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## The Work of Sex Work: Legislative Failures, Societal Prejudices, and their Disparate Outcomes in the Fight for Sex Workers' Rights

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The Work of Sex Work:  
Legislative Failures, Societal Prejudices,  
and their Disparate Outcomes in the Fight for Sex Workers' Rights

Senior Project Submitted to  
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by  
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## Introduction

Sex trafficking is a multibillion-dollar industry, which preys largely on young, vulnerable women. It has been described by the UN Office on Crime and Drugs as the world's fastest-growing international organized crime.<sup>1</sup> The US Department of Homeland Security defines sex trafficking as modern-day slavery which “involves the use of force, fraud, or coercion to obtain some type of commercial sex act.”<sup>2</sup> These commercial sex acts include, traditional forms of sex work, pornography, or any sex act in exchange for money, drugs, or other items of value.<sup>3</sup> The International Labor Organization defines a victim of sex trafficking as a person who “involuntarily entered a form of commercial sexual exploitation,” or a person who entered the sex industry voluntarily at first, but can no longer leave due to exploitation by an abusive manager, or pimp.<sup>4</sup>

As is the case for all organized crime, accurate statistics on sex trafficking are difficult to assess because operations are conducted in secret. Even women liberated from the sex trade are often afraid to come forward with their experiences. Understandably, they fear retaliation from their former pimps, and punishment by law enforcement in countries with policies of criminalization. The International Labor Organization has estimated that between 700,000 and 2 million women and children are trafficked across international borders each year for an overall annual profit of \$12-\$17 billion.<sup>5</sup> Though the victims can be anyone — man, woman, or child —

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<sup>1</sup> Moorehead, Caroline. “Women and Children For Sale.” *New York Review of Books*, 11 Oct. 2007. Pp. 3.

<sup>2</sup> “What Is Human Trafficking?” *Department of Homeland Security*, 21 Nov. 2016.

<sup>3</sup> *Ibid.*

<sup>4</sup> International Labour Organization. *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. Geneva, International Labour Organization, 2017. Pg. 39

<sup>5</sup> Moorehead 3.

the majority are consistently women. In 2016, the organization conducted a study in sexual exploitation which revealed that ninety-nine percent of victims were female. Trafficking is a highly lucrative business; traffickers are estimated to earn nearly \$250,000 for each enslaved woman through the exploitation of her sexual labor.<sup>6</sup>

Traffickers tend to be well versed in international crime, often as part of drug and arms deals as well as trafficking.<sup>7</sup> They smuggle women from all around the world over international borders to countries where demand for sex workers is higher; much of the time their destination is a country with less restrictive sex work laws. According to the United Nations, there are currently one hundred twenty-seven “source countries” where traffickers abduct large numbers of women and force them into trafficking rings, mainly in Asia and Eastern Europe, and one hundred thirty-seven “destination countries” where the victims are likely to end their journey.<sup>8</sup> Traffickers employ typical abusive tactics; victims are isolated and controlled through various emotional and physical techniques. Often drug and alcohol dependency are used as the catalyst for cementing control over the victim, in other cases the trafficker will trick and terrorize them into submission. The cruel tactics employed by traffickers mirror those in other forms of modern-day slavery such as forced physical labor.

The first chapter will examine the traffic in women historically, and several of the proposed frameworks for understanding modern-day sex slavery. The traffic in women has been observed throughout history, and is strongly rooted in patriarchal systems which have positioned women as subordinate to men. Historically, ideas of kinship have shaped the relationships

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<sup>6</sup> Moorehead. Pp.3.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.



between men and women through marriage structures. Daughters and wives have been used as gifts of exchange between men, for the social and economic advancement of their fathers and husbands. In this system, women are not given the ability to take ownership of their own body and are stripped of their agency. Social constructions of marriage as ownership have evolved into the sex slavery we see today. Trafficking is a lasting problem in the world which must be addressed to ensure the rights and freedom of vulnerable populations. Far too often, however, attempts to improve conditions for trafficking victims have led to policies which abridge the rights of sex workers. This failure of legislation leaves people in the sex industry, whether they are working voluntarily or not, susceptible to the very abuse that they meant to be protected from.

Activists in favor of sex workers' rights have long demanded the recognition of sex work as a profession in an attempt to improve the conditions under which sex workers operate, while also empowering women to take ownership of their body and embrace their sexuality. The term 'sex work' was invented to counter the harmful rhetoric which surrounds sex workers as a result of their chosen work. It specifically aims to reframe work traditionally referred to as 'prostitution' — a word which has been used historically as an insult to women — in a way which is dignified rather than degrading. It seeks to take control over the language employed by the public in order to more effectively advocate for the rights of sex workers. The term sex work is inherently political in this way because it takes the position that sex work is, in fact, work and is therefore rejected by those who disagree with that statement.

I stand firm in my belief that sex work is work and should be recognized as such for the safety of all sex workers. In framing sex work as work we can effectively advocate for the labor

rights of sex workers while protecting trafficking victims, who are having their labor exploited rather than ‘working’ in a traditional sense. For this reason, and others which will be explained, ‘sex work’ will be the term used in this project. Although the category of sex work covers, by design, a vast array of jobs within the sex industry — including, but not limited to, stripping, pornography, phone-sex chatlines, and BDSM work — sex work in this paper will be used primarily to refer to work traditionally known as ‘prostitution’. Unfortunately, most of the current literature on the topic of sex work — including the laws which will be referenced — does use the dated terms for sex work. Therefore, use of the word will be limited to quotes.

The second chapter will examine the different models which have been proposed and implemented by countries across the world to pass legislation on sex work. These models include total criminalization, total legalization, and the decriminalization of sex work but criminalization of the buying of sexual services and pimping of women, known as the Nordic model. Not one of the models is perfect by any means, each presents its own struggles. Legalization policies, in perfect world, would provide better working conditions for sex workers while also reducing demand for services delivered by trafficked women. The goal of legalization is to substitute services supplied by trafficked women with those offered by newly legitimized voluntary workers. However, as has been observed by researchers in Germany, after the passage of their current sex work legislation, a scale effect exists which has led to the expansion of sex trafficking rings in the country. The Nordic model attempts to solve the problem presented by the total legalization model by decriminalizing the act of selling sexual services but criminalizing managing a sex worker, and purchasing sexual services. It has been criticised because it operates under the assumption that sex work is inherently damaging to women. The model does not afford

sex workers the rights and protections that they require to work safely because, under the Nordic model, sex workers must still work in secret and hide from law enforcement. As has been observed time and time again, any policies of criminalization endanger the safety of sex workers and make them more susceptible to abuse.

The criminalization of sex work creates an adversarial relationship between sex workers and law enforcement. Sex workers, as a result of criminalization policies, report harassment and abuse not only at the hands of clients and managers, but also at the hands of the police. The institutional mentality that sex workers must be apprehended and punished feeds the social stigma against sex workers and endangers all those in the sex industry. For this reason, the model which poses the most threat to sex workers is criminalization. Throughout the course of this project, I do not suggest that I can solve the issues which sex workers face on a daily basis. I simply hope to highlight the issues presented by criminalization policies and advocate for the rights of all sex workers through an end to criminalization.

