THE BIOETHICAL ARGUMENT FOR THE DECRIMINALIZATION OF SEX WORK

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by
Christina Garcés
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Thesis Approvals:

Dr. Kathleen Reeves MD, Thesis Advisor, Center for Urban Bioethics

ABSTRACT

This thesis uses the four principles of biomedical ethics as put forth by Beauchamp and Childress to address the issue of the criminalization of sex work in contemporary national and international settings. Though a controversial subject, the existence of sex work has been a constant for centuries worldwide. However, the criminalization of sex work in contemporary society has been largely predicated on the conflation of sex work and a number of social ills, particularly human trafficking and sexual exploitation. This uncritical and inappropriate conflation of terms has enabled discourse, legislation, and even health care policy that is unethical, ineffective, and explicitly harmful to both sex workers and victims of human trafficking alike.

Medical professionals have a unique set of moral obligations to which they must hold themselves in their practice of medicine, both with their individual patients as well as with the society in which they live. This thesis argues that the criminalization of sex work is fundamentally incompatible with contemporary health care ethics, reviewing each of the four fundamental pillars of biomedical ethics as it applies to policies that criminalize sex work. Each chapter will outline the many ways in which criminalization violates each of these fundamental principles, causing immense and largely preventable harm in the form of human rights violations and poor public health outcomes. At the same time, this thesis will introduce the alternative policy of decriminalization, discussing its features and implications for public health, and highlighting the ways in which the decriminalization of sex work results in improved health, safety, and human

rights outcomes for both sex workers and victims of sex trafficking, exemplifying a viable, ethical, and evidenced-based alterative to criminalization.

Given the gross bioethical and humans rights violations associated with the criminalization of sex work, this thesis concludes that there exists evidence of a substantial ethical imperative on the part of the medical community and its constituent professional societies to formally condemn policies that criminalize any and all aspects of sex work and issue formal recommendations for its urgent decriminalization, as both a public health issue and an issue of human and patients' rights.

nothing about us without us

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para todos la luz

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CHAPTER 1

INTRODUCTION TO SEX WORK AND ITS DEFINITIONS

Speaking Of Sex Work

Commercial sex and sex work has been a controversial, polarizing, yet ever-constant occupation, avocation, and subject in societies around the world and throughout time. From ancient Rome to biblical times, sex workers have been an integral part of human societies for cetneries,[193-197] yet whatever public discourse emerges surrounding the topic of sex work and its validity as a choice and an occupation is consistently met with strong reactions of repulsion, rejection, and concern. These conversations frequently evoke questions of morality, ethics, respectability, society, social politics, public health, and all facets of human rights, from autonomy and consent to coercion and abuse.

All too often, conversations concerning the topic of sex work are muddled by intentional and unintentional misunderstandings and misdirections, the most common of which is the conflation of sex work and sex trafficking. Though these two terms when explicitly defined represent two distinct and very different concepts of human behavior, their popularization and perception as interchangeable serves the function of confounding and vilifying attempts to understand and reflect on what sex work truly is, what harms it truly does and does not cause, what roles consent and autonomy actually play, and what we should do about it. Medical providers, however, have a unique set of moral and ethical considerations to grapple with as a function of their profession and the position of privilege it grants them in relation to their individual patients and to the greater society in which they live. Health care providers are meant to consider these principles of medical ethics when discussing any topic that could relate to patient care or issues public health.

In this paper, we will consider the topic of sex work, specifically, the criminalization and decriminalization of sex work, and its ethical implications using the principles of biomedical ethics as a framework for doing so.

In their seminal work, The Principles of Bioethics, Beauchamp and Childress detail the four main pillars of bioethics - autonomy, nonmaleficence, beneficence, and justice[1] – as the fundamental framework through which health care professionals can and should consider questions of ethics and morality within the context of clinical medicine and public health, including the ethical obligation of health care professionals to take action in order to protect them. This paper will discuss the topic of sex work as it relates to each of these four pillars of biomedical ethics, highlighting the ethical implications each has for health care providers who work in countries in which sex work is criminalized. In particular, it will review the current criminalized state of sex work in countries such as the United States, China, Russia, South Africa, Argentina and several others, while analyzing the effects these policies have had on the rights of sex workers, their access to health care, and their safety and health care outcomes, in order to argue that criminalizing the labor of sex work is inconsistent with each of the four pillars of biomedical ethics, in both intent and effect. In doing so, I argue that the criminalization of sex work is fundamentally unethical from a medical and public health perspective, and should be discontinued, while the decriminalization of sex work presents a viable, practical solution that is both consistent with each of the four principles of bioethics and is supported by substantial research, documented evidence of improved health care outcomes, and the support of the sex worker community itself. Furthermore, after outlining the various ways in which the criminalization of sex work violates the

fundamental principles of bioethics, including the perpetuation of largely preventable harms in the health and safety of both sex workers and victims of human trafficking alike, in addition to outlining the ways in which decriminalization resolves these harms and violations, this thesis concludes by arguing that the medical community has the ethical obligation to condemn policies that criminalize sex work and explicitly support its decriminalization as matter of public health and human rights.

What Sex Work Is and What It Is Not

An explicit and precise definition of sex work is an essential requirement for any discussion regarding the ethical concerns and considerations of the sex worker community, the legislation and public health policies that affect them, as well as their rights, safety, and health care outcomes. This is especially true given the vague, inconsistent, and non-specific ways in which many policy makers, legislators, and anti-sex work activists tend to use terms such as "sex work" and "prostitution," frequently doing so in such a way that enables misleading, inappropriate, and inaccurate conflations of sex work and human trafficking. The casual and uncritical conflation of these terms among legislators and policy makers inevitably leads to conversations about sex work, sex workers, and the policies that affect them that are hampered and stunted by their predication on a fundamental misunderstanding of who and what is actually being discussed. This inaccurate and imprecise use of terminology is often at the crux of intentional or unintentional misunderstandings and misrepresentations of issues concerning sex work and sex workers rights. Therefore, it is important that these terms are made explicit and unambiguous. However, given the politicized nature of these

topics, I've chosen to draw upon statements from multiple nationally and internationally recognized global health, human rights, and sex worker-led advocacy organizations to provide sufficient documentation of currently accepted contemporary definitions of these terms. In this way, I aim to begin my thesis with clear, well-documented, and well-informed understandings of the terminology that will be used in the chapters that follow.

Common concerns regarding the topic of sex work and how it is defined are often centered on questions of who, exactly, can or cannot be a sex worker. Therefore, it is sometimes useful define the term *sex worker* as it helps to both address these concerns while also describing what sex work is. Important points regarding both terms are addressed in the following definitions put forth by the World Health Organization (WHO), the United Nations, and Amnesty International, respectively:

> "Sex workers" include female, male and transgender adults and young people (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally …It is important to note that sex work is consensual sex between adults, which takes many forms, and varies between and within countries and communities.[2]

> [Sex workers] include female, male and transgender adults, over the age of 18, who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not self-identify as sex workers. In terms of this definition, three elements are worth highlighting: a) sex work and sex workers involve adults only; b) sex work involves consensual acts between adults; c) acts involving deceit, fraud, coercion, force or violence do not fall under the definition of sex work.[3]

> "Sex workers" are adults (aged 18 and older) of all genders who receive money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally. Amnesty International recognizes that the terms used to refer to sex work and sex workers vary across contexts and according to individual preference and that not all

> people who do sex work identify as "sex workers." […] As outlined above, these terms are not applicable to children.[4]

The definitions put forth by these three internationally recognized human rights and global health organizations reveal a number of consistent criteria. The first is that sex workers are adults. This is an important feature of the definition of sex work and sex workers, as it indicates that only adults can be sex workers and, therefore, only adults can participate in sex work. This also means that children - or anyone under 18 years of age - cannot, by definition, participate in sex work, nor can children be sex workers.

The exclusion of children from the definition of sex work and sex worker is related to the second important criteria described by these definitions: Consent. A defining feature of sex work is consensual participation in said sexual activity, which means consent is required to be a sex worker. This is what makes the inclusion of children fundamentally incompatible with the definition of sex work. Children cannot consent to sexual activity, therefore, children cannot be sex workers. Only adults can consent to sexual activity and sex work, therefore only adults can be sex workers. However, while only adults *can* consent to participate in sex work, this does not mean *all* adults can. For example, some adults cannot consent to sex because they do not have the capacity to do so. This may include cognitively impaired adults or adults who are intoxicated by drugs or alcohol. Similarly, adults who do have the capacity to consent but are being forced, threatened, or otherwise coerced or manipulated into participation are also not capable of providing consent. These adults therefore cannot participate in sex work and cannot be sex workers. Instead, adults in these situations - like any child no matter the situation - who are compelled to participate in sexual activity would automatically fall under the definition of sexual exploitation, sexual abuse, sexual assault,

or human trafficking, depending on the surrounding circumstances. Indeed, the World Health Organization expands on its initial definition of sex work and sex worker by making this same delineation explicitly clear:

> "Sex work" is used in this technical brief when referring exclusively to adults aged 18 years or older. When referring to those below the age of 18, including 10–17 years olds, reference is made to sexual exploitation of children, in accordance with article 34 of the Convention on the Rights of the Child which ensures the protection of all children from all forms of sexual exploitation and sexual abuse.[2]

The presence or absence of consent is a crucial feature of the definition of sex work that distinguishes it from terms such as sexual assault, sexual abuse, and human trafficking. While comprehensive definitions of sexual assault and sexual abuse are outside the scope of this paper, expanded definitions of sex and human trafficking will be presented in subsequent sections. In terms of sex work, the above passage is useful in highlighting the explicit boundaries of what sex work is and who it can and cannot involve, emphasizing the ways in which parties who cannot consent to sex, such as children under the age of 18, are categorically excluded and therefore must be defined by alternative terminologies.

The final defining feature of sex work that will be reviewed in this thesis is the acquisition of money, goods, or some other commodity of value, such as housing or shelter, in exchange for the provision of sexual services. This aspect of sex work is often emphasized in the definitions put forth by sex worker advocates and sex worker-led advocacy organizations. For example, the International Committee on the Rights of Sex Workers in Europe (ICRSE) published a report on the rights of sex workers that also begins by explaining these fundamental terms. In the introductory section entitled, "What is sex work? Who are sex workers?" the authors state, "Sex work is work, a form of

livelihood and economic activity."[6] While their definition does go on to describe the same essential criteria as above, including that sex workers are adults, 18 years of age or older, who "consensually exchange their own sexual labor or sexual performance for compensation," they expand significantly on defining sex work specifically in the context of labor:

> Workers in the sex industry constitute a heterogenous group of individuals of all genders who decide to engage in sex work for many different reasons. Some might decide to work in the sex industry because it allows for more flexible working hours and gives them greater control over their working conditions than other jobs. Others choose sex work because they find it financially rewarding. For other sex workers again, it may be the most acceptable of very few options available to them which enables them to provide a living for themselves and their families.[6]

This description of sex work and sex workers highlights the ways in which labor are central to the definition of sex work, particularly as it relates to sex workers advocacy and sex workers rights. Indeed, "flexible working hours" and being able "to provide a living" for one's self and one's family are considerations all people make in choosing an occupation and making a living. Describing sex work in these terms functions to emphasize sex work as just that: an occupation that people choose to provide for themselves and their families.

Stella, a sex worker advocacy organization based in Canada, describes a similar concept in their publication "Sex Work: 14 Answers to Your Questions," which was written to answer common questions related to sex workers for people in the social services, health care professionals, law enforcement, media, and criminal justice industries. They also describe why the terms "sex work" and "sex worker" are used instead of the terms "prostitution" and "prostitute" in the following passage:

> The morally charged term, "prostitution", has been associated with deviance, corruption and criminality, and still is today. […] The negative labels or words like "prostitute" and "whore" reduce a person to one dimension: engaging in sexual activities for money. Sex workers need these activities to be defined as work because they view their occupation as an activity that generates income. Using the term sex work therefore helps draw a distinction between the economic activity and the person's identity. … Speaking about sex work allows a rethinking of this activity in terms of contracts, improvement of working conditions and sex workers' ability to negotiate the different aspects of services they offer (acts, rates and duration) […] and paves the way for action about workers' rights.[7]

The above passage highlights two important points: first, the stigma and harmful stereotypes associated with terms like "prostitution," "prostitute," and "whore," and the dehumanizing impact they have when used, and second, the important purpose terms such as "sex work" and "sex worker" serve in reorienting conversations concerning this population towards concepts of labor rights and bodily autonomy. Indeed, describing and discussing these issues in such a way that consistently and deliberately contextualizes sex work, first and foremost, as a form of labor serves the important function of helping to move these conversations away from harmful stereotypes of "victims" and "fallen women" or "vectors of disease," and refocusing them on practical questions of essential human rights, labor rights, and safety. The definitions put forth by these organizations, though they include the same fundamental inclusion and exclusion criteria as those put forth by the World Health Organization, United Nations and Amnesty International, emphasize sex work as a choice of occupation in order to highlight that there is, in fact, agency and autonomy among this population and that it is those attributes that should be the real focus of these conversations. The elaboration on common aspects of work, such as work hours, occupational safety, and labor rights is an attempt to indicate that sex work is work like any other and is therefore deserving of the same protections and safety

standards afforded to any other form of work or occupation by law. The absence of such protections highlights where the autonomy and agency of sex workers has been limited, primarily by criminalization, which, of course, is the central thesis of this work. Establishing the defining criteria of sex work - that is, that participants are adults, over the age of 18 years, who participate consensually - is just as important as establishing the inherent agency of people who are sex workers, who, despite their depictions in popular culture, are and self-define as autonomous actors, which is particularly important as the issue of autonomy is critical to the argument put forth in the chapters that follow.

