

Rights and Responsibility in the Sex Industry

A 20-Year Study on Decriminalization and Legalization in Sweden and the Netherlands

by

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ABSTRACT

It is extraordinarily well-documented that death, physical assault, rape, and psychological trauma are common to those working in the sex industry. This is true around the world, despite the varying laws of different countries. 20 years ago, two opposing policies were introduced in an attempt to end abuse and provide support to those in the industry: the Nordic Model of partial decriminalization, and legalization with regulation. Both models were created with the intention to decrease abuse of the vast number of primarily women and girls in the industry and increase their freedom and protection, as they are some of the most vulnerable and marginalized of society. However, these models approach the issue from conflicting views on the nature of the industry itself and use criminal justice approaches without connecting rights, resulting in unreliable means of protecting the rights of those in the sex industry. This paper utilizes a rights-based framework grounded in criminal race theory (CRT) and feminist rights-based literature in conversation with the reality of working within criminal justice systems to understand how fundamental understandings of the sex industry influence policy making, what the presence or absence of government involvement does to the protection and freedom of sex workers, and what kind of government involvement helps or hinders sex worker's rights. This will be seen in a case comparison of how both policies have succeeded and failed to provide basic human rights to those in the sex industry in the Nordic Model of partial decriminalization in Stockholm, Sweden, and the legalization model of Amsterdam in the Netherlands.

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TABLE OF CONTENTS

	Page
CHAPTER	
1 INTRODUCTION	1
Can Human Rights be Realized in Criminal Justice Approaches?.....	1
A Rights Gap in Labor Rights and Anti-Human Trafficking Approaches.....	4
The Problem in the Scholarship.....	5
Thesis Design: Feminist Rights-Based Framework.....	15
- Black Feminism and Critical Race Theory.....	17
- Radical, Marxist, and Liberal Feminism.....	19
- Positionality.....	21
Operationalizing a Critical Rights-Based Framework: Analytical Strategy.....	24
- Formal Policy.....	25
- Implementation.....	25
- Impact.....	27
Case Selection Strategy.....	27
- Criminalization.....	28
- Legalization and Decriminalization.....	29
- Partial Decriminalization.....	31
- Amsterdam and Stockholm.....	32
- Overview of Chapters.....	33
- Limitations.....	34
2 Storied Preludes to the Case Studies.....	37
Savannah.....	38
Heather.....	40

TABLE OF CONTENTS

	Page
CHAPTER	
Morgan.....	41
3 AMSTERDAM AND LEGALIZATION.....	43
A Brief Overview of Amsterdam's Model.....	43
Why a New Rights-Centered Framework is Needed.....	45
Policy.....	47
- Actors Participating in Changes.....	47
- Current International Actors.....	49
- Evolution of Laws.....	50
Implementation.....	54
- A Feminist Critique of "Sex Work is Work" Rhetoric.....	54
- Effectiveness of Regulations.....	58
- Screening.....	58
- Licensing and Zoning.....	59
Impact.....	60
- Post-policy Working Conditions.....	61
- Financial Issues.....	63
- Abuse and Murder.....	64
- Punters.....	65
- Minors.....	68
- Controversy with Labor Rights.....	71
- Trafficking and Migrant Workers.....	74
Summary.....	77

TABLE OF CONTENTS

	Page
CHAPTER	
4 STOCKHOLM AND PARTIAL DECRIMINALIZATION	80
A Brief Overview of Stockholm’s Model.....	81
Policy.....	83
- Actors Participating in Changes.....	83
- Evolution of Laws Passed	85
Implementation	88
- Exiting Services	88
- Criminalization of Punters	89
Impact	91
- Numbers of Women in the Sex Industry	92
- Abuse and Murder	94
- Minors	96
- Trafficking and Migrant Workers	98
Summary.....	100
5 CONCLUSION	101
Lessons from Amsterdam	102
Lessons from Sweden.....	103
Final Conclusions	104
REFERENCES	106
APPENDIX	
A DEFINING RAPE	117

LIST OF FIGURES

Figure	Page
1. A New Framework for Centering Rights in Human Trafficking Laws	16

CHAPTER 1

INTRODUCTION

It is extraordinarily well-documented that death, physical assault, rape, and psychological trauma are common to those who participate in the sex industry. This is true around the world, despite many international and national laws being enacted to combat the effects of trafficking and abuse of sex workers. 20 years ago, two approaches to policy were enacted: a Nordic Model that partially decriminalizes acts of prostitution, and a model that legalizes and regulates prostitution as a industry. Both of these models seek to increase freedom and protection for primarily women and girls in the industry. However, these models approach the issue from conflicting views on the nature of the industry itself and use criminal justice approaches that produce gaps in the rights of those in the sex industry. This paper utilizes a feminist rights-based framework grounded in criminal race theory (CRT) and feminist rights-based literature in conversation with the reality of working within criminal justice systems to understand how fundamental understandings of the sex industry influence policy making, what the presence or absence of government involvement does to the protection and freedom of sex workers, and what kind of government involvement helps or hinders sex worker's rights. This will be seen in a case comparison of how both policies have succeeded and failed to provide basic human rights to those in the sex industry in the Nordic Model of partial decriminalization in Stockholm, Sweden, and the legalization model of Amsterdam in the Netherlands.

Can Human Rights Be Realized in Criminal Justice Approaches?

The inability to center and protect rights is evident in both prostitution models examined in this paper when it comes to their inability to make a clear distinction between trafficking victim and voluntary sex worker. This is evident from a criminal justice approach, as officers and prosecutors often have difficulty distinguishing the differences during raids or inspections, and prosecutions and convictions of traffickers and abusers are hard to come by. Both trafficking

victims and voluntary sex workers have reason to fear authorities, and trafficking victims are controlled by their pimps/brothel owners, and thus are compelled to lie about the nature of their work, such as their age, consent to services, and country of origin. Distinguishing trafficking victim from voluntary sex worker can be just as difficult in victim-centered approaches, as there are many contributing factors to victimhood. Indeed, many people in the sex industry decline being referred to as trafficking victims, as this forces a victimhood on them that they do not identify with and can be disadvantaged by.

There is a gap between realized rights and how sex industry literature and criminal justice models understand and attempt to frame rights. This leads to obstructing human rights for those involved in the sex industry. In this thesis, I argue that both sex industry literature approaches and criminal justice approaches fail at the same point of trying to create a strict distinction between trafficking victim and voluntary sex worker. Creating these two categories for people in the sex industry overly simplifies our understanding of the multiple and intersectional dimensions of core rights that are at stake in both trafficking and voluntary sex industry contexts. This thesis employs a critical race theory (CRT) and feminist rights-based framework in order to better ground our understanding of rights and protections.

Criminal justice is historically rooted in gendered understandings of rights that privilege the white male perspective. This limits the ability of right-based approaches to policy and enforcement mechanisms from being proactive in centering women, children, and other marginalized communities. The system overwhelmingly fails women and children who are victims of sexual violence whether they are in the sex industry or not. For sex workers with an increased risk of suffering these kinds of abuses, the stigma surrounding their work continues to decrease the chance that they will find justice for crimes committed against them. Another consequence of the gendered criminal justice approach is that it narrows how the UN's 2000 Protocol to Prevent,

Suppress and Punish Trafficking in Persons Especially Women and Children is used to legally identify and protect victims and punish traffickers. The criminal justice system treats women in the sex industry differently based on whether they are believed to be trafficking victims or voluntary sex workers, and when the difference is difficult to identify, convictions of criminals and enabling women's rights becomes much harder to navigate. The criminal justice system has horribly failed victims of sex trafficking, where if victims are recognized and removed from an abusive situation, they are re-victimized through the system by forced deportation, mistreatment in the courts and psychological torture by being made to testify in front of their abuser. This re-victimization is only for the few that are found and removed – many more are neglected by the criminal justice system entirely, leading to their continued abuse and often death.

Another reason that current approaches fail to center rights is that the term “trafficking” has morphed over time. It began being used for cross-border transport of people for the purpose of exploitation but has grown to encompass forced exploitation without the necessity of crossing a border. Trafficking no longer refers to the movement of peoples for exploitation, but mainly to the act of exploitation itself. People are considered trafficking victims if they are being exploited in their own homes against their will. Therefore, this thesis uses the term “trafficking” to encompass any kind of forced or coerced sexual exploitation. For example, children are not developmentally able to consent in the sex industry (UN Protocol 2000), which makes them trafficking victims. This paper examines trafficking specifically for the purpose of sexual exploitation, including exploitation in various forms in the sex industry, forced marriage, and pornography, and does not focus on other forms of trafficking such as labor (Cockbain and Bowers 2019).

A feminist approach in combination with CRT is necessary to fully understand women's rights in the context of a criminal justice system that seeks to prevent and penalize trafficking. CRT and Feminist theory offers important critiques of institutes of power and intends to give voice

to the victims and marginalized groups whose rights have been infringed upon. These critical frameworks help understand criminal justice not as an approach, but as a system of power, which itself violates and shapes the meaning of “rights.” They acknowledge the need to combine rights-based theory with policy and practice to ensure that rights are actualized. Meanwhile, criminal justice approaches focus on making distinctions in status: criminal and victim. Lacking a more robust multidimensional and intersection grounding in rights, the criminal justice system creates human rights issues and violations. By centering rights through the framework set forth in this paper, the weaknesses in approaches that push for making this distinction are exposed, and the conversation can move into operationalizing rights.

A Rights Gap in Labor Rights and Anti-Human Trafficking Approaches

In anti-trafficking approaches, victims of trafficking are the focus. While assistance for victims and measuring the impact of laws on victims is important, as discussed above, it is incredibly difficult to determine who is a victim and who is not. This approach defines rights in light of the attacks against them, rather than core rights that exist before and beyond becoming a victim. It also defines rights based only on specific victimhood – focusing on trafficking and in turn neglecting abuse against voluntary sex workers, migrant rights, or restricting vocation opportunities for women. This limits the scope of understanding on how women in different parts of the sex industry, women outside the industry, children, and men with any degree of involvement (i.e., the whole community) are affected by attacks on women’s rights. This approach ends up becoming narrowly focused, bandaging critical wounds by defining women’s rights based on how victims have been victimized. The alternative approach which focuses on labor rights critiques how the anti-trafficking approach applies criminal justice to the sex industry. Participants in the sex industry who are not trafficking victims also have a range of rights, which are impacted by the ways that criminal justice is enforced. There are good intentions in both of these

approaches. Trafficking, abuse, and stigma in the sex industry are all widespread and policy is required to protect rights for participants in the sex industry on every part of the spectrum.

These two approaches are unable to fully center rights because they focus on rights within a criminal justice system, either by focusing on enforcing anti-trafficking laws against violators or by focusing on how law restricts the freedom of sex workers and leads to their further abuse. Both of these issues are important, but end up in contention with each other as they fight to make the criminal justice work for their side of the binary. Both sides are overwhelmed with trying to put out the fires on their own sides of the equation – many of which were started by failed criminal justice initiatives. They are fighting over a perceived shortage of rights, when both the right to choose your occupation and be free of stigma and the right to be free from violence, force, and coercion in the sex industry can exist at the same time.

This paper bridges the disconnect between labor rights and anti-trafficking approaches by examining the false binary between trafficking victim and voluntary sex worker that is present both in policy and in the literature. Thus while I will be building off of rights-based literature, I will be utilizing the intersectionality of Feminist Theory and Critical Race Theory in combination with an understanding of the criminal justice system's impact to gain a broad scope view of rights that allows rights to be understood and carried out in many different capacities.

The Problem in the Scholarship

In this section I review work that has made the binary so anchored in our scholarly and popular understanding, and weave in critical scholars' critique to help make sense of why the binary is a barrier to being able to center rights. After this section, I continue to build on the critical scholars' foundation and critique in order to develop an original, rights-based framework that employs CRT and feminist rights-based approaches to determine rights in policy. Centering rights

into anti-human trafficking laws and practices is an important theoretical, conceptual, and empirical gap that this thesis helps to fill. As participants, feminists, activists, and scholars call for a break from this binary to better ensure the rights of those in the sex industry, this must be translated into how policies are implemented. The challenge this thesis takes on is in how to operationalize critical theories into working policy models, so that policies at international, national, and local levels of anti-trafficking governance are effectively grounded in the nuances of marginalized communities' experience with law and order.

This section briefly reviews current critiques of the binary that provide the foundation for rethinking how rights are, or can be, placed at the center of anti-trafficking approaches. Yet, as I argue here and in the following section, this critique does not go far enough.

There is a stiff disconnect between those that advocate for the normalization of the sex industry and those who advocate for its abolition, between those fighting for sex worker's labor rights and those fighting against all sex work in an attempt to curb sex trafficking. This binary is present in academia, in policy making, in activist movements and NGOs, and in popular culture. This creates a plethora of issues, not only in that the binary is unrealistic and misleading, but it is especially problematic in understanding and defining the core values of human rights. In the policies studied in this work, we see that legalization of the sex industry and sex workers rights advocates use rights-based approaches to passionately argue that women should be allowed autonomy of their own bodies, sex work should be socially accepted and destigmatized, and the state should provide the same protections, healthcare, and other benefits that other working-class citizens receive. Partial decriminalization and anti-trafficking advocates argue just as passionately with criminal justice approaches that women should be free from force or coercion into the sex industry, the sex industry should be socially denounced as inherently misogynistic and

dehumanizing, and the state has the responsibility to protect its citizens from the abuses and dangers of the sex industry.

Some scholars point out how this polarization stems from very different understandings of the sex industry as portrayed by popular media. Bernstein (2018) bemoans films like Liam Neeson's *Taken* which exoticizes the issue, playing on fears of "white slavery," and terrifies audiences into saving and pitying those in the sex industry. This attitude results in the assumption that all those in the sex industry are there by force/coercion or are able to be removed without suffering repercussions, leading to discrimination such as being run through the legal system and forcing women in the industry into rehabilitation centers, which can be as harmful if not more so than the sex industry itself (Bernstein 2018). By portraying people in the sex industry as victims, those who are building their business and trying to survive in the industry are harmed by the policies, NGOs, and people who would "save" them.

These films and ideas perpetrate the male-centric narrative that women and girls (whether poor and brown or affluent and white) are helpless, their sexual virtue at stake, and they are in need of white male saviors to swoop in and save them from "dangerous brown men" (Bhattacharyya 2008). Additionally, this "rescue narrative" bolsters the idea that criminal justice is the most effective and necessary means of stopping trafficking (Baker 2013). The issue is presented as a few bad men who kidnap women seemingly at random and sell them as slaves to a few other bad men. It makes an easily digestible solution to give more money to law enforcement to find the bad guys and put them behind bars. It ignores the reality that most trafficking happens through trusted relationships such as family, friends, or boyfriend figures (Toney-Butler 2021), that men of all social status and circumstances buy women and girls for sexual purposes (Demand Abolition 2019), that white Western males are the majority of punters through military bases and through sex tourism (Chapuis 2017, Chang 2012), and that law

enforcement has been grossly unable to shut down known trafficking rings (Farrell and Reichert 2017).

On the other hand, using exaggerated images to lead people to a narrow understanding of the sex industry is just as damaging for trafficking victims. The proliferation of “happy hooker” narratives and glorifying of sex work presented in modern media conveys to those who are forced/coerced or those struggling in the industry that what they are experiencing is not trauma. It invalidates the widespread experiences of those who have been forced to enter and cannot leave the industry if they tried. Young, naïve girls are taught that the sex industry is fun and risk-free (Bindel 2017), drawing in an exploitable (in other words, abusable and trapped) work force. While Bernstein rightly critiques the propensity of anti-trafficking organizations to sensationalize and victimize sex workers, chalking the sentiment up to blind adherence to cultural portrayals of sex trafficking as dramatic renditions, she fails to acknowledge her own bias that can just as easily be pointed back to cultural ideas of glamourized/romanticized sex work. Popular media such as *Pretty Woman*, *Hustlers*, *Burlesque*, etc. gives a fun, easy, and normalized face to the sex industry, which can lead to a bias that sex workers are empowered and acting autonomously, and need only the protection of their rights to participate in the sex industry. This leads to testimony of women who have experienced abuse in the industry not being taken seriously, and allows and perpetuates the systematic turning of blind eyes to the effects of grooming and abuse in the industry.

This binary is harmful to women in every spectrum of connection to the sex industry, and has been long pointed out by participants, feminists, and scholars alike as a contributor to abuse and oppression. PROUD (a pro-sex work organization in Amsterdam) advocate Velvet December states, “Sex work is constantly conflated with human trafficking. This, and the dichotomy attached to it for categories of sex workers—the ‘happy hooker’ and the ‘poor victim’—leaves no room for

the realities we face and to address the problems we see” (Abdul 2019). Here December acknowledges the false dichotomy between victim and autonomous worker while at the same time wanting to distance sex work from trafficking. The problems that both ends of the sex industry face are the same – poverty and a wide range of abuses from johns, pimps, and law enforcement.

Critical Theory as the Starting Point for a Rights-Based Policy Framework

The binary stems from the “othering” (hooks 1992) of women into categories like prostitute, sex worker, or trafficking victim. Black feminists like hooks write on the “othering” that places black women into a particularly marginalized social category that makes them easy to abuse and oppress. This occurs in several different capacities in the sex industry. When participants in the sex industry are viewed as belonging outside of society, either belonging to an illicit/criminal or victim subclass, their voices are silenced, as they do not belong with the “regular” people. Trafficking victims are separated from prostitutes/sex workers and given pity and charity, while prostitutes/sex workers are left on the unwanted fringes of society. Jo Doezema, a sex worker’s rights advocate, writes,

If it is recognized that the majority of those in the sex industry who end up in debt-bondage or slavery-like conditions were already working as sex workers, it is impossible to avoid the conclusion that it is prostitutes whose human rights are being violated on a mass scale. Of course this is unpalatable to the international community: it is one thing to save innocent victims of forced prostitution, quite another to argue that prostitutes deserve rights. It is not only governments who prefer saving innocent women to giving rights to guilty ones. (Doezema, 1998)

Rachel Moran discusses her experience of the “othering” she underwent as she transitioned from a traumatic childhood to participation in the sex industry. Family dysfunction, educational disadvantage, adolescent homelessness, the secrecy from “normal” society surrounding the sex industry, working at night instead of daylight hours, using drugs or alcohol as a further emotional

and psychological detachment, inability to get regular jobs, mortgages, credit cards, or business loans, and a mutual resentment between herself and the rest of society – these were all part of what Moran states separated herself and others like her from “normal” society. “The sense of ‘otherness’ for the woman ensnared in this lifestyle is so strong that she begins to regard herself so utterly different from other members of society that it does not feel possible or feasible on any level to partake in that society” (Moran 2013). Moran attributes these physical, social, and emotional barriers between herself and the rest of society as a large factor in not being able to leave the industry for years when she wanted to get out.

Not only are people in the sex industry “othered” from society, but the psychological distress that many endure leads to mental disassociation from their own bodies, a common phenomenon in abuse victims who feel that what is or has happened to their bodies is so painful and egregious that one mentally “checks out” of their body to protect themselves from the pain. Participants in the sex industry express losing their personhood in the act in order to satisfy whatever desires the purchaser wants from them. Survivor activists Carter and Giobbe connect this disembodiment, this othering, with the process of commodifying the self. In this process, to mentally and emotionally survive the subjugation of being sold to another, the mind disengages from the body to allow it to be used without damage to the “self.” Carter and Giobbe describe this as feeling that the self “is empty space surrounded by flesh into which men deposit evidence of their masculinity. She does not exist so that he can” (Carter and Giobbe 1999).

Migrant people in the sex industry experience a particularly severe form of othering, as they are defined by government intervention in anti-migration laws as simultaneously victim and criminal. Migration laws use sexualized and racialized ideals of trafficking victims to justify exclusionary and harsh border control laws. A study on sexually commodified migrants across various prostitution models found that “there is an inversely proportional relationship between the

degree of criminalization faced by migrant sex workers, including people in trafficking situations, and their ability to access justice and assert their rights and lives against increasingly extreme and racialized forms of bordering” (Mai 2021). The victimhood placed on migrant workers through the criminal justice system does not give more rights based on their “victimhood” status, but less. Migrant people in the sex industry are othered from larger society, othered and exoticized racially, and are othered simultaneously as victims and criminals through the criminal justice system. These harms are placed on top of the denial of human rights that migrants often face as refugees or as statelessness persons.

