Punishing Criminals or Protecting Victims:

A Critical Mixed Methods Analysis

of State Statutes Related to Prostitution and Sex Trafficking

by

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ABSTRACT

This study uses the ontological lenses of discourse theory to conduct a critical mixed-methods analysis of state statutes related to prostitution and sex trafficking. The primary research question of the study was, "How do state laws communicate and reinforce discourses related to sex trafficking and prostitution and how do these discourses reinforce hegemony and define the role of the state?" A mixed methods approach was used to analyze prostitution and sex trafficking related annotated and Shepardized statutes from all fifty states. The analysis found that not all prostitution related discourses found in the literature were present in state statutes. Instead, statutes could be organized around five different themes: child abuse, exploitation, criminalization, place, and licensing and regulation. A deeper analysis of discourses present across and within each of these themes illustrated an inconsistent understanding of prostitution as a social problem and an inconsistent understanding of the legitimate role of the state in regulating or criminalizing prostitution. The inconsistencies in the law suggest concerns for equal protection under the law based upon a person's perceived deservingness, which often hinges on his or her race, class, gender identity, sexuality, age, ability, and nationality. Implications for the field include insights into a substantive policy area rarely studied by policy and administration scholars, a unique approach to mixed methods research, and the use of a new technique for analyzing vast quantities of unstructured data.

DEDICATION

This dissertation is dedicated to my mother Barbara Mayo who taught me that there is

nothing that a strong woman cannot accomplish if she puts her heart and mind towards it.

Thank you for your support and love.

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While writing a dissertation can often seem like an isolating task, I would never have finished this project without the support of and encouragement from multiple individuals. I would especially like to thank my dissertation committee, Dr. Chris M. Herbst, Dr. Joanna Lucio, and Dr. Elizabeth Segal for their patience, flexibility, support, guidance and understanding over the course of the past few years. The advice you have provided me throughout this process has been invaluable and I will take it with me as I continue on in my career. I would also like to thank Dr. Thomas J. Catlaw, Dr. Arnold Danzig, Dr. Anne M. Schneider, Dr. Laura R. Peck, and Dr. Corey Shdaimah for serving as mentors and advisers throughout my doctoral career.

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CHAPTER 1

INTRODUCTION

Discussions of sex trafficking and prostitution have permeated popular culture and current events for the past few years. Between episodes of popular dramas like *Law and Order Special Victims Unit* (Wolf et al., 1999) and *House of Cards* (Fincher et al., 2013); awareness raising activities like the FBI's Human Trafficking Prevention Month; concerns over the possibilities of sporting and political events increasing the likelihood of trafficking; and prominent political scandals like the Eliot Spitzer scandal and the DC Madame scandal; competing discourses of prostitution and sex trafficking seem to be everywhere.

During the 2013- 2014 school-year Arizona State University's (ASU) experienced the consequences of competing discourses first-hand. While a faculty member in the School of Social Work was promoting what she saw as a positive intervention in the lives of prostituted women, *Project Rose*, in which, individuals who had been engaging in long-term prostitution were arrested and offered social and diversion services; a transgender ASU student and sex worker was protesting the actions of the social work professor and warning her fellow sex workers of what she saw as a prostitution sting. At the same time, other research into domestic sex trafficking occurring during the Super Bowl was undertaken by ASU's Office of Sex Trafficking Intervention Research, despite the fact that even many proponents of the sex trafficking narrative were disputing the idea that sex trafficking increases during sporting events (Ludwig, 2014; Strangio, 2014). In a single location, three disparate prostitution and sex trafficking discourses were

converging, leading to conflict and controversy around the university's role in mediating and facilitating different actions in the prostitution and sex trafficking policy arena.

Whether the controversies occur at the national level or the local level, the role of government and other institutions in regulating and preventing prostitution and trafficking was being questioned, with the policy community poorly equipped to offer any answers. While communities of sociologists, anthropologists, economists and social workers have researched and shared insight into these problems, insights from the fields of public policy and administration have been largely absent.[1] As interdisciplinary fields concerned primarily with government actions and how they are carried out, both fields could play a critical role in informing these issues. This dissertation seeks to remedy this absence and approach government's role in regulating prostitution with a mixed methods analysis of the discourses encapsulated in and communicated through prostitution and sex trafficking policies.

What is Prostitution and Why Does the Definition Matter?

Prostitution is often defined as the exchange of sexual services for financial gain, but in practice, this definition is far too ambiguous. Not only do economists often classify marriage as an exchange of sexual and reproductive services for financial security, but as sexual norms outside of marriage open and evolve, distinguishing prostitution from non-commercial sexual relationship becomes increasingly difficult. For example, the NYPD has oft been criticized for using possession of condoms as evidence for arresting a

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[1] While Dr. Ron Weitzer has written extensively on prostitution and sex trafficking policy he is a sociologist and writes from the disciplinary perspective of sociology. Still, his body of work can be considered the sole consistent voice on the issue of prostitution policy.

woman (whether cisgendered or transgendered[2]) under prostitution statutes. The existence of websites like Seekingarrangement.com, which creates "mutually beneficial arrangements" between "sugar babies" and "respectful and generous modern gentleman" ("What's an Arrangement," 2013), and popular television shows like the Millionaire Matchmaker further blur the line between consensual non-commercial relationships and prostitution. The standard for prostitution increasingly becomes, like Justice Potter Stewart's definition of obscenity, "I know it when I see it." Unfortunately, when the object seen is a person rather than a material, individuals who are already marked by society as promiscuous due to their sexuality, gender identity, race, or class become the most visible targets of enforcement.

It is for this reason that the language used in prostitution policies must be thoroughly and critically examined. How prostitution statutes define and delineate what is and is not prostitution and/or sex trafficking, and the official justifications given for these definitions have important social justice implications that can potentially impact who is arrested for prostitution related crimes and why they are arrested. This dissertation asks the question "How do state laws communicate and reinforce discourses related to sex trafficking and prostitution and how do these discourses reinforce hegemony and define the role of the state?" To answer this question, I will rely primarily on discourse theory as my ontological lens, Critical Discourse Analysis as proposed by Norman Fairclough (1992, 2003), and text mining and discourse analysis as my methods. My data corpus will

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[2] Cisgender is a term used by gender scholars and queer theorists to describe individuals who feel that their gender identity matches the sex they were assigned at birth. It is often used in contrast with transgender.

be composed of prostitution and sex trafficking related statutes drawn from all fifty state

codes. Figure 1 illustrates my mixed methods research design.

Research Question:
"How do state laws communicate and reinforce discourses related to sex trafficking and prostitution and how do these discourses reinforce hegemony and define the role of the state?"

Data Collection:
Pull state-level annotated and Shepardized statutes (the corpus)
- Organize and prepare statutes for importation into text mining software
- Collect state level political, demographic, and economic controls

Quantitative Data Analysis:
Text Mining using RapidMiner to analyze full corpus of state statutes
- Prepocessing of documents to create structured data vectors
- Analyses of term frequencies and associations
- Cluster analysis to categorize statutes
- Cluster analysis to categorize states
- Statistical analysis to explore the relationship between states and statutes

Qualitative Data Analysis:
Discourse analysis through the lens of Foucauldian discourse theory and Laclau and Mouffe's Discourse Theory using Fairclough's CDA as a methodology.

- Sample statutes using cluster analysis to create a purposeful sample
- Iteratively analyze documents using procedure suggested by Fairclough (1992)

Figure 1. Research Design. This figure presents the research design for this transformative mixed methods research project.

Prostitution Regulation in the United States

Prostitution policy regimes are often evaluated and categorized at the national level (Outshoorn, 2004). This model of categorization is not necessarily appropriate for the United States, however, where prostitution policy is decided at the state level and enforced at the local level. While prostitution criminalization exists in at least some form in the United States, and there is an increasing trend of sex trafficking legislation across all states, regulation of prostitution is considered one of the power's reserved for the states in the American federalist system. The 1913 Supreme Court case *Hoke v. United States* affirmed the rights of states to regulate prostitution and other commercial sexual activity, but also affirmed the constitutionality of the Mann Act, a federal law that prohibited the "persuasion, inducement or enticement" of women and girls across state lines for "immoral purposes" ("Hoke and Economides v. United States," 1913). At the federal level, the constitutionality of the Mann Act was further upheld and expanded to non-commercial sexual activity in 1917 and Congress refined the Act in 1978 and 1986 making the language of the act increasingly gender neutral and removing the references to the morality of sexual behavior in favor of a standard of criminalized behavior (Langum, 2006). While the emphasis of the Mann Act shifted from prohibiting sexual behavior that was not within the "proper bounds of marriage" to protecting children from sexual exploitation, the Act continues to prohibit the transport of women across state lines for the purposes of criminalized sexual activity. The history of the Mann Act and federal regulation of prostitution illustrates two points about policies regulating prostitution. First, the discourse of sex trafficking, which has become a major discourse in popular consciousness about commercialized sexual activities is not a new discourse

and has existed at least since the Progressive Era. Second, the federal government can only constitutionally legislate prostitution policy by using an interstate or international sex trafficking discourse as its rationale for action.

The limited scope of federal power in regulating prostitution calls into question the national level as the proper level of analysis for evaluating and examining prostitution policies in the United States. For this reason, my research examines prostitution policy at the state-level. While there are consistent trends in the treatment of prostitution across states, there is substantial variation in the degree of criminalization and the language used to justify criminalization of prostitution and sex trafficking. Further, civil regulations on labor force or civic participation of women who have a prior conviction vary across states and influence the lives of women participating in and exiting prostitution. By ignoring state level statutes in favor of federal actions, a large piece of the United States prostitution policy regime is missed. That is why this dissertation focuses on analyzing state statutes across the United States, despite the fact that it is a large undertaking.

Personal Background, Motivation, and Biases

The belief that research can never be completely objective and always includes some subjective biases of the researcher is a major tenet of critical epistemology. Because this dissertation relies on the use of critical and post-structuralist theory, it is important that I am transparent about my background, motivations, and biases in approaching my subject matter. As a researcher, I believe that multiple perspectives are valuable and indeed necessary for understanding the relationships between public policy and society. I was influenced early in my academic career by Burrell and Morgan's (1979) work on sociological paradigms. While there was a paradigmatic view of society that resonated

with me more than others (the Radical Weberian strain of conflict theory), I found value in examining problems from all of the paradigms described by Burrell and Morgan including functionalism, critical theory, and interpretivism. They all seemed to be valid ways of examining social behavior and problems offering different insights into the meanings of and explanations for different aspects of society.

As I mentioned, it was conflict theory based in Radical Weberianism that resonated with me the most. Conflict theory emphasizes issues of conflict, power, and inequality rather than harmony in society (Burrell & Morgan, 1979). Stemming from the works of Karl Marx and Max Weber, conflict theory can almost be seen as a middle-ground between functionalism and critical theory. I would consider contemporary scholars like Anne Schneider, Helen Ingram, Sanford Schram, Joe Soss, and Richard Fording as conflict theorists due to their emphasis on the measurable impacts of racial, class-based, and other forms of inequality. My work is heavily influenced by the work of these contemporary scholars of public policy, political science, and social work.

As the child of a low-income single parent, issues of gender and income inequality were a persistent force in my life. It was not until college and my discovery of sociology that I was able to articulate and truly understand the meaning of gender and class-based inequality. It was in the Sociology Department at Colgate University that I was also introduced to issues of race-based and sexuality based inequality. My formative experiences cemented within me a Marxist-feminist based lens for examining the world, but I have since pushed myself to identify with and consider all forms of hegemony when I examine social problems and conflict. The work of post-colonial feminist Chela Sandoval (2000), which encourages the development of a mental map navigating various

feminist critiques of hegemonic structures and choosing the critique appropriate for the context at hand, has been extremely influential in my views of the world. Although I am not a third-world feminist, I believe that by acknowledging my privilege as a white middle class woman and listening to the voices of women and men who face different and often more oppressive hegemonic structures, I can attempt to understand post-colonial feminism and see the world through its lenses. As such, I tend to be critical of feminist movements, like the radical feminists and egalitarian feminists that deny or do not acknowledge the role of white western privilege in their views of the world. This understanding likely influences my critique of prostitution and sex trafficking statutes coming out of these movements.

My motivation for choosing prostitution policies as a subject of inquiry stems from my views of the world discussed above and my desire to focus on an oft ignored area of policymaking in the field of public policy and administration. After viewing the documentary "Very Young Girls"(Schisgall & Alvarez, 2008) while studying Schneider and Ingram's(1997) theory of social construction of target populations, I became concerned about the unequal treatment of "johns" and women arrested for prostitution as targets of public policy interventions. The john school was touted as a revelatory institution for teaching men what was wrong with prostitution, but it appeared to do so by reinforcing concepts of patriarchy like power resting with the male and the male as the protector and savior of victimized women. The differential punishment of a day of "john school" for the men versus weeks of unpaid diversion or jail-time for the women struck me as patently unfair.

While my interest in prostitution policy began with the john school, I soon realized that these messages about prostitution and the women and men who engage in transactions of sex for money pervade all of our policies seeking to regulate prostitution and sex trafficking. Likely due to the challenges of quantifying all aspects of prostitution as a policy issue, as well as the lack of political interest in the actual effects of such morality based policies, there has been very little study of prostitution and sex commerce policies from the fields of public policy and administration. I do not, however, take this silence to mean that public policy and administration have nothing relevant to say about public policies addressing prostitution. It was for these reasons that I chose the regulation of sex work, particularly prostitution as my dissertation topic.

Roadmap of the Dissertation

This dissertation is divided into seven chapters. The first four chapters provide background information in order to ground my empirical analysis of prostitution policies. In chapter two, I present a review of the literature organized by the prevailing discourses justifying state intervention in prostitution in the United States. Chapter three presents the theoretical and methodological lenses that I used to design my research project. The fourth chapter details the specific methods I used to analyze my data: quantitative text mining and discourse analysis. The fifth and sixth chapters present the findings and results of my empirical research, with chapter five presenting the findings and results of my text mining analysis and chapter six presenting the findings of my discourse analysis. The final chapter, chapter seven, provides concluding thoughts and remarks including the limitations of the research presented and future directions for prostitution and sex trafficking research.

Although it is a unique topic for research public policy and administration (or perhaps because of its uniqueness) my research on prostitution policy provides important lessons for the field. Public problems that lack good data or are based on questions of morality are not inappropriate for research by policy scholars. In contrast, by pointing out more pragmatic concerns and issues of social justice and equity, the fields of public policy and administration can offer insights into the problem that other disciplines may miss. Further, by increasing the calls for more and better data about the problem, public policy researchers can push policymakers and academia to understand social problems at both a macro- and micro-level.

A Note on Critique

This dissertation uses discourse theory as a lens to analyze prostitution and sex trafficking related statutes. While it is tempting in an applied field like public policy and administration to view critique as an impetus for policy change to improve public policies for the better, this is not necessarily the role of critique as viewed by Foucault or Laclau and Mouffe. Instead, the ethos of critique in this dissertation is to interrogate the "taken for grantedness" of hegemonic discourses as they are expressed through laws. As Foucault states:

> A critique is not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices that we accept rest…Criticism is a matter of flushing out that thought and trying to change it: to show that things are not as self-evident as one believed, to see that what is

accepted as self-evident will no longer be accepted as such. Practicing criticism is

a matter of making facile gestures difficult. (Foucault, 1988, pp. 154-155)

While there will be many instances where I critique discourses and language as they are

presented in state prostitution and sex trafficking policies, this should not be interpreted

by the reader as a call to change these policies, but instead as a call to interrogate and

deconstruct them, to determine whether there are other ways to think about them and

conceptualize them, in short to consider them. It may very well be that after considering

the "taken for grantedness" of them the reader, and indeed, even the analyst, will be

content with them as public policies. While Foucault's ethos of critique sees criticism as

essential for transformation, it does not follow that critique requires transformation or

implies anything about the direction or mode of transformation. I would be remiss if I did

not present some suggestions for improving prostitution and sex trafficking related

policies in my concluding remarks; however, it should be noted that these suggestions do

not include every critique presented in my discourse analysis, and that these suggestions

themselves incorporate and perpetuate their own discursive constructions of the world.

CHAPTER 2

LITERATURE REVIEW: DEFINING PROSTITUTION AS A PUBLIC PROBLEM

Problem definition is a key component of policy formulation and design (Peters, 2010; Stone, 2012). How one perceives a problem constrains the acceptable policy alternatives and often suggests preferred policy action. Prostitution as it exists in the early 21st century American context is widely agreed to be a social problem, but there is wide disagreement on the nature of the problem and its cause. It may be seen as a moral problem, a public health problem, a criminal justice problem, an economic problem, a human rights problem, or some combination of all of the above depending on the context and the individual woman. The degree to which context, including the current policy context, contributes to the status of prostitution is also a subject for debate. Some activists and scholars argue that prostitution is always problematic regardless of the context, while others envision contexts and social arrangements where prostitution would be a legitimate social exchange.

Prostitution as a Moral Problem

Prior to the mid-19th century, prostitution in the United States was not widely perceived as a social problem suitable for policy intervention. There were no laws criminalizing prostitution, however, prostitution was considered a form of deviance and prostitutes were occasionally charged with the crimes of adultery, fornication, or nightwalking (Miller, Romenesko, & Wondolkowski, 1993). From the urban centers of New York to the pioneer towns of the western frontier, prostitution was considered an unremarkable aspect of society. In *City of Eros* (1992), Timothy J. Gilfoyle describes the centrality of prostitution to urban life in pre-Progressive era New York City,

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By the midnineteenth [sic.] century, a wide variety of commercial sexual activity

existed in the largest American cities. In addition to prostitution, abortion, masked

balls, stripteasing, 'model artist' shows, and pornography were easily available.

Urban sexuality was increasingly expressed and restructured to appeal to a male

consumer world of entertainment, goods, newspapers, and advertisements.

Prostitution, in particular, became a public activity, conducted in the open and

visible to unengaged neighbors and observers. Brothels flourished in all parts of

the city. Streetwalkers claimed the most celebrated avenues as their personal turf.

Courtesans worked in the foremost theaters, concert halls, and hotels. And many

others advertised in guidebooks, in newspapers, and with personal cards. (p. 18)

In urban areas and towns of the American west prostitution played a similarly central role

by providing necessary employment to women who migrated to the western territories,

but this does not mean that prostitution was prosperous or enriching for all women during

the early and mid-nineteenth century. While the madams of western legends did well for

themselves financially, the stigma of being a fallen-woman was present for all women

working in sexual commerce regardless of whether they were working in the northeast or

the southwest. Further, many of the racial and class divisions present in sex work today

could be observed in the mid-nineteenth century. According to Butler (1985), the racial

and class composition of prostitutes in the nineteenth century American West varied by

city. In Austin, Texas, for example, brothel prostitution was unofficially sanctioned with

powerful madams drawing support from local and state officials, while street prostitutes

were often arrested by police (p. 6).

It was during the Progressive Era that prostitution was first discussed as a social problem worthy of state intervention. The Progressive Era, generally defined as the late nineteenth to early twentieth century in the United States and Europe, was a time of great demographic shifts and overall social reform. Across the United States, men and women were migrating into the cities and away from rural areas to take advantage of the economic opportunities offered by the industrializing cities. At the same time, the women's suffrage movement was taking shape. Spurred by their success in the abolition movement, middle-class white women were advocating for greater participation in social and political life. Increasingly seen as municipal housekeepers responsible for the moral soul of the city, middle-class white women like Jane Addams advocated for a state role in regulating and legislating social morality.

It was during this period that prostitution was first conceived as a morality problem worthy of state intervention. The social purity movement of the late nineteenth and early twentieth centuries targeted sexual activity outside of marriage, particularly prostitution. According to Luker (1998), the social purity movement was made up of primarily female moral reformers who saw prostitution as a problem caused by the double standard of sexuality for men and women. As such, advocacy for a single standard, that which the Victorians applied to middle-class women, became the main goal of the movement. As Luker (1998) states, "In practice, the single standard meant that men would be held to the exact standards expected of women, being celibate before

marriage and faithful afterward" (p. 608).[3] The social purity movement succeeded in increasing the age of consent in some states and persuaded many men to pledge adherence to the single standard, but their impact was limited by the fact that the movement was composed mostly of women who had little influence on policymakers.

Although many proponents of sex trafficking legislation would argue that their perspective avoids constructing prostitution as a morality issue, critics of the perspective argue that many proponents of sex-trafficking laws are re-visiting the old argument of prostitution as a moral failing, that of men who solicit prostitutes and/or otherwise exploit them. Evangelical Christian and Radical Feminists organizations have been the primary drivers of re-defining prostitution as an immoral act. Ronald Weitzer (Weitzer, 2006, 2007) argues that the anti-sex trafficking movement is primarily a moral crusade. He describes the characteristics of a moral crusade thusly,

> These movements define a particular condition as an unqualified evil, and see their mission as a righteous enterprise whose goals are both symbolic (attempting to redraw or bolster normative boundaries and moral standards) and instrumental (providing relief to victims, punishing evildoers). To achieve their aims, activists seek to generate widespread public concern about a problem and lobby political elites to either intensify punishment of offenders or criminalize acts that were previously legal (2007, p. 448)

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[3] The single standard for sexuality suggests that the blame for the moral failing responsible for prostitution could be laid solely on the shoulders of men, women who engaged in prostitution were still stigmatized as fallen women with bad morals.

The idea that prostitution is an act performed by the wrong sorts of men and women reinforces the traditional virgin/whore dichotomy espoused by traditional Victorian beliefs. It also serves to define certain types of sexuality as correct and others as incorrect. As conceptualized by the early Progressive reformers and the contemporary anti-prostitution crusaders, prostitution is caused by the moral failings of men who exploit young women and turn them into the fallen woman or the prostitute. Despite this, most of the laws passed during this era penalized women arrested for prostitution or the operation of "bawdy houses". While the legal roots of this viewpoint stem from the Progressive era, when these beliefs were first written into laws, many of them persist in the state codes and statutes of today.

Prostitution as a Public Health Problem

Preserving and promoting public health has also served as justification for state regulation of prostitution. During the course of the Civil War, military leaders for the Union were concerned about the effects of venereal disease on their troops.[4] Prostitutes were seen as the major vector of these diseases in times of war, and the military attempted various strategies to reduce the threat posed by transmission of disease. They unsuccessfully attempted to relocate prostitutes to areas where there were no troops stationed, but when the women returned, testing and licensing of brothels became the medically preferred method of disease control (D'Emilio & Freedman, 1997).

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[4] Concern about the health of soldiers and their protection from venereal disease has, historically, been a common justification for government efforts to regulate prostitution. During World War I and World War II the American government took actions to dissuade soldiers from visiting prostitutes during their service. As the sole war to occur on United States soil, the Civil War was the rare conflict where the American government could regulate both the demand and supply sides of prostitution.

Given the medical establishment's history of supporting legalized prostitution, it is not surprising that physicians and social purists initially approached each other with suspicion. What is surprising is that the two groups were working together under the umbrella of the American Social Hygiene Association (ASHA) by the turn of the 20th century. According to Brandt (1985), public opinion was against the idea of regulated prostitution and the medical establishment was challenged to change its position on the issue. The American Society for Sanitary and Moral Prophylaxis, which later became the ASHA, was founded by a physician in 1905 to oppose the regulation of prostitution as an anti-venereal disease tactic. It was this organization that brought the position of medical providers and social purity reformers into alignment.

> This coalition among reformers on the prostitution problem was probably the result of a growing body of medical literature that suggested the inadequacy of medical inspection – a prostitute could become infected between exams – as well as a desire to attract non-medical reformers to the social hygiene movement. These reformers, veterans of the purity crusades of the late nineteenth century, the settlements, and urban Progressivism, refused to compromise with evil (Brandt, 1985, p. 35)

The physicians involved in the ASHA had used principles of science and medicine to reduce the incidence of contagious diseases including tuberculosis, smallpox, and cholera as part of a sanitary engineering project. The male doctors believed that the same principles could be used to reduce the incidence of venereal disease. The social purists who were seeking to eliminate prostitution through the increased application of

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Victorian sexual mores to male sexuality partnered with the social hygienists to eradicate prostitution. According to Luker (1998), the social purists' message of a single sexual standard for men and women based on Victorian sexual mores applied to women, became the dominant message of the movement with the added weight of medical professionals and science behind it. While medical treatments for venereal diseases, most notably syphilis, were being developed for the first time, few of those afflicted by the disease were getting the necessary treatment. Syphilis treatment was painful and only those experiencing severe symptoms were willing to begin and adhere to the treatment regimen. The logic of the single sexual standard as a public health tactic is described thusly by Luker (1998),

> For pragmatic reasons, then, physicians agreed that prevention in the form of advocacy of the single (e.g. female) standard of sex behavior was preferable to a treatment that, although technically capable of curing the illness, in practice was highly problematic. Moreover, preventative medicine, and in particular social reform that aimed at changing (and indeed perfecting) human behavior was very much in the tradition of the sanitarians. Thus the male ``sanitarians'' in the social hygiene movement were agreed (although, as we will see, in a highly contingent way) with the female moral reformers that the key to the problem was male unchastity and that the logical solution was the implementation of a single standard of sex behavior (p. 612).

Luker argues that it was this coalition of female moral reformers and male physicians who wrote the first sweeping prostitution laws in the United States. While prostitution

had, at most, been considered a nuisance and threat to public disorder, the moral hygiene

movement re-classified the act and related activities as sexual crimes. Rather than impose

a new sexual standard for men, these laws served primarily to punish and imprison

women who deviated from Victorian standards of sexuality. From the moral reformers'

perspective these laws were a failure, but for the "sanitarians" the removal of prostitutes

and "fallen women" from the streets was a sufficient outcome to reduce venereal disease

in the interest of public health. This divide over the implementation of morality laws,

Luker argues, was the cause of the split between moral reformers and social hygienists.[5]

The idea of regulating prostitution based on public health concerns gained a

resurgence in the 1980s and 1990s when fear of AIDS and HIV transmission spurred

many states to pass laws drastically increasing penalties for prostitution among those who

are HIV positive and knowledgeable of their status. Commensurately, HIV and AIDS

testing became mandated as part of the arrest process for women and men arrested for

prostitution. In Nevada, where brothel prostitution is legal in some rural and suburban

counties, regular condom use and HIV and STD testing became key aspects of brothel

regulation. According to Brents, Jackson, and Hausbeck (2010), Nevada authorities

proposed mandatory HIV testing and condom use as a condition of work in brothel

prostitution, despite the fact that prostitutes were not listed as a high-risk group by the

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[5] As Stivers (2000) discusses in her study of gender dynamics in the Progressive Era formation of public administration and social work practice, this dynamic of moral concern driven primarily by female reformers with little political power, coupled with scientific research backing moral outrage was a common characteristic of Progressive Era social movements. In the examples discussed by Stivers, state action consistently reflected the concerns of the male social science reformers over those of female morality reformers. Over time, the moral concerns advocated by pre-suffrage women were lost in the actions of the state, and relegated to the non-profit charitable sector and the field of social work.

CDC. These actions by the state led to the organization of brothel owners into a business association with a dedicated lobbyist. While these laws were mostly symbolic and based on the stereotype of prostitutes as vectors of disease, they legitimized brothel prostitution and cemented the position of the brothel industry as a political player in the state. Further, actions by brothel owners like Russ Reade who invited the CDC to study the incidence of HIV among the women in his brothel pointed to the safety of Nevada's brothels:

> In August, 1990, Reade appeared with Dr. Gary Richwald of UCLA's School of Public Health on *Larry King Live* to publicize the results of this study. These studies found no sero-transmission of HIV and a level 1 percent positive gonorrhea rate. (p. 87)

Some groups proposing the legalization of prostitution in other areas of the United States used the Nevada example to argue that prostitution legalization and regulation would be a better solution to the problem of prostitution as a threat to public health. However, the admission by Nevada policymakers that they believed the policies to be more symbolic rather than based on actual threat calls this conclusion into question.

Unlike the definition of prostitution as a morality problem, the definition of prostitution as a threat to public health does not imply a clear policy solution. Historically, physicians and advocates concerned about the threat posed by prostitution to public health have backed severe criminalization of the practice, as well as legalization and regulation. Although these two policy alternatives seem to be two sides of the spectrum in terms of prostitution policy, both propose that the state play a pervasive role

in the lives of women and men practicing prostitution through criminal justice

institutions, medical institutions, or both.

Prostitution as a Criminal Justice Problem

Prostitution is often criminalized based on the types of crimes with which it has

been associated. One of the consequences of the increased criminalization of prostitution

as a vice crime in the mid-twentieth century was that it shifted prostitution from a cottage

industry dominated by women to a criminal activity run by men and associated with

organized crime. Indeed, providing prostitution has, historically, been one of the illicit

activities used to define organized crime in federal law (Schelling, 1971). According to

Woodiwiss (2001), the involvement of organized crime in prostitution began as the

extortion of brothels for protection; however, the closure of red light districts and areas of

regulated and legalized prostitution led to a greater role for powerful crime rings.

> By the middle of the nineteenth century, many state legislatures had responded to
>
> pressure by passing anti-gambling, anti-prostitution, and other laws thought
>
> desirable by the reformers… however, few city governments consistently directed
>
> their police to enforce these laws. The politicians, in effect, licensed vice enabling
>
> entrepreneurs to build up bookmaking, lottery, and policy syndicates, operate
>
> strings of gambling houses, or run houses of prostitution. (p. 171)

Woodiwiss' interpretation suggests that the gap between the passage of state laws

promoted by moral and public health reformers and the implementation of those laws by

local authorities created harsh unintended consequences for the practice of prostitution

and its perception as a crime.

While organized crime consolidated around the sale of prohibition era alcohol, it was prostitution that provided the major source of income keeping organized crime afloat in a post-prohibition United States (Demleitner, 1994; Duke & Gross, 1993). Duke and Gross (1993) credit the entrance of organized crime into prostitution as the fulcrum for the relationship between prostitution and illicit drug addiction.

> As alcohol prohibition was winding down, a Sicilian-American gangster – Salvatore C. "Lucky" Luciano – aggressively pursued a marketing strategy that artfully combined prostitution and narcotics peddling. Luciano is credited with introducing a business innovation that would allow the Mafia to maintain prostitute discipline with a greatly reduced overhead of pimps: get the prostitutes hooked on drugs… Lucky Luciano's new ideas transformed prostitution from a cottage industry which had been plagued by the deadweight of too many unproductive managers (the pimps), into a business suitable for management by organized crime. His idea also established a connection between drug abuse and prostitution that has survived to this day and contributes to the spread of AIDS (p. 102).

Prostitution continues to be associated with organized crime; however, the face of organized crime in America has changed from the Italian led mafia of the prohibition era to the predominantly black and Latino inner-city gangs.

Prostitution, particularly street-walking prostitution, is often associated with gang activity. In their research on anti-demand initiatives across the United States, Michael Shively, Kristina Kliorys, Kristin Wheeler, and Dana Hunt discuss prostitution's relationship with organized crime and gang activity as justification for demand versus

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supply side initiatives. They argue that law enforcement sees prostitution as a draw for more serious crime, and supply focused initiatives tend to reduce only the less organized forms of prostitution rather than the large-scale organized prostitution rings (Shively, Kliorys, Wheeler, & Hunt, 2012). Unfortunately, much of these conclusions from the Shively report are drawn from perceptions of prostitution by law enforcement, and the researchers offer no empirical data that prostitution attracts other crime or that demand focused initiatives would be any more successful at targeting organized crime than supply side initiatives.

Many anti-prostitution and anti-trafficking advocates argue that gangs are increasingly turning towards prostitution and sex trafficking as a revenue source. In an article for Public Discourse, Laura J. Lederer (2011), a prominent anti-sex trafficking advocate argues,

> With state and national crackdowns on drug trafficking, gangs have turned to sex trafficking for financial gain. Unlike drugs, girls can be used more than once, and it is the girls, not the traffickers, who run the greatest risk of being caught and prosecuted (para. 4).

While a shift away from drug trafficking to sex trafficking, particularly the highly abusive trafficking highlighted by advocates like Lederer, should be studied as an unintended consequence of the war on drugs, research by Sudhir A. Venkatesh suggests that this is not the case.

While some of the gangs in Venkatesh's (2008) ethnographic study of gangs in the Southside of Chicago engage in prostitution as one of their economic activities, other

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gangs intervened in prostitution in informal ways. As Venkatesh (2008) explains, direct

involvement in prostitution was less profitable for the gang than outsiders might expect

> J.T. had specifically told me that his gang didn't run a prostitution racket. Most
>
> gangs didn't, he explained, since there wasn't much money to be made.
>
> Prostitutes were hard to manage and required a great deal of attention: they were
>
> constantly getting beat up and arrested, which meant long periods without
>
> income. They needed to be fed and clothed, and the ones who used drugs were
>
> notoriously unpredictable. They were also prone to stealing money… Even
>
> though J.T.'s gang didn't actually control the prostitutes in his buildings, Clarisse
>
> explained that he did extract a monthly fee from both the hypes and the regulars.
>
> The regulars usually paid a flat fee (anywhere from fifteen to seventy-five dollars
>
> a month), and in return the gang would beat up any johns who abused the women.
>
> (p. 57-58)

While Venkatesh's work reinforces the idea that prostitution and gang activity are tied,

his ethnography suggests a more mutually beneficial relationship rather than one of

exploitation. Further research by Venkatesh and Steven D. Levitt suggests that prostitutes

who work with pimps for protection, who may or may not be associated with gangs, are

provided protection from gangs, while those who do not often provide free services to

local gang members for protection. As an illicit economic activity that often takes place

in urban areas, it is clear that prostitution is often tied to gang activity, but the nature of

that tie and the closeness of the relationship is unclear. Further, the idea that prostitution

attracts or creates organized crime and gang activity does not seem to be supported by the

literature.

Many scholars and activists argue that organized trans-national trafficking is the most concerning tie between prostitution and organized crime. These scholars argue that there are well-organized crime syndicates operating throughout the world, including in the United States, that engage in the trafficking of women into prostitution for profit. According to a report by Amy O'Neill Richard prepared for the U.S. Department of State (1999), Russian organized crime syndicates are operating in the United States and trafficking women and children into the sex industry. She believes this behavior may expand due to the profitable nature of trafficking in women. The report claims that these women were told they would receive jobs in domestic service or manufacturing, but were instead trafficked into mostly indoor forms of prostitution (Richard, 1999). Andreas Schloenhardt (1999, p. 230) argues that the connection between prostitution, organized crime, and international trafficking persisted and even increased after some forms of prostitution were legalized in Victoria Australia.

While most of the discussion of the relationship between prostitution criminalization and organized crime has been anecdotal and theoretical, three recent papers test the empirical relationship between legalization and human trafficking. Akee, Bedi, Basu, and Chau (2010) use an instrumental variables approach to model the effects of increased demand focused initiatives on human trafficking. Their results indicate that factors like the policies in countries where trafficking originates, the ability of traffickers to work in multiple markets, and the elasticity of demand for prostitution matter. Assuming inelastic demand, they find that stricter prostitution laws are positively related to trafficking due to customer's willingness to pay a higher price for services. This effect was not consistently statistically significant across all models, however. Alternatively,

Jakobsson and Kotsadam (2011) use an ordered logit model and find that prostitution legalization in European countries is positively associated with human trafficking. Their results suggest that countries with legalized prostitution have the highest rates of trafficking, while those with the most severe prostitution penalties have the lowest rates of trafficking. Their analysis is limited by its cross-sectional nature, inability to control for nation specific effects, limited generalizability beyond Europe and endogeneity between prostitution laws and trafficking incidence. Cho and Dreher (2013) use a slightly more sophisticated model than Jakobsson and Kotsadam (2011), and find similar results. They still suffer from the cross-sectional nature of their data, but include regional effects to attempt to parse out country specific issues, and the endogenous relationship between laws and trafficking incidence. Given the methodological sophistication of both the Akee, et al. (2010) and Cho and Dreher (2013) models, it is fair to say that the empirical relationship between organized trafficking and prostitution criminalization is, for the time-being, still under dispute.

Whether prostitution should be criminalized because of its tie with other more serious crimes or prostitution criminalization causes its association with other forms of crime presents an important chicken and egg problem, implying radically different policy solutions. While research into the history of prostitution suggests that criminalizing prostitution led to the dominance of organized crime in regulating and controlling prostitution, recent research on legalization suggest that prostitution remains tied to gangs and international organized crime regardless of its legal status.

Prostitution as an Economic Problem

Gary S. Becker (1974) was the first mainstream economist to examine crime as an economic problem. He argued that the commission of any crime was an economic choice, not simply a moral one.

> The approach taken here follows the economists' usual analysis of choice and assumes that a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities. Some persons become "criminals," therefore, not because their basic motivation differs from that of other persons, but because their benefits and costs differ. (p. 9).

Based on this assertion, Becker created economic models using rational choice theory for understanding the decision to engage in crime, the decision to become a criminal, and the correct intensity of criminalization for optimal crime prevention, Becker's models applied to all crime whether they were murder, tax evasion, or parking violations. In recent years, a variety of scholars have refined Becker's model to study criminalized prostitution.

Edlund and Korn (2002) assume that prostitution is a low-skill profession and use an economic model to answer the question of why wages are so high for prostitutes relative to other professions that require little education. They incorporate gendered and sexuality assumptions into their model, assuming that men are the consumers of prostitution, women are the suppliers, and there is a substitution effect between the prostitution and marriage market for suppliers. They assume that women enter into marriage or prostitution primarily for economic support, while men enter into marriage

primarily for reproductive labor and prostitution for sexual labor. Like Becker's (1974) model of crime, Edlund and Korn (2002) make assumptions about the trade-offs faced by women and men when they decide to participate in the supply and demand market for prostitution. Unfortunately, some of their perceptions about the trade-offs associated with prostitution rely heavily on gender stereotypes and do not represent the reality faced by many women engaging in prostitution.

In contrast, Della Giusta, Di Tommasso and Strom (2009) provide a theoretical economic model of prostitution that is not predicated upon gendered assumptions of sexuality. The authors argue that income and stigma both play important roles in the prostitution market, which allows for the modeling of the racial, gender, and class bases of power in the prostitution. They develop a model, in which the utility of prostitution consumers is determined by the amount of freely provided sex, the consumption of goods aside from prostitution, and the consumer's reputation. Reputation is determined by current social status and the risk of exposure from soliciting prostitutes. Thus, as social status and perceived risk increase, consumers will be less likely to solicit prostitutes. The utility curve of those acting as suppliers in the prostitution market is determined by the consumption of goods, leisure time, and reputation. Prostitution is believed to decrease both leisure and reputation, but increase consumption for those engaging in the activity. Of course, consumption is determined by participation in prostitution and other labor activities. This suggests that supply of prostitution will be reduced when the risks of discovery are higher, and the opportunities to earn substantial income from other sources are increased. While the model proposed by Della Giusta, et al. is not predicated on

gender, the income disparity between men and women will lead to the overrepresentation of men among consumers and women among suppliers of prostitution.

Della Giusta, et al. (2009) argue that based on their model they would expect policies to affect the market for prostitution. Policies that treat prostitution as a job, for example decriminalization and legalization strategies, will likely reduce stigma for both suppliers and consumers. This will lead to a greater demand for prostitution, which will raise prices in a closed economy. It will also increase supply of prostitution in an open economy, where increased trafficking and immigration will keep prices low. In contrast, policies that target consumers for punishment will reduce demand for prostitution and decrease prices unless consumers adapt their behavior to once again reduce the risk of being caught. Finally, policies that increase income alternatives for those who engage in prostitution will lead to a reduction in the supply of prostitution and an increase in the price, reducing the number of individuals willing to provide prostitution and the number of individuals able to pay for prostitution.

Theoretical modeling of the prostitution market is not the only way economists have attempted to study and understand prostitution. While relatively understudied in contrast to other topics, some scholars have attempted to empirically study the prostitution market. Most of these studies have used mixed-methods strategies and focus on a single sector of the market.

The findings of Levitt and Venkatesh (2007) suggest that women consider the trade-offs between leisure, other labor, and prostitution. They find that the supply of prostitution is very elastic, increasing in times of high demand such as holidays. Specifically, the increase in demand for services over the Fourth of July holiday and the

resulting increase in supply to meet that demand suggests an "arc elasticity of supply of 0.50 for this predictable, temporary demand shock" (p. 20). In other words, women in their study appeared to significantly change their behavior in response to price changes. As the opportunity cost of engaging in leisure or other labor market activity and forgoing prostitution increased, women who normally would choose other activities responded by engaging in prostitution. The authors also found substantial evidence that women in their sample were engaging in other forms of work aside from prostitution, including child care, informal sector work, and formal sector work. However, the estimated wages from other forms of work were significantly lower than the estimated wages for prostitution. Still, this suggests that women, at least in Levitt and Venkatesh's sample were able to choose to allocate their time between prostitution and other forms of work.