## Sex Workers: The Unacknowledged Laborers

### Theory, Framework & Naming

#### I. Theory

The traffic in women has a long, complicated history rooted in global patriarchal systems and the subordination of women since the earliest recorded human social formations. Gayle Rubin traces the history of the oppression of women in her article, “The Traffic in Women: Notes on the Political Economy of Sex.”<sup>9</sup> She focuses on the idea of kinship, and men’s rights in women throughout her work to outline this history. Kinship refers not to a biological relationship, but to relationships stemming from marriage. In this relationship, women are used as gifts of exchange between men, for the benefit of men. However, women, as a result of their oppression, do not have any means to reap such benefits for themselves. This gift exchange occurs through marriage, as women are given by their fathers and received by their husbands with no sense of autonomy. It limits women’s role in society to the service of men, rather than allowing women rights in themselves. This work by Rubin echoes that of Gerda Lerner in her book, *The Creation of the Patriarchy*. Lerner explains, “kinship structured social relations in such a way that women were exchanged in marriage and men had certain rights in women, which women did not have in men.”<sup>10</sup> Women’s sexuality and reproductive potential are commodified; therefore, women are considered to have less autonomy than men. Gender and marriage are socially constructed to subordinate women in this way, and therefore, reduce women and girls to the status of wives, mothers, and daughters. Through marriage, women are used for social

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<sup>9</sup> Rubin, Gayle. “The Traffic in Women: Notes on the Political Economy of Sex,” pp. 157-183

<sup>10</sup> Lerner, Gerda. *The Creation of Patriarchy*. New York, Oxford UP, 1986. pp. 77.

advancement and monetary gain and stripped of agency. This construction of marriage as ownership translates into the sex slavery we see in society today with the pimp and buyer taking the place of the father and husband within the system.

## II. Framework

In her book, *Rethinking Trafficking in Women: Politics Out of Security*, Claudia Aradau examines modern-day sex trafficking through several proposed frameworks. She divides the arguments posed by governments, theorists, advocates, and NGOs into four dominant representations of trafficking in popular discourse. These include trafficking as a problem of migration, organized crime, prostitution, or human rights abuses. She also outlines the arguments of those on both sides of the sex work as labour versus sex work as exploitation debate. Through her analysis, Aradau finds that these frameworks all fail to adequately address the issue of trafficking as a security problem, a framework which she believes to be most effective in understanding the broad scope of issues surrounding trafficking and then using that understanding to address trafficking as a global rights issue.

Aradau begins by outlining trafficking as a problem of migration, a framework that has been employed most notably by the European Council which, in 1999, promised “to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants.”<sup>11</sup> A resulting 2002 proposal from the European Union outlines how member countries should coax victims of trafficking into cooperating with anti-trafficking agencies by creating a “special residence arrangement” for them. This

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<sup>11</sup> European Commission. "Combating Illegal Immigration and Trafficking in Human Beings: Commission's Proposal for a Residence Permit for Victims Who Cooperate with the Authorities." European Commission, 12 Feb. 2002, [ec.europa.eu/commission/presscorner/detail/sk/IP\\_02\\_224](https://ec.europa.eu/commission/presscorner/detail/sk/IP_02_224). Accessed 6 Apr. 2020.

arrangement is meant to encourage victims to come forward with information without fear of deportation. The proposal makes clear that a victim must first fulfill all requirements — the presence of the victim must serve a useful purpose, the victim must demonstrate a clear intention to cooperate and must sever all links with the presumed criminals — before they are considered for this residence agreement.<sup>12</sup> Policies such as this position trafficking as inseparable from migration (specifically so called “illegal” immigration), but fail to protect those trafficked within their home country and sex workers who are not victims of trafficking but who are undocumented immigrants. Aradau explains that “almost all definitions of trafficking include the element of ‘movement across borders,’” continuing that even when writers and policymakers note the existence of intra-border trafficking, “it is considered a rather sporadic form of trafficking, which has not challenged the dominant understanding of trafficking as an international problem of managing migration.”<sup>13</sup> It is in the failure to consider and protect all sex workers, voluntary or involuntary, local or foreign born, that the “trafficking as a problem of migration” framework falls short in its scope and therefore its ability to effect change.

A further consequence of framing trafficking as a problem of migration is that it contributes to the vilification of the undocumented and of immigration in general. The current political climate in the United States, specifically as it has been shaped by discourse surrounding immigration, demonstrates a clear example of how anti-trafficking rhetoric can be appropriated as anti-immigration rhetoric. Just days after his inauguration, on January 25, 2017, US president, Donald Trump issued an executive order outlining “Border Security and Immigration

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<sup>12</sup> Ibid.

<sup>13</sup> Aradau, Claudia. *Rethinking Trafficking in Women; Politics out of Security*. Basingstoke, Palgrave Macmillan, 2008. Pp. 22.

Enforcement Improvements” under his administration. The stated purpose of the executive order was to “direct executive departments and agencies to deploy all lawful means to secure the Nation’s southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely,” stressing that border security is of the utmost importance to the Trump administration while scapegoating immigrants, specifically those from Latin America. It implicitly marked them as the source of drugs and crime in the United States, despite overwhelming evidence to the contrary.<sup>14</sup> In accordance with his campaign promise, President Trump’s executive order on border security calls for “the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.”<sup>15</sup> It calls for the United States government to “identify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the southern border.”<sup>16</sup>

In January of 2019, when congress refused to allocate the funds required for the construction of this wall in the appropriations bill for the 2019 fiscal year, the president would not approve the bill resulting in a government shutdown. In an address to the American public during the course of the shutdown President Trump asserted the importance of border security by claiming it as a form of humanitarian aid for trafficking victims. He insisted that the “plan also includes desperately needed humanitarian assistance for those being exploited and abused by

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<sup>14</sup>Trump, Donald J. “Executive Order: Border Security and Immigration Enforcement Improvements.” The White House, 25 Jan. 2017, [www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/](http://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/)

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

coyotes, smugglers, and the dangerous journey north.”<sup>17</sup> He continued by painting a picture of this abuse saying, “Women are tied up. They’re bound. Duct tape put around their faces, around their mouths. In many cases, they can’t even breathe. They’re put in the backs of cars or vans or trucks,” and brought across the border.<sup>18</sup> Through his statements, Trump appropriates the language of anti-trafficking advocates to validate his racist, xenophobic policies, exposing the flaws in rhetoric which positions trafficking as a problem of migration; the framework can easily be twisted to disallow all immigration and vilify immigrants. This is explained by Aradau at the end of her analysis of migration. She writes that “vectoring human trafficking through migration leads to the interpretation of trafficking as illegal migration with a surplus, that is, the exploitative trafficker,” the trafficker is understood in this model as an evil foreigner, making repressive policies targeted at traffickers possible, while ignoring traffickers who operate within their own borders.<sup>19</sup>

Aradau outlines the framework of human trafficking as a problem of organized crime as having similar issues to the framework of migration because smuggling people across borders illegally is an organized crime and thus, the two frameworks are inherently linked. Therefore, the rhetoric employed by both sides is much the same. Both, Aradau argues, involve the drawing of boundaries (borders) and rely on keeping out and punishing a foreign criminal as their method of enforcement. Aradau claims that the organized crime framework becomes more problematic when “more than just a form of organized crime, human trafficking is often simply integrated in

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<sup>17</sup> Trump, Donald. "Remarks by President Trump on the Government Shutdown." The White House, 25 Jan. 2019, [www.whitehouse.gov/briefings-statements/remarks-president-trump-government-shutdown/](http://www.whitehouse.gov/briefings-statements/remarks-president-trump-government-shutdown/). Accessed 4 Mar. 2020.