In reality, these groups are polarized around an issue that is much murkier and tangled than the easy to digest versions of powerless sex trafficking victims or autonomous, empowered sex worker. The binary leaves no room for the nuance of individual experience and how these categories are often overlapping or interrelated. While it seems convenient to demonize either the sex industry as a whole or those working to dismantle it, Hannah Arendt’s theory of the “banality of evil” suggests an everydayness to evil that humans cause and endure, and how everyday decisions that lead to abuse are actually made in light of that banality, not an adherence to some overarching evil desire (Arendt, 1994). There is a much larger story of poverty, misogyny, and carceral idealism that dictates how women around the world experience exploitation, including how their consent is given/taken/used in sex work, their options/ideas around work and autonomy, and the relation of self to body and the value of self/sexual experiences.

Feminist theory determines that women, girls, and all people have the right to bodily autonomy and freedom from sexual violence. This comes with a strong conviction that sex trafficking and any kind of forced sex (rape) is wrong, along with the strong conviction that women should have the autonomy to make decisions about their involvement in the sex industry. Importantly, when distinguishing between trafficking victim and voluntary sex worker, critical

theorists ground the difference in consent. Bernstein (2018) argues that sex workers are harmed by conflating sex trafficking with willing sex workers, stating that “sex trafficking is not defined by any particular set of exploitative labor conditions within sex work, but is best understood in relation to its ability to evoke viscerally dense moral statements.” However, the reverse is also true, that trafficking victims are harmed by being conflated with voluntary sex workers, and that considering oneself a voluntary sex worker is nearly impossible to define and relate to at all times when in the industry. Sex workers who experience violence in the sex industry are also harmed by the notion that consent to participate in the sex industry is consent to whatever abuses may occur, as anybody with experience in the sex industry can attest to (Moran 2013). Consent becomes a fluctuating factor, since consent might be generally given to participate in the industry, but may be revoked depending on the person, time, place, specific acts, etc. Dana Levy, a self-identified survivor of the sex industry, explains:

Consent relies on three conditions: the freedom to choose a sexual partner, the freedom to choose the nature of relations, and the freedom to choose the timing. If any one of these conditions is impaired, the sexual relations should be considered forced – for example, when someone forces their regular partner or spouse to have sex at a time or in a way they do not want. In the context of prostitution, none of those three conditions can be completely met. Women in prostitution do not choose their clients (except in anecdotal blog stories); they do not choose the timing; and, in most cases, they have hardly any freedom to determine the nature of the acts performed (Levy, 2018).

Although this may not be every person involved in the sex industry’s experience, it is repeated enough (Carter, 1999; Moran, 2013; Hepburn, 2013) that it becomes clear that free consent is a privileged experience, or at least not consistently present. Again, the ability to make a distinction between voluntary and forced participation in the sex industry becomes difficult if not impossible to determine. If sexual relations are only not considered rape with the presence of enthusiastic consent, but sex has become a job or service instead of a relational activity, it is not always going to be possible to ensure enthusiastic consent. Saying no when unwilling becomes difficult when

physical safety or money needed for living expenses is at risk. The need for safety, or money, trumps the need for consent.

Consent is a multi-tiered concept with multiple influencing factors. Hulusjö writes on how this muddling of choice and force are especially apparent in examining the entry into the sex industry:

The dispositif of prostitution consists of complex relations of power, domination and resistance...Participant's beginning stories troubled the notion of the entry into prostitution as a clear cut matter of 'choice'/'force'. Most of the participants made sense of their entry into prostitution as both an effect of power and as a means of resistance. These participants' beginning stories spoke of how power relations and forces of desire connected in creating conditions of possibility for resistance (Hulusjö, 2013).

Seeing participation in the sex industry as a means of resistance can be a motivating factor, but still does not ensure enthusiastic consent. Women make decisions about their involvement in the sex industry based on the best options and perceived outcomes available to them. Choosing to have sexual relations with another person based on anything other than enthusiastic consent changes the experience and definition of sexual relations. Thus, it has to be decided if sex, consent, and rape means something different for women in the sex industry in contrast to the general population.

Finally, distinction between trafficking victim and voluntary sex worker is further complicated when the age of entry to the sex industry is considered. Nicole Bell, founder of LIFT, a survivor-led advocacy organization, comments; "We look at prostitution and trafficking as two different things, but most people in prostitution have experienced trafficking in some form. Most were brought into this before they were old enough to consent to sex – never mind to being sold for sex" (Galluchi 2019). While most people would confirm that children cannot consent to participating in the sex industry, there is silence from sex worker/labor rights advocates regarding the high number of women in the sex industry who entered as minors, or who experienced sexual

abuse as children, which some studies conclude is a precursor to working in the sex industry (West, 2000; Bales, 2000). Hypersexualization can be a result of experiencing sexual abuse, where victims have a compulsory need to overcome the lack of control over their bodies they experienced when being assaulted by over sexualizing themselves and engaging in risky sexual behaviors (Senn and Coury-Doniger 2011). This is shown not to alleviate the trauma of their past experience, but to continue and compound upon it.

Criminal justice approaches have a narrow ability to determine victim from voluntary worker due to the constant flux in laws surrounding rape. These laws vary between countries, and have undergone vast changes in policy throughout the years as a result of feminist movements. The greatest way that the criminal justice system fails to protect victims of violence in the sex industry, however, is in the extremely low rate of prosecutions and convictions in rape and sexual assault cases for women regardless of their involvement in the sex industry. Trafficking victims, sex workers, and citizens outside of the sex industry all deserve justice for crimes committed against them, and yet rarely do, even in extreme cases of abuse. Without legal ramifications for these crimes, defining rape and consent becomes an exhausting and powerless measure against abuses (see Appendix I).

Throughout the analysis of the legalization and partial decriminalization models, I will examine how factors surrounding entry into the sex industry affect the state of voluntary participation, including age of entry, exposure to past abuse, poverty, coercion, and force. This thesis also examines voluntary participation in light of the ability to exit, and difficulty surrounding leaving the sex industry such as threat of abuse, addiction, poverty, lack of education, lack of job experience, and overcoming the multi-layered “othering” as previously mentioned.

Connecting this binary thinking and creating a holistic understanding of rights for those in the sex industry is imperative to finding a path forward for realizing rights for women in all

spectrums of the sex industry. Both sides of the binary bring up important understandings of rights and can actually be complementary to each other rather than being pitted against the other. What is lacking in bringing these camps together is a multi-dimensional, intersectional framework that centers rights.

Thesis Design: Feminist Rights-based Framework

Critical theories are integral to understanding and realizing rights in policy making and implementation. For example, CRT critiques power structures and structures policy around rights for marginalized groups, and feminist theory upholds rights-based responses for realizing rights within the sex industry for a variety of experiences. This thesis has developed an original framework for human trafficking approaches to center rights based on several different feminist understandings, including Black feminists, Marxist feminists, radical feminists, and liberal feminists (see Figure 1). This centers women's voices, particularly those with experience in the sex industry from both sides of the spectrum, which is a key weakness of the current binary of approaches. Importantly, because women and girls make up the vast majority of people selling or being sold for sex (EU Parliament 2014), the theories that help center their rights in particular are prioritized in this thesis. The critical framework developed here complements other theories, including critical legal theory that help address the rights of migrants with varying legal statuses and backgrounds. This framework is also designed with the ability to be implemented across other legal models of prostitution, as well as across countries within the same models.

Before overviewing each of the theories that ground this framework, it is important to note that this thesis uses the neutral term "sexually commodified person," or "SCP" instead of "prostitute," "sex worker," or "trafficking victim." The term "prostitute" has a historically derogatory connotation of illegal, dirty, ruined, or evil women that is not reflective of participant's lived experiences. While the term sex worker was initially employed to combat those harmful labels, it

has also been purposefully used to bring about a normalization of the sex industry, which can be harmful to those who are in the industry by force/coercion and is hotly debated among participants in the sex industry. The term trafficking victim will only be used when it is clearly known that the person being discussed is a trafficking victim, such as in the case of forced prostitution and minors.

Figure 1. A New Framework for Centering Rights in Human Trafficking Laws

	How each theory contributes to centering rights of impacted populations
Feminist Theory	<ul style="list-style-type: none"> • Active voices must be from participants to understand rights • Policies are written in biased forms that generally benefit men over women • Sex without consent is rape
CRT	<ul style="list-style-type: none"> • Power structures benefit the powerful and dismiss the marginalized • Racial disparities in policy discriminate against POC, purposefully and accidentally • Rights can be operationalized through policy
Radical/Marxist Feminist Theory	<ul style="list-style-type: none"> • Capitalistic policy exploits and abuses workers • Society is stratified by gender and systematically disempowers women • The sex industry is inherently misogynistic, an ultimate enslavement of women to male pleasure

<p>Black Feminist Theory</p>	<ul style="list-style-type: none"> • The history of enslaving and sexually abusing WOC has current ramifications in society • WOC are marginalized both as women and as black, leading to increased abuse • WOC are sexually exoticized and hated at the same time by men • The past trauma of slavery and abuse play into the psychology of WOC today.
<p>Liberal Feminist</p>	<ul style="list-style-type: none"> • Women can be trusted to make decisions for their own lives • Women's bodies should not be controlled and policed by the government
<p>Migrant Rights Lit</p>	<ul style="list-style-type: none"> • The statelessness migrants face leaves them vulnerable to abuse by government institutions. • Migrants are villainized by governments in order to build heavy anti-immigration laws • Migrants are uniquely vulnerable to trafficking and face abuse by traffickers and government intervention alike.

Black Feminism and CRT

Kimberle Crenshaw was the first to coin the term “intersectionality” to explain the unique experiences of those with multiple points of oppression, and the need for policy that protects those particular vulnerabilities. Crenshaw uses Black feminism and CRT to show that

“trickle-down” justice does not ensure rights to oppressed populations, and instead implementing policy that focuses on marginalized people groups first will in turn protect the privileged as well. (Crenshaw 1989).

Black feminism centers Black voices to expose the impact of policy on marginalized people and describe how policy that includes this perspective ensures rights not only for marginalized populations, but for all involved in the sex industry. Due to the highly gendered issues of endangerment and abuse in the industry, women, and especially women of color, are those most affected by abuse in the industry and are the voices that will be centered in the literature review. Black feminist theory considers the “othering” of POC in society at large, and the racist exploitation and eroticization of Black women and POC in the sex industry by looking at the intersection of racism, classism, and sexism to reveal ways that Black women are specifically oppressed (hooks 1989, hooks 1984, Collins 1994).

The sexual exploitation and exoticization of black women has a long history, rooted in imperialism, colonization, and slavery. The history of rape and sexual abuse in eras of slavery that combined sex, violence, and exoticism (hooks, 1992; Hernandez, 2001) , with the fact that POC are still the majority of SCP (Farley 2003), have fewer options for work outside of the sex industry and less social mobility, and face more discrimination than white SCP (Alexander, 1987; L. Bell, 1987; McClintock, 1992), leads Black feminists to contend that “racism makes certain forms of sexual objectification possible,” that “sex work represents the exploitation of Black women’s sexuality for an economic purpose,” and that once that is accomplished, “commodified sex can then be appropriated by the powerful” (Collins, 1990; Sloan 2000). These overlapping oppressions further complicate consent and the presence of choice for SCP. The connection between the experience of Black women in a society that denigrates women of color (hooks, 1984), while at the same time sexualizing and exploiting them, reveals that the overwhelming

inclusion of POC in the sex industry while they are excluded elsewhere is a result of the interconnected domination of racism, classism, and sexism, not of free consent (Carter, 1999; Farley, 2003; hooks, 1992).

Critical race theory speaks into the comparative design of this thesis by providing a framework for critically examining issues of race, power, and law in society. CRT bridges the gap between policy, implementation, and impact, and works to operationalize rights within systems of power. This brings actuality to forward motion in securing rights within policy work. Because impoverished, minority, and marginalized populations are the most vulnerable to entering and staying in dangerous and abusive situations, and because traffickers and pimps target people of color and vulnerable populations with greater frequency, which raises issues of exoticism and exploitative impoverishment, critical race theory is an important key to understanding the far-reaching effects of prostitution practices. Critical race theory's examinations of power and law contribute to a more full understanding of how both play into each model. The criminal justice system has to be understood as an institute of power that shapes rights, and CRT brings this perspective into play when looking at how shaping policy has on the ground impact.

Radical, Marxist, and Liberal Feminism

The feminist research approach applies a needed voice to the discussion by focusing on lived experience of participants in the sex industry rather than limiting valid research to academic voices. The research cannot be complete and accurate without incorporating those who have direct experience in the industry as much as possible. To fully integrate a feminist approach to a comparative research design of the legalization and partial decriminalization models, I will draw from feminist case studies and literature of personal accounts of participants in the sex industry to find answers to normative questions that will inform the levels of safety and freedom across both models. This is crucial to a fuller understanding of each model, as it grounds

the models in real-world societal implications and applications. It is important that these questions are answered from a feminist perspective because it is primarily women and girls who are directly affected by the outcomes, and whose experience can most clearly see the conclusions drawn from each answer. Feminist understandings of the female body, sex, and exploitation bring imperative questions to this research project. To understand the lived experience of those who have participated in various ways in the sex industry, past and current participants who describe themselves on either side of the debate, as sex-workers rights activists or as survivors against legalization, will be included in this study (Moran 2014, Doezema 1998, Collins 1994, Vanwesenbeeck et al. 2002, Vuolajärvi 2018, Asante and Shaapman, 2005).

Marxist and radical feminist approaches critique the nature of the sex industry itself, and are used in the framework to determine if rights are being understood in light of the gendered society that actively works to dismantle women's rights. These approaches both regard the commodification of female bodies as inherently destructive due to the combination of the exploitative nature of labor and misogynistic social treatment of women (McKinnon, 1983; Dworkin, 1987). Radical feminists have long argued that women are systematically oppressed and cannot access their rights if a portion of women are offered for sale to male supremacy and pleasure. Radical feminism acknowledges the dangers in the sex industry as unavoidable in a system that provides male power over women's bodies, and advocates for the dismantling of the industry to protect women's rights.

Liberal feminism (Bernstein 2018, Jennes 1990, Doezema 1998) contributes to the framework by recognizing the harm done to women when the sex industry is controlled and policed. Liberal feminists contend that to uphold women's rights to their bodily autonomy, a woman's choice to participate in the sex industry should be protected, sex should be celebrated instead of stigmatized, and women should benefit financially from that decision and be protected

from abuses in the industry. Liberal feminism fights for women's rights against abuse in the industry by advocating for legalization/decriminalization to provide SCP with freedom within the industry, recognizing that much abuse against SCP comes from the industry being criminalized, which leads to violence by police (both direct violence from police and passive violence from neglect of police protection) and violence from punters who feel entitled to abuse women in systems that do not actively protect SCP.

The feminist theory and CRT employed in this paper uplifts the voices of the marginalized above the voices of the privileged. In the tradition of qualitative-interpretivist research, I recognize my own privilege in never experiencing being trafficked or selling sex, and instead aim to elevate the experiences of those who have direct experience in the sex industry, particularly focusing on marginalized populations. This project originally was going to be conducted with the intention of using personal interviews to bridge the gaps between formal academia and lived experiences of research participants (Yanow 2006) and forming trusted relationships with research participants who would be intimately involved in the writing process (Nagar 2006). Although I wasn't able to interview SCP in the Netherlands and Sweden due to the COVID-19 pandemic, I will include stories from my experience working with SCP in the US. This paper and the framework utilized within it shows that the fluidity between the titles of trafficking victim and voluntary sex worker and the experiences of sexual abuse of SCP are the same across models are common across models.

Positionality

While I cannot speak from personal experience in the sex industry, I can speak from my experience of being coerced into sexual situations I didn't want to be in, of having conflicting feelings for someone who consistently hurt me while saying they loved me, of being discriminated against based on my perceived sexual history, of being sexually objectified by friends and

strangers alike, of wondering if a sexual encounter was consensual or not, of experiencing non-consensual sexual encounters and having no understanding, support, or justice for those moments. These are not uncommon experiences to women around the world and are the natural consequences of living in patriarchal societies that places women's value on their sexual availability. These common experiences of women point again to the fluidity between victims of abuse and voluntary sexual experiences.

I have worked closely with adults and children involved in the sex industry, both trafficking victims and voluntary sex workers, through behavioral health and child welfare occupations. Much of my work was done with teenage girls in rehabilitative group homes and children of all ages in foster home placements after their exit from their abusive situations. I have also worked with adults in a job skills training program who were exiting the sex industry, and with women situated in various conditions in the sex industry through behavioral and mental health services for themselves and/or their children. I have had weekly meetings with men convicted of pedophilia, rape, and domestic violence while their children were in state's care, and with fathers grappling with how to care for their children who have been sexually traumatized and suffered abuse. The time I spent with these individuals was extensive, spending much more than 40 hours a week immersed in their daily lives, from homework help, mental health, and daily living skills lessons for teenagers to supervising visitation services for children in foster care and weekly living skills sessions with their parents.

When I worked with children who had experienced abuse from their parents or been sold for sex by parents and family members, I was enraged at the adults responsible for the devastation and trauma in my client's lives. However, the more I worked with adults and family units, the more I understood that those who abused their children or exposed them to abuse had been themselves abused in much the same way when they were young.

Two things became clear to me throughout the years of working with victims: first the fluidity of these groups, between sex trafficking victims and voluntary sex workers, between child victims and adult victims. Secondly, the clear disconnect I examine in this paper between abuse-victim advocates and labor-rights advocates.

In 2018 Backpage was seized for proliferation of child pornography and child trafficking ads. Those working with vulnerable youth populations breathed a sigh of relief that the videos and ads of the traumatized children we worked with had been removed, allowing a little more space for these young survivors to find healing without their abuse being perpetuated through sites like Backpage. Several child victims I worked with at the time had major breakthroughs in their therapy work and were able to function more freely in the community without fear that people they were encountering on the streets had watched and enjoyed the videos of their abuse. The women I worked with who had exited the sex industry wished that there had been the same kind of awareness of the abuse they had faced when they were children and that they had help when they were being groomed into the sex industry. Outside of these groups, however, I saw backlash from those still working in the sex industry, labor-rights groups, and liberal feminists. These groups were angered that they could not use these platforms to gain customers, and that they had lost what they used as a means of vetting punters and controlling their prices/hours.

Similar to what we are seeing in 2021 with the lawsuits against Pornhub and MindGeek, while survivors of abuse are finding hope in getting some amount of justice for the crimes committed against them, we also see the labor-rights movement decrying those legal movements as restrictions on their freedom and safety. I was surprised that these women, most of whom had experienced similar cases of abuse as children, would be so angered that child pornography and access to child abuse was being removed from the internet. This incident in

particular spurred me to research the systems that disadvantage SCP on every part of the spectrum, from trafficking victim to voluntary sex worker.

Operationalizing a Critical Rights-Based Framework: Analytical strategy

A key contribution this thesis makes is to illustrate how a rights centering framework can be operationalized to make sense of national and local policy to reveal the centering or de-centering of rights based on policy and practice. CRT and feminist theory is applied to center rights along three key areas: formal policy composition, policy implementation, impact on working conditions, counter trafficking measures, and marginalized populations. Policy composition will assess the history of the policy and the main actors participating in changes. Implementation will examine the effectiveness of regulations put in place, and how the policy is attempting to accomplish its stated goals. This will vary between the two models: for the legalization model, whether protection and freedom have increased for SCP and if support programs have been successful will be considered, whereas in the partial decriminalization model, whether the number of SCP has decreased, protections for SCP have increased, and if exiting programs have been successful will be considered. Impact on working conditions will determine what changed from before to after the policy changes, including throughout the amendments and additions to the policy during the years after implementation. Impact on counter trafficking measures and marginalized populations will look at known trafficking rates of numbers of victims, arrests, and convictions, along with amounts of protection of rights provided to vulnerable populations such as minors and migrants engaged in the sex industry.

The damaging and unhelpful binary practice of focusing on justice for trafficking victims or on sex workers rights is mirrored in public policy. This is evident in how policy work uses a criminal justice approach focused on preventing trafficking that misses communication with rights-based approaches that critique how those policies are put into practice and restrict

rights. Often literature focuses on one side or the other, studying either the policy work or the aftereffects of implementation. The feminist rights-based framework used here will examine the multiple relational aspects of government involvement in the sex industry to measure rights. Rights will be measured by examining levels of formal policy, implementation, and impact.