The elasticity of prostitution supply in response to increased demand is confirmed by Cunningham and Kendall's (2011a) difference-in-difference analysis of the supply response of on-line prostitution advertisements to political conventions in Denver and Minneapolis. They find that the increased demand due to an increase in transient men to a city increases the number of craigslist.org ads by 35 to 195 percent. Once again, a temporary and anticipated increase in demand for services led to an increase in prostitution supply.

Edin and Lein (1997) interviewed low-income women in order to empirically examine the rational choice models of their behavior. They interviewed 379 low-income women in four cities across the United States, some who were receiving welfare benefits and some who were engaging in the low-wage labor market. Unlike Della Giusta, et al. (2009), they argue that low-income mothers "were less interested in maximizing

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consumption than in minimizing the risk of economic disaster" (Edin & Lein, 1997, p. 63). On the other hand, they confirm Della Giusta, et al.'s (2009) assumption that low-income women make choices that are constrained by their socioeconomic conditions. They recognize the limitations of both the social welfare system and the low-wage labor market in meeting their needs. Overall, they found that eight percent of the welfare-reliant mothers they interviewed and one percent of the wage-reliant mothers they interviewed engaged in underground work to supplement their income. Of the possible underground jobs they could perform, prostitution was the most highly compensated; however many were reluctant to participate in any underground work because it conflicted with their view of themselves as good mothers. This confirms Della Giusta, et al.'s (2009) proposition that reputation is an important factor in the utility curves of women who could potentially engage in prostitution.

In contrast, a study by De Riviere (2006) suggests that women who engage in prostitution do not consider the full costs and benefits of their participation. While the women in her study earned over $27,000 (Canadian) per year through engaging in prostitution, the wage premium for engaging in prostitution including payments to pimps and escort services and purchases of drugs and alcohol, along with forgone wages associated with incarceration and time spent recovering from violence significantly reduced earnings. Coupled with the opportunity costs of lost experience and wages in the mainstream labor market, women engaging in prostitution experienced substantial losses over the course of their lifetime. This suggests that women who engage in prostitution may be less sensitive to economic alternatives than the model suggested by Della Giusta, et al. (2009). De Riviere's study is quite limited in its scope, relying on a cost-benefit

analysis of data provided by only eight former prostitutes who had previously sought exiting assistance in Winnipeg Canada. The external validity of her findings is certainly questionable.

While most of the scholars discussed above viewed prostitution from the perspective of microeconomic rational choice theory, researchers from the Urban Institute took a macroeconomic approach to prostitution, examining the underground markets for commercial sex in eight American cities. Through proxy measures of market size and interviews with stakeholders and convicted pimps and traffickers, the researchers found that the size of the underground commercial sex markets varied from under $40 million to $290 million across the eight cities in 2007. They also found that the market decreased in five of the seven cities, for which they were able to estimate changes, from 2003 to 2007 (Dank et al., 2014). Like the other scholars discussed in this section, they also found that economic and social factors influenced the decisions of pimps and sex workers to enter the underground commercial sex economies. While organized crime was not found to be a prominent interest in underground commercial sex markets in the cities studied, social networks were used to transport sex workers from city to city, and family members of pimps and sex workers were often involved in transporting the sex workers.

Economists are not the only group of scholars, activists, and advocates to see prostitution as an economic problem. Many feminists involved in sex worker organizing view prostitution as a labor market issue, where criminalization distorts the ability of sex workers to sell their services in the free market. In her article on Call Off Your Old Tired Ethics' (COYOTE's) campaign to re-frame sex work in the 1970's, Valerie Jenness argues that COYOTE was able to change the discourse on prostitution in the legal,

criminal justice, and public health arenas. She categorizes COYOTE as a claims-making organization that successfully reframed prostitution using the discourse of work and civil rights

> At the heart of COYOTE's crusade are three primary claims. First, COYOTE claims that not all prostitution is forced prostitution; in fact, often prostitution is voluntarily chosen. Second, COYOTE claims that prostitution is work and should be respected (i.e., destigmatized) as work like any other type of service work. Finally, COYOTE claims that to deny a woman the option to work as a prostitute under conditions of her own choosing is a civil rights violation. Combined, these claims define prostitution as problematic because of its relationship to something our culture purports to abhor; namely, the violation of individuals' civil rights and social rights based on membership in a particular group (p. 416)

By discussing prostitution as a chosen profession rather than a forced state of being, COYOTE was able to draw on a libertarian, free-market discourse to legitimize prostitution.

One of the keys to COYOTE's success in changing the discourse around prostitution was the important role played by actual sex workers in the movement. The founder of COYOTE, Margo St. James is a highly educated sex worker who has advocated on behalf of sex workers arrested for prostitution, including herself. In a 1999 article, St. James connected the stigmatization and criminalization of sex work to issues faced by women in all sectors of the labor market by arguing that the accusation of sleeping to the top and being a whore can overshadow many accomplishments. She

argues that removing the legal intervention into sex work would increase women's choices

> If prostitution were decriminalized, women would finally be given control of their own bodies, control of their own destinies. And society would finally have taken an affirmative step toward removing the glass (read, "class") ceiling over all women's human rights… By removing sexuality from the long arm of the law, our society would empower women to make choices. Indeed, some would choose sex as work, and others would simply choose to say yes to the money, regardless of their job. Our collective mission must be to remove the stigma attached to demanding pay for services rendered (p. 7)

Although COYOTE's attempts to change the laws surrounding prostitution were for the most part unsuccessful, we cannot conclude, as Weitzer (1991) does, that the movement was a failure. They successfully created an alternative prostitution discourse that re-framed prostitution as an economic activity akin to work. This new understanding of prostitution, as a choice removed from morality, opened the door for future economic analyses of prostitution as a rational choice. They may have also drastically impacted the discourse of their ideological opponents: while many radical feminists reject the discourse of prostitution as work, their support for demand side initiatives, like john schools, implicitly accepts this market-based understanding of prostitution (Mayo, 2011).

Prostitution as a Human Rights Problem

While the argument for prostitution as work often draws upon the language of labor rights and civil rights, the anti-prostitution and anti-trafficking movements often draw upon a language of international human rights. According to Gretchen Soderlund, a

coalition of radical feminists and Christian evangelicals worked to classify sex trafficking as the worst form of violence against women as domestic violence was being recognized by the UN as an international human rights issue. The argument that prostitution, and all forms of sex commerce, are always exploitative, and thus an important issue for inclusion in our understanding of human rights issues is characteristic of those who advocate strongly for harsh demand initiatives penalizing johns.

The two most notable advocates of this perspective are the feminist scholars Catharine MacKinnon and Andrea Dworkin who are considered the founders of the Swedish approach to prostitution, which criminalizes the buyers of prostitution in the hopes of ending prostitution altogether. In an early article advocating against prostitution and grounding it in the language of social justice, MacKinnon (1993) states

> Women in prostitution are denied every imaginable civil right in every imaginable and unimaginable way, such that it makes sense to understand prostitution as consisting in the denial of women's humanity, no matter how humanity is defined. It is denied both through the social definition and condition of prostitutes and through the meaning of some civil rights (p. 13)

MacKinnon's understanding of prostitution here is clear; it is the complete exploitation of women's minds, bodies, and souls.[6] In an article in the same symposium, Dworkin (1993) goes further than MacKinnon by comparing prostitution to the Holocaust and arguing that prostitution keeps women at the very bottom of society, while re-enforcing men's

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[6] In order to understand MacKinnon and Dworkin's perspective on prostitution, it is important to understand their view of heterosexuality in patriarchal society. Radical feminists believe that what society has constructed as sex is based upon male dominance and the objectification of women. In their mind, sex-positive feminism cannot exist because men have constructed sex to require the passivity and exploitation of women. More recent writings by MacKinnon suggest an acceptance of heterosexual sexuality that is mutually rewarding for both men and women in certain circumstances.

dominance. She even goes so far as to argue that from the point of view of prostitutes, there is no hope for the future. These statements are not supported by any empirical research into the views of women who are prostituted.

Carole Pateman expresses similar views to that of MacKinnon and Dworkin on heterosexual intercourse within and outside the practice of prostitution. Pateman takes issue with both marriage and prostitution in western society, arguing that the social contract has from the start excluded women. The social contract is predicated on the sexual contract, which most often takes the form of the marriage contract. The sexual contract cemented men's patriarchal domination over women and excluded them from the freedom ensured by the social contract, and contractualism in general. Like the marriage contract then, the contract or agreement to enter into prostitution is more problematic than normal employment contracts.

> In modern patriarchy, sale of women's bodies in the capitalist market involves sale of a self in a different manner, and in a more profound sense, than sale of the body of a male baseball player or sale of command over the use of the labour (body) of a wage slave. The story of the sexual contract reveals that the patriarchal construction between the masculinity and femininity is the political difference between freedom and subjection, and that sexual mastery is the major means through which men affirm their manhood. When a man enters into the prostitution contract he is not interested in sexually indifferent disembodied services; he contracts to buy sexual use of a *woman* for a given period. (p. 207)

Like MacKinnon and Dworkin, it is the relationship between heterosexual sex and men's dominance over women, which is ultimately the problem with prostitution. The

fundamental inequality between men and women in a heterosexist patriarchal society makes women's free engagement in prostitution impossible.

More recent writings by MacKinnon (2011) de-emphasize western patriarchy and theoretical problems associated with prostitution, discussing the problem of prostitution as worldwide sex inequality. A 2011 paper by MacKinnon acknowledges the different experiences faced by prostitutes of different races, classes, ethnicities, gender-identity, and nationalities. Ultimately though, she argues that conditions like juvenile entry into prostitution, post-traumatic stress disorder, sexually transmitted diseases, and unsafe conditions occur for nearly all sex workers, making prostitution an exploitative practice for all women, even if they are relatively privileged by their socio-economic characteristics.

Given the perceived role of male dominance in the practice of prostitution, it is not surprising that those who view prostitution as a human rights issue focus on pimps, traffickers, and johns; the predominantly male participants in prostitution exchanges. These scholars often argue for extremely harsh penalties for pimping and trafficking. Using interview and survey data from formerly pimped women, their families, and government officials; Kennedy, Klein, Bristowe, Cooper, and Yuille (2007) find that pimps use a range of strategies to recruit women into street prostitution including emotional manipulation, force, debt, drugs, and existing family or community authority. Similar research on currently pimped girls and women in Chicago found that while there was some variation in how pimps treat women, two-thirds of their sample experienced violence and coercion that would classify them as trafficked (Raphael, Reichert, & Powers, 2010). Another paper on pimps used this research to argue that pimps and

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psychopaths have common characteristics, finding that one-third of the 22 pimps in their sample who had been screened for psychopathy met the criterion for classification (Spidel et al., 2007). This research characterizes pimps and traffickers as the most ruthless of criminals who are clearly suitable for punishment by the state.

Many of the researchers who discuss prostitution as a human rights issue also favor policies that punish "johns" or consumers of prostitution while offering exiting support to women. Although they are often lumped together, the preferred policy solution emphasizing women's victimization exist in sharp contrast to the criminalization of prostitution favored by moral reformers. As Heiges (2009) states,

> Whereas trafficking laws address the harms inflicted upon prostituted persons, prostitution laws are intended to combat moral corruption, and the spread of disease, crime, and other collateral social harms thought to be caused by prostitutes. Where trafficking laws presume non-consent, prostitution laws presume prostitution acts to be voluntary and therefore criminally sanctionable. (p. 432)

The contradiction between existing prostitution and trafficking laws are particularly problematic for Heiges because she believes that prostitution cannot be viewed as independent of trafficking networks.

Much of the empirical research on prostitution as a human rights problem relies on the use of qualitative methods and descriptive statistics as evidence of women's exploitation. Melissa Farley's (2004, 2009; 2003) work is often cited. A clinical psychologist, Farley emphasizes the psychological costs of prostitution. Her largest study involved interviews of 854 people across nine countries. Based on these

interviews, Farley, Cotton, Lynne, Zumbeck, Spiwak, Reyes, Alvarez, and Sezgin
(2003) find that

> 71% [of the women interviewed] were physically assaulted in prostitution; 63%
> were raped; 89% of these respondents wanted to escape prostitution, but did not
> have other options for survival. A total of 75% had been homeless at some point
> in their lives; 68% met criteria for PTSD. Severity of PTSD symptoms was
> strongly associated with the number of different types of lifetime and sexual
> physical violence (p. 34).

Farley, et al. (2003) point to a practice of prostitution that is clearly exploitative and
dangerous to women. Most scholars accept that there are women who are exploited and
harmed by prostitution; however, this study relies solely on descriptive statistics and a
convenience sample. While drawing a random sample of women engaging in prostitution
would be nearly impossible, the sample drawn in Western locations includes only street-
walking prostitutes. For these reasons, her conclusions are likely not generalizable to all
women engaging in prostitution, but shed light on the extreme exploitation that women
may face in prostitution's most dangerous forms.

Given her sweeping conclusions about prostitution as a whole based on
methodologies more suited to qualitative investigations, Farley's scholarly work has
proven to be very controversial among researchers from other perspectives. In his critique
of prostitution research, Weitzer (2010) singles out Farley for making sensational claims
based on her research without providing much information about her research
methodologies or sampling strategies. In their ethnography of sex work in legal Nevada
brothels, Brents, Jackson, and Hausbeck (2010) take Farley to task arguing that in her

2007 study of Nevada's brothels she draws conclusions that are not borne out by her data, relying instead on a partial reading of evidence provided by the research of others (p. 247).

Aside from Farley's research, other scholars examining street-level prostitution report similar findings. Qualitative research by Nixon, Tutty, Downe, and Ursel (2002) found that of the 47 Canadian women who had sought substance abuse or exiting services, two-thirds reported a history of abuse. Their interview subjects reported extreme sexual and physical violence from pimps, family members, customers, police, and the public. Mixed methods research by Dalla, Xia, and Kennedy (2003) using a sample of 43 women who had formally engaged in street prostitution, finds that the women in their sample were victimized and sexually abused throughout their life course. Those who were able to form strong social support systems were more able to cope with negative events, but the women who faced more frequent incidences of victimization were the least likely to form such bonds. While this research may only apply to the most exploited women engaging in street-prostitution, the experiences of these women cannot be ignored by policies. At the same time, a one-size fits all approach based on the most extreme cases, as advocated for by those viewing prostitution as a human rights problem, also seems like an imprudent policy design.

Prostitution as a Complex Problem

While the "sex wars", as Chapkis (1997) refers to them are often framed as a debate between sex positive feminists who view prostitution as an empowering choice made by women challenging the status quo or a forced condition imposed on women through violence, coercion, or financial necessity. We have seen that there are other ways

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to think about prostitution as a social problem. Many feminists incorporate these multiple understandings of prostitution into their writings, arguing that prostitution is a complex problem that intersects with hegemonic social structures. Referred to as post-modernists by Scoular (2004), these scholars reject the various dichotomies like victim/deviant and Madonna/whore, which are often used to reference and discuss prostitution. Performance and identity are key factors in their analyses, and they often use in-depth interviews, historical research, and ethnography to support their arguments.

Jacquelyn Monroe (2005) adopts an Africana feminist perspective to critique the ways in which prostitution has been defined as a problem by radical, Marxist, and socialist feminists. She argues for an intersectional perspective that views street-walking prostitution as a structural problem occurring at the intersection of race, class, and gender. Street prostitution, the form of prostitution that Monroe is most concerned about, therefore effects low-income African American women disproportionately and cannot be separated from other institutional forms of sexism and racism present in American society. Reinforcing this belief is the unequal enforcement of laws which affect the low-income women of color working on the street far more than their white, middle-class counterparts or their male clients. Given the complex and structural nature of the problem, Monroe recommends ending discriminatory labor market policies as the long-term goal with increased social service outreach to low-income women of color engaging in street-walking in the short-term.

Phoenix (1999) uses in-depth interviews with women engaging in prostitution to study the issue of identity. Through a Foucauldian discourse analysis of her ethnographic data, Phoenix argues that women who engage in prostitution are no different from other

women, and require the same things that other women require. The idea that "prostitutes" are no different from other women was an important distinction as she finds that both the academic and legal discourses focus on their differences from other women. She found that the women in her study who engaged in prostitution had a contradictory experience with prostitution, consistent with many of the contradictions present in feminist debates. They recognized prostitution as a form of survival, a form of victimization, and an interaction consistent with larger norms of heterosexual subjugation (Phoenix, 1999). In other words, Phoenix's interviewees confirmed that the debate over prostitution is not an either/or debate, but a yes/and discussion.

Many postmodern examinations of prostitution policy have been conducted outside the U.S. context. Brock (1998) adopts a historical perspective, tracing the definition of prostitution as a problem worthy of national attention in the Canadian context. Specifically, she asks the question, "*[W]hy* prostitution in our time is considered to be a problem, and *for whom*?" (Brock, 1998, p. 3). Power plays an important role in her analysis, as those with economic and social power were able to define the prostitution problem as they wished, while those without power were most likely to be ignored or considered deviant. Kuo (2002) critically engages with the debate over prostitution policy in a cross-national context. She critiques the messages put forth in the American context by the radical (prostitution as a human rights problem), sex-radical (prostitution as a criminalization/stigmatization problem), and socialist (prostitution as an economic problem) feminists. Kuo critiques all of these positions by arguing that some women choose to engage in prostitution, but there are certainly women who are coerced and forced to engage in prostitution, and while poverty cannot be considered the cause of all

prostitution because many middle-class women also engage in prostitution. Kuo's position is that a feminist policy solution to prostitution would seek to eliminate the most coercive forms of prostitution, primarily through the arrest and punishment of clients and traffickers, while also offering support services and a strong social safety net to provide options for women who want to leave prostitution.

Through the use of historical research, Shrage (1994) argues that prostitution is not a single problem, and may not be considered problematic at all. She discusses four types of prostitution present in different societies across space and time: ancient Babylon, Colonial Nairobi, West Nepal, and Medieval Occitania. Prostitution existed in each of these societies, but the meaning of prostitution was very different in each. In ancient Babylon, for example, many prostitutes worked in temples honoring the goddess of fertility and their earnings went to the care and upkeep of the temple. In Nairobi, prostitutes performed the functions of wives for men who could not afford to marry on their low wages. In West Nepal, prostitution is the traditional form of labor for women in the Badi caste and the primary form of income generation for their community. In medieval Occitania, public prostitutes were an important part of community life, often contributing to municipal coffers with their wages or subsidized by government to satisfy the needs of the town's young male residents. Shrage identifies the Occitanian and Nepali forms of prostitution as problematic due to their reliance on class and gender inequality, but sees the Babylonian and Kenyan forms of prostitution as mostly unproblematic. She believes that there may exist forms of prostitution in the modern world, and even within individual countries that are similar to each of these forms of prostitution. Her preferred policy regime for addressing harmful forms of prostitution is a system of regulation that

would create a board made up of sex workers, community leaders, public health professionals, and educators to license prostitutes based on their training in subjects related to human sexuality (Shrage, 1994, pp. 158-159).

Julia O'Connell Davidson (1999) conducts a similar review of forms of prostitution in existence in late twentieth century western democracies. She identifies six forms of prostitution based on the degree to which contracts for service are formalized and the prostitute's level of relative power. Contracts may either be formal or informal and the prostitute may be enslaved, employed, or self-employed. Each form of prostitution implies different degrees and forms of power. While O'Connell Davidson believes that self-employed prostitution is the best form for women, criminalization provides incentives for women to work either formally or informally with a third party whether that is a pimp, madam, or gang. Ultimately, prostitution is a problem due to racism, sexism, and classism; and a one-size fits all policy will always cause problematic consequences for women working in sex commerce. Like Monroe (2005) she ties prostitution to the overall labor market and welfare state, arguing that prostitution allows for the existence of low social welfare benefits and discrimination against women in the labor market. Equal treatment of sex entrepreneurs, as well as, a reduction in gender and racial discrimination in all industries would, according to O'Connell Davidson, reduce the problematic nature of prostitution in the United States.

Anthony Marcus, Amber Horning, Rick Curtis, Jo Sanson and Efram Thompson (2014) provide an empirical research paper framing prostitution as a complex problem. Their mixed methods research using interviews of sex workers and pimps in New York City and ethnographic research of the street sex scene in Atlantic City, NJ rejects

narratives portraying prostitution as a completely free choice or a completely coerced choice, particularly as it applies to children and young sex workers. They state,

> We did not encounter one TVPA [Trafficking Victim Protection Act]-defined sex trafficking victim who came to engage in sex work out of what one might call a fully realized choice: in every case their agency was constrained. But in very few of these cases was a 'trafficker' responsible for that constraint, rather it was a complex set of life crises or near-crisis points that compelled them into the sex trade (p.243)

Their findings support theoretical work arguing that sex work and prostitution are a function of intersectionality, one of the many issues faced by women, transgender, and queer men who are low-income and often of color.

While recognition of the complexity of prostitution is an important development, Elizabeth Bernstein (2007) is hesitant to believe that this complexity can ever fully be incorporated into law. While feminists may argue adamantly over criminalization, decriminalization, and legalization as preferred policy regimes for addressing prostitution, Bernstein argues that the outcome of all three is the same in practice. The most exploited, marginalized, and vulnerable women are arrested and subjected to criminal penalties regardless of the official policy regime. Women who do not have the options to work in legal brothels are either arrested and subject to criminal sanctions (under legalization and criminalization) or lose their customers to women who are privileged enough to work indoors (decriminalization). The solution to the prostitution problem, Bernstein argues, is a new ethic of sexuality that loosens the connection of sexuality from procreation and romance.

The State of Research on Prostitution Policy

High quality research can help play an important role in efforts to define

prostitution as a public problem and design effective policies for addressing the problem.

Unfortunately, as Weitzer (2005) points out, much of the research mentioned above is

misused by advocates and activists in order to advocate for their preferred policies.

Studies are often based upon small-N convenience samples, which represent only a small

subset of women participating in prostitution. This can lead to constructions of the target

population of prostitution policy as either extreme victims (Farley, et al., 2003; Kramer,

2003; Leidholdt, 2003; Ross, Farley, & Schwartz, 2003; Stark & Hodgson, 2003) or

extremely prosperous entrepreneurs (W. Chapkis, 1997; Levitt & Venkatesh, 2007; St

James, 1999), neither of which is characteristic of the entire population of women

engaging in prostitution. While these studies may prove useful for understanding and

working with specific groups of women and men who have engaged in prostitution, they

may have detrimental unintended consequences when used to create policy prescriptions

for prostitution policy as a whole.

Scholars who have attempted to study prostitution and sex trafficking at the

macro-level are stymied by the lack of good data. The majority of quantitative analyses

of prostitution policy and sex trafficking rely on cross-sectional datasets that researchers

acknowledge have major limitations. Cho and Dreher (2013) point out in their study on

trafficking that as an underground activity, it is impossible to fully estimate the full extent

of trafficking (or prostitution) and the data that is available is often divided into multiple

datasets, each with its own strengths and weaknesses for capturing the scope of the

problem. Kendall and Cunningham (2011b) make similar arguments about the

availability of data on prostitution within the United States. In the online appendix to

their article, the authors identify two official sources of data on prostitution, the Uniform

Crime Reports and the National Incidence Based Reporting System both of which have

limitations that will be discussed in chapter 5. Because Kendall and Cunningham were

primarily interested in researching online sex workers, which they identify as a different

population than the outdoor street-walking sex workers, neither source was acceptable for

their research. Given the dearth of research examining prostitution and trafficking at the

macro-level, there is a real need for contributions from this perspective to the literature.

The lack of available high quality data on multiple forms of prostitution makes this

research nearly impossible to carry out.

CHAPTER 3

THEORY AND METHODOLOGY

Discourse Theory

In the previous chapter I argue that the literature presents six common discourses

of prostitution, which begs the question, "What is a discourse, and why is it important?"

Discourse theory argues that language constructs and creates the world in which we live.

Discourse is often described as a net of signs[7], or words, in relation to each other, from

which we draw meaning. In the previous chapter, I illustrated how the use of the same

signifier, "prostitution" could imply radically different signifieds, depending upon its

orientation among various other signs related to criminal justice, human rights,

economics, morality, public health, or complexity. Although not overtly discussed, this

organization strategy relied upon an application of discourse theory to the literature. For

this dissertation, I will primarily draw from the post-structuralist critical discourse

theories of Michel Foucault, and Ernesto Laclau and Chantal Mouffe to examine the

underlying assumptions of sex trafficking and prostitution statutes and how they conceive

of sexuality, gender, power, and the role of the state.

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[7] In semiotics, signifiers are the word representing a sign and the signified is the thing itself. For example, a signifier would be the word "dog", which would cause the reader to think of the signified, an actual dog, perhaps a golden retriever. The signifier combines with the signified to create a meaningful sign. In discourse theory, signifiers are slippery in that the signifier used may lead the reader or listener to think of a very different signified than that intended by the author or speaker. If, in the example above the word dog was meant to signify a chihuaha and the reader imagined the signified to be a great dane, the statement "I flew with my dog under the seat in front of me" would make little sense. Instead, the net of words created by the other words in the sentence surrounding the signified allow for sense-making and signal to the reader that by using the signifier "dog" I am signifying a small dog. This becomes more difficult, and more easily manipulable as the sign becomes more abstract. The sign freedom is one example of a slippery signifier often present in political discourse.

Discourse theory evolves during a period in philosophy and social science during which a shift was occurring away from the modernist, technocratic assumptions of the early twentieth century and towards assumptions about subjective nature of reality. In contrast to the modernist perspective, which viewed reality as objective and impervious to perception, the interpretive turn focused on the degree to which mental and emotional factors affected one's perception of reality. Language, in particular, was seen as an important factor influencing subjective perception of the world surrounding us. As Terry Locke states, this interpretive turn has "changed language from being thought of as a medium for expressing meanings that pre-exist linguistic formulation to a system that constitutes meaningfulness on its own terms" (p.11).

As an ontological lens for viewing the world, the roots of discourse theory can be traced back to the linguistic work of Ferdinand de Saussure, Claude Levi-Strauss, and Jacques Derrida; the philosophy of Friedrich Nietszche; the psychoanalytic approach of Jacques Lacan; and the economic theories of Karl Marx. Although it is concerned primarily with language and semiotics, it is considered an interdisciplinary approach and has been used to understand discursive practices in the humanities and social sciences. While studies using the principles of discourse theory across these fields have similar roots, it should not be assumed that all forms of discourse analysis emphasize the same aspects of discourse or even share the same assumptions. While discourse analyses performed in communication and rhetoric departments may emphasize the structure of language within texts and discourses, analyses performed by sociologists and political scientists are far more likely to focus on the power dimensions of discursive practice. As mentioned above, while some forms of discourse theory reject the idea that any social

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phenomena exist outside of discursive practice, others examine the relationships between discursive practice and other social practices.

Foucauldian Discourse Theory

Much of the policy and public administration research drawing upon discourse theory relies primarily on the work of Michel Foucault. It is difficult to provide a short overview of the work of Foucault, but generally, scholars divide his theorizing into three periods of his life and work: the archaeological period, the genealogical period, and the theory of the subject period (Wagenaar, 2011, pp. 112-113). Or as Foucault summarized his own body of work "The establishment of a certain objectivity, the development of a politics and a government of the self, and the elaboration of an ethics and a practice in regard to oneself" (Foucault, 1997, pp. 116-117). Like many scholars, Foucault's early work often contradicts his later work. By dividing his theorizing into three different philosophical approaches to discourse, scholars can avoid the contradictions inherent in Foucault's corpus of work and apply the lens that they feel is most appropriate to their discipline and the research project at hand[8]. The philosophical insights developed by Foucault in his theory of the subject period, in particular, his insights on governmentality are the most relevant to this dissertation.

While Foucault's early work is not as relevant to this dissertation, his work on governmentality builds upon his understandings of the world during his archaeological and genealogical periods. In his early work, Foucault was primarily concerned with

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[8] While Foucault's earlier work certainly influenced his later work, I believe that it would be against the spirit of Foucauldian critique to argue that his work evolved from one stage to another. Instead, it is perhaps more appropriate to think of the three phases of his work as it focuses on different levels and aspects of power. Indeed, scholars have found value in all phases of his theoretical work, not just his latter period.

epistemes, or the idea that cultural era is characterized by an overarching way of knowing. Outside of that given era, this way of knowing appears to be completely nonsensical. This theoretical orientation towards knowledge precludes the idea of the humanist autonomous subject operating outside of any and all structural influence and the hermeneutic essential structural cause that influences behavior across time and space (Wagenaar, 2011, p. 113). Foucault rejects the idea of generalized truths, arguing instead that ideas are only representations of the episteme. This episteme is characterized by discursive rules, so for Foucault (at least in his early work), there is no objective or subjective reality objective outside of discourse. Actors are the agents of discourse: it acts upon them and they, in turn, propagate it, all the time acting within the rules of the episteme (Wagenaar, 2011, p. 116). According to Foucault, the important elements of discourse are statements rather than sentences or prepositions; this can be seen as an important theoretical distinction that separates Foucault from more structuralist linguistic scholars like Saussure and Levi-Strauss.

The insights Foucault makes in his archaeological period influence his thoughts during his genealogical period. While the archaeological period focused on identifying the episteme, his genealogical period deals more with how knowledge and power evolve and change over time and the impact of that evolution[9]. It is here that Foucault rejects the idea of any knowledge outside of discourse. There is no object of interpretation, only interpretations layered upon each other. History is therefore contingent, and as Wagenaar states, "Changes in its course are determined by conjunctions of power. It is the analyst's

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[9] The use of the term evolution here should not imply that Foucault believed in a positive progression of ideas. Instead, it should be interpreted to mean only gradual changes over time as context changes.

task to explain which logic of power and domination brought certain institutional possibilities into being and foreclosed other historical possibilities" (2011, p. 118). Practices are the drivers of these forces, and as Gutting states "Genealogy deals with the connection between non-discursive practices and systems of discourse (bodies of knowledge)" (2001, p. 278). Foucault proposes the *dispositif* as the systems of discursive and non-discursive practices. Dispositives can be best thought of as social, cultural, and institutional beliefs, practices, traditions, understandings, etc. in a given historical and cultural context that become taken for granted as "the way things are".

Also important to Foucault's genealogical period is the idea of power, specifically micro-powers that act upon individual behaviors. In *Discipline and Punish* (1995), Foucault documents how power in the neo-liberal era has evolved from the large imposing power of the state to micro-powers influencing behaviors, beliefs, values etc. Foucault calls this micro-power discipline, which is seemingly less pernicious than the use of state power to punish, but is also more pervasive and stealthy in its ability to shape individuals into the ideal citizens. Power comes not just from above, but is shaped through relationships and everyday activities. This power from below, still interacts with the more traditional forms of authoritarian power, and in many ways these two forms of power reinforce each other. The individual becomes the willing subject of the state for the good of the collective[10]. Where they contradict, the traditional power of the state loses its legitimacy.

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[10] The individual subjecting him or herself to the will of the state for the good of the collective is characteristic of the neo-liberal era. While he or she may lose freedom, it is seemingly self-imposed from below rather than imposed from above.

Foucault's later work introduces the idea of governmentality. Foucault's work on governmentality seeks to reconcile some of the problems with his perception of power/knowledge during his genealogical period and the relationship between the bottom-up micro-powers he focuses on during his genealogical period with the power enacted and carried out by the state, which Foucault terms domination (Lemke, 2002, pp. 50-53). Foucault argued that modern liberal democracies were characterized by a form of governing, in which, all aspects of life are subject to regulation, despite an ideological commitment to small government. Governing in this period extends beyond the state. Foucault re-defines the term as the "conduct of conduct" which ranges from self governance to the governance of others (Lemke, 2002, pp. 50-51). Because the state becomes reliant on the localized, day to day, micro-powers; communities, civil institutions, businesses, and citizens are called upon to govern themselves and others (Rose & Miller, 1992, pp. 175-177).

Foucault also introduces the idea of problematics of government as part of his work on governmentality (Lemke, 2002, pp. 52).   The problematics of government has two components; political rationalities and technologies of government. Rose and Miller (1992) state:

> Problematics of government may be analyzed, first of all, in terms of their political rationalities, the changing discursive fields within which the exercise of power is conceptualised, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors. But, we suggest, problematics of

government should also be analyzed in terms of their governmental technologies, the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions (p. 175)

Although often discussed and analyzed separately, Foucault believed that technologies of government and political rationalities were not really separate, but two expressions of the same discursive field. Policy failure does not occur because of a mismatch between rationalities and technologies, or intent and action. Instead, both are part of a reality where programs are permanently failing (Lemke, 2002; Rose & Miller, 1992).

For Foucault, government as expressed by the state is not a separate entity imposing its will on subjects outside of civil society or other institutions. Instead, the state is an expression of governmentality or a particular form of power relations. Foucault (1998) states,

I have never tried to analyze anything whatsoever from the point of view of politics, but always to ask politics what it had to say about the problems with which it was confronted. I question it about the positions it takes and the reasons it gives for this; I don't ask it to determine the theory of what I do. I am neither an adversary nor a partisan of Marxism; I question it about what it has to say about experiences that ask questions of it (p. 115)

The study of political rationalities in particular, would therefore view policy and political statements as the expression of a discursive field that problematizes a particular phenomenon and posits the exercise of political action in opposition to that phenomenon as appropriate.

This dissertation will use the lens of problematics of government along with other aspects of Foucault's discourse theory to analyze prostitution and sex trafficking statutes as expressions of a discursive field that problematizes prostitution and related activities. While Foucault's insights on governmentality will be key to this analysis, the idea of hegemony as proposed by Antonio Gramsci and integrated into discourse theory by Laclau and Mouffe will also provide important insights into the discursive field expressed through these laws.

Laclau and Mouffe's Discourse Theory

In the social sciences, discourse theory is often associated primarily with Laclau and Mouffe's (1985) Discourse Theory. The primary concern in their work is the role played by discourse in constituting hegemonic social relations. Laclau and Mouffe rely primarily on the definition of hegemony provided by Antonio Gramsci, who defined hegemony as a moment of political consciousness where "one becomes aware that one's own corporate interest, in their present and future development, transcend the corporate limits of the purely economic class, and can and must become the interests of other subordinate groups too" (as cited in Mouffe, 2013b, p. 25) For Gramsci, hegemony was an expansion of a discourse across the social spectrum without violence or coercion (Rear & Jones, 2013). Hegemonic discourses become common sense, with their origins and any contestation of meaning forgotten. While identified primarily as post-Marxist scholars, it is important to note that Laclau and Mouffe rely on an anti-reductionist interpretation of conflict and hegemony, which is not primarily attributable to economic class. Instead, Laclau and Mouffe see everything as a function of the political, or of discourse, there is nothing that can be separated from or perceived outside of the discursive.

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A reality that is completely mediated by discourse is one, in which meaning is never completely and permanently fixed. According to Laclau and Mouffe, discourse is like a net with slippery signifiers, in which the signified may be many different things to different people. Sense can only be made of these signs through their relationship to nodal points (signifiers) used in a discourse. Nodal points may be conceived as key signifiers that assign the meanings of other signifiers (Torfing, 1999). These relationships are not linear and may shift interdiscursively so a net is most often used as an analogy for Discourse Theory. Indeed, Laclau and Mouffe perceive of discourse as a constant struggle over the meaning of signs, which shift based upon the actions and interactions of social actors (Rear & Jones, 2013). Once a node has been articulated, or has been assigned meaning based on the signifiers surrounding it, Laclau and Mouffe state that it is a moment; however, the transition from node to moment is never permanent, and is always contestable. When the meaning of a signifier is unfixed and open to multiple, very different articulations, such a signifier becomes a floating signifier (Torfing, 1999). Of course, much of this is relative and up to interpretation. Given the discussion in the previous chapter, one could certainly argue that "prostitution" is a floating signifier in the current discourse.

Discourses are perpetually competing for hegemony, but no discourse can ever fully achieve complete and permanent hegemony. The agonistic struggle between hegemonic and counter-hegemonic practices is a permanent fixture of the discursive order. Social actors, particularly those who benefit from a hegemonic discourse, attempt to rearticulate floating signifiers when hegemony is challenged. Ideology is perceived by

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Laclau and Mouffe not as false consciousness, but as hegemonic discourses that attempt

to make an order normal or unchallengeable (Mouffe, 2013a).

While Wagenaar (2011) argues that post-structuralist versions of discourse theory

are rarely used in political and policy research because of the complexity and obscurity of

its language, its neo-Marxist theoretical roots, and its lack of concrete analytical

guidance; the theoretical work of Laclau and Mouffe provides a lens for viewing policy

as an expression of hegemonic discourses. Like Foucault's political rationalities, Laclau

and Mouffe's work on hegemony provides a space for interrogating the ideological

assumptions underlying policies and proposing a counter-hegemonic discourse that

exposes what Slavoj Žižek (1989) terms the 'ideological fantasy' behind them.

This dissertation draws from the discourse theories of Foucault and Laclau and

Mouffe to argue that prostitution and sex-trafficking laws are more than directives for

state and local agencies to follow when dealing with prostitutes and the various actors in

prostitution transactions. Instead, like all laws, they are expressions of hegemonic

discourses that shape our understandings of, in this case, what prostitution is and how the

state should address it.

Critical Discourse Analysis

While discourse theory provides an ontological lens for viewing the world,

discourse theorists like Foucault, Laclau and Mouffe, and Zizek, provide very little

guidance on how to use discourse theory to conduct empirical research. While some of

the assumptions of discourse theory might question the usefulness of such a project in a

discursively constructed reality, such an exercise seems important in an applied field such

as public policy, and would, I believe, add substantial insight into the critical and

interpretive literature on policy analysis. For this reason, I use a modified version of Norman Fairclough's Critical Discourse Analysis (CDA) to methodologically analyze prostitution and sex trafficking statutes based upon the insights of discourse theory presented above.

While it differs somewhat in its assumptions about the pervasiveness of discourse as a mediating factor in the subjective experience of reality from the discourse theories presented above, Norman Fairclough's CDA has provided scholars with the methodological process for understanding and analyzing discourses used to construct social practices, and discourses constructed by social practices. Unlike Laclau and Mouffe's discourse theory, Fairclough's CDA posits that discursive practice is one form of social practice that interacts dialectically with other social practices that shape and constrain individual agency. Further, Fairclough's CDA is concerned with textual deconstruction at multiple levels of analysis. The dialectical relationship between discursive and other social practices allows for the use of CDA to examine different aspects of texts themselves and their relations to other texts, society, and institutions as a whole. While a critical discourse analysis by a linguist may focus heavily on the linguistic and semiotic structure of a text, a critical discourse analysis by a sociologist may focus on the relationship between discursive practice and hegemonic social relations. Indeed, the degree to which scholars using critical discourse analysis must be well versed in linguistic and semiotic fields is debated by scholars with some insisting on expert-level knowledge and others arguing for only a minimal proficiency, depending on the focus of the research.

Fairclough's *Discourse and Social Change* (1992) was an attempt to bring together the discourse analysis methods of linguistic studies with discursive theories in the social and political sciences. The role of changing language in constructing and reflecting social change was of particular interest to Fairclough. Linguistic texts thus became the primary object of analysis for Fairclough, but analysis does not stop at the bounds of individual texts. Texts are viewed as the products of discursive practices which also construct identities, knowledge, beliefs, and truth. These discursive practices change dynamically over time and a single text may contain multiple discourses, which shape and interact with other social processes and forms of social change. These discourses reflect power relations across society and have the potential to reinforce and change ideology. As Fairclough states, "What is envisaged is a discourse analysis focused upon variability, change, and struggle: variability between practices and heterogeneity within them as a synchronic reflex of processes of historical change which are shaped by struggle between social forces" (p. 36).