<sup>18</sup> Ibid.

<sup>19</sup> Aradau 25.



the looser category of crime.”<sup>20</sup> Pointing to the statement by an abolitionist, Donna Hughes, “without recruiters, traffickers and pimps, trafficking in women would not exist,” Aradau shows the weakness of the argument that human trafficking is a problem of organized crime.<sup>21</sup> In Hughes’ view, human trafficking can only exist and be explained in relation to crime, positioning all those involved as criminal. Aradau writes, “organized crime is already located in a securitized discourse which vectors human trafficking and establishes a logic of suspicion for trafficked women. Trafficked women are continually suspected of not being genuine victims, of taking advantage of the system or, even worse, of being involved themselves in these networks.”<sup>22</sup> It is by criminalizing victims in the eyes of authorities and the public that the trafficking as organized crime framework fails to protect trafficking victims. The framework also labels all sex workers, even those working voluntarily and legally as criminal.

Aradau next analyses the “trafficking as a problem of prostitution” framework, explaining that sex trafficking and sex work have historically been linked. In 1949, the UN Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others equated sex work and sex trafficking by referring to “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution.”<sup>23</sup> It continued by asserting that both “are incompatible with the dignity and worth of human persons and endanger the welfare of the individual, the family and the community.”<sup>24</sup> The belief that sex work is inherently damaging and linked to sex trafficking has been echoed by anti-sex work feminist activists for decades.

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<sup>20</sup> Aradau 28.

<sup>21</sup> Ibid.

<sup>22</sup> Aradau 29

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

Feminism is split on the issue of sex work and whether agency can ever exist when selling sexual services. Aradau reduces the two positions on sex work to “prostitution as sexual slavery versus prostitution as labour,” explaining that the former approach operates under the assumption that sex work is, without question, abusive of women, while the latter allows for the possibility that there exists a choice to become a sex worker.<sup>25</sup>

Those who subscribe to the “prostitution as sex slavery” argument, claim sex work as a social evil. Therefore, they argue, “‘trafficking’ should include all forms of recruitment and transportation for prostitution, regardless of whether any force or deception took place.”<sup>26</sup> Deeming sex work as “a degradation that no normal woman would consider,” as these activists do, leaves no possibility that it may be chosen. In this argument, Aradau explains, “prostitution can only be the result of some sort of coercion and violence.” In this scenario violence is not only understood in the traditional sense, as direct physical assault; it is also experienced in the social and economic structures in which women live as a result of patriarchal standards. This position is criticized because it denies the agency of women. It claims to respect women while not allowing them a choice in their profession because the proponents have not or would not make the same decision. More problematic still, the “prostitution as sex slavery” argument strips rights away from sex workers through policies of criminalization, leading to unsafe working environments for sex workers by taking away all legal protections for sex workers and trafficking victims.

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<sup>25</sup> Aradau 30

<sup>26</sup> Ibid.

Those who believe that sex work is work make a distinction between sex work and trafficking. In disconnecting sex work from trafficking, activists are able to advocate for protections for sex workers separately from advocacy for an end to trafficking. It is argued that anti-trafficking measures proposed by those who believe that sex work is sex slavery, do not protect the rights of women as a whole, and have negative effects on sex workers working conditions and limit their access to rights. Aradau highlights a quote from the sex workers' rights organization, Network of Sex Work Projects, "anti-trafficking measures have been more concerned with protecting women's 'purity' than with ensuring the human rights of those in the sex industry," explaining that "this approach limits the protection afforded by these instruments to those who can prove that they did not consent to work in the sex industry," and criminalizes women who have voluntarily turned to sex work.<sup>27</sup> It is, therefore, argued that until sex workers' rights are fully recognized, anti-trafficking measures are also anti-sex work measures. The obsession with women's purity, through virginity and repressed sexuality, is a direct product of the patriarchal obsession with treating women as fragile and incapable of making decisions about their body. The rhetoric of "forced prostitution" however, creates two categories of women in the sex industry for those opposed to decriminalization, the innocent victims seen as eligible for human rights protection, and the "dirty whores" who chose sex work and are to be policed and punished as such. This mindset only further endangers sex workers.

The "human trafficking as a problem of prostitution" framework, Aradau argues, is ineffective as it fails to protect both victims of trafficking and sex workers in general. The framework creates a conundrum wherein the same policing necessary to rescue trafficking

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<sup>27</sup> Aradau 31

victims, victimizes sex workers. These interventions, therefore, do not give the security that is required to successfully address trafficking as a global rights issue and to reduce sex trafficking rates. The “human trafficking as a problem of prostitution” framework is also complicated when put in conversation with migration. There exist undocumented sex workers who are insecure as a result of their work status and their immigration status. Aradau explains that “these women continually fall out of the representation of trafficking.”<sup>28</sup> They are not victims of trafficking, because victims of trafficking must either be “unwilling, forced prostitutes or unwilling, forced migrants;” however, they are often misidentified as such.<sup>29</sup> This misidentification leads to deportations guised as humanitarian efforts to return enslaved women home, free of their captors. Undocumented migrant sex workers are also not protected as workers under the argument that sex work is work “as the status of ‘work’ is linked with clear conditions of residence and citizenship.”<sup>30</sup> Aradau concludes that “illegal migrant sex workers simply are not,” within any of the proposed frameworks as result of their lack of security. The undocumented are left invisible and unacknowledged through the lack of protections they are offered.