Formal Policy

Formal policy is used as a measure of rights on multiple levels of governance, from international, national, to local, and specifically the cities of Amsterdam and Stockholm. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children was published in 2000, the same year the Netherlands legalized the sex industry and the year after Sweden enacted the Ban Against the Purchase of Sexual Services. This collision of policy implementation set up multiple contrasting criminal justice approaches, all of which have fallen short of protecting women's rights in the sex industry. Through employing CRT, Marxist, and Black feminism, this thesis reveals how these international and national policies work to determine and uphold the rights of marginalized people.

Implementation

CRT and feminist theory critiques the ability of criminal justice approaches to adequately protect rights and bring justice for abuses in the industry. CRT looks at alternatives to criminalization and imprisonment, campaigning for harm prevention and deterrence through options like poverty reduction, education, and rehabilitation or exiting services. Feminist theory identifies ways that ingrained ideas about criminality and deservedness prevents implementation from being effective.

Criminal justice approaches are narrowly confined in their ability to identify victims and punish, protect, and prevent in accordance with the UN's Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Not only does it fall into a similar trap of understanding rights and victimhood through whether or not laws are being enforced, because of these blurred lines of victimization governments have the opportunity to make laws that appear to be aggressively fighting sex trafficking while in actuality these laws have very slight, if any, positive effect and instead often damaging effect on abuses in the industry – using “cheap talk” to appear to be more upstanding than they truly are (Smith-Cannoy 2012). A state can pass any number of laws that purport to follow the UN's guidelines for ending trafficking, but without the ability to distinguish trafficking victim from voluntary sex worker, most changes made in law end up suppressing SCP instead of finding and convicting traffickers.

A regular critique of both the legalization and the partial decriminalization models is that the rehabilitative options for victims and the exiting programs for SCP are terribly underfunded and ineffective, and can contribute to re-victimization of SCP. This is not surprising due to the structure of criminal justice approaches that focuses above all on conviction rates in hopes of being seen as tough on criminals, to the exclusion of understanding and supporting the difficult and delicate issues related to rehabilitating victims. Because of the criminal justice approach being utilized, rehabilitation centers perform more like prisons in restricting SCP's movements, holding strict standards of behavior, and having high rates of abuse (Bernstein 2018). It is also not difficult to see reportedly anti-trafficking measures effectively operate as anti-immigration measures and suppress migrant's rights.

Impact

In social areas of inequality, the purpose of government intervention should be to create equity across groups to ensure rights to all people. In male dominated societies, where criminal justice is a male-centric racialized system of power, and the sex industry contributes to an unequal balance of male power over female bodies, equalizing women's rights becomes an uphill battle and equality has to be built in a multitude of areas and in different measures depending on level of marginalization. Impact measures the strength of rights based on how tangible and attainable those rights become for SCP after policy changes. This is where on-the-ground reports from SCP are most important, because they are intimately familiar with how the policy changes have affected their everyday lives and livelihood. Impact is measured across groups to determine equality between how voluntary sex workers, SCP of color, migrant SCP, and minor trafficking victims experience the changes in policy.

Both feminist theory and CRT focus on marginalized groups first and foremost when considering impact of policy being implemented. These approaches amplify the experiences of WOC, migrants, children, and other disadvantaged groups to determine if their rights have been enhanced or dismantled by policy changes. The feminist rights-based framework suggested in this paper allows us to re-think old questions from the scholarship from outside the binary, and in a collaborative way that allows us to see a more realistic picture of how rights are affected by government involvement or lack thereof.

Case Selection Strategy: Why I Compare the Netherlands to Sweden

This thesis employs ethnographic case study design, which is rooted in interpretivist, critical, reflexive, descriptive methods (Nagar 2006, Schwartz-Shea and Yanow 2012, Behl 2017), as opposed to a positivist, crucial case study design (Gerring 2007). As previously mentioned, the

partial decriminalization model and the Netherland's legalization models were chosen for this project because they are the most progressive models to date. The Swedish and Dutch models both attempt policy that is somewhere in between decriminalization and legalization. The framework set forth in this thesis speaks into each case by examining how marginalized populations have experienced the policy and its implementation. Below I will examine the most prevalent models in place today globally and why these two models were chosen for this project.

It should be noted that the historical structure of prostitution is deeply rooted in colonization, and rape has been used throughout history to terrify, destroy, and conquer nations and people groups. Even those countries where prostitution may have existed in some form before colonization, prostitution was morphed into a colonized form. Policy practices during colonization oscillated between criminalization and full decriminalization – often at the same time. Brothels were constructed around military bases which conquering forces occupied, and soldiers were encouraged to act sexually on colonized women, while colonizer women were prohibited from engaging in the sex industry as this would be damaging to the image of a successful and powerful conquering nation. Colonizers would put criminalization policies in place over their conquered nations, but would continue to demand sexual services for themselves (Taraund 2018). Moving away from colonization in the last several decades has meant adapting from these practices.

Criminalization

Criminalization is still the overwhelming majority of policy in place worldwide, such as in the US, large parts of Africa, most Asian countries, and Eastern Europe. This model is in large part so widespread because of the influence of colonization as mentioned above. Criminalization is punitive toward any aspect of the sex industry, whether selling sex, selling others for sex, or

buying sex – although most implementation and impact of punitive measures falls to those that sell sex, as they are viewed as the ones enticing the illegal activities. Criminalization is usually justified to attempt to stop the spread of venereal diseases and for moral reasons. It is widely considered among SCP, feminists, and scholars to be the worst policy to address any undesirable aspects of the sex industry, whether that be stopping abuse and trafficking, containing diseases, saving the “purity” or “morality” of women, or controlling substance use or organized crime. Criminalization has been shown to create destructive patterns of trafficking and increased forced prostitution due to pimps and traffickers being able to threaten exposing their victims to the police to keep them contained. This creates vicious cycles of poverty, drug use, and jail time for women caught in the sex industry unwillingly, and creates secrecy and stigma around SCP that decreases the ability to get help, which increases the likelihood of abuse.

Legalization and Decriminalization

Decriminalization is a harm-reduction model which removes all penalties on any aspect of the sex industry, from selling, to buying, pimping, and procuring. Decriminalization has been a model promoted by the sex worker’s/labor rights movement, and has received backing from several internationally recognized actors. In 2016 the human rights NGO giant Amnesty International concluded a lengthy report on the sex industry and stated it’s favor for full decriminalization, stating it,

Recommends the decriminalization of consensual sex work, including those laws that prohibit associated activities—such as bans on buying, solicitation and general organization of sex work. This is based on evidence that these laws often make sex workers less safe and provide impunity for abusers with sex workers often too scared of being penalized to report crime to the police. Laws on sex work should focus on protecting people from exploitation and abuse, rather than trying to ban all sex work and penalize sex workers (Amnesty 2016).

UNAIDS, Global Network of Sex Work Projects, and Human Rights Watch share the same recommendation for full decriminalization with state recognition and protection of SCP. However, most countries that have decriminalization models in place do practice regulation to some degree, usually in attempting to appease international treaties against trafficking. There are always exceptions to what is decriminalized – decriminalization models still have laws against children and migrants participating in the sex industry and against sexual abuse and force. These laws are necessary to prevent child abuse, trafficking, and violence against women. A re-occurring issue in full decriminalization models is that because pimping and benefitting from other's sexual commodification is legal, it is much harder to determine if coercion is involved, as we will see in examining the Amsterdam model.

Harm reduction decriminalization became a popularized theory during the HIV/AIDS crisis when both homosexual men and SCP were heavily inflicted by these diseases and discriminated against. Harm reduction measures make sense in cases of consensual activities, but directly fail to protect those in the sex industry under force or coercion. States that have enacted decriminalization laws have seen that the sex industry grows quickly and allows ample room for trafficking to occur when there are no penalties involved. The critique of the Amsterdam model will look at this progression in detail and determine what can be done in such systems to curb abuse.

The legalization model legalizes all aspects of the industry - selling and purchasing sex, owning brothels, and receiving funds from other's sexual services (pimping), while trafficking remains illegal. Legalization models typically impose stricter labor regulations within the industry such as occupation registration, taxes, and health checks. This is meant to allow sex workers to maintain labor rights such as protection against abuse and discrimination, police protection, social security, and healthcare, with an understanding that the sex industry needs to be destigmatized

and instead normalized into society as a viable and respectable occupation. Legalization is controversial in its policing of women's bodies, and ends up controlling and restricting SCP instead of supporting SCP in staying safe and growing business (Vanweesenbeek 2017). In the review of Amsterdam's legalization model, it will be seen that many legalization policies may begin as a decriminalization model, but move into legalization as the abuses within decriminalization grow exponentially and government intervention is called to control increased trafficking. Amsterdam is called a legalization model but does not impose mandatory health checks or penalize non-registered sex workers, falling into a middle ground between decriminalization and legalization.

Partial Decriminalization

The Nordic Model decriminalizes the act of selling sex and criminalizes those who benefit from selling others (pimps) and those who purchase sex (johns/punters). This is meant to provide protection for sex workers while decreasing the demand from johns, with an understanding that the sex industry is an indication of gender inequality in society and should be discouraged and dismantled. Partial decriminalization is the official recommendation for prostitution policy from the UN (Honeyball 2014). This model attempts to bridge the gap between the issues in criminalization and the issues in full decriminalization by protecting those who are most damaged by the industry and punishing those who are most likely to create abuse in the industry. This is a neo-abolitionist model that attempts to move toward eliminating the sex industry by decreasing demand and providing exiting resources for SCP. Sex-worker advocates oppose this model as any kind of restriction on the sex industry is understood to be restrictive against SP themselves. In the review of the partial decriminalization model in Stockholm it is seen that while this model is promoted as

a focus in women's rights against violence, the implementation of laws has not had that conviction and migrant SCP especially suffer under this model.

Amsterdam and Stockholm

This paper examines the Netherland's legalization model of prostitution as enacted in 2000 through the New Prostitution Act, which decriminalized all aspects of sex work including selling, buying, pimping, and procuring. The New Prostitution Act originally started as a decriminalization model, but has since morphed into a legalization model as the government has made additional policy changes and become more involved in regulating the industry. While policy is changed into a legalization model, in practice The Netherland's model will be compared to the Nordic model of partial decriminalization of the sex industry as enacted in 1999 in Sweden through the Ban against the Purchase of Sexual Services, which decriminalizes the selling of sex and criminalizes the purchase, procurement, and selling or benefitting from other's who sell sex. The case study focuses on the cities of Amsterdam and Stockholm, due to their comparable size and due to the varying of policy approaches within different regions in the Netherlands.

These models were chosen as they were the first countries to implement these policy models and continue to be the most progressive legislation put forth to date, in contrast to criminalization of the industry or full decriminalization. They were also chosen due to being enacted within a year of each other and of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. This comparison is timely as many countries are considering adapting these policies in response to the increased awareness and market for sex trafficking. In the past 20 years since these two policies were introduced, Germany, Austria, Switzerland, Greece, Turkey, Hungary, and New Zealand have followed the Netherland's decriminalization model in the past twenty years – while Norway, Iceland, Northern

Ireland, Canada, France, The Republic of Ireland, and Israel have adopted or adapted Sweden's Nordic Model of abolition. While the Republic of Ireland became the most recent country to adopt the Nordic model in 2017, as of April 2019 Canada has been revisiting its adherence to the Nordic Model and considering adopting a decriminalization model instead. In the United States various states and cities including Washington D.C., New York, and Oregon have recently presented legislation to decriminalize sex work (Buckwalter-Poza 2021). This issue will not go away anytime soon, and countries around the world are seeking to understand the effects of the laws and how to best integrate them into their own policies.

The feminist rights-based framework utilized in this thesis focuses on the experiences of marginalized and disadvantaged groups in these two models, such as WOC, migrants, and children. Because this framework is rights-based, each of these models were chosen to highlight the specific rights that each model attempts to protect. Both models advocate for the right to remain free of violence and the right to labor, but while Sweden emphasizes freedom from violence, the Netherlands emphasize labor rights. These models are commonly used as reference points in the dichotomy examined earlier between protecting trafficking victims and advocating for voluntary worker's rights. Sweden's partial decriminalization views all SCP as victims in some capacity, and the Netherland's view sex work as a legitimate profession. The CRT and feminist theory employed in this paper expose the failures in each model to protect rights based on their bias toward one end of the spectrum or the other.

Overview of Chapters

In Chapter 2 I will present several stories of trafficking victims and sex workers that I have worked with to help illustrate the nuanced experiences of individuals who enter the sex industry. While I worked with these women and children in the US under a criminalization model, I chose

experiences that could have happened and faced the same challenges in either a partial decriminalization or legalized model as well. All names have been changed for privacy protection.

In Chapter 3 I will detail the national and regional policy changes applicable to the city of Amsterdam, the implementation of the policies, and the impact on SCP with an emphasis on vulnerable populations. In Amsterdam's legalization model, rates of death and abuse of participants, known trafficking rates of women and minors, and arrests or penalization of undocumented participants in the sex industry will be considered. Both the number of cases and their outcomes will help determine how effective the policies have been and if they increase protection and freedom for sex workers.

In Chapter 4 I will review the partial decriminalization model in Stockholm. Sweden enacted the Ban Against the Purchase of Sexual Services in 1999, becoming the first nation to enact a partial decriminalization of the sex industry. This study will look at the make-up of the initial policy and evolution of laws, implementation, and impact on SCP with an emphasis on vulnerable populations. Rates of death and abuse of participants, cases of arrests or penalizations of johns and pimps, known trafficking rates of women and minors, and deportation rates of undocumented participants in the sex industry will be considered.

Limitations of the Study

This project has been conducted with the understanding that the most important voices to understanding rights in the sex industry are women with experience in the sex industry under both models. Originally, this project was designed to include interviews with women who have been in the industry before and after the policy changes in both countries to give a grounded experience of how rights are experienced in practice. Because this paper was written during the 2020 and continuing COVID-19 pandemic, it is not feasible to expand the project to that extent at

this time due to travel restrictions and the shut down of much of the legal sex industry in Amsterdam.

As a child welfare, family preservation, and mental and behavioral health worker, I saw the immediate effects of children being unable to go to school and trapped in home with their abusers while DCS cut back on home visits. I saw families fall with immediacy into poverty and destitution, parents fired from jobs or unable to go to their jobs due to having kids at home from school shutdowns. And after a few short months of shutdown, I witnessed many child welfare and mental health services downsize or close their doors permanently, including my own program, due to not receiving enough funding from insurance companies to provide services modified to have less in-person contact. While my co-workers and I of course were disadvantaged from losing our jobs, we were much more afraid and disheartened for the children and families we had been providing services to. 2020 also saw the spotlight turn to the devastation of police brutality and systematic oppression of POC in the US and around the world, and led to more collective trauma for marginalized groups already suffering under COVID-19.

As of yet there have not been any full reports on the devastation that the pandemic has brought to SCP. In Amsterdam, while the window brothels were closed for a few months before re-opening in June 2020, many SCP continued to work out of their own homes or through the internet. Those that were licensed as sex workers were entitled to unemployment, however, as will be shown later on, many SCP decline registering for various reasons and were not able to access those benefits. Those that did continue to have contact with johns were of course at high risk of infection due to the nature of close physical contact and exchanging bodily fluids. The framework utilized in this paper will be ideal for understanding the ramifications of the pandemic on SCP and especially marginalized communities. Because of the high rates of unemployment

during the pandemic and due to much of the sex industry being built and dependent on impoverished SCP, this post-pandemic perspective will be an insightful addition to this work.

This project does continue with the same purpose of centering SCP voices, especially marginalized voices such as migrant SCP and minors, by utilizing literature created by those with direct experience and past interviews found in the literature. Additionally, analyzing the post-policy effects through related crime statistics in both models, policy amendments, and restorative measures implemented with help determine how rights are engaged in practice.

This project is re-designed to be easily added to and continued in future research projects that will include interviews of participants in the sex industry in order to come to a better understanding of the issues presented in the policies from the point of view that most matters – women with experience in the sex industry. Expanding the project at a later date gives the opportunity to analyze how the pandemic impacted participants in the sex industry and how each policy was either helpful or harmful. Crisis situations like a global pandemic expose the effectiveness and shortcomings of policies and reveal where economic and justice failures are exacerbated. This ongoing project would seek to find voices from different spectrums of experience in the industry to gauge how policies affect the overall experience. This would include prostitutes engaged in window prostitution in Amsterdam, private and street prostitution, and other forms. This would also include interviewing local and trafficked SCP in both Stockholm and Amsterdam, as well as women who have attempted to exit the industry with help of government programs. The interviews will focus on sex worker's quality of life from their own perspective, what risks they assume or are imposed on them as part of their occupation, their thoughts on why they entered the sex industry, what they believe will reduce or eliminate abuse, and whether policy changes have affected their daily lives in positive or negative ways. Additionally, adding similar comparison projects with criminalization of the industry (such as the US) and full

decriminalization (such as New Zealand) will give a more comprehensive view of the issues at hand.

Studies on illegal activities such as trafficking will always have limits as assessments can only be made on known reports of activities. While some can be surmised based on numbers of arrests or people removed from trafficking situations, these numbers often fluctuate year to year based on funding from police or specific government program initiatives. Government reports can be unreliable as governments have a vested interest in appearing to be successful at stopping trafficking – even those with high arrest rates may not be focused on helping victims as much as they are on boosting arrest and conviction numbers. This paper seeks to overcome this limitation as much as is possible by gathering data from multiple sources, including government reports, NGOs, and personal testimony.

CHAPTER 2

STORIED PRELUDES TO THE CASE STUDIES

In this section I will share three stories of women and girls I have worked with in various capacities and experiences in the sex industry. While these three experiences happened in the US under a criminalization model, they all could easily be experienced under the legalization or partial decriminalization cases studied below. The names in these stories have been changed to protect privacy, and are shared to give a real-life basis for how different situations occur. These stories give insight into how the legalization or partial decriminalization models would respond to similar situations.

Savannah

Savannah came to the group home at age 17. She was rescued in a child sex trafficking sting operation along with 3 other underage girls. They had been living in their pimp/boyfriend's apartment where he advertised videos and pictures of them on Backpage and sold access to them in his apartment. Savannah proudly told us that she was the "bottom girl" for her boyfriend – she was in charge of the other girls and helped manage their Backpages and appointments with johns. She showed us pictures of herself and her boyfriend – a 38-year old man who had been imprisoned in the sting and was facing 5 years in prison for child sex trafficking and child molestation. He had branded her with a tattoo on her collar bone that said "Baby," and she told anyone who would listen that this meant she was always going to belong to him. While the other girls were in school, Savannah would assist me with daily tasks, since her pimp had organized to have her graduate high school early online so she would have less monitoring by social services. Her mother was out of state, and her father was glad to have someone else taking care of her when she told him that she was going to live with her boyfriend. Savannah loudly declared that if

she got “soprano’d” (she meant subpoenaed) to court she would lie for “her man” so that he could get out of prison and they could continue living “the life.” Savannah resented being called a victim and being called a child, and stated that what she had been doing was her choice and what was best for her.

In front of the other girls, Savannah would boast about how much money she made for her man and would give them her contact information so that when they were “on the outs” of the group home she could get them in contact with her boyfriend – grooming them into the sex industry with promises of the easy money she made. When she was alone with staff, she stuck to her story of being in love with her boyfriend and working to get him out of prison, but her confidence in this narrative slowed as she worked through her therapy and living skills classes. She slowly stopped bringing him up, took the pictures of him off of her walls, and when her court date came she testified that her pimp had forced and coerced her and the other girls to have sex with him and with the johns that he procured. We heard the records of the court from her attorney, while she remained quiet about her experience in the court room after seeing her pimp again. She declined opening up in therapy, but listened attentively to the group sessions on self-esteem and living skills.