In order to further highlight the explicit boundaries of these terms, the following definition of "human trafficking" is provided per the United Nations:

> Human Trafficking is the recruitment, transportation, transfer, harboring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit. Men, women and children of all ages and from all backgrounds can become victims of this crime, which occurs in every region of the world. The traffickers often use violence or fraudulent employment agencies and fake promises of education and job opportunities to trick and coerce their victims.[8]

The defining feature of human trafficking is that of lack of consent, either because the victims in question are children, and therefore cannot consent, or they are adults who have been coerced. The trafficking of people into sexual labor, which is, of course, non-consensual, by definition, is known as sex trafficking. Recall, while lack of consent is the defining feature of human trafficking, consent is the defining feature of sex work. However, it is important to note that human trafficking does not exclusively involve coercion into sexual labor. Instead, victims of human trafficking may be forced into any number of forms of labor, the most common of which are agricultural and domestic labor.[8,82,171] These forms of human trafficking are just as exploitative, dangerous,

abusive, and abhorrent as sex trafficking. The WHO, in their statement on "General Recommendations on the Trafficking in Women and Girls in the Context of Global Migration,"[9] refers to the United Nations in defining human trafficking. However, the statement does a include an important, related point:

> WHO would like to emphasize the importance of not conflating trafficking for sexual exploitation with sex work. Anti-trafficking laws that assume that all or most sex workers have been trafficked may both undermine efforts to stop trafficking and likewise negatively impact sex workers. In countries where laws, policies, discriminatory practices and stigmatizing attitudes drive sex work underground, access to health and other services by sex workers may be impeded.[9]

The statement above returns us to the original intent in defining the above terminology as it applies to this thesis. The conflation of "sex work" and "sex trafficking" has only served to undermine important conversations regarding the issues of sex workers and sex workers rights, as well as the policies that come out of them, due to their predication on fundamental misunderstandings of what and who is being discussed. This introduction has demonstrated that, despite these conflations, there is ample documentation of a consistent, explicit definition of these terms across multiple expert sources. Therefore, this thesis will use a definition of sex work that is consistent with these sources, in the hope that doing so will stem any concerns of ambiguity regarding what who is being referred to in the discussion that follows, reiterating once more that sex work is a form of labor in which *only* consenting adults can participate, in which an individual provides some sexual service or services for money, goods, or commodities of value.[2,3,4,5] Sex workers are adults who have chosen to do sex work as a form of income generation,[2,3,4,5,6,7] whether as their primary occupation or a supplementary form of income. Like all children, adults who cannot consent, either due to incapacity or

intoxication, and adults who have been in anyway coerced or manipulated into the provision of sexual services or activities are automatically excluded from sex work by function of their lack of consent. Children and non-consenting adults who have been coerced or manipulated into sexual activity instead fall under the categorizations of sexual exploitation, sexual abuse, sexual assault, and human trafficking,[4,5,7] depending on the surrounding circumstances.

CHAPTER 2

AUTONOMY

Of the four pillars of medical bioethics, the principle of autonomy - also known as respect for persons - is often given special reverence. It tends to be the first referenced and cited when discussing questions of healthcare and research ethics. This principle is grounded in the understanding of autonomy as a fundamental human right: the right to self-determination and self-governance. As a bioethical principle, respect for autonomy refers to the duty of physicians to respect and secure their patients' ability and opportunity to make informed, voluntary decisions about their health and medical care.[1] In the context of healthcare, the principle of autonomy is called to mind in many ways. In the most technical sense, autonomy requires that healthcare providers obtain informed consent from their patients before initiating any medical treatment or intervention, providing them with adequate and accurate information regarding their medical condition, as well as potential treatment options, risks, and benefits, and allowing them to make decisions about their healthcare for themselves, in alignment with their own personal goals and values.[1]

However, the principle of autonomy does not just apply to individual healthcare decisions a provider may encounter over the course of patient care with an individual patient. Instead, respect for autonomy is largely understood and discussed within the context of the greater patient-physician relationship as a whole, such as the way a provider communicates choices regarding the patient's care or how options and strategies to address said care are presented to the patient. Similarly, the principle of autonomy does

not just apply to clinical decision-making either, but instead extends to any choice a patient makes regarding their body or lifestyle that may affect their overall health, including their occupation, their diet, or recreational activities. This is particularly important when discussing patient choices or activities that are considered "high risk" or are believed to be associated with poor health outcomes, such as smoking or a high-fat diet.

Nevertheless, with a few key exceptions regarding imminent harm to self or others, physicians are required to respect their patients' autonomy with every choice they make about their lives and care, and especially when it comes to those decisions with which the provider might vehemently disagree or perceive to be bad for their patient's health and wellbeing. For example, the principle of autonomy and respect for persons asks providers to treat a patient diagnosed with diabetes who chooses to consume a high-sugar, high-fat diet with the same respect and competent treatment as a patient with diabetes who chooses to adhere to a strict sugar-free diet. Similarly, physicians should not judge or shame a patient with hypertension who is non-adherent to their medications and frequently misses follow-up appointments, nor is it acceptable to push or punish a patient with substance use disorder who is unwilling or unable to abstain from the use of substances, or treat them any differently than a patient with substance use disorder who agrees to enter a detox program or begin medical therapy with buprenorphine or methadone. Despite choices that may or may not cause significant exacerbation of their medical condition, these patients are all meant to be afforded the exact same courtesy, respect, and care as a function of the principle of respect for persons. This is because the principle of autonomy states that the role of the healthcare provider is not to make

decisions on behalf of the patient, or force the patient into making decisions that they think are best, but to provide each patient with all relevant information regarding their medical condition(s) and overall health, so that they, themselves, may make the choices that best align with their goals, priorities, and values.[1]

Expanding on this logic, one must conclude that respect for autonomy should also be extended to sex work and those patients who choose to engage in it. Sex workers are adults making a consensual choice to provide sexual services in exchange for some form of capital.[2,3,4,5,7] While sex is not, in and of itself, dangerous or harmful in any way, [4,6,49] even if it was, respect patient's autonomy would require that medical providers respect that patient's choice.[1] However, the fact remains that sex work is not inherently dangerous, although it is often spoken about as if it is.[10,11,12,13] Indeed, sex work and the people that participate in it are often discussed in terms of "high-risk" behaviors,[10,11,13] but the reality is that it is the circumstances in which the individual engages in sex work that makes the behavior risky or safe. [4,6,49,107,147] A fact which is true with all sexual activity, not just that which takes place in the context of sex work. This paper argues that it is the criminalization of sex work that creates an unsafe and dangerous environment for sex workers,[3,4,5,6,9] rather than something inherent to the labor of sex work or the behavior of sex workers themselves. While this point will be elaborated upon further in the subsequent chapters, it is necessary to highlight in the context of reminding ourselves that the consensual choice of adults to participate in sexual activity in exchange for material gain is not inherently "high-risk," even though it is so often categorized along with other "high-risk" behaviors[2,3,510,11] and populations such as people who inject drugs or people with substance use disorders. Instead, sex work that done in the setting of consent and

safe sex practices is no more or less dangerous than sex in any other context,[3,4,6,49,107,147,158-160] therefore the choice to engage in sex work should be approached with the same non-judgmental and open-minded attitude as any other conversation about sex, as bodily autonomy and reproductive freedom are fundamental aspects of the right to autonomy and respect for persons.

However, key exceptions to respect for autonomy do exist and involve situations in which the individuals in question are not of consenting age or otherwise unable to consent, such as those who are cognitively impaired or who are being coerced. Sex work, by definition, excludes such individuals, including those who are minors or who are otherwise unable to consent.[2,3,4,5,7] Indeed, consent is a defining feature of sex work, while its absence is the defining feature of sexual exploitation, sexual assault, and sex trafficking.[2,3,4,5,6,8,9] Only competent, consenting adults can engage in sex work,[2,3,4,5,7] therefore individuals fitting these criteria are the sole of interest in this paper.

In the context of competent, consenting adults, autonomy and respect for persons emphasizes the right of each individual to make informed and voluntary decisions about their own lives, without undue influence or coercion from others, including their choice of occupation.[1] Understanding that sex work is ultimately a choice of occupation made by competent, consenting adults,[2,3,4,5,6,7] respect for autonomy should extend to sex work as well. This means physicians have the ethical obligation to recognize and respect adults who have chosen to engage in sex work as their primary or supplementary form of occupation or economic survival, without fear of stigma, discrimination, or legal prosecution.[1,3,4,5,6]

In practice, the principle of autonomy and respect for persons asks healthcare providers to listen to their patients, creating space for dialogue and shared decision making so that each individual patient has the opportunity to make choices about their healthcare that are consistent with their own priorities and healthcare goals.[1] This concept of listening to one's patients increases in importance when the patient is or identifies as a member of a marginalized group or community. In these cases, it is important for providers to listen not only to the voice and needs of the individual patient in the context of the clinical setting, but to also be cognizant of the challenges of that patient's community from a larger, socio-political standpoint as well. Patients who are members of one or more marginalized communities routinely find their voices, priorities, and unique healthcare needs are left out of larger conversations of healthcare, clinical medicine, and public health and therefore require special attention and consideration in conversations of health care both in the clinical and public health setting.[14,15,16,17,18,19]

Sex workers, who are marginalized as a function of the criminalization of their labor, are one such community. Additionally, the sex worker community is extremely diverse, with significant populations of persons of color,[34-36,46,47,108] persons of variable socioeconomic background, neurodivergent and disabled persons,[40] transgender and non-binary persons,[39,41,4,98,176] and migrant persons.[4-7,20-22,37,38,47] The large proportion of the sex worker community which also occupies other spaces of marginalization is, in part due to the ways in which many marginalized people, such transgender people or undocumented individuals, may face significant barriers to securing and maintaining forms of "traditional" work, such as discrimination, harassment, or lack of required documentation.[4,6,20,22] For this reason, it is worth noting that the sex worker community is

composed of many people who sit at the intersection of multiple marginalized identities. For example, black and brown sex workers,[34-36] sex workers of color with disabilities,[40] and transgender sex workers of color[39,43,41,44] all face multiple, unique yet compounding layers of socio-political challenges and needs.[21,22,23] Similarly, individuals with multiple marginalized identities often experience a compounding effect of discrimination and erasure,[43,42,44] making their unique healthcare needs even less likely to be represented in larger conversations of healthcare or recognized in the clinical setting.[14,15,18,34-36,39-44]

Each of these groups that exist within the larger sex-worker community has their own set of challenges, needs, and barriers to care that overlay their challenges and needs as sex workers more broadly. While each of these unique sets of needs and challenges are, unfortunately, outside the scope of this paper, it does highlight the importance of recognizing the complexity and diversity of this community's constituents, as well as how much of this complexity and nuance has gone largely unrecognized by the healthcare community. That said, this paper does seek to explore one important, fundamental issue that applies to the sex worker community as a whole: Criminalization. Multiple studies point to criminalization as the single most important barrier facing sex workers in seeking health, stability, and human rights.[3,4,5,6,9,20,23] For example, not only is the criminalization of sex work cited as an important reason that sex workers face barriers to healthcare[3,4,5,6,9] and it is also cited as a major reason why sex workers struggle to find housing[24-32,109] and financial stability.[29-32,45,51,61]

For decades, sex worker advocates and sex worker-run advocacy organizations around the world have been advocating for the decriminalization of sex work,[6,7,22,24,26,28,46,47] arguing that these policies are at the root of the discrimination,

violence and abuse sex workers face both as individuals and as a community.[6,7,22,24,26,28,33,48,49] In recent decades, those organizations have been joined by many international public health organizations, such as the United Nations and the World Health Organization,[3,4,8,9,33,49] who have both released reports stating that the decriminalization of sex work is the single most important step nations must take to ensuring the human rights of sex workers and their communities worldwide. These organizations, in addition to organizations such as Amnesty International,[4] the American Civil Liberties Union (ACLU),[5,23,31,33] joining groups such as International Committee on the Rights of Sex Workers in Europe (ICRSE)[6] and the European Sex Workers Rights Alliance,[22] in arguing that the criminalization of sex work stands in direct violation of sex workers' rights, including their right to health, self-determination and bodily autonomy, in addition to causing significant and, importantly, preventable harms in the form of violence and poor health outcomes.[20,23,48,49]