Framing human trafficking as a human rights issue — while seen by some as a way to provide a more ethical representation of trafficking — is inherently damaging according to Aradau. She argues that human rights approaches to addressing sex trafficking “take up a rhetoric of danger and representations of threat that actually render them incapable of providing an alternative strategy of security.”<sup>31</sup> The “human trafficking as a problem of human rights abuses” framework, Aradau argues, presents a “one-dimensional image of the trafficking victim

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<sup>28</sup> Aradau 10

<sup>29</sup> *ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Aradau 8

as a suffering individual” and, therefore, relies on emotional responses to cries of distress from trafficking victims.<sup>32</sup> Human rights approaches focus not on the categories a woman falls into — whether they are a migrant, a sex worker, or a criminal — but on their humanity and call for an end to their suffering by ensuring that their human rights are respected. Far too often, however, human rights activists have neglected the rights of sex workers in their calls for an end to sex trafficking. Within a human rights framework, the rights of one category of person are assessed against the rights of another. In the case of sex trafficking and sex work, the human rights of both categories of people are seen as being at odds with each other. It is in this comparison that the human rights framework fails as it does not guarantee security for all those in the sex industry, just the group seen to be suffering more.

Politics out of security arises as a solution to the failures of previous frameworks for understanding and tackling the issue of sex trafficking. Aradau explains that this framework begins from the standpoint that those underrepresented in the other frameworks, the undocumented immigrant sex worker, must have a voice in advocacy to ensure their security as well as the security of other sex workers and of trafficking victims. She suggests that security out of politics “takes place through the collective mobilization of workers addressed under the universal and egalitarian predicate of work,” and thus, it is free from the bureaucratic struggles over definitions and interventions which exist in the previous frameworks.<sup>33</sup> Work, she believes, “reframes the situation of trafficking without excluding either illegal migrants or victims of trafficking.”<sup>34</sup> It does, however, separate their different struggles. The trafficking victim is not

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<sup>32</sup> Aradau 34

<sup>33</sup> Aradau 10

<sup>34</sup> Aradau 191

“working” they are having their labor exploited, while the undocumented migrant sex worker and other sex workers are not having their work recognized. As a result of the refusal to recognize sex work as work, sex workers cannot collect benefits or unemployment in times of economic hardship, benefits that would improve their security. Through the framing of sex trafficking and sex work as work struggles, Aradau advocates for the rights of sex workers and the recognition of their labor.

### III. Naming

The debate about whether or not sex work can or should be considered work like any other profession is ongoing. However, looking at the history of the term can shine some light on the importance of language in the fight for sex workers rights. The term sex work was coined in 1979 by sex worker and activist Carol Leigh, also known as the Scarlet Harlot. She explains why she began using the term in her essay “Inventing Sex Work.” She recalls attending a conference in San Francisco hosted by Women Against Violence in Pornography and Media planning to be the voice of sex workers in the space, a group she thought to be underrepresented in conferences such as this. Upon arriving at the workshop on sex work, she noted that the title of the workshop included the phrase “Sex Use Industry,” a term which clearly objectifies women in the industry, stripping them of their role as an actor in a transaction and claiming instead that they are being used by their clients. This type of language reduces the role of the sex worker. It creates the image of a sort of doll to be ejaculated into, rather than that of a woman providing a service to her clients. To counter this image, she suggested that the title be changed to the “Sex Work

Industry,’ because that described what women did,” explaining that “men used the services, and the women provided them,” they, therefore, did the work in the encounter.<sup>35</sup>

Leigh asserts the importance of the invention of the term “sex work” in a world which is blind to the labor that goes into selling sexual services. For Leigh, the usage of the term “marks the beginning of a movement” by acknowledging the work sex workers do rather than defining them by perceptions of status based on their work.<sup>36</sup> She writes that earlier words used to define sex workers “contain the history of centuries of slurs. Some feminists used slurs against us such as whore, and the censure of pornography as a weapon against the contemporary sex trade.”<sup>37</sup> She continues by denouncing the use of the word ‘prostitute’ when referencing sex workers because “‘prostitute’ is yet another euphemism, like lady of the night, hooker, filles de joie,” all terms which are degrading to women.<sup>38</sup> Further problematic for Leigh, “‘prostitute’ does not refer to the business of selling sexual services,” it gives no acknowledgement to the work, and the business savvy that goes into selling sex.<sup>39</sup>

A ‘prostitute’ is defined as a person who puts themselves or their talents “to an unworthy or corrupt use for personal or financial gain,” and as synonymous with ‘dishonor’ by the Oxford English Dictionary.<sup>40</sup> This definition refers to an aged understanding of the word — whereas today it is widely understood as a person, in particular a woman, who “engages in sexual activity for payment” — regardless, it clearly demonstrates the problem with referring to sex workers as

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<sup>35</sup> Leigh, Carol. "Inventing Sex Work." *Whores and Other Feminists*, by Jill Nagle, New York, Routledge, 1997, pp. 230.

<sup>36</sup> Ibid.

<sup>37</sup> Leigh. 229.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> "prostitute, v." *OED Online*, Oxford University Press, March 2020, [www.oed.com/view/Entry/153083](http://www.oed.com/view/Entry/153083). Accessed 26 April 2020.

such.<sup>41</sup> There is an inherent and undeniable negative connotation to the word ‘prostitute,’ it villifies sex workers and does not allow for the possibility that sex work is a valid profession. Before the word ‘prostitute’ was established as the official word for someone who sells sexual services, terms such as ‘whore,’ ‘strumpet,’ ‘harlot,’ or ‘common woman’ were used interchangeably. These words are largely understood today as offensive and degrading to women. Though none of these terms have ever been directly linked to the profession in the way ‘prostitute’ has, they are all pejoratively used to attack and degrade women’s sexuality and have therefore seen a sharp decline in usage. So too should the term ‘prostitute’ be limited in usage. The duality of the word ‘prostitute’ as an insult and the title of a profession is deeply problematic as it contributes to the degradation of sex workers. For this reason, ‘sex worker’ is the term preferred by a large portion of the workers themselves and is, therefore, the term that will be utilized in this paper.

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<sup>41</sup> Ibid.



## Sex Workers: The Unprotected Laborers

### Legislation & Policing

It was once the belief of many governments and organizations that if sex work were legalized, newly legitimized brothels would not want to jeopardize their business by employing trafficked women and, thus, the demand for enslaved sex workers would decrease. This theory is called the substitution effect. The substitution effect was examined in a study conducted by three European researchers — Seo-Young Cho, Axel Dreher, and Eric Neumayer — on the effectiveness of different countries' sex work laws.<sup>42</sup> They compiled data from 150 countries, and found overwhelming evidence that where sex work is legal, trafficking rates increase rapidly.<sup>43</sup> This phenomenon can be explained by the scale effect, which states that legalized sex work leads to an expansion of the market for sex workers, therefore, increasing human trafficking.<sup>44</sup> On average, countries where sex work is legal experience larger reported human trafficking inflows, this is the case in countries with legalized sex work regardless of how the laws were written; whether they legalize pimping or not.<sup>45</sup> However, in cases where pimping is criminalized, there are undoubtedly fewer cases of exploitation.