She got a local internship and thrived in keeping up with her work hours, and was given leadership opportunities in the home. She used her work money to buy several long-haired wigs to cover her hair that had been shaved off by her pimp just before coming to the group home. She never told the full story about why he had shaved her, except that she was deeply embarrassed and would work hard to regain his favor when they were reunited. A local organization provided her with a mentor who had left “the life” and worked in rehabilitation. When her father came to pick her up just before her 18th birthday (since she could no longer stay at the group home after 18), he barked at her and the staff that she would be out of his house and on the streets as soon

as she turned 18. A month after her departure, she returned to pick up some of her left items from the group home and was visibly changed from the girl we knew her to be. She no longer wore her wigs and had a quieter disposition. She told me that she had continued to see her mentor after exiting the group home. A few months after leaving, she made a post on Facebook asking for donations to an anti-trafficking organization. She wrote that she now recognized that what she had experienced was trafficking and she was in therapy for PTSD from her experience. A couple of staff kept in contact with her while she battled heroin addiction while coping from acknowledging her trauma. She continues to be an advocate today for anti-trafficking organizations.

Heather

Heather was too young to be on our unit at the group home of 16-17 year old's, but had caused too much conflict on other units to stay with the 14-15 year old's. She taught many of the girls on her old unit how to cut and helped them find and hide broken glass or other objects to cut with. Heather was incredibly strong-willed, smart, and manipulative. She was moved to our unit permanently after long deliberation in management – everyone was aware of what she was capable of and no one wanted the chaos she brought. Heather wreaked havoc on our unit, inciting rebellions, sneaking in contraband, manipulating and threatening the other girls on the unit, constantly finding new items to cut or choke herself with, and was hospitalized for suicidal intent every month. She had been sexually abused by her father and his friends, and from the age of 6-14 sold to multiple men a day by her mother, who used the money to fund her drug addiction. Heather had two younger siblings who she fiercely defended, and had reported that they did not receive the same kind of abuse because she would hide them when johns came and

offer herself instead. Heather was placed in the group home at age 14 after her mother was arrested with meth charges.

What I remember most about Heather is her passion, sincerity, and honesty. Heather kept a mugshot of her mother above her bed – the only picture she could find of her on the internet – and in her darkest moments cried and called for her mother. After being in our program for two years, Heather had been on her best behavior and was beyond excited because her mother was being released from prison and she could not wait to be reunited. Not a week after being released, Heather's mom was rearrested for drug use after an overdose. Heather's devastation and anger was all-encompassing. She would not stop finding ways to challenge staff, break furniture and windows, and even with 24/hr one-to-one staff ratio found a way to cut her arms and belly so deeply that she needed internal stitches when she was hospitalized.

Morgan

Morgan was a black single mother who had her 8 year old daughter removed by DCS when she started talking about sexually explicit subjects to her peers at school that led the teachers to believe she was having sexual experiences at her home. While supervising visitation for her daughter and holding weekly life skills sessions, Morgan told me that her daughter must have been talking about sex at school because her daughter had walked in on her webcamming with a john and she had used that experience to explain masturbation to her. Morgan told me about her own experiences as a child of sexual abuse by her father and step-father, and her removal from her family by DCS when she was 12. She was adopted by a white family, to whom Morgan stated she was the "literal black sheep of the family." Morgan was disconnected from her heritage and black community, and as an adult struggled to find her identity.

Morgan told me about her experience of being pimped by her boyfriend for several years in strip clubs and in their apartment before he left her when she became pregnant. With the support of her family, she was able to go to nursing school and earn her degree. She worked for several years as a nurse but found that the hours did not allow her to take care of her child and she did not feel that she could trust her adopted family to care for her daughter as they racially discriminated against her. She quit her nursing job and began stripping during the day while her daughter was in school, but needed more income. Morgan started camming while her daughter slept to make ends meet.

While her daughter was in DCS custody after the incident at school, Morgan adamantly argued that working in the sex industry was the only viable option for her to provide for her daughter financially and be present for her in the home, and felt that because she had seen the worst side of the industry, she was able to navigate around the pitfalls of pimps, drugs, and violent customers. In our sessions we discussed how to best keep her daughter safe from the same dangers. Morgan saw the widespread drug use, customer violence, and the dangers of accepting a pimp, and to keep her daughter safe she decided she would only strip and webcam so that there would be no danger of her daughter coming into direct contact with johns, pimps, or the drug scene. Morgan worried about the danger of any of her customers finding her address and took precautions to cover any revealing details on her webcam while finding new routes to walk home from her strip club job. We discussed how webcamming was the safest option for Morgan, but that she could not be entirely safe from doxing, having her videos recorded or stolen, and having websites advertise her videos on other sites (making it more likely that others who may know Morgan in person could find them). All of these dangers could have physical, social, financial, and occupational consequences for Morgan.

Morgan keenly understood that because her daughter did not have the same life experiences as herself, she would not be able to navigate the sex industry the way that Morgan could. Her daughter was a wide-eyed romantic who swore she would marry the teenybop sensation Shawn Mendes. Morgan wanted to be open with her daughter about her occupation but wanted to protect her from an industry that she knew would exploit and destroy her vulnerability. Morgan wanted to support her daughter in whatever profession she chose, even if that included stripping or other parts of the sex industry, but knew that being told what to watch out for was not the same as having the experience to know what was dangerous. While Morgan was adamant that her involvement in the sex industry was the only way for her to be able to care for her daughter and keep a roof over their heads, she readily admitted that she would not have begun her journey into the sex industry if she didn't have the previous experiences of her childhood abuse and introduction by pimp. She had been through multiple instances of abuse within the sex industry and had been glad to get away from the control of her pimp. Her re-entrance came through the need for flexible hours and enough income to care for her daughter. Morgan chose to find fulfillment and community in the sex industry as a way of overcoming her circumstances, but was only able to reach a place of security in the sex industry after having been run through the gauntlet of childhood abuse, pimp control, and a range of abuses within the industry before feeling she had the tools necessary to navigate re-entry to the industry when need required it. She feared her daughter falling into the sex industry without the experience and understanding necessary to navigate safely.

CHAPTER 3

AMSTERDAM AND LEGALIZATION

Many have upheld Amsterdam as the ideal “rights-based” model due to its commitment to labor rights and decreasing stigma for sex workers. As I will show in this chapter, a more critical centering of rights through the framework developed in the introduction reveals many inadequacies and gaps in SCP’s rights under Amsterdam’s current laws and practices. Specifically, my framework shows gaps in the following areas of rights: rights for those who experience abuse in the industry, trafficking victims, migrant SCP, and minors.

A Brief Overview of Amsterdam’s Model

This section will discuss the principles and goals of Amsterdam’s legalization model. The policy rightly intends to decrease abuse and stigma against SCP and grant a legal pathway for success and better quality of life. However, the ideals behind this legalization model turn a blind eye to the plight of marginalized groups and neglects a holistic understanding of the lived experiences of women, and does not take into consideration the nuances of poverty, trauma, addiction, and variance of consent that SCP experience.

The New Prostitution Act enacted in 2000 lifted the ban on brothels, legalizing the sale, purchase, profiting, and procuring of sexual services, while keeping trafficking/forced prostitution illegal. The sex industry was already passively accepted in Dutch society, but the law brought with it a state approval and the protection of the law. The goals of Amsterdam’s legalization model are to decrease harm in the sex industry by removing forced prostitution and trafficking victims from the sex industry, and to protect the right to participate in the sex industry for those consenting to participate, those who purchase sex, and those who benefit from other’s selling of sex. By bringing the industry “above ground” where it could be monitored and regulated, the act aimed to

protect minors and trafficking victims from abuse and protect the social position of prostitutes (Staatsblad 1999).

The crux of this argument, and the main tenet of the act, is in the ability to make the distinction between voluntary and forced prostitution. However, as we've seen, this binary does not reflect the reality of the lived experience of SCP, and attempting to force SCP into one of these two categories ends up furthering abuse, either by ignoring the plight of victims who have been labeled voluntary sex workers or by placing a victimhood stigma on voluntary sex workers. Amsterdam's legalization model accepts the sex industry as an inevitable facet of society, and thus finds efforts to end the industry are futile and unnecessary – utilizing harm-reduction methods to solve problems in the industry. Legalization models also presume that SCP enter the industry by free choice, and that choice must be protected through state regulation and benefits. Rather than money being a source of coercion, some pro-sex work scholars contend that women charging fees for what men otherwise would demand for free is a channel to reclaim their power (Jennes 1990), although considering the amount of SCP kept in poverty due to debts owed to their brothel owners, booth rental, and pimps, it's controversial to say that the sex industry is financially beneficial.

Additionally, legalization is meant to normalize the sex industry into society, which ideally would remove or decrease stigma, and in turn would decreasing violence from punters, police, and other members of society. Legalization is meant to give SCP the ability to only participate in acts that they choose, participate with sex purchasers that they choose, and set their own prices – all the necessary components to ensure free consent. This policy is neoliberal and relies on harm-reduction approaches to curb abuse. However, as will be seen further in the section on the impact of the policy, it becomes apparent that those who benefit most from normalizing the sex industry are punters, and stigma for SCP does not appear to decrease with legalization.

Additionally, moving prostitution into more closely controlled areas such as indoor venues does not decrease violence, and can even be a contributor to more violence as johns have more concealment and SCP have fewer places to go for help (Raphael and Shapiro 2004).

Why a New Rights-Centered Framework is Needed

In this model the root of the harm in the sex industry is understood to be social inequalities between SCP and the rest of society, where SCP are “othered” from the class of socially acceptable women, which results in SCP being persecuted for their choice to participate in the sex industry while johns do not face the same dangers. This further results in violence and abuse being perpetrated in the industry due to lack of regulation and social stigmas that makes the industry unsafe. When the industry is illegal, there is no way for SCP to report abuses or get help without being prosecuted, thus the root of the abuse within the industry is due to its illegal nature. If the industry is instead legalized, SCP can be respected as fellow citizens and demand respect and healthy working conditions. As will be seen in the study on implementation, this ideal is much more difficult to realize and has not resulted in less stigma or violence.

Utilizing CRT and feminist theory to build an understanding of rights from the perspective of the most marginalized and oppressed members of society allows for a ground-up view of gaps in the legalization system. While all SCP are disadvantaged in a criminalized model, by legalizing the industry the advantages are not automatically granted to disadvantaged groups, but rather give more protection to privileged groups first. The most privileged groups involved in the sex industry are johns, pimps, and brothel owners. These are the groups that benefit financially or physically/sexually from the sex industry with very little effort. Under legalization, these already privileged and protected groups gain more privileges and are least disadvantaged by stigma. SCP in the industry with the most privilege, such as those who have the freedom to find other work if they are not enjoying the sex industry, who have the financial freedom to turn down

customers they do not want and can afford to pay fees for security, and who have the legal advantages of citizenship also gain some more privileges under legalization. Marginalized and oppressed groups, however, continue to be restricted from what advantages can be had in a legalized system, and instead incur more danger and abuse.

The following sections will examine how the policy itself shapes rights as an instrument of power, by looking at whose voices were centered in it's making, who's voices are still influential today, what considerations were taken for marginalized groups, and what shifts have occurred from the original policy. Next, implementation will examine how power was used and in what way to make the policy a reality, and what if this had any direct benefit to or neglect of rights. Finally, the framework will bring light to determining how the policy change has impacted rights in the lived experienced of SCP, particularly marginalized and disadvantaged groups such as children, migrants, and trafficking victims. In all three of these areas, those with the most privileged voices are the easiest to hear due to their proximity to power and social connections. However, through the feminist rights-based framework employed in this thesis, I will examine rights from the perspective of marginalized groups first and foremost to reveal gaps in rights through the legalization model.

Policy

To employ the feminist rights-based framework in this portion of the thesis, I use CRT and feminist theory to understand policy as a tool of power used by the powerful. Examining the surrounding influences and individual actors that brought forth the policy changes helps us to understand whose rights are most likely to be protected under this new law and whose are more likely to be neglected or dismembered. Throughout this section we see a mixed influence of lobbyist groups, activists, SCP, pimps, and brothel owners that contributed to the push for policy change.

Actors Participating in Changes

It is important that we understand who is pushing for policy changes and whose voices are being centered. CRT and feminist theory both show the importance of centering the voices of those most affected by change, with emphasis on the most marginalized groups. SCP are marginalized (othered) from society, with groups like migrant workers and children being even further marginalized from SCP who have a more privileged position in the sex industry (such as having other work options, having education access, and having connections to political or lobbying groups). Throughout this section I will show that the movement toward legalization has been a strange mixture of SCP, lobbyists, pimps, and allies.

In the 1970's through the 1980's, the sexual revolution and the AIDS epidemic were making major changes in how society viewed sexuality and how governments attempted to police sexuality. COYOTE was founded by Margo St. James in 1973 in the US and were the first to coin the phrase "sex work" in their effort to normalize and promote the legalization of prostitution. St. James was part of the "beatnik" scene, and after receiving an erroneous prostitution charge went to law school to pursue challenge her conviction. With a conviction on her record, St. James was unable to get any jobs and did end up being forced to work part time in the sex industry for a few years before she began to receive more funding for her activist efforts and was able to discontinue accepting johns. COYOTE swiftly grew to more than 30,000 members in their first decade of organizations, although radical feminists during this time were quick to point out that COYOTE called itself a union of "hookers and whores" while only about 3% of its members were prostituted women – the rest consisted of liberal party members, known pimps and porn producers, and beatniks (Ekman 2014). The leadership originating from non-SCP is problematic and leads to bias in the rights being advocated. Re-branding the sex industry from a privileged

perspective and including voices of pimps and pornographers skews the understanding of the harm in the industry.

With the growing AIDS epidemic, organizations like COYOTE around the world began receiving serious funding for their work to promote harm reduction tactics such as sex education and condom usage. In 1985 the Dutch government, the de Graaf foundation (a pro-prostitution lobbyist organization), and COYOTE hosted the First World Whore's Congress in Amsterdam. About half of the participants were SCP, and the other half consisted of academics, liberal party members, government officials, police, pimps, and other allies of the sex industry. The First World Whore's Congress made a sharp distinction between forced and voluntary prostitution, and strongly recommended full decriminalization of voluntary prostitution. They committed to pressuring legislation changes in three areas: lifting of the ban on brothels to improve the position of sex workers, residence permits for women who were trafficked so that they could testify against their traffickers, and higher penalties for traffickers (Outshoorn 2012). However, the records of the congress show that SCP who attended had varying opinions on legalization, but when SCP's votes were added to the other attendees (many of whom had a financial interest in legalization, such as pimps and lobbyists), the result of the Congress was to back legalization (Ekman 2014). Again, this reduction of voices of SCP in favor of pimps and lobbyists skews the understanding of what is needed to prevent abuse in the industry. Following this Congress, the de Graaf Foundation, with backing from government organization to de-stigmatize the sex industry and fight the AIDS epidemic, founded the de Rode Draad (The Red Thread) along with former SCP as a trade union for SCP to lobby for legalization policy.

Current International Actors

This era was the beginnings of The Global Network of Sex Work Projects (NSWP), a membership organization that now has 64 sex workers rights organization members around the world. The Red Thread was a founding member until 2012 when it declared bankruptcy, but the Dutch groups TEMPEP, PROUD, and ICRSE continue to be a part of the NSWP. The NSWP “exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male, and transgender sex workers.” Their core values are acceptance of sex work as work, opposition to all forms of criminalization and other legal oppression of sex work (including sex workers, clients, third parties*, families, partners and friends), and supporting self-organization and self-determination of sex workers (NSWP, 2021). NSWP allows any members who adhere to their core values – including coalitions made up of non-SCP, but excluding coalitions of SCP who do not agree with decriminalization of the industry. This creates a barrier for free speech of SCP and an internationally recognized echo chamber of parties that agree with decriminalization. NSWP continues to be a major advocate for decriminalization and harm reduction in the industry in a biased way that quiets victims in the sex industry while uplifting voluntary SCP (see section on Minors under Impact).

In 2002, Dutch SCP founded the Sex-work Initiative Group Netherlands (SIGN), who organized the International Committee on the Rights of Sex Workers in Europe (ICRSE) and held The European Conference on Sex Work, Human Rights, Labour and Migration in 2005. This conference was made up of 120 sex workers and 80 various allies from 30 countries, who co-authored the Declaration of the Rights of Sex Workers in Europe. This Declaration used previous EU Declarations Human Rights to found rights for SCP that are specifically threatened by all kinds of prostitution policy listed. The ICRSE continues to work today as a labor-rights group that supports the development of national and international law, policy, and practice with three core

values: recognize sex work as work, support sex worker self-determination and self-organization, and oppose all forms of criminalization and other legal oppression of sex work (ICRSE 2005). While the Declaration gave special consideration to migrant workers, demanding freedom from oppressive laws that deport migrant workers and protection from trafficking, the Declaration makes no mention of minors being exploited in the industry, except to say that all SCP should have freedom from coercion to remain in the sex industry.

Evolution of Laws

The amendments made to the original New Prostitution Act are important to consider to more fully understand rights for SCP as they stand today. Through these changes we see a shift in understanding rights for SCP as something to be protected rather than something to enable through loosening restrictions. Policy changes in Amsterdam turned the New Prostitution Act from a decriminalization model into a legalization model. These changes were made to combat the abuse and trafficking that continued to run rampant and even increased after decriminalization. The policy changed to become more active in attempting to protect rights through zoning laws, closer inspection of brothels, and offering licensing for SCP in order to have more awareness of abuses in the industry. However, even these attempts toward protecting rights often have the negative effect of restricting and controlling SCP.

Before the New Prostitution Act of 2000, Amsterdam and Rotterdam had established “tipplezones” in an attempt to control prostitution in their cities. Tipplezones were drive-thru alleys with partitioned walls, so that SCP could be picked up from the street, and purchasers could stand or park in the partitioned zones to perform their purchase. This was a zoning attempt to curb “streetwalking” prostitution. In 2003 and 2004, Amsterdam and Rotterdam closed these zones, as they had become hotbeds of illegal activities such as trafficking, illegal drug use, and

violent crime. (Outshoorn 2012, Bindel 2012). These areas had become more unmanageable with the legalization act, and the cities moved toward indoor prostitution options such as the famed window prostitution districts.

In 2006 the city council found that many of the legal brothels were being run by organized crime and refused to renew the licenses of some 37 businesses and individuals for their connections to illegal activities. This began a trend of slowly limiting red-light zones in an attempt to curb crime that gravitate to these areas. Lodewijk Asscher was the deputy major of Amsterdam at this time, and during his time in office from 2006-2010 oversaw the closing of a third of Amsterdam's 450 window brothels. This turn in policy came from Asscher's understanding of who was pushing for less restrictions: "The pro-sex-work lobby does not represent the women but the pimps. They are financed by the [prostitution] sector and so paint a picture that is too good to be true." (Bindel 2012). In six years the Netherlands had transitioned from decriminalization to enacting limitations and strengthening zoning laws in a legalization model.

In 2009 the Bill for Regulation of Prostitution and Combatting Abuses in the Sex Industry was introduced, and revised again in 2014. This bill was put forth after the Dutch Scientific Research and Documentation Centre from the Ministry of Justice (WODC) published an evaluation in 2007 finding rampant abuses in the industry (see post-policy working conditions below). The purpose of this bill was to reduce the number of abuses in the industry by installing a nation-wide licensing protocol for sex businesses, raising the age of licensing from 18 to 21, and putting mandates on local governments to ensure SCP are licensed. The revised version of this bill, however, removed the national licensing protocol to allow for more freedom in local governments, and while the age of legal prostitution did rise to 21, any SCP found working underage would not be punished, but those that purchased her would be fined. The age was raised because 21-year old's are considered to be more mature and able to make a more

informed choice about entering the sex industry. This brings up an interesting ambiguity to Amsterdam's stance on distinguishing between consensual and coerced engagement in the sex industry and protecting women's rights to participate in the sex industry. It's shown clearly that even in a legal system, coercion plays an integral role in recruiting participants to the industry, and that all involved in the industry, including johns, brothel owners, and policing systems have a responsibility to ensure they are not exploiting vulnerable populations.

In 2017 a bill was presented to the Senate called the Bill Penalizing Abuse of Prostitutes Who Are Victims of Human Trafficking, criminalizing anyone who purchases sex from someone whom they know or should have reason to know to be forced or coerced into the sex industry. The bill passed the Senate and is awaiting implementation in the First Chamber of the States General (First Chamber 2021). This is a huge win for advocates of minors and trafficking victims, as in the past there have been no repercussions for men purchasing trafficking victims, "even if the girl seemed very young or was crying" (CoMensha 2021).