Fairclough proposes a three dimensional model for critically analyzing discourse, in which each level operates dialectically with the other dimensions (See fig. 2). Texts are the event of discourse usage; discursive practice is the process of text creation, consumption, and distribution; and social practice is the larger context within which the text is produced. Fairclough suggests that analysis at the level of text primarily draws upon linguistic and semiotic theory and language, analysis at the level of discursive practice primarily concerns micro-level interpretive and critical social theory, and analysis at the level of social practice primarily concerns macro-level social theory. Fairclough believes that all three dimensions should be examined together and in relation

to each other in order to correctly balance the role of structure and agency in social relations. Further, interdiscursivity, or the analysis of discourses within or across texts, becomes of key importance. As discourses cross institutional or genre boundaries and multiple discourses are incorporated into a single text, the subject of discourse may become problematized. This problematization may lead to changes in both discursive practice and social practice, or reflect changes in the two macro-level dimensions.
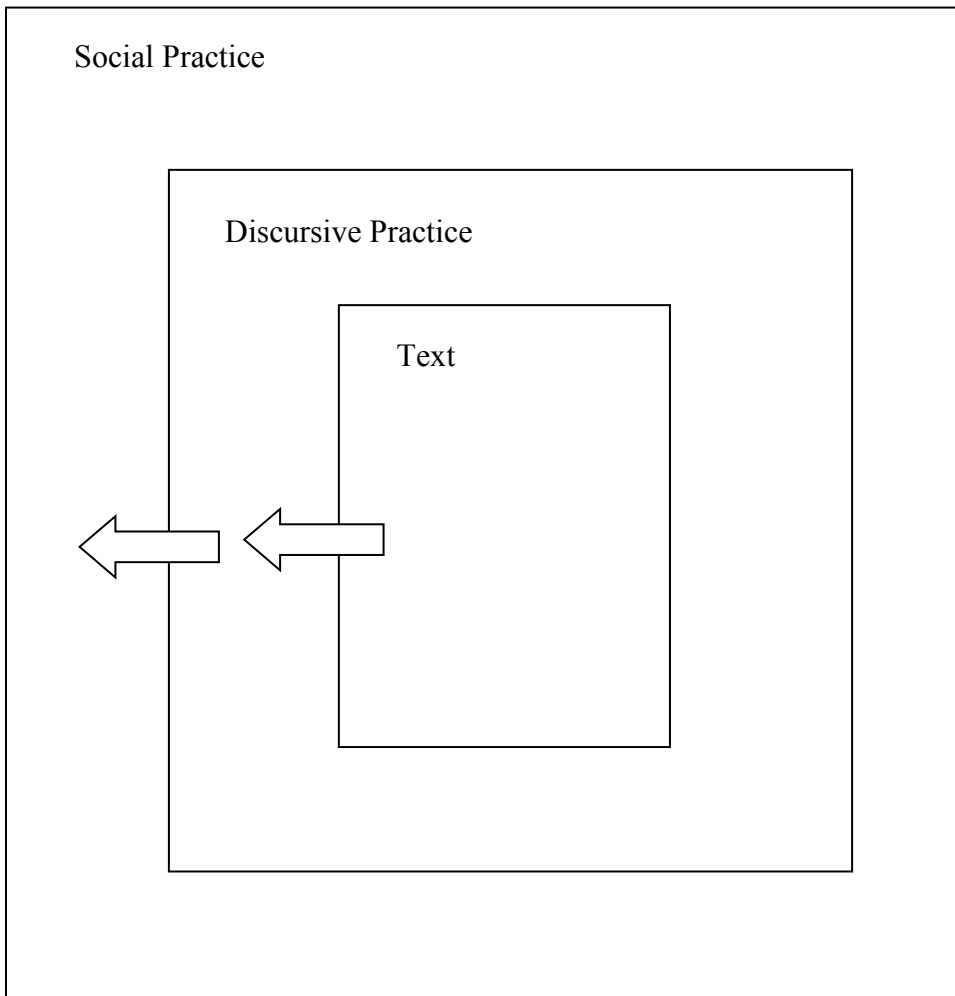
Figure 2. Critical Discourse Analysis. Adapted from Fairclough (1992). This figure illustrates the relationships between the levels of Critical Discourse Analysis.

CDA at the Level of Text

The text is the event or object being studied and is often analyzed from a semiotic or linguistic perspective. Fairclough identifies four elements of discourse as text that the critical discourse analyst should consider. The first, "vocabulary" refers to word choice. The words chosen to discuss a social phenomenon may have very different implications for the ideological significance of a text. Different signifiers may be used to imply the signified with very different meanings. For example, prostitute and trafficking victim may be used to describe the same subject, but the differing word choice suggests a different ideological orientation in terms of our knowledge, beliefs, and feelings toward that subject. Metaphor may also be considered as part of vocabulary and is apparent in the example above. The trafficking metaphor may not literally mean the movement of a person from place to place, but may serve as a metaphoric understanding of the degree of agency experienced by the subject.

Once we have examined word choice, the Critical Discourse Analysis of texts turns to clauses. "Clauses", are the building blocks of language that combine words to communicate meaning. The ways in which clauses are chosen and written within a text signify and construct subjects, identities, knowledge, and beliefs (p.74). Clauses may be emphasized, de-emphasized, or omitted to communicate different understandings of the problem at hand. For example, a text that states "Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money or other thing of value commits prostitution." (C.R.S. 18-7-201 2012) implies a somewhat different understanding of prostitution than a text that states, "A person sixteen years of age or

older is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee." (Conn. Gen. Stat. § 53a-82, 2012).While both statements appear to criminalize the same activity, the organization of the clauses, omission of specific clauses, and the use of passive versus active language imply different understandings of prostitution as a criminal justice issue.

The organization of clauses can also be examined in terms of the cohesion between clauses and sentences. Cohesion examines the transitions between different clauses and the connections used to tie them together or distinguish them from each other. The use of pronouns or substitutions are also studied under the heading of cohesion. In many ways, cohesion represents the micro-level structure of the text. In contrast, text structure examines the macro-level aspects of text construction. The combination of different word choices, clauses, and connectors into a single text has important implications for the story that the text is attempting to communicate and its implications for constructing identities and social phenomena. Also of importance are the ways in which institutions influence the structure of the text as a whole. For example, media stories will have a different text structure than official government documents, which will be structurally distinct from weblogs.

CDA at the Level of Discursive Practice

A critical discourse analysis of any text moves beyond the text itself to examine the discursive practice surrounding the text, or the production, distribution, and consumption, of the text. The social context of text creation has a crucial impact on how the text is created and the structure, language, and meaning of the text. Whether a text is created by a single individual, a dialogue between two individuals, or part of an extensive

group process affects the shape and form of the text. Further, the distribution channels and interpreters of the text can influence how the text interacts with other discursive and social practices. Discursive practice is both a top-down and bottom-up process, as text production shapes distribution and consumption, and text consumption and distribution affect the production of text. Further, as social contexts change, the meaning of texts change, as well. This applies to the meanings of existing texts, as well as, the meanings of new texts that are created through a discursive practice.

The process of text production affects the meaning and interpretation of that text. A text that is produced by a single producer will have a meaning that is different than a text that is produced by a group acting in an institutional context. Even when a text is produced by a single individual, the different roles played by that producer in different stages of production have an effect on the meaning. What the text will look like, how it will be distributed, and what other texts or discourses will be simultaneously distributed affect the interpretation of the text. For example, a bill on sex trafficking that is introduced by a policymaker with a history of introducing bills related to prayer in schools or abortion restrictions has a different contextual meaning than a sex trafficking bill introduced by a policymaker who has a history of supporting labor rights and women's rights. The production of these texts will be influenced by the existing social context like the laws already on the books in each state and ideological aspects of the state itself.

Distribution of the text also influences its meaning and interpretation. Some texts are easily distributed and are intended to have little impact beyond the immediate participants. Other texts are intended for wide distribution. Such texts often have a direct

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and an indirect audience. While a conversation between a policymaker and her staffer is likely only intended to reach the ears of the two individuals present, a bill that is introduced in the state legislature is intended for the direct audience of citizens of the state, but also an indirect audience of the policymaker's constituents, the political party apparatus within and outside the state, and policymakers in other states and nationally. A speech that is meant to be given orally will differ from a written legislative document. The ways in which discourses are woven into a text are dependent on the channels of text distribution and the intended audiences, and change over time.

Finally, texts are consumed and interpreted by their audiences based on the social context and their previous experiences with the discourses presented in the text. Consumers and producers of texts both have mental maps that constrain their possible interpretations of a text based on social norms and beliefs. Fairclough introduces two important elements for understanding the interpretation of a text: force and coherence. "The force part of a text (often, but not always, a sentence-sized part) is its actional component, a part of its interpersonal meaning, what it is being used to do socially, what 'speech act(s)' it is being used to 'perform'" (Fairclough, 1992, p. 82). Force may also be discussed as direct or indirect with the direct force being a command and the indirect force being an argument. The context of the text element is important in determining the actual force of an argument, which may seem contradictory when taken out of context. For example, criminal statute that imposes a penalty for individual behavior will have a different force than a civil statute that advises licensing boards or other governments. Coherence refers to the relationships between parts of the text. While similar to cohesion, coherence refers to interpretation of the text and the ability of its elements to be

interpreted as a cohesive whole. Coherence may rely on knowledge of social practices beyond the discursive practice at hand, such as ideology or power dynamics, in order for the consumer of the text to interpret it as a coherent whole.

Intertextuality is an important concept in discursive practice. Texts rarely emerge without basis in other texts. Usually, a text is created by drawing upon pieces of existing texts and interpreted based on knowledge of existing texts. Fairclough discusses two types of intertextuality, manifest intertextuality, where other texts are an overt part of a new text and interdiscursivity, where texts are constructed from various different discourses. Intertextuality can be seen as a historical endeavor because texts from the past are integrated into present texts, which may all be integrated into future texts. Intertextuality brings discursive practice to a higher level by illuminating the macro-level orders of discourse from which texts draw. As Fairclough (1992) states,

> Micro- and macro- analysis are therefore mutual requisites. It is because of their interrelationship that the dimension of discursive practice in my three-dimensional framework can mediate the relationship between the dimensions of social practice and text: It is the nature of the social practice that determines the macro-processes of discursive practice, and it is the micro-processes that shape the text. (p. 86)

By drawing together the micro- and the macro- dimensions of critical discourse analysis, intertextuality in discursive practice serves as important criteria for understanding the role of the text in appealing to larger social practices of power and inequity.

CDA at the Level of Social Practice

Discourse has meanings beyond the creation and content of individual texts. While much linguistic and semiotic analysis focuses solely on the text itself and its use of discourse, critical discourse analysis also views discourse as a social practice that interacts with other social practices at the macro, or institutional level. Discourse as social practice considers the order of discourse from which texts draw, but also engages with social theory to explain the relationship between the text and existing social processes (Jørgensen & Phillips, 2002). The integration between social theory and traditional orders of discourse can help illuminate social change and the role of discourse in reflecting and constituting change. In this instance, prostitution and sex trafficking statutes reflect wider understandings of power, deviancy, gender, race, and class.

It is at the macro-level of discourse as a social practice where the critical and interdisciplinary aspects of CDA become most apparent. Critical and post-modern theories are the most often theoretical viewpoints used by critical discourse analysts. As Jørgensen & Phillips (2002) state "Doing critical discourse analysis will, then, always involve the trans-disciplinary integration of different theories within a multi-perspectival research framework – linguistic theory and analysis can never suffice to account for the non-discursive aspects of the phenomenon in question" (p. 86). However, it is also this relationship between discourse and social practice within critical discourse analysis that draws the most critique. The distinction between discursive and non-discursive practices are somewhat theoretically unclear, and the ability to measure a dialectical relationship between discursive and other social practices may only be analytically useful (Jørgensen & Phillips, 2002, p. 89). Still, by positing discourse as partially constitutive and partially

constituted, Fairclough and other critical discourse analysts have created a transdisciplinary methodology that critically examines the role of discourse in social change.

This dissertation relies on critical discourse analysis as discussed by Norman Fairclough because as Jørgensen & Phillips state, "Fairclough, has in our view, constructed the most sophisticated framework for analysis of the relationship between language use and societal practices in general" (p. 89). Because my research focuses on the ties between the macro- and the micro-level analysis of discourse and the relationship between discourse as incorporated in state prostitution and sex-trafficking statutes and punitive social processes, Fairclough's framework was the most useful for understanding these relationships. This does not mean; however, that Fairclough is the only theorist or methodologist associated with critical discourse analysis. Ruth Wodak, Teun Van Dijk, Paul Gee, and Paul Chilton have also proposed forms of critical discourse analysis with somewhat different theoretical and methodological emphases.

Critical Discourse Analysis as a Multi-Perspectival Methodology

While Fairclough does not explicitly discuss the role of ontology and epistemology in his work, it is clear that he intended his theory to cross disciplinary boundaries and integrate theoretical assumptions of social sciences and the humanities. Specifically, he perceived a need to integrate the rhetorical and critical research conducted in his discipline of communication studies with the macro-theoretical frameworks of sociology and political science. When examined through the lenses of Burrell and Morgan's ontologies of social science (discussed in the introduction chapter) it becomes clear that CDA crosses the epistemological boundaries of interpretive and

radical humanist analysis and approaches the ontological boundary between radical

humanist and radical structuralist theory (see figure 3.2). As agency, interaction, and text

shift in importance at each level, so too must the focus of the analyst change to achieve a

truly deep reading of the text and its implications for social practice. The critical

discourse analyst must as David Farmer (2010) suggests, apply different lenses to read

the text and its incorporated discourses deeply and across multiple levels of analysis.

Research to
Radically Change
System

Radical Humanist	Radical Structuralist
Discourse as Social Practice	*Discourse interacting with other Social Practices*
Discourse as Discursive Practice	
Interpretivist	Functionalist
Discourse as Text	

Subjective

Objective

Research to
Improve Function
of System
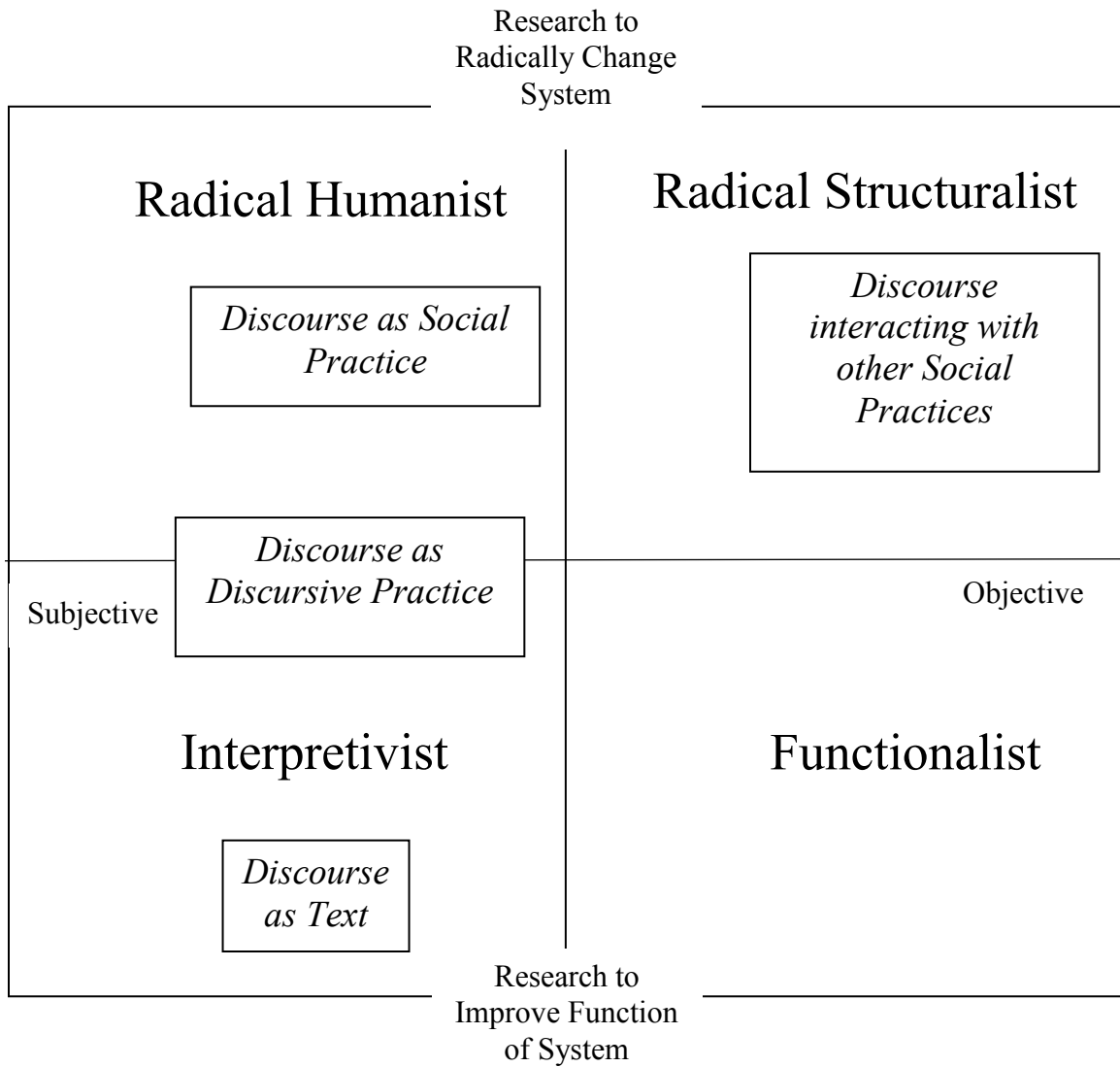
Figure 3. Critical Discourse Analysis and the Sociological Paradigms. Adapted from Burrell and Morgan (1979) and Fairclough (1992). This figure shows the relationship between the sociological paradigms discussed by Burrell and Morgan (1979) and the levels of Fairclough's Critical Discourse Analysis.

Critical Discourse Analyses of Political and Policy Documents

Critical discourse analysis' ability to integrate multiple social theories and engage with texts at multiple levels of analysis makes CDA a useful methodology for the analysis of texts and discourse in a variety of disciplines. While many of the methodology's major theorists have a background in linguistics or communications, the methodology was created for use in a variety of fields across the social science and humanities. Because public policy and administration are themselves interdisciplinary fields, examples that analyze political and policy documents from multiple perspectives will be considered in shaping the empirical use of critical discourse analysis for my research.

In their review of critical discourse analysis as a prominent methodological framework in anthropology, Blommaert and Bulcaen (2000) identify studies using CDA to examine nine different topics including racism, political discourse, ideology, economic discourse, media discourse, and gender. In his own work, Fairclough uses CDA to examine the role of media discourses in the shifting boundaries between private and public life in the 1990s (1992). He analyzes news articles and ties them to larger societal shifts. He later uses CDA along with rhetorical theory to examine the political discourse surrounding the 2008 economic crash to illustrate the use of political statements as rhetorical argument (Fairclough & Fairclough, 2012).

In an article published in *Critical Social Policy,* Marlene Spanger (2011) uses a Foucauldian form of critical discourse analysis to understand the prominent discourses present in Danish prostitution and human trafficking policy debates and historically ground them. Consistent with Foucauldian genealogical theory, she examines past

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debates as elements shaping the current prostitution policy field. To conduct her analysis,

Spanger uses studies of the history of prostitution problematization and adds a critical

discourse analysis of contemporary government and NGO documents related to

prostitution and sex trafficking. She identifies five discourses present in the field of

prostitution policy: the juridical discourse, the medico-scientific discourse, the religious

discourse, the feminist discourse, and the social policy discourse.[11] Over time, the

specific content of each discourse changes and different discourses increase or decrease

in prominence in Danish policymaking. She concludes by elaborating on some of the

discursively problematic aspects of the currently dominant human trafficking discourse:

> At a discursive level, the effects of how human trafficking is problematized
>
> produce a subject position of 'the prostitute' that is based on the intersections of
>
> gender, race and geographical place and that creates stereotypical notions of the
>
> 'Third World Female Sex Slave' rescued by the 'White First World Feminist' (p.
>
> 536)

Spanger's (2011) use of Foucauldian discourse analysis to examine Danish governmental

and NGO documents related to prostitution and trafficking as texts provides a good

methodological and conceptual model from which my analysis can build. By examining

the role of discourse along with other social practices commensurate with Fairclough's

CDA, my analysis will have a somewhat different emphasis and may reach different

conclusions.

---

[11] Interestingly, Spanger combines the sex work and abolitionist arguments into a single feminist discourse because they both focus on the effects of prostitution on women.

Critical discourse analysis has also been used frequently in the study of social policy, particularly among European scholars. Vasilis Arapoglou (2004) uses critical discourse analysis to categorize and understand the role of power in various homelessness discourses present in southern European welfare states. By analyzing texts from agencies dealing with homelessness, Arapoglou found that there were a small number of actors whose voices pervaded managerial and philanthropic discourses, allowing them to decide which members of the homeless population received which services. Stuart Connor (2007) uses CDA to deconstruct discourses related to the Targeting Benefit Fraud campaign instituted by the British government in 2000. He analyzes television advertisements during two phases of the campaign and finds that the campaign uses a hero and villain discourse to reinforce an understanding of fraud and deceit as human nature, and divides society into deserving and undeserving groups. By employing these discourses, the political stance of the New Right is reinforced. Elizabeth A. Segal and Keith M. Kilty (2003) used critical discourse analysis to deconstruct political speeches given on the floor of the House of Representatives during the debates over the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). They identified three major themes discussed by members of the House, "They referred to the problem of welfare, the goal of changing the current system, and their assessments of the legislation before them" (p. 58). They also examined appeals to cultural and social values like fairness and responsibility. Commensurate with the three level strategy of critical discourse analysis, the authors go beyond the thematic aspects of the discourses presented to tie the speeches to hegemonic structures of race, class, and gender, even though none of these sources of structural inequality were explicitly mentioned in the debates. Jay

Wiggan (2012) examines a green paper and a white paper on poverty released by the British government. He finds that they rely on a neo-liberal discourse of dependency and worklessness that promotes a causal story of poverty as stemming from poor choices and bad behaviors over institutional factors.

Critical discourse analysis has also been used in other policy arenas to analyze the role of government texts as discourses that promote certain forms of power and beliefs. Scholars studying environmental and sustainability policies have used CDA to study blogs and controversies over climate change (Nerlich, 2010) and pesticide regulations created at the Stockholm Convention (Hardy & Maguire, 2010). Defense policy scholars have used CDA to study preventive war discourses in the political speeches of George W. Bush (Ferrari, 2007). Scholars studying health policy have used critical discourse analysis to analyze national statements about public health and health inequalities in the UK (Smith et al., 2009). In education policy, the use of "we" in education policy discourses proposed by the New Left (Mulderrig, 2012) and drug texts used in anti-drug education classes (Tupper, 2008) have been deconstructed and connected with hegemony and ideology using critical discourse analysis. Other scholars have used CDA to analyze government responses to the Arab Spring (Maalej, 2012) and Occupy and its British equivalents (Bennett, 2013).

The use of CDA to analyze government documents and speeches as texts has been used in a variety of policy domains. While these papers may be substantively and disciplinarily diverse, they offer empirical models for any scholar attempting an analysis using CDA. The next chapter will integrate the lessons learned from this body of research to create a more specific roadmap for the use of critical discourse analysis as a

methodology for deconstructing prostitution and sex trafficking statutes using a mixed

methods approach of traditional qualitative discourse analysis and quantitative text

mining and analysis strategies.

CHAPTER 4

METHODS

As mentioned in the previous chapter, I am using the ontological and

epistemological lens of discourse theory to conduct a critical discourse analysis of state

prostitution and sex trafficking statutes to determine how these statutes function as

expressions of hegemonic discourses about sexuality, gender, class, race, and the role of

the state. To do this, I relied upon a transformative[12] mixed methods strategy of text and

discourse analysis to examine how signifiers serve as political rationalities for state

intervention into prostitution across the fifty states. By using a mixed methods strategy, I

was able to both assemble a broad corpus of texts for analysis and delve deeply into the

language of individual texts, combining micro- and macro- approaches to uncover

meaning in policy texts.

Data Collection

Both my quantitative and qualitative approaches to the analysis of text used the

same corpus, or body of data. Based upon previous research in the field of prostitution

policy and a review of the literature from various disciplinary fields, I used LexisNexis

State Capital to collect relevant criminal and civil statutes from the 2012 state codes of all

fifty states as my corpus for analysis. The statutes provided by LexisNexis were

annotated and Shepardized, meaning they contained information about legislative history

and related law review articles, as well as, a list and summary of court cases citing the

bill. After some trial and error, two keyword strings were used to identify relevant

---

[12] According to John Creswell and Vicki Plano Clark (2007), the key aspect of a transformative mixed methods design is its use of a radical theoretical lens and is intended to increase social justice for an oppressed or marginalized group. The data collection and analysis phase can occur in any order, but the goal of transformative research must be present in all stages.

statutes "'sex traffic*' or 'human traffic*' or 'traffic* in persons'" was used to identify

statutes related to sex trafficking, while 'prostitut*' was used to identify statutes related

to prostitution. Searches were conducted by state, and the District of Columbia was

excluded from analysis. The full text of statutes, as well as, meta-information like title,

chapter, article, statute, and full statute number; as well as statutory history and

Shepardized reference information from Lexis Nexis was retained for each statute.

Unsurprisingly, the searches resulted in some duplicates, which were identified by statute

number and removed from the corpus. All statutes that were pulled from Lexis Nexis

using the two keyword strains above were retained, regardless of how prominent

prostitution or sex trafficking was to the statute title. This decision was made in order to

identify points of interdiscursivity across multiple discourses, commensurate with

Fairclough's (1992) CDA methodology. The corpus was also unconstrained by code or

title. Statutes were pulled for both civil and criminal regulations in order to get a full

picture of how hegemonic discourses are transmitted through state policies. Using these

data collection procedures, a final count of 1,432 statutes were selected for analysis.

<div align="center">

Quantitative Text Mining and Analysis

</div>

Critical discourse analysis emphasizes deep analysis of texts and discourse at

multiple levels of analysis. In the early 1990's, when *Discourse and Social Change* was

published, analyzing over 1,432 texts spanning thousands of pages would have been

nearly impossible. The early 21st century has become the era of big data, and new tools

have been developed that facilitate the analysis of large corpuses of unstructured data.

While these tools have primarily been designed for use on data transmitted across

websites, particularly social media and networking sites, this does not preclude their use

on existing documents. Just as humanities scholars have used these tools to analyze

classic works of literature, so too can policy and administration scholars use these tools to

analyze the many documents of government operations, including statutory documents.

The use of these tools is generally referred to as text mining, which is a new

research method that uses techniques from "data mining, machine learning, natural

language processing (NLP), information retrieval (IR), and knowledge management"

(Feldman & Sanger, 2007, p. i). It provides researchers with the capacity to collect, clean,

analyze, and store large amounts of unstructured data. Through this process, text mining

software helps the analyst discover new information and knowledge that she would be

unable to access without the assistance of the computer program. For my analysis, I used

RapidMiner[13], an open source data mining and analysis software program, with the text

processing extension. Text mining has several steps: document collection, preprocessing,

core analysis, information management, and knowledge creation. Figure 4.1, adapted

from Fan, Wallace, Rich, and Zhang (2006, p. 78) shows the text mining process. I was

able to complete all of these steps using the RapidMiner software.
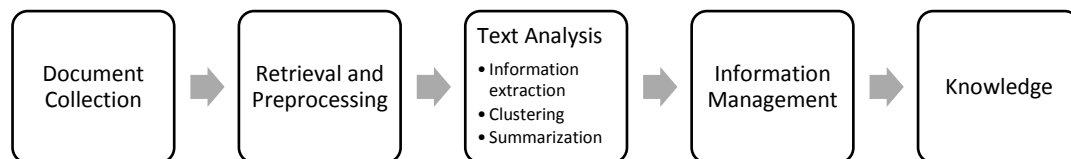
Figure 4. The Text Mining Process. This figure shows the steps taken in the text mining
process as adapted from Fan et al.

---

[13] For my analysis, I used RapidMiner version 5.3, which is the current open source version of RapidMiner.
Later versions of RapidMiner exist, but they are proprietary.

Document Preprocessing

Because my corpus of data was the same for my quantitative and qualitative analysis, I discussed my data collection methods in the previous section. In order to analyze my corpus of statutory data using text mining techniques, I had to transform my data from unstructured text into a structured dataset. This transformation occurred in the preprocessing stage of text mining. To prepare my data for importation into RapidMiner, I first created an Excel file with the statute number used as the text identifier. I included a number identifying each statute by state, the title of the statute, the full text of the statute, and the history of the statute. These data were used as the column headers for my dataset. I then imported the data into RapidMiner for pre-processing and analysis. I used a similar process to pre-process my documents for the state by state analysis. RapidMiner also has the capability to import individual text documents and pre-process them to create a data vector. For the state analysis, it made more sense to create individual text documents with the names of each prostitution and sex trafficking statutes selected for each state[14] than to create an excel file with a row for each state, which would have forced me to include all statutes for that state included in a single cell of data. I directed the software to the folder that included all 50 state files and it imported the data as 50 separate data vectors.

By constructing my dataset this way, I defined my key unit of analysis, referred to as *the document*, in text mining, as the statute for the first phase of analysis and the state for the second analysis. Feldman and Sanger (2007) state:

---

[14] An analysis was also run using the full-text of statutes for each state, but there was a significant amount of noise when the data were analyzed this way due to the length of statutes like sentencing statutes that were only marginally related to prostitution and sex trafficking.

For practical purposes, a document can be very informally defined as a unit of

discrete textual data within a collection that usually, but not necessarily, correlates

with some real-world document such as a business report, legal memorandum, e-

mail, research paper, manuscript, article, press release, or news story (p.3).

This distinction became important in my statistical analysis, where I examined the

relationship between the two levels of analysis.

For the statutory analysis, the data I was interested in analyzing was the

unstructured full-text of the statutes so I weighted the full-text column by 1 to ensure that

only the text of the statute was used to create my data vector. For the state analysis, the

only data included in the text documents were the names of statutes so there was no need

to weight the data as part of the importation process.

Vector creation also requires some guidance in order to assist the computer in

successfully extracting the text data. For both analyses, I directed the program to tokenize

the text using non-letters. This divides the data into individual terms, per the instructions

given by Feldman and Sanger (2007), but the data can also be divided using dividing

symbols like periods to create full sentences or by regular expressions set by the analyst. I

also pruned the data as part of pre-processing. Tokens with two or fewer characters and

more than 25 characters were removed from the vectors. Tokens that occurred less than

three percent of the time and more than 80 percent of the documents were also removed

from the data. English stopwords, which are common words in the English language like

"and", "the", "or", etc. were also filtered out. Finally, terms were transformed into lower

case and stems. Stemming the terms reduced them to their root so that for example,

"prostitute", "prostitution", and "prostituting" would all be represented by the same

variable in the data vector, in this case the stem "prostitut". N-grams of two terms were also generated. N-grams are chains of tokens and the user can set how many tokens the computer should include in each chain[15]. The above procedures directed the RapidMiner program to extract terms from each document in order to create a data vector for each document in the corpus.

The analyst can choose what type of data vector she would like to generate as part of the document processing stage. Different types of data vectors are helpful for different types of analyses. For association analyses, the analyst needs to examine term frequencies to determine which terms occur together frequently within documents. For cluster analyses, the analyst needs to differentiate between documents, so a Term Frequency-Inverse Document Frequency (TF-IDF) vector is needed. Because I wanted to analyze the importance of terms to the corpus as a whole and cluster the documents, I constructed two structured data vectors from my corpus: a term frequency vector and a TF-IDF vector.

The TF-IDF data vector is based on the creation of a metric that illustrates how important a term is to any given document relative to the other documents in a sample. Mathematically, the TDF-IDF score is calculated as follows:

Given a document collection D, a term t and a document $d \, \epsilon \, D$

$$t_d = f_{t,d} * \log(|D|/f_{t,D}) \tag{1}$$

---

[15] I also repeated my pre-processing with an N-gram value of three, which would pull all N-grams composed of three and two terms. None of the three term N-grams were common enough to note.

where $f_{t,d}$ is equal to the number of times that t appears in d and $f_{t,D}$ is equal to

the number of documents where t appears in D (Berger, Caruana, Cohn, Freitag,

& Mittal, 2000; Ramos, 2003; Salton & Buckley, 1988)

Using the formula above, one can see how the TF-IDF score changes as $f_{t,d}$ and $f_{t,D}$

change. When $f_{t,d}$ increases, the TF-IDF score will increase, but when $f_{t,D}$ increases, the

TF-IDF score will decrease. Thus, terms that occur frequently within a small number of

documents will be given a relatively high TF-IDF score for the documents, in which they

occur; while terms that occur commonly across all documents would have a relatively

low TF-IDF score for documents, in which they occur.

Core Analysis Procedures

Once the documents were pre-processed, I continued to the analysis stage of text

mining. Feldman and Sanger (2007) refer to this process as the core mining operations

stage and describe it thusly:

> Core mining operations are the heart of a text mining system and include pattern
>
> discovery, trend analysis, and incremental knowledge discovery algorithms.
>
> Among the commonly used patterns for knowledge discovery in textual data are
>
> distributions (and proportions), frequent and near frequent concept sets, and
>
> associations. Core mining operations can also concern themselves with
>
> comparisons between – and the identification of levels of 'interestingness' in –
>
> some of these patterns (p.14)

Although I had some historical information about statutes, I analyzed my corpuses of

statutes as a cross-sectional dataset of current laws. My analysis was therefore unable to

incorporate trends, and was focused primarily on distributions of terms within documents

and comparisons between documents. To ground the discussions of term frequencies and distributions, I coded each term based upon the prostitution discourse from the literature that the term seemed to signify. While I ran an analysis of frequent sets and associations, this analysis was not included in my research findings because the prominence of statutory language associations was far more prominent across documents than substantive sets and associations related to the subject matter of prostitution and sex trafficking. My text mining analysis presented in chapter five, therefore, focuses primarily on term frequencies and distributions, as well as a cluster analysis, which groups and compares the documents.

Cluster Analysis

A key procedure of my text mining analysis is cluster analysis of documents. I conducted two cluster analyses, one using statutes as my unit of analysis and the other using states as my unit of analysis. According to A.K. Jain, M.N. Murty, and P.J. Flynn (1999), there are five components to a clustering task:

(1) pattern representation (optionally including feature extraction and/or selection),

(2) definition of a pattern proximity measure appropriate to the data domain,

(3) clustering or grouping,

(4) data abstraction (if needed), and

(5) assessment of output (if needed).

However, as Aldenderfer and Blashfield (1984, p. 46) point out, cluster analysis can be considered as much an art as it is a science. Decisions made by the analyst at each of

these five steps can influence the outcome of the cluster analysis. The analyst's goal in a cluster analysis is to optimize the clustering solution and select the best among all possible groupings.

The pre-processing stage of my text mining analysis, in which I created a data vector from the documents using a TF-IDF score, completed step one of Jain, et al.'s (1999) five steps by extracting terms and assigning a numerical score to each term within each document. Step two of Jain et al.'s procedures requires the selection of an appropriate similarity function on which to base the clusters. While Euclidean Distance is the most popular function used in the clustering of structured data, the cosine similarity measure is the most common function used in clustering text documents (Feldman & Sanger, 2007; Shepitsen, Gemmell, Mobasher, & Burke, 2008).[16] Mathematically, the cosine similarity measure can be written as follows:

$$Sim(x_i, x_j) = \left(x'_i \cdot x'_j \right) = \sum_k x'_{ik} \cdot x'_{jk} \tag{2}$$

where x' is the normalized vector $x/|x|$ (Feldman & Sanger, 2007, p. 85)

The cosine similarity matrix is best explained using an example where a set of three documents is clustered based on the TF-IDF score of two terms. Given the nature of my corpus, I used the terms "prostitution" and "trafficking". Prostitution appears frequently across all documents, so even when it appears multiple times in an individual document we would expect the TF-IDF score to be relatively low. As shown in Figure 4.2, the cosine similarity measure is based on the differences in angles between vector scores. In the example, document one contains the term prostitution, but not the term trafficking.

---

[16] For comparison's sake, I also clustered my data using the Euclidean Distance similarity function. A review of the resulting clusters supported the use of the cosine similarity measure, as the resulting cluster solution seemed to group the data in a more comprehensible manner.

Document two contains the term trafficking, but not the term prostitution. Document

three contains both terms, but has a higher TF-IDF score for trafficking[17]. Thus, using the

cosine similarity matrix, document three would be clustered with document two rather

than document one. RapidMiner calculates the cosine similarity measure multi-

dimensionally across multiple documents using the TF-IDF score for every term in a

given document's data vector.

---

[17] This result would actually be expected in my corpus because prostitution is a more common term across
all documents than trafficking.
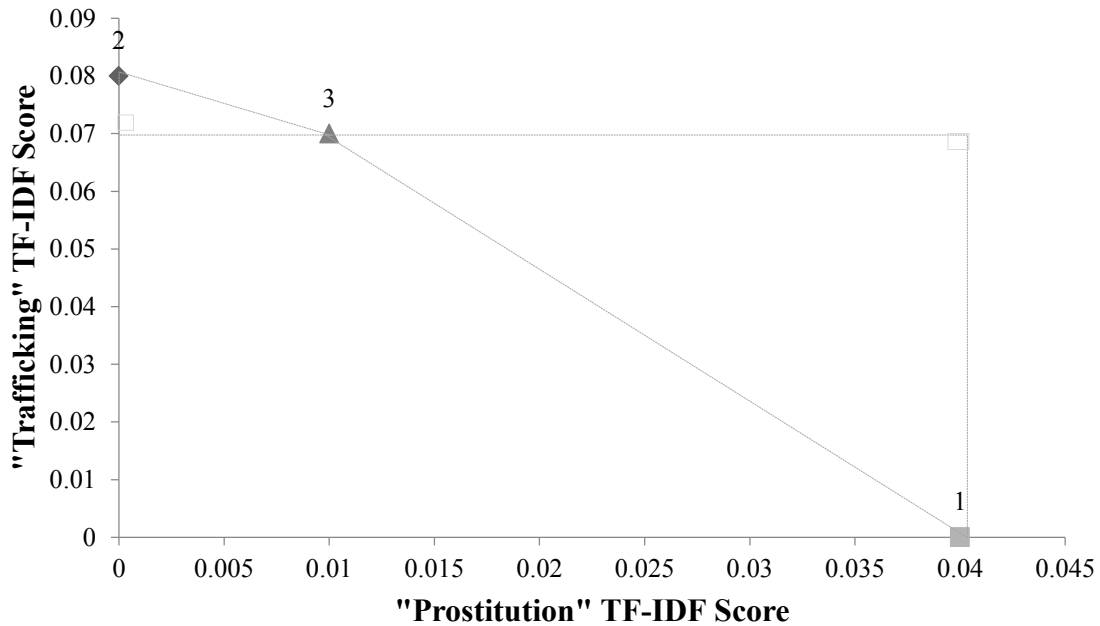
d_1=0.04 0.00
d_2=0.00 0.08
d_3=0.01 0.07

$$\sin(d_1,d_3) = (0.04 * 0.01 + 0.00 * 0.07)/(\sqrt{(0.04^2+0^2)}*\sqrt{(0.01^2+0.07^2)})$$

$$= 0.0004/0.002828$$
$$= \mathbf{0.14144272}$$

$$\sin(d_2,d_3) = (0.00 * 0.01 + 0.08 * 0.07)/(\sqrt{(0.01^2+0.07^2)}*\sqrt{(0.00^2+0.08^2)})$$

$$= 0.0056/0.005657$$
$$= \mathbf{0.989924}$$
$$\sin(d_2,d_3) > \sin(d_1,d_3)$$

Figure 5. An Example of a Cosine Similarity Matrix Calculation. This figure provides an example of how a cosine similarity measure would be calculated for two terms occurring across three documents (Shepitsen, et al., 2008).

Step three in Jain et al.'s (1999) list of components involves the clustering of the

data itself. There are multiple ways that clustering can be used to sort and compare data.

The first decision that an analyst must make is whether the clustering will be hard or soft.

In a hard cluster analysis, each observation can only be clustered into a single group,

while a soft cluster allows observations to be clustered into multiple groups with a

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fractional membership in each one (Aldenderfer & Blashfield, 1984). For the sake of simplicity and usefulness as a sampling strategy for my discourse analysis, I chose to use a hard cluster solution in my analysis.

There are also many different algorithms that can be used to cluster the data. These algorithms may be agglomerative, separating each observation into a single cluster and gradually merging them, or divisive, starting with all observations in a single cluster and gradually splitting them (Aldenderfer & Blashfield, 1984; Feldman & Sanger, 2007). The algorithms may be relatively simple, relying on the analyst to specify the number of groups and clustering observations based on that specification; hierarchical, illustrating all possible cluster groups for the corpus of data, or probabilistic, relying on probabilistic logic to categorize the data into the best clusters (Aldenderfer & Blashfield, 1984; Feldman & Sanger, 2007). For my analysis, I used the simplest and most efficient form of clustering, the K-Means algorithm.