In terms of the principle of autonomy, Beauchamp and Childress outline three important conditions that characterize autonomous actors. These include intentionality, understanding, and non-control.[1] The last of these, non-control, is arguably the easiest to prove in the context of sex workers, as sex work is defined by conditions of consent and the absence of non-coercion by an external party.[2-5,7] Notably, Childress and Beauchamp make a point to distinguish between control and influence, stating, "not all influences exerted on another person are controlling."[1] This is an important distinction given that much of the rhetoric surrounding anti-sex work advocacy revolves around the idea that sex in exchange for financial gain is always exploitative and always abusive,[10-13] often referring to possibility of "undue influence" that might be placed on those in poverty to

participate,[69] though rarely explaining exactly why this influence should not be a concern in every other form of labor as well. Proponents of this logic will often evoke ideas of "putting a price on the human body" and the inherent "degradation"[12,13] and "humiliation"[10,12] of allowing one's body to be "used"[11] in exchange for money, forgetting, of course, that this is a characteristic of *all* labor. All labor puts some monetary value on the human body, whether it is a function of the human body or access to it. Construction work, manufactory work, domestic labor, agricultural labor, masonry, firefighters, even massage therapists, dancers, and professional athletes are all forms of physical labor where a value is placed on the human body, often requiring those individuals push their bodies to their physical limit and beyond. Functions of a normal job, such as not getting paid as much as you'd like or not getting along with every client who solicits your business, are not necessarily features of exploitation but features of work, and should be treated no differently in the context of sex work. However, a client that uses threats of violence to compel a worker to do something they do not want to do, to work in unsafe working conditions, without the proper safety equipment, is exploitation regardless of whether it is in the context of sex work, construction work, firefighting or athletics. Such situations are most certainly examples of exploitation and non-control. But sex workers themselves are quick to argue, as they have for decades, that their work is not inherently exploitative. A cursory review of the many publications, articles, and reports published by sex worker advocates and sex worker-led advocacy organizations immediately demonstrates a community that is well-aware of its own position, place, and power.[22,28,46,47,51,53-62] Sex worker activists and the advocacy organizations that support their rights are nothing if not well-versed in their own rights

and capacity for self-determination, as well as the sociopolitical and structural barriers that block their ability to fully realize those rights and capacities. Consider the following passage from the following report published by Durbar Mahila Samanwaya Committee - better known as Durbar, which, they write, means "unstoppable" or "indomitable" in Bengla[51] - entitled "Durbar: We Demand Workers' Rights."

> Durbar has been active in addressing the structural issues that frame the everyday reality of sex workers' lives as they relate to their material deprivation or their social exclusion. Durbar is explicit about its political objective of fighting for recognition of sex work as work and sex workers as workers and for a secure social existence of sex workers and their children. Durbar also seeks to reform laws that restrict human rights of sex workers, tend to criminalize them and limit their enfranchisement as full citizens […] We recognize that sex work is work and the sex workers have every right to determine her life and profession. We also recognize that to establish the basic human, civil and occupational rights of sex workers the structures of existing power relations have to be altered. We are committed to carry out a process to empower sex workers at individual, community and at societal level.[51]

Still, despite popular narratives regarding pimps and trafficking rings, according to texts written and published by sex workers themselves, these are not the barriers to autonomy and self-determination that concern the sex worker community the most. Indeed, the vast majority of sex workers are independent, without "pimps" or managers.[10,11] Instead, many, if not most, sex workers consider themselves similar to independent contractors or persons running a small business, managing their own advertising, setting their own prices, and scheduling their own clients.[52-57] In fact, many sex workers note this level of relative independence is one of the main features that attracted them to sex work.[7,53-57] For the purposes of this conversation, these conditions of sex work as sex workers experience it help highlight the ways in which narratives of sex working being inherently

"exploitative" and "degrading" are more often based in stereotype and stigma than in reality. This, in combination with the defining features of sex work, which are, once again, control, consent, and non-coercion,[1,2-6] should satisfy the important criteria of non-control as set forth by Beauchamp and Childress in their definition of autonomous actors.

In terms of the other defining features of persons acting autonomously, the (self-)characterization of sex workers as a people running independent small businesses, who manage their own advertisements, set their own rates, and schedule their own clients, should provide ample evidence for the condition of intentionality.[6,7,39,53-57] Beauchamp and Childress argue that intentionality is defined by "plans in the form of representations of the series of events proposed for the execution of an action."[1] These features of running a business, putting up advertising, contacting clients, negotiating terms, and scheduling appointments are all examples of an individual who is forming an intentional, purposeful plan which is made up of, quite literally, "representations of the series of events proposed"[1] in order to execute said plan. Indeed, it is hard to think of a more literal example of intentionality. However, one could just as easily argue that the many pieces and publications, reports and articles written by sex workers advocating for their work[6,7,46-48] to be recognized as valid labor is an exercise in intentionality in and of itself. Indeed, a popular slogan among the sex worker community and its advocates is "sex work is work"[6,7,22,51] which certainly implies a high level of intentionality in its own self-characterization as a community of workers who want (and intend) to do this work.

Similarly, the many articles and publications written by sex workers in which they characterize their work as labor, detailing their experiences and delineating the barriers and challenges that hamper their ability to fully self-actualize as a community, only

further speaks to this community's level of self-awareness and understanding,[1] which is the final feature of autonomous actors as defined by Beauchamp and Childress. Indeed, sex worker advocates have formed hundreds of organizations and advocacy groups around the world,[53] and in many settings, collectivized into unions[51,53,59-62] and committees where they have lobbied for their rights, health care, safety standards and more. For example, organizations like Sex Workers Outreach Project (SWOP),[53] the European Sex Workers Alliance,[22] and the International Committee on the Rights of Sex Workers in Europe (ICRSE)[6] have published innumerable reports, statements, and articles on the issues affecting sex workers, both on the national and international level.[6,28,44,47,51,58,74,81182] They continuously release policy briefs and updated position papers in response to any new legislation that is passed on sex work or human trafficking, regardless of its country of origin, in addition to conducting their own research, surveys, and reports. Durbar Mahila Samanwaya Committee (DMSC), for example, which collectivized in 1992 and now represents over 65,000 sex workers in West Bengal, India,[51] was originally conceived in an effort to address issues of poor safety standards, high rates of violence, stigma, and discrimination faced by both sex workers and their children. Since collectivizing, DMSC has increased condom utilization among its workers from 3% prior to collectivization to the current rate of 92%.[60] In response to the financial discrimination DMSC's members were facing at banks, the collective established a communal fund that dispenses loans to sex workers wishing to start a small business.[61] Even more, DMSC established extensive protocols and policies to deal with underaged girls who were brought or otherwise trafficked into to their community,[60] setting them up with medical care and placing them in schools, with rules prohibiting

them from working until they were old enough to make a consensual choice of occupation for themselves.[62] These various forms of activism and organizing shows this community's extensive awareness of its own challenges, needs, barriers, and goals. Although these specific organizations happen to be particularly large and well-known internationally, there exist innumerable examples of smaller sex worker-run organizations doing similar work among their local community of sex workers.[58,130,183] Still, however big or small these organizations, collectives, and their projects are, their deliberate, purposeful plans clearly display both significant intentionality and extensive understanding of their own situation. Therefore, it would be exceptionally difficult to characterize this community as anything other than autonomous. It is important, therefore, to note that in this way, the criminalization of sex work fundamentally violates sex workers right to bodily autonomy and is therefore inconsistent with the bioethical principal of autonomy and respect for persons.[50]

While Beauchamp and Childress help to define what an autonomous actor is and looks like, the question of what respect for autonomy requires from health care professionals is something different. In its most basic form, respect for autonomy or respect for person requires listening to one's patient and centering their right of self-determination over their medical care as well as their choices in life.[1] This active and respectful listening becomes even more important when dealing with patient populations that are as marginalized as sex workers. It is worth noting at this point that sex workers remain an extremely under-studied population in medicine.[63-65] Most research concerning health outcomes in sex workers is narrowly focused on substance use and sexually transmitted infections (STIs),[35,67-71] despite little evidence that these issues are more

prevalent in the sex worker population when compared with the general population.[66] Importantly, many of the studies that focus on these issues recruit street-based sex workers almost exclusively[67-71] and also tend to have very small sample sizes. This creates a skewed and problematic representation of the sex worker community, particularly in countries like the United States, where the vast majority of sex workers work indoors.[63,65,72] Additionally, sex worker voices are routinely left out of conversations regarding public health and policy,[65,73] with disastrous effects as recent as the COVID-19 pandemic.[73-76,]

This lack of research briefly highlights the medical community's limited foundational knowledge regarding the healthcare needs and challenges of sex workers, including those in the United States. For example, even data as basic as the prevalence of HIV/AIDS among sex workers in the US is poorly understood, in large part due to lack of research.[63,65] In an interview about HIV/AIDS rates among sex workers and possible strategies for prevention, Brian Katzowitz, health communications for the Center for Disease Control (CDC) National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention stated, "Unfortunately, we have virtually no data on prevalence of HIV among [the sex worker] population, so there's not a lot of insight we can provide."[65]

In the absence of comprehensive research and empirical data to help medical providers define the healthcare challenges sex workers are facing and guide clinical decision making for our patients who are sex workers, it becomes that much more important to listen and allow sex workers with lived experience to explain to medical providers what those challenges actually are.[64,65,77] Sex worker advocates and sex worker-run advocacy groups have been consistent and unanimous in their advocacy for the

decriminalization of sex work and for the recognition of sex work as a valid and legitimate means of income-generating labor.[6,7,22,51] Indeed, the popular slogan among sex worker advocates - "sex work is real work"[81] – is, fundamentally, and out-cry from the sex worker community for government agencies and establishments of power, such as the medical industrial complex, to recognize that sex work is valid labor and, in doing so, recognize that their human and labor rights.[7,22,51,53-55] In fact, the term "sex worker" is used by advocates in favor of words like "prostitution" for this very reason. The Global Network of Sex Work Projects (NSWP), states in their policy brief entitled "Sex Work is Work" that the term "sex worker" was adopted in the 1970's specifically to contextualize the sex worker liberation movement as primarily a labor movement.[6,7,78] In doing so, the sex worker community sought to (and continues to) highlight how first, they are autonomous laborers worthy of dignity and respect, and second, that legally recognized labor affords its practitioners protected labor rights, which would make all sex workers safer and reduce their risk of harm.[6,7,48-51,79]

This logic is echoed by nearly every sex worker advocacy group across the country and around the world.[6,7,2,22,28,46,47,48,53-53,77,81] Reviewing the mission statements, priorities and values of sex-worker run organizations - such as those cited above - reveals a number of consistent themes involving the desire to be seen as consenting, capable adults who are intelligent, well-informed and well aware of the choices they are making to engage in sex work as labor. Additionally, these statements and publications consistently point to the criminalization of sex work as the number one barrier standing in the way of their realization of those rights, in addition to creating a system of structural violence that puts them at greatly increased risk of largely preventable harm.

Still, in spite of this community's legacy of decades-long, intentional and deliberate self-advocacy for recognition of their human rights and capacity for self-determination, one surprisingly common argument from anti-sex work organizations is the assertion that sex workers cannot consent.[10-13] These arguments tend to assert that people cannot, under any circumstances, consent to sex if it is being done in exchange for something else. But this is a dehumanizing and degrading standpoint in and of itself. Since sex workers are, by definition, adult humans with the capacity to consent,[2-7] denying them their capacity to do so and overruling their own self-characterization as consenting adults is paternalistic[1] and condescending, and therefore is inconsistent with the bioethical principle of respect for persons and autonomy, which secures adults' right to make decisions for themselves above all else.[1]

Furthermore, the assertion that all sex work is inherently exploitative or cannot be consensual is also inconsistent with both reality and legal precedent. Of course, there is nothing inherently dangerous about consenting adult humans engaging in sexual activity. Indeed, consenting adults' motivations for engaging in sexual activity varies widely in day-to-day life. Therefore, there is no logical reason why consensual sex motivated by an exchange of money or capital would be inherently different or more dangerous than consensual sexual activity for any other reason, provided it is done safely and, again, consensually.[49,82] Additionally, the fact remains that consensual sexual activity motivated by income-generation is, in fact, legal in the setting of pornography,[80] which raises a curious inconsistency in the legislative logic. The fact that pornography is legal but other forms of sex work are not adds yet another layer of confusion and paternalism to this argument, as it seems to imply that consensual sex between adults motivated by monetary

or capital gain is exploitative, unless, of course, it is being performed for the benefit of the (predominantly) male gaze.[50, 64]

Nevertheless, sex is a normal human activity that can easily be engaged in safely and consensually given adequate education, counseling, and resources. Counseling adults and young people on how to engage in safe sex is an integral part of medical training for all healthcare providers, particularly physicians, who are taught to focus their counseling on making sure their patients are engaging in sexual activity consensually and safely. Similarly, sex worker advocates argue that it is not sex work itself that is dangerous, but the conditions[3-6,49,64,81] in which an individual engages in sexual activity that makes sexual activity dangerous or safe, noting, once again, that this fact remains true irrespective of whether said sexual activity takes place in the context of sex work or not.