The first decade after enacting the New Prostitution Act showed that the inequalities and abuses in the sex industry were not simply due to the previously criminalized nature of the industry, but revealed deeper issues of female exploitation and power imbalances that result in women becoming unwilling victims of violence even in a "safe" environment. The policy changes resulting from the evidence of continued abuses in the industry follow a harm reduction model, hoping to control the amount of damage being done. However, the fundamental beliefs underlying Amsterdam's understanding of the sex industry, that the sex industry is an inevitable facet of society and that a SCP's right to choose to engage in the sex industry can be determined apart from coercion and must be protected, remain the same throughout the legislative changes.

These legal changes show a definite shift from the original intention of freedom for SCP in full decriminalization to a tightening of restrictions in the sex industry in order to fight against the abuses in the industry. Post, Brouwer, and Vols conclude the following:

The developments in Dutch prostitution legislation show that the Dutch legislator considers the regulation of prostitution as an important area of governmental responsibility. The legislator tries to find a balance between the freedom of prostitution and protection against harm caused by this phenomenon. As a result, prostitution is visible in Dutch society, but the possibilities concerning prostitution are most certainly not unlimited. The authorities actively intervene in the prostitution sector in order to control it, as well as to protect prostitutes and the general public from harm. Paradoxically, the idea of this liberal dream goes hand-in-hand with a growing repression of personal freedom in the Dutch prostitution sector (Vols 2019).

Examining policy creation and enacting gives important insight into how rights are understood and prescribed in law. CRT critiques law precisely because it can be a determiner of rights and if the state has a clear view of rights and the determination to uphold them. The evolution of laws in Amsterdam show a misunderstanding and backtracking on the original intent of preserving rights through decriminalization and attempted course-corrections to protect rights through more strict laws. As the authors above point out, the responsibility of balancing freedom and protection in law results in one of the two getting sidelined in favor of the other in policy making. The next section will consider the implementation of the policies, and how much implementation or lack thereof affects the effectiveness of policies.

Implementation

Implementation is as important as the policy itself to determine if the policy uphold rights. Because the original Act gave most control over regulating the sex industry to cities and provinces, this section will look at how the ideas and application of the policy were employed throughout all the Netherlands, but with particular attention on the city of Amsterdam.

A Feminist Critique of “Sex Work is Work” Rhetoric

To understand how legalizing the sex industry in Amsterdam has been implemented, it is important to see the difficulty in turning a previously illegal behavior into a government-approved job – especially one with such high risks of exploitation. A member of PROUD, an organization in Amsterdam that lobbies for sex worker rights comments, "Of course sex work is exploitation. But people - women - are exploited in restaurants, as maids in hotels, as secretaries, as farm workers. I have more control over my work than they do and I make more money" (Picard 2018). The justification, then, is that since all forms of labor are in some way exploitative, SCP should have the freedom to participate and the protection of the law to demand their own terms and make their work environment as safe as possible (Jennes 1990). This would ideally decrease abuse within the industry and provide healthcare and benefits for sex workers.

There is a connection between Western capitalistic ideas of labor and legalization of the sex industry (Miles 2003). As the PROUD member above observed, all labor is exploitative, and thus the sex industry is included in that. If capitalistic practices of labor, exploitation, and supply/demand are the dominant economic factor, then legalizing the sex industry makes perfect sense, but so do the results of underpaid laborers, commodification/dehumanization of SCP, procurement of the cheapest labor possible, and high incentives to cover abuses of laborers in favor of the corporation. The viability of sex work as an occupation that may provide a more livable income for people who can't make ends meet with "regular" jobs is not a reflection on the virtues of the sex industry, but on the poor working conditions and unlivable wages of the job market. Marxist feminists as well as radical feminists regard the commodification of female bodies as inherently destructive due to the combination of the exploitative nature of labor and misogynistic social treatment of women (McKinnon, 1983; Dworkin, 1987). Because the sex

industry is overwhelmingly gendered, while all labor is exploitative, sexual labor is exploitative particularly of women.

Advertisements for openings in sexual entertainment are overwhelmingly marketed toward young women, and the disparity between the number of female SCP and male SCP points to questions of male allies of the pro-sex work movement, who seem to be fighting not for the right for them to sell themselves, but to be able to purchase others. Legal commodification of sex also runs into errors and contradictions when women experiencing unemployment are offered job positions at brothels, and may have their unemployment rights revoked if they decline employment. This has been an on-going issue in Germany, where after full decriminalization of the sex industry in 2002 and laws taking away rights for jobless people who refuse work offers, a brothel sued an employment center for refusing to post open positions at their establishment. The court ruled in favor of the employment center, but continues to run into issues as some employment centers have offered employment at brothels, and been sued by those being offered the positions due to the potential damage they could incur if they turn the jobs down (Speigel 2013). No records of this issue have been reported coming from Amsterdam, which points to an understanding that there is a difference between the sex industry and “regular” work.

While it has also been argued that in other labor industries that people consent to can be just as exploitative, either in injuries incurred or in control of other’s bodies (such as coal mines, factories, professional sports, acting, or other forms of physical labor), there are several holes in this argument. First, many of those industries are known to be harmful to humans and labor rights have long fought to abolish industries that destroy worker’s lungs, hands, brain function, physical wellbeing, etc., or at least put protections in place. Claiming that the sex industry is just as harmful as other harmful industries is not a positive argument but instead backs up radical feminist claims in the inherent destructive nature of including sex in the labor industry. Second,

while muscles are used in any profession, “renting an organ for 10 minutes” (Farley, 2010) is a different category of labor, more closely related to similar industries like surrogacy (another gendered labor).

Third, this is separate from other industries in that it is not only that specific organs are negatively affected (like lungs in a coal mine, or concussions in professional football, or food/exercise control for actors – all highly contested issues of exploitation), it’s the fact that the specific body parts are sold to individual people to use (whole bodies are sold, but it is specifically female organs and female secondary sex characteristics that are being advertised, most directly used, and that sell). Where entertainment exploitation leads to consumption by many and physically dangerous jobs lead to injury by toxins or machinery, in the sex industry the dangers are coming directly from another person who has purchased your organ/body to use and potentially abuse. Fourth, no other industries pay more for lack of experience. If sex work was a job like any other, older people with experience would be the top sellers, instead of what we see in reality where men pay top price for the youngest and most inexperienced girls and women - those who they believe to be “cleaner” and who they know they can take the furthest advantage of.

Fifth, no other industry has work hazards as dangerous and pervasive as the sex industry. Any other job that requires bodily contact includes protection gear and hygienic measures to help ensure low transference of diseases. In the sex industry, bodily contact is unavoidable, and bodily fluids exchange is nearly unavoidable even with barrier methods and hygiene measures – besides the common and ongoing issues surrounding getting punters to use condoms at all. Post-Traumatic Stress Disorder is an extreme mental disorder caused by experiencing a traumatic event or events that causes physical changes to the brain to keep the victim of trauma trapped in a state of hyper-arousal and fear even after the danger has passed.

PTSD leads to numerous mental and physical health conditions, and shortens the lifespan by years if untreated. Of a group of 854 SCP interviewed around the world in 9 different countries, 68% met the DSM III-R diagnostics for PTSD (Farley 2007). The closest occupation that can revile the high rates of PTSD found in SCP is soldiers who have experienced direct combat – and even this falls staggeringly short, with estimates of 11%-30% of US veterans from the past three wars having PTSD at some point in their lives (US Department of Veteran Affairs). STDs and PTSD are just two of a plethora of physical, psychological, and emotional dangers that SCP are at a higher risk for than people in other industries.

The sex industry is decidedly different from other jobs, and requires more attention and nuance than other industries to protect the rights of those involved. With higher risks should come greater protection and greater rights for those being put at risk for other's entertainment. Below I will show how treating the sex industry as any other job harms SCP and is controlling rather than protective.

Effectiveness of Regulations

Through the feminist rights-based framework used in this thesis, it is clear that not only is the make-up of the policy important for understanding rights, but the implementation of the policy are just as significant in determining if rights are upheld under the legalization model. The regulations that are supposed to provide protection and freedom to those in the sex industry are not always helpful to SCP, and indeed can be harmful. The New Prostitution Act was implemented by mandating screening of SCP and brothel owners before licensing, creating age restrictions (the age of legal sexual consent in the Netherlands is 16. Punters must be 16 to purchase sex, and only 18 and up are allowed to become licensed independent sex workers.

Amsterdam recently raised the age of licensing to 21), and restricting licensing to only EU members as an anti-trafficking measure. Additionally, window brothels are equipped with panic buttons that sound an alarm in case of emergency during sessions. Licensed sex workers pay income tax and have access to health care and exiting services such as resume writing help at public Prostitution and Health Centers. These safety measures are at times inadequate, and at other times directly contribute to increased stigma and danger.

Screening

Screening has proven to be an unreliable and ineffective means of restricting trafficking and abuse. Trafficking, exploitation of minors, and violence in the industry is more easily hidden, because police are reliant on information from brothel owners, who have a vested interest in procuring the cheapest labor and covering up abuses. Dutch authorities report that “the screening of brothel owners and the monitoring of the compliance of licensing conditions do not create levels of transparency that enable sex trafficking to be exposed” (Huisman 2014). In the mandatory interviews that SCP face before being licensed as a sex worker, SCP will withhold information about pimps and boyfriends from the authorities to avoid the exiting strategy “help” that authorities are supposed to provide to anyone who appears to be a trafficking victim (Verhoeven 2017). Non-EU citizens are also barred from legally working in the industry, and yet can still be found in all types of venues, from legal booths, bars, and illegal brothels and escort agencies (Outshoorn 2012).

Licensing and Zoning

Many SCP prefer not to get their licenses as this opens them up to discrimination and limits their field, both during and after their time in the sex industry. Registering would require

SCP to take on the extra expense of paying taxes, and allows the stigma against SCP to follow them even after their time in the sex industry. Because the male demand is for young bodies, most SCP do not make enough money once they are in their 30s to remain full-time, and with a written history of their time in the sex industry, the stigma against SCP follows them and makes it difficult to find jobs. They are left without education or job experience that they can use elsewhere. Researcher Sietske Altink comments, “Knowing the number won’t stop human trafficking. Registering an already stigmatized group is perverse, and it could make it harder for them to find different work or a new place to live” (Lageman 2019).

In a research study of 299 SCP by the sex-worker’s rights group PROUD, it was found that SCP who registered and conducted business only in legal venues had half as many instances of violence against them in comparison to SCP who worked unlicensed from their own homes, or did a mixture of the two (Kloek and Dijkstra 2017). While violence was not completely eradicated, as will be seen in the following section, the visibility and centrality of the window brothels did allow for some amount of protection from punter violence for SCP. However, a report made by the National Police Service in 2008 found that 50%-90% of women working in the legal venues in the Netherland’s three major cities were working against their will, and that “criminal gangs, working as pimps and bodyguards, had been using extreme violence against women in the legal, licensed sector of the industry for as long as ten years despite the presence of brothel inspectors” (National Police Service 2008).

As explained in the policy changes section, many of Amsterdam’s window brothels in the red light district have been shut down in an attempt to curb illegal activity and to re-brand Amsterdam as clean and crime-free. The reduction in work spaces pushes the prices of window booth rental higher (around 90 to 150 euros for an eight hour shift), and without renting for several days in a row, SCP could lose their window to the competition (van Iterson 2010). These

raised prices pushes more SCP into poverty, and more SCP out of the legal sector and into more lucrative venues (Daalder 2002).

SCP value their autonomy and have been pushing for legislation that allows SCP to book punters on the internet and to work in their own homes. This way they have more control over their surroundings and can implement their own punter screening measures and safety tools. The government is slow to make this change, because this would undermine the entire system of keeping the sex industry visible and controlled to reduce harm. Thus many SCP do not register at all but conduct their work illegally in a legal system.

Impact

By legalizing the industry, the state acknowledges the autonomy and agency of SCP to participate in the industry by choice, (Jennes 1990) and proclaims that it offers protection and regulation to attempt to curb the dangers that SCP face. This autonomy is a main tenant of liberal feminist approaches to the sex industry, but much of the evidence of the results of the policy change show to provide more freedom and autonomy to pimps and traffickers than to the SCP the laws were supposedly made for. The famed Martine and Louise Fokken, identical twins who worked in the sex industry in Amsterdam for over 50 years, noted a dramatic shift when legalization was put in place. In an interview in 2012 Martine states, “Legalisation has never worked. It is better for the pimps and the foreigners. The vultures came in 2000 — organised criminals. They thought, ‘Aha, it’s legalised, now we’re OK” (Bindel 2012).

The CRT and feminist theory employed in this paper show clear connections between policy and the impact it has on individual’s lives. Policy gives a legal definition of rights that can be upheld or withheld through the legal system, but policy also reveals and helps shape a societal understanding of rights. These combined legal and societal perceptions of rights have dramatic

impact on the daily lives of those involved in the sex industry. By examining the impact of policy on marginalized and oppressed groups as a measure of rights, gaps of understanding are revealed in the legalization model which leave little protection for the underprivileged. In this section I will examine how the policy changes have affected working conditions such as autonomy of SCP, poverty levels, and stigma decrease. This section also examines the darkest side of the industry, such as abuse and murder rates, and protection of vulnerable groups such as migrant SCP, trafficking victims, and minors.

Post-Policy Working Conditions

The Dutch Scientific Research and Documentation Centre from the Ministry of Justice (WODC) completed two evaluations to determine the effectiveness of the policy change, one in 2002 and again in 2006. The 2002 evaluation was published with promising results, although they admitted that it was probably much too early to see any true changes (Daalder 2002). The report found that larger provinces had put more regulations in place and licensed SCP, smaller provinces had not caught up to speed yet and had more reports of trafficking, coercion, and unlicensed SCP. The report also found that there had been an increase in unlicensed and unregulated places of work, such as saunas, massage parlors, cars, and bars. Corroborating with the WODC report, the National Reporter on Human Trafficking that came out that year also found that prostitution had taken a shift from licensed brothels to services being offered in hotels and homes (Mensenhandel 2002). This trend away from legal business to more lucrative avenues would continue in ever-increasing ways, as we will see with the rise of the internet.

Despite the reports that things were progressing moderately smoothly, individual accounts of the changes that took place told a different story. In another report published the same year as the first evaluation, it was found that instead of hiring SCP as employees, most bar or brothel owners set up booth fees for independent workers. This allows the bar and brothel

owners to evade paying income tax or providing health insurance and disability or unemployment, while still controlling what SCP wear, charge, hours worked, and what percentage they take home (Vanwesenbeeck et al. 2002). Non-Dutch SCP are particularly effected by this, as legally they can only be granted permits as independent workers, and lose any benefits of being employed. The Red Thread completed an extensive investigation in 2006 throughout several different avenues in the sex industry, such as window brothels, escort services, and massage parlors, and found similar results. The investigators Altink, S., & Bokelman, S. (2006) found that “proper working conditions were nearly non-existent,” especially for those without permanent addresses and migrant workers, who were found to be commonplace (Outshoorn 2012). This calls into question how much had really changed and points to SCP shouldering more responsibility rather than exercising more control over their work.

Financial Issues

Legal methods of business are expensive, and many SCP report having difficulty making enough money to make it worth it. Wendel Schaeffer, a social worker at the state-run Prostitution and Health Center explains this difficulty,

You get 50 euros for a fuck and a blow job; you have to pay your rent and your tax, sometimes also your pimp. That leaves you with no money. Because the women are independent workers they can choose for themselves how much they work. If they need money they often make working days of sixteen hours. This is very exhausting for the body and the mind (van Iterson 2010).

Some women turn to drugs to keep up their momentum and work longer shifts, which has devastating consequences on their health and makes them more vulnerable to violence – and

becomes another contributing expense (Kloek and Dijkstra 2017). Others try working without pimps, but without a pimp's advocacy, protection, and connections, finding enough punters in a night can be even more difficult. In an interview with a Slovakian SCP named Ingrid, she reveals, "I was told I needed someone to protect me when I started working here five years ago. But all that means is that I pay a pimp to stop me being beaten up, and that is on top of my rent. I can barely make a living (Bindel 2012). In the 2017 PROUD survey, 58% of SCP reported experiencing financial violence, either in being cheated out of their fees by punters, having their earnings taken by pimps, or being unable to access financial necessities such as opening bank accounts. (Kloek and Dijkstra 2017). Voluntary participation in the sex industry becomes complicated when poverty, drug addiction, lack of education, and lack of access to exiting resources are present (COSWOS 2000; Baker, 2018). Again, SCP turn to illegal means of conducting their work, where they can avoid paying some of the fees, but face a greater likelihood of violence. SCP who work in unlicensed spaces are three times more likely to experience rape, assault, forced unwanted sexual services, and being cheated out of their earnings. This calls into question whether moving SCP into their homes or other more discreet venues could be properly monitored enough to protect them from violence, when even in monitored venues SCP routinely encounter violence.

Abuse and Murder

In 2005 an Amsterdam City Councilor, Karina Shaapman, published a policy report about the New Prostitution Act. Shaapman had been a SCP previous to the 1999 New Prostitution Act, and her policy report emphatically stated that violence and pimping were still widespread in the industry, and similar to previous report findings, stated that the only thing the policy change had managed to do was drive more business underground, into escorting and trafficking (Asante and

Shaapman 2005). This was a profound result, since the biggest argument in legalizing the sex industry was that it would prevent crime by allowing safe avenues.

According to research conducted by PROUD in 2017, 97% of SCP interviewed had experienced some type of violence and stigma during their time in the sex industry. 93% had experienced emotional violence such as harassment, stalking, humiliation, or being asked intrusive personal questions, and 60% of SCP who were interviewed said they experienced physical violence. 78% said they experience sexual violence – within the past year alone, 30% had experienced rape and sexual assault by a customer, and 38% had experienced being forced into sexual services they did not want to engage in.

In 2004 a Thai woman was found dead from having her throat slit while working in the Red Light District. In 2009, a 19-year old woman named Berti was found stabbed to death in her legal, licensed window booth. Between 1983-2013 it was reported that 152 women in the sex industry had been murdered, although it is unclear how many of these women were killed after the policy change (DutchNews 2014). While murders are known to happen (although much less likely to be discovered or reported) in illegal parts of the sex industry, these murders came as a shock as they happened in the middle of the Red Light District, during regular business hours and with tourists and locals walking about and enjoying their evening. This gives pause to the idea that women are safer in legal and regulated areas, as even with police present, street cameras, security guards, pimps, and panic buttons installed, these women tragically lost their lives. The heavy amounts of violence noted earlier also call into question the effectiveness of panic buttons in a situation where a person is so closely physically engaged with a person who is likely larger and able to place SCP in controlled positions.

Punters

Interviewed SCP stated that 90% of all violence they experienced in the industry was caused by punters, and 41% experiencing physical violence from a punter in the past 12 months alone (Kloek and Dijkstra 2017). Intimate partners and other SCP had been experienced by 17% of SCP and 11% of SCP, respectively. It is important to understand the source of this violence and why the rates of violence are so high, even in a legal profession.

As we have seen from the brief review of laws surrounding rape and consent, it would be impossible to discuss these terms without considering the point of threat of these abuses – men who purchase sex. When considering a punter’s understanding of consent, it becomes clear that even when men acknowledge the lack of consent in the sex industry, it does not change their minds about exploiting that lack of consent for their own benefit. Multiple studies of men who purchase sex show that they would not change their actions if they knew that the SCP they were purchasing were underage, being forced, or being abused (Invisible Men Project 2014,). To the contrary, many tricks report understanding that the women they purchase are in abusive and unstable situations, but purchase sexual services anyway, regardless of whether or not they know the women to be exploited. Some men believe that in some way they are helping SCP by giving them money to help the situation, while many others believe that it is their right regardless of any presence of consent. Their money purchases the right to bypass the need for consent.

There have been multiple interviews of tricks who openly view SCP as objects to be used by them in any way they please (Fairly 2010), including abusive practices or practices that SCP have explicitly stated they are unwilling to do. 42% of interviewed SCP were forced into unwanted sexual services, and 39% had been raped or assaulted by punters at least once in the last twelve months (Kloek and Dijkstra 2017). About half of respondents stated they always used condoms, while the half responded they did not always use condoms with punters. Those who reported

always using condoms were half as likely to experience rape, assault, stalking, and forced sexual services. The authors concluded this was due in large part to SCP who had the ability to have their wishes followed with condom usage were also able to more successfully negotiate the acts chosen and command more respect from punters. The authors acknowledged that asserting authority was often most difficult for younger SCP with less experience. The authors also acknowledged that sometimes when the SCP disagreed with the punter's demands, he could become more violent. This often leads to SCP accepting work without condom usage in an attempt to incur less violence.