#### I. Germany — Total Legalization Model

Germany, following the passage of their current sex work legislation, exhibits the scale effect. In 2001, German parliament passed a law intended to improve working conditions for sex

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<sup>42</sup> Cho, Seo-Young, et al. "Does Legalized Prostitution Increase Human Trafficking?" *World Development*, vol. 41, pp. 67–82.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

workers. Under the new law, sex workers can conduct their work autonomously in the same way that people in other professions do. They are now able to sue for their wages and collect unemployment in times of financial hardship.<sup>46</sup> The goal of the legislation was to make sex work a more valid profession that is accepted by the masses instead of punished; an important cause. When the sex work law was enacted, the language used to convict sex workers and their pimps was amended. This amendment, while effective in legalizing sex work, furthered the problem by making convictions of abusive pimps more difficult to attain. The term "promotion of prostitution," once a criminal offence, was replaced with "exploitation of prostitutes," this simple specification made the procurement of a sex worker only punishable when it is exploitative.<sup>47</sup> Though the purpose of the law was to take the stigma away from sex work and make conditions better for sex workers, it actually resulted in a rise in trafficking rates and made it more difficult for traffickers to be prosecuted. This is because conditions of exploitation, such as a pimp taking more than half of a women's earnings or being physically abusive toward a sex worker, are difficult and, at times, impossible to prove. As a result, conviction rates plummeted, leaving traffickers free to continue preying on women. This can be observed in the conviction rates of sex crimes in the years following the German law. One hundred fifty-one people were convicted of exploitation in the year before the law was enacted, while in the ten years following, only thirty-two people were successfully convicted.<sup>48</sup>

In accordance with the scale effect, following the passage of the law, German brothels expanded greatly. As of 2012, there were between 3,000-3,500 red-light establishments, and it is

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<sup>46</sup> Spiegel Staff. "Human Trafficking Persists Despite Legality of Prostitution in Germany." Spiegel Online, 30 May 2013. Pp. 1.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

estimated that sex work accounts for about €14.5 billion of Germany's annual revenue.<sup>49</sup> There are an estimated five hundred brothels in Berlin alone, seventy in the smaller northwestern city of Osnabrück and two hundred seventy in the small southwestern state of Saarland.<sup>50</sup> German brothels have become tourist destinations, allowing consumers to book multiple day stays with the sex worker of their choice. They are advertised as a luxurious experience, some packages even include transportation to and from the brothel in expensive cars.<sup>51</sup> A quick Google search of “German brothel” will produce a number of websites advertising prices of different brothels, including the King George Nightclub and Hotel which offers a so called “all-inclusive” experience, promises a room and unlimited alcohol for a flat-rate of €99 per night.<sup>52</sup> The hotels’ websites are relatively open about the activities that occur within their walls, however their word choice suggests that they are unwilling to admit that they are a brothel outright. One such website informs perspective guests of FKK Artemis in Berlin that they are “welcome at any time during your visit to enjoy the company of one of our many female guests” then continues by ensuring the customers that “the ladies are all self-employed business women and offer their services on their own account,” and therefore, all price negotiations and payments should go through the women.<sup>53</sup> They never once call the ladies sex workers, nor do they refer to themselves as a brothel. This overt commercialization creates a system where not only are sex workers undervalued as simply sexual objects, but which paves the way for traffickers to profit off of

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Creighton, Conor. “A Visit to One of Germany's All-You-Can-Fuck Brothels.” *Vice*, 15 July 2014.

<sup>53</sup> “FKK Artemis Berlin: Brothel Berlin, Sex Club and Wellness.” *FKK Artemis*, [www.fkk-artemis.de/en/?enter](http://www.fkk-artemis.de/en/?enter).

abducted women under the guise of legality. However, the goal of legislation should not be to criminalize

## II. The Nordic Model — Conditional Legalization

The failure of full legalization of sex work has paved the way for a conditional legalization model. The Nordic model is an example of legal yet regulated sex work. The model criminalizes the procurement and third-party brokering of sex but protects the sellers from jail time.<sup>54</sup> It aims to discourage buyers of sex by making it clear that people cannot be bought without consequence “in order to reduce the demand that drive sex trafficking.”<sup>55</sup> It operates under the assumption that sex work, voluntary or otherwise, causes damage to those involved and can, therefore, never truly be safe.<sup>56</sup> This idea leaves little room for the possibility that a woman could choose to become a sex worker under any condition other than absolute necessity or coercion, which is not always the case. However, the Nordic model does present a step in the direction toward better working conditions for sex workers. A group attempting to raise awareness of the benefits of the Nordic model writes that the existence of trafficking in sex work rings as a lasting issue “makes women’s human right to equality with men a distant pipe dream.”<sup>57</sup> The article then goes on to condemn the consumption of sex, saying, “vast sums of money are made from the heinous trade in (mostly) women’s and children’s bodies and this leads inexorably to sex trafficking.”<sup>58</sup>

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<sup>54</sup> Svanström, Yvonne. “Prostitution in Sweden: Debates and Policies 1980-2004.” *International Approaches to Prostitution: Law and Policy in Europe and Asia*, edited by Geetanjali Gangoli and Nicole Westmarland, Policy Press at the University of Bristol, Bristol, 2006, pp. 67–90. JSTOR, [www.jstor.org/stable/j.ctt9qgxs0.8](http://www.jstor.org/stable/j.ctt9qgxs0.8).

<sup>55</sup> “What Is the Nordic Model?” *Nordic Model Now!*, 6 Oct. 2017, Pp. 1.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

The Nordic model is probably the most tempting of the sex work legislation models because, if successful, it puts the entire burden of the law on those exploiting sex workers rather than on the workers themselves. For this reason, the Nordic model has been endorsed by several international organizations, including Amnesty International, and adopted by several European countries --Sweden, Finland, Iceland, Norway, Northern Ireland, and most recently, France.<sup>59</sup> Much of the criticism that this model receives is that it does not give enough autonomy to sex workers as it still requires them to work in secret. One opinion piece states “sex workers, who in large majority oppose the criminalization of people who buy sex (so-called ‘Johns’), are stripped of their agency, reduced to ‘victims’ of the ‘sex industry’ who suffer from ‘false consciousness.’”<sup>60</sup> The Nordic model is not perfect by any means, not least of all because trafficking rates are still shown to increase with the legalization of sex work. However, with more research, partial legalization could prove to work better than total legalization by protecting trafficked women and voluntary sex workers alike.

Many proponents of the Nordic Model cite sexual liberation and a perceived improvement in working conditions as reasons for legalization. They believe that when a woman is given agency in choosing sex work, coercion becomes less of a problem. However, a woman can be coerced into sex work without the help of a pimp. Emily Rothman explores the ethics of legalized sex work through the lense of a medical professional in her article, “Should US Physicians Support the Decriminalization of Commercial Sex?”<sup>61</sup> She contemplates the issue of consent within a buyer/seller relationship saying, “one pressing problem is that there are no

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<sup>59</sup> Peters, Mary Ann. “Nordic Model Key to Beating Exploitation.” CNN, 18 Apr. 2016.

<sup>60</sup> Mudde, Cas. “The Paternalistic Fallacy of the ‘Nordic Model’ of Prostitution.” The Huffington Post, 8 Apr. 2016.