Importantly, sex worker advocates and advocacy organizations do not deny that sex work can be dangerous and exploitative, but they are explicit in characterizing this as a feature of *all* labor, rather something that is intrinsic to sexual labor specifically. For example, consider the following excerpt from NSWP's policy brief "Sex work is Work", which states:

> Exploitation and unsafe and unhealthy working conditions in many labor sectors. Work does not become something other than work in the presence of these conditions. Even when preformed under exploitative, unsafe or unhealthy conditions, sex work is still work. Indeed, criminalization, by perpetuating stigma, discrimination, and social marginalization and by alienating sex workers from formal labor protections, creates conditions in which violations of sex worker's rights, including their labor rights, can continue with impunity.[81]

The passage above highlights how all forms of labor have the potential to be dangerous and exploitative, from construction work to factory work, food service work to

domestic labor. In fact, it is interesting to note that despite common narratives around human trafficking, the vast majority of human trafficking victims worldwide are actually trafficked into domestic labor, textiles and agricultural labor, not sexual labor, according to both statistics published by the United Nations and the US Department of Customs and Boarder Security.[8,82] Still, what makes any of these occupations truly dangerous is their lack of legal protections. In the context of sex work, it is the criminalization of consensual labor that keeps sex workers trapped in circumstances without protection and without legal recourse when their rights are violated. The NSWP's brief continues, "where criminalization excludes sex work from national labor laws, sex workers have no option but to accept what are often exploitative working conditions."[81]

The following chapters will elaborate further on the ways in which criminalization forces sex workers into unsafe and dangerous working conditions where they are at greater risk of being harmed, and in doing so will also highlight how the criminalization of sex work is consistent with the bioethical principles of nonmaleficence, beneficence, and justice. However, for the purposes of establishing its inconsistency with the principle of autonomy or respect for persons, the focus of this chapter is on how the criminalization of sex work denies consensual, adult workers their rights to self-determination, bodily autonomy, and the equal labor rights that should be afforded to them under the law, which includes the insurance of safety standards and protections from abuses. Put most simply: Legal workers have rights. Illegal workers do not. Making sex work illegal only makes sex workers less safe, in addition to denying them bodily autonomy.

In terms of healthcare, sex worker advocates around the world agree that criminalization is a major barrier to access.[46-48,77,81, 95,97,98,124,-128,161-163] First, fear of stigma and criminalization motivates sex workers to avoid disclosing their status to their healthcare providers,[53-37,124-128] making it difficult for providers to adequately counsel their patients who are sex workers on best practices for safe sex[63] and, just as importantly, help them if or when they're being harmed or their rights are being violated. It also makes it more difficult for medical researchers to recruit sex workers for their studies, resulting in narrow and highly skewed study populations.[67-71] These studies subsequently produce results that may not accurately represent the sex worker population as a whole, leading to conclusions and even public policy that is ineffective and misinformed in large part because it is predicated on skewed data. This fear of disclosure among sex workers contributes to the poor knowledge base medical professionals currently have to draw on and help patients who are sex workers in the clinical setting, creating a vicious cycle of lack of understanding, stereotype, stigma, and fear. For example, it is the author's own experience that throughout multiple years of medical training, sex workers were only ever brought up in the context of substance use and STI transmission. Vignettes of patients who were sex workers were exclusively street-based and always had concurrent substance use disorder. This kind of stereotypical representation of sex workers is narrow-minded and contributes to the reluctancy sex workers feel in disclosing their status to healthcare providers. As mentioned previously, the vast majority of sex workers in the United States are not street-based, but work indoors,[53-57,63,65,72] and the evidence that rates of substance use disorder are higher among sex worker populations is almost exclusively based in studies of street-based and/or

survival sex workers only.[66,69] In reality, the sex worker community is varied and extremely diverse, with individuals occupying a wide range of social locations and relationships to sex work.[6,7,20-22] In fact, in the United States and the United Kingdom, many sex workers are college educated, with a not insignificant proportion working in or having previously worked in healthcare.[83] Yet, these sex workers are consistently being left unidentified by their medical providers due to passive stigma of the medical community.

While there are many other ways in which the criminalization of sex work results in poor healthcare and healthcare access for sex workers, these are the ones most relevant to the bioethical principal of autonomy or respect for persons. The principle of autonomy recognizes that self-determination is inalienable human right that must be centered and protected within the context of healthcare. Not only does the criminalization of sex work deny sex workers this right by implying adult persons cannot consent to sexual activity in some circumstances but not others, it also makes it harder for sex workers to disclose their status to healthcare providers who wish to support them in their choices and assist them in being as safe and healthy as possible.

Supporting sex workers in their fight to be seen as valid and legitimate workers with human and labor rights is consistent with the bioethical principle of autonomy because it is that same right to personal autonomy and self-determination that is at the center of sex workers' argument for decriminalization. Sex workers argue for the decriminalization of sex work primarily because they believe they should have the right to determine when and where they can use their body for labor and have the same protections afforded to them as any other form of laborer. Nothing could be more

consistent with the concept of autonomy and respect for persons. The medical community should support sex workers in their fight for decriminalization not only because criminalization denies sex workers their right to autonomy, but also because it is criminalization that is the root cause of the fear of retribution and stigma which prevents sex workers from disclosing their status to their healthcare providers. Therefore, it can be said that that the criminalization of sex work directly impacts and interferes with the patient-provider relationship, breeding stigma, distrust, fear, and misunderstanding between sex workers and health care providers. Even more importantly, criminalization interferes with the process of providing good and comprehensive healthcare to our patients. The principle of autonomy requires medical providers to explain the risks and benefits of a particular course of action, procedure, or treatment clearly and comprehensively, and provide guidance on best practices for safety and harm reduction in whatever choices their patients make about their lives, from diet to smoking to sex. Healthcare providers cannot do this if sex workers are afraid to disclose their status to providers and cannot recruit a sufficient variety of community members for studies that accurately represent and explore their health care needs. For these reasons, and many more, the medical community should support the decriminalization of sex work, as its criminalization is highly inconsistent with the bioethical principle of autonomy and, as will be shown in the following chapters, the principles of nonmaleficence, beneficence and justice as well.

CHAPTER 3

NONMALEFICENCE

The bioethical principle of nonmaleficence is the second of the four fundamental ethical principles integral to the provision of healthcare to be discussed in this text. Nonmaleficence emphasizes the ethical obligation of medical professionals to prevent harm and minimize risks to patients whenever possible and is drawn from what is perhaps the most widely recognizable phrase of the Hippocratic Oath: “Do no harm.” Like autonomy and respect for persons, the principle of non-maleficence is deeply rooted in the ethical codes and guidelines of healthcare providers, and is evoked in both the American Medical Association (AMA) Code of Medical Ethics, stating, "A physician shall first consider the well-being of the patient,”[84] as well as the World Medical Association's Declaration of Geneva, a widely recognized ethical statement for physicians internationally: "I will use my medical knowledge for the benefit of the patient and will do no harm.”[85] These important statements highlight the ethical imperative physicians and medical providers have to prioritize the safety of patients during the provision of healthcare or medical research and to avoid causing intentional or preventable harm at any and all times.

In Beauchamp and Childress’ “Principles of Biomedical Ethics,” the authors define nonmaleficence as the ethical obligation physicians hold to "not inflict intentional harm and [...] prevent and remove harm when it is foreseeable and unintentional."[1] Noting that the concepts of maleficence and nonmaleficence are often described in terms of “harm” and “injury,” the authors take time to explore the definitions of these terms and

the ways in which they are relevant to the ethical obligation of physicians. While harm can encompass a great number of negative outcomes towards a person or party, in the context of the bioethical principle of nonmaleficence, harm involves "thwarting, defeating, or setting back the interests of one party by causes that include self-harming conditions"[1] with particular emphasis on "physical harms including pain, disability, and death, without denying the importance of mental harms and setbacks to other interests." Importantly, the authors reiterate their emphasis on "intending, causing, and permitting death or risk of death,"[1] noting the inclusion of both intentional and unintentional actions. This is specification is essential when discussing questions of medical ethics as it relates to marginalized patients and populations, such as sex workers, and the ways in which socioeconomic circumstances, structures, and policies may cause harm, injury, and poor health outcomes for patients from marginalized communities.

In terms of the criminalization of sex work, there are many ways in which the laws and policies of criminalization both "cause and permit" - in the most literal sense – increased rates of harm, injury, and even death of sex workers. [20,23,41,48,49,63,65,71,77,81,87-95,97,98,107-109,124,-128,142-116,151,161-163] Indeed, proponents of decriminalization argue that criminalizing s sex work typically leads to a culture of impunity when it comes to violence towards and even murder of sex workers, and argument which is bolstered by rates of violence and homicide which, even while considered to be drastically underreported, are significantly higher than the average population. [3,5,23,34,36,41,48,49,77,81,104,106-109,151] Similarly, the United Nations, Amnesty International, along with dozens of other national and international human rights organizations have released multiple statements and reports on how the criminalization of sex work puts sex

workers at greater risk of violence, illness, and death.[20,23,41,48,49,63,65,71,77,81,87-95,97,98,107-109,124-128,142-116,151,161-163]

Understandably, Beauchamp and Childress acknowledge the line between due care and care that "falls below or exceeds what is due [on the part of physicians] is difficult to draw" and that "substantial question often remains regarding the lengths to which physicians, employers, and others must go to avoid or lower risks."[1] However, the authors also note that the principle of nonmaleficence does not inherently exclude extensions of these principles to the public and political sphere, pointing out how, for example, reducing occupational health in industries, such as manufacturing or mining, by increased safety measures, greater investment in epidemiological studies, greater education and health promotion programs can fall well within the limits of the medical community's obligation to reduce foreseeable and preventable harm, death, and risk of death for populations of the public.

A similar argument can be made in terms of reasons healthcare providers have the moral imperative to support the decriminalization of sex work. Not only do these laws violate respect for the autonomy of consenting adults, they also put members of the sex worker community in grave and – perhaps more importantly - preventable harm. Questions of this moral imperative are made even more stark by the public health effects which are largely considered features of societies in which sex work is criminalized, such as the way criminalization directly and indirectly thwarts sex workers' attempts to practice safe sex, thereby putting them at greater risk of contracting and dying from sexually transmitted infections such as HIV/AIDS.[63,65,86,95,97,98,124] According to reports by the United Nations, sex workers are 30 times more likely to be HIV+ than the

general population.[86] However, it is the reason for this increased risk that should provide urgent motivation for the medical community to reconsider its support of criminalization, even if that support is only by default. This is because multiple studies have shown that it is criminalization, first and foremost, that places sex workers at increased risk of STIs such as HIV/AIDS,[63,65,86,95,97,98,124] rather than irresponsible or risky behavior on the part of sex workers themselves.[4,6,49,107,147,158-160] For example, innumerable reports and studies have shown that criminalization decreases both access to condoms[48,49,63,65,71,81,95,97,98,124,-128,161-163] and condom usage among sex workers.[87-95,107-109,142-146] Lack of access to condoms is just one result of the larger trend of reduced healthcare utilization among sex workers in criminalized environments compared to decriminalized settings.[48,49,63,65,71,81,95,97,98,124,-128, 149,159,161-162,170] These poor rates of health care utilization, seen across multiple countries in which sex work is criminalized, is often due to sex workers' fear of being discovered or reported to law enforcement, fear of stigmatization and poor treatment by health care workers[53-37,124-128,159,163] but may also be because sex workers are generally ineligible for employment-based health insurance, making health care utilization more challenging. Meanwhile, lower rates of consistent condom use are also seen among sex workers in criminalized settings, that is, at least among those sex workers researchers are able to recruit for studies which, as we elaborate upon in later sections, may only represent a small fraction of the sex worker population and, as a result, often leads to skewed and problematic results.[67-71] However, this fraction – namely, street-based, survival sex workers – may accurately represent part of the sex worker population most affected by policies of criminalization and over-policing, therefore the reasons for poor or inconsistent condom utilization provide useful insights

into the structural violence perpetuated by criminalization. Indeed, the results of these studies have shown poor, inconsistent condom usage among sex workers to be due to several factors, such as pressure and coercion by clients from whom they have little-to-no legal recourse. [87-95,107-109,142-146] However, more distressing is the fact that in many countries – including the United States, China, Russia and South Africa - law enforcement officers are permitted to use possession of condoms as evidence of solicitation and as sufficient grounds for arrest and prosecution.[87-94,107-109] These policies force sex workers to forgo carrying, and by extension, using condoms, for fear of arrest and incarceration, making it nearly impossible to practice safe sex.