These figures show clear examples of punters disregarding the consent of the SCP they purchase. There is ample evidence that the absence of consent is an attraction, not a deterrent, for men who buy sex. This is seen in how even in a legal system, without any repercussions for purchasing sex, there is a large network of illegal operations. Punters are more likely to know that girls and women in illegal settings are not there under their own volition, but these operations still thrive. Additionally, in online forums (MERB, PunterNet) by punters who review the SCP they purchase, there are reoccurring elements of satisfaction and pride in "breaking" SCP or pushing past the boundaries they put up, by injuring SCP, committing specific acts that the SCP has explicitly stated they were not willing to do, refusing or removing condoms, and a plethora of other ways that punters degrade and dehumanize the SCP they purchase instead of showing an understanding of rights and working to uphold them.

This active destruction of women's rights is apparent in the online sex industry, where top search terms include "rape," "gang bang," "daddy-daughter," "painal," "crying," "revenge porn," and other torture terms – terms specifically relating to force and lack of consent. Where there may be also scenes of consensual acts or ethical porn available to be viewed, these terms consistently remain at the top of searched videos. "Upskirt" photos, and hidden bathroom

cameras are other examples of material that is created explicitly due to the demand for content that is not consensual or voluntary (Gong and Sullivan 2018, May and Lee 2018). There is plenty of explicitly sexual material available on the internet, the attraction to these categories that might seem more “tame” is that women are not aware/not consenting to having this material shown. Other feminists and scholars have researched how the escalation of violent internet porn affects women’s rights (Bridges 2010), including seeing surges of searches on porn sites for names of victims during open cases of rape and murder in hopes the perpetrators filmed and shared their criminal acts (Abraham 2019), SCP reporting high levels of violence from punters who want them to replicate what they’ve seen in porn, children being groomed for sexual exploitation by forcing them to watch porn (Farley 2010, Ost 2009), and the recent civil court cases in several countries of victims of child porn and trafficking victims suing online porn platforms PornHub and MindGeek for streaming the videos of their abuse (Kristoff 2020).

This dialogue is imperative to understanding rights and the factors that contribute to their dismantling or protection. There is a proclivity to focus on the women in the sex industry apart from the men who purchase them. Even in descriptions of abuse, the women are the focus of the conversation in terms of how many women are murdered or how many women are involved in the sex industry, without considering how many men are abusing and murdering, or how many men purchase sex. Including the perspective of punters, as they are the main sources of abuse and danger, is imperative to understanding SCP rights and how they are upheld or dismantled.

Minors

As already stated, children cannot consent to participation in the sex industry, and their participation is always either forced or coerced, as this is abusive and detrimental to their health and wellbeing. The UN Convention on the Rights of Children (1990) defines children as anyone

under 18 and declares that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" (UN CRC 1990). UN Protocol (2000) defines all children as victims of exploitation regardless of consent. This paper focuses on the rights of children as they are an especially vulnerable and often separated from discussions on the sex industry and rights. Children are a particularly hidden group, and most exploitation of minors happens either by family members or another adult that they trust. UNAIDS explains the particular vulnerability that children face:

The development of the brain in adolescence influences the individual's ability to balance immediate and longer-term rewards and goals, and to accurately gauge risks and consequences. This can make adolescents more vulnerable to peer pressure, or to manipulation, exploitation or abuse by older people, and therefore potentially to HIV. This is especially true for those who lack stable and supportive family environments (UNAIDS 2015).

As children grow into teenagers, they are picked up by pimps looking for children with weak social ties and insecurity issues. This can look like "loverboy" pimps who offer the vulnerable child support and attention, acting as a boyfriend, before exploiting them for profit through manipulation, abuse, and threats. In more recent years, it has become apparent that pimps can groom children easily through the Internet before asking for explicit pictures/videos or asking to meet up.

The Coordination Centre against Human Trafficking (CoMensha 2021) records all reports of trafficking in the Netherlands and provides support and connections for the victims they come across. Their latest report from 2019 recorded 110 reports of child sex trafficking victims, a number that fluctuates throughout the years (196 in 2017, 63 in 2018), but is certainly not comprehensive of all victims being exploited in the Netherlands. CoMensha estimates that they are only able to record about 20% of actual victim numbers (CoMensha 2021).

The Internet is a cesspool of abusers waiting for child victims. In March 2021 the Dutch Public Prosecution Service began putting false ads on the Internet for minors. The sting operation ended in the arrest of a 54-year old man who was prepared to meet the fictional child for sex, but the report revealed there were multiple men who were completely undaunted by the child's age and offered money on the spot to meet up (CoMensha 2021). Other researchers have created social media profiles for fictitious girls of all ages, the youngest being 11, not offering sexual services but talking about innocuous parts of a child's life – friends, school, hairstyles, etc. The outpour of messages from men detailing what sexual services they want the child to do to them, sending pictures of penises and videos of themselves masturbating, and requesting nude photos and videos from the children are disturbing and alarming (Ryan and Powell 2019).

CoMensha recently wrote a report stating that the internet allows children to be exploited faster, more easily, and for images of their abuse to be shared repeatedly. The report found that in 25 trafficking cases, the recruitment period from first contact to physical exploitation lasted for less than a month, and for half of the cases it was only a week before traffickers were able to connect the victims to their punters.

“The report shows that online contact especially plays an important role when victim and perpetrator are strangers to each other. In almost 80% of those cases, especially with child victims, the first contact is then made online, for example via social media, dating apps or sex sites. It also appears that 82% of the victims in the survey approach customers digitally, mainly via regular websites with sex personals. Most of the victims have no role in the creation of these advertisements. CKM spokesperson Shamir Ceuleers: 'This shows that online platforms not only play an important role in the grooming process, but also in the offering to customers' (CoMensha 2021).

The Netherlands has a National Referral Site for Human Trafficking that provides resources such as information on detection, protection, criminal prosecution, and compensation. However, in the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, the reporters admit that “despite the increased number of reports, very little is known about the group

of child victims of sexual exploitation” (Human Trafficking Victims Monitoring Report 2020).

CoMensha acknowledges that children in state custody or living in group homes are particularly vulnerable, but there have not been any noticeable measures taken against this phenomenon.

Once entered into the sex industry, the risks for children are greater than for adults. It is well-founded that children who are exploited sexually are at extremely high risk of contracting HIV, and make up 35% of new cases of HIV worldwide (WHO 2015). PROUD interviews showed that the younger the SCP is, the more likely they are to experience violence of all kinds (Kloek and Dijkstra 2017). This is not surprising, as there is an overwhelming power differential between children and the men abusing them, and several layers of systemic constraints that leave children vulnerable. SCP who enter the industry as children die younger, have more health complications, are more likely to become drug or alcohol addicts, and are less likely to finish educational pursuits.

The particular vulnerabilities that children face means that their rights need further attention and protection than other people groups. While many countries have policy in line with the UN’s Protocol, the implementation is often stunted and children’s rights left woefully unprotected.

Controversy with Labor-rights

Shockingly, labor-rights groups have taken the position of decriminalizing sex work even for minors, in alignment with their harm reduction model. This shows a distinct difference in understood rights between labor-rights groups and the feminist rights-based framework employed in this paper. Understanding children as a particularly marginalized group due to their mental, relational, and physical vulnerabilities is imperative to understanding their rights and needed protections. The language of labor-rights groups misplaces responsibility of the abuse of minors

onto the children being abused rather than the adults abusing children, and thereby protects the “rights” of adults to perpetrate on children rather than protecting the rights of children to be free from abuse.

The NSWP, in a policy brief on Young Sex Workers, makes a minute distinction between “young sex workers,” referring to sex workers aged 18 years and over, and “persons under 18 who sell sex” for adolescents under 18 “to emphasise behaviour and to avoid labels that some young people may find stigmatising or inaccurate” (NSWP 2016). This has become common language within organizational giants such as the WHO and UNAIDS as well (UNAIDS 2015). It is important to see what this language does to the understanding of rights of children and the situation a child is in when they are being sexually exploited. Reframing the abuse of children into phrases like “young sex workers” or “persons under 18 who sell sex” may remove stigma for the children being abused, but it does not remove the abuse. This phrasing gives the impression that children are selling sex themselves, and not being sold by others, which is much more often the case. Additionally, by removing stigma from the labels on children, it also removes the stigma for the adults abusing the children, both those who sell them and those who purchase and use their bodies.

The NSWP policy brief (2016) focuses on harm reduction of HIV transmission and impregnation of children who are abused in the sex industry. NSWP finds the root of this issue to be in policy that restricts children from using health services meant for sex workers, blaming the legal restrictions for putting them in this dangerous situation. This rhetoric removes the true perpetrator from the equation – the adults who are physically, sexually, psychologically, and emotionally abusing children. Not once are the perpetrators mentioned, except to say that “It is important not to label men as predators because social norms permit the behaviour. Similarly, it is

important not to make men the enemy and assume that girls and boys are only victims, as some might play a willing or even conducive role in perpetuating the practices.”

This rhetoric is dangerous on several levels. First, defining rights in light of social norms is profoundly anti-feminist. CRT and feminist theory alike speak to the need to challenge social norms that are oppressive and abusive, especially in instances of power and marginalization. Any marginalized person knows from experience that many social norms condone predatory behavior, and need to be combatted not accepted. Second, stating that “some” children play a willing or conducive role is alarming victim-blaming language. It subtly shifts victimhood from the child being abused to the adult men who abuse them, posing them as have been just following along with what children have wanted of them and being unfairly labeled predatory. The policy brief goes so far as to say that “even young people in exploitative situations report complex feelings toward the person exploiting them, who may also be a source of love and support” in defensive of defending children’s “consent” to be involved in the sex industry. While understanding the mindset that exploitative children have is important, legally, psychologically, and developmentally, children are not able to give clear, informed consent to engage in sexual acts. The fact that children have conflicting emotions towards those exploiting them points not to the free consent of children to engage in sexual acts for money, but to the insidious nature of those using emotional manipulation and trauma bonding to keep children in a position to continue being exploited. Consider the story of Heather shared in the prelude section. While she understood she was being exploited by her own mother, she did not stop loving her mother or trying to get back to her. She also knew she was protecting her younger siblings from abuse by “allowing” herself to be abused instead. While you could possibly argue that at some point Heather was making a choice to be sold, that choice was not made freely by any means, if only because it was made out of protection for her mother and siblings. Heather is just one example of how children may enter the

sex industry, while other children with unstable home lives may be swept up by love and support offered to them by pimps – like Savannah or Morgan when she was young. The brief does not ask why children are making that “choice,” even as it admits to poverty and lack of education as precursors to children being exploited in the sex industry. This rhetoric redirects the burden of ensuring consent and safety on children who are being exploited, instead of on those exploiting them.

The NSWP promotes decriminalization of “young people” in the sex industry, including children, in order to “improve access to information and health services that enable them to protect themselves and obtain the highest attainable standard of health.” The brief states that harm reduction practices such as making condoms available to children in the sex industry and teaching them how to negotiate with men to reduce unprotected sex or participation in acts they do not want. Because of the power differences in these situations, it is highly unlikely that these harm reduction attempts would work and will instead lead to increased violence against children if they try to negotiate (Kloek and Dijkstra 2017). Here again, we see a redirection away from the gross sexual, physical, psychological, and emotional abuse of children to instead focus on fixing the results of that abuse – disease and pregnancy in minors. This is a natural progression within labor-rights ideology and echoes the movement’s history of ignoring the needs of victims in favor of focusing on the needs of the privileged. Addressing the need to get sexually exploited young people the health services they need does not necessitate ignoring their abuse – both need to be treated with seriousness and urgency.

Trafficking and Migrant Workers

Trafficking victims are a particularly oppressed group of people in their forced vulnerability and the immediate danger they live in. Because their behavior is being controlled,

either by force, coercion, or fraud, their voices are marginalized and restricted by their traffickers, fear of authorities, or psychological and emotional bondage to those exploiting them. Migrants face multi-faceted marginalization and are vulnerable to oppression by law enforcement and traffickers, have limited means of support, face racial discrimination, lack of knowledge of host country's language, and for refugees may suffer from statelessness or persecution in their home countries. These intersectional points of marginalization allow for a plethora of ways that rights for migrant workers and trafficking victims are dismantled. These experiences are important in assessing if rights are centered in policy and how to re-center rights for migrants and trafficking victims where they are lacking.

While anti-trafficking policy had been updated in the Netherlands as recently as 1993, with the introduction of the New Prostitution Act anti-trafficking took a turn into anti-migrant policy. The new Act only granted working permits to women from the EU: non-EU member SCP were assumed to be trafficking victims and would be deported if found. This addition was less about protecting vulnerable trafficking victims and more about not allowing a foreign SCP to "subvert immigration policies" (Outshoorn 2012). Granting permits to migrant SCP was seen as encouraging traffickers to find ways to bring foreign women in.

As stated above, the main tenant of the Netherland's legalization policy is its endeavor to make a sharp distinction between voluntary and forced participation in the sex industry (Outshoorn 2012). The state could then prosecute on behalf of trafficking victims while protecting the rights of voluntary sex workers. However, the ability to make that distinction and accomplish both acts of protection has become the most highly debated aspect of the policy. The most damning argument against decriminalization/legalization is that trafficking and forced prostitution increases in countries that have implemented these measures (Cho 2012, Marinova 2012). Researchers found that while legalization policy hoped that trafficking would decrease due to the

economic substitution effect of preference for legal SCP over illegal SCP, the economic expansion of the sex industry instead led to a higher demand of supply to fill the demand (Cho 2012). While numbers on illegal activities are never complete, and have a multitude of contributing factors such as ongoing expanding definitions of trafficking or budget usage (utshoorn 2016), some reports show a shift from 284 to 909 reported cases of all trafficking between 2001 and 2009 (Mensenhandel 2010). Not only is traffickgin increasing in the Netherlands, but because of the difficulty in distinguishing victims from voluntary workers, sex trafficking is also more difficult to fight through the criminal justice system in a legalization model (Huisman 2014). Instead of finding the distinction between voluntary and forced participation, legalization has clouded the ability of police and judges to determine if a crime has been committed.

In 2007 the WODC published their second evaluation of the policy changes and found that “abuses, such as involuntary prostitution and sexual exploitation, were still extensively part of the prostitution sector” (Daalder 2007, Post 2019). This evaluation was published on the heels of a police report of a Turkish trafficking ring in Amsterdam and beyond that was discovered to have trafficked at least 78 women over a decade. Three men were prosecuted for these crimes in 2008, and the case became infamously known as the SNEEP case (EU 2013). The SNEEP case was eye-opening for the Netherlands and all those watching what a legalization model could accomplish, as it showed that sex trafficking was still a relevant and enduring activity even with the monitoring that legalization provided.

Legalization and full decriminalization has been regarded by some scholars as the safest way to protect migrant SCP from abuses by those transporting them, or by government officials upon arrival (Hall-Blanco, 2017). However, because Dutch law makes non-EU migrant SCP illegal, cross-border migration is just as dangerous as other policies and comes with the same

issues of threats from smugglers, control by pimps, and abuse of police and criminal justice systems. This policy was put in place as an anti-trafficking measure, but shows itself to clearly be more focused on anti-migration than in protection for trafficking victims. Amsterdam deports migrant SCP and does not allow for residency visas while waiting to testify against their traffickers. This is part of the model's attempt to make a distinction between trafficking victims and SCP in the industry by choice. Ironically, the policy's attempts to protect SCP's agency and autonomy is not considered for migrant workers – they are immediately assumed to be in the industry against their will.

Scholars point out that anti-trafficking efforts have actually served to restrict migrant SCP's rights by restricting their movement across borders, or forcing SCP to participate in "rehabilitation centers" that too often perpetrate horrid conditions such as "verbal, physical, and sexual assault by guards; contaminated food and water; detainment of children...extortion and theft by guards; and death while in custody due to lack of medical care or by suicide" (Bernstein 2018).

Despite Amsterdam's law against registering non-EU member SCP, migrant SCP's presence is prevalent. This points to another failure to make a distinction between voluntary and forced SCP, as legalization models take advantage of oppressed POC to offer them as cheaper, exoticized forms of sexual labor. If legalization truly operated within bounds of free consent, you would expect to see an equal amount of SCP from all ethnicities and classes. Instead, it is estimated that less than 40% of known SCP in Amsterdam are of Dutch descent, and two thirds of trafficking victims are non-Dutch (TAMPEP, 2009). This is due to the cheaper/more exploitable labor of migrants, as well as sexualized exoticization of "othered" ethnicities (Mora 2014). These numbers confirm Black feminist theory of the "othering" that leads to racist exploitation and eroticization of Black women and POC in the sex industry through the intersection of racism,

classism, and sexism, and reveal ways that Black women are specifically oppressed (hooks 1989, hooks 1984, Collins 1994). PROUD 2017 research study showed that women from Central and South America were more than twice as likely to experience physical violence, financial abuse, and privacy violations. This points clearly to the inability to go the police for fear of deportation. SCP not knowing Dutch was another factor found to increase the likelihood of violence by punter by more than 50%.

Migrant SCP have neither the protection of the law as victims, nor do they have recognized autonomy as legal, voluntary sex workers. They are caught on both ends of the distinction and doubly disadvantaged into a marginalized space where neither side addresses their needs.

Summary

The decriminalization/legalization model was established by the labor-rights and liberal feminist movements, and continues to be central to the policy work in place, the implementation, and the impact on SCP. The main goals of the policy, to decrease abuse in the industry and change the stigma around the sex industry by legalizing the industry and allowing economic progression for the women in the industry have largely failed. There is still ample abuse in legal and illegal venues in the sex industry, the stigma around sex work still affects those within and those who try to leave, and many SCP report struggling to find economic freedom through sex work. The inability to decrease abuse is largely due to the inability of the criminal justice system to distinguish between trafficking victim and voluntary sex worker when in actuality these categories are much more fluid. The abuse, stigma, and economic disparity for SCP appear to stem not from the criminalization of the industry as had previously been supposed, but because of ingrained issues around gender and male violence.

Through the intersectional framework of CRT and feminist theory, it becomes clear that this policy does not properly center the rights of the most vulnerable in the sex industry, mainly children, migrant workers, and WOC. Black Feminists and CRT point out that economic-focused changes do not adequately address the needs of WOC. In a study on wage-gap minimizing initiatives, researchers found that “previous progressive, woman-focused economic agendas have focused too narrowly on wage and workplace issues, and do not sufficiently address the obstacles facing women of color” (Flynn 2017). The authors go on to state that “for women of color, social justice will not be an inevitable byproduct of economic progress given the racism and sexism baked into our social and economic systems.” Giving all women equal opportunity to work in the sex industry does not decrease the issues that WOC face in the industry, but rather increase the disparity between privileged women and marginalized women. Policy makers must look to address safety and health issues along with economic disadvantages.

CHAPTER 4

STOCKHOLM AND PARTIAL DECRIMINALIZATION

This chapter focuses on the partial decriminalization model in Sweden. While both models state their aim is to increase protection for trafficking victims and decrease abuse in the industry, this model stands in contrast to the legalization model in Amsterdam in several important ways. First the Nordic partial decriminalization model builds its policy from the understanding that the sex industry is inherently a form of male violence against women and contributes to gender inequality, whereas Amsterdam understands the sex industry to be an empowering occupational option. Second, Sweden's model places responsibility and consequences for abuse directly on the johns, while Amsterdam's policy decreases stigma for johns and gives leniency to their actions, while at the same time using harm-reduction models that places responsibility on SCP to reduce violence through enforcing boundaries, condom usage, etc.

This comparison is important because it shows the impact of policy that focuses on labor rights vs. policy that focuses on rights for victims. While both policies have elements of each goal, their main focus leans toward one side of the spectrum over the other, and this comes out in the policy organization, implementation, and impact on SCP. This helps us understand the gaps in rights on both ends of the spectrum, and come to more holistic understanding of the lived experience of SCP that can be negatively affected by either side of the binary. Through the feminist rights-based framework in this paper, the comparison allows us to see where marginalized and oppressed populations have their rights most protected, and can use this as a measure of operationalized rights in each model.