The K-Means algorithm partitions documents, represented as data vectors, into clusters. Mathematically, the K-Means algorithm maximizes the clustering quality function, *Q:*

$$Q(C_1, C_2 \ldots,C_k) = \sum_{C_1} \sum_{x \in C_i} \text{Sim}(x - M_i)$$

Where $\{x_1, x_2 \ldots x_n\}$ is a collection of data vectors and $(C_1, C_2 \ldots,C_k)$ is a set of clusters and M_i is the centroid of a cluster calculated as:

$$M_i = |C_i|^{-1} \sum_{x \in C} x \quad \text{(Feldman \& Sanger, 2007)} \tag{3}$$

The analyst designates the number of clusters and the seeds, or centroid observations, for each of the clusters. Generally, the analyst will set the computer system to choose the seeds randomly. Each of the vectors is then assigned to the cluster with the closest seed

based on the selected similarity measure. Once all of the vectors are assigned to k number of clusters, the centroids of each cluster are re-calculated and the process begins again. When the algorithm converges and data vectors no longer shift between clusters, the process stops and the cluster solution is presented to the analyst. In a K-Means cluster, the initial seeds and the number of groups are set by the user and can drastically alter the cluster solution. It is thus recommended that the analyst use trial and error, running the analysis multiple times with random seeding and attempting multiple solutions with various values for k (Aldenderfer & Blashfield, 1984).

Choosing the correct value for k depends upon highly subjective factors like the reason for the clustering. For example, a small number of clusters may be more useful for categorizing and describing a dataset, while a larger number of clusters may be more useful for an inferential statistical model. Further, a cluster solution that seems incomprehensible to the analyst, is probably not the best cluster solution (Feldman & Sanger, 2007). While the data vector may direct the computer software to cluster the data in a specific way, the label of the cluster can be just as important as the cluster solution itself. If, after consideration, the analyst cannot find some value in the clusters derived, she should consider clustering using a different value of k or a different method. Through the iterative process of clustering on different values of k, the analyst may notice that the k+1 cluster solution merely parses out a small number of observations from a single cluster in the k cluster solution. In such a case, it is likely that the k solution is a better cluster solution than the k+1 solution (Aldenderfer & Blashfield, 1984). Through an iterative process of trial and comparison, the analyst can determine the best cluster solution for her needs. For my analysis, I used this iterative process to determine the best

cluster solution, as well as, RapidMiner's *X-Means* function, which automates the

iterative process by allowing the user to set minimum and maximum values for k. Using

both processes, I arrived at a five group solution for my cluster analysis of statutes and a

three group solution for my cluster analysis of states.[18]

Cluster Analysis Validity

While the cluster analysis of structured data uses measures of validity to help the

analyst select the best cluster solution, ensuring that a cluster solution is valid is, once

again, more of an art than a science. There is no statistic that provides a cut-off level of

significance indicating a valid versus an invalid solution. Instead, the analyst must always

rely on relative measures of validity for her corpus of data (Aldenderfer & Blashfield,

1984). Feldman and Sanger (2007) argue that measures of clustering quality are really

only useful in order to optimize the clustering algorithm for a given corpus. Instead, the

usefulness of the resulting clustering is a better standard for evaluating a cluster solution,

particularly when the objects being clustered are unstructured text documents. They

suggest the use of simulated experiments to evaluate a given cluster solution.

For this reason, I eschew traditional measures of statistical internal validity and

instead use machine learning to test the validity of my cluster solution. Machine learning

is a useful strategy for assessing the validity of any categorization scheme based solely on

the data vectors for a given unstructured corpus. Using bootstrapping techniques, the data

mining software program attempts to learn the categorization scheme used for the data,

and then attempts to replicate it. The ability of the machine to successfully categorize the

data into each group provides the analyst with a relative measure of cluster validity,

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[18] In both cases, I set the minimum k to three and the maximum k to ten for the X-Means cluster procedure.

suggesting the degree to which, the categorization scheme presents true distinctions in the data or imposes an artificial structure on the data at hand. I use RapidMiner's machine learning function to evaluate the cluster solutions for both my statute and state level analyses in order to separate the signal from the noise in the data.

For both the statute and state cluster solution, I conducted the machine learning validity check using both a nearest neighbor strategy and a Naïve Bayesian strategy. The k-Nearest Neighbors algorithm (k-NN) is a similar strategy utilized by a k-means cluster analysis to categorize the data into classes. In a k-NN classification strategy, class membership is determined based upon the classification most common among a certain number of nearest neighbors. When the cosine similarity measure is used, as it was in my analysis and often is in text mining analyses the procedure for conducting a k-NN classification is as follows:

> *knn (d')* denotes the indexes of the *k* documents which have the highest cosine with the document to classify *d'*.

$$H_{knn}(d') = sign\left(\frac{\sum_{i\in knn(d')} y_i(d',d_i)}{\sum_{i\in knn(d')} \cos(d',di)}\right) \qquad \text{(Joachims, 1998, p. 8) (4)}$$

You can see from the equation how the k-NN classification strategy is similar to the k-means cluster strategy, particularly when the same similarity measure is used. Just as k-means is the simplest form of clustering, k-NN is the simplest form of machine learning, but k-NN has also generally performed well when classifying text documents.

The Naïve Bayes model uses probabilistic modeling to classify the data, relying on the assumption that all terms in a document occur independently of the other terms. According to Joachims (1998):

The goal [of the Naïve Bayes classifier] is to estimate Pr(+|*d'*), the probability that a document *d'* is in class +. With perfect knowledge of Pr(+|*d'*) the optimum performance is achieved when *d'* is assigned to class + iff Pr(+|*d'*) ≥ 0.5 (Bayes' rule). Using a unigram model of text leads to the following estimate of Pr(+|*d'*)…

$$\Pr(+|d') = \frac{\Pr(+)\cdot\prod_i (w_i|+)^{TFw_{i,d'}}}{\Pr(+)\cdot\prod_i \Pr(w_i|+)^{TF(w_{i,d'})}+\Pr(-)\cdot\prod_i \Pr(w_i|-)^{TF(w_{i,d'})}} \tag{5}$$

The probabilities *P*(+) and *P*(-) can be estimated from the fraction of documents in the respective category. For Pr(w_i|+) and Pr(w_i|-) the so called LaPlace estimator is used. (Joachims, 1998, pp. 7-8)

The use of the Naïve Bayes classification strategy for machine learning provided me with an alternative means of attempting to replicate the cluster analysis that incorporates probabilities of group membership rather than a simple nearest neighbor strategy. While it seems unlikely that the Naïve Bayes method would learn the clusters better than the nearest neighbor strategy, on which the cluster match was initially made, if the Naïve Bayes algorithm succeeds, it suggests that there is a real underlying pattern in the data beyond an arbitrary assignation to groups.

Statistical Analysis

In order to test the relationship between my state and statute cluster solutions, I also ran a statistical analysis to determine whether there was a relationship between the distribution of types of statutes by state and the groups into which states were clustered. To do so, I constructed a multinomial logistic model in STATA, because my left hand side variable (state cluster) was nominal with three categories.

According to John Fox (2008), the multinomial logit model, also known as the polytomous logit model, extends the logit model used for dichotomous variables to a multivariate logit model where the left hand side variable can have any of m non-arbitrarily and non-ordinally assigned qualitative values (p. 355). Formally, the multinomial logit model is written as:

$$\ln\Omega_{m|b}(x) = \ln \frac{Pr(y = m|x)}{Pr(y = b|x)} = x\beta_{m|b} \text{ for } m = 1 \text{ to } J \qquad (6)$$

where b is the base category, which is also referred to as the comparison group

(Long & Freese, 2006, p. 228)

While J. Scott Long and Jeremy Freese correctly state that the appearance of differences in parameter estimates only appear to be different when the base or reference category is changed, and do not really change based on the reference category, I ran and present in chapter five models with two different reference categories for ease of interpretation by the reader.

Consistent with Long and Freese's recommendations, I also used likelihood-ratio hypothesis tests to test the null hypotheses that the coefficients for a given variable are simultaneously equal to zero and that conceptually relevant sets of coefficients are jointly simultaneously equal to zero. I also used a combined likelihood-ratio test to test the null hypothesis that the classes indicated by the left hand side variable are indistinguishable given the right hand side variables as a group. While STATA also allows analysts to use Wald testing on each of these hypotheses, they suggest the use of likelihood ratio testing unless the model is complex or the sample size is very large (Long & Freese, 2006, p.

237). Neither of these caveats applied to my analysis, making the likelihood-ratio hypothesis tests the superior choice.

Because I collected my data cross-sectionally, and therefore only had 50 observations, I attempted to keep my statistical analysis as simple as possible, while still controlling for the distribution of statute clusters and important political, demographic, and economic characteristics. I also attempted to control for arrests, to see if they had any relationship to the left hand side variable, state cluster.

I controlled for the distribution of statute clusters within states by including five variables in my model, the percent of child abuse statutes, the percent of exploitation statutes, the percent of place-based statutes, the percent of criminalization statutes, and the percent of licensing and regulation statutes. I also controlled for the total number of prostitution and sex trafficking statutes.

I collected my state control variables from various sources. The demographic characteristics (population, population density, percent of the state that identifies as black or African American, and the percent of the state that identifies as Hispanic or Latino) were collected from the 2012 American Community Survey (ACS) one-year estimates by state (2014) and the US Census Bureau Population Division (2012). The economic variable (unemployment rate) was collected from the University of Kentucky Center for Poverty Research's publicly available dataset, *State-Level Data of Economic, Political and Transfer-Program Information for 1980-2012* (SDEPTI) (2013), the ideological data were collected from Richard C. Fording's public website and represent the most recently updated version of the ideological index created by Berry, Ringquist, Fording, and Hanson (1998). Finally, the number of prostitution arrests was collected from the Federal

Bureau of Investigation's Uniform Crime Reports (2013). In all cases, the data used were from 2012, except for the ideological score data which were only updated to 2010, so the 2010 data were used as a proxy for the 2012 data[19].

Discourse Analysis

The purpose of my text mining analysis described above was two-fold. First, describing the types of laws states have passed to regulate and criminalize prostitution and sex-trafficking provided interesting insights into the discourses present in the statutes in its own right. Second, it provided a basis for sampling my corpus of data for my in-depth discourse analysis. While I could have selected my documents completely at random, a purposeful sample based upon the clusters uncovered in the text mining analysis ensured that I would analyze a substantively diverse sample of texts. I therefore randomly selected five statutes for analysis from each of the five clusters, resulting in a sample of twenty-five statutes for analysis.[20] Indeed, Fairclough (1992) recommends selecting a small sample of texts from the corpus for in-depth discourse analysis. Selection of sample texts should, Fairclough argues, be based upon a preliminary survey of the corpus and advice of those familiar with the topic and discipline of the research; my text mining analysis can be seen as a more in-depth version of this preliminary survey.

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[19] Specification tests were run with other data from these same sources, including personal income, the governor's party, and the density of Democratic members in the state house and senate from the SDEPTI, the percent of the population with more than a BA from the ACS, and a measure of religiosity from the annual Gallup poll.

[20] I initially considered using the state as my unit of analysis for the discourse analysis, choosing a smaller number of states and analyzing the entirety of their state code related to prostitution and sex trafficking. After my text mining analysis indicated that the state appeared to be a poor unit of analysis for examining prostitution and sex trafficking laws, I decided to use individual statutes as my documents or unit of analysis.

Fairclough offers substantial guidance on data analysis, once the research project, data corpus, and sample have been identified. He suggests conducting discourse analysis in the following progression:

> (i) [A]nalysis of discourse practices… focusing on the intertextuality and interdiscursivity of discourse samples… to (ii) analysis of texts (plus micro aspects of discourse practice); to (iii) analysis of the social practice of which the discourse is a part (p.231).

In this way, the analysis proceeds from interpretation, to description, to interpretation again (Fairclough, 1992, p. 231). Within each level of analysis, Fairclough recommends certain focal points of analysis based on his discussion of the methodology. These analytical focal points are discussed in the previous section on critical discourse analysis methodology.

For my analysis, I examined each of the twenty five selected statutes line by line, along with any relevant statutes referenced by the sampled statute and any relevant court cases provided by LexisNexis as part of the Shepardized version of the statute. Additionally, I examined the history section of the LexisNexis annotated statutes in order to contextualize changes in the statutes. I also referred back to any bills making recent changes to the statutes. I attempted to critique and deconstruct the language of the statutes through the lens of discourse theory as presented in the previous chapter. To do this, I read through the statutes multiple times, taking notes about the language used and my attempts to interrogate the inherent assumptions underlying the language. With each

read through, I attempted to work through the progression suggested by Fairclough (1992), above.[21]

Justifying the Analysis and Establishing Trustworthiness

Validity and reliability are important criteria for judging the merits of objective social science research (Babbie, 2011). The idea of reliability and validity are; however, premised on the ontology and epistemology of positivist social science. Research conducted from the critical and interpretivist perspective is more concerned with subjective and contextualized meanings. Validity and reliability therefore become impossible and irrelevant standards for the researcher to meet. This does not mean; however, that it is impossible to judge the quality of interpretive and critical research. Instead, the researcher seeks to provide other means for establishing and judging research quality.

Fairclough's (1992) method does not discuss explicit procedures for establishing the quality of discourse analysis. He discusses the topic of validation and justification as a question without a simple answer. He does; however, offer brief guidance, some of which is relevant to my analysis. The first factor he believes the analyst should take into account is the degree to which the analysis offers deep and comprehensive explanation of the discourse sample. No part of the sample should be left out of the analysis, details should be discussed, and the analysis should make sense in regard to the features of the text. The analysis should also be useful to the analyst as a model for future analyses[22].

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[21] Although, doing so was much easier to accomplish for some of the statutes than others.
[22] Other guidance offered by Fairclough concerns the input of discourse participants in validating the analysis. Because this analysis uses archival data, this procedure for validation is less relevant for my research. Further, the critical nature of this research makes participant validation more difficult. It is

While brief, Fairclough's guidance on validating one's analysis is consistent with the guidance offered by other interpretive and critical researchers. Stefan Titscher, Michael Meyer, Ruth Wodak, and Eva Vetter (2007) use the term "quality criteria". They argue that the criteria for "good" critical discourse analyses are that the analysis must be intelligible, practical, and recognizable (p. 164). Further, because discourse analysis is entirely contextually dependent, validity is never hard and fast, but is instead open-ended. The researcher must acknowledge this open-endedness honestly, and understand that as contexts and information change, the results of the analysis may evolve.

In their overview of three types of discourse analysis, Jørgensen and Phillips (2002) offer three criteria for judging the quality of a discourse analysis. The first is that the analysis must be solid. A variety of textual features should be included in the analysis, rather than a single feature. The second criterion is comprehensiveness. In other words, the question should be fully answered by the analysis and conflicting features should be accounted for. Finally, the analysis should be transparent to the reader. The process of analysis should be replicable and the empirical data should be fully disclosed (p.173).

In each of these cases, the criteria for judging the quality or trustworthiness, to use Catherine K. Riessman's (2008) term, of a critical discourse analysis is not nearly as straightforward as establishing the validity of a more objective analysis. To justify my critical discourse analysis, I will rely on the principles presented by Fairclough (1992), Jørgensen and Phillips (2002), and Titscher, et al. (2007). First, I will disclose my

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unlikely that policymakers creating prostitution and sex trafficking statutes would be willing to agree with and validate critiques of their lawmaking based on hegemony and ideology.

personal biases and beliefs about my subject matter to the reader in order to make my approach to the research and implicit standpoint transparent, commensurate with most critical and post-modern analyses (see Ch. 1). Appendix A, (available on request) will include all of the raw data for analysis: the state statutes pulled from Lexis Nexis State Capital, listed by state and code section, and the codes chosen for deeper analysis. These steps, along with my repeated reference to the literature and experts in the field will establish my research as trustworthy and of good quality.

The findings of my mixed methods analysis are presented in chapters five and six of this dissertation. Chapter five presents the findings of my text mining analysis, while chapter six presents the findings of my discourse analysis. While presented in two separate chapters, I believe that the reader will be able to see how they relate to each other and how the quantitative text mining chapter feeds into the more in-depth discourse analysis presented in my qualitative chapter. I believe that each chapter harnesses the epistemological strengths of each type of method in order to present the reader with a fuller understanding of prostitution discourses as they are encapsulated in and disseminated through state criminal and civil codes.

CHAPTER 5

DISCURSIVE CONSTRUCTIONS OF PROSTITUTION AND TRAFFICKING

ACROSS STATE STATUTES: A TEXT MINING ANALYSIS

When policymakers consider passing legislation on prostitution and/or sex trafficking. The emphasis is often solely on the criminal and criminal procedure codes. The reality; however, is that state-level prostitution and sex trafficking policy layers various types of laws, sometimes with conflicting goals and regulations, on top of each other. Using procedures detailed in Chapter Four, I identified 1,432 statutes from all 50 states, some of which spanned multiple pages and thousands of words in length. This lengthy and largely unstructured data presented an analysis challenge. Attempts to analyze the data manually were extremely time intensive. For this reason, I drew upon tools used primarily to analyze Big Data: text mining and analytics.

This chapter presents the findings of this machine assisted textual analysis at three different levels of analysis by starting with the most basic, an analysis of words and phrases across documents, and moving to larger units of analysis, full statutes and states. This analysis sheds light on the degree to which the understandings of prostitution as a social problem present in the literature are incorporated into prostitution laws, and the degree to which states can be classified based on their prostitution laws.

Word-Stem and N-Gram Frequencies

Analyzing basic word-stem frequencies, or the number of times the roots of words occur in the data, is a key primary step in any text analytics project. While statistical

counts of words, stems, and n-grams[23] can shed light on frequent terms and phrases

across data, counts of conceptually important words and phrases can illustrate the fit

between conceptual frameworks and the data.

Table 1

Most Frequently Occurring Stems in Corpus

Stem	**Total Occurrences**	**Document Occurrences**
prostitut	3094	79.99%
section	7574	64.03%
state	3415	49.58%
purpose	1510	47.49%
act	2136	45.67%
offense	3834	44.97%
law	2565	44.20%
include	2004	43.64%
year	2215	42.18%
sexual	3301	41.90%
child	3742	28.98%
court	3012	32.82%
mean	2863	35.75%
violat	2321	41.00%

Listed stems appeared in the top ten based on rank ordering by either total or document frequency after pruning, filtering, and tokenizing of the corpus. Total occurrence is a count of the number of times the stem occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem appears.

Table 1 presents the most frequently occurring stems across all statutes both in

terms of total frequency and document frequency after pruning for words occurring in

more than 80 percent of documents and less than three percent of documents, as well as,

filtering for common English stopwords and tokens of three letters or less. Total

frequency is interpreted as the total number of word occurrences across all documents,

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[23] While word stems are the roots of a word, for example prostitut to represent prostitute, prostitution, and prostituting, n-grams are chains of word stems for example promot_prostitut to represent promoting prostitution. While the analyst can set the number of stems to include in the number of n-gram chains, this analysis only includes chains of two stems.

while document frequency is interpreted as the number of documents in which the word or stem occurs. For all tables, the document frequencies are presented as a percentage of all documents. There was significant overlap between the most frequently occurring words overall and the words occurring in the most documents so any word that is in the top ten on either count is included in Table 1.

These frequently occurring stems illustrate the importance of legal and statutory language. The majority of stems are included in this list not because of the topical subject of sex trafficking and prostitution statutes, but because of the linguistic conventions of statutes and public policy. Five of the top stems can be considered topical terms: prostitut, offense, sexual, violat, and child. Offense and violat can be considered hybrid terms that are related both to the topical subject and the linguistic conventions of statutes.

Conceptually Important Terms

Occurrences of words that may not be statistically important to the dataset, but are conceptually important to the topic of prostitution and sex trafficking can shed light on how frequently policymakers draw from key narratives, and which narratives are successfully passed into law.

Criminal Justice Stems

Stems and n-grams that suggest a criminal justice treatment of prostitution include those that use criminal justice terms to describe the act of exchanging sexual contact for compensation and related behaviors, as well as those that tie prostitution to other crimes.

Table 2

Occurrences of Common Criminalization Stems in the Corpus

Stem/N-Gram	Total Occurrences	Document Occurrences
prostitute	3094	79.89%
offens	3834	44.97%
solicit	551	21.09%
promot	555	20.11%
offend	1758	14.94%
promot_prostitut	338	13.41%
engag_prostitut	223	10.68%
procur	260	9.57%
prostitut_person	164	8.52%
patron	258	8.45%
sexual_assault	300	8.10%
compel	170	8.10%
engag_sexual	205	7.89%
nuisance	408	7.26%
delinqu	240	6.98%

This table presents the most common stems in the corpus that were coded as criminalization related and appear in more than five percent of documents. Total occurrence is a count of the number of times the stem or n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem or n-gram appears.

The common criminal justice related terms that appear in more than five percent of documents are listed Table 2, above. Of those word stems and n-grams, "prostitut", "solicit", "engag_prostitut", "prostitut_person", and "engage sexual" refer to actions performed by the prostitute or seller of sexual contact. Other terms "promot", "promot_prostitut", "procur", "patron", "compel", "nuisance", and "delinqu" refer to actions performed by others participating in prostitution in a direct or indirect manner. "Solicit" could refer to multiple actors in the interaction.

While "prostitut" is the most common criminal justice stem, occurring in nearly 80 percent of documents, this is unsurprising given its use as a keyword for retrieving

statutes. The n-gram "engage_prostitut" more accurately reflects the presence of the action of prostitution itself. "engag_prostitut" appears in just under 11 percent of statutes.

The next most common criminal justice stem is "solicit", present in just over 21 percent of statutes. In most states, soliciting refers to either the seller or purchaser of sexual contact and is used when contact does not take place, but intent can be established. For example, the Michigan statute prohibiting solicitation states "A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime punishable as provided in section 451" ("Soliciting, accosting, or inviting to commit prostitution or immoral act; crime.," 2013). In this example, the seller, purchaser, or another party could all be accused of soliciting.

There is a wide variety in the usage of solicitation and the behaviors to which it refers. For example, the Louisiana statute prohibiting soliciting for prostitutes states "Soliciting for prostitutes is the soliciting, inviting, inducing, directing, or transporting a person to any place with the intention of promoting prostitution" ("Soliciting for prostitutes ", 2013). In Louisiana, soliciting is a crime that is not committed by the direct seller of sexual contact, but is instead a crime related to the promotion of prostitution committed by a third party who somehow profits from the transaction.

"Promot" is the next most common stem present in slightly over 20 percent of statutes, while the n-gram "promot_prostitut" appears in 13 percent of statutes. Promoting prostitution is a legal term in many states to criminalize "pimp" like behaviors. It often has multiple degrees depending on the extent of force involved and the

age of the prostitute. In Alaska for example, there are four degrees of promoting prostitution. Promoting prostitution in the first degree refers to causing a person under age 18 or a person in the promoter's custody to engage in prostitution using force and is a severe penalty ("Promoting prostitution in the first degree ", 2012). Promoting in the second degree refers to managing a prostitution of sex tourism enterprise and is a class B felony ("Promoting prostitution in the second degree ", 2012). Promoting in the third degree refers to intent, coercion of adults, or profiting from prostitution and is a class C felony ("Promoting prostitution in the third degree ", 2012). Finally, promoting in the fourth degree refers to aiding prostitution and is a class A misdemeanor ("Promoting prostitution in the fourth degree ", 2012).

The stem "patron" appears in less than nine percent of statutes. This stem is generally used in so-called "john" laws, which explicitly punish the purchasers of sexual conduct. Prostitution is often seen as a transaction between a seller and purchaser of sex or a transaction between a seller, his or her pimp or madam, and a purchaser; however, statutes penalizing prostitution and promoting prostitution are far more common than statutes explicitly penalizing the purchase of sexual conduct.[24] In fact, a second term related to the coercion of prostitutes "procur" is as common and appears in more statutes than "patron". In states that have patronizing laws on the books, one can assume at least some effort to criminalize all parties involved in the prostitution transaction. Many advocates believe that this creates a more equitable system of punishment. In Idaho, for example, the patronizing statute says:

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[24] While the purchaser could be charged using prostitution, loitering, or soliciting laws in many states, such charges are rare.

(1) A person is guilty of patronizing a prostitute when he or she:

  (a) Pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual conduct or sexual contact;

  (b) Enters or remains in a house of prostitution for the purpose of engaging in sexual conduct or sexual contact.

(2) Patronizing a prostitute is a misdemeanor, provided that a third or subsequent conviction therefor shall be a felony ("Patronizing a prostitute," 2012a)

Patronizing laws often contain different penalties for patronizing adult prostitutes versus juvenile prostitutes. In Illinois, patronizing an adult prostitute is a class 4 felony, which usually carries a one to three year prison term, while patronizing a minor is a class 3 felony, which generally carries a two to five year prison term ("Patronizing a minor engaged in prostitution ", 2012; "Patronizing a prostitute," 2012b; "Penalties for Crimes in Illinois," 2010).

The other criminal justice related terms are used less frequently. While "compel", "advanc" and "pander" are all terms related to promoting, "nuisance" and "loiter" are misdemeanor stems related to prostitutes and the sale of sex. In each of these cases, the stems appear in less than nine percent of statutes.

Another trend that illustrates prostitution's perception as a criminal justice problem is its association with other crimes within statutes. Table 3 presents the non-sexual crimes that occur most often in the prostitution and sex trafficking related statutes. "substanc", "drug", "organ", and "control_substanc" are the four most common non-sexual crime terms related to prostitution in the statutes. "substanc" appears in over 19 percent of statutes, while "drug" appears in over 15 percent of statutes and

"control_substanc" appears in just over 14 percent of statutes . This is not surprising given the connection between substance abuse and prostitution and the belief that many criminal organizations involved in prostitution or sex trafficking often engage in drug trafficking. The stem "organ" also appears in over 15 percent of statutes and illustrates the perceived tie between organized crime and prostitution in "RICO" statutes. "gambl" is the third most popular stem and once again illustrates the link between organized crime, vice crimes, and prostitution.

Table 3

Occurrences of Non-Sexual Crime Stems in the Corpus

Stem/N-Gram	Total Occurrences	Document Occurrences
substance	665	19.41%
drug	579	15.57%
organ	444	15.15%
control_substanc	420	14.18%
gambl	266	11.17%
murder	304	9.22%
homicid	140	6.35%
theft	214	5.73%
manslaught	122	5.31%
stalk	109	4.75%
narcot	82	3.56%
stolen	80	3.42%

This table presents the most common stems in the corpus that were coded as criminalization related and are commonly used to describe a non-sexual crime. Total occurrence is a count of the number of times the stem or n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem or n-gram appears.

The prevalence of murder and the murder related stems "homicid" and "manslaught" in the dataset is a little more difficult to explain. In some states, these terms appear along with prostitution and sex trafficking crimes in sentencing laws. In others, they appear in laws restricting future employment. For example, Alabama's public

welfare code requires child and adult care facilities to conduct background checks for all

employees and volunteers and forbids them from hiring any individuals convicted of

certain crimes including murder, manslaughter, promoting prostitution in the first and

second degree, and soliciting a minor for prostitution ("Written consent for criminal

history background information check," 2012).

Prostitution is also often related to other sex crimes in state codes. Surprisingly,

the frequencies of stems for sex crimes within prostitution related statutes suggest that

associations between prostitution crimes and other sex crimes are not any more

prominent than those between prostitution and non-sex crimes.

Table 4

Occurrences of Sex Crime Stems in the Corpus

Stem	Total Occurrences	Document Occurrences
rape	366	10.96%
obscene	188	9.36%
incest	141	7.82%
sodomi	99	4.12%
molest	83	3.49%

*This table presents the most common stems in the corpus that were
coded as criminalization related and are commonly used to describe
a sexual crime. Total occurrence is a count of the number of times
the stem occurs across all documents. Document occurrence is the
percent of corpus documents, in which, the stem appears.*

Table 4 shows the total and document occurrences for sex crime stems in the

dataset. Only five such crimes appear in the dataset with a range of just over three percent

of documents (molest) to just under 11 percent of documents (rape). Like the non-sexual

crime stems, these stems often appear in sentencing laws and in restrictions of future

employment. However, they also appear in sex offender registration laws, public health

laws regarding HIV and STD testing, morality laws relating to child delinquency, and in

the case of "sodomi" as a behavior that can be considered prostitution if it occurs in certain contexts.

Exploitation Stems

One of the key aspects of the definition of prostitution as a human rights problem is the idea that prostitution is an exploitative relationship where a prostitute is coerced or compelled by his or her pimp or trafficker to exchange sexual contact with a john or patron for the primary benefit of the pimp or trafficker. Table 5 shows the total occurrences and document occurrences as a percent of all documents in the dataset for the top ten exploitation related stems based on appearances in the most statutes.

Table 5
Occurrences of Exploitation Stems and N-Grams in the Corpus

Stem/N-Gram	Total Occurrences	Document Occurrences
traffick	1443	32.05%
victim	2068	29.26%
child	3742	28.98%
minor	1251	24.16%
human_traffick	747	20.11%
kidnap[25]	346	15.29%
parent	1027	13.97%
family	570	13.48%
exploit	424	13.20%
take	316	12.84%

This table presents the most common stems in the corpus that were coded as exploitation related. Total occurrence is a count of the number of times the stem or n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem or n-gram appears.

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[25] While kidnapping is a crime and could also be included in table __. I chose to include it in the exploitation category because it is most often used as a term to describe something happening to a victim of human trafficking, as opposed to a crime committed by a participant in the prostitution act or a similar criminal.

It is not surprising that the most common term related to exploitation is "traffick", which was part of the keywords used to search for and obtain statutes for analysis. "traffick" appears 1,443 times in the dataset across 32 percent of documents. The n-gram "human_traffick" is the most common phrase identified in the dataset using the stem "traffick", appearing in over 20 percent of statutes. Laws containing the term "traffick" vary from criminal laws prohibiting sex trafficking, human trafficking, or trafficking in persons; victim's laws allowing for restitution and crime forgiveness; awareness laws educating different professions and businesses about trafficking; and prohibition and sex offender legislation laws affecting the post-conviction lives of traffickers. California is one of the states with the broadest anti-trafficking laws in the United States. In California trafficking appears as a stem in 23 different statutes. Statute 236.1 defines and prohibits human trafficking, 52.5 states that a victim of human trafficking can bring a civil suit for damages by her trafficker, 186.8 deals with the disposition of forfeited property, 236.2 which requires law enforcement to use due diligence in identifying victims of human trafficking, 293 deals with the disclosure of public information about trafficking victims, 13283 and 18945 allow for noncitizen victims of trafficking access to social services, 13519.14 creates training and guidelines for law enforcement dealing with human trafficking, 13750 and 13837 create pilot and grant programs to address human trafficking, and 266k requires the use of fines for prostitution related offense to serve juvenile victims of human trafficking ("Access of noncitizen victims of trafficking, domestic violence and other serious crimes to refugee cash assistance and refugee employment social services; Requirements," 2012; "Action by victim of human trafficking," 2012; "Additional fines; Use for child sexual abuse prevention and

counseling and to serve minor victims of human trafficking," 2012; "Creation of pilot projects; Establishment of multiagency, multidisciplinary family justice center; Definitions; Victims of crime; Responsibilities of family justice center; National Family Justice Center Alliance; Confidentiality of information; Evaluation of pilot centers; Report; Development of criteria," 2012; "Distribution of proceeds from forfeiture sale," 2012; "Duty of law enforcement agencies to use due diligence to identify victims of human trafficking; Indicators," 2012; "Eligibility of noncitizen victims of trafficking, domestic violence and other serious crimes to social services; Definitions; Duration of eligibility; Federal benefits; Evidence," 2012; "Grants to counseling centers and prevention programs; Eligibility; Use of funds; Reports; Legislative intent; Collaborative administration of SASP's by Cal EMA and advisory committee; Funding process," 2012; "Human trafficking defined; Punishment," 2012; "Publication of information regarding victim of sex offense or human trafficking," 2012; "Training and guidelines for handling human trafficking complaints," 2012). There are also 13 other related statutes that address more narrowly defined issues related to human trafficking such as trafficking of refugee victims and the creation of a victims' fund.

Given that a victimization paradigm is a key component of the human rights narrative, it is not surprising that "victim" occurs in just under 30 percent of documents. While "victim" appears in many of the statutes prohibiting trafficking, there are also full statutes that can be classified as victims' laws. They may allow for human trafficking as a defense against a prostitution charge, like in Tennessee's prostitution defense law ("Prostitution -- Defenses.," 2013). They may also provide access to human and social services like New Mexico's human trafficking law, which provides victims of trafficking

with state benefits and services while the victim is waiting to qualify for federal benefits ("Human trafficking; benefits and services for human trafficking victims ", 2013). These laws often require victim cooperation with law enforcement in order for the victim to receive any benefits. The New Mexico law is not an exception to this rule. While the available services are comprehensive, including health care, child care, mental health services, job training, food assistance, and substance abuse treatment they are only provided if law enforcement certifies that a victim is cooperating in the investigation of the alleged trafficker.

"child" and "minor" are the next most prevalent exploitation stems appearing in 29 percent and 24 percent of statutes, respectively. One of the major concerns in the anti-trafficking movement is the sex trafficking of juveniles. The trafficking of children and youths is criminalized to a greater degree than the trafficking of adults, with much higher penalties imposed, perhaps because it is much easier to consider children as victims in an exploitative relationship, as they are unable to consent to any legal form of sexual activity. In addition, sex trafficking of children or minors is not just considered a crime in its own right, it also generally requires registration as a sex offender and qualifies as a form of child abuse in most states. Thus, the laws and penalties addressing trafficking of children and minors may be different from and more numerous than the laws addressing trafficking of adults in many states.

Economic Stems

Statutes that treat prostitution solely as an economic activity are not prevalent in state codes. That does not mean, however, that statutes do not rely on the language of

economics when criminalizing prostitution and sex trafficking or regulating industries in which they feel former participants in prostitution should not be involved.

Table 6
Occurrences of Common Economic Stems in the Corpus[26]

Stem	Total Occurrences	Document Occurrences
properti	1248	20.46%
sale	558	13.41%
valu	351	12.22%
employ	667	11.87%
work	320	10.06%
commerci	242	9.22%
sell	226	7.54%
payment	222	7.33%
paid	164	6.91%
hire	156	6.84%

This table presents the most common stems in the corpus that were coded as economic stems and appear in more than 5% of documents. Total occurrence is a count of the number of times the stem occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem appears.

Table 6 shows the total and document occurrences (as a percentage of all documents) for the top ten un-pruned stems related to economics that appear in the dataset. Most of the economic terms appear in criminal statutes prohibiting prostitution related behaviors and civil statutes restricting employment and business ownership by former prostitutes, patrons, or promoters. The most common economic stem in the dataset is "properti", appearing in 20.5 percent of documents. "valu" is also common in the data and is present in just over 12 percent of documents. "properti" and "valu" are both commonly used as a substitute for the more purely monetary terms "fee" or "payment" in prostitution statutes. In New Jersey, prostitution is defined as "sexual

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[26] The most common economic n-gram was commerce_sexual, which appeared in only 3.28% of documents.

activity with another person in exchange for something of economic value, or the offer or

acceptance of an offer to engage in sexual activity in exchange for something of

economic value" ("Prostitution and related offenses ", 2013). In Connecticut, a person

profits from prostitution if "when acting other than as a prostitute receiving compensation

for personally rendered prostitution services, he accepts or receives money or other

property pursuant to an agreement or understanding with any person whereby he

participates or is to participate in the proceeds of prostitution activity" ("Promoting

prostitution: Definitions.," 2012). The references to value and property rather than

payment extend the definition of prostitution beyond a monetary transaction to a barter or

exchange. Both are also often used in forfeiture statutes to require a determination of the

value of property before disposition, or to set a floor and ceiling on the value of goods

subject to seizure. "Properti" may also refer to a place where prostitution occurs,

particularly in statutes dealing with nuisances.

The next most prevalent economic term was "offer", which appears in nearly 16

percent of statutes. The stem "offer" is used in both criminal and civil statutes that seek to

restrict prostitution acts. In Arkansas, offering to engage in sexual activity for a fee is a

crime prohibited by an anti-prostitution statute and offering to perform massage in

exchange for a fee without a license is subject to a civil fine ("Disciplinary actions and

penalties," 2012; "Prostitution.," 2012). As in the Arkansas case, the offer restricted may

not be directly related to the prostitution regulation, but is instead another behavior that

can lead to ineligibility for or revocation of a license.

"Sale" is another common economic stem appearing in over 13 percent of

statutes. Like offer, it appears in both criminal and civil statutes. It is used in Iowa's

prostitution statute to prohibit the "sale of the person's services as a participant in a sex act" ("Prostitute," 2012), to classify the sale of hard core pornography as a sex offense ("Sex offense classifications," 2012), and to classify the sale of alcoholic beverages as an activity contributing to the delinquency of a minor ("Contributing to delinquency," 2012),

In other states, "sale" is often used in forfeiture and seizure statutes. In Minnesota, the disposition statute details proper procedure for disposing of or selling seized property, including a requirement that "Sales of forfeited property under this section must be conducted in a commercially reasonable manner" ("Disposition of Forfeited Property," 2013) .

The other two stems that appear in more than 10 percent of documents are "employ" (11.87%) and "work" (10.06%). "employ" appears in some of the anti-prostitution laws, for example, Arizona's prohibition of keeping a house of prostitution, which states, "A person who knowingly is an employee at a house of prostitution or prostitution enterprise is guilty of a class 1 misdemeanor" ("Keeping or residing in house of prostitution; employment in prostitution; classification ", 2012). It is more often used in laws to prohibit employment of individuals with a prostitution or promoting conviction or to require criminal background checks for certain employees. "work" is a stem used almost exclusively to prohibit future employment of individuals with a sex offense on their record, to require mandatory reporting for certain types of workers, or in marginally related statutes such as broad definitions and municipal powers statutes. While some advocates prefer the use of the term sex work to describe prostitution, it is not a term used in any statutes to refer to prostitution.

Although the economic paradigm does not seem to be a dominant narrative in prostitution laws across states, only Nevada regulates indoor forms of prostitution like other sexually oriented businesses, that does not mean that economic terms do not appear in statutes prohibiting prostitution and regulating the employment of those involved in prostitution after their convictions. Indeed, terms like offer, sale, value, and employ appear in several prostitution-related statutes across the fifty states.

Health Stems

The health narrative posits that prostitution is a social problem because it poses a threat to public health. There are only nine un-pruned health related stems present in the dataset. These stems may be referencing health status, health risk, or treatment.

Table 7

Occurrences of Common Health Stems and N-Grams in the Corpus

Stem/N-Gram	Total Occurrences	Document Occurrences
health	777	18.85%
mental	403	11.45%
medic	303	9.85%
treatment	396	9.43%
risk	229	6.70%
transmit	142	5.03%
mental_health	114	4.68%
diseas	138	4.26%
psychology	94	4.05%
physician	98	3.07%

This table presents the most common stems in the corpus that were coded as health related. Total occurrence is a count of the number of times the stem or n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem or n-gram appears.

Table 7 shows the total occurrences and document occurrences of the nine health related stems. Of these "health" appears in the most documents, 18.85 percent. Protecting

health, especially public health, is often used as a reason for regulating businesses like massage parlors, adult-oriented businesses, and establishments serving alcoholic beverages; all of which are statutorily associated with prostitution. For example, in its statute regulating adult-oriented businesses, Arkansas argues, "The purpose of this subchapter is to establish requirements governing the location of adult-oriented businesses in order to protect the public health, safety, and welfare and to prevent criminal activity." ("Findings and legislative intent," 2012).

"health" also appears in statutes, like Florida's HIV testing statute, that direct departments of health and health facilities that they do not need informed consent to test convicted prostitutes for HIV and/or other sexually transmitted diseases ("HIV testing," 2012). "diseas", which appears in 4.26 percent of documents also appears frequently in these statutes. "health" also appears in a substantial number of regulations of post-conviction employment and business licensing statutes.

"mental" is another health related stem that appears in over 11 percent of statutes. This stem, along with "psycholog", which appears in just over four percent of statutes, and mental_health, which appears in almost five percent of statutes; implies that physical health is not the only concern with prostitution. Trafficking and promoting statutes in particular emphasize mental and psychological harm to the victim/prostitute. A Minnesota statute authorizing a study of human trafficking directs the researchers to examine "common recruitment techniques; use of debt bondage, blackmail, forced labor and services, prostitution, and other coercive tactics; and risks of assault, criminal sexual conduct, exposure to sexually transmitted diseases, and psychological harm", among other issues ("Trafficking Study," 2013).

The Nebraska statute prohibiting prostitution also recognizes mental health as a contributing factor to prostitution, allowing judges to sentence a first time offender to probation with the caveat that he or she "shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment" ("Prostitution; penalty ", 2013). Mental and psychological health are also referenced in statutes relating to child abuse, sexual exploitation, and mandatory reporting. While "mental" and "psycholog" are used most frequently as health related terms in the dataset, it is clear that their usage is most often related to an exploitation paradigm of prostitution as a social problem.

Morality Stems

While the morality narrative is an important narrative in defining and classifying prostitution as a social problem, morality stems play a minor role in prostitution statutes. This may be due to an unwillingness to legislate morality on behalf of state policymakers, or morality may be discussed in the intents and purposes portions of bills, which are not preserved in the state codes.