<sup>61</sup> Rothman, Emily F. “Should US Physicians Support the Decriminalization of Commercial Sex?” *AMA Journal of Ethics*, vol. 19, no. 1, Jan. 2017, pp. 110–121.

trustworthy estimates of the percentage of sellers who sell sex willingly in the US or any nation,” continuing by explaining that a seller may be doing so with “(a) consent; (b) financially induced consent; (c) nonconsent because of force, fraud, or coercion by a third party (i.e., being trafficked); or (d) as a minor child, which in the US is automatically considered trafficking victimization.”<sup>62</sup> Rothman suggests that consent lines are blurred when a woman turns to sex work out of desperate financial need. Today’s society is structured in such a way that women must work harder for the same remuneration as men. It has become common knowledge over the past few years that women earn, on average, only about 80 cents for every dollar that a man makes.<sup>63</sup> This pay gap widens further for women of color. The drastic wage gap between men and women does not afford working women the same financial freedom that men experience. In this system, it is difficult to say whether women can ever truly choose a profession in sex work out of anything other than financial necessity. However, one could argue that this is the case for all types of employment. Capitalism creates a system wherein all people must sell their time and labor in order to survive and thrive in society. Why then should sex workers selling their time be thought of as any different than someone working an unwanted desk job, other than our societal repression and aversion to the discussion of sex? Many people work jobs that they do not want to out of financial need. It seems highly problematic to say that this is not okay in the case of sex work when it is unquestioned in the case of other jobs.

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<sup>62</sup> Ibid.

<sup>63</sup> “Pay Equity & Discrimination.” Institute for Women's Policy Research, 2017.

### III. Total Criminalization — The United States as the Prison Nation

In the United States, sex work is highly criminalized with only a few exceptions; most notably, several counties in Nevada have decriminalized sex work. Under U.S. law, both the sale and purchase of sex is illegal, as is the solicitation of sex regardless of whether or not the service is provided.<sup>64</sup> In their collaborative work, “Missing Rights and Misplaced Justice for Sex Workers in the United States,” Crystal A. Jackson and Jennifer J. Reed explore the state of sex work in the United States and put forth a plan for improving the conditions under which sex workers are employed. Jackson and Reed assert that United States anti-sex work laws, which prohibit loitering for the purposes of committing prostitution, “are based on arbitrary factors that can include a person’s location, dress, and possession of more than two condoms” and, for this reason, “people of color, trans-women, and women living in poverty are often the targets of these laws,” making them incredibly racist, and classist in their wording and enforcement.<sup>65</sup> Studies have also shown that policies which criminalize condom possession and use are ineffective in reducing sex work, they simply make sex work less safe for all those involved.

The history of chattle slavery in the United States leaves a legacy of over-policing and exploitation of the bodies of black women that we can still see today. In her book, *Laboring Women: Reproduction and Gender in New World Slavery*, Jennifer L. Morgan explores the ways in which enslaved women’s physical and reproductive labor was exploited by enslavers to reap financial gain. She explains how early European writers worked to both sexualize and barbarize

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<sup>64</sup> Jackson, Crystal A., and Jennifer J. Reed. “Missing Rights and Misplaced Justice for Sex Workers in the United States.” *Agenda for Social Justice: Solutions for 2016*, edited by Glenn W. Muschert et al., 1st ed., Bristol University Press, Bristol, UK; Chicago, IL, USA, 2016, pp. 15–24. *JSTOR*, [www.jstor.org/stable/j.ctt1t8968r.8](http://www.jstor.org/stable/j.ctt1t8968r.8). Pg. 15.

<sup>65</sup> *Ibid.*

African women in their travel accounts. They evoke the imagery of animals and beasts to create lines of distinction between Europeans and Africans. They write of women with bodies so strong that they can accomplish hard labor in the fields mere days after childbirth, breastfeeding their infants over their shoulders with elongated breasts simultaneously. Morgan writes, “European writers turned to black women as evidence of a cultural inferiority that ultimately became encoded as racial difference. Monstrous bodies became enmeshed with savage behavior as the icon of women’s breasts became evidence of tangible barbarism.”<sup>66</sup> The dehumanization of African women in this way allowed Europeans to find morality in enslavement. Black women’s bodies were thus appropriated by white men to justify slavery in the Americas. It is the same sexualization that was used as justification for enslavement that is employed today by police to profile black women as sex workers based on looks.

The United States prison industrial complex has been consistently claimed as a deliberate extension of chattel slavery in the Americas. Policies of mass incarceration —since their inception in the 1970s with President Richard Nixon’s “war on drugs” — have, by design, disproportionately affected black and latinx individuals in the United States.<sup>67</sup> Sex workers of color are no exception to this. In her book, *Invisible No More: Police Violence Against Black Women and Women of Color*, Andrea Ritchie carefully examines how police violence and racial profiling effect black women and other women of color. She explains that in the 1970s, black women were seven times more likely to be arrested for sex work and other related offences, such

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<sup>66</sup> Morgan, Jennifer L. *Laboring Women: Reproduction and Gender in New World Slavery*. University of Pennsylvania Press, 2004. Pp. 49.

<sup>67</sup> Cullen, James. "The History of Mass Incarceration." Brennan Center for Justice, 20 July 2018, [www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration](http://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration). Accessed 23 Apr. 2020.



as loitering, than white women.<sup>68</sup> This disparity can still be seen today. In New York City, black and latinx people make up only fifty-four percent of the city's population, however, between the years 2012 and 2015, eighty-five percent of people charged with 'loitering for the purpose of prostitution' were either black or latinx.<sup>69</sup> It is clear, through these figures, that racism and racial profiling play a large role in the policing of sex workers.

Criminalization models exist under the assumption that sex work is indecent and those who partake in sex work must be punished. Prisons in the United States are not built to rehabilitate, they are built for profit. As a result of this prison model, sex work laws in the US have been written to ensure recidivism. In their book, *Revolted Prostitutes: The Fight for Sex Workers' Rights*, Juno Mac and Molly Smith explain how charges such as 'breach of parole,' a charge which includes the crime of continuing to sell sex after being previously apprehended, keep sex workers in a constant cycle of incarceration. Being caught in 'breach of parole' comes with harsher sentencing than a first time offence. The more times a sex worker is apprehended, the longer they will be sentenced for each time. Incarceration also comes with more penalties than just time served. Mac and Smith explain that even upon release, sex workers are "likely to be homeless, will struggle to find 'legitimate' employment, and may be barred from some kinds of social safety net provisions, such as public housing," leaving them stuck in the trap of incarceration as they continue to find sex work as their only option to feed and house themselves and their family.<sup>70</sup>

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<sup>68</sup> Ritchie, Andrea, *Invisible No More: Police Violence Against Black Women and Women of Color*, Boston, MA: Beacon Press, 2017, pp 150.

<sup>69</sup> Ibid.