This chapter will analyze the policy, implementation, and impact of the partial decriminalization model in Sweden. What becomes apparent in this chapter is that while Sweden wrote the partial decriminalization with a focus on women's rights, the implementation has

muddled the effectiveness of rights protection. Additionally, it becomes clear that while the policy claims to protect rights of SCP, there is much lacking in protection of the marginalized, especially for child victims, refugees, and migrant SCP.

A Brief Overview of Stockholm's Model

Sweden passed The Ban against the Purchase of Sexual Services in 1999 and were the first country to implement the Nordic Model/partial decriminalization. The ban was part of a Bill to Eliminate Violence Against Women and Children, which included measures such as clearer provision for women's rights to be free from violence in the home and in work spaces, expanding the definition of rape, implementing stricter punishment for female genital mutilation, including greater social services for women and children, and funding for education for male perpetrators of violence. The ban was passed along with these other revisions with an understanding that abuse in the sex industry was not going to be solved by anti-prostitution legislation, but by putting together a myriad of violence prevention and protection measures. Partial decriminalization policies decriminalizes those who sell sex while criminalizing making profit from other's sexual commodification (pimping, procuring, or brothel owning) and purchasing sex (johns).

In this model the root of harm in the sex industry is understood to be gendered social inequalities between men and women, which results in men's misogynistic viewing of women as "other" (hooks 1992) and beneath them, further resulting in demand for sexual gratification from women and girls and the violence they perpetrate to SCP. The Swedish Ministry Of Industry, Employment And Communications (2005) has stated as their official view that "prostitution and trafficking in human beings require a demand among men for women and children, mainly girls. If men did not regard it as their self-evident right to buy and sexually exploit women and children, prostitution and trafficking in human beings for sexual purposes would not exist." Along with

gendered inequality, poverty, lack of resources, and lack of education are also considered causes of entry into the industry. In this view the sex industry is inherently exploitative and SCP are victims, either by force or coercion.

Thus, this policy rejects the idea of a binary distinction between voluntary sex workers and trafficking victims, instead understanding there is always considered a correlation if not direct relation between sex workers and trafficking victims. While understanding that women are victims of oppression in an unjust society, the Nordic model allows for understanding of SCP as autonomous people who make their decisions. The model allows for this autonomy by decriminalizing SCP's part in the sex industry, and giving the power of the law on SCP's side to protect against abuse. The stigma attached to SCP is understood to be caused by negative societal understandings of women's worth and place in society. If women are seen as objects to be temporarily purchased, equality among the sexes will not be achieved, but if instead women are viewed as fellow members of society, men can be held accountable to treating them as equals.

To eliminate the dangers of the industry, partial decriminalization advocates for all SCP by decriminalizing their part in the exchange and providing safe houses, therapeutic services, and other forms of support for those who wish to exit the industry. Acknowledging the danger of the industry and the vulnerability of SCP, the Nordic Model puts the responsibility of the industry instead on the johns. By criminalizing the purchase of sex, a clear message is sent that male demand is wrong, and the problem is not the SCP but those who exploit the vulnerable position they are in (Steinman 2016).

The Swedish government states that "unlike in many other countries where efforts focus on harm reduction, the initiatives targeting prostitution in Sweden are mainly aimed at fighting prostitution by helping people out of prostitution or to stop purchasing sex" (Swedish Institute

2010). The Nordic Model is a neo-abolition model – the ultimate goal is to eradicate the sex industry because of the negative individual and societal impacts. The assumption is that if each SCP had the resources necessary, they would choose not to remain in the industry. If there are other ways to earn the amount of income along with the flexible schedule of sex work, most if not all SCP would choose that option instead. Women will be respected as equal human beings, and sex will be understood as an activity between consenting parties, not a good to be purchased from someone regardless of their consent.

Policy

This section considers the thought and action put into the creation of the policy, and determines if rights are centered by considering the actors pushing for these changes and whether marginalized voices were included in the decisions. This section also examines policy additions or changes and whether they positively or negatively impacted rights.

Actors Participating in Changes

Swedish feminists, most notably Yvonne Hirdman, wrote on the “gender system” (Hirdman 1990) that provides power and privilege to men and disadvantages women – the most glaring example of this being prostitution. Swedish feminist began taking a radical feminist stance against the sex industry, finding prostitution to be not just a means of violence, but a form of violence in and of itself (Jefferys 1997). This view understands that even when women are not forced by another person into the sex industry, social inequalities coerce that choice. Social inequalities include poverty, lack of job opportunity, lack of resources, lack of social support, experiencing gender-based violence, and unequal burden in caring for children. These issues specifically push

women more so than men into prostitution in much greater numbers. Prostitution is an extension, some argue the ultimate extension, of male violence and male power over women.

Radical feminists note that far from liberating SCP financially, the sex industry keeps SCP in a place of subjugation economically as well as socially. Andrea Dworkin writes,

Feminists know that if women are paid equal wages for equal work, women will gain sexual as well as economic independence. But feminists have refused to face the fact that in a woman-hating social system, women will never be paid equal wages. Men in all their institutions of power are sustained by the sex labor and sexual subordination of women. The sex labor of women must be maintained; and systematic low wages for sex-neutral work effectively force women to sell sex to survive. The economic system that pays women lower wages than it pays men actually punishes women for working outside marriage or prostitution, since women work hard for low wages and still must sell sex. The economic system that punishes women for working outside the bedroom by paying low wages contributes significantly to women's perception that the sexual serving of men is a necessary part of any woman's life: or how else could she live? Feminists appear to think that equal pay for equal work is a simple reform, whereas it no reform at all; it is revolution. Feminists have refused to face the fact that equal pay for equal work is impossible as long as men rule women (Dworkin 1987).

To combat this phenomenon, the 1999 Ban institutes a wide range of provisions, including measures for equality in social and home labor. While radical feminists took center stage, labor-rights advocates and liberal feminists state that in the policy meetings leading up to the institution of the ban, their arguments were not addressed, and that SCP that were pro-legalization were largely cut out of the discussion (Levy and Jakobsson 2014).

This division along liberal and radical feminists shows that Sweden's policy lean toward anti-trafficking measures rather than the labor-rights side of the spectrum. Although it can be argued that the decriminalization and social reforms are attempts at ensuring labor rights for SCP, liberal feminist feel that it is not enough to provide SCP with the option of choosing sex work, but that the sex industry needs to be destigmatized for full rights to be enacted. Because this policy still criminalizes punters and pimps, stigma does not decrease for the sex industry, although it does place the responsibility of the sex industry on punters and pimps as well as the government

to combat abuse and allow for free choice. CRT and feminist theory speak to the need to hold those in power accountable rather than those in oppressed groups.

In 2013, the European Parliament overwhelmingly voted in favor of the Nordic Model, following a thorough report by Mary Honeyball, which “Recognises that prostitution and sexual exploitation are highly gendered issues and violations of human dignity, contrary to human rights principles, among which gender equality, and therefore contrary to the principles of the Charter of Fundamental Rights of the European Union, including the goal and the principle of gender equality” (Honeyball 2014). In the US noted feminist Gloria Steinmen, in a protest against full decriminalization in New York, stated, “It is crucial to decriminalize prostituted women, men, and children, and it is equally crucial not to decriminalize the pimps and traffickers who exploit them” (Solis 2019).

Evolution of laws passed

In 2002 the Trafficking in Human Beings for Sexual Purposes law came into force which increased penalties for those selling, procuring, or purchased sexual services from trafficking victims, including greater penalties for punters who are in situations that they should be able to determine are against the person’s will. The 2010 investigation found that after this law was enacted “there has been a dramatic increase in the number of prosecutions for infringements of the ban on the purchase of sexual services that originate from procuring and human trafficking cases.” (Swedish Institute 2010) The Investigation also stated that number of prosecutions varied widely by year depending on the funding for those areas and the priorities of the police.

Sweden signed the Council of Europe Convention on Action against Trafficking in Human Beings in 2005, and were instrumental to the writing of articles in the Convention that focused on decreasing male demand for sexual services. In 2008 the Swedish government proposed an action plan against prostitution and human trafficking for sexual purposes. The action plan re-

emphasized the government's commitment to combat trafficking and prostitution. The action plan specified that the focus of eradicating these issues was on male demand for sexual services. Simply, if there was no demand for services, there would also be no force or coercion into the sex industry and no violence against women and children through the sex industry. This shift in perspective is important, as removing the cause of violence is more effective than defending against violence. The 10-year assessment of the ban on sexual purchased describes how liberal feminists and pro-legalization advocates use the binary logic, stating that it is possible to distinguish between voluntary sex worker and trafficking victim. "However," the report explains, "based on a gender equality and human rights perspective, and shifting focus away from what is being offered, i.e. those who are exploited in prostitution, to demand, i.e. traffickers, procurers and sex purchasers, the distinction between voluntary and nonvoluntary prostitution is not relevant" (Swedish Institute 2010). Because the distinction is so difficult to make and the binary is in reality a spectrum, focusing attention and energy on male demand is more effective than attempting to make that distinction.

In 2010 the definition of trafficking was expanded in order to comply with the UN's Palermo protocol, including "abuse of a position of vulnerability" to the conditions of violence, or threats or deception that force people into prostitution. In 2015, Sweden introduced an action plan for a feminist foreign policy. This policy highlighted combatting trafficking, strengthening rights of female refugees and migrants, reducing domestic violence, and solidifying reproductive rights. The Minister of Foreign Affairs stated, "equality between women and men is a fundamental aim of Swedish foreign policy" (Ministry of Foreign Affairs 2015) upon announcement of the policy, but as will be made apparent in the section on trafficking and migrant SCP in this chapter, rights for migrants have yet to be fully realized in Swedish policy. This is an example of political "cheap talk" (Smith-Cannoy 2012) that government institutions engage in to appear to be doing the most

to combat abuses and trafficking, while in reality neglecting the rights of those they say they are protecting.

In 2016 the Swedish government submitted the proposal "Power, Goals, and Authority - Feminist Policy for an Equal Future" to the Riksdag, detailing proposed measures to close the gender inequality gap. These measures include a ten-year, national strategy for preventing and combating men's violence against women through various means. In addition to combatting prostitution and trafficking, the proposal determines honor-based violence, inequality in government and educational pursuits, and inequality in unpaid labor such as homemaking as other areas of focus (Regeringskansliet 2016).

In 2018, Sweden adapted their rape laws to include negligent rape. The law states that if anyone has sexual intercourse without receiving confirmed, verbal consent from the other party, they can be convicted for negligent rape because they did not ensure consent from their partner (Hofverberg, 2019). This modification takes into account rape victims who experience a "freezing" response in the face of danger or who otherwise could not express their lack of consent or get out of the situation safely. This law is an important addition for victims and points to Sweden's goals of creating equality and justice for victims of sexual crimes.

The goals of the partial decriminalization model are to protect women and children from violence, to remove victims of forced prostitution and sex trafficking from the sex industry, and to decrease demand for sexual services from men. This section has shown that Sweden's policy has largely been focused on rights, with particular attention to oppressed and marginalized groups. By framing their partial decriminalization model as part of a feminist combatting of violence against women and children, there are some immediate positive consequences in shifting the perspective of society toward one of protection of rights. In critiquing Sweden's policies through a feminist rights-based framework, we will look at post-policy working conditions,

effectiveness of regulations to stop sex trafficking and forced prostitution, decreasing amount of SCP and decreasing demand from men, and treatment of vulnerable populations such as children and migrants to determine how successful the policy changes have been in accomplishing their goals.

Implementation

While Sweden's partial decriminalization centers rights in its policy, the implementation is lacking in effectively ensuring rights for all. The framework of this thesis emphasizes that implementation is just as important as the policy itself, because the law is useless without power actually executing the change. Because the policy was made in combination with a large variety of social services initiatives to combat poverty, joblessness, and systematic abuse and oppression of women, direct implementation is more difficult to address. Another study on the effectiveness on this combined social effort to combat trafficking and abuse of SCP would enhance understanding of the policy's success or failure at centering rights. Because there is not enough space to look at all of the combined efforts put in place, the main points of implementation focused on in this thesis are those most directly connected to the sex industry, criminalization of punters and offering exiting services for SCP who are interested.

Exiting Services

A survey of SCP taken in 2008 reveals that barriers to exiting are similar to those across prostitution policies. Participants cite financial reasons, drug use, and the "othering" of carrying a secret and having a separate lifestyle. One participant commented that leaving has been difficult for her because johns continue to contact her, refusing to accept that she has left the sex industry, telling her that "'prostitute' is something a person is, not something a person does" (Eriksson and Gavanas 2008). Accepting the extra money that comes with accepting johns can

be difficult to turn down, and another participant comments that “once you’re into it, it’s hard to get out; it’s like a drug I guess. This is really not something anybody really wants to do with their lives.”

Even for those who are afforded the privilege of citizenship, lack of funding for exit programs leaves a gapping hole in the state’s ability to follow through on providing safe housing and job access for those desiring to exit. There are only a few, such as Talita, which is a safe house that offers one-year rehabilitation programs which include safe housing, trauma therapy, psychoeducation, planning for the future and transition to independent living and integration into society.

Reports of exiting services available to SCP show have shown that while there is lack of government intervention to provide exiting services, a growing number of non-profits have filled the gap. While some have found the services demeaning or unhelpful, others report “positive experiences including everything from just being approached in the street by social workers, “who show that they care”, and whose presence in the milieu guarantees a sense of security, to more long term support including experiences of counselling, safe housing and qualified therapies for those who want to exit prostitution” (Dahlborg & Hulusjö, 2010; Grönvall & Holmström, 2016).

Criminalization of Punters

As mentioned above, authorities have not seen an increase in punters and few have been arrested - even fewer convicted. After the Ban was enacted, there were doubts that police would be forceful in applying the new law due to the police force being “male, homosocial, and conservative working environment—a police force that is being asked to enforce a law that seriously threatens traditional male value” (Ekburg 2004). In 2003 the National Criminal Police and Division for Gender Equality created educational trainings for police departments focusing on

education on why a woman may enter prostitution and the barriers that keep them from leaving. Reportedly, arrests of punters increased 300% after these educational programs were put in place in 2003 (Ekburg 2004).

While it was estimated that 200 men were arrested in Stockholm in 2003 for purchasing or attempting to purchase sex, only 140 were convicted between the years 1999-2003 (Ekburg 2004). There have been less than five hundred convictions from 1999-2008 (O'Mahoy and Savage 2008). This is in part due to police not prioritizing this crime and focusing instead on trafficking and procuring crimes, and not having the funding to pursue this work. In cases where punters have been arrested, 8 of 10 admit to the crime and 85% of all arrests result in "day fines" instead of jail (Swedish Institute 2010). This falls in line with the policy understanding that criminalization is not the main focus in combatting prostitution, but rather focusing on a wide range of social services to make the sex industry unnecessary.

It is unclear if the criminalization of purchasing sex has developed a higher respect and understanding for women from men who purchase sex. KAST reports that "clients who approach them do so because they do not feel morally comfortable with buying sexual services, that the purchase of sex does not provide the expected relief of anxiety, or because a partner has demanded that they stop buying sex" (Eriksson and Gavanas 2008). Swedish Social Services launched KAST units in major Swedish cities to provide interventions to buyers of sexual services to "motivate potential and active sex purchasers to change their behaviour" (Swedish Institute 2010). KAST groups (purchasers of sexual services) reports to The Swedish Institute that surveys of men who purchase sex taken before and after the ban reveal fewer men purchasing sex and some reporting that they stopped buying sex completely. Swedish men report that main reason that they have decreased their sex purchasing is linked mostly to fear of being exposed as a sex

buyer to family and friends, and secondarily to fear of legal retaliation, which concurs with past studies on potential deterrents for men who buy sex (Swedish Institute 2010, Kafa 2014).

There are talks in punter internet forums about the ethicality of purchasing sexual services, where it appears punters consider buying sexual services online or from non-Swedish SCP to be the most ethical choice, although they are careful to point out that they would not buy services from someone if they knew they were being trafficked (Eriksson and Gavanoas 2008). However, SCP report the same problematic elements that attract punters to certain SCP over others, such as “oral sex without a condom, youthful age/appearance, women who are new to the game, and “willingness to go a bit further”,” along with racialized “othering” of consuming exoticized WOC. KAST members identify that it is common among johns with ethnic preferences for othered bodies to think of their purchases as charity to disadvantaged SCP, finding a “post-colonial thrill to consume ethnicity” (Eriksson and Gavanoas 2008). All of these categories are power-driven and again point to lack of consent as a dominating factor of attraction. These understandings of the sex industry from men is widespread and deeply ingrained, and thus while we cannot say with certainty that the partial decriminalization model decreases these mindsets, the criminalization of seeking these services does provide a disapproval, a deterrent, and a punishment for acting on those damaging ideas.

Impact

Through the feminist rights-centered framework in this thesis, I will examine impact of the policy on SCP, with the most marginalized and oppressed populations being centered to gain an understanding of rights within the partial decriminalization system. This section will examine impact on minors, migrants, and trafficking victims, as well as rates of abuse and death, the number of SCP in Sweden and their working conditions.

Four surveys were taken of the public attitude in the first fourteen years after implementation, and in all three surveys public opinion remained high, at 70% positive acceptance of the new law (Swedish Institute 2010). These surveys regularly show that women have high acceptance of the ban, between 70%-85%, while male support is lower, from 50%-60% (Netscher 2014). As previously mentioned, support of the ban varies among SCP, but is mostly clearly seen to be disapproved by those currently in the industry and overwhelmingly approved by those who have left.

Those who remain in the industry report difficulty with relying on the Internet to find johns due to the saturated online market, although this is a common phenomenon worldwide. The average SCP makes \$140-\$175 (USD) per full-service john, which is significantly higher than reports from SCP in Amsterdam's legalization prices of about \$50 (Eriksson and Gavanoas 2008). SCP responding to the survey specified that those who work only with wealthy clients are privileged, older Swedish women, while migrant women (particularly from Eastern Europe) take many more clients and for lower prices. SCP report most use the sex industry as a side job, and that very few attempt to make their whole livelihood by it. Participants report that pimps typically only work with migrant SCP, while Swedish SCP do not accept pimps and do not have as much of a need for a middleman (Eriksson and Gavanoas 2008).

Number of Women in the Sex Industry

Because the Swedish model understands the sex industry as inherently oppressive and that with proper support most SCP would want to leave the industry, the impact of proper implementation of their rights-based model should show a decrease in the number of SCP. The Swedish Institute reports that immediately following the ban in 1999, street prostitution was halved. Comparing themselves with neighboring countries Norway and Denmark, the Swedish

Institute found that by 2008 these countries had three times as many women involved in street prostitution than Sweden (Swedish Institute 2010). The city of Stockholm saw a fall from 650 SCP in street prostitution in 1995 to 200-250 SCP in street prostitution in 2014 (Netcher 2014). The evaluators state that while there is a presence of migrant SCP and Internet prostitution services, they found these numbers to be minimal compared to the surrounding countries, and thus consider the reduction in street prostitution to be a true decrease, and not simply a moving from street prostitution to indoor or Internet prostitution. They accredit this decrease in number of women in the sex industry to a decrease in demand. They determine their numbers to be as correct as possible, determining that since some amount of advertisement is necessary to continue contacting,

There is nothing to indicate that the prevalence of indoor prostitution that is not marketed through advertisements in magazines and on the Internet, e.g. prostitution in massage parlours, sex clubs and hotels, and in restaurant and nightclub settings, has increased in recent years. Nor is there any information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution (Swedish Institute 2010).

Other researchers argue that the number of SCP in the sex industry has not changed since the ban, SCP have simply moved to more discreet locations and are forced to spend less time negotiating with customers to avoid being caught.

In a survey of police understandings of the sex industry conducted in 2008, police report that many of the SCP they know to be involved in prostitution struggle with addictions. They also report lack of public education about trafficking and lack of funding to adequately tackle the issues relating to reducing demand for sexual services (Eriksson and Gavanas 2008).