The Open Society Foundations (OSF) report "Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, and the United States" investigates legal and illegal confiscation of condoms by law enforcement across all six countries and explores the grave implications it has on sex workers lives, health, and safety.[90] According to the report, over 40% of all sex workers surveyed reported police seizure of condoms and said they were less likely to use condoms with clients as a result. In the United States, 52% of sex workers surveyed said they chose to not carry condoms due to fear it would mean problems with police. The report summarized the trend, stating "this treatment of condoms as contraband forces sex workers to make a choice between safeguarding their health and staying safe from police harassment or arrest."[90]

Another study looked at the practice of using condoms as evidence against sex workers by law enforcement and the effect it had on condom usage among sex workers in China.[89] The study found that among the 517 male, female, and transgender sex workers

surveyed there was a 21% decrease in consistent condom use among sex workers who had been interrogated by the police compared to those who had not.[89] Among sex workers who did not carry condoms, nearly half reported not doing so out of fear that police would search for them condoms and then use their possession as reason to arrest them for solicitation. A journalist reported on the same practice by law enforcement in the United Kingdom and asked sex workers to explain the effect it had on their lives:

> I was sitting with my friend at a bus stop and the police came and said they are going to search us. My friend had some condoms on her and the police said to me that I had to say they were mine otherwise they would arrest my friend. I did that and they immediately arrested me. I was fined £250 which of course I had to earn by going back out to work.[94]

Interestingly, authors of the OSF's report "Criminalizing Condoms" made a point of describing how "sex workers who are affected by these policies and actions are not passive."[90] Instead, researchers noted the numerous ways sex workers "[demonstrated] agency in response to these actions and [...] efforts to resist and circumvent the police actions." For example, the many respondents reported various methods they used to hide condoms in concealed places such as "their bras, underwear, shoes, or even in bushes near where they work."[90] Others chose to reduce the number of condoms they carried rather than forgo carrying them altogether. One sex worker in New York recalls being stopped and searched by police, stating "Luckily I had condoms in my Altoids box or I'd have to have raw sex."[90] These actions provide further evidence for the argument that low condom usage among the sex worker population may have less to do with "irresponsible" or high-risk behaviors on the part of individual sex workers and more to do with a sociopolitical and legal environment of criminalization that sets sex workers up to fail.[35,89,87-95]

In fact, many studies have shown that consistent condom usage among sex workers in decriminalized settings is very high, in some cases nearing 100%.[51,60,63,97] This will be further elaborated on in later sections but is useful in underscoring how poor condom utilization among sex workers in criminalized settings is more likely the result of criminalization itself, rather than an issue of "compliance" or "risk-taking" behavior, thereby providing further support for the argument that in the absence of criminalization, and the barriers and structural inequalities with which they are associated, sex workers are safer, healthier, and less likely to be harmed – both directly and indirectly.[49,51,60-62,99,132,135-140,147-150] This assertion is supported by the accounts of sex workers in decriminalized settings, such as New Zealand, which decriminalized sex work in 2003. According to one survey of New Zealand sex workers, over 90% stated their "legal, health and safety rights" had improved after decriminalization.[94,168] For example, 65% stated they found it easier to refuse clients and 70% said they were more likely to report a violent attack to the police, critical improvements for a population that typically reports such fear of law enforcement that most will avoid interacting with police in any context, even when they've been the victim of a violent crime.[94,168] Indeed, sex worker activists and organizations that advocate for sex workers' rights have been arguing this very logic for decades:[46-49,81,87-95]

> The State allows condoms to be brought into hotels, guest houses and venues where high-risk sex occurs, and I feel that, in this respect, the State has made progress. So then why do the police still use them [condoms] as evidence of prostitution? I feel this runs counter to national policies and really needs to change.[89]

Even the United Nations has, as early as 2006,[3,5] noted the critical importance of condoms, both in terms of public health initiatives to fight and reduce HIV/AIDS and,

just as importantly, the simple assurance of the human and reproductive rights that should be afforded to every individual, including sex workers, and the gross violation interfering with those rights presents:

> In the context of HIV, international human rights norms and pragmatic public health goals require States to consider measures that may be considered controversial, particularly regarding the status of women and children, sex workers, injecting drug users and men having sex with men. It is, however, the responsibility of all States to identify how they can best meet their human rights obligations and protect public health within their specific political, cultural and religious contexts.[…]With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.[3]

> Condoms, both male and female, are the single most effective available technology to reduce the sexual transmission of HIV and other sexually transmitted diseases. Condoms must be readily available for sex workers and their clients, either free or at low cost, and conform to global quality standards…harassment by law enforcement officers reduces the ability of sex workers to negotiate condom use; governments and service providers should address such factors to maximize the impact of condom programming focused on sex work.[5]

The absurdity of using the possession of condoms - a vital tool in the prevention of STIs such as HIV/AIDS and unwanted pregnancies - as criminal evidence to prosecute sex workers of solicitation is made particularly acute when one considers that one of the most prevalent public health initiatives governments around the world use to combat HIV/AIDS is - as the United Nations report alludes to above - the distribution of condoms to at-risk populations, such as sex workers.[87-95] Indeed, in many of these contexts, sex workers are being given condoms by public health and government officials

on one hand, while having them taken away, destroyed, and used against them by law enforcement on the other.

But it's not just the foolishness of such a self-defeating practice that is problematic. Far more concerning is the real health implications these practices have in the lives and safety of sex workers. According to OSF's report, 48% of sex workers surveyed in the United States said they had condoms confiscated by police.[90] Of those sex workers who did sex work after police had taken their condoms away, 50% had unprotected sex.[90] This trend was seen again and again in each of the six countries in which the report surveyed sex workers and is further supported by numerous other independent studies in various countries and jurisdictions around the world where sex work is criminalized.[87-95]

> If I took a lot of condoms, they would arrest me. If I took a few or only one, I would run out and not be able to protect myself. How many times have I had unprotected sex because I was afraid of carrying condoms? Many times.[87]

HRW's report calls on the United States government to "prohibit the possession of condoms as evidence of prostitution and related offenses" and "recognize that human rights abuses are significant barriers to HIV prevention for sex workers"[87] and other vulnerable groups. Similarly, OSF's "Criminalizing Condoms" concludes the following:

> By hindering sex workers' ability to carry and use condoms, police actions increase sex workers' risk of exposure to HIV and other sexually transmitted infections, as well as unwanted pregnancies, compromising sex workers' health and the health of their sexual partners.[90]

Reports such as these are consistent in pointing out the link between punitive sex work legislation and the disproportionately high HIV burden among sex workers. In fact, a 2012 review of over 100 studies representing over nearly 100,000 sex workers across

50 countries found that the "legal and policy environments in which sex workers operate…contribute to sex workers' increased risk of HIV infection by limiting their ability to negotiate safer sex."[97] Furthermore, research shows this increased risk is only further exacerbated by further marginalization. A meta-analysis of 25 studies involving 14 countries and 6,405 transgender sex workers found the risk of HIV/AIDS was even higher. Study results highlight the compounding effects of criminalization and marginalization to make the most vulnerable even more so.[98] Indeed, the study's authors noted a similar conclusion, stating "many health policy approaches to reduce HIV risk for sex workers are challenged by legal frameworks that criminalize prostitution."[98]

The argument for health care providers to support the decriminalization of sex work as a function of the medical community's ethical obligation to nonmaleficence is quite strong just on this point alone, given how irrefutably effective and practical condoms are in protecting against unwanted pregnancies, STIs and HIV/AIDS. The imperative to support sex workers in their fight for decriminalization, both as a function of their right to personal autonomy and self-determination, as well as an overall public health issue, is made even strong by the fact that sex workers *want* to use them,[87-95] and in the absence of criminalization, will.[51,60,63,97] Even the American College of Obstetricians and Gynecologists notes that, while sex workers as a population may be at greater risk of STIs, studies in Nevada, the only jurisdiction in the United States where sex work is not criminalized, condom use among brothel-based sex workers is extremely high.[63,99]

Furthermore, one could logically draw the conclusion that less consistent condom usage among sex workers will inevitably result in higher rates of STIs and HIV/AIDS.

However, as noted previously, studies concerning the prevalence of STIs (as well as substance use disorder (SUD) and mental health issues) among the sex worker population in criminalized environments are often complicated by a number of sociopolitical challenges that lead to poor study design, such as poorly defined terms of inclusion, poor population sampling, and lack of controlling for socioeconomic factors such as poverty, type of sex work, and age.[67-71] These problematic foundational flaws inevitably lead to results which are skewed and may not truly represent the sex worker population.[63]

For example, it has been noted previously that criminalization is associated with fear of being stigmatized by health care providers and, therefore, lack of disclosure.[53-37,124-128] As a result, medical researchers are often limited to sex workers they can easily identify; namely, outdoor, and street-based sex workers. However, this represents only one fraction of the sex worker community. While accurate representations are difficult to ascertain specifically due to issues of non-disclosure, it is generally noted across studies that the vast majority of sex workers work either primarily or exclusively indoors.[53-57,65,72] Similarly, the American College of Obstetricians and Gynecologists estimates that only 20% of the sex worker population work outdoors.[63]

For this reason, it is perhaps unsurprising that studies looking at STI prevalence among sex workers in decriminalized settings are somewhat varied, even between those within the same country.[163,170]

Studies in decriminalized environments, on the other hand, do not face the same barriers as those research projects that take place in criminalized environments. Because there is significantly less or no fear of legal prosecution, sex workers are more likely to disclose their status to healthcare providers,[49,63,64,81,95,97,98,105,107,111,124,131-136] making it

easier to recruit a wide range of individuals who adequately represent the sex worker population. Although the positive effects of decriminalization will be further elaborated upon in the discussion of beneficence, it is worth briefly noting the results of these studies are encouraging. For example, one study compared the prevalence of various STIs among male and female sex workers of various cohorts, including brothel-based sex workers, independent (non-agency affiliated) sex workers, and "illegal" street-based sex workers, with STI prevalence rates among the general population. The study found STI prevalence among the independent and brothel-based sex worker cohorts was either lower or equal to that of the general population, depending on specific STI, while the "illegal" street-based cohort had poorer outcomes.[159] The fact that the legal, brothel-based and independent sex worker cohorts had prevalence rates equal to or better than the general population for all STIs investigated provides further support for the argument that decriminalization is associated with improved condom utilization among sex workers and, consequently, improved health outcomes, especially when taken with the fact that the "non-legal" street-based cohort was the only group whose prevalence rates were higher than those of the general public.[159] These results provide compelling evidence that it is criminalization, poverty, and the other socioeconomic factors with which they are related – such as being forced to work outdoors - that are the true cause of poor health outcomes in this population.

Interestingly, in 2017 the American College Obstetricians and Gynecologists (ACOG) released an opinion statement entitled "Improving Awareness of and Screening for Health Risks Among Sex Workers", in which they noted, "Sex workers engaged in collective sex work—those who collaborate with other sex workers—were significantly

less likely to test positive for an STI (odds ratio [OR] 0.4; 95% CI, 0.1–0.9)," citing a 2006 study in San Francisco.[100] The study in question took place at St. James Infirmary, one of two clinics in the United States dedicated to providing healthcare specifically for sex workers, highlighting how in the absence of barriers to care commonly associated with criminalization such as stigma, fear, violence, and social isolation, the healthcare outcomes of sex workers drastically improve. Results such as these continue to underscore the conclusion that it is criminalization that causes these largely preventable harms, rather than something inherent to the labor of sex work itself.