Table 8

Occurrences of Morality Stems in the Corpus

Stem	Total Occurrences	Document Occurrences
delinqu	240	6.98%
moral	125	6.35%
immor	77	4.19%
religi	58	2.93%

This table presents the most common stems in the corpus that were coded as morality related. Total occurrence is a count of the number of times the stem or n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem or n-gram appears.

Table 8 shows the morality related stems present in the dataset. Only four were identified and the most prevalent, "delinqu" appears in less than seven percent of documents. While the morality narrative was key for placing prostitution on the policy agenda in the late 1800s, the language of morality did not carry-over into statutes. Instead, as you will see in chapter six, the immorality of prostitution is merely suggested.

Other Stems

While not present in the literature, a review of the remaining stems in the dataset suggests that there are two other conceptually important categories of stems worth examining across statutes: stems relating to place and stems relating to sexual behavior.

Place-Based Terms.

Based on the stems identified in the dataset, where prostitution related behaviors occur is important to understanding how states penalize and regulate the act. Table 9 gives the total and document occurrences for stems related to place in the dataset. The

publicness of prostitution and its proximity to children or citizens seem to be important

factors in the dataset that are not realized in the literature surrounding prostitution.

Table 9

Occurrences of Common Place-Based Stems and N-Grams in the Corpus

Stem/N-grams	Total Occurrences	Document Occurrences
place	1308	33.45%
hous	732	20.25%
vehicle	554	10.89%
school	590	9.57%
hous_prostitut	217	8.87%
motor	297	6.63%
motor_vehicl	285	6.22%
street	220	5.45%
place_prostitut	104	5.17%
residenti	163	4.75%
park	160	3.63%
public	73	3.00%
rent	109	3.00%
tenant	290	3.00%

This table presents the most common stems in the corpus that were
coded as place related. Total occurrence is a count of the number
of times the stem or n-gram occurs across all documents. Document
occurrence is the percent of corpus documents, in which, the stem
or n-gram appears.

The two most common place-based stems in the dataset are "place", appearing in

over 33 percent of documents and "hous" appearing in just over 20 percent of documents.

"Place" and "hous" are commonly used in prostitution statutes to refer to places of

prostitution in nuisance and abatement statues. Indeed, the n-gram "hous_prostitut"

appears in nearly 9 percent of statutes, while the n-gram "place_prostitut" appears in just

over 5 percent of statutes. One example of this usage is Oklahoma's bawdy house law,

which states:

Every person who keeps any bawdy house, house of ill fame, of assignation, or of

prostitution, or any other house or place for persons to visit for unlawful sexual

intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a

misdemeanor and upon conviction shall be fined in any sum not less than One

Hundred Dollars ($ 100.00) nor more than Five Hundred Dollars ($ 500.00) for

each offense ("Bawdy house, etc.--Penalty," 2013)

"Place" and "hous" also appears in other statutes relating to sex offender registration,

business regulations, and statutes that relate more closely to other place based stems.

The other stems relating to place describe specific types of places where

prostitution can occur. "vehicl" and "motor" appear in eleven percent and seven percent

of statutes, respectively, with "motor_vehicl" appearing in just over six percent of

statutes. Increasingly, many states are impounding motor vehicles or revoking driving

privileges when patrons are arrested for prostitution in their vehicle. Florida's mandatory

revocation law directs the Department of Motor Vehicles to revoke a driver's license

when the person has been convicted of, among other crimes, "Any violation of the law

against lewdness, assignation, and prostitution where such violation has been effected

through the use of a motor vehicle" ("Mandatory revocation of license by department ",

2012). Vehicles also play important roles in statutes prohibiting the transport and

enticing of prostitutes, statutes prohibiting loitering, nuisance laws prohibiting places of

prostitution, soliciting laws, and forfeiture laws. In many ways, the stem "vehicle" is

closely tied to the view of prostitution as a criminal behavior.

Sexual Behavior Terms.

One key aspect to the definition of prostitution in statutes is the exchange of money or property. The other key aspect is some sort of sexual contact or the intent to engage in sexual conduct. While these two pieces of the prostitution exchange are present in the statutes prohibiting prostitution across the United States, the ways in which sexual contact is described vary across states. Table 10 shows the most common sexual behavior stems.

Table 10

Occurrences of Common Sexual Behavior Stems in the Corpus

Stem	Total Occurrences	Document Occurrences
sexual	3301	41.90%
perform	663	19.90%
sex	833	16.34%
lewd	365	11.59%
intercours	203	7.75%
pornographi	104	5.10%
oral	130	4.54%
penetr	115	4.33%
explicit	100	3.98%

This table presents the most common stems in the corpus that were coded as related to sexual behavior. Total occurrence is a count of the number of times the stem occurs across all documents. Document occurrence is the percent of corpus documents, in which, the stem appears.

Not surprisingly, the most common sexual behavior stem in the dataset is "sexual", appearing in nearly 42 percent of documents. An n-gram analysis of the term "sexual" illustrates how it is commonly used across statutes. "Sexual_conduct" is the most common n-gram, appearing in 10.5 percent of statutes. "Sexual_intercours" is the next most common n-gram, appearing in 6.8 percent of statutes. This suggests a preference for a broader definition of acts constituting prostitution as opposed to a more

narrow view. Table 11 shows all of the sexual behavior related N-grams present in the dataset.

Table 11

Occurrences of Common Sexual Behavior N-Grams in the Corpus

N-gram	Total Occurrences	Document Occurrences
sexual_conduct	352	10.54%
sexual_intercours	154	6.77%
sexual_activ	216	6.15%
sexual_contact	137	5.24%
sexual_act	102	4.75%
sexual_explicit	91	3.49%
indec_exposur	67	3.42%
sexual_perform	65	3.14%
sexual_penetr	81	2.93%

This table presents the most common N-grams in the corpus that were coded as related to sexual behavior. Total occurrence is a count of the number of times the n-gram occurs across all documents. Document occurrence is the percent of corpus documents, in which, the n-gram appears.

Prostitution statutes generally describe the actual act or behavior that occurs in a transaction of sexual contact in exchange for compensation. While some statutes are vague about what constitutes the illegal act, some are very specific. For example, the Washington State statute prohibiting prostitution states, "A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee… For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW" ("Prostitution," 2013).

In contrast, the Colorado statute prohibiting prostitution is very specific and graphic in describing the prohibited behavior, stating "Any person who performs or

offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money or other thing of value commits prostitution" ("Prostitution prohibited," 2012). As mentioned previously, over 10 percent of all statutes use the n-gram "sexual_conduct". Additionally, 6.15 percent of statutes use "sexual_activ", 5.24% use "sexual_contact", and 4.75% use the term "sexual_act". In contrast, 7.75% of statutes use the stem "intercours", 4.45% use the stem oral, 4.33% use "penetr", and 4.12% use "sodomi". These latter more narrow terms may be used within the same statute to describe different forms of sexual contact. In contrast, it is much less likely that the broader terns will be used in the same statute as they tend to be specifically defined within statutes.

In this section, I examined the common stems, words, and n-grams across documents. While I attempted to contextualize the terms based on the diverse literatures that define prostitution as a social problem worthy of government intervention, caution should be exercised when examining a word or set of words out of context, particularly when examining such a breadth of different types of statutes. In the next section, I will use a more methodologically rigorous and more complete method for text analytics, cluster analysis.

Document Clusters

The academic literature (see chapter 2) suggests that there are six primary narratives that frame prostitution as a social problem ripe for governmental intervention. These narratives can be categorized as a morality problem, a health problem, a criminal justice problem, a human rights problem, an economic problem, or a complex problem. While Spanger's (2011) work on prostitution and sex trafficking policy in Denmark

suggests that these narratives may also be present in the American context, the large amount of unstructured text data present in my dataset suggests the need for a more systematic categorization method.

The way that prostitution and sex trafficking are addressed in state statutes suggest a somewhat different categorization scheme. Using an iterative k-means approach using the cosine similarity measure[27], five distinct types of statutes were identified across the 1,432 statutes in the dataset. Based on similarities and differences in statutory language, the five clusters are: a criminalization cluster, an exploitation cluster, a child abuse cluster, a place-specific cluster, and a licensing and regulation cluster. While conceptually, promoting prostitution and sex trafficking both represent a type of victimization and exploitation, statutory language classifies these two types of crimes very differently. Further, the differences between the narratives present in the literature and the cluster solution derived by the data suggest some differences in who is allowed at the policymaking table and who is excluded.

Cluster analyses of unstructured data use the Term Frequency - Inverse Document Frequency (TF-IDF) scores of individual attributes within documents along with a similarity measure to create centroids for a k-means cluster analysis. Figures 5.1 to 5.5 present the ten most important centroid terms for each cluster and their TF-IDF scores. As discussed in chapter 4, the TF-IDF score provides a relative measure of term

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[27] As discussed in the methods chapter a k-means approach to cluster analysis is a hard cluster solution where the analyst chooses the number of cluster groups and the beginning seed for each cluster. Generally, random seeds are chosen to avoid bias. The computer program uses a similarity measure chosen by the analyst, in this case a cosine similarity measure, which is the most frequently used measure for the clustering of text documents, and the computer sorts the data into groups based on their closeness to the seed for each cluster. Once all the documents have been sorted the computer finds the new centroid for the cluster and begins the process again with the centroids chosen as the random seed. This process repeats until the centroids consistently do not change, which is also known as model convergence.

importance to any given document. When the number of times a term appears in a document increases, the TF-IDF score increases. When the number of documents, in which, a term appears increases, the TF-IDF score decreases.

The Criminalization Cluster

Figure 6. Key Criminalization Cluster Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 242 criminalization statutes were clustered, by their centroid TF-IDF scores.

The first cluster identified in the statutes dataset is the criminalization cluster, which includes 242 statutes (16.90%). This cluster matches an understanding of prostitution as a social problem present in the literature. The terms important to the data also match the terms identified as conceptually important to the criminalization narrative in the stems and n-grams section. Here, "promot_prostitut", "prostitut", "promot", "patron" and "sexual" are important to the cluster. Also important are other criminal justice terms like "class", "class_feloni", "engag", and "degre". "sexual" is an important

stem for both the criminalization and child abuse clusters. The word sexual is used in the criminalization cluster to refer to sexual contact that would not be criminalized except that it occurs in the context of a prostitution interaction, such as sexual contact or sexual intercourse. In the child abuse statute, sexual is used to describe contact that is always criminalized such as sexual offense, sexual exploitation, and sexual abuse.

The Exploitation Cluster

Figure 7. Key Exploitation Cluster Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 286 exploitation statutes were clustered, by their centroid TF-IDF scores.

The next cluster identified in the data is the exploitation cluster, which parallels with the human rights narrative presented in the academic literature and contains 286 statutes (19.97%). Statutes categorized as part of this cluster draw from human trafficking and sex trafficking language, presenting the person engaging in prostitution as the victim of an outside offender. Terms that are important to this cluster include "victim",

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"traffick", "human_traffick", "human", "program", "servic", "fund", "victim_human",
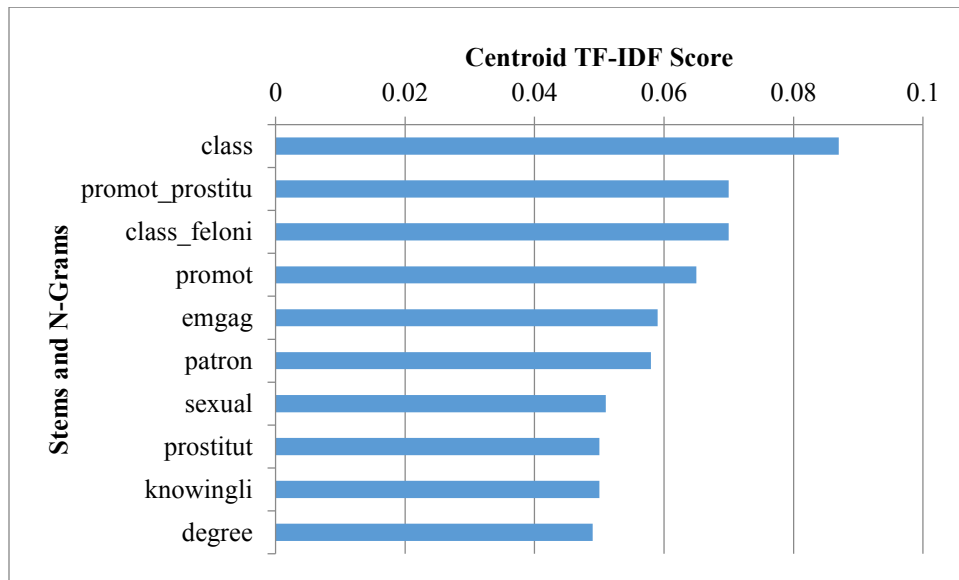"labor", "and "train".

The Child Abuse Cluster
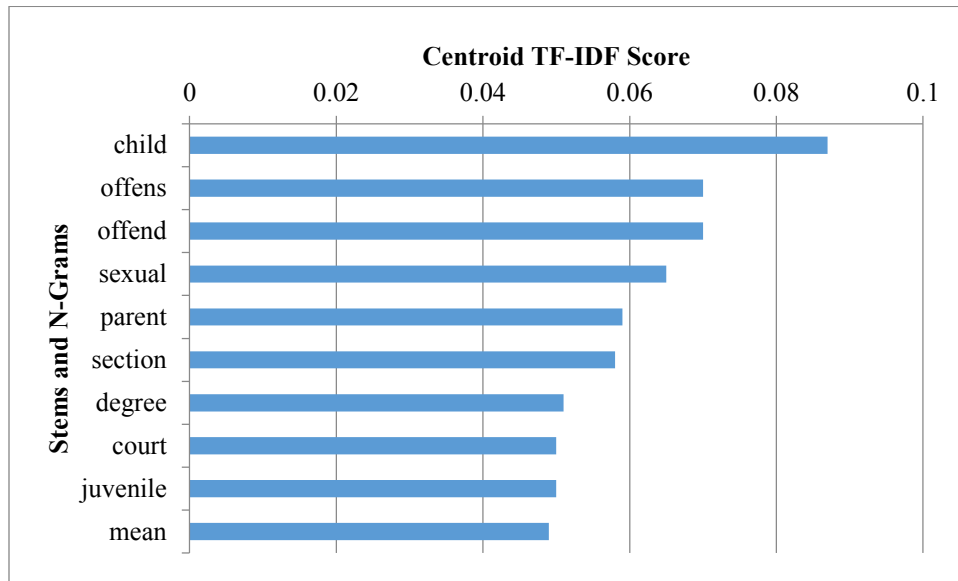
Figure 8. Key Child Abuse Cluster Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 343 child abuse statutes were clustered, by their centroid TF-IDF scores.

The terms and n-grams important to the exploitation cluster are the same terms classified as important conceptual words for the human rights narrative of prostitution, with the exception that any words relating to juveniles and families become the centroids for the child abuse cluster, which includes 389 statutes (27.16%). While statutes that prohibit sex trafficking, human trafficking, and trafficking in persons are clustered into the exploitation cluster, statutes defining trafficking, promoting, and patronizing minors as child abuse are clustered into the child abuse group. Terms important to this cluster include "child", "offens", "offend", "sexual", "parent", "section", "degree", "court",

"juvenil", and "mean". The clustering may have to do as much with the age of the victims as the titles, in which, the different types of statutes appear. While trafficking laws are generally present in the criminal code, child abuse statutes often appear in public and family welfare codes. It would not be surprising for two different types of codes to use different types of statutory language.
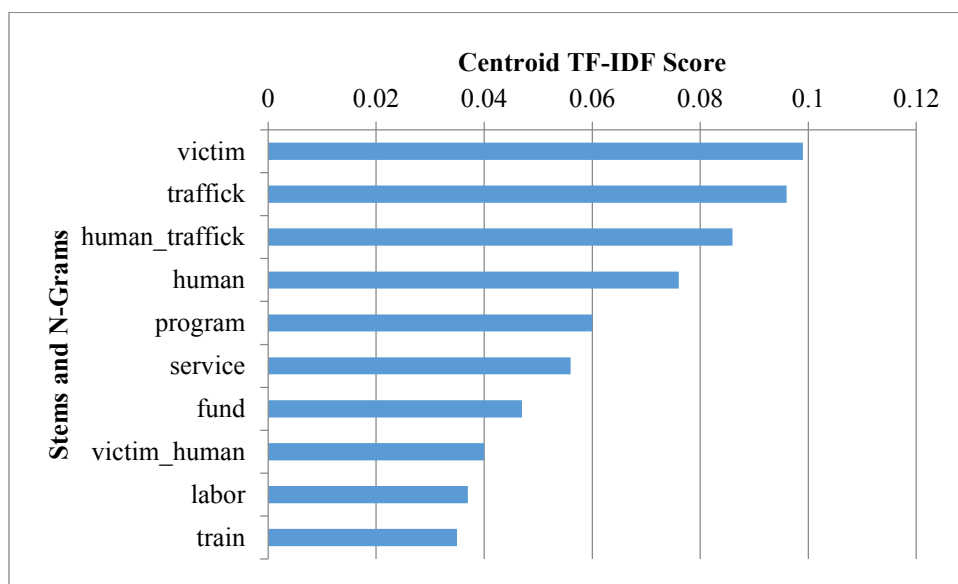
The Place-Based Cluster
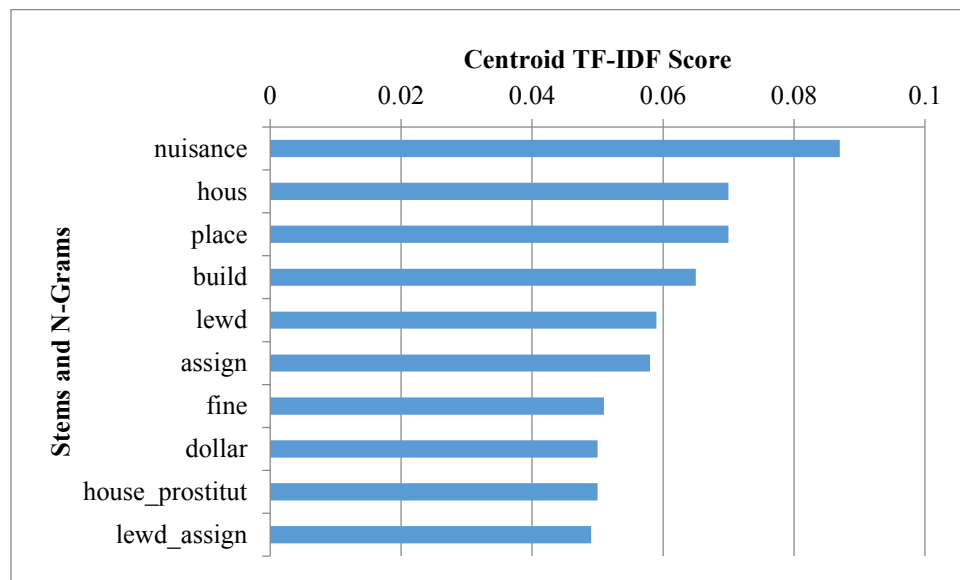
Figure 9. Key Place-Based Cluster Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 283 place-based statutes were clustered, by their centroid TF-IDF scores

The fourth cluster is the place-based cluster, which includes 283 statutes (19.76%). While this was not an important narrative for understanding prostitution as presented in the literature, stems referring to place were described as conceptually important in the previous section due to their numerous and varied appearances in the dataset. Based on my cluster analysis, it seems as though place-based words appear not only within criminalization or exploitation statutes, but actually constitute a category of

importance at the statute level of analysis. Stems that are important to the place-based cluster include "nuisanc", "hous", "place", "build", "lewd", "assign", "fine", "dollar", "hous_prostit", and "lewd_assign". These statutes are often described as nuisance statutes and impose lower penalties than the criminalization statutes.

The Licensing and Regulation Cluster
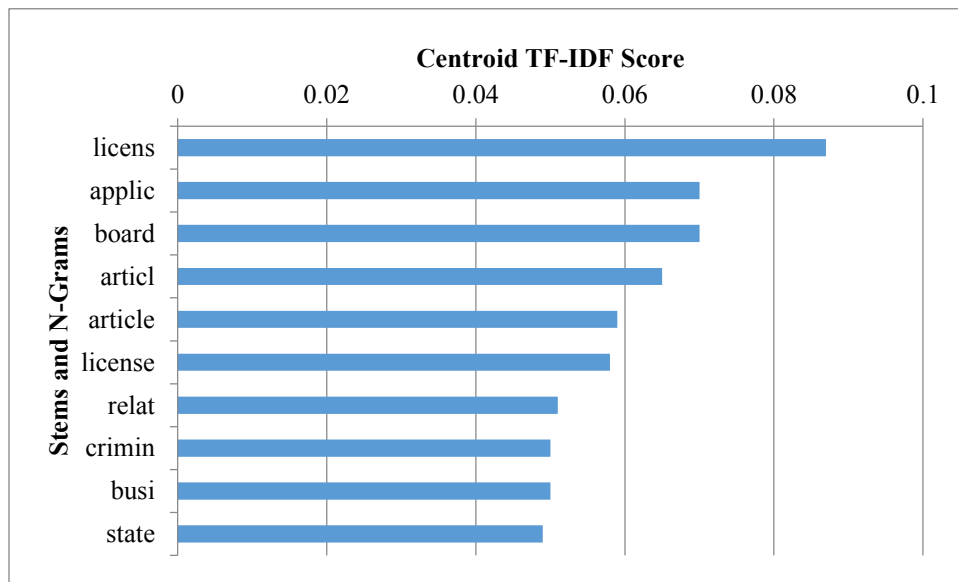
Figure 10. Key Licensing and Regulation Cluster Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 278 licensing and regulation statutes were clustered, by their centroid TF-IDF scores

The final cluster was somewhat unexpected based on the literature, perhaps because licensing and employment restrictions that prohibit those with certain types of prostitution or trafficking convictions on their record, are often not considered to be part of prostitution policy regimes. The licensing and regulation cluster includes 191 statutes (13.34%). These statutes create rules to regulate businesses and professional licenses. The statutes included in the dataset are only those that have provisions disallowing the participation of former

prostitutes, or those who commit prostitution related crimes. Because these statutes add another layer of economic penalty on those committing prostitution, I thought they were important to include in the dataset. Words that are important to the statutes in this cluster include: "licens", "applic", "board", "articl", "license", "relat", crimin", "busi", and "state".

The cluster analysis hints at some key points of difference across prostitution statutes. While some classify prostitution as a single act for which the participants are penalized, others classify it as an ongoing exploitative relationship, and still others classify it as a life-long identity for which the participants deserve economic and personal sanctions. While some of the statutes are clearly related to a criminal behavior, others are more civil in nature. Even the penalties across statutes range from severe penalties to prohibition from certain careers. Perhaps it is not the individual statutes that matter when determining how prostitution is defined across state statutes, perhaps it is the full policy regime present in the state as a whole. The next section will move the unit of analysis from the statute to the state to see if clusters of prostitution policy, as presented in the statutory codes, can be identified in the dataset.

State Clusters

This chapter has used text analytics to move up a chain of units of analysis. I started with the words and terms within statutes, moved to individual statutes, and now I will examine entire state codes to determine if policy regimes for addressing prostitution exist across states. Using the same clustering method as I used to cluster individual statutes, a k-means cluster analysis using a cosine similarity matrix, I clustered the fifty

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states based on the names of prostitution related statutes present in each state code.[28]

Figures 5.6 to 5.8 show the top stems and n-grams by TF-IDF scores for each cluster.

Figure 11. Nuisance Regime Key Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 20 nuisance regime states were clustered, by their centroid TF-IDF scores.

Based on the key terms as illustrated in the three figures above, I named the three clusters the "Nuisance Regimes", "Trafficking Regimes", and "Criminalization Regimes". The states included in the nuisance regime cluster emphasize statutes based on licensing and place. The exceptions to this rule are "pander" and "child". Pandering is a crime similar to promoting and carries a fairly high penalty, while "child" is used most often in exploitative statutes. When one examines the TF-IDF scores of the key attributes in this cluster, they are much lower than those in the other clusters. It is possible that this cluster contains states without many laws that are uncommon in other states.

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[28] I also attempted to cluster based on the full statute text. The noise created by long statutes that were only marginally related to the topic at hand, such as sentencing statutes, regulatory statutes, and municipal code statutes made clustering by full statute text less accurate.
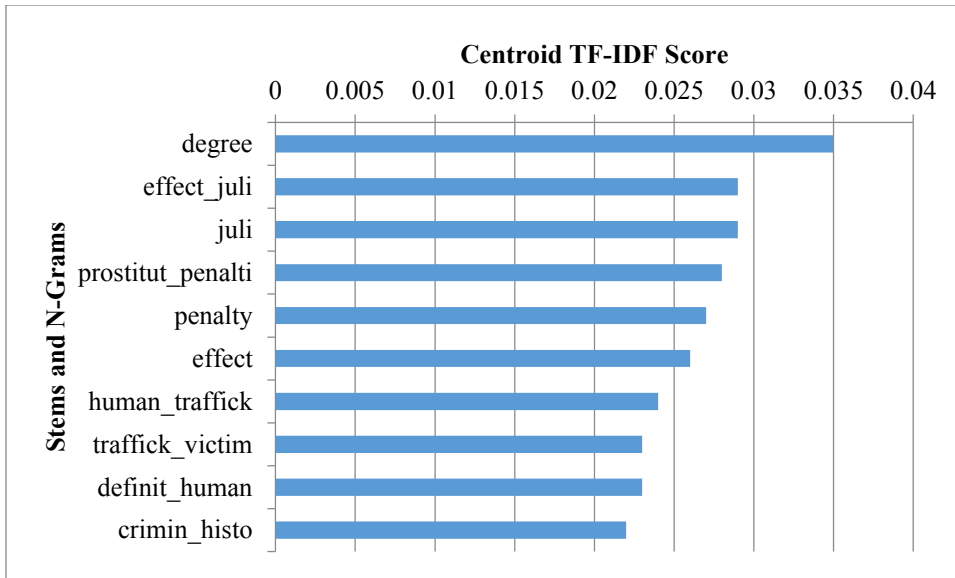
Figure 12. Trafficking Regime Key Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 20 trafficking regime states were clustered, by their centroid TF-IDF scores.

The stems and n-grams that are important to the second cluster includes those that are important to a view of prostitution as exploitative. This is the only cluster where the n-grams "traffick_victim", "human_traffick", and "definit_human" are important. "prostitute_penalti" is also important to this cluster, suggesting that the distinction between the criminalization and trafficking regimes are not as clear cut as those between the individual document clusters.

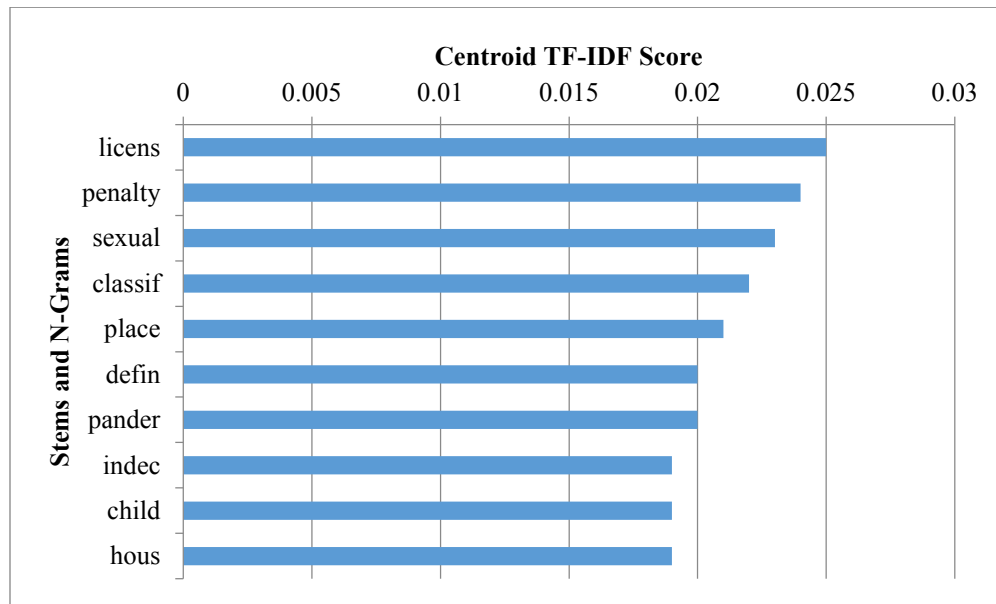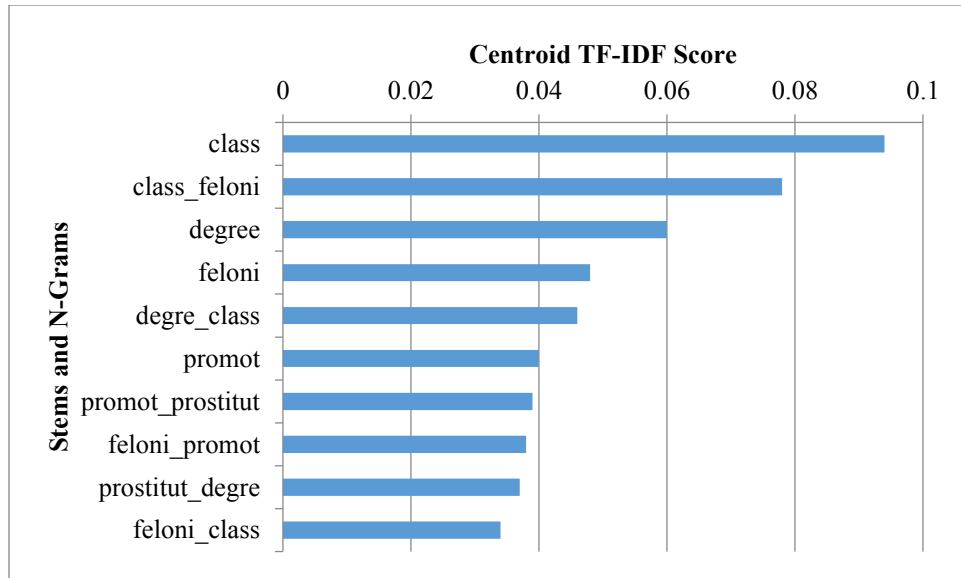*Figure 13*. Criminalization Regime Key Terms by Centroid TF-IDF Score. This figure shows the top ten terms around which the 10 trafficking regime states were clustered, by their centroid TF-IDF scores.

The final cluster is the criminalization cluster. Many of the same terms important to the criminalization document cluster and the criminalization narrative are important to this cluster based on their TF-IDF scores. "class", "feloni", "degre" and n-grams combining two of the three are important to this cluster. While "traffick_victim" is important to the exploitation cluster "promot_prostitut" is important to this cluster. It is interesting that promoting and trafficking are very similar crimes, and yet they serve as centroids around which two different groups of states are clustered. This may be due to regional differences in language and/or the time periods, in which, prostitution and the exploitation of prostitutes appeared on the political agenda.[29] Figure 1 shows a map of the fifty states with shading for the different clusters.

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[29] While most trafficking laws were only passed after 2000, most promoting laws were initially passed prior to 1980. Some of the promoting laws have; however, been amended since 2005.

Figure 14. Prostitution and Sex Trafficking State Clusters. This figure illustrates the geographic distribution of the prostitution and sex clusters.

As the map above illustrates, there seems to be some geographic trends in the cluster distribution. Twenty states, mostly in the South, Southwest, and Eastern Great Lakes regions were clustered together into a nuisance regime cluster. States in the Midwest, as well as a few in other regions were clustered into the trafficking regime cluster. Finally, a few states spread across the United States, including Alaska and Hawaii, were clustered into the criminalization regime.

Validity

While there are several tests for validity in cluster analysis with structured data, testing the validity of clusters of unstructured data is more complicated. One way to test the validity is through the use of machine learning. A cluster solution where the computer program can easily learn the clustering algorithm and successfully categorize documents

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into each cluster is a stronger solution than a solution where the computer makes many mistakes. For this reason, I used two strategies for automatic classification of both types of clusters: a Nearest Neighbor strategy and a Naïve Bayesian strategy. As illustrated below, the five group cluster solution for statutes is far more valid than the three cluster solution for states. This suggests that there may not actually be clear prostitution policy regimes that can be determined based on the titles of prostitution statutes alone.

Automatic Classification of Statutes

Using machine learning to predict the cluster membership of individual statutes is fairly successful. On average, the program was able to successfully predict cluster membership 85.41% of the time with a margin of error of +/-2.38% using nearest neighbor matching with 3 nearest neighbors and 78.35% of the time with a margin of error of +/- 1.46% using naïve Bayes analysis. Given that cosine similarity was used in the original cluster algorithm, it is not surprising that it performs better than the Bayesian method. Tables 12 and 13 present the automatic categorization accuracy and precision for the nearest neighbor and naïve Bayes methods, respectively.

Table 12

Accuracy and Precision of Nearest Neighbor Categorization of Statute Clusters

	True Licensing	True Place-Based	True Criminal	True Exploitation	True Child Abuse	Class Precision
Predicted Licensing	247	10	4	11	28	82.33%
Predicted Place-Based	7	256	20	4	9	86.49%
Predicted Criminal	2	9	197	3	17	86.40%
Predicted Exploitation	10	3	10	247	13	87.28%
Predicted Child Abuse	12	5	11	21	276	84.92%
Class Recall	88.85%	90.46%	81.40%	86.36%	80.47%	

The nearest neighbor categorization accurately predicts the correct category between 80.5 and 90.5 percent of the time. The model is precise between 82.3 and 87.3 percent of the time. The model is least accurate when predicting membership in the child abuse cluster. Of the 343 statutes in the child abuse cluster, 276 (80.47%) were correctly categorized as child abuse cluster statutes. 28 (8.16%) of the statutes were categorized as licensing and regulation statutes. The model precisely predicted membership in the child abuse cluster 84.9% of the time. 325 statutes were predicted to be in the child abuse cluster, 21 (6.46%) of those were actually clustered as exploitation statutes.

The automatic categorization of the criminalization cluster was only slightly more accurate than the categorization of the child abuse cluster. Of the 242 criminalization statutes 197 (81.40%) were predicted correctly. 20 (8.26%) of the criminalization statutes were predicted to be place-based statutes. The model precisely predicts membership in

the criminalization cluster (86.40%) of the time. A total of 228 statutes were predicted to be criminalization statutes, of these 17 (7.46%) were actually child abuse statutes.

The automatic categorization of the exploitation cluster statutes was 86.36% accurate, with 247 of the 286 statutes correctly classified as exploitation statutes. As mentioned above, 21 (7.34%) of the statutes were predicted to be in the child abuse cluster. The model precisely identifies exploitation statutes 87.28 percent of the time. 283 statutes were predicted to be exploitation statutes with 13 (4.59%) of those actually belonging to the child abuse cluster.

The model accurately predicted membership in the licensing and regulation cluster 88.85 percent of the time. Of the 278 statutes in the licensing and regulation cluster, 247 were correctly predicted to be members of the cluster. 12 (4.32%) of the 278 statutes were predicted to be members of the child abuse cluster. The model precisely predicts membership in this cluster with the least success. Of the 300 statutes predicted to be members of the licensing and regulation cluster, 82.33% were actually members of the cluster. 28 (9.33%) of those were actually child abuse statutes.

The model most accurately predicts membership in the place-based cluster. 236 (90.46%) of the 283 place-based statutes were correctly categorized. 10 (3.53%) of the statutes were predicted to be in the licensing and regulation cluster. The model precisely predicts membership in the place-based cluster 86.49% of the time. Of the 296 statutes predicted to be in the place-based cluster, 20 (6.76%) were actually in the criminalization cluster.

Table 13

Accuracy and Precision of Naïve Bayesian Categorization of Statute Clusters

	True Licensing	True Place-Based	True Criminal	True Exploitation	True Child Abuse	Class Precision
Predicted Licensing	233	44	9	21	11	73.27%
Predicted Place-Based	6	204	17	2	2	88.31%
Predicted Criminal	0	11	159	2	5	89.83%
Predicted Exploitation	7	2	3	213	12	89.87%
Predicted Child Abuse	32	22	54	48	313	66.74%
Class Recall	83.81%	72.08%	65.70%	74.48%	91.25%	

A more stringent test of the cluster solution would be whether or not a program using a different type of algorithm from that used in the cluster procedure can learn and successfully classify the statutes. The naïve Bayes process of categorization does not perform as well as the nearest neighbor process. There is also a greater range in precision and accuracy across groups. The model accurately predicts membership in clusters between 65.70 percent of the time for the criminalization cluster and 91.25 percent of the time for the child abuse cluster. The model precisely predicts membership between 66.74 percent of the time for the child abuse cluster and 89.87% of the time for the exploitation cluster. Using the naïve Bayes method, there seems to be a clear trade-off between accuracy and precision in modeling the classification by cluster. Still, the model performs well overall, suggesting that the five cluster solution is a valid way to classify and organize the data.

Automatic Classification of States

While the automatic classification of individual statutes suggests a high degree of validity in the cluster solution, the same cannot be said for the automatic classification of whole states. Interestingly, the naïve Bayes solution was just as successful as the best performing nearest neighbor model, despite the fact that the nearest neighbor model uses the same similarity measure as the cluster analysis. The best performing nearest neighbor with cosine similarity model was based upon six nearest neighbors. Using these parameters, the model was 58.00 percent accurate with a margin of error of +/- 11.66 percent.[30] The naïve Bayes model was also 58.00% accurate but with a margin of error of +/- 7.48 percent. Tables 14 and 15 present the results of the nearest neighbor and naïve Bayes models, respectively.

Table 14
Accuracy and Precision of Nearest Neighbor Categorization of State Clusters

	True Criminalization	True Trafficking	True Nuisance	Class Precision
Predicted Criminalization	3	3	1	42.86%
Predicted Trafficking	5	13	6	54.17%
Predicted Nuisance	2	4	13	68.42%
Class Recall	30.00%	65.00%	65.00%	

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[30] While the seven nearest neighbor solution was slightly more accurate on average, accurately predicting membership 60.00% of the time, the margin of error was much higher at +/-16.73%

Table 15

Accuracy and Precision of Naïve Bayesian Categorization of State Clusters

	True Criminalization	**True Trafficking**	**True Nuisance**	**Class Precision**
Predicted Criminalization	3	0	1	75.00%
Predicted Trafficking	5	10	3	55.56%
Predicted Nuisance	2	10	16	57.14%
Class Recall	30.00%	50.00%	80.00%	

Both models are most accurate in correctly classifying states in the nuisance cluster. The nearest neighbor model correctly classifies 13 (65.00%) states in the nuisance category correctly, while the naïve Bayes model correctly classifies 16 (80.00%) nuisance states. On precision, the nearest neighbor model performs better. 19 states were predicted to be part of the nuisance cluster, 13 (68.42%) of which were actually considered to be nuisance states. 28 states were predicted to be part of the nuisance cluster by the Bayesian model, 16 (57.14%) of which were actually nuisance states.

The nearest neighbor model does equally well at correctly identifying states in the trafficking cluster. Thirteen (65.00%) of the 20 states in the trafficking cluster were correctly predicted by the nearest neighbor model, while the naïve Bayes model only correctly predicts 10 (50.00%) of states. In terms of precision, the nearest neighbor model predicts that 24 states will be in the trafficking cluster, only 53.17 percent of which were actually in the cluster. They naïve Bayes model predicts that 18 states will be in the trafficking cluster, only 55.56 of which were actually in the cluster.

Both models fare the worst in correctly classifying states into the criminalization cluster. Both the nearest neighbor and naïve Bayes models correctly classify only three of the ten states in the criminalization cluster. The nearest neighbor model is not precise, predicting that seven states will be in the criminalization cluster, of which only 42.86 percent were actually in that cluster. The naïve Bayes model was more precise, predicting that only four states would be in the criminalization cluster, of which 75.00 percent were actually in that cluster. These results suggest that the criminalization cluster is likely an arbitrary cluster. A two cluster solution may have performed better, making cluster analysis a poor tool to use for understanding and structuring the data.

The Relationship Between States and Statutes

Based on the validity tests of the two cluster analyses presented above, it appears as though there is more variation within state codes than across state codes, in terms of their prostitution and sex trafficking related laws. In order to test this assumption, I ran a multinomial regression to test the relationship between the state and statute clusters, and to see if membership in the state clusters might be associated with political, economic, or demographic factors.