<sup>70</sup> Smith, Molly, and Juno Mac. *Revolted Prostitutes: The Fight for Sex Workers' Rights*. London, Verso, 2018. Pp. 121.

Sex workers often identify police officers as major perpetrators of violence and harassment. They frequently report being raped, physically assaulted, and coerced into exchanging sex for their freedom by law enforcement officers.<sup>71</sup> Under United States federal laws, undercover police officers can legally exchange money for sex, then “after sex, they arrest the worker and take the money back,” they are also able to confiscate a sex worker’s entire earnings, not just the money that they provided.<sup>72</sup> These policies do nothing to reduce trafficking rates, instead, they actually seem to assist in allowing trafficking to continue. Laws such as these fuel tension between sex workers and law enforcement making sex workers understandably distrustful of the police and, therefore, less likely to report cases of abuse. Criminalization strips all legal protection from sex workers, making them far less likely to report instances of abuse for fear of arrest and imprisonment. It is for this reason that, like total legalization, the total criminalization of sex work is ineffective in reducing trafficking rates.

It has also been argued that the ways in which sex work is policed in the United States abridge and infringe on the rights of sex workers and women as a whole. Penelope Saunders and Jennifer Kirby in their article, “Move Along: Community-based Research into the Policing of Sex Work in Washington, D.C.,” look at data from Washington D.C. as a specific case study for the ways in which sex work is policed in the United States, and how certain policies infringe on the rights of sex workers. In 2005, the Washington D.C. City Council introduced several laws aimed at expanding the scope of police power over regulating sex work in both public and

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<sup>71</sup> Jackson and Reed 15.

<sup>72</sup> Jackson and Reed 18.

private spaces.<sup>73</sup> The Prostitution Nuisance Abatement Amendment Act, the Omnibus Public Safety Act, and the Anti-Prostitution Vehicle Impoundment Amendment Act all sought to crack down on sex work within the city, in part, by giving law enforcement the power to exclude people who they profile as sex workers from public spaces through so-called “prostitution-free-zones.”<sup>74</sup> Within these zones, police are allowed to deny entry to or remove individuals based solely on the possibility that they are a sex worker. The laws received much criticism from several rights organizations including the American Civil Liberties Union, and sex workers themselves who argued that the laws limited their right to public assembly and free movement. The laws are not only unconstitutional because they infringe on the basic rights of citizens, they also allow increasingly harsh policing of low-income communities.

Saunders and Kirby emphasize that the laws rely on the dehumanization and stigmatization of sex workers to gain support from citizens. They then explain how the laws have resulted in the further gentrification of Washington D.C. as gentrifiers “view street sex workers as urban dirt that must be removed to protect their property,” and, thus, support the forceful removal of those profiled as sex workers.<sup>75</sup> Saunders and Kirby assert that “fears about the ‘prostitute’ are often augmented by hysteria over the presence of people of color in public space who may be simultaneously eroticized, considered ‘dirty,’ and security threats,” resulting in increased policing of black and brown bodies.<sup>76</sup> Transgender women of color are profiled as sex workers with alarming frequency making them more susceptible to “arrest and harassment by

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<sup>73</sup> Saunders, Penelope, and Jennifer Kirby. “Move Along: Community-Based Research into the Policing of Sex Work in Washington, D.C.” *Social Justice*, vol. 37, no. 1 (119), 2010, pp. 107–127. *JSTOR*, [www.jstor.org/stable/41336938](http://www.jstor.org/stable/41336938). Pg. 107

<sup>74</sup> *Ibid.*

<sup>75</sup> Saunders and Kirby 110.

<sup>76</sup> *Ibid.*

police who act out societal stigma against gender-nonconformity,” than they already are.<sup>77</sup>

Again, this form of criminalization serves only to further police the bodies of women, most often women of color. It does nothing to actually prevent the exploitation of these women.

The criminalization of sex work creates an adversarial relationship between the police and sex workers. Criminalization policies position sex workers as criminals and give the police the power of punishment over them. With sex work written into law as a criminal offence, policing sex work is simply part of the job description for police officers. In 2011, the Open Society Foundations conducted a study on how sex work policing practices put sex workers at risk. A report on the study, “Criminalizing Condoms” focuses specifically on how policies which target condom possession as a means of identifying sex workers do not prevent sex work, they simply prevent safe sex, and thus, contribute to increased HIV transmission rates among sex workers and their clients. The study looks at data collected from sex workers in six countries where sex work is criminalized — Kenya, Namibia, Russia, South Africa, The United States, and Zimbabwe — and aims to provide “critical information about the effect of certain police practices on sex workers’ access to condoms and ability to realize their right to health,” to the larger study of HIV prevention.<sup>78</sup>

The Open Society Foundations’ study finds that police often confiscate and destroy condoms in an attempt to prevent sex workers from working. Authorities have also been known to harass and abuse sex workers who carry condoms, using the threat of arrest on the grounds of condom possession to extort and exploit the women. As a result of these fear tactics, rather than

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<sup>77</sup> Ibid.

<sup>78</sup> *Criminalizing Condoms*. *Criminalizing Condoms*, Open Society Foundations, 2012, [www.opensocietyfoundations.org/publications/criminalizing-condoms#publications\\_download](http://www.opensocietyfoundations.org/publications/criminalizing-condoms#publications_download). Pp. 7.

ceasing to sell sexual services, many sex workers simply opt not to carry condoms, thus, “increasing their risk of exposure to HIV and compromising their health” and the health of their clients and sexual partners.<sup>79</sup> Of the workers surveyed by the Open Society Foundations, forty-seven percent report that they have stopped carrying condoms due to fear of harassment or arrest.<sup>80</sup> One Namibian sex worker reported that she had been stopped and searched by police six times in the previous year. She described one such encounter saying, “They searched me and when I asked who gave them permission to touch my body, they beat me, tore my clothes, and took my money and my condoms,” she continues by explaining that as a result of the attack, she did continue to work that night, but without protection.<sup>81</sup> Stories such as this are not uncommon, and are a direct result of criminalization policy. Criminalization gives law enforcement a dangerous amount of power over the bodies of sex workers, it allows them to decide when and how a sex worker can protect themselves.

#### IV. SESTA-FOSTA — The Insecurity in Cyber Security

With the advent of the internet, came new ways for sex workers to advertise to clients. The internet has taken sex workers off of the streets and onto websites such as Craigslist and BackPage. However, as commercial sex has become increasingly present online, anti-sex work laws have been increasingly aimed at censoring it. In *Revolted Prostitutes*, Juno Mac and Molly Smith write that in the United States, “the 2010s have seen a war of attrition against online platforms that host sex workers ads,” a war which has resulted in the shuttering of many of these

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<sup>79</sup> Ibid. 3.

<sup>80</sup> Ibid. 9.

<sup>81</sup> Ibid. 11.

websites.<sup>82</sup> No laws, they argue, have been more destructive to the safety of sex workers than SESTA and FOSTA.