Online advertising for sexual services has boomed in the past 20 years, seemingly on par with other countries around the world and not as a direct result of the implementation of the ban. SCP report that it is becoming increasingly difficult to make adequate amounts of money through

online advertising as the market is over-saturated, and results in SCP taking more clients for less money or accepting johns or services they otherwise would not (Eriksson and Gavanas 2008).

Abuse and Murder

Advocates against partial decriminalization argue that you cannot successfully criminalize only one half of a transaction. It essentially makes the sex industry an illegal market, pushing SCP back into an unsafe environment. Some SCP report that sex purchasers are more aggressive, more prone to forcing services that SCP do not consent to, and more likely not to pay for services, since the johns are the ones putting themselves at risk. Other SCP have found the law change empowering as they are able to threaten punters with exposure to the police if they refuse to pay or otherwise violate boundaries (Holmstrom 2014). Other SCP report that after the policy change punters became more cautious in their frequency and in their violent conduct due to fear of social ramifications if they were found out by friends and family members to be purchasing sex, or no change in the amount of violence or frequency of purchases due to the low level of punters being arrested and lenient penalties (Swedish Institute 2010).

Rachel Moran, an advocate for the partial decriminalization model and founder of SPACE International (Survivors of Prostitution-Abuse Calling for Enlightenment), writes that if criminalization of demand had been the policy in Ireland while she was a SCP, she would have been glad to know that her punters could be prosecuted, but would have feared for her safety. She explains,

I am in no way surprised that many prostituted women oppose the criminalisation of their punters, mainly because of the way criminalisation lays bare the actuality of the prostitution experience. The criminalisation of a prostitute's client strips away the smoke and mirrors game of pretense that often exists between them; it forces him to accept the reality of his role as an abuser – a reality many men who use prostitutes reject, dismiss, and concentratedly ignore. The criminalisation of their actions forces them to see that their behavior is not considered acceptable. Men will resent this and any prostitute with more than a few weeks' experience will know that and be justifiably fearful of it, because the

resentments of men who prostitute women are always vented on the women they prostitute. (Moran 2013).

While arguing that more violence against SCP will ensue if johns are criminalized appears to be valid and concerning, it sheds light on the dehumanization present in the industry. That it is expected that criminalizing men's actions leads not to a concern or respect for SCP, but instead to resentment, contempt, and violence is an indicator that there is inequality in the exchange. Moran later concludes that even though she would've opposed the criminalization of sex purchasers while she was "in the life," now she would not hesitate to support such a law, because it could have helped to keep her out of prostitution in the first place, and because her experience of violence and abuse from punters is something she believes should be punished. Corroborating with Moran's experience, an independent Swedish investigation on the effectiveness of the sexual purchase ban from 2010 that reveals that those who have left the industry overwhelmingly support the criminalization of punters, while it is those who are still involved in the industry that are critical, which they show to be a repeated phenomenon in reports and in interviews with SCP (Swedish Institute 2010).

The fear that working in unmarked and unregulated spaces makes the sex industry more dangerous proves to be a misconception, as in other models such as legalization, SCP fight for the right to conduct their business in similar conditions instead of in brothels or on the street. While street prostitution has been considered the most dangerous method, research shows that there is no difference between abuse in regulated and unregulated venues. A survey taken in 2008 of SCP in Sweden revealed that preference between meeting johns in indoor and outdoor venues varied significantly between participants. Some felt more in control in their own homes, others preferred clubs, others meeting customers online before meeting in person, and some preferred meeting on the street and in public spaces (Eriksson and Gavanoas 2008).

Since the implementation of the ban, there have not been any reported murders of SCP. Labor-rights activities rallying around the death of Eva Marree Smith Kullander in 2013, crying that the stigma around sex workers led to her death, and demanding full decriminalization to take the place of the Nordic model. However, this was not a case of SCP being murdered over stigma, but of domestic violence – which strengthens the partial decriminalization’s claim that male violence is the source of abuse, not stigma (White 2015). It is significant that Sweden has had no murdered SCP. In full decriminalization models such as New Zealand, “countless” women have lost their lives to violent johns (White 2015).

Minors

Police reports from Stockholm report the youngest child they found being exploited in the sex industry was 15, and any minors found are immediately sent to child services (Eriksson and Gavanas 2008). Sweden reports low rates of prosecution of child traffickers, although this does not necessarily indicate low numbers of children being exploited. The Internet continues to be a hazard for grooming children into performing sexual services. The ten-year evaluation of the policy change found that,

The Internet plays an important role particularly with regard to young people in prostitution. The National Board for Youth Affairs concludes that most young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet. The results of other questionnaire surveys that examined young people’s experiences of selling sexual services support this conclusion. The ban on the purchase of sexual services has not had an effect on the exposure of young people on the Internet (Swedish Institute 2010).

The Group of Experts on Action against Trafficking in Human Beings (known as GRETA), a part of The Council of Europe Convention on Action against Trafficking in Human Beings, performed two evaluations on Sweden, in 2013 and in 2018. The first evaluation gave birth to the Platform Swedish Civil Society against Trafficking in Human Beings, which acts as an umbrella organization that encompasses 30 NGOs and civil society actors who combat human trafficking in

protection and support roles in Sweden. The first evaluation urged the Swedish government to provide more protection for unaccompanied minors entering the country as asylum seekers. The second evaluation by GRETA took place in 2018. The second evaluation found some improvements for minors due to the Platform that was implemented to better support and track minor victims of trafficking. However, the evaluation found that there was a “high number of unaccompanied and separated children disappearing” from the influx of asylum seekers that surged into Sweden starting in 2015 (GRETA 2018). The second evaluation also found that “the only case of trafficking in children which led to a conviction was discovered by the police by chance when they were investigating another criminal offence.” The low number of prosecutions and convictions is concerning and shows a lack of follow-through with policy meant to appease international laws.

Asylum-seeking children were found to be especially vulnerable to abuses by the criminal justice system, such as held for months at a time in transit centers before being registered (during which some children have disappeared), children being represented without lawyers or other circumstances that reduces the likelihood of trafficking evidence being brought forward, and experiencing abuse in institutional accommodation as they awaited sentencing or deportation (GRETA 2019).

The Platform writes annual reports, and makes special effort to focus on child victims of “secondary” human trafficking by asking respondents to include information about the children of trafficking victims and children born due to sexual exploitation. In total, during 2019 a total of 12 child victims were assisted by anti-trafficking organizations, 13 children were reported having been born to trafficking victims during their exploitation, and an estimated 51 children had parents who were trafficking victims and were either left in their country of origin or were still living with their parent at the time of the parent’s exploitation (The Platform 2019). The report also detailed

what the impact was on the children of trafficking victims, gauging levels of trauma, neglect, physical injuries, etc. For those who have their children with them at the time of their exploitation, it is highly likely that their children also experience violence and trauma through traffickers and punters. For undocumented minors, more protection is afforded to both themselves and their undocumented parents if it is discovered that they suffered abuse along with their parent.

Trafficking and Migrant Workers

The 2010 Swedish Institute investigative report found that the new policy had been effective in decreasing trafficking, as evidenced by reports of large increases of reports of trafficking in surrounding countries, with little to no increase in Sweden. This is considered to be due to the laws prohibiting procuring or benefitting from the sale of sex by others not being worth the risk when traffickers could simply go to countries without such laws instead.

Sweden's formation of a civil society platform in 2013 following the GRETA evaluation gives structured support outside the legal process for victims of trafficking in human beings, and has been an improvement in supporting trafficking victims regardless of legal status in accordance with international law. This allows more contact with victims, and has been successful in identifying far more trafficking cases than are reported to police (The Platform 2019). The Platform's annual reports have identified between 65-177 trafficking victims in Stockholm in the past 5 years, and the civil societies assist with a range of support, from physical needs, mental health services, and some legal counsel. The number of victims identified and assisted grows each year, although reports conclude this is most likely due to greater range of influence and not due to greater numbers of trafficking per se.

The GRETA evaluation in 2013 criticized the lack of assistance for trafficking victims who had broken immigration laws, the low number of convictions for trafficking, and the lack of

involvement in protecting refugee populations, especially unaccompanied children. The 2018 evaluation noticed a marked improvement in policy and organizations put in place, but still found a low number of convictions for trafficking and lack of protection for unaccompanied minor migrants. Additionally, both evaluations urged Swedish government to provide more substantial residency for trafficking victims. Under current law, trafficking victims may be granted 30-day residency permits while they await the trial of their traffickers if they complied with trafficking investigations, with the possibility of having the permit extended or being granted permanent residency granted.

Estimates reveal that about 60% of the trafficking victims are Swedish, and the rest are from various other countries, with the rest coming from primarily Eastern Europe and Nigeria. While the 1999 ban on purchase of sexual services has been lauded as a progressive step for recognizing misogynistic social inequality in sex/the sex industry and working to rebalance by protecting the vulnerable side of the exchange, in practice this model has several holes in its apparent defense of vulnerable SCP. Migrant SCP still suffer from criminalization and discrimination in the criminal justice system. While citizens of Sweden are protected under this law, “we see a shift in the regulation of commercial sex from prostitution to immigration policies which results in a double standard with respect to the governance of national and foreign sellers of sexual services” (Vuolajärvi 2018). Migrant and undocumented SCP who do not receive the support of the state end up bearing the brunt of anti-trafficking efforts.

Bucken-Knapp (2012) shows that while Sweden’s prostitution policy was written from a gender equality perspective, the initial anti-trafficking policy switched in to a “securitization policy.” While gender equality has started to be readdressed in anti-trafficking policy, the policy does more to protect national security than potential victims. Berstein (2018) writes that “anti-trafficking policy is above all an immigration policy,” echoing other’s observations that anti-immigration

policies hide between sex trafficking horror stories and anti-trafficking efforts to make a humanitarian case for limiting migration and deporting non-citizens. (Andrijasevic 2007, Lasocik 2010, Bucken-Knapp 2012). Police reportedly use anti-trafficking funds to find undocumented SCP and evict or deport. (Levy, J., & Jakobsson, P. 2014). Thus, the apparent concern for vulnerable populations is quickly disregarded when it comes to eliminating a different kind of “undesirable.”

In reports from NGOs that work with trafficking victims, the most common issue is that they are not able to provide victims with the help that they need due to their clients being deported or denied services due to their undocumented status. Reports have even shown that undocumented children have faced rejection or discrimination when trying to access health services, even though legally children have a right to healthcare regardless of legal status. The criminal justice system shows its failure to protect victims due to discriminatory anti-immigration practices, placing value distinctions on people instead of utilizing rights-based approaches for all victims.

Summary

While Sweden prompts its policy up as a beacon for women’s rights, they fail to protect the most vulnerable among them, instead neglecting migrant rights in preference for citizens. Sweden’s policy is written as significantly rights-centered and focuses on ending violence rather than stopping prostitution through criminalization, but fails to implement these ideas into the practice of the law. What we find in this policy is that 1) centering rights in policy is ineffective when bent toward protecting the rights of already privileged groups instead of marginalized groups, and 2) implementation of policy often engages in political “cheap-talk” (Smith-Cannoy 2012) to appear that they are engaged in anti-trafficking efforts in accordance with UN protocol, but in reality fails victims and re-exposes them to abuse through the criminal justice system.

CONCLUSION

After working for several years with adult and child victims of trafficking and abuse through the sex industry, I considered joining the FBI to help combat trafficking and abuse directly. However, the more I understood of the criminalization model in the US, I realized that any effort I put into removing victims from abusive systems would be minimally effective in a system that does not center rights, and that I would end up contributing to further harm due to the criminalized state of oppressed and marginalized people in the sex industry. As I read about full decriminalization movements in the US and countries like New Zealand, I considered the horror this produces for victims, whose vulnerabilities are more easily preyed upon in systems that have a limited scope of identifying abuse and have limited repercussions for those abusing them. Rights for women and children have been clearly written in a plethora of declarations, treaties, and policies. However, rights lose their protection in models that do not center rights of marginalized groups, models that do not implement their rights-based protective policies, and models that incorrectly prioritize rights for privileged groups over disadvantaged groups.

While these two policies compared in this thesis are often seen as opposites on the victim vs. voluntary worker binary, they lie closer to the middleground between criminalization and decriminalization models in protecting rights. Both models strive to have protections in place, and yet what we can see in this comparison is that both models end up failing along similar lines - but for different reasons. Both models fail to adequately address the needs of the most vulnerable and marginalized victims – migrants and children. The failures of these models to protect the vulnerable come from different places. Amsterdam's decriminalization/legalization model fails to adequately protect children by sanctioning an industry that preys on children and following harm-reduction practices that do not adequately address the special need for protection that children

have. Stockholm's partial decriminalization model fails to adequately protect children by not following through with implementation of their rights-based policy.

Both models fail to protect migrants and trafficking victims by utilizing anti-trafficking rhetoric to impose anti-immigration laws rather than protective laws for victims. Through the rights-based theories employed in this framework, it is clear that these models fail to address the ingrained racism present in their policies that allow these laws to exclude migrants from their rights, as well as the ingrained racism that exists in the sex industry through the exoticization of WOC that allows greater abuse of "othered" people.

Neither model has been able to completely eradicate the violence present in the sex industry, although there is a marked difference in the amount of violence in Amsterdam vs. Stockholm. Where there have been no murders and mixed reviews on whether violence has stayed the same or decreased in Stockholm, Amsterdam has seen several murders and high levels of violence. This suggests that focusing on abuse through targeting possible perpetrators is more effective than targeting potential abuse victims and training them in harm reduction policies. This also suggests that a focus on ending violence instead of a focus on ending stigma is a more effective means of educating punters and protecting SCP.

In utilizing CRT and feminist theory to examine rights within policy, we find these lessons to implement in future policy:

Lessons from Amsterdam

Amsterdam's neo-liberal pro-labor rights and harm reduction policies create a plethora of problems for marginalized and oppressed populations. First, creating policy centered on making the distinction between victims and voluntary workers fails in its ability to make that distinction and thus fails to provide protections to either. The issues surrounding consent in the industry and

the inability of criminal justice systems to accurately assess abusive situations reveal that holding to binary understandings of the sex industry is not a productive or helpful way to address rights. Secondly, focusing on labor rights comes at the expense of protecting the right to be free from violence. Because labor-rights focus on less government involvement and more freedom, punters benefit from this leniency and are enabled to project more violence on SCP.

Third, focusing on the right to bodily autonomy at the expense of bodily safety furthers abuse of children and other vulnerable people groups. Bodily autonomy and bodily safety should be a cohesive category of rights for SCP, but instead by focusing on bodily autonomy and the right to choice, the voices of those who are being exploited and are not in the industry by free choice are obscured. Choice and consent become obscured in an already muddled understanding of how, if, and why SCP make decisions about their involvement. Finally, focusing on removal of stigma around the sex industry by legalization removes the stigma from men who purchase SCP more than removing stigma from SCP themselves. This puts more power into the hands of the already privileged group. Pushing for normalization does not decrease abuse, but rather opens the door for abuse without consequences.

Lessons from Sweden

Sweden's neo-abolitionist partial decriminalization has some rights-based groundwork, but fails to implement rights and focus on the marginalized about the privileged. This policy did succeed in some areas of furthering rights. First, the policy centers women's and children's rights to be free from male violence. This is an important acknowledgement of gender inequality and toxic male social standings that perpetrate abuse, and has proven to be effective in changing societal perceptions of gender and attitudes toward the sex industry. Second, Sweden's model places responsibility for abuse in the industry on the male perpetrators by criminalizing male

purchase of sex. This model understands that reducing abuse must necessarily focus on those who are actively abusing others. This focus has been shown to make moderate moves toward societal understandings of equality where it would be unthinkable to abuse women and children. Third, Sweden acknowledges that the multi-faceted nature of consent and entry must be approached with an equally holistic support system to negate these issues. Building social supports such as safe housing, strong anti-domestic violence laws, and opening opportunities for employment are all important steps not only to decreasing the amount of women in unwillingly entering or staying in the sex industry, but also are steps toward seeing the humanity and unique needs of oppressed groups and caring for their individual needs.

However, while Sweden has important grounding in rights-based approaches, the implementation falls short of the ideals protected. In particular, Sweden fails to uphold the rights of migrant people through using anti-immigration policy in place of anti-trafficking policy. This furthers the abuse of migrant SCP by criminalizing their movement and placing them in danger from pimps/traffickers, punters, and the law through arrest or deportation. Sweden also fails to adequately address protections for minors, especially vulnerable populations such as refugees. Thus rights in the partial decriminalization model are not adequately centered around the most marginalized and oppressed groups.

Final Conclusions

Criminal justice systems and labor-rights activists stand by the need to differentiate between sex trafficking victims and voluntary sex workers. However, when we engage the literature with an overview of policy in practice through a feminist rights-based approach with CRT, the binary disappears and the lived experience of SCP being a part of both worlds comes to light. Policy and activists alike have to find a way to work not in simplified black-and-white terms,

but in the “grey,” of real life to make a lasting change in women’s rights to protection from abuse in all areas of life. In the fight between viewing SCP as victims or autonomous beings, focusing on one or the other means limiting the amount of rights being realized. Both the right to be free from abuse and the right to bodily autonomy and labor are essential, and are complimentary, not mutually exclusive. Again, these harsh distinctions are assumed because it is simpler to think of women in these two polarized terms, instead of as whole humans with various experiences and motivations. By implementing the rights-based framework set forth in this paper, the humanity of each individual can be valued and their rights restored in accordance with their needs through understanding how intersectional marginalization can be specifically catered to in policy and implementation.

It is clear that criminal justice approaches alone are not enough to adequately tackle issues of trafficking and violence in the sex industry. The barriers to women’s rights in the sex industry are complex, and include gendered violence, poverty, addiction, mental health issues, anti-immigration policy, and lack of protection for children. These issues cannot be fixed with anti-trafficking or anti-prostitution legislation. As seen in this case study, the most comprehensive and engaging work for SCP came not from government interventions, but from NGOs and activists groups. These groups help bridge the gap between policy and implementation. To see the end of abuse of women, whether they are on the spectrum between trafficking victim and voluntary sex worker, whether they are migrants or refugees, or whether they are victims of domestic and social violence, the only thing that ends male violence against women is if there is an equal society in which one people group does not have power over the other. While both models have proposed modest steps toward reaching that equality, clearer policy, more effective implementation, and centering of rights on marginalized people groups is necessary to make a difference in the lives of women and children.

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APPENDIX A
DEFINING RAPE

118 This section will examine both the importance of defining rape/involuntary sex through feminist theory to ensure women's rights are protected and the fluidity of how rape has been defined in law that threatens that protection. This is important groundwork for understanding how policy protects or denies women's right to freedom from sexual violence, regardless of their involvement in the sex industry.

The Merriam-Webster Dictionary defines rape as "unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception." In the last 10 years, legislation around the world has expanded their legal definitions of rape to include lack of consent, not just presence of dissent, as a means of rape. Previous definitions have been antiquated and largely limited to include only violent instances of rape. The US Department of Justice had not changed their federal legal definition of rape since 1927 when they updated in 2012 to move the definition from "the carnal knowledge of a female, forcibly and against her will" to include any gender and lack of consent as means of rape, notably including that "Physical resistance is not required on the part of the victim to demonstrate lack of consent" (DOJ Office of Public Affairs 2012). This shows a shift in cultural understandings of rape – moving from an assumption that rapists were strangers who attacked you on the street, and where one had to prove force by showing injuries to get any kind of conviction, to an understanding that recognizes rape is more often a relational abuse, and that victims have a variety of responses in the face of abuse, including freezing or appeasing attackers in order to limit the amount of harm they would be subjected to. As recently as 2018, Sweden adapted their rape laws to include negligent rape. If anyone has sexual intercourse without receiving confirmed, verbal consent from the other party, they can be

convicted for negligent rape because they did not ensure consent from their partner (Hofverberg, 2019).

These changes in legal definitions of rape are incredibly recent, and show the lack of reliability for criminal justice systems to protect women's rights to sexual freedom without abuse. While illegality of specific abusive acts is an important factor to understanding the differences between the two models, it should also be understood that laws are incredibly difficult to make comprehensive for every instance, and to limit understandings of abuse to what the law defines is to neglect victims' experiences. Simply looking at the vast differences between the laws in different countries or in different decades tells us that the law is not the ultimate standard for protection of rights, but only a part of understanding rights. In the review of rights in the legalization model, this becomes even more clear as laws put in place with the intention of protecting SCP rights actually work to control and restrict.