As Figures 5.1 to 5.5 illustrate, there is substantial variation in terms of the importance of different types of statutes, determined by the cluster analysis above, to the prostitution regimes of states. In each case, there are states with no statutes in a given cluster: Connecticut and Delaware have no statutes that were clustered as child abuse statutes; Michigan and Montana have no statutes that were clustered as exploitation statutes; Kansas, Maine, and North Dakota have no statutes that were clustered as place-based statutes; Louisiana, Mississippi, West Virginia, and Massachusetts have no statutes

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clustered as criminalization statutes; and Vermont, Wyoming, and South Dakota have no statutes clustered as licensing and regulation statutes. It should be noted that this does not mean that these states do not have laws that would seem to fit in any of those categories, for example, all states criminalize prostitution to some extent, but it means that the language in those laws was different enough from the other laws clustered in a given cluster, that they were sorted into another cluster. Any given cluster represents a maximum of fifty percent (the exploitation and place-based clusters) to seventy-five percent (the child abuse cluster) of a state's prostitution and trafficking regime. On average, each cluster represented around twenty percent, 18.1 percent for the licensing and regulation cluster and 23.3 percent for the child abuse cluster, of a state's prostitution and trafficking regime.

Table 16

Means and Standard Deviations for the Full Sample and by State Cluster

	Full Sample	Nuisance States		Trafficking States		Criminalization States	
Percent in Child Abuse Cluster	23.33	20.25	**	23.45	**+	29.24	+
	(14.33)	(10.30)		(12.82)		(22.06)	
Percent in Exploitation Cluster	19.38	14.78	**	24.95	**++	17.43	++
	(11.94)	(11.08)		(12.40)		(8.48)	
Percent in Place Based Cluster	19.89	26.89	**!!!	18.19	**+	9.29	!!!+
	(13.61)	(15.36)		(10.74)		(5.13)	
Percent in Criminalization Cluster	18.82	14.31	!!	17.78		29.94	!!
	(15.04)	(14.83)		(10.85)		(18.26)	
Percent in Licensing and Regulation Cluster	18.11	23.52	**!!	14.69	**	14.10	!!
	(11.31)	(8.25)		(13.28)		(8.42)	
Total Prostitution and Trafficking Statutes	28.64	29.25		30.85	+	23.00	+
	(12.98)	(11.84)		(15.35)		(8.79)	
Unemployment Rate	7.30	7.74		6.95		7.12	
	(1.72)	(1.97)		(1.71)		(1.05)	
Citizen Ideology	47.43	46.10		45.58		53.77	
	(15.47)	(13.26)		(17.00)		(16.29)	
ADA/COPE Policymaker Ideology	53.45	46.44		57.03		60.33	
	(31.40)	(31.37)		(33.26)		(27.68)	
Black Percent	28.44	12.38		10.14		7.05	
	(4.85)	(10.41)		(9.50)		(7.64)	
Hispanic Percent	10.99	13.29	!	10.37		7.63	!
	(10.13)	(11.98)		(9.96)		(4.60)	
Ln of Population	15.17	15.47	!!	15.13		14.64	!!
	(1.02)	(1.05)		(0.97)		(0.92)	
Population Density	197.24	212.24		181.15		199.45	
	(263.05)	(264.63)		(282.93)		(242.54)	
Prostitution Arrests	962.96	1,756.60	**!!	449.50	**	402.60	!!
	(1,883.06)	(2,749.38)		(515.03)		(673.00)	
Total Observations	50	20		20		10	

Values in parentheses are standard deviations.*,!, and +indicate levels of statistical significance on pairwise t-test across groups. * indicates statistically significant difference between nuisance and trafficking states, ! indicates statistically significant difference between nuisance and criminalization states, and + indicates statistically significant difference between trafficking and criminalization states. For *, !, + ; one symbol signifies statistical significance at p<0.10, two symbols indicate statistical significance at p<0.05, and three symbols indicate statistical significance at p<0.001.

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The question at hand however, is whether or not the importance of each type of statute to the state policy regime is associated with the state cluster, particularly once other state characteristics are controlled for. Figures 5.6 to 5.11 suggest that there may be some relationship between the state and statute clusters. The nuisance and criminalization regimes, in particular seem to show substantial variation in terms of how important each type of statutes is to their laws. I hypothesize that there will be a relationship between the density of statute clusters within a state and the state clusters. More specifically, I expect that states clustered as trafficking regimes will have a higher density of exploitation and child abuse statutes, states clustered as criminalization regimes will have a higher density of criminalization statutes, and states clustered as nuisance regimes will have a higher density of place-based clusters. I would not expect that there will be much difference between state clusters in terms of the density of licensing and regulation clusters.

I would also like to examine any possible relationship between state political, economic, and demographic characteristics and the prostitution and trafficking regime clusters. Based upon previous work by Soss, Schram, and Fording; Schneider; and Pierson and Hacker, I believe that the institutional characteristics of a state may be just as important in understanding public policies as the occurrence and incidence of a social problem. I would expect this relationship to hold especially true in the case of prostitution and sex trafficking policies where there is little available data on the problem and concerns about morality, justice, and sexuality play a primary role in the social consciousness.

Controls and Descriptive Statistics

Table 5.18 provides the state controls I include in my analysis, along with their means and standard deviations. To control for economic characteristics of the state, I use the 2012 unemployment rate drawn from the University of Kentucky Center for Poverty Research's public dataset of State-Level Data of Economic, Political, and Transfer-Program Information for 1980-2012 (SDEPTI)[31]. To control for political characteristics of the state, I use two measures of ideology drawn from Richard C. Fording's publicly available dataset "Updated Measures of Citizen and Government Ideology", the revised citizen ideology measure and the ADA/COPE measure of state government ideology indicator created by William D. Berry, Evan J. Ringquist, Richard C. Fording and Russell L. Hanson (1998). The revised citizen ideology score is based on the interest group ratings of representatives from the state, the interest group ratings of their most recent opponent, and the electoral vote difference between the challenger and incumbent. The ADA/COPE ideology score uses ideology ratings of state legislators and the governor weighted based on their abilities to influence state policy. The ideology score ranges from zero to 100 and as the ideology measure increases, a state is deemed to be more liberal. Because the current data series has only been updated to 2010, I used the 2010 ideology scores as proxies for political conditions in 2012[32]. To control for demographic characteristics of the state, I used various indicators from the 2012 American Community

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[31] Earlier models also controlled for personal income per capita using the personal income variable from SDEPTI divided by the 2012 American Community Survey (ACS) one-year estimate of population by state for 2012, but it was removed from the model due to its lack of explanatory power.

[32] I also ran the model using various combinations of the revised 2010 citizen ideology measure along with the governor's party, the percentage of the state house that is Democratic and the percentage of the state senate that is Democratic. The latter three variables were drawn from the SDEPTI dataset described in the text.

Survey (ACS) one-year datasets including, the percent of the population that is black or

African American, the percent of the population that is Hispanic or Latino, the population

density, and the natural log of the population[33]. I also controlled for the number of arrests

per 1,000 residents in order to attempt to establish a relationship between arrests and

prostitution regimes. While I could have controlled for more characteristics and added

interaction terms, the cross-sectional nature of my data meant that I only had 50

observations in my dataset so I was very wary of over-controlling, while still attempting

not to violate the assumptions of regression analysis related to confounding variables and

error terms that are associated with my dependent variable. Because my dependent

variable is a nominal variable with three categories, I ran my analysis as both a regression

and a multinomial logit. My final model is presented below:

$$Pr(Cluster_s) = \beta_0 + \beta_1 P\_CA\_Cluster_s + \beta_2 P\_E\_Cluster_s + \beta_3 P\_PB\_Cluster_s +$$

$$\beta_4 P\_C\_Cluster_s + \beta_5 P\_LR\_Cluster_s + \beta_6 Total\_Statute_s +$$

$$\beta_7 Citizen\_Ideology_s + \beta_8 ADA/COPE\_Ideology_s + \beta_9 UR_s +$$

$$\beta_{10}\%Black_s + \beta_{11}\%Hisp_s + \beta_{12}Ln\_Pop_s + \beta_{13}Pop\_Dens_s +$$

$$\beta_{14}Prost\_Arrest_s + \varepsilon_s$$

where $P\_CA\_Cluster_s, P\_E\_Cluster_s, P\_PB\_Cluster_s, P\_C\_Cluster_s,$ and $P\_LR\_Cluster_s$

are equal to the percent of prostitution and sex trafficking statutes in state s are clustered

in the child abuse cluster, the exploitation cluster, the place-based cluster, the

criminalization cluster and the licensing and regulation cluster, respectively;

$Total\_Statutes_s$ is equal to the number of prostitution and sex trafficking statutes found in

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[33] Preliminary models also included estimates of the percent of the population with a BA or higher from the 2012 ACS and the percent of the population that is very religious from the 2012 Gallup survey, but both were removed due to their lack of explanatory power.

the state code of state s; $Citizen\_Ideology_s$ and $ADA/COPE\_Ideology_s$ are two measures of state ideology, the ideology of citizens and the ideology of policymakers for state s, respectively (Berry, et al., 1998); UR_s is equal to the unemployment rate for state s, $+$ $\%Black_s$ and $\%Hisp_s$ are equal to the percent of the population that is black or African American and Hispanic in state s, respectively; Ln_Pop_s and Pop_Dens_s are equal to the natural log of the population and the population density of state s; and $Prost\_Arrest_s$ is equal to the number of prostitution arrests in state s.

It should be noted that this model is a cross-sectional model with very few observations. The intent of this model is not to establish a causal or predictive relationship between the state clusters, the statute clusters, and the state characteristics, but to explore whether there might be such a relationship. If the results suggest a relationship, additional research can attempt to establish time trends and explore causality between the state controls and the state policy regimes.

Results

Table 17 presents the relative risk ratios and standard errors for three successive multinomial logit models. In each case, the risk, or likelihood, of membership in the trafficking and criminalization regimes is interpreted relative to the nuisance regime.

Table 17

Multinomial Logit Results with Nuisance States as Omitted Category

	Model I			Model II		Model III	
	Trafficking	Criminalization		Trafficking	Criminalization	Trafficking	Criminalization
Percent in Child Abuse Cluster	0.97	2.94	***	--	--	1.25	2.20 **
	(0.19)	(0.11)				(0.29)	(0.72)
Percent in Exploitation Cluster	1.00	2.73	***	--	--	1.40	1.51
	(0.21)	(0.14)				(0.38)	(0.46)
Percent in Place Based Cluster	0.92	2.40	***	--	--	1.12	1.40
	(0.19)	(0.18)				(0.24)	(0.36)
Percent in Criminalization Cluster	0.97	3.03	***	--	--	1.19	2.14 **
	(0.19)	(0.12)				(0.26)	(0.65)
Percent in Licensing and Regulation Cluster	0.92	2.50	***	--	--	1.18	1.33
	(0.19)	(0.15)				(0.28)	(0.39)
Total Prostitution and Trafficking Statutes	1.01	0.98		--	--	1.09	1.11
	(0.03)	(0.05)				(0.08)	(0.99)
Unemployment Rate	--	--		0.78	1.19	1.24	1.60
				(0.29)	(0.41)	(0.52)	(1.26)
Citizen Ideology	--	--		0.99	1.03	0.93	0.97
				(0.04)	(0.02)	(0.07)	(0.12)
ADA/COPE Policymaker Ideology	--	--		1.01	1.00	1.05	1.05
				(0.02)	(0.02)	(0.03)	(0.05)
Black Percent	--	--		1.00	0.95	1.00	0.69
				(0.04)	(0.06)	(0.07)	(0.20)
Hispanic Percent	--	--		1.03	0.96	0.99	0.58 *
				(0.05)	(0.07)	(0.09)	(0.19)
Ln of Population	--	--		1.61	0.79	0.57	0.11
				(0.96)	(0.52)	(0.78)	(0.21)
Population Density	--	--		1.00	1.00	1.00	1.01
				(0.00)	(0.00)	(0.00)	(0.01)
Prostitution Arrests	--	--		1.00	1.00	1.00	1.00
				(0.00)	(0.00)	(0.00)	(0.00)
Log-Likelihood	-37.08			-45.04		-24.29	
Pseudo R^2	0.30			0.15		0.54	

*Numbers in parentheses are the standard errors. * indicates statistically significant at p<0.10 level, ** indicates statistical significance at p<0.05 level, and *** indicates statistical significance at p<0.001 level. Total obs = 50.*

The preliminary models test the relationship between the state clusters and the statute clusters, and the state clusters and the political, economic, and demographic controls separately. Model I tests the relationship between the state cluster and the density of statute clusters in the state's prostitution and trafficking regime. While the distribution of statute clusters has no statistically significant relationship to the likelihood of being clustered into the trafficking statute as opposed to the nuisance statute, an increase in the percent of any of the statute clusters increases the likelihood of being clustered into the state criminalization cluster rather than the nuisance cluster. A one percent increase in child abuse statutes increases the likelihood of membership in the criminalization cluster by 2.94 times as compared to the nuisance cluster. A one percent increase in exploitation statutes makes it 2.73 times as likely that a state is classified as a criminalization state. A one percent increase in place-based statutes makes it 2.40 times as likely that a state is classified as a criminalization state. A one percent increase in licensing and regulation statutes makes it 2.50 times as likely that a state is classified as a criminalization state rather than a nuisance state. A one percent increase in criminalization statutes makes it 3.03 times as likely that a state will be classified as a criminalization state. All of the relative risk ratios for the cluster percentages discussed above for the distinction between criminalization and nuisance statutes for model one are highly statistically significant at the 0.001 level.

The lack of statistically significant difference in model coefficients between the nuisance and trafficking statutes is illustrated by the likelihood-ratio tests conducted on Model I and presented in Table 18. None of the coefficients were individually statistically

significantly different from zero across both models. When the coefficients on all of the variables related to the percentage of clusters within state codes was tested as a set, i.e. all of the coefficients in Model I except the total number of statutes the set was statistically significantly different from zero ($p<0.05$), suggesting that there is a relationship between the statute clusters and the state clusters. Finally, a combined likelihood-ratio test of Model I suggests that we can reject all of the null hypotheses that the nuisance, trafficking, and criminalization states are indistinguishable from each other at some level of significance; however, the nuisance and trafficking states are only marginally distinguishable at the 0.10 level of statistical significance, the trafficking and criminalization states are distinguishable at the 0.05 level of significance, and the nuisance and criminalization states are highly statistically significantly distinguishable at the 0.001 level of significance. This suggests that even though Model I seems to show that the right hand side variables individually explain very little difference between the trafficking and nuisance states, the model as a whole suggests that differences exist.

Table 18

Likelihood-Ratio Hypothesis Test Results by Model

	Model I		Model II	Model III	
Percent in Child Abuse Cluster	0.12		--	0.7	
Percent in Exploitation Cluster	0.02		--	1.14	
Percent in Place Based Cluster	0.21		--	0.24	
Percent in Criminalization Cluster	0.18		--	0.51	
Percent in Licensing and Regulation Cluster	0.25		--	0.43	
Joint Cluster Set	28.35	***	--	38.97	***
Total Prostitution and Trafficking Statutes	0.34		--	1.93	
Unemployment Rate	--		1.6	0.47	
Citizen Ideology	--		0.77	1.15	
ADA/COPE Policymaker Ideology	--		0.53	3.1	
Black Percent	--		0.78	4.83	*
Hispanic Percent	--		1.44	6.55	**
Ln of Population	--		1.23	1.49	
Population Density	--		0.1	3.79	
Prostitution Arrests	--		3.78	5.68	*
Combined Test					
Trafficking - Criminalization	13.91	**	6.22	25.36	**
Trafficking - Nuisance	11.75	*	8.36	25.71	**
Criminalization - Nuisance	22.49	***	7.06	33.41	***

*"Joint Cluster Set" presents the chi-squared value on the likelihood-ratio test for the joint set of the percent of statutes in the child abuse cluster, the percent of statutes in the exploitation cluster, the percent of statutes in the place-based cluster, the percent of statutes in the criminalization cluster, and the percent of statutes in the licensing and regulation cluster. * indicates statistically significant at p<0.10 level, ** indicates statistical significance at p<0.05 level, and *** indicates statistical significance at p<0.001 level. Total obs = 50.*

It is not surprising that as the percent of criminalization statutes increases, the

state would be more likely to be considered a criminalization state. It is surprising;

however, that an increase in the percent of any of the statutes increases the likelihood that

a state will be clustered as a criminalization state. I also controlled for the total number of

statutes to ensure that the relationship was not an artifact of the number of statutes, but the relationship between total statutes and state clusters was statistically insignificant for both the trafficking and the criminalization clusters, relative to the nuisance cluster.

Perhaps then, there is some other underlying factor that is increasing the percent of statutes in a given state clustered into one of the five categories, and the overall categorization of the state. For this reason, I also ran model two, which controlled for state economic, political, and demographic factors along with the number of prostitution arrests in the state. Surprisingly, these factors alone explained very little of the variation across clusters, with a pseudo R-squared of only 0.15. None of the state controls were statistically or economically significantly related to the state cluster for either comparison group. The likelihood-ratio tests of this model confirm the Model II's lack of explanatory power, with none of the individual coefficients statistically significantly different from zero across all models, and the combined coefficients leaving the three state clusters indistinguishable from each other. Still, it is possible that the state controls add some explanatory power to the model beyond the distribution of statutes by cluster and so I retained these controls for model three.

The final model is model three, which controls for the percent of statutes clustered into each of the five groups, the total number of statutes, state economic, political, and demographic controls, and the number of prostitution arrests. Despite the fact that none of the political, economic, and demographic controls were statistically significant, according to the log likelihood ratio comparison, the final model (LLR = -24.29) better explains the variation between cluster groups than either model one (LLR= -37.08) or

model two (LLR= -45.00). The inclusion of the controls moderated the relationships between the statutes and the state clusters particularly for the criminalization cluster relative to the nuisance cluster. In the final model, an increase in the percent of child abuse statutes and criminalization statutes is related to an increased likelihood that a state is clustered as a criminalization state (2.20 times more likely and 2.14 times more likely, respectively). These relationships are less significant than they were in the limited model, and are significant only to the 0.05 level. One of the demographic indicators also becomes statistically significant in the final model, with a one percent increase in the percent of the population that is Hispanic making it only 0.58 times as likely that a state will be clustered as a criminalization state rather than a nuisance state. The effect of the percent of the population that is Hispanic or Latino is only marginally significant at the 0.10 level and may be capturing a regional effect rather than a demographic effect.

The likelihood-ratio tests of Model III tell a slightly different story from the tests of Models I and II. The individual coefficient tests again fail to reject the null hypothesis that the percent of statute cluster types and the total number of statutes within a state prostitution regime are statistically significantly related to zero across all models. Unlike in Model II; however, some of the state controls are statistically significantly related to zero across all groups. This is surprising given the lack of statistical significance for most of the state controls within the model. The number of prostitution arrests and the percent of the population that is black are statistically significantly different from zero across all groups at 0.10 level. The percent of the population that is Hispanic or Latino is statistically significantly different from zero across all groups at the 0.05 level. As

mentioned above, these results may reflect regional differences as much as demographic differences. When the statute cluster variables were tested as a set, they were yet again jointly statistically significantly different from zero at the 0.001 level. Finally, the combined test suggest that all three groups are distinguishable from each other at some level of significance. Based on the full model, the nuisance and trafficking states, and the trafficking and criminalization states are distinguishable from each other at the 0.05 level, while the nuisance and criminalization states are distinguishable from each other at the 0.001 level.

The results of a multinomial logit often hinge upon the category selected as the reference category. In my first set of models, I used the default reference category, which is determined by STATA based upon the number of observations in each category. The category with the most observations is chosen as the reference category (Long & Freese, 2006, p. 229). The results of this multinomial logit suggest a statistically significant difference between the states clustered as criminalization states and the states clustered as nuisance state, but no statistically significant difference between the states clustered as trafficking states and the states clustered as nuisance states. But how does this relationship hold up when the criminalization states are made the reference category?

Table 19 presents the results of three multinomial logits that test the relationship between state clusters and statute clusters when the criminalization state cluster is the reference category[34]. Models I and II tell a story that is consistent with Table 5.19. In the limited model with only statute variables, a one percentage point increase in the density

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[34] While the coefficients and standard errors may change when a new reference category is selected, the likelihood-ratio tests remain the same so they are not reported again in this section.

of any of the clusters in a state's prostitution and sex trafficking regime drastically decreases the likelihood that a state will be clustered as a nuisance or trafficking state rather than a criminalization state. All of these relationships are highly statistically significant at the 0.05 or 0.001 levels. Like Model II in Table 5.19, the state control variables on their own explain very little of the variation between clusters and there are no statistically significant relationships.

Model III of Table 18 tells a slightly different story from Model III of Table 19. When criminalization is used as the reference category, none of the control variables are statistically significantly related to the state cluster solution. Instead, all of the statute variables except for the total statutes are statistically significantly related to the state cluster. In comparison to Model I, the inclusion of the state controls increase the economic and statistical significance of the cluster variables. Relative to the criminalization state cluster, a one percentage point increase in the percent of any cluster decreases the likelihood of a state being clustered into the nuisance cluster by a factor of 0.21 (the criminalization statute cluster) to 0.30 (the place-based statute cluster). Relative to the criminalization state cluster, a one percentage point increase in the percent of any cluster decreases the likelihood of a state being clustered into the trafficking cluster by a factor of 0.26 (the criminalization statute cluster) to a factor of 0.34 (the place-based cluster). All of these risk ratios are statistically significant at the 0.05 or the 0.001 levels.

Table 19
Multinomial Logit Results with Criminalization States as Omitted Category

	Model I		Model II		Model III	
	Nuisance	Trafficking	Nuisance	Trafficking	Nuisance	Trafficking
Percent in Child Abuse Cluster	0.42 *** (0.08)	0.41 *** (0.01)	--	--	0.52 ** (0.17)	0.65 (0.23)
Percent in Exploitation Cluster	0.45 *** (0.10)	0.46 *** (0.02)	--	--	0.76 (0.23)	1.05 (0.37)
Percent in Place Based Cluster	0.51 ** (0.11)	0.48 *** (0.03)	--	--	0.81 (0.21)	0.91 (0.28)
Percent in Criminalization Cluster	0.41 *** (0.08)	0.40 *** (0.02)	--	--	0.53 ** (0.16)	0.63 (0.22)
Percent in Licensing and Regulation Cluster	0.49 ** (0.10)	0.45 *** (0.03)	--	--	0.86 (0.26)	1.02 (0.35)
Total Prostitution and Trafficking Statutes	1.02 (0.05)	1.03 (0.05)	--	--	0.90 (0.08)	0.98 (0.07)
Unemployment Rate	--	--	0.84 (0.29)	0.66 (0.23)	0.62 (0.49)	0.77 (0.60)
Citizen Ideology	--	--	0.97 (0.04)	0.96 (0.04)	1.04 (0.13)	0.96 (0.11)
ADA/COPE Policymaker Ideology	--	--	1.00 (0.20)	1.01 (0.02)	0.95 (0.05)	1.00 (0.05)
Black Percent	--	--	1.05 (0.07)	1.05 (0.07)	1.45 (0.43)	1.45 (0.42)
Hispanic Percent	--	--	1.05 (0.08)	1.07 (0.08)	1.74 * (0.58)	1.72 * (0.56)
Ln of Population	--	--	1.26 (0.82)	2.03 (1.41)	8.79 (16.49)	5.03 (8.96)
Population Density	--	--	1.00 (0.00)	1.00 (0.00)	0.99 (0.01)	0.99 (0.01)
Prostitution Arrests	--	--	1.00 (0.01)	1.00 (0.00)	1.00 (0.00)	1.00 * (0.00)
Log-Likelihood	-37.08		-45.04		-24.29	
Pseudo R^2	0.30		0.15		0.54	

*Numbers in parentheses are the standard errors. * indicates statistically significant at $p<0.10$ level, ** indicates statistical significance at $p<0.05$ level, and *** indicates statistical significance at $p<0.001$ level. Total obs = 50.*

Based on the results of the multinomial logistic regressions, it seems as though distinct policy regimes could be the wrong way to categorize state prostitution and sex trafficking regimes. Instead, it seems as though 40 of the 50 states have fairly consistent laws and regulations related to prostitution and sex trafficking in their state codes, while 10 states are outliers with a higher concentration of one of the types of statutes. On the other hand, the likelihood-ratio tests suggest that the nuisance and trafficking states are distinguishable from each other. While the cluster validity tests suggested almost no support for the policy regime model, the statistical analysis presented here suggests that there may be some validity to such an approach. Further research that incorporates time and regional trends is necessary to determine whether there are substantive differences across states in their overall approaches to regulating and criminalizing prostitution and sex trafficking.

Conclusion

This chapter uses text mining and text analytics software to analyze 1,432 prostitution related statutes from all fifty states at three levels of analysis.

Stemming and n-grams are used to identify key terms, both in terms of their statistical prominence across documents and their relevance to understandings of prostitution as a social problem. Based on the terms that appear frequently across many statutes, some of the understandings of prostitution present in the literature were preliminarily identified in the data. The understanding of prostitution as a human rights problem, prostitution as a criminal justice problem, prostitution as an economic problem, and prostitution as a public health problem were all identified across documents to some extent. The understanding of prostitution as a morality problem could not be strongly

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identified in the data. There were also key terms identified in the data that did not relate well to the understandings of prostitution presented in the literature. The place where prostitution took place, as well as the specific sexual behavior indicted by statutes were identified as conceptually important and numerous in the data.

At the level of whole statutes, five clusters were identified. The criminalization and exploitation clusters were commensurate with understandings of prostitution present in the literature review and the scan of stems and n-grams. The place-based cluster was deemed significant based on the presence of terms identified as key place-based terms across documents, and this significance was reinforced by the cluster analysis. Finally, the licensing and regulation cluster and the child abuse cluster were not identified as significant in the literature or the term analysis, but they were identified as individual groups in the five cluster solution. The ability of two different algorithms to accurately classify statutes into the five clusters suggests that these are valid clusters and not just arbitrary structure imposed on data.

The attempt to cluster states into policy regimes was far less successful. While three regimes were identified in the data, a Nuisance Regime, a Trafficking Regime, and a Criminalization Regime, the cluster solution was not successfully learned by either the Nearest Neighbor or Naïve Bayes Model. The Criminalization Cluster was especially difficult to correctly predict.

In contrast, when the relationships between the state and statute clusters were tested using multinomial logistic modeling, more justification for the state policy regime idea was offered. Indeed, it appeared that the state clusters were reflecting the density of statute clusters within their prostitution and sex trafficking regimes. In this case, the

criminalization states appeared to be most different from the two other classes of states, the trafficking and nuisance states. While individual coefficient estimates seemed to imply that trafficking and nuisance states were indistinguishable from each other, likelihood-ratio tests suggested that there were distinguishable differences between each type of state. Also interesting was how little explanatory power state demographic, economic, and political factors had in terms of explaining state clusters. Indeed, even the number of prostitution arrests seemed to offer little explanatory power in terms of explaining why a state was clustered into one group over another. On the other hand, the likelihood-ratio tests once again muddled the story, with demographic factors and the number of prostitution arrests deemed significantly different from zero across all models. This result suggests that more research is needed in order to determine whether state prostitution regimes exist, whether they are driven by the importance of any given type of statute to their overall regime, and the role that state institutional factors have on predicting the cluster. The cross-sectional model presented here with only 50 observations offers a story that is too inconsistent with too little statistical power to draw any concrete conclusions.

While quantitative strategies for text mining and analysis work extremely well for categorizing large n-datasets and pulling out general themes, they leave questions of power, identity, and sexuality largely untouched. In the next chapter, I will draw a purposeful sample of statutes based on the five clusters presented in this chapter. Using critical and interpretive forms of discourse analysis I will attempt to understand what these prostitution policies say about hegemony and identity in the 21st century context.

CHAPTER 6

AN UNDEFINABLE PROBLEM WITH AN UNKNOWN SOLUTION: A CRITICAL

DISCOURSE ANALYSIS OF PROSTITUTION AND SEX TRAFFICKING RELATED

POLICIES

In the last chapter, I used text mining and analysis of unstructured data to identify

five clusters of statutes that regulate and penalize prostitution related behaviors and sex

trafficking: the criminalization cluster, the exploitation cluster, the child abuse cluster.

While the quantitative analysis of the data gave a broad overview of statutes across fifty

states, it could tell us very little about concepts related to power and identity within the

statutes. For that reason, I used the cluster analysis to sample the data and randomly

select five statutes from each cluster to analyze using in-depth interpretive and critical

discourse analysis procedures[35]. This chapter presents the findings of that analysis. The

randomly selected statutes for each cluster are listed in Table 1, below.

While the statutes were sampled and initially analyzed by cluster, many themes

relating to identity, sexuality, and the role of the state were uncovered across clusters.

Often, there were as many inconsistencies within clusters related to these themes as

across clusters. For these reasons, it made sense to discuss the findings of my discourse

analysis by theme, rather than by cluster. The first theme I uncovered through my

discourse analysis were inconsistencies in the definition of prostitution across statutes

with some statutes defining prostitution as an act, some defining it as a transaction, some

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[35] While more positivist methods of interpretive research would recommend drawing a statistically
representative sample, guidance from Fairclough (1992) suggests that the selection of a statistically
representative sample would provide too large a corpus to thoroughly analyze using critical discourse
analysis (CDA). For a more thorough discussion of the assumptions of CDA see Chapter four.

defining it as a lifestyle, and some defining it as an identity. The second major theme I

uncovered relates to the role of the state in resolving multiple tensions in the treatment of

prostitution as a social problem: protection versus penalization, autonomy and privacy,

and the public versus the private.

Table 20

Statutes Sampled for In-Depth Analysis by Cluster

Child Abuse		Exploitation		Criminalization		Place-Based		Licensing and Regulation	
State	Statute	State	Statute	State	Statute	State	Statute	State	Statute
MI	§803.225a	CA	§1038.1	CO	§18-7-405.5	OH	§3767.05	AR	§17-17-312
MT	§46-18-205	CA	§13700	FL	§796.03	RI	§11-34.1-4	MO	§513.605
WA	§9.94A.030	IN	§35-42-3.5-4	KY	§529.040	UT	§78B-6-1107	OK	§2-501
WA	§28A.400.322	NC	§7A-474.3	PA	§5902	VT	§2632	OH	§4776.20
MN	§631.52	UT	§76-10-1314	TN	§39-13-514	WY	§6-6-201	TN	§7-51-1102

What is Prostitution - Act, Transaction, Lifestyle or Identity?

A common theme present across prostitution and sex trafficking statutes was inconsistency in the definition of what prostitution is, according to the state. While almost every state provided a statutory definition of prostitution under the criminal code, a deeper reading of the statutes found inconsistent applications of the definition. One of the biggest sources of contradiction was whether prostitution was simply an act for which a person is arrested, or whether it constitutes more than that. The four major ways that prostitution was discussed across the statutes chosen for analysis are as: an act, a transaction, a lifestyle, and an identity.

Prostitution as an Act

When the general public thinks of prostitution in the criminal sense, we think of it as an act that occurs at a single point in time. This is how most states statutorily define prostitution in their criminal codes. In order to be punished under the criminal justice system, one must have committed an act that the state has determined to be illegal. When an individual is arrested, it is because he or she is believed to have committed that act, at least once. When we think of most criminal behaviors, when a person is charged with committing the same prohibited offense multiple times, he or she is charged with multiple counts of the offense. This could only be true, if the behavior in question could be separated into clearly delimited occurrences of the offense, these occurrences may be delimited by time, or they may be delimited by victim.

One of the statutes randomly selected for analysis from the criminalization cluster addresses patronizing prostitution. Prostitution is often defined as a three pronged relationship between a patron, or john; a prostitute; and a promoter, or pimp. Tennessee's

Title 39, Chapter 13, Section 514 is titled "Patronizing Prostitution" and refers to patronizing prostitution as a criminal offense("Patronizing prostitution," 2013). Section 39-13-512 defines patronizing prostitution in more detail than 39-13-514, stating that patronizing prostitution means, "soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity"("Part definitions," 2013). "Soliciting", "hiring", "entering", and "remaining" are all actions that occur at a single point in time.

Generally, the penalty for patronizing prostitution in Tennessee is a Class B misdemeanor; however, there are special categories of patronizing that enhance the sentence. The enhancements in Tennessee further reinforce the idea that prostitution is an act. Two of the enhancements are place-based and increase penalties for prostitution based upon where the act takes place. The penalty for being within 100 feet of a church or 1.5 miles of a public or private elementary or secondary school is a Class A misdemeanor. Those arrested within 1.5 miles of a school also face a mandatory jail sentence of seven days and a fine of at least $1,000 ("Patronizing prostitution," 2013).

The two other enhancements are patronizing a minor or an individual with an intellectual disability, both of these are considered Class E felonies under Tennessee law ("Patronizing prostitution," 2013). Again, this reinforces the idea of prostitution as an act. By patronizing a minor or a person who may not be intellectually capable of consent, the offender is perceived to be committing an act of violence against someone who is incapable under the law of consenting to sex. Such behavior, if it did not occur in exchange for money, could just as easily be considered another sexual offense: rape, or at the very least, statutory rape.

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Two other statutes sampled from the criminalization cluster deal specifically with third party activity related to the prostitution of a minor. Florida statute 796.03 prohibits procuring a juvenile for prostitution. In Florida, procuring or causing the prostitution of anyone under age 18 is a second degree felony ("Procuring person under age 18 for prostitution," 2012) [36]. While some states use longer term verbs to describe third party activities related to prostitution, the verbs here "procuring" and "causing" are time limited. Under this reasoning, once a person has been procured for prostitution or caused to enter prostitution the action of the procurer is complete. There is no long-term relationship necessary between the three prongs of prostitution discussed above.

Colorado statute 18-7-405.5 prohibits "Inducement of child prostitution." Inducement refers only to words or actions that are not considered to be menacing or intimidating. Colorado has two definitions of child prostitution, "prostitution by a child" and "prostitution of a child". Both are defined in statute 18-7-401, as follows:

(6) "Prostitution by a child" means either a child performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child's spouse in exchange for money or other thing of value or any person performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any child not the person's spouse in exchange for money or other thing of value.

(7) "Prostitution of a child" means either inducing a child to perform or offer or

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[36] While case law initially interpreted procuring for oneself as punishable under this law, in 1998, the court determined that such behavior was soliciting and covered by another statute under the law. This decision clarifies that the procuring statute refers only to a third party act.

agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child's spouse by coercion or by any threat or intimidation or inducing a child, by coercion or by any threat or intimidation or in exchange for money or other thing of value, to allow any person not the child's spouse to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with or upon such child. Such coercion, threat, or intimidation need not constitute an independent criminal offense and shall be determined solely through its intended or its actual effect upon the child ("Inducement of child prostitution," 2012)

Like many states, Colorado uses the term act to define prostitution. Unlike other states, however, Colorado's definitions of prostitution are very graphic, describing the specific sexual acts considered to be prostitution. Included in the definition are both mainstream and taboo sexual acts including masturbation. Colorado case law makes clear that inducement of a child to masturbate in one's presence is considered prostitution of a child. Because the definitions of prostitution by a child and prostitution by an adult differ only based on the age of the person performing the act, it is likely that the same standard could be applied to adult prostitution, as well. Thus, an act of child prostitution, and possibly adult prostitution, can occur with or without any bodily contact between two individuals.

In this statute, Colorado provides two definitions of child prostitution: prostitution *by* a child and prostitution *of* a child. The difference between the two definitions hinges on the agency of the child. In the first definition, the child performs the act, while in the second a third party induces or coerces the child to perform the act. Even though the

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definition of prostitution of a child in section 8-17-401 refers to inducing and coercion, the statute prohibiting inducement refers to prostitution by a child.

It is not surprising that all of the statutes discussing prostitution as an act were sampled from the criminalization cluster. As mentioned above, defining prostitution as an act seems a necessary step in order to arrest someone for committing a prostitution related crime. Still, you will notice that not all of the criminalization statutes classify prostitution as an act, even while they impose criminal penalties for committing prostitution or a related crime.

Other themes can be found in this section that are unique to the description of prostitution as an act. First, this definition allows the state to specify victims of the act, some of whom may be regularly victimized, like minors or the intellectually disabled, and others who may be victimized on a single occurrence of the act or who may be perpetual potential victims should such an act occur in their vicinity, like schoolchildren and churchgoers. Describing prostitution also allows for a discussion of specific sexual acts that meet the threshold to be considered a criminal offense. While the more graphic descriptions, like that found in the Colorado statute seem to be more taboo, by codifying specific sexual acts as opposed to simply stating "sexual conduct", these statutes actually reduce the stigma of various sexual acts and allow for the same penalties whether prostitution occurs between a man and a woman, a man and a man, or a woman and a woman. Indeed, the statute seems to imply that no bodily contact between any of the participants need occur for prostitution to take place. Perhaps that brings Colorado's statute more in line with the next category of analysis, prostitution as a transaction.

Prostitution as a Transaction

As mentioned in the literature review chapter, a common way of understanding prostitution as a social problem is to think about it in economic terms. Whether one is examining the economic determinants of entry into prostitution, or prostitution as an economic exchange, the language of markets is a pervasive discourse in our common knowledge of prostitution and scholarly research on prostitution. The results of my textual analysis found that while very few statutes conceptualized prostitution as an economic issue, the language of economics could still be found within the statutes themselves. Through the use of economic language, certain statutes selected for in-depth analysis frame prostitution as an economic transaction, rather than an action completed by a single person or a longer-term lifestyle or identity.

Two laws pulled from Washington as part of the child abuse cluster use economic language to describe prostitution as an economic market based transaction. The first defines crimes for the purposes of a three strikes law, and the second defines crimes against a child in the context of school district employment.

Washington's crime definition statute discusses prostitution and trafficking crimes in a few ways. Both promoting prostitution and human trafficking are used as examples of criminal street gang related offenses. The language in this section of the law describes prostitution as a very market based crime using economic terms.

> (f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW);

promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW

9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or

promoting pornography (chapter 9.68 RCW) (Washington 9.94A.030)

("Definitions," 2013a)

A few important points stand out from this section of the code. First, when it comes to

street gang activity, the Washington code relies on purely economic language to describe

the prostitution exchange, which in this case refers to the exchange of a person providing

a service rather than the service itself. Second, rather than treat coercing or procuring a

juvenile for the purposes of prostitution and profiting from said prostitution as a similar

crime to the same third party intervention for adults, the Washington Code treats said

exchange as a crime more similar to child abuse. By labeling the crime "commercial

sexual abuse of a minor", the Washington Code acknowledges the inability of a juvenile

to consent to sexual conduct and considers juvenile prostitution to be closer to child

pornography than adult prostitution. This seems to be a fairly important distinction.

However, "commercial sexual abuse of a minor" is clearly a market based crime as

opposed to other forms of sexual abuse, which would be considered sexual offenses.

While one could argue that the true intent of this distinction is to incorporate third party

behavior into the definition, the use of the word "commercial" emphasizes the offenders

desire for monetary as opposed to sexual gain, and grounds the behavior firmly in the

black market.

Pennsylvania section 5902 contains multiple subsections criminalizing

prostitution and all related crimes in a single statute. The final subsection of the law

prohibits patronizing prostitutes, which is also known as a "john law". Pennsylvania defines patronizing prostitutes as:

> A person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity ("Prostitution and related offenses," 2013)

While so-called john laws are generally advocated for and passed into law by groups favoring a human rights understanding of prostitution as a social problem (Weitzer, 2006), the language they use is highly economic. The logic behind john laws is that prostitution is a market transaction characterized by a supply and demand relationship. Because past efforts to focus on the supply side of prostitution have been unsuccessful and harmful to victim, the state should focus more on reducing demand for prostitution by arresting and penalizing patrons. At the same time, advocates of this point of view object to the use of other economic terms like sex work, that seek to further entrench prostitution as an economic activity.

There are several levels of penalties for patronizing a prostitute in Pennsylvania. Generally, increases in penalties are due to the number of offenses with a first or second offense resulting in a third degree misdemeanor, a third offense in a second degree misdemeanor, and a fourth or additional offense a first degree misdemeanor. Additionally, on a second or additional patronizing offense, the sentence is published in the local paper, and the offender must pay the fee to publish the sentence. Previous

research has shown; however, that "johns" are rarely arrested more than once (Monto, 2000, 2004; Shively et al., 2008)[37].

Publishing sentences for patronizing prostitutes is just one of several attempts to increase penalties on the "demand side" of prostitution. By publishing names in local papers, the statute creates a penalty for patrons that does not exist for promoters or prostitutes. However, it is also a less restrictive publication of behavior than the sex offender registry, which would be required of anyone convicted of patronizing or promoting anyone under age 18 in Pennsylvania. It is also a penalty that seeks to increase the stigma of prostitution, or at the very least, equalize the stigma for buying and selling prostitution.

