealand Prostitutes Collective. An encouraging step in the direction of legislation that considers the needs of sex workers, the PRA has provisions to "safeguard the human rights of sex workers and protect them from exploitation, promote the welfare and occupational health and safety of sex workers, and prohibit the use in prostitution of persons under 18 years of age." (New Zealand Ministry of Justice, 2003)

Despite the lofty aspirations of decriminalizing commercial sex in New Zealand, the 2003 Prostitution Reform Act still had shortcomings in the brothel sector. Complete decriminalization without extensive labor regulation has proven to fall short of protecting sex workers from brothel owners and enabled exploitative practices. Sex workers in New Zealand brothels reported continued exploitation by brothel owners (or bizimps) who imposed unfair management practices before the passage of the PRA. With their recent legal status, unscrupulous brothel owners were empowered to impose fines, bonds, and extraneous fees on sex workers. (New Zealand Prostitution Law Review Committee, 2008, p. 153) On the other hand, self-contracted workers report satisfaction with the results of the PRA. This report published five years after the passage of the PRA highlights the positive impact decriminalization can have and paves the way for policy reform in other countries.

Decriminalization has meant that sex workers and their clients no longer have to be as clandestine about their activities. This means negotiations can take place at a less hurried pace, and maybe within sight of other workers and members of the public. The Committee was told that street-based workers are now seen during daylight hours as well as after dark, that they work in better lit areas, and are more ‘up-front’ about working. Street based workers reported that it is now easier to refuse a client – 61.9% of street-based workers in the CSOM study reported that it was now easier to refuse... a client. (New Zealand Prostitution Law Review Committee, 2008, p. 121)

In a report commissioned by the New Zealand Ministry of Justice, a review of the PRA 2003 put together by a committee of public health officials, sex workers, academics, social workers, city council members, and criminologists aimed to evaluate the results of the PRA three years after its passage and address shortcomings in the brothel sector. The Prostitution Law Review Committee found high uses of condoms throughout the industry since the law was passed. Additionally, upon surveying prostitutes, the committee found that 90% of sex workers felt the PRA protected their legal rights, over 60% of sex workers felt that they were able to refuse to provide sexual services since the passage of the PRA.” New Zealand Prostitution Law Review Committee, 2008, p.14) However, there were several recommendations made to remedy the issue of exploitation in brothels. In assessing the brothel operator certification system, the report mentions that lack of regular inspections leaves a gap in workers’ protection. (Although all brothels must be certified, the Ministry of Justice has no role in enforcing or monitoring operator certificates once issued. (New

Zealand Prostitution Law Review Committee, 2008, p.) The committee recommended inspections through the Department of Labor and continued inspections through the Ministry of Health, as well as informing brothel operators of their responsibilities regarding occupational health, safety, and safer sex practices. (New Zealand Prostitution Law Review Committee, 2008, p. 95, 96 & 160) The committee also identified best practices for those who want to exit the industry, recommending a collaboration of social services, education initiatives, etc. for those who chose to leave.

Illustrative Example of Empirical Analysis

To collect qualitative data and gauge the consensus of sex workers, I compiled secondhand research interviews, extrapolated findings from the Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, first-person narration from an anthology of sex worker's short stories, and participatory action research findings from a secondary source. To compare different legislative models and weigh consequences of different approaches, I reviewed journals, articles, and books on sex work related legislation and weighed prominent critiques of several legislative models. To gauge how sex workers regarded disparate policies, I referenced interviews with sex workers and participatory action research. I reviewed the recommendations for legislation going forward from PAR research findings and the New Zealand Committees' law review (made in collaboration with the New Zealand Prostitute Collective). Integrating critiques of various legislative models and compiling information regarding safety, health, and legal repercussions for sex workers in various jurisdictions, xI was able to form a comprehensive overview of the current debate on reforming sex work and interject my perspective

on how to include sex workers in legal discourse going forward. The prevailing theme in much of my research was the importance of implementing labor protections for sex work that mirror other labor sectors with additional regulations and safety inspections to address the risks particular to sex work. In addition to decriminalization, labor rights were a recurring suggestion from the English Prostitute's Collective and the New Zealand PRA review committee. Central to this recommendation is the recognition of sex work as work, deserving of the same protections as other labor sectors. Decriminalization in conjunction with labor regulations work wo-fold to protect sex workers by affording safer labor conditions and mitigating the stigma that accompanies the illegitimate status of sex work. In addition, decriminalization encourages sex workers to seek legal recourse if they experience exploitative conditions or assault. Regarding trafficking, this means that victims can reach out for help without fear of recrimination. In the review of the PRA 2003, the New Zealand committee reached several recommendations along these lines. The committee compiled several conclusions and suggestions: frequent brothel inspections, protections for self-contracted workers, and inspections through public health programs. The committee surmised that "one of the consequences of decriminalization has been the illumination of the workings of an industry which have historically been hidden." (New Zealand Prostitution Law Review Committee, 2008). Through demystifying the workings of the sex industry and encouraging sex workers' collaboration with legislators, conditions can improve.

In recognition of how social attitudes shape legislation, the inclusion of sex workers in public initiatives could begin to shift the perspective of legislative discourse. Acknowledging the

opportunity for exploitation inherent in almost any labor sector, the foci of sex work legislation should include labor protection. Going forward, a model for implementing reforms in other countries would include consulting participatory action research and collaborating with groups like the New Zealand Prostitute Collective in formulating policy as mentioned before, overzealous and stringent legislation can impinge on workers' agency so labor regulations should be implemented cautiously and as needed. Applying a critical lens to anti-trafficking discourse and the appropriation of sexual politics, as well as deferring to the suggestions of sex workers would yield safer policies for sex workers. A review of current literature on legal reform for sex work yielded several promising solutions. Lauren's case for expanding vacatur offers a vital solution for trafficking victims inclined to leave the industry by expunging criminal records and removing criminal penalties. Canada's attempts to implement restorative justice practices to address sex work, although misguided, offer valuable insight into the potential for restorative justice programs to offer social support to those who may want to leave the sex industry of their own volition. If legal measures must be employed, they can be used to support victims without criminalizing consenting adults.

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