In April of 2018, President Trump signed the joint Allow States and Victims to Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act into law. The acts are meant to curb the use of the internet by traffickers to buy and sell trafficked women and children. They do this by amending Section 230 of the Communications Act of 1934 to clarify that it “was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims,” and puts the legal burden of policing sex trafficking on the websites where trafficking and sex work ads appear.<sup>83</sup> SESTA-FOSTA received a fair amount of media attention, with celebrities taking part in PSAs urging the public to contact their representatives and ask them to support the bill.<sup>84</sup> With the bills’ branding as a way to fight sex trafficking, it easily passed the House and Senate, becoming law.

Much of the opposition to SESTA-FOSTA comes from organizations which argue that amending Section 230 does not punish traffickers as the authors of the bill suggest. Instead, they argue, it abridges the freedom of speech online “silencing a lot of marginalized voices in the process,” most susceptible to this silencing; the voices of sex workers.<sup>85</sup> This censorship exists because the law does “nothing to differentiate between various kinds of sex work and related content — even if the workers and content are all legally protected by local law,” and does not

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<sup>82</sup> Mac and Smith 123.

<sup>83</sup> Wagner, Ann. “Text - H.R.1865 - 115th Congress (2017-2018): Allow States and Victims to Fight Online Sex Trafficking Act of 2017.” *Congress.gov*, 11 Apr. 2018, [www.congress.gov/bill/115th-congress/house-bill/1865/text](http://www.congress.gov/bill/115th-congress/house-bill/1865/text).

<sup>84</sup> “PSA Featuring Seth Meyers, Amy Schumer, Josh Charles, Tony Shalhoub and Others - FOSTA-SESTA.” *Vimeo*, 20 May 2019, [vimeo.com/249095210](https://vimeo.com/249095210).

<sup>85</sup> “Stop SESTA/FOSTA.” *Stop SESTA/FOSTA*, 2017, [stopsesta.org/](http://stopsesta.org/).

differentiate between consensual and non-consensual sex work.<sup>86</sup> An article on the consequences of SESTA-FOSTA, “A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It,” stresses that “there is ample evidence, both anecdotal and researched, that giving sex workers a way to advertise, vet, and choose clients online makes them much safer than they are without an online system.”<sup>87</sup> When sex workers are forced onto the streets to find clients by laws like SESTA and FOSTA, they “have fewer advance safety precautions in place, no ability to effectively pre-screen clients, and no way to ensure that they work in safe, secure locations.”<sup>88</sup>

On April 17, 2019 —one year after the passage of the law — the Hannah Arendt Center hosted Danielle Blunt and Melissa Gira Grant who spoke on the topic of “Propaganda, Surveillance, and the 21st-Century Vilification of Sex Workers,” specifically focussing on the passage of SESTA-FOSTA and its effect on sex workers’ ability to work safely and make a profit. Blunt and Grant argue that SESTA-FOSTA, while it claims to target sex traffickers in order to reduce the online trafficking of people, it does more harm than good for sex workers (including those who provide legal services, such as dominatrixes) who have found their way off the streets into safer spaces through advertising in online forums.<sup>89</sup> Blunt, a dominatrix herself, recounts how, shortly after the passage of SESTA-FOSTA her social media profiles and website were hidden from potential clients, limiting her ability to make a living in her profession.<sup>90</sup> This

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<sup>86</sup> Romano, Aja. “A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It.” *Vox, Vox*, 2 July 2018, [www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom](http://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom).

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> Blunt, Danielle and Melissa Gira Grant. “Propaganda, Surveillance, and the 21st-Century Vilification of Sex Workers.” Lecture, Tough Talks from The Hannah Arendt Center, Annandale-on-Hudson, April 17, 2019.

<sup>90</sup> *Ibid.*

experience is shared among many sex workers, some of whom are being driven back to older, more dangerous methods of procuring clients to make ends meet as a result of the misguided laws.

Though SESTA and FOSTA claim to prevent trafficking through online forums, in accounts from sex workers themselves, they have actually led many sex workers to depend on abusive managers to bring in new clients when they were previously self sufficient. Juno Mac and Molly Smith write that in the days after the passage of SESTA-FOSTA, US based sex workers “started getting a flood of texts, calls, and other come-ons from wannabe-managers, looking to lure newly desperate workers into potentially exploitative arrangements,” arrangements which mirror trafficking.<sup>91</sup> SESTA-FOSTA also increased the power clients have over sex workers. With workers struggling to find work, clients were able to make unfair service demands. One client wrote that SESTA-FOSTA was a “win for hobbyists,” explaining that “prices will drop because providers will not be able to pull in new customers,” and therefore, will no longer have the “luxury” of turning clients, even abusive ones, away.<sup>92</sup>

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<sup>91</sup> Mac and Smith. Pg. 124.

<sup>92</sup> Ibid.



## Conclusions

It has long been debated whether or not sex work can or should be considered work like any other. The contra argument relies on perceptions of women as unable to make decisions about their body and of sex as dirty and degrading to women to prove its position. Assigning moral qualifications such as these to the discussion of labor rights for sex workers misses the point of labor rights entirely. Non-sex worker opinions about the legitimacy of sex work are irrelevant. Some sex workers report feeling empowered through the earning power of their sexual labor, and some just see sex work as a job to pay the bills until a new opportunity comes along. Both experiences are valid and common among other forms of employment. The addition of sex to work should not prevent workers from accessing their rights. The fact is that all workers deserve access to safe working conditions, fair wages, and social benefits, such as unemployment during times of economic hardship regardless of the job they hold. When workers are recognized and have their human rights realized, the conditions of their employment improve and instances of abuse become much more easily reported and, therefore, less common.

No model for sex work legislation which has been proposed and implemented as of yet is perfect. Legalization, as it has been executed in Germany, has given rise to trafficking rates in the country because traffickers have taken advantage of the language of the new laws to enslave women under the guise of legality. Conditions defined by the laws as trafficking are difficult to prove, leaving all sex workers vulnerable even though their work has been legitimized. The Nordic decriminalization model attempts to rectify the issues presented by legalization, but does not go far enough to protect the rights of those in the sex industry from abuse. It operates under

the assumption that sex work is inherently wrong and, therefore, does not advocate for sex workers' rights effectively. Criminalization is, by far, the worst of the models for both voluntary sex workers and trafficked women. Policing practices resulting from criminalization punish sex workers for their profession and intentionally terrorize people of color and low income communities in the process. Regardless of what legislation exists, the stigmatization of sex still persists and contributes to the villification of sex workers, keeping many workers who are experiencing abuse silent. Further complications exist for the undocumented who, as a result of their status, are unable to report instances of abuse for fear of deportation, even when they are working in a legal sector. All of the models fail to adequately address these important issues and, therefore, fail to effectively legislate sex work.

We must continue to fight for the labor rights of sex workers — whether they are working voluntarily or having their labor exploited, whether they hold permanent legal residence in their country, or if they are undocumented — to ensure the safety of all people in the sex industry.

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