Still, poor health care service utilization, condom utilization and STI transmission are not the only tangible public health harms that are caused by the criminalization of sex work. One 2016 report looked at the impact of law enforcement practices on effective HIV prevention among male, female, and transgender sex workers in China and found that criminalization enables an environment where violence against sex workers is routine:

> The criminalization of various aspects of sex work and same-sex sex practices, and existing law enforcement practices that exacerbate violence by police and clients by giving the police broad powers to arrest and detain sex workers, promoting impunity, pushing sex work underground, reducing sex workers' ability to negotiate safe work practices, and increasing stigma and discrimination.[89]

Furthermore, when summarizing the "factors that increase sex workers' exposure to violence," criminalization is at the top of the list. Second is "a culture of impunity in which perpetrators of violence are not held accountable" and "an environment in which violence against sex workers is normalized and justified"[89] - a condition that sex worker advocates have been attempting to draw attention to for decades.[20,23,46-49,77,81]

Similarly, the Open Society Foundations released the report in 2015 entitled, "10 Reasons to Decriminalize Sex Work," neatly summarizing the many ways in which criminalization of sex work results in increased violence against sex workers:

> Sex work is not inherently violent; it is criminalization that places sex workers at greatest risk. The need to avoid arrest - of both sex workers and their clients - means that street-based sex workers must often move to more isolated areas that are less visible to law enforcement, and where violence is more prevalent. Fear of arrest and police abuse limits the time and methods that sex workers can use to conduct safety screenings of clients without detection by police. For sex workers who are not street-based, authorities have even shut down online sex work forums, like Redbook, which have offered sex workers more detailed client screening possibilities and thus greater security. These factors, plus real or perceived impunity for perpetrators of violence against sex workers, place sex workers at heightened risk.[49]

Each of these points is supported by both a multitude of studies, as well as the lived experience of sex workers and sex worker advocates from around the world.[6,7,22,24,26,28,33,46-48,81] The first and most obvious point, which, lamentably, seems to require some regular reiteration, is that sex is not, in and of itself, inherently violent or dangerous. As established by several centuries of human existence, sex is a normal and healthy human behavior. Sex worker and advocate Tamika Spellman put it aptly in her 2019 interview with Vox, in which she states, "Everybody has sex. The only difference is that we charge for it."[106] Like all sexual relations, under the conditions of consent, safety and respect, sex in the context of sex work is no more or less dangerous than sex in any other context. Which is why sex workers, and their advocates, argue that it is specifically criminalization that causes harm and dangerous in the context of sex in sex work, rather than sex work itself or "risky" behaviors of sex workers. The English Collective of Prostitutes (ECP) is one of the oldest sex workers rights organizations in the world, has

been relentlessly advocating for the decriminalization of sex work for decades. In 2015, an spokesperson for the ECP told reporters from The Guardian that, "The fundamental problem is criminalization prevents women [from] working together, forces them into isolation and pushes prostitution into the shadows."[107]

More recently, in 2019, the ECP launched its #makeallwomensafe campaign, pushing for the decriminalization of sex work in order to create a safer world for all women. Niki Adams, a spokesperson for the campaign said in an interview, "Women contact us daily who have been raped, attacked, robbed, stalked, and harassed. Much of this violence is hidden because women can't report to the police for fear of arrest and, for those of us who are migrants, fear of deportation." Adams went on to explain how criminalization forces "women to make a choice to either work together with others in relative safety and face the possibility of arrest…or avoid a criminal record and put ourselves in danger."[94]

Unfortunately, it isn't just fear of arrest that motivates sex workers to avoid police, even if it means putting themselves in more dangerous situations, because it's not just clients who are the greatest perpetrators of violence against this population - it's police themselves. A 2003 survey of street-based sex workers in New York City found that 75% experience daily or near daily "police-initiated interactions" - defined as interactions "begun on the part of the police officers."[108] Respondents reported interpreting "a high frequency of police-initiated interactions as harassment, especially when the respondent was engaging in no criminal activity at the time of such contact."[108] The report continued, noting respondents accounts of police-initiated contact included anything from "false arrests", "name calling" and "stalking behavior," to "sexual

situations, violence and threats of violence," such as "inappropriate touching, extortion of sex (sometimes in exchange for not making an arrest), and rape." [108] Sex workers of color, particularly those of Latinx descent, reported "the most violent police encounters and the most persistent verbal harassment," highlighting again the ways in which multiple intersections of marginalization result in compounding levels of physical and social harm. Astonishingly, the report states that even the researchers themselves were forced to change their location while working in these areas "in response to police harassment of their outreach staff,"[108] further demonstrating the severity and impact of police presence in the community.

This kind of harassment and violence at the hands of law enforcement is consistent across studies[87-95,107-109] and in what appears to be every country in which sex work is criminalized. For example, another study from 2008 looked at policing and sex work in Washington D.C. found similar results.[109] Of sex workers surveyed, 97% reported police-initiated interactions, the vast majority of which were interpreted as negative. According to the study, nearly half had experienced "being insulted, humiliated or verbally abused by officers"[109] and 1 in 5 respondents has been asked to provide sexual favors. Meanwhile, OSF's "Criminalizing Condoms" surveyed sex workers in several countries in Africa. In South African, the study found 80% of sex workers had experienced harassment by police, while 85% in Zimbabwe reported being extorted by police officers.[90] Similarly, in Asia Catalyst's report "The Condom Quandary", researchers found out of the hundreds of sex workers surveyed the vast majority had experienced verbal harassment while over half reported experiencing physical violence at

the hands of police officers, in addition to entrapment (65%), extortion (50%), and coercion of sexual services (4%).[89]

> They [the police] began asking me, "Are you engaging in prostitution?" I kept denying it, and the truth is that I hadn't done anything that day. Finally, the police ran out of patience and began to hit me and berate me to make me admit it. The police rummaged through my bag and found a lot of condoms and some lubricant, and they claimed that I was providing prostitution services and sent me to a detention center for 15 days. I was very angry at the time. They had no evidence, and hadn't caught me in the act or chatting anyone up, so on what basis could they say I was engaging in prostitution?[80]

Furthermore, while the percentage reporting sexual coercion is relatively low, it may be worth pointing out that entrapment, which the study authors defined as "being solicited by an undercover investigating officer,"[89] also implies coercive physical and sexual assault of these participants. Spellman, sex worker and advocate who spoke in an interview with Vox, recounts similar experiences with police: "I've had them call me names, tell me that I was stupid, that whatever happened to me out there, I deserved it for being out there."[106] She also describes multiple instances of sexual assault by police, adding "This is something you can find across the board with sex workers. They take advantage of us." The ECP policy brief "Why Decriminalization?" echoes these concerns:

> Police wield enormous power over sex workers because of the threat of arrest and exposure. When police bully, steal, extort, and demand free sexual services from sex workers they often enjoy impunity for their crimes.[59]

These first-hand accounts of sex workers with lived experience are backed up by an appealing number of arrests and reports of police intentionally targeting sex workers for horrific crimes, from sexual assault, rape, and homicide.[39,41,51,89-93,100,106-109] Many of

these accounts involve law enforcement officers who had been able to harass, assault, and abuse dozens of sex workers - in particular, sex workers of color and transgender sex workers - before ever facing criminal charges. In fact, further investigation often reveals the officers involved had previously been the subject of multiple complaints or disciplinary offences, but for whatever reason had not been placed under extra supervision, disciplinary leave, or dismissed from the force,[108,110,157] only further highlighting the culture of impunity and negligent attitude that exists when it comes to violence towards sex workers, as well as the way that violence is compounded even move for sex workers who exist at the intersection of multiple forms of marginalization.[39,41,44,98]

Indeed, sex workers of color, transgender sex workers, and especially transgender sex workers of color, experience astronomical levels of violence, even compared to other demographics of sex workers.[39,41] For example, TVT, an organization that advocates for the rights and recognition of trans-people worldwide, conducts an informal yearly homicide rate based on reported account and media reports. According to their data, which they note is likely highly under-reported, the year 2021 was the deadliest year on record for trans-people, with a staggering 375 homicides of transgender individuals, most of whom, they note, were women of color and many of whom were involved in some form of sex work.[172] The authors note that it is a problematic mix of hatred, violence and discrimination against both transgender people of color and sex workers that leads to these incredible levels of violence, while also being the same reason why they are likely to be gross underestimations.[174] According to one study, hate crimes against transgender individuals, especially those who are people of color, has doubled over the last few years,[177] while multiple studies have shown that sex workers in criminalized

environments face much higher rates of violence.[34,36,39,41,48,49,77,81,104,106-109,151,171-174,177-179] Additionally, studies have shown that street-based sex work is more dangerous than sex work that is conducted indoors.[102,103,105,180] Criminalization, which places people in the position of having to hide from law enforcement and landlords alike, is the driving force pushing low-income and survival sex workers into street-based contexts, where they are at increased risk of violence, unsafe working conditions, and death.[48,49,81,65,81,104,106-109,151171-174,180] For example, studies in Scotland, which moved to criminalize sex work in 2007, showed a marked spike in violence against sex workers as an increasing number were forced to work in unsafe, isolated, street-based conditions.[104,181] This provides another example of how criminalization causes harm, particularly when place in contrast to decriminalization. Studies have shown that in settings in which sex work is decriminalized and sex workers can freely and legally establish and conduct businesses indoors and in community with other sex workers, leads to increased safety, increased consistent condom use, decreased condom coercion by clients, and decreased violence at the hands of clients and law enforcement officers alike.[49,48,51,60-62,99,102,103,105,132,135-141,147-150] Indeed, sex workers activist and sex worker-led organizations have consistently argued that criminalization makes them and their entire community less safe.[21,46,47,63,81,100,106,107] For example, studies in Scotland saw reports of rapes and violent assaults against sex workers double in the first year alone of passing new criminalization legislation.[104,181] Conversely, studies that looked at countries where sex work was previously criminalized and then moved to decriminalization, such as Australia and New Zealand,[105,111] results show improvement in multiple health and safety metrics after decriminalization was passed:

> In jurisdictions that have decriminalized sex work such as New Zealand, sex workers have an increased ability to screen clients, work in safe areas with better access to security services, and refer to police in cases of violence.[49]

Even with all this said, it is not just sex workers alone that suffer under criminalization. Victims of human trafficking suffer too.[47-49,77,113,120] Importantly, anti-sex work legislation tends to not distinguish between sex work and sex trafficking,[114,115] which leads to conflations of sex work and sex trafficking tending to be quite prominent among legislators and law enforcement personnel. In both cases, law enforcement officers tend to position themselves as "saviors" of people they consider to be victims of sexual exploitation and coercion.[194] The fact that their primary mode of addressing these "victims" is treating them like criminals, arresting them, incarcerating them, and potentially traumatizing them for life in an attempt to "save" them seems questionable, at the very least. But even when genuinely well-intentioned, this punitive approach to addressing sexual exploitation causes real, tangible harm to sex workers and victims of human trafficking alike.[47-49,77]

Common methods of intervention used by law enforcement officers in contexts in which sex work is criminalized, such as raids and "sting" operations, in which individuals suspected of solicitation or sex trafficking are either tricked into an interaction with an undercover officer or rushed in upon by multiple officers without warning, generally involve law enforcement intentionally and purposefully waiting until the target individual(s) are in a vulnerable position before revealing their identity and proceeding to cuff, strip-search, and arrest the intended target or targets.[194] Such an experience would be humiliating and traumatizing for anyone, much less for someone who might be a victim of sexual trafficking and exploitation. However, because these anti-trafficking

laws are imprecise by design, they often lead to humiliating and traumatizing experiences for both sex workers who are not victims in addition to victims who are treated like criminals. Even in countries with "End Demand" legislation - in which the selling of sex is not prohibited but the purchasing or promoting of sexual services is - sex workers and trafficking victims are subjected to the same tactics, even though the laws do not explicitly target them. When asked to describe what it was like experiencing a raid, one sex worker in Scotland told reporters, "I felt so violated … I've never been so humiliated in my life,"[112] while another sex worker in the UK described it as "devastating" and "incredibly stressful."[193] To make matters worse, reports have found that the majority of sex workers are not even referred to resources or support programs after the raids they are subjected to.[193,194]

Furthermore, using criminalization to combat sex trafficking leaves both sex workers and victims of human trafficking with extensive criminal records, making it harder - not easier - for them to leave the sex trade, irrespective of whether their involvement was consensual to begin with or not.[47-49,77,113] In fact, The Freedom Network-USA, the largest network of anti-trafficking organizations and survivors in the country, explains the ripple-effect a criminal record can have on nearly aspect of one's life in their position paper entitled "Preventing Sex Trafficking Requires the Full Decriminalization of Sex Work:"

> Due to the common use of background checks, sex work-related arrests and convictions block consensual sex workers and trafficking survivors from a wide variety of employment, volunteering, parenting, licensure, safe housing, higher education, financial aid, immigration relief, and public benefits. The trauma and shame associated with having to reveal and explain their criminal record leaves many people unable to seek other forms of employment, reconnect with family and friends, or to seek

> support from public agencies. For sex trafficking survivors, it is a constant reminder of the abuse they suffered. Foreign nationals can be deported for such convictions, which dissuades immigrants from seeking protection from law enforcement or support from service providers.[113]

Still, in recent years, legislators around the world continue to conflate and criminalize sex work and sex trafficking.[114,115] In the United States, legislators have tended to be more deliberate about billing new laws as specifically anti-sex *trafficking* measures, at least superficially. Nevertheless, ambiguous language within the laws themselves have consistently led to similarly harmful effects on sex workers and victims of human trafficking alike. For example, in 2018 the "Allow States and Victims to Fight Online Sex Trafficking Act"[114] and "Stop Enabling Sex Traffickers Act"[115] - better known as FOSTA/SESTA - were signed into law in the United States, ostensibly to help combat sex trafficking over the internet.