Such a tactic is often described as shaming. Other forms of shaming include publishing names of "johns" on police websites, sending letters to spouses and significant others, or publishing names and photos on billboards. Such tactics are meant to deter former patrons from engaging in another purchase of prostitution. Other jurisdictions use tactics like license revocation, community service, vehicle seizure, and Stay Out of Areas with Prostitution (SOAP) orders to penalize patrons, in a more private but also possibly more painful manner (Shively, 2014). One final tactic is the john school which is, at least in theory, used less as a penalty and more as an opportunity to teach patrons about the negative aspects of prostitution (Shively, et al., 2008). One could think of the john school as a consumer education program, and indeed, debate exists over whether the lesson of

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[37] The one exception is that Pennsylvania also increases penalties for patrons who are knowledgeable of their HIV positive status or who have symptoms of AIDS. In this case, the penalty is greatly increased to a third degree penalty. Patronizing a minor does not lead to an increased penalty under this section, but is prohibited as unlawful contact with a minor under section 6318 and carries a third degree felony charge.

the john school is to eliminate the consumption of prostitution by johns or to help them be smarter consumers when they do consume prostitution services (Bernstein, 2001).

While both of the statutes that define prostitution as a transaction use substantial economic language in their text, neither would be considered friendly to the concept of prostitution as sex work, or a more Marxist orientation towards prostitution, which seeks to ground it in capitalism. Indeed, both statutes were sampled from clusters concerned primarily with the abuse and victimization of so-called prostituted individuals. The contradiction between the underlying logic of the policy tools created by this section and the conceptual orientation of those advocating for the enactment and continued renewal of those tools is particularly jarring given the hostile tenor of debates surrounding prostitution (W. Chapkis, 1997).

Prostitution as a Lifestyle

While some statutes refer to prostitution as a time limited activity, either an action undertaken by an individual or a transaction between two or more individuals, other statutes extend the time period of prostitution. These statutes either use a prostitution related conviction as an indicator of an immoral or criminal lifestyle, or they define prostitution and its related crimes as an ongoing, long-term behavior. By defining prostitution in this way, these statutes suggest that engaging in prostitution is a choice to live a lifestyle characterized by inappropriate and illegal behavior.

Minnesota's Statute 631.52 "Effect of certain convictions on custody and parenting time rights" uses a prostitution related offense as an indicator that a parent is living a lifestyle that is inappropriate for a child. This law, which refers to child custody, appears in the criminal procedure code, and removes a child from the custody of a parent

if he or she commits certain crimes ("Effect of certain convictions on custody and parenting time rights," 2013). The applicable crimes include murder and manslaughter, assault, kidnapping, depriving another of custodial rights, criminal sexual conduct, sex crimes against children, neglect, abuse, terroristic threats, or felony stalking. Among the relevant sex crimes against a child are the prostitution related crimes of soliciting, inducing, promoting, or receiving profit from the prostitution of a minor ("Effect of certain convictions on custody and parenting time rights," 2013). It is interesting that engaging in prostitution as an adult or promoting, soliciting, and profiting from prostitution of adults are not considered crimes worthy of losing parental rights.

While few people could argue against suspension of parental rights in the case of an adult engaging in prostitution with a minor or forcing children to engage in prostitution with a third party, the Minnesota statute reinforces the child/victim: adult/criminal dichotomy. Further, there is a substantial difference in intent and awareness between actively inducing and promoting prostitution and profiting from prostitution. The latter of which could be used to suspend parental rights of third parties, such as a landlord whose tenant was engaging in or promoting underage prostitution. Regardless of the intensity of one's involvement in the sex crimes covered by the statute, when such a conviction is issued, the state has determined that such a person is unfit to serve as a parental guardian to a child. This would not necessarily be true if the state believed these offenses to be time-limited to the act or transaction for which the parent was convicted.

As mentioned in the previous section, Pennsylvania's Statute 5902 deals with prostitution and related offenses. The four offenses covered by this section are

prostitution, promoting prostitution, living off prostitutes, and patronizing prostitutes. Aside from the patronizing section, which treats prostitution as a transaction and was discussed in the previous section, Statute 5902 consistently discusses prostitution and related offenses as a lifestyle. This is in spite of the fact that the statute not only criminalizes prostitution, but other statutes that penalize prostitution refer back to the definition provided. The statute states:

(a) *Prostitution.* --A person is guilty of prostitution if he or she:

(1) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or

(2) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity…

(f) *Definitions.* --As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"House of prostitution." Any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another.

"Inmate." A person who engages in prostitution in or through the agency of a house of prostitution.

"Minor." An individual under 18 years of age.

"Public place." Any place to which the public or any substantial group thereof has access.

"Sexual activity." Includes homosexual and other deviate sexual relations ("Prostitution and related offenses," 2013)

Pennsylvania defines prostitution as either living in a place where prostitution occurs or loitering in a public place for the purpose of prostitution. Neither of these definitions refer to a specific act or transaction, but instead refer to a continued living situation or an intent. Interestingly, the statute defines "House of Prostitution" using a legal understanding of prostitution, which is then defined by living in a house of prostitution, creating a circular reference. The alternative definition of prostitution, "engaging in sexual activity as a business" also implies a long-term way of life. This definition is problematic; however, because it does not discriminate between legal forms of sex work like stripping and phone sex, both of which could be considered sexual activity as a business.

Aside from its lack of clarity in defining prostitution as a legal offense, Pennsylvania's definition of prostitution is interesting in that it classifies prostitution as more than an act or behavior. By defining prostitution as being an inmate in a house of prostitution, and intending to engage in prostitution; the statute argues that prostitution is a lifestyle and a state of mind, as much as an act.

Pennsylvania Criminal Code Section 5902 also criminalizes promoting prostitution using the language of prostitution related offenses as a lifestyle. There are multiple activities that could be considered promoting prostitution under this statute, which basically amount to third party participation in prostitution. Some of the actions are considered misdemeanors, while others are considered felonies. The statute defines promoting prostitution as the following:

> (1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business;

(2) procuring an inmate for a house of prostitution or a place in a house

of prostitution for one who would be an inmate;

(3) encouraging, inducing, or otherwise intentionally causing another to become

or remain a prostitute;

(4) soliciting a person to patronize a prostitute;

(5) procuring a prostitute for a patron;

(6) transporting a person into or within this Commonwealth with intent to

promote the engaging in prostitution by that person, or procuring or paying for

transportation with that intent;

(7) leasing or otherwise permitting a place controlled by the actor, alone or in

association with others, to be regularly used for prostitution or the promotion

of prostitution, or failure to make reasonable effort to abate such use by ejecting

the tenant, notifying law enforcement authorities, or other legally available

means; or

(8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing

to do anything forbidden by this subsection ("Prostitution and related offenses,"

2013)

The definition of promoting in Pennsylvania relies on seven different verbs to describe a

single crime. Some of these verbs describe time-limited acts such as procuring, causing,

or soliciting; while others describe long-term behaviors like leasing, managing, or

owning. There is also substantial variation in the intensity of the verbs used to describe

behaviors ranging from agreeing to receive benefits to keeping a house of prostitution.

The penalties for promoting prostitution vary just as much as the language used to

describe promoting behaviors. The penalties seem to be based primarily on the intensity of action, with subsections one through three classified as felonies in the third degree, and the other subsections generally classified as second degree misdemeanors. Prostitution of a minor, defined as an individual under age 18, is always a third degree felony.

Section 5902 also includes a separate subsection defining "living off prostitutes" as an additional promoting offense. More than any other, this subsection of 5902 defines a prostitution related offense as a lifestyle. This subsection prohibits a person from being supported wholly or substantially by the earnings of a prostitute, and defines this behavior as promoting prostitution. Other states often refer to "profiting from" or "pimping" rather than "living off prostitutes". These alternative ways to classify the act of receiving at least part of the profits from a prostitution transaction treat prostitution as a time-limited behavior. In contrast, Pennsylvania's use of "living off prostitutes" suggests a long-term relationship wherein a person is substantially provided for by a prostitute, using her earnings from multiple transactions. This subsection exempts minor children and legal dependents who cannot support themselves from prosecution for promoting, but spouses and other relatives are not exempt. As with Minnesota's section 631.52, this section seeks to penalize individuals who consciously chose a lifestyle based on prostitution.

Kentucky Revised Statutes Chapter 529, Section 040 also prohibits promoting prostitution. Like Pennsylvania's Section 5902, promoting prostitution is defined as third party involvement in prostitution, but KRS 529.040 does not go into detail about the specific behaviors that are considered to be prostitution promotion, instead, Kentucky defines promoting prostitution simply, "A person is guilty of promoting prostitution when

he knowingly advances or profits from prostitution" ("Promoting prostitution," 2013).

Kentucky defines advancing prostitution as

> when acting other than as a prostitute or as a patron thereof, he knowingly causes
>
> or aids a person to engage in prostitution, procures or solicits patrons for
>
> prostitution, provides persons or premises for prostitution purposes, operates or
>
> assists in the operation of a house of prostitution or a prostitution enterprise, or
>
> engages in any conduct designed to institute, aid or facilitate an act or enterprise
>
> of prostitution ("Definitions," 2013b)

Kentucky uses similar verbs to define advancing prostitution as Pennsylvania uses to

define promoting prostitution. Once again, the language used expands the prostitution

related offense of promoting beyond a single act to a lifestyle.

In Kentucky, managing, supervising, controlling, or owning a house of

prostitution or a prostitution business with more than one "employee" is considered a

form of promoting that carries an enhanced penalty. Unlike Pennsylvania, where

penalties are enhanced based on the intensity of action, Kentucky enhances penalties for

longer-term behaviors. While promoting prostitution is generally a Class A misdemeanor,

when the activity involved is institutionalized as a business, the penalty is a Class D

felony("Promoting prostitution," 2013).

Oklahoma's Section 2-501 was sampled as part of the licensing and regulation

cluster and discusses the powers of enforcement personnel or peace officers under the

Uniform Controlled Dangerous Substances Act. While most of these powers relate to

suspicion of drug related offenses, two subsections of this statute apply to other crimes.

Subsection 6 permits investigations and arrests based on suspicion of money laundering

activities, and Subsection 7 permits investigations and arrests based on suspicion of human trafficking ("Powers of enforcement personnel," 2013).

By codifying the relationship between money laundering, human trafficking, and trafficking of controlled substances, Oklahoma's law integrates the prostitution related offense of human trafficking into the lifestyle of organized crime. This statute and similar Racketeer Influenced and Corrupt Organizations (RICO) laws argue that prostitution, particularly the promotion of prostitution or human trafficking, are crimes indicative of larger criminal enterprises. The problem is not the individual act or transaction for which a person was arrested, but the fact that he or she was perceived to be acting on behalf of a larger organization involved in multiple black market crimes. The understanding of prostitution as a criminal justice problem because it is associated with long-term criminal behavior, which was discussed in the literature review, views prostitution related crimes as a lifestyle enabled by a larger criminal organization.

Tennessee statute 7-51-1102 deals with licensing in a specific industry, adult oriented businesses. The specific statute sampled provides definitions used in other statutes regulating adult-oriented establishments. Aside from defining the types of businesses and workers regulated by the act, the statute also defines criminal activities that can lead the board to deny or revoke licenses. All of the listed offenses are sexually related offenses, some of which are violent and others that are non-violent. Included in the list are prostitution and promoting prostitution ("Part definitions," 2013). While a conviction for one of the listed offenses will not permanently prohibit a person with a listed offense from operating or working at an adult-oriented business, all of the offenses require the regulating authority to revoke an existing license and a new license cannot be

issued within two years of a single misdemeanor conviction, or within five years of two or more misdemeanor convictions occurring within a twelve month period or a felony conviction ("License to operate - Qualifications," 2013). This restriction only applies to the sexual offenses listed in the definitions statute and do not apply to other crimes no matter how extreme or severe.

Many states have permanent licensing prohibitions in place for individuals convicted of a prostitution related offense, particularly for businesses and professions perceived to be conceptually related to prostitution and trafficking, like massage parlors and lodgings. By instituting a temporary period where a business license cannot be attained, Tennessee appears to discourage individuals with sex crimes convictions from operating an adult business. On the other hand, the temporary nature of the prohibition, as compared to the permanent nature of prohibitions for other types of business and employment licenses, encourages an entrepreneurial person with such a conviction to open a sexually oriented business. The statute, therefore, codifies the idea of sex work as a lifestyle, suggesting that the appropriate business for someone with a sexually related conviction to own is a sexually oriented business. This could be seen as a somewhat subversive statute, breaking down the barriers between black market sex work and sex work that is considered legal under Tennessee law.

The idea that prostitution is problematic because it is an ongoing lifestyle and not just a one-time act or transaction is not unique to the statutes discussed here. Indeed, the common parlance for prostitution among women and men who are involved in it is "the life". By framing prostitution as an ongoing economic activity or behavior, state laws strengthen the ties between prostitution, organized criminal enterprises, and crimes of

addiction. They also imply that individuals involved in prostitution and/or related offenses have made a choice to reject a more mainstream lifestyle in favor of prostitution and other black market crimes.

Prostitution as an Identity

While statutes that describe prostitution as a lifestyle imply that prostitution is an ongoing behavior that is not limited to a single transaction or act for which a person is penalized by the state, the most problematic category of statutes classify prostitution and related offenses as an identity. Some of the statutes establish prostitution as an identity by shifting the language from a verb like prostitution or patronizing to a noun like prostitute or john. These statutes codify the idea that once one engages in prostitution or a related behavior, one is never not a prostitute, john or pimp. Another way that these statutes frame prostitution as an identity rather than an act, transaction, or lifestyle is by restricting employment of individuals convicted of prostitution for perpetuity.

I previously discussed the patronizing section of Pennsylvania statute 5902. While the statute frames patronizing as a transaction, it also includes language constructing prostitute as a an identity. Again, Pennsylvania defines patronizing prostitutes as:

> A person commits the offense of patronizing prostitutes if that person hires
> a prostitute or any other person to engage in sexual activity with him or her or if
> that person enters or remains in a house of prostitution for the purpose of
> engaging in sexual activity ("Prostitution and related offenses," 2013)

In this subsection of the statute, Pennsylvania uses the plural tense to describe the identity, "prostitutes" as opposed to the noun referring to the behavior, "prostitution". It is strange that the subsections prohibiting prostitution and promoting prostitution use the

word to indicate the behavior while this subsection and the "Living off Prostitutes" subsection use the term "prostitutes". This is particularly notable given that the definition of patronizing prostitutes prohibits hiring any person to engage in sexual activity with him or her, whether or not that person is a prostitute. This adds to the confusion over the definition of prostitution in Pennsylvania. It is unclear whether prostitution is considered a transaction, a lifestyle, or an identity. For the purposes of criminalizing prostitution and promoting it seems to be considered a lifestyle, while for the purposes of criminalizing patronizing it is a transaction for the john and a lifestyle for the prostitute. While these may seem to be minor distinctions, one can see how different criminal and civil penalties might be in order depending on whether one is addressing a problematic transaction, a problematic lifestyle, or a problematic identity.

Washington's statute 28A.400.322 specifies crimes against children for the purposes of school employment. The statute lists 16 crimes that are considered crimes against children and can be used to deny employment or fire a school employee("Crimes against children - Crimes specified," 2013). Some of these crimes may no longer exist under Washington code, as both previous and current convictions are listed as eligible offenses. For example, Washington no longer uses promoting prostitution of a minor to describe pimping or profiting from the prostitution of a juvenile. As of 2009, this behavior was instead re-named commercial sexual exploitation of a child ("Crimes against children - Crimes specified," 2013). Both crimes are listed as offenses for which one could be denied employment or fired by the Washington school system. Interestingly, some of the crimes classified as crimes against children are crimes committed against adults. The crimes against children statute lists a conviction for "Promoting Prostitution

1" as a crime for which an employee must be fired, even though it is not technically a crime against a child. It should be noted that this is only true for offenses that occurred after 2009, when the statute was revised to include some violent and property crimes against adults ("Crimes against children - Crimes specified," 2013). The fact that a person can be fired or denied employment in the school system for crimes occurring as early as 1989, illustrates that for the purposes of employment, one never stops being a criminal once a conviction for a certain crime has been accrued.

Like Washington, Arkansas restricts the employment of individuals convicted of prostitution related offenses throughout the life course. Arkansas' section 17-17-312 of the state code requires the Auctioneer's Licensing Board to conduct background checks on anyone applying for a new license or renewing an existing license. If the person has plead guilty or no contest to, or has been found guilty of, one of several criminal offenses then the board cannot issue an auctioneer's license. There are over 30 different crimes listed including violent crimes, sexual crimes, and property crimes, among them is promoting prostitution in the first degree, which is defined in Arkansas as promoting through compulsion or force, or promoting of a juvenile (5-70-104). The board may waive the denial of the license based upon the age of the applicant when the crime was committed, the circumstances of the crime, the amount of time since the crime, work history, and references. Given the stigmatized nature of prostitution related crimes; however, it seems unlikely that a waiver would be granted for first degree promotion, even though it seems to have little to do with auctioneering. Interestingly, the 2011 amendments to this section included a section on legislative intent. According to that section, "The intent of this act is to implement comprehensive measures designed to

reduce recidivism, hold offenders accountable, and contain correction costs." It is unclear

how constraining employment activities of former offenders is meant to reduce

recidivism or correction costs, suggesting that holding offenders accountable for the rest

of their lives may be the true intent of the act.

While the Washington and Arkansas statutes deal with narrowly defined

professions and a wide definition of prohibitive criminal activities, Ohio's section

4776.20 deals with a wide range of professions and only one criminal act, trafficking in

persons. Section 4776.20 requires any and all licensing agencies in the state to revoke

the license of a person who has plead guilty or no contest to, or is found guilty of

trafficking in persons ("Suspension of license regarding offense of trafficking in

persons," 2013). When the offense occurs in a licensed facility, the license of the facility

is also revoked. The prosecutor's office is responsible for notifying the licensing board,

but the individual or facility whose license has been revoked can request a hearing, but

the revocation can only be overturned if the report of a trafficking conviction is

erroneous("Priority of action; evidence; dismissal of citizen's complaint; costs; permanent

injunction; abatement orders concerning beer or intoxicating liquor," 2013). There is no

ability to waive or appeal revocation if the conviction occurred. Although Ohio also

denies licenses for other crimes when discovered via background checks, trafficking in

persons is the only crime where the prosecutor is obligated to inform licensing boards on

conviction, and the only crime that warrants a special section of the Occupations Title of

the revised code.

When one is considering remedies to a social problem, it makes a difference

whether that social problem is defined as one of isolated actions, illegal transactions,

inappropriate lifestyles, or marginalized identities. As Pennsylvania Code Section 5902 illustrates, contradictory conceptualizations of prostitution sometimes co-exist in a single statute, not to mention across statutes and states. Constructing prostitution as an identity is particularly problematic because it allows no room for reform or rehabilitation. Once a prostitute always a prostitute, or once a promoter always a promoter, is a problematic point of view in a country with a pervading myth that once one has done the time for his or her crime, citizenship is restored. The continued restrictions on employment licensing suggest that one's identity as a criminal is a static identity and the state must guard against that identity across the life course.

What is the Role of the State?

Another major theme occurring across the statutes relates to the role of the state in regulating and enforcing sexual behavior. There are three major discussions of the role of the state suggested by the statutes: penalization versus protection, autonomy and privacy, and public versus private. Prostitution and sex trafficking statutes offer a window into how states approach these questions, particularly as they apply to the criminal justice arena and regulation of behaviors that the state deems sexually deviant.

Protection versus Penalization

One of the biggest contradictions across prostitution and sex-trafficking statutes is whether the proper role of the state is to protect prostituted individuals or penalize prostitutes. Even in states that were early adopters of sex trafficking laws, anti-prostitution laws remain on the books. In some cases, penalization of prostitution is viewed as "tough love", the possible catalyst that will force the petulant prostitute, no matter how young or marginalized, to leave the life (Mayo, 2012). In states with felony

convictions for persistent offenders, this is particularly problematic, as each arrest "for his or her own good" increases the likelihood that he or she will have to spend substantial time in jail for his or her victimization.

Some of the statutes analyzed are clear in their intent to treat trafficked and prostituted individuals as victims. Montana's mandatory minimum sentence law was sampled for deeper analysis as part of the child abuse cluster and discusses prostitution as a relationship between an abuser and a victim. In 2001, the state added aggravated promotion of prostitution, which involves compelling another to engage in prostitution or promoting the prostitution of a child or a person who should be under that person's protection (a spouse, ward, or biological child) as a crime that requires a convicted person to immediately serve the first two years of his or her sentence ("Mandatory minimum sentences - restrictions on deferral or suspension," 2012).[38] The other crimes in this section include violent crimes like kidnapping and sexual assault and drug crimes like possession and possession with intent to deal. By including aggravated promotion of prostitution in this list, the state is arguing against the idea of prostitution as a victimless crime and positing that the victim here is the prostitute, someone who in this case should have received special protection from his or her victimizer, the promoter.

Similar to Montana's mandatory minimum law, Washington's crime definition statute discusses promoting prostitution in the first degree as a "most serious offense". Promoting prostitution in the first degree applies to adult prostitution and involves

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[38] Promoting prostitution in Montana includes any third party involvement in a prostitution transaction, including procuring a prostitute or a client, operating or residing in a house of prostitution, encouraging prostitution, soliciting clients, transporting a person for the purpose of prostitution, leasing or failing to abate a place of prostitution, or living on the earnings of a prostitute, unless the person is a dependent incapable of self-support.

compulsion into prostitution using threat or force, or compulsion of a person with a mental or developmental disability that prohibits consent. Promoting prostitution in the first degree is a class B felony. While Montana's aggravated promotion statute emphasized the victimization of special classes of individuals believed to have been forced into prostitution by a person who is supposed to protect them, Washington's definitions of most serious offenses for the purposes of sentencing allows any individual to be considered a victim of a promoter ("Definitions," 2013a).[39]

Unfortunately, while the Washington Code does not limit victimhood by age or relationship with one's promoter, Washington defines victim in a less than ideal way, particularly in the context of commercial sexual abuse of a minor and promoting prostitution in the first degree. According to the statute, victim means "Any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged" ("Definitions," 2013a). In 1995, the Court of Appeals of Washington ruled that a man who plead guilty to a count of possession of depictions of a minor engaged in sexually explicit conduct for possessing pictures of his two-year-old granddaughter in varying stages of undress could not be charged with an exceptional sentence. The ruling stated that in order to be a vulnerable victim, the child had to first be a victim and the prosecution had not shown that the girl was injured by the crime because a two year-old child had not yet reached the age of reason ("The State of Washington v. John R. Hicks," 1995). This suggests that if it can't be shown that a victim was physically or financially harmed, and the court finds that he or she cannot

[39] Promoting prostitution of a minor is not listed in the most serious offenses because this crime no longer exists in Washington. Instead, behavior that would be considered promoting if it had been carried out on an adult is now termed commercial sexual abuse of a minor and is included in the most serious offenses list as a form of sexual exploitation.

comprehend well enough to understand what is happening to him or her to experience emotional or psychological harm, then s/he is not a victim under the law. The individuals whom the promoting prostitution statute deems to be the most vulnerable, are also those whom the definition of victimhood under the law may exclude.

While the two statutes discussed above, sampled as part of the child abuse cluster define the victims of promoting prostitution, three of the statutes sampled from the exploitation cluster deal with some form of the trafficking victim experience. The first, from Indiana explains the additional rights afforded to alleged victims of human trafficking. The statute makes clear that the alleged victim is first and foremost a victim. He or she cannot be confined or jailed, must be treated as a victim, and his or her family must be protected. Further, law enforcement has 15 days from identifying the alleged victim to provide him or her with the proper forms allowing them to benefit from the Victims of Trafficking and Violence Protection Act of 2000 ("Additional rights of victim," 2012). While the victim protections under Indiana's statute are generous, the Victims of Trafficking and Violence Protection Act primarily focuses on trafficking of immigrant women across national lines. The act does very little to protect American citizens (Wendy Chapkis, 2005). While the statute does not specify that it only applies to immigrant trafficking victims, it reinforces the prevailing notion that trafficking is something that only occurs to vulnerable immigrants from third or second world countries and not to American women, men, and children. While this statute appears to merely describe the treatment that trafficking victims should receive from police, it also refines the category of victim by referring to the Trafficking Victims Protection Act.

The second statute, from California, discusses when a human trafficking caseworker can be compelled to disclose information. A human trafficking caseworker is someone working for a domestic violence shelter on a voluntary or for-pay basis with credentials in therapy or counseling and training in counseling of trafficking victims ("Definitions," 2012). Generally, the victim or the caseworker can claim the privilege to keep information exchanged between the two confidential. When there is a criminal case and the information disclosed to the caseworker would contribute to the case in a manner that would outweigh the harm of disclosure, a judge can compel the caseworker to disclose. Disclosures first occur in private with the judge, but should the evidence prove important enough, the information will be presented in court ("When Court May Compel Disclosure; Ruling on Claim of Privilege," 2012). While many of the trafficking laws emphasize victims' rights, California's section 1038.1 of the evidence code illustrates the limitation of those rights. The ultimate goal is the prosecution of a trafficker, and even a victim's relationship with his or her caseworker prioritizes prosecution over protection.

The third statute in this cluster provides North Carolinian indigents with legal representation for certain civil claims. Included in the list of services provided by the act are: general legal education, family abuse representation, assistance in applying for certain federal benefits, foreclosure assistance for farmers and low-income families, and services specifically for residents under age 21 and over age 60 ("Eligible activities and limitations," 2013). Assistance in gaining access to benefits under federal laws and programs assisting human trafficking victims is covered by the law. However, assistance is not available under this act for criminal proceedings, for incarcerated prisoners, or for institutionalized individuals with mental handicaps ("Eligible activities and limitations,"

2013). While a trafficked person who cannot afford an attorney would benefit from the assistance in applying for benefits, the prohibition on the use of funds under the act for criminal cases or to assist incarcerated individuals means that the act does not provide any assistance in helping trafficking victims establish themselves as victims under the law. Presumably, a court appointed attorney in their criminal case would help them establish their victim status, but given the caseload of public defenders, this assumption may not happen, in reality.

The next statute sampled as part of the exploitation cluster discusses victims of traffickers and promoters in a somewhat different way from the first three. While the first set of statutes discusses the benefits and limits of trafficking victim status under the law, this fourth statute attempts to reduce the number of young people who are victimized. Section 13700 of California's Welfare and Institutions Code deals with Homeless Youth Emergency Pilot Projects. The statute presents the findings and declarations for the chapter, which goes on to discuss the details of the pilot programs. The chapter, as described in this section, creates two homeless youth emergency projects in California; one in Los Angeles County and the other in San Francisco County ("Creation of pilot projects; Establishment of multiagency, multidisciplinary family justice center; Definitions; Victims of crime; Responsibilities of family justice center; National Family Justice Center Alliance; Confidentiality of information; Evaluation of pilot centers; Report; Development of criteria," 2012).[40] The statute recognizes the particular risks faced by homeless youth including abuse or neglect in their home environment,

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[40] If additional funds are available in any given year, the statute also allows for the creation of other projects in other counties or cities where homeless youth is deemed to be a problem.

involvement in illegal activities including prostitution and drug use while they are on the street, and their immediate and long-term needs for shelter, food, and healthcare. The act establishing the pilot programs was passed in 1985, retained in 1988, with the option to expand to other cities and counties added in 1990, and has remained an unchanged part of the California Welfare and Institutions Code since 1991 ("Creation of pilot projects; Establishment of multiagency, multidisciplinary family justice center; Definitions; Victims of crime; Responsibilities of family justice center; National Family Justice Center Alliance; Confidentiality of information; Evaluation of pilot centers; Report; Development of criteria," 2012).

While the purpose of the first few statutes describe the benefits provided to victims of trafficking and punishes promoters who are believed to be taking advantage of vulnerable individuals, the California statute attempts to stop victimization before it happens. By creating pilot programs for homeless youth in two cities with large underground and above ground sexually-oriented economies, California not only implies that young people on the streets are victims, or at least potential victims, the state is also able to intervene in their lives with a harm reduction strategy, without resorting to a punitive approach.

While the statutes discussed in this section have framed prostituted individuals primarily as victims, statutes discussed in prior sections, such as Pennsylvania's Section 5902, Missouri's CAFA law, Utah's mandatory testing law, and Tennessee's sexually oriented business license law continue to punish women and men engaging in prostitution, sometimes to an extreme degree, regardless of their status as trafficking victims or victims of coercive promoters. Further, while many laws create a special

victim status for children, spouses, and the mentally ill, advocates of a human rights approach to prostitution are seeking to extend that victim status to all individuals engaging in prostitution. Many of the recently passed sex trafficking statutes attempt to do just that, without repealing the criminalization statutes on the books. In some cases, states have concurrently increased the penalties on persistent prostitution offenders (Mayo, 2012).

When prostitution policy is viewed as a single policy movement or policy tool, it appears that individuals engaging in prostitution are beginning to be seen as victims; however, when the full package of laws relating to prostitution are considered by criminal justice officials, prosecutors, judges, and juries, the contradiction in the law creates a type of Schrodinger's cat thought experiment where the prostitute is both simultaneously a potential victim and criminal until charges are filed and we learn how the court will view him or her. While a system where such determinations were made randomly would be somewhat problematic, in the American system where race, class, gender, and sexuality often determine one's treatment by the criminal justice system, the ambiguity in the law can lead to unequal protection by the legal system. Additionally, because prostitution is one of the only crimes where a victim is also a criminal, the state can withhold victim status and the benefits associated with it until the prostituted individual cooperates in the investigation of his or her promoter or trafficker. As California's trafficking victim disclosure act illustrates, trafficking victims' rights end where police investigation needs begin.

Autonomy and Privacy

A related theme suggested by the prostitution and sex trafficking related statutes addresses the dichotomy between autonomy and privacy. One of the reasons that sex trafficking is deemed problematic by society is the belief that the bodily autonomy of trafficked and prostituted women has been eliminated by the trafficker or pimp. While the state is perceived to be a benevolent entity that intervenes to restore that autonomy, in many cases, agents of the state are authorized to once again violate the autonomy of victims.

Michigan statute 803.225a was selected for discourse analysis as part of the child abuse cluster. The statute is part of the Youth Training and Rehabilitation Chapter of the Michigan Code. The statute is titled "Community placement and discharge from wardship; chemical testing for DNA identification profiling; exception; providing samples; manner; consent; hearing or court order not required; disclosure; assessment; 'felony' and 'sample' defined." It mandates that a juvenile convicted of committing certain felonies and misdemeanors shall not be released unless a DNA sample is collected ("Community placement and discharge from wardship; chemical testing for DNA identification profiling; exception; providing samples; manner; consent; hearing or court order not required; disclosure; assessment; "felony" and "sample" defined.," 2013). The crimes to which this section applies include murder and attempted murder, indecency, criminal sexual conduct, enticing a child for immoral purposes, loitering, prostitution, leasing a house of prostitution, and being a female under age 17 in a house of prostitution. Unless the juvenile already has DNA on file, he or she will have to pay a $60.00 fine and has no right to deny consent or request a hearing for the acquisition of the

sample ("Community placement and discharge from wardship; chemical testing for DNA identification profiling; exception; providing samples; manner; consent; hearing or court order not required; disclosure; assessment; "felony" and "sample" defined.," 2013). The sample is released to law enforcement and judicial agencies, as well as academics for research purposes.[41] The law was initially passed in 1988 and revised in 1996, 1998, and 2001.

By including prostitution, loitering, and being in a house of prostitution as offenses warranting automatic DNA collection, the Michigan law treats juveniles not as victims but as criminals. Thus, the law equivocates crimes like murder and sexual assault with non-violent sexual crimes. Recent laws related to child prostitution have treated juveniles engaging in prostitution primarily as victims, but this law, amended as recently as 2001, treats them as habitual criminals without the right to consent to invasive and privacy violating procedures by the state. The law provides no exception for trafficked or sexually exploited individuals despite the fact that Michigan, like most other states, has anti-trafficking laws. The same juvenile who is approached as a victim who has had autonomy taken away by a trafficker or a pimp by the trafficking statutes may then have her bodily autonomy taken away by the state as authorized by this statute.

Utah's statute "Examination of testing procedures and results in legal proceedings" is part of the Utah Criminal Code chapter on "Offenses Against Public Health, Safety, Welfare, and Morals". The statute states that when a laboratory analysis of blood samples is collected and tested for HIV under the mandatory testing statute, an employee of the laboratory may be called to testify in court about the test when enhanced

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[41] DNA can only be used for academic purposes once identifying information has been removed.

penalties for prostitution, patronizing a prostitute, or sexual solicitation due to HIV status are being considered by the court ("Examination of testing procedures and results in legal proceedings," 2013). According to the mandatory testing statute, any person who pleads guilty, no contest, guilty and mentally ill, or who is found guilty of the crimes listed above is subjected to a mandatory test. The person subjected to the test is required to pay for it, unless he or she is indigent and no expectation of privacy should be expected if the test results are positive ("Mandatory testing -- Retention of offender medical file -- Civil liability ", 2013). Further, if it is determined that an HIV positive person arrested for those crimes faces enhanced penalties if he or she knew about his or her status and/or was previously arrested for prostitution, patronizing, or solicitation ("Enhanced penalties -- HIV positive offender," 2013). The law does not state that a previous arrestee had to test positive on his or her prior arrest to be subject to the higher penalty, just that he or she tested positively at this arrest and has a previous conviction for one of the listed crimes. Further, while the law states that law enforcement, the Department of Corrections, the state Department of Health, or one of their representatives   must provide written notice to the offender when he or she tests positive with language describing the increased penalty for committing prostitution, patronizing, or solicitation while HIV positive, there is no liability or defense if the notice is not delivered and the person is arrested. Prior to 2011, not receiving this notice was a defense against the higher penalty ("Enhanced penalties -- HIV positive offender," 2013).

By requiring the HIV testing of individual's arrested for prostitution and enhancing penalties based upon a positive HIV test, the state is once again violating the bodily autonomy of women whom many consider to be victims. While public health has

historically been a justification for regulating and criminalizing prostitution, there is no evidence that individuals engaging in prostitution have higher rates of HIV infection than the general population, particularly once race, sexual orientation, and class have been controlled for (Brents, et al., 2010). Of course, individuals arrested for prostitution are not the only individuals who are asked to sacrifice their privacy in the face of positive STD results, but the mandatory testing provisions and the increased penalty for a prostitute who is HIV positive with a previous arrest, goes beyond the privacy sacrificed by individuals voluntarily undergoing testing. In an era where advances in drug therapy have made HIV more of a chronic than a terminal illness, the increased attention paid to HIV over and above all other sexually transmitted diseases continues to be codified in state laws.

While the Michigan and Utah statutes authorize the state to use medical procedures to intervene in the bodily autonomy of women and men whom many would argue are at least partially victims, Missouri's Section 513.605, illustrates how the state can intervene in the economic autonomy of a person arrested for a prostitution related crime. Section 513.605 provides definitions for the Criminal Activity and Forfeiture Act (CAFA) ("Definitions," 2013c). Under CAFA, an individual convicted of any of 16 criminal acts, one of which is prostitution and related crimes, face the forfeiture of "All property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity" ("Property subject to forfeiture -- procedure -- report required, when, contents -- annual state auditor's report, contents -- violations, penalty," 2013). According to the statute, CAFA seizures can occur on arrest of the individual and may not require advanced notice. If the

defendant is not found guilty of or does not plead guilty to a felony charge then the courts must release the property back to the defendant. If s/he is or does, the property is subject to forfeiture and the state may sell or dispose of the property, as appropriate. Any funds received from CAFA forfeiture go into the liquidated school fund of the county where the CAFA hearing occurred to fund public education.

While the minimum penalty for a prostitution conviction would not fall under CAFA because it is a Class B Misdemeanor, Missouri has enhanced penalties for persistent offenders and HIV positive prostitution. Both of these crimes are felonies under Missouri law. Certain forms of patronizing and promoting are also classified as felony crimes and would be subject to CAFA. Further, CAFA does not require that the defendant be found guilty of or plead guilty to the precise state offense listed in order to face the civil forfeiture action. If a defendant is convicted of or pleads guilty to a similar federal felony offense, the state can still forfeit the defendant's property ("Property subject to forfeiture -- procedure -- report required, when, contents -- annual state auditor's report, contents -- violations, penalty," 2013).

CAFA was substantially reformed in 1993, after many complaints about its interpretation and implementation in Missouri. CAFA did not originally require a felony conviction, or any conviction of a crime, to authorize forfeiture and proceeds from CAFA forfeiture could be distributed to any state agency, including criminal justice agencies. For this reason, CAFA was perceived as incentivizing police corruption and the unnecessary seizure of property (Stracke, 1992). While the reforms to CAFA were substantial, portions of the law still remain controversial. Unlike many other forfeiture laws, which limit the scope of crimes eligible for forfeiture to black market offenses,

CAFA's definition of criminal activity includes a long list of crimes, some of which are unrelated to profit-making or economic gain. Additionally, under Section 513.615, CAFA requires an innocent party to the property seized to prove that they are innocent and unaware that the property in question was being used for criminal activity. As Shannon Jade Ryser points out, "This is contrary to the central tenet of the American justice system that every person is innocent until proven guilty (1996).

The proper role of the state as it relates to the autonomy and privacy of individuals arrested for any crime has been an important question dating back to the founding of our nation. Questions about privacy and autonomy, particularly in an era of rapidly improving technologies like DNA typing and data mining will likely persist for many years. Because prostitution is a crime where many of the individuals involved are considered victims and criminals by the criminal justice system and society at large, questions of autonomy and privacy become particularly important.

Public versus Private

The final theme present in the statutes selected for in-depth analysis relates to the role of the state in regulating and criminalizing public versus private behaviors, particularly as those behaviors relate to sexuality. Since the 2003 *Lawrence v. Texas* Supreme Court decision found that state laws prohibiting sodomy are unconstitutional, the state has moved away from regulating indoor sexual behavior between consenting adults (Franke, 2004). It has long been established that individuals participating in indoor prostitution are much less likely to be arrested than individuals participating in street-prostitution (Bernstein, 2007); however, as the internet has allowed prostitution to flourish on websites like Backpage.com, police have increasingly participated in online

stings of johns and prostitutes. Research suggests that the women participating in online prostitution and the women participating in street prostitution are two different groups. Online and indoor prostitutes tend to be younger, less likely to be addicted to drugs, white, and from a better class background than street prostitutes (Cunningham & Kendall, 2011b). How the state views prostitution, whether it is seen as primarily an outdoor problem or as an indoor activity, can have consequences for how prostitution laws are enacted and how prostitution is perceived as a social problem.

As discussed in the textual analysis chapter, where prostitution takes place is an important factor discussed in prostitution related statutes. The first statute sampled in the place-based cluster is Utah's section 78B-6-1107, regarding nuisances. The statute defines nuisances as places where black market and/or immoral activity take place. Specifically, places where drug dealing, gambling, gang activity, partying, and prostitution occur. Nuisances are subject to abatement via the eviction of individuals engaging in the prohibited activities; however, nothing in the nuisance section imposes criminal penalties on individuals ("Nuisance - Drug houses and drug dealing - Gambling - Criminal activity - Party house - Prostitution - Weapons," 2013). By defining nuisances in this way, the statute reinforces ties between gang related activities, black market activities, immoral activities, and prostitution. While a nuisance could occur in a completely private residence, the law implies that the high degree of criminal activity occurring on the private premises inevitably spills-over into the public arena, creating unsafe and unpleasant living and working conditions for residential and commercial neighbors.

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Wyoming section 6-6-201 also relates to nuisances. This statute is used to define a nuisance. While Utah describes a nuisance broadly as a "place", Wyoming specifies that a nuisance is a "structure, boat, or vehicle" that is maintained, used, owned, or leased by a person for a specific purpose or set of purposes ("'Nuisance' defined," 2013). The purposes used to define a nuisance in Wyoming are "lewdness, assignation, prostitution, or gambling, or for the manufacture, possession, sale or disposition of intoxicating liquor or any controlled substance in violation of law" ("'Nuisance' defined," 2013). The place itself, as well as any contents are also declared nuisances in Wyoming and can be seized by authorities. While some of these offenses overlap with Utah's nuisance law, there are some differences. Utah specifically refers to gang activity, while Wyoming refers to activities like producing liquor and assignation, or providing a place for lovers to meet, that seem to refer to classic behaviors associated with organized crime. Further, while a nuisance is a place under the Utah statute, nuisance is both a criminal act and a description of property and goods in Wyoming. The Wyoming statute specifically classifies "furniture, fixtures, musical instruments, gambling devices, and instruments of any kind or nature" as nuisances ("'Nuisance' defined," 2013). While Utah's statute was initially passed much earlier than Wyoming's statute in 1953, it was revised five times between 1992 and 2010 ("Nuisance - Drug houses and drug dealing - Gambling - Criminal activity - Party house - Prostitution - Weapons," 2013). In contrast, Wyoming passed its nuisance statute in 1982 and it was only revised in 1983 ("'Nuisance' defined," 2013). This explains why the Utah statute is more likely to have updated language referring to new forms of organized criminal behavior, gang activity, while Wyoming seems to refer back to taverns, dance halls, and speakeasies in its statutes. The connection

between organized crime and nuisances in Utah and Wyoming further emphasizes the contradiction between public and private. While such organizations often meet in public, they are perceived as bringing violence, drug problems, and decay with them into neighborhood streets.