The pair of bills - FOSTA, by the House and SESTA, by the Senate - introduced new amendments to Section 230 of the Communications Act of 1934, also known as the Communications Decency Act of 1996.[116] The Communications Decency Act was originally an attempt to protect children from pornography and obscenity on the internet by regulating internet content, though much of these provisions were later struck down by the Supreme Court in *Reno v. ACLU*. [117] However, Section 230, which concerns the liability of internet service providers, remained in place. Which is a good thing, as the statute is considered by many to be one of the most important pieces of internet legislation to date. This is because Section 230 provides what was known as a "safe harbor" rule, [117] protecting providers of internet services, such as websites like craigslist and twitter, from the things their users might use their services or platforms for. The relevant text of Section 230 states the following:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.[116]

In the simplest terms, Section 230 means websites like craigslist, backpage, or twitter, cannot be held liable for what their users post, write, say, do, or create on their platforms. It is considered a critically important protection of free speech on the internet, as platforms would otherwise be incentivized to limit what their users say and post to avoid being sued.[117] But FOSTA/SESTA amends that very clause, meaning any internet service operator can be prosecuted for the federal crime of human trafficking if they are found to be engaged, even peripherally, "in the promotion or facilitation of prostitution" or "facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims."[114] Proponents of FOSTA/SESTA claim the bills are meant to target human traffickers, despite the laws being vehemently opposed by major survivor-led human trafficking organizations and sex worker-led advocacy groups nationwide.[120] In fact, legislators receive letters of opposition Freedom Network USA,[120] the nation's largest network of survivors of human trafficking, and the Sex Workers Outreach Project (SWOP),[182] the nation's largest network of sex worker advocates, in addition to the ACLU, the National Center for Transgender Equality, and even the United States Department of Justice (DOJ).[118] The United States DOJ published its letter in opposition to the law, citing serious concerns that the bills were not only unnecessary given existing laws to prosecute human trafficking, but more importantly, may actually make prosecution of trafficking crimes even harder, in addition to several constitutional concerns.

> Under current law, prosecutors must prove that the defendant knowingly benefited from participation in a sex trafficking venture, knew that the

> advertisement related to commercial sex, and knew that the advertisement involved a minor or the use of force, fraud, or coercion. While well-intentioned, this new language would impact prosecutions by effectively creating additional elements that prosecutors must prove at trial…. We note that Section 4 of H.R. 1865 states that the changes to the CDA 'shall apply regardless of whether the conduct alleged occurred [sic], or is alleged to have occurred, before, on, or after such date of enactment.' This raises a serious constitutional concern. Insofar as this bill would 'impose[] a punishment for an act which was not punishable at the time it was committed'… The DOJ objects to this provision because it is unconstitutional.[119]

Nevertheless, legislators proceeded with passing the bills into law, adding the following notes regarding the amendments to Section 230:

> [Section 230] was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims…clarification of such section is warranted to ensure that such section does not provide such protection to such websites.[116]

Of course, in passing FOSTA/SESTA, legislators ignored the critical flaws advocates, human rights, and legal experts alike were all aware would cause the bills to backfire. First, is that the language of the bills themselves make no effort to distinguish between sex work and sex trafficking. While the legislators presenting FOSTA/SESTA made a point of to *emphasize* sex-trafficking, the text of bills themselves consistently uses the terms "sex trafficking" and "prostitution" interchangeably, with no attempt to define the terms explicitly. [114,115] While federal law already criminalized the promotion or facilitation of sex *trafficking* - defined as commercial sex involving minors or adults who were induced to participate via force, fraud, or coercion- the key text of FOSTSA/SESTA makes it a federal crime to operate an internet service that "promotes or facilitates *prostitution*." [114,115] It is the use of the word "prostitution" that allows the conflation of

consensual sex work and human trafficking, meaning that sex workers can now be prosecuted by this "anti-trafficking" law, even though by definition they are working consensually. Even more absurd is, because of the way the text is phrased, sex workers can even be convicted of trafficking *themselves*. Many sex workers who work as independent contractors – as in, they do not use an agent or agency to help promote their services or schedule clients - will create and publish their own websites to advertise their businesses. Such a website may include an individual sex worker's personal photos, screening requirements, and contact forms through which prospective clients can arrange an appointment. Under FOSTA/SESTA, these independent sex workers can be prosecuted for human trafficking because they published a website that promotes and facilitates "prostitution", even though the only person being promoted on the site is themselves. Indeed, studies have found that FOSTA/SESTA has been primarily used to target and arrest sex workers,[183,185,187] having devastating effects on the lives of sex workers not only in the United States, but worldwide.[184,186] Meanwhile, the number of human trafficking victims "caught" by the laws has been virtually nothing, with many law enforcement officers citing how much more difficult the laws have made going after traffickers.[187-191]

The second crucial flaw with the bills is that it failed to recognize the ways in which sex workers and victims of sex trafficking both used platforms like craigslist and backpage to keep themselves safe. Sites like backpage and craigslist personals allowed an extra layer of safety between those in the sex trade and the clients who contacted them, by allowing sex workers and even sex trafficking victims to assess and screen a client from a distance before meeting them physically.[102,103,105,180] Similarly, many of the

websites that were forced to shut down in response to FOSTA/SESTA actually functioned as places where sex workers could communicate with one another and share tips for staying safe. Other websites functioned as informal databases where sex workers could post and warn each other about violent or unsafe clients. Individuals in the sex trade could search a potential client before ever meeting them physically by searching for them by name, date of birth, even driver's license number, and reviewing the accounts of other sex workers who had seen that same client before. This allowed both sex workers and victims of sex trafficking to identify and avoid clients with histories of violence, keeping themselves and each other out of harm's way. [102,103,180]

With the passing of FOSTA/SESTA, sex workers and trafficking victims alike saw all those resources disappear, with disastrous effects. Not only did sex workers lose their screening mechanisms, their databases to search violent clients, and their forms of communication with each other, they also lost the safest way for them to interact with clients. Without these platforms, sex workers and victims of trafficking could not screen their clients, meaning they were forced to see clients with no information about them. Without access to informal, community databases, violent clients were impossible to identify before meeting them in-person, meaning sex workers were forced to walk into private spaces with potentially dangerous, violent clients and hope they could escape if the interaction turned bad.[32,180,183-187] But perhaps most dangerous of all, was the fact that losing these websites meant many sex workers and trafficking victims alike lost their safest way of advertising to and contacting clients - the internet.[180] This loss affected the poorest and most marginalized individuals the most, forcing the most desperate and vulnerable people in the sex trade to put themselves in far more danger to find clients

than before.[183] People who were previously working indoors, in relative safety, were now forced to walk the street or otherwise find clients in person, with no distance, no screening, and no community.

The loss of these resources put sex workers and victims of human trafficking in indescribable danger and, of course, that danger was only magnified for those who existed at the intersection of multiple marginalizations. Street-based sex workers, sex workers of color, transgender sex workers, and victims of human trafficking were the hardest hit by far.[180,183] Worst of all, studies found that with the loss of these websites human trafficking was pushed further and further underground,[188,189,191] something that experts on the subject had also warned congress would happen if these were passed. Dr. Kimberly Mehlman-Orozco, a professor in criminology with an emphasis on human trafficking, who serves as an expert witness on the subject in both criminal and civil cases stated the following regarding the effects FOSTA/SESTA would have on law enforcements' ability to identify and target traffickers:[121]

> You are going to see a displacement and a dispersion of these erotic advertisements, except instead of being on one open-access website, it's going to be displaced to other websites that may not be cooperative with law enforcement, and dispersed to multiple websites.[121]

Both sex worker-led advocacy groups like sex worker-led and survivor-led advocacy groups for victims of sex trafficking like Freedom Network made similar appeals to legislators prior to FOSTA/SESTAs passing.[113,119-120] Of course, they were ignored and after the laws were passed, their predictions materialized. Just a two short years later, even law enforcement began admitting that FOSTA/SESTA had made their jobs harder, leading many to call the bills a colossal failure.[187-191]

Despite the general concurrence among so many of FOSTA/SESTAs failure, United States legislators continue to pass more laws criminalizing various aspects of sex work under the guise of stemming sex trafficking. Yet sex worker advocates[6,7,20,22,24,26,28,32,37,40,44,45,47,50,53-62,66,81] and their supporters around the world, including international[3-5,8,9,33,49,64,76,79,124] and national[23,29,31,32,39,46,192] human's rights organizations, medical professional associations,[63,192] and numerous independent studies[21,25,35,36,67,68,70,73,79,88-93,95,97,99,100,101,105,111,125-127,131,133-150,158-171] continue to the undeniable link between the criminalization of sex work and the disproportionate violence sex workers face.

The medical community has an ethical obligation to address these issues as part of its ethical obligation uphold the principle of nonmaleficence, avoiding preventable harm whenever possible, including on a societal level, and especially in the context of public health and legal policy that is currently creating obvious and indefensible systems of structural violence from which certain members of our society cannot escape. The criminalization of sex work is one such system, and while this argument is not exhaustive by any means, it does provide sufficient evidence for just a few of the ways in which the criminalization of sex work creates multiple forms of harm from almost every angle and, importantly, does so in such a way that would be largely non-existent if the policies of criminalization were simply reversed.

The argument for the decriminalization of sex work as a moral imperative is strong if only from a public health standpoint alone: Criminalization causes greater violence, injury, harm, and even death for sex workers and victims of human trafficking alike, while also decreasing consistent condom utilization for a population that would

otherwise be highly adherent, putting them in greater danger of contracting sexually transmitted infections and hindering our own public health efforts to fight the spread of HIV/AIDS. But the moral necessity is arguably made even greater by the obvious and, frankly, appalling impingement criminalization puts on sex workers' basic rights to bodily autonomy. The use and possession of condoms is, nor should ever be illegal, reasons not least of which are that condoms are a vital tool in the prevention of fatal infections such as HIV/AIDS, not to mention other life-altering conditions, such as other STIs and unwanted pregnancies, both of may potentially increase one's risk of further harm and are particularly dangerous in the context of poor healthcare access, which sex workers have. But just as important is one's right to bodily autonomy, reproductive freedom, and sexual health. The choice of women, men, and other human beings to carry condoms, to engage in sexual activities in a safe and healthy way should not be policed in any context, as it is a direct violation of what is arguably one of the most important human rights across legal, medical, and political realms: the right to autonomy. It is the combination of the harm the criminalization of sex work causes and the basic human rights it violates that makes these policies, once reflected upon, so egregious. In Principals of Bioethics, Beauchamp and Childress state that none of these fundamental bioethical principles stand-alone, but instead interact with one another and can be called upon so support each other as well.[1] While it should be enough to prove that the criminalization of sex work violates consensual, commercial sex workers' right to bodily autonomy, self-determination, and reproductive freedom, or that it creates so much harm in so many ways on so many levels, to provide sufficient evidence and motivation that this is a policy the medical community should immediately condemn, the fact that these

policies violate two of these fundamental principles should emphasize how grossly inconsistent these policies are with the healthcare community's ethical standards and how critical it is that the medical community address them. Furthermore, the following chapter on beneficence will aim to show the many ways in which the decriminalization of sex work resolves these gross violations, restoring the right to autonomy and reducing the harms they cause in significant and practical ways, presenting a practical and viable solution that is truly urgent the medical community consider.

CHAPTER 4

BENEFICENCE

The third biomedical principle to be discussed is that of beneficence, which encompasses the ethical obligation for medical practitioners to act in the best interest of their patients, in such a way that promotes their well-being and improves heir health outcomes. From an etymological standpoint, the term "beneficence" is related to the qualities of "mercy, kindness, generosity, and charity" or any action that has "the goal of benefiting or promoting the good of other persons."[122] As an ethical principle or "rule" beneficence implies the duty to act for the benefit of others' well-being, "protecting them from harm"[123] and "helping them to further their important and legitimate interests, often by preventing or removing possible harms."[122,123]

Like autonomy and nonmaleficence, the principle of beneficence in healthcare does not only involve what is good for each patient, separately and individually, but also questions of health, safety, and well-being of society as a whole. While the Hippocratic Oath does indeed ask physicians to pledge to "benefit the sick" and act in ways to lessen their suffering, this is only one facet of beneficence.[122] The principle of beneficence in healthcare are obligations that extend to "both individual investigators and society at large."[123] While these ideologies were initially thought of within the context of biomedical research, like autonomy and respect for persons, they now are considered to extend and apply to all aspects of medical care. In the context of medical research, the principle of beneficence asks investigators and medical providers to consider what benefit their projects will bring to society overall, and to consider if the benefits are worth

any risks or harms that may arise in the process.[123] However, in its wider applications, the principle of beneficence asks providers to make the same considerations in the context of their patients' clinical care as well. Working with each patient involves questions regarding how to bring the most potential benefit, while also reducing potential harms.[1,122,123] Increasingly, physicians are taught that a patient's socio-economic context is critically important to their greater clinical picture.[1,123] In this way, considerations of beneficence should also extend to the patient in the setting of their overall social location, rather than simply as an individual in the context of the clinic.

In the case of the sex worker community, it is impossible to consider the healthcare challenges of patients who are sex workers without considering their socio-political context as well. Their status as criminalized people creates a situation in which the healthcare outcomes of this population are inextricably linked with factors related to their social location, in addition to other factors that contribute to social marginalization, such as gender and ethnic identity, sexual orientation, and economic background. Heavily criminalized populations such as sex workers face several unique and important stressors that have the potential to reach most facets of these patients' every-day lives and health care. Sex workers who occupy a location of multiple, intersecting marginalizations, such as sex workers of color, transgender, queer, male and migrant sex workers, may face additional layers of discrimination, stigma and other social barriers when attempting to access care. The difficulty of navigating these barriers is only made more complex by criminalization.

Creating a space of trust and open communication is absolutely key to the provision of healthcare for any patient and is especially important when it comes to topics

such as sex and illegal activity. One of the ways in which healthcare providers are taught to facilitate trust and communication with their patients is to try, in various ways, to ensure a safe and non-judgmental space. For example, when speaking about drug use, sex and sexually transmitted infections, providers must take care to communicate to patients that they are in a safe, private space and that there will be no judgment concerning the patient's choices or history. Creating a safe and non-judgmental space is particularly important when working with patients from marginalized communities, who may face near-constant stigma, discrimination, and harassment from various people and institutions throughout their daily lives. Providers may attempt to similarly create or signal a safe space for specifically marginalized patients as well. For example, providers who include their preferred pronouns on their identification cards may help signal to queer, trans and gender non-conforming patients that the provider is a safe person to speak openly with about issues concerning gender identity, sexuality and sexual healthcare without worry or fear. This kind of signaling is extremely important for patients from marginalized communities, particularly those who face higher rates of harassment and violence, such as transgender and gender non-conforming individuals.[14-19,42-44]

Sex workers, as a patient population, sit at the intersection of all of these sensitivities. They are a marginalized, sexually active population that faces significant stigma,[3-6,20,23,48,49,81,106-109] discrimination,[2-6,20,22,29-32,34-36,39,4145,49,107-109] and disproportionate rates of violence, including physical and sexual assault, rape, and homicide.[3-6,9,20,23,34,36,41,48,49,77,81,106-109] It is also a population that has been historically distrustful of the medical community and has a high reported rate of medical trauma,[53-55,124-127] Indeed, it is not just fear of disclosure that prevents sex workers from speaking

openly with their healthcare providers about their status as sex workers. Sex workers around the world report poor treatment and stigmatizing behavior by healthcare providers due to their occupation. One study which drew its title from a direct quote of one of its participants who told researchers, "we are despised in the hospitals,"[125] while another report by the UNFPA found that almost 1 in 4 sex workers had been denied healthcare services outright because of their occupation.[124] While other sex workers have reported "blatant discrimination and harassment from medical providers; doctors ignoring their injuries and needs, running STI tests without consent." Sex worker advocates and advocacy organizations worldwide consistently report stigma from healthcare providers as the second greatest deterrent from seeking medical help after criminalization and fear of arrest.[53-37,124-128]

Given these reports, it is perhaps unsurprising that one study found over 60% of sex workers were afraid and distrustful of healthcare providers.[128] In fact, results from the same report noted many sex workers stated they would not even see a doctor or go to the hospital unless they were able to find another person who could accompany them. Interestingly, this is not unique to the international setting or the United Nations report. Many sex worker-run advocacy groups in the United States have adopted similar programs to help sex workers in their local communities seek medical care when necessary, providing so-called "medical accompaniments" to sex workers who need to see a doctor or go to the ER.[129,130]

But the fact that sex workers face a great deal of stigma, discrimination, and violence in society is not unknown to the medical community. Organizations like the United Nations and the World Health Organization (WHO) have both released reports on

the specific barriers to care, such as stigmatization and medical discrimination, going back decades.[3,5,86,124,128] Yet despite this, there currently exists very little discussion regarding how to make, create or signal a safer space for these patients, nor the high rates of discrimination, neglect, and trauma sex workers have reported in the medical setting, Discussion regarding the ways in which criminalization negatively affects the healthcare outcomes of sex workers, as well as prevents them from freely disclosing their status and their healthcare needs to providers, is similarly limited beyond concerns of "high-risk behavior" on the part of sex workers[2,3,5,10,11,147] – a point which previous chapters have noted to be problematic, at best.[67-71] This lack of discussion around the subject of sex workers as patients, the effects of criminalization on their health, and the stigma they face both inside and outside of the clinical setting, directly contribute to the fear and distrust these patients continuously report towards the medical community. Similarly, the lack of discourse on the ways in which criminalization of sex work results in poorer health outcomes for these patients signals to sex workers that their health and human rights are not important. This silence implies the medical community supports criminalization and the negative health outcomes it perpetuates. Neither of which are consistent with the ethical concepts of beneficence or non-maleficence. Conversely, medical professionals advocating for the decriminalization of sex work would signal to patients who are sex workers that their rights and their healthcare do matter. By speaking out against the criminalization of sex work, the medical community would take the first and most important step to fostering trust and safety with the sex worker community as a whole, a move that would be not just consistent with the principle of beneficence, but integral to it.

Without the active cultivation of trust and safety, the patient-provider relationship cannot exist and patients such as sex workers will continue to not disclose their status. However, public support and advocacy for the rights of sex workers among medical providers would signal to sex workers that their voices are being heard and their rights are being centered. Of course, patients who feel heard and respected by their providers are more likely to speak openly and trust their medical guidance but, just as importantly, public condemnation of the criminalization of sex work and support for decriminalization would simultaneously push healthcare providers to discuss the stigma and discrimination many sex workers report facing within the medical setting head-on. This kind of explicit conversation would require local and national medical communities to discuss what implicit bias against sex workers looks like and, perhaps, finally analyze and address some of the blatant and subversive stigma sex workers face.

At this point, it is important to note that stigma is a barrier to care in and of itself. In fact, many studies that looked at healthcare outcomes and healthcare utilization rates among sex workers consider the "experience of stigma" an outcome[2,3,131-135] and noted that health care utilization decreased in studies where the experience of stigma was high.[53-57,63,65,71,81,95,97,98,124-128]

But the beneficial effects of decriminalization go beyond fostering trust and a safe space for patients who are sex workers. Multiple studies have shown how decriminalization resulted in higher healthcare utilization among the population,[131-136] a critical data point in a community where avoidance of healthcare providers is high. One interesting study looked at healthcare utilization rates among sex workers in different parts of Australia,[135] where criminalization of sex work varies from city to city. The study

compared rates of healthcare access and utilization among sex workers between cities with differing legal environments, and found that cities where sex work is decriminalized, such as Sydney, had both greater healthcare access and healthcare outcomes overall. For example, the study found many more public sexual health clinics in cities where sex work was decriminalized, along with greater investment in health promotion programs directed at sex workers, and found they were more likely to have language services for migrant sex workers who were non-English speaking.[135] The study also found greater occupational health and safety measures in place for sex worker spaces and that sex workers had greater access to condoms and other health supplies. Additionally, sex workers reported feeling safer in accessing and receiving medical care from health care providers in the cities where sex work was decriminalized. Interestingly, the study noted that sex workers in partially criminalized settings - also known as the Nordic Model, the "End Demand Model" or the "Entrapment Model", in which the buying of sexual services is criminalized, but the selling is not - experienced the poorest health and safety outcomes of all three legislative settings, likely related to greater policing of brothels and sex worker spaces. [135] In fact, policing was found to be high in both criminalized and partially decriminalized jurisdictions and was associated with reduced access to health services and other support services for sex workers in those cities, highlighting the direct causal link between criminalization and healthcare utilization among this patient population. [135]

Several other studies have shown that sex workers in decriminalized environments are more likely to seek out healthcare services, which results in better healthcare outcomes overall, from increased condom use,[132,135-140] improved safety,[141]

and mental health.[137] For example, while several studies have shown the association between poor condom usage with countries where sex work is criminalized,[87-95,107-109,142-146] decriminalization shows the opposite.[132,135-140] One study looked at condom usage among female sex workers in Sydney, Australia before and after decriminalization, comparing rates from 1993, when sex work was still illegal, and to rates in 2003, after sex work had been decriminalized. The study found condom use had increased from 51.6% to. 84.8% for vaginal sex and 39.6% vs. 66.1% for oral sex (p=0.001).[137] Other studies have also found that, when the barriers of criminalization are removed, condom adherence becomes extremely high,[147-150] with one study finding sex workers reported using condoms "with all clients,"[147] and another concluding as follows:

> [Sex workers] are more inclined to carry (and use condoms) in venues where their possession cannot be used as evidence of intent to commit an offense related to prostitution.[149]

Similarly, in India, sex workers in West Bengal's red-light district reported facing near constant condom coercion from clients. However, after collectivizing in 1999, the over 65,000-member Durbar Mahila Samanwaya Committie (DMSC) – one of the largest sex worker labor unions and advocacy groups in the world – has created a culture in which condom use is nearly universal.[51,60,62] Today, DMSC boasts a condom utilization rate of 93%; an incredible increase from the base 3% rate recorded prior to their collective organizing. [61]

Sex worker advocates and advocacy organizations echo these studies with their own lived experience, arguing that sex workers in criminalized environments are often forced to forgo condoms usage for various reasons, including lack of access and fear of prosecution by police,[87-95] citing policies in many countries, including parts of the United

States, that allow law enforcement to use possession of condoms as evidence of solicitation and grounds for arrest. Blatantly discriminatory policies such as these put sex workers in a position where they fear simply carrying condoms, making it nearly impossible to practice safe sex and highlighting once again how much of the lack of safety, danger, and poor health outcomes sex workers experience are a direct result of their criminalization. Therefore, it is easy enough to see how decriminalization immediately alleviates these barriers: If solicitation is no longer a crime, sex workers no longer have reason to fear carrying the very items so crucial to safe and healthy sexual activity.

Sex workers advocates and advocacy organizations point to similar shifts in violence and harassment in places where decriminalization is implemented. While sex workers in countries where sex work is criminalized face astonishing rates a violence,[49, 6,9,20,23,34,36,41,48,49,77,81,106-109,151] countries where sex work has been decriminalized show the exact opposite.[49,48,102,103,105,141] One reason for the high rates of violence has to do with being forced to "hide" from law enforcement. Fear of discovery or entrapment motivates sex workers to conduct their appointments with clients in increasingly unsafe, unregulated environments and under unsafe conditions. For example, laws like FOSTA-SESTA made it harder for sex workers to meet with clients safely by taking away what is arguably the single most important tool they have to screen out and avoid violent clients: The internet. As explained in preceding chapters, though these laws were ostensibly passed to target sex traffickers, ambiguity in the language in the actual text of the bills allows for law enforcement to prosecute consensual, commercial sex workers for using any website to advertise or promote their businesses, even if they only person they're

promoting is themselves.[114,115] Additionally, legislators either did not realize or chose to ignore the critical safety function these websites, including sites like backpage and craigslist, served for sex workers in keeping themselves and their community members safe worldwide.[103,103,105] As was predicted by human rights, sex workers rights, human trafficking survivors, and free speech advocates alike, the passing of these laws caused many of these crucial websites to shut their platforms down, rather than risk being prosecuted for the "facilitation or promotion of prostitution."[114,115] Of those that did remain, sex workers were too afraid to use them and risk being prosecuted themselves. As a result, sex workers who previously worked in relative safety, indoors, with screening mechanisms to avoid violent clients, were now forced to meet clients direct, in the street or other risky environments, isolated and without any chance to screen them beforehand and from a distance. This meant that sex workers had no chance to avoid a client who was already known to be violent with other sex workers previously, because those platforms in which sex workers could warn each other about dangerous clients were now gone.[49,63,101-103, 105, 108, 109]

Meanwhile, in countries where sex work is decriminalized, sex workers are free to use websites, screening platforms and other resources without fear, allowing them to search and identify clients with histories of violence or harassment from the safety of their own homes. In this way, sex workers in decriminalized settings can avoid ever meeting such a client in person and alone, which, unsurprisingly, leads to fewer violent encounters among individual sex workers and decreased rates of violence for the sex worker community overall.[141]

Similarly, when sex workers do not have to "hide" from law enforcement, they are better able to negotiate intentional boundaries with clients, such as non-negotiable condom use. This "increased bargaining power" comes in large part from the fact that sex workers in decriminalized settings can freely report clients who violate