The third statute sampled in the place-based cluster is Ohio's section 3767.05 which deals with the civil aspects of disorderly house abatement. Although this statute refers to civil actions, it states that a conviction or admission of guilt or criminal behavior like prostitution, lewdness, or assignation is admissible evidence in the proceeding ("Priority of action; evidence; dismissal of citizen's complaint; costs; permanent injunction; abatement orders concerning beer or intoxicating liquor," 2013). The statute also describes the responsibilities of a complainant against a nuisance. The court cannot dismiss a complaint by a citizen of the county without the permission of the complainant, unless the complainant refuses to press charges. If the complaint is deemed unfounded and without reasonable grounds by the court, on the other hand, the person who filed the complaint against the alleged nuisance is liable for the costs of the hearing ("Priority of action; evidence; dismissal of citizen's complaint; costs; permanent injunction; abatement orders concerning beer or intoxicating liquor," 2013). If the place in question is found to be a nuisance, the statute also describes the actions that the court can take against the defendant. The court can prohibit the sale, manufacture, or presence of alcohol in the nuisance, he or she can order that the place not be occupied, not be occupied by the defendant, or only occupied by the defendant after a fee is paid with conditions ("Priority of action; evidence; dismissal of citizen's complaint; costs; permanent injunction; abatement orders concerning beer or intoxicating liquor," 2013).

Ohio's law reinforces the idea that nuisances and disorderly houses are only a problem when they inconvenience neighbors. In Ohio, to be considered a nuisance there must be a complaint issued by a citizen of the county where the nuisance exists. This complainant has his or her own responsibilities, and can be penalized if the place is found not to be a nuisance.

The fourth and fifth statutes sampled from this cluster deal specifically with the dichotomy between public and private forms of prostitution. Both Vermont's statute 2632 and Rhode Island's statute 11-34.1-4, describe prohibited acts related to prostitution. While the Vermont statute is concerned primarily with indoor forms of prostitution, the Rhode Island statute is concerned with loitering in public places. Vermont's section 2632 states:

(a) A person shall not:

(1) Occupy a place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation;

(2) Knowingly permit a place, structure, building or conveyance owned by the person or under the person's control to be used for the purpose of prostitution, lewdness or assignation;

(3) Receive or offer, or agree to receive, a person into a place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation;

(4) Permit a person to remain in a place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation;

(5) Direct, take or transport or offer or agree to take or transport a person to a place, structure, building or conveyance or to any other person knowingly, or with

reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;

(6) Procure or solicit or offer to procure or solicit a person for the purpose of prostitution, lewdness or assignation;

(7) Reside in, enter or remain in a place, structure or building or enter or remain in a conveyance for the purpose of prostitution, lewdness or assignation;

(8) Engage in prostitution, lewdness or assignation; or

(9) Aid or abet prostitution, lewdness or assignation, by any means whatsoever.

(b) A person who violates a provision of subsection (a) of this section shall be fined not more than $ 100.00 or may be imprisoned not more than one year. For a second offense such person shall be imprisoned for not more than three years ("Prohibited acts," 2012)

Seven of the nine prohibited activities listed in this statute relate to a place of some kind, generally a "place, structure, building, or conveyance" in which prostitution occurs. In Vermont, it is clear that prostitution is generally something that takes place indoors in some sort of house of prostitution, with outdoor prostitution codified as the exception.

The final statute sampled in this cluster is Rhode Island's statute 11-34.1-4, which prohibits loitering for prostitution. Like Vermont's statute discussing prohibited acts under the prostitution subchapter of the criminal code, Rhode Island's loitering statute refers to behavior that occurs in specific places. While Vermont's statute focuses heavily on indoor activities, Rhode Island's loitering statute focuses primarily on outdoor activities. The statute says:

(a) It shall be unlawful for any person to stand or wander in or near any public highway or street, or any public or private place, and attempt to engage passersby in conversation, or stop or attempt to stop motor vehicles, for the purpose of prostitution or other commercial sexual activity ("Loitering for prostitution," 2012)

Aside from the location "private place" all of the locations described above are public property. The statute also criminalizes intent. In order to arrest someone for loitering, an officer would have to be able to determine that a person was engaging passersby or stopping motorists for the purpose of engaging in commercial sexual activity. Without testimony of the passersby or the motorist, police officers would rely on visual cues related to gender, sexuality, race, and class to determine the nature of the stop. This extends the role of the police beyond enforcing prostitution laws to removing the wrong sorts of people from certain public areas.

While research suggests that individuals engaging in street prostitution are the most desperate and the most likely to be marginalized by race and class, they also represent the most visual form of prostitution and are likely to be considered the most harmful to neighborhood safety (Bernstein, 2007; Cunningham & Kendall, 2011b). It is not surprising then that the maximum penalties for loitering in Rhode Island are equivalent to the penalties for prostitution, patronizing, and promoting in Vermont. A first offense of loitering in Rhode Island carries a sentence of up to six months and/or a fine between $250 and $1,000. Additional offenses carry a prison sentence up to one year and/or a fine between $500 and $1,000.

The statutes discussed in this section force us to ask whether or not prostitution is considered a social problem when it occurs completely in private without any spill-over effects into local neighborhoods. Even when laws prohibiting Houses of Prostitution are examined, they suggest that it is only the negative spill-over effects of nuisances that make them problematic. Street prostitution is certainly the most visible form of prostitution and the form most likely to lead to arrest; however, when issues of inequality and marginalization are considered, a system that focuses solely on street prostitution would lead to disproportionate effects on women who are already occupying the lowest rungs of the social ladder. On the other hand, states are increasingly moving away from the regulation of sexual behavior that occurs in private when that behavior does not intrude on the public sphere. When even state codes cannot completely resolve the tension between public and private, it seems impossible to expect frontline bureaucrats attempting to enforce the laws to be able to fairly resolve this tension when confronted by it.

Discussion

The critical and interpretive analysis of sampled statutes suggests the importance of moving beyond individual policies and policy tools to examine the full package of policies that affect the lives of the targets of policy regimes. As the themes analyzed in this chapter illustrate, the trend to shift towards a language of victimization and human rights in prostitution legislation only affects a small section of all the prostitution related laws to which individuals engaging in prostitution and related behaviors are subjected.

In the language of Schneider and Ingram's (1997) theory of Social Constructions of Target Populations, the statutes analyzed place individuals engaging in prostitution

somewhere between deviants and dependents. None of the statutes suggest that prostitutes have any forms of political power to mobilize and change laws on their behalf, despite attempts by Call Off Your Old Tired Ethics (COYOTE) and the Sex Worker's Opportunity Project (SWOP) to organize sex workers. Such an acknowledgement would offer a legitimacy to prostitution and contradict the popular human trafficking discourse of women as powerless individuals trapped "in the life" by traffickers and pimps.[42] The lack of power attributed to individuals engaging in prostitution clearly places them in the bottom half of Schneider and Ingram's typology (See Figure 1).

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[42] Although no Nevada statutes were selected for in-depth analysis, research of the history of Nevada brothels suggests that the sex industry in Nevada has been successful at organizing brothel owners and influencing local and state policies regulating the legal prostitution industry and further criminalizing unlicensed forms of prostitution.

	Deserving	Undeserving
Strong	Advantaged	Contender
	Dependent	Deviant

Figure 15. Schneider and Ingram's (1997) Typology of Social Constructions of Target Populations.

The contested nature of the social construction of prostitutes as a target population seems to hinge solely upon their perceived deservingness, at least when it comes to the law. While some of the statutes constructed prostitutes as victims deserving of state intervention and benefits, others constructed prostitutes as criminals deserving of punishment. According to Schneider and Ingram, we should not expect that individuals engaging in prostitution would receive substantial benefits from the state regardless of

how positively they were constructed, due to their lack of political power. The distinction lies instead in the degree to which they are subject to harmful policies such as arrest and incarceration, and the degree to which the discourse surrounding prostitution frames them positively. While in some cases, the line between a deviant and dependent construction seems to be drawn on age, mental ability, location of prostitution activity, immigrant status, and marriage status, the argument for criminalization as a "tough love" policy tool suggests that the true goal of prostitution related laws is to punish individuals engaging in a form of deviant sexuality.

The analysis presented in this chapter shows that the contested nature of prostitution goes beyond the perceived deservingness of individuals engaging in prostitution. The inability of state statutes to even consistently define prostitution suggests limitations on the state's ability to regulate sexual behavior, particularly as it occurs between consenting, or apparently consenting, adults. The conceptual fuzziness between marriage, legal sexual relationships, legal forms of sex work, black market economic activities, and prostitution makes the codification of prostitution prohibition problematic, especially in an era where heteronormative patriarchal assumptions about sex and sexuality are being questioned and removed from laws.

The in-depth analysis of prostitution related statutes suggests that states have incorporated Justice Potter Stevens infamous statement about obscenity "I know it when I see it" into their legal regimes prohibiting prostitution and regulating the lives of those engaging in prostitution. Perhaps it is time to revisit prostitution related statutes and resolve these contradictions across sections and titles. In a hegemonic society where race, class, gender, age, and sexuality have been shown to influence the treatment of

individuals by our justice system, we must question whether "we know it when we see it" or whether "we only see it when we know it". While the former implies an accepted understanding of what prostitution is and what the state should do about it, the latter implies an unequal application of contradictory laws and statutes based on visual cues of class, race, gender, and sexuality. While prostitution is certainly not the only policy arena where there are biased applications of the law based on perceptions of identity, it is a particularly pernicious one given the role that inequality and privilege play in who ends up engaging in prostitution in the first place.

CHAPTER 7

CONCLUSION

The central argument of this dissertation is that the study of public policy involves more than the quantitative testing of policy outcomes, particularly when the policy in question relates to prevailing social mores. When it comes to public policy, language matters, and how policies incorporate or fail to incorporate prevailing discourses surrounding a social problem can be an important factor in broader understandings of the problem and whether and how the state should address it. Further, policy is broader than an individual act. When inconsistencies in language choice across sections and codes exist, it creates ambiguity surrounding how and when street-level bureaucrats apply and enforce different sections of the law. When a policy arena has already been criticized for biased applications of a law, as is true of the American criminal justice system, such ambiguity offers further potential for unequal treatment based upon race, gender, ability, sexuality, and age.

Major Findings

The empirical case presented in this dissertation applies the above concepts to prostitution and sex-trafficking related policies. In the literature review chapter I argued that there were six prevailing discourses of prostitution as a social problem presented in the literature: prostitution as a moral problem, prostitution as a public health problem, prostitution as a criminal justice problem, prostitution as an economic problem, prostitution as a human rights problem, or prostitution as some combination of all of the above depending on the context and the individual woman. When I analyzed a corpus of statutes drawn from across the 50 United States, I found that some of the discourses were

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more prominent in the law than others, and factors that were not well-discussed in the literature were more important in the law than some of the discourses from the literature. While language relating to each of the discourses could be found in some of the statutes, a cluster analysis showed that only two of the three discourses were distinct and prominent enough to serve as organizing themes for the corpus of statutes. The child abuse and exploitation clusters were centered around language discussing prostitution as a human rights problem, while the criminalization statute was centered around language discussing prostitution as a criminal justice problem. Two other organizing themes discovered in the data by the cluster analysis were the place where prostitution occurs and the role that prostitution and sex-trafficking related crimes play in state licensing laws and regulations. While the place where prostitution occurs is mentioned in the literature, the long-term implications of prostitution-related convictions are rarely, if ever, mentioned.

Another major finding of this dissertation relates to the appropriate unit of analysis for examining prostitution laws. While theories like policy diffusion and policy regimes suggest that the state is the proper unit of analysis for examining public policies, the attempted cluster analysis by state was not replicable by machine learning software. On the other hand, the statistical analysis suggested that the state clusters were distinguishable from each other based upon the density of types of statutes (as classified by the statute cluster analysis) contained within their prostitution and sex trafficking policy regimes. This suggests that there is more support for statutes as the unit of analysis, rather than states, although it also suggests directions for future research at the state-level once time trends can be accounted for. This finding led me to sample my

corpus by statute rather than by state, using the cluster analysis of statutes as a guide in order to conduct my in-depth critical discourse analysis.

The first major finding of the critical discourse analysis is the lack of any common understanding across states, offense, and statutes about what prostitution is. The statutes implied that prostitution may be anything from a single act to a lifestyle to an identity. The understanding of prostitution may vary even within a single statute, as was true of Pennsylvania's section 5902 of the criminal code. In that statute, prostitution was defined as a transaction on behalf of the patron but an identity on behalf of the prostitute for the purposes of prohibiting patronizing, a lifestyle for the prostitute and the promoter for prohibiting some forms of promoting, and an identity for the prostitute for the purpose of prohibiting other forms of promoting. In an era where advocates are attempting to at least equalize criminalization for prostitutes and other actors in the prostitution exchange, the inconsistency in definitions across offenses is problematic. Further, where inconsistencies exist for the same act, transaction, lifestyle, or identity across codes or statutes, unequal protection under the law can occur, especially when a more favorable statute with lower penalties is used to coerce prostitutes into testifying against their promoter or trafficker. When hegemonic discourses related to gender identity, race, sexuality, class, age, and ability are incorporated into our understanding of prostitution; equal protection seems even more questionable.

One could argue that the lack of consistent definitions across statutes is true for any crime; however, it is particularly problematic in a policy arena where a person can be simultaneously viewed as victim and criminal. While making such a distinction less clear is often successfully used as a strategy by defense attorneys in rape and sexual assault

cases, the women and men who are treated by the defense as deviant or transgressors of gender norms in order to reduce the degree to which they are seen as victims of rape or sexual assault, prostitution is different in that the man or woman does not just become seen as more deviant when the legal system attempts to reduce her victimhood, she is increasingly seen as more criminally culpable for her behavior and more subject to legal penalties. The argument is not just "she asked for it" but "she solicited for it". Increasingly, this logic is being applied to crimes outside the realm of sexual crimes as "Stand your Ground" laws create a double victim/criminal duality for individuals charged with manslaughter or murder who can argue that they saw the *victim* of their shooting as a dangerous threat, or potential *criminal*.

Another major finding of the discourse analysis is that prostitution and sex trafficking related policies differ in their understanding of the role of the state, particularly as it relates to public and private sexual acts, identities, and behaviors. Whether or not state intervention into prostitution is seen as legitimate hinges on how discourses of protection and penalization, autonomy and privacy, and public and private space are incorporated into prostitution related laws. Where prostitution takes place and who engages in it become important factors when determining the legitimacy of the state to intervene. Further, the ability of participants in prostitution to exercise autonomy and choose to engage in it, whether it is defined as an act, identity, or behavior can influence what type of state interventions are deemed legitimate.

Limitations and Avenues for Future Research

The study of prostitution and sex trafficking policies has rarely been undertaken by policy and administration scholars due to the lack of valid and reliable data about the

problem. Often considered a morality policy, positivist scholars have steered their research away from the problem until recently. Researchers that approach these topics must tailor their research methods to the available data, which is often very different from the types of data generally used in policy research. This dissertation is no exception. While I initially sought to tie my analysis of the contents of the statutes to prostitution incidence, or at the very least, prostitution enforcement, surveys of the available data showed that they either suffered from a lack of internal or external validity. Innovative data collection efforts by scholars like Cunningham and Kendall (2011), Venkatesh and Levitt (2008), Dank, et al. (2014), and Marcus et al. (2014) suggest that new and more internally valid data on prostitution and trafficking may soon be available. However, questions remain about their generalizability beyond the groups directly surveyed and interviewed for these studies. The official government statistics on prostitution and sex trafficking from sources like the Uniform Crime Reports (UCR) and the National Incident Based Reporting System (NIBRS) suffer from endogeneity problems and reflect political concerns as much as actual crime incidence (Levitt, 1998). Rather than attempt to analyze likely invalid data, I constrained my research to focus solely on the text of the policies themselves, which limits my ability to illustrate how discourses that are incorporated into prostitution and sex trafficking policies matter and for whom they matter.

My research is also limited by the point in time nature of the analysis and my use of only official legal documents in my corpus. While my analysis could be expanded across time and into less formal expressions of state will, the analysis project I undertook seemed expansive enough. My future research will likely revisit this issue and attempt to

establish time trends and interdiscursivity between government documents and other
discursive practices.

Contributions

Despite these limitations, I believe that my research contributes to the substantive
literature on prostitution and sex trafficking policies, as well as to the fields of public
policy and administration in important ways. My project is the first to focus on the full
package of policies that regulate and criminalize prostitution and sex trafficking across
the United States. By using such a broad corpus of data, I was able to point to important
contradictions in the laws and illustrate how competing discourses are incorporated into
different statutes across and within states. My research also illustrates the path
dependency of how state codes regulate and criminalize prostitution. As discourses
compete for hegemony and shift over time in the discursive arena, state laws often remain
unchanged, preserving discourses that have become less prominent. This allows for
unequal treatment of individuals based on their perceived deservingness, which can often
be attributed to factors like race, age, gender identity, sexuality, class, nationality, and
ability.

Methodologically, my research is an important contribution to the field of public
policy and administration. By using an innovative method like text mining and applying
it to policy documents, I show how the study of policy can redefine what data is and
harness "big data" to increase our knowledge of the social world. These methods can be
applied to new sources of data like social media, but they can also be applied to long
existing sources of data, like state codes, to uncover hidden patterns in the data. By
incorporating these methods into a highly critical and interpretive methodology and

ontological lens, I illustrate how new ways of thinking about data and text allows for a re-thinking of old divisions between interpretive and critical qualitative research and quantitative strategies for examining large and broad sets of data. My dissertation harnesses the strengths of both types of research and, I believe, provides new insights into the study of prostitution and sex trafficking policies and the fields of public policy and administration as a whole.

Applications for Policy Reform

Because this is a dissertation in the field of public policy and administration, it seems important to apply the insights of my research and suggest some avenues for policy reform. Although the purpose of critique is not necessarily to suggest better policy levers, but instead to question the common sense nature of even having a policy lever in the first place; I still believe that there are some actionable lessons that can be learned from my research.

First, I would also advocate that states examine existing laws before proposing new laws. While the current trend is to pass laws increasing penalties for traffickers, laws criminalizing prostitution and promoting remain on the books. Without aligning these two types of laws, policymakers risk the passage of contradictory laws based on conflicting understandings of prostitution, which may be applied unequally at the street level.

Second, I would advocate that policymakers broaden their understanding of what constitutes prostitution and sex trafficking policies. As my dissertation illustrates, there are many regulatory policies that can affect the lives of individuals exiting prostitution long after their arrest and conviction. The existence of these restrictions makes it more

difficult for individuals to successfully exit prostitution. There also may be other avenues

for reducing prostitution and trafficking beyond the criminal code. Social services

agencies, child welfare agencies, mental health and substance abuse agencies, as well as

non-profit organizations can all play a role by providing better options to young people at

the margins and preventing the type of life that makes prostitution and sex trafficking

seem like the best possible option.

In May of 2014, five stand-alone bills on human trafficking passed in the House

of Representatives. The first, H.R. 3530, the *Justice for Victims of Trafficking Act* would

create block grants to fund trafficking deterrence and trafficking victim support programs

("Justice for Victims of Trafficking Act of 2014," 2014). H.R. 3610, the *Stop*

Exploitation Through Trafficking Act, would encourage states to avoid the prosecution of

trafficking victims and increases their eligibility for social services ("Stop Exploitation

Through Trafficking Act of 2014," 2014). HR 4058, the *Preventing Sex Trafficking and*

Improving Opportunities for Youth in Foster Care Act, would authorize states to screen

children in the foster care system for trafficking risks and allows for the collection and

release of sex trafficking data as part of the adoption and foster care analysis and

reporting system (AFCARS) ("Preventing Sex Trafficking and Improving Opportunities

for Youth in Foster Care Act," 2014). HR 4225, the *Stop Advertising Victims of*

Exploitation (SAVE) Act, would make it a federal crime to profit from the advertising of

underage or coerced sex work ("Stop Advertising Victims of Exploitation Act of 2014,"

2014). Finally, HR 4573, the *International Megan's Law to Prevent Demand for Child*

Sex Trafficking, would create a system for monitoring the international travel of child sex

offenders and notifying other countries when such an offender traveled from the United

States to an international location ("International Megan's Law to Prevent Demand for Child Sex Trafficking," 2014).

Based on the analysis I present here, I believe that these bills had significant shortcomings. HR 4225 and 4573 would create questionable constraints on the speech and freedom of movement of American citizens, while HR 3610 focused solely on trafficking in children while ignoring the treatment of adults. On the other hand HR 3610 actively encouraged states to avoid prosecuting minor victims of sex trafficking and refer them to social services, while HR 4058 promoted a prevention strategy to reach minors in foster care. While all five of the bills promote a discourse of exploitation and child abuse over other related discourses, there seems to be broad agreement in the feminist scholarly community and among other researchers of prostitution and sex trafficking that decriminalization for the women and the provision of adequate alternatives to prostitution are positive policy directions. At the same time, the ability of the federal government to intervene in domestic prostitution and sex trafficking is constitutionally limited, and it remains to be seen if states will adopt the same discourses and pass similar legislation, or whether another discourse will challenge the exploitation discourse for dominance at the state level. If the latter occurs, the state may increasingly become an interesting unit of analysis for the study of prostitution and sex trafficking policies.

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APPENDIX A

GRAPHS OF STATUTE CLUSTER DENSITY BY STATE

Figure A.1. Statutes in Child Abuse Cluster by State. This figure presents the number of child abuse statutes in each state as a percentage of the total number of prostitution and sex trafficking related statutes in the state.
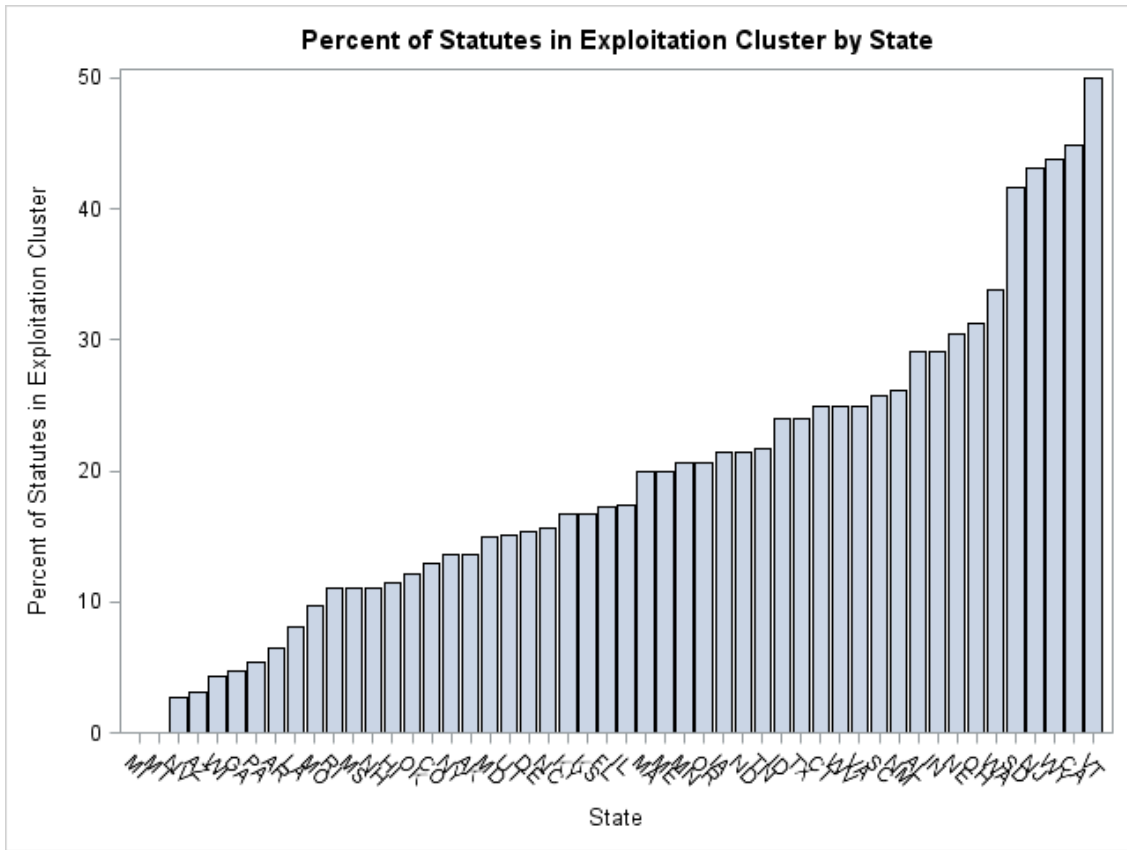
Figure A.2. Statutes in Exploitation Cluster by State. This figure presents the number of exploitation statutes in each state as a percentage of the total number of prostitution and sex trafficking related statutes in the state.
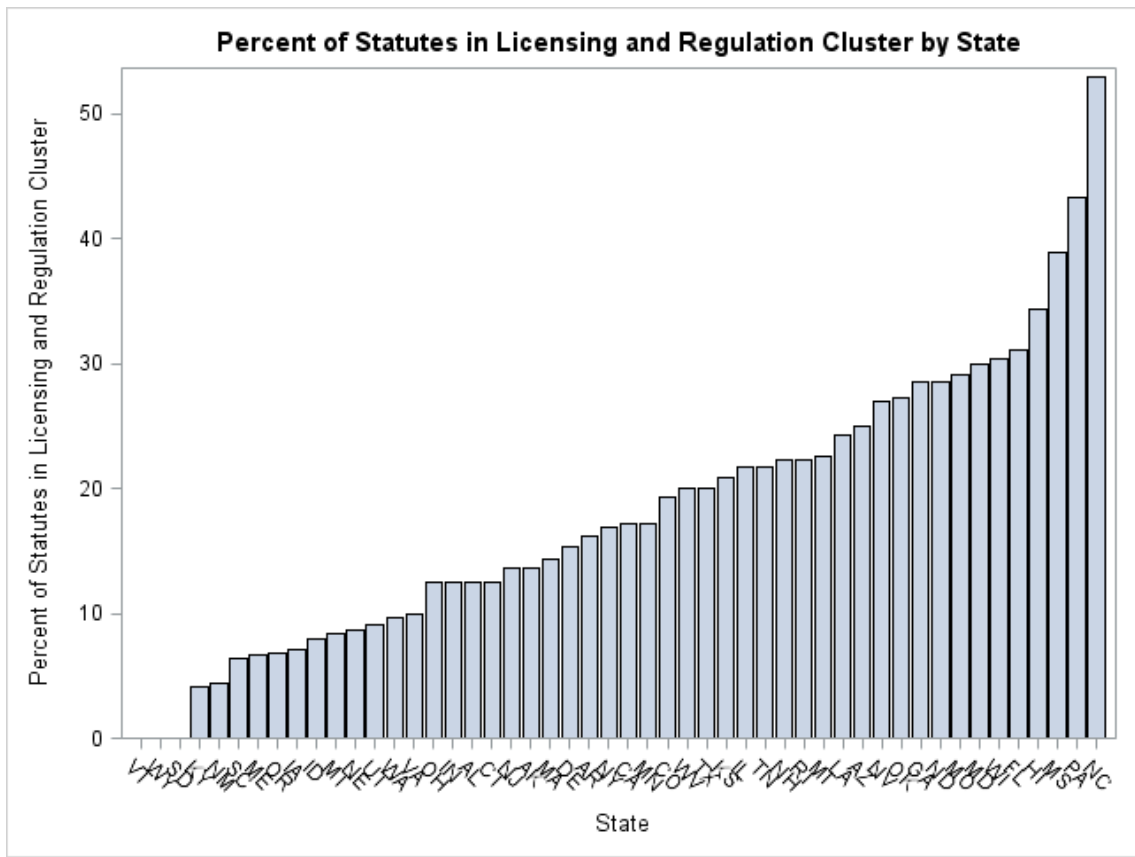
*Figure A.3.* Statutes in Place-Based Cluster by State. This figure presents the number of place-based statutes in each state as a percentage of the total number of prostitution and sex trafficking related statutes in the state.

Figure A.4. Statutes in Criminalization Cluster by State. This figure presents the number of criminalization statutes in each state as a percentage of the total number of prostitution and sex trafficking related statutes in the state.

Figure A.5. Statutes in Licensing and Regulation Cluster by State. This figure presents the number of licensing and regulation statutes in each state as a percentage of the total number of prostitution and sex trafficking related statutes in the state.
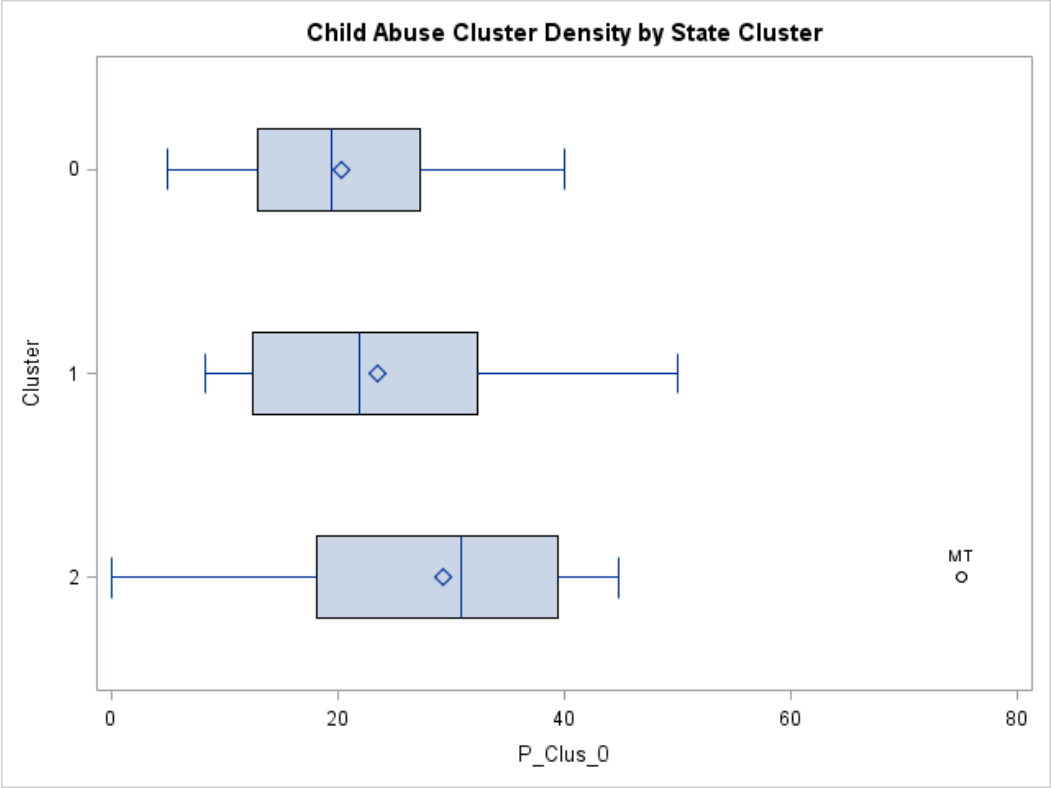
Figure A.6. Percent of Statutes in Child Abuse Cluster by State Cluster. This figure presents the average percentage of child abuse statutes for each state cluster with outliers labeled by state name.
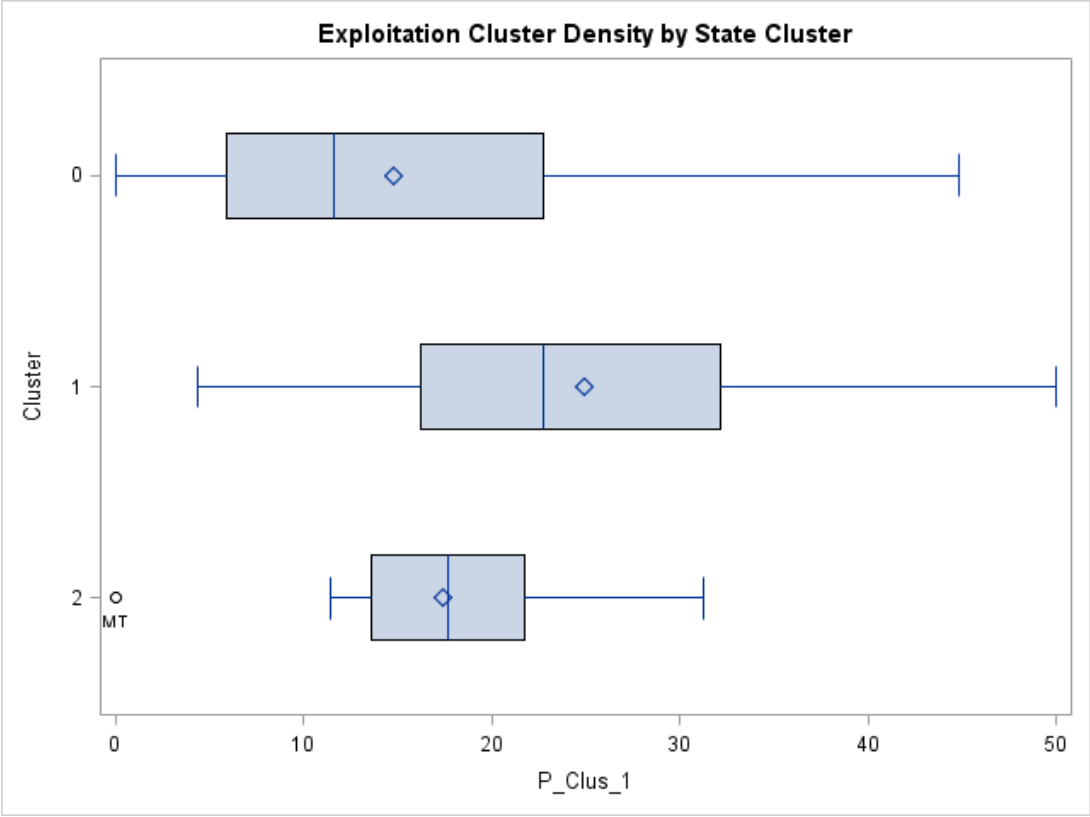
Figure A.7. Percent of Statutes in Exploitation Cluster by State Cluster. This figure presents the average percentage of exploitation statutes for each state cluster with outliers labeled by state name.
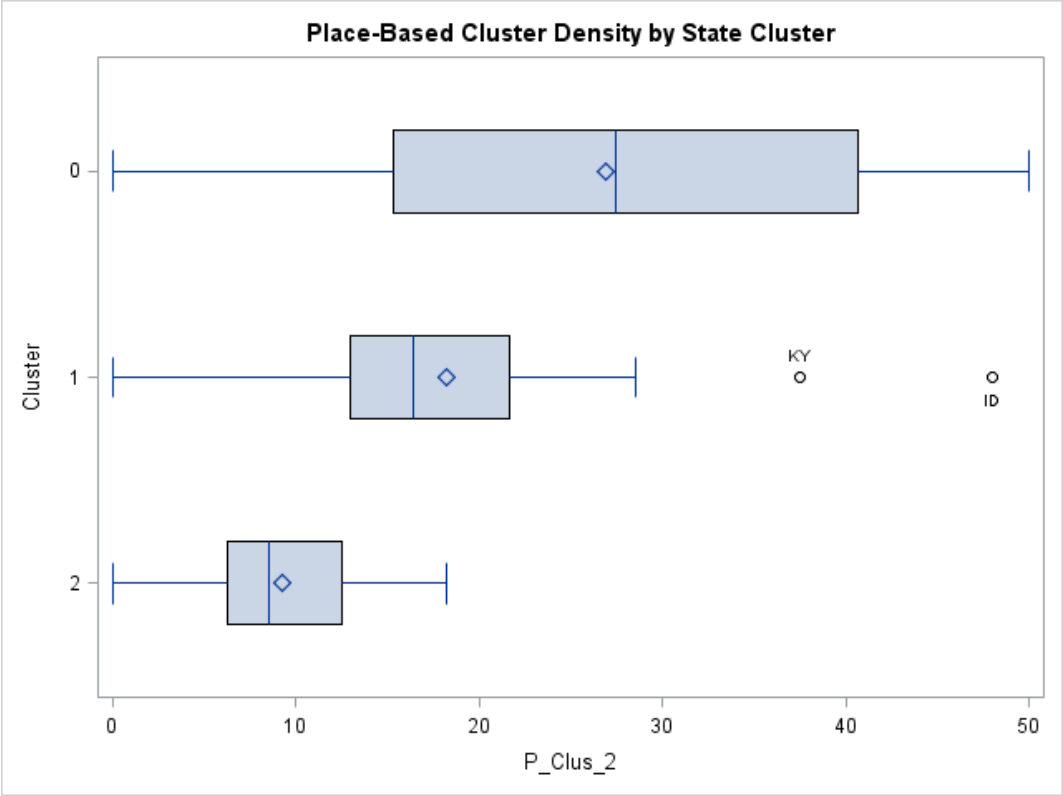
Figure A.8. Percent of Statutes in Place-Based Cluster by State Cluster. This figure presents the average percentage of place-based statutes for each state cluster with outliers labeled by state name.
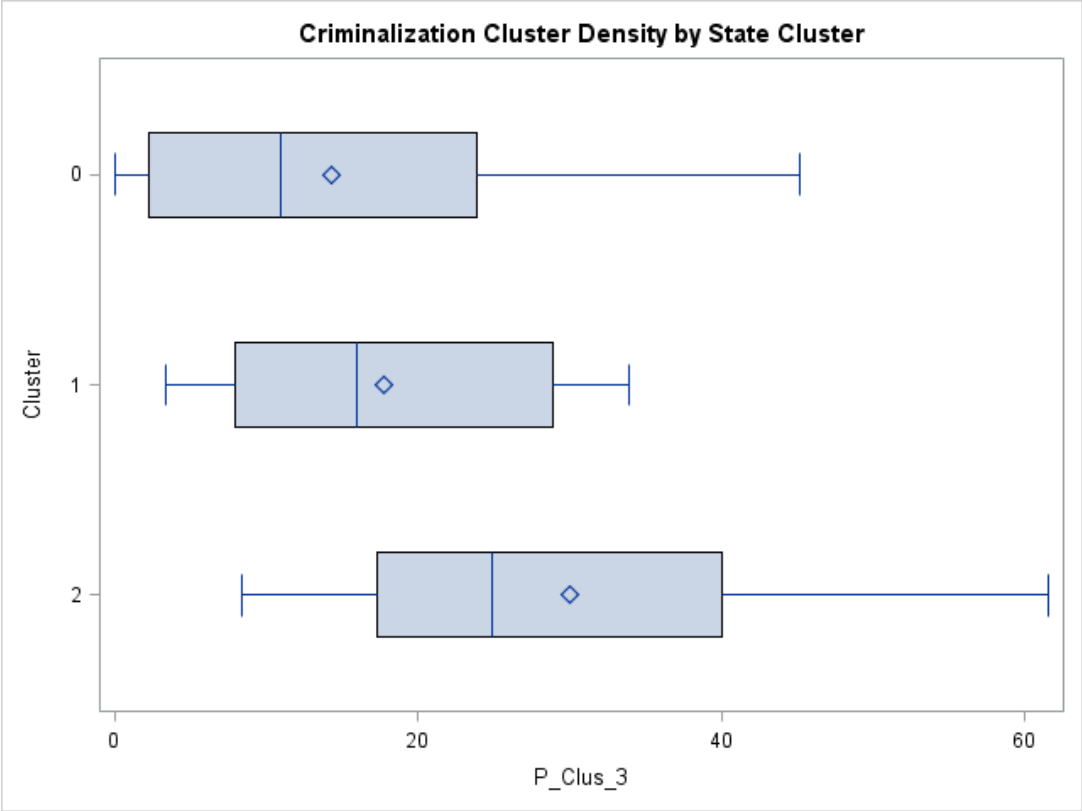
Figure A.9. Percent of Statutes in Criminalization Cluster by State Cluster. This figure presents the average percentage of criminalization statutes for each state cluster with outliers labeled by state name.

Figure A.10. Percent of Statutes in Licensing and Regulation Cluster by State Cluster. This figure presents the average percentage of licensing and regulation statutes for each state cluster with outliers labeled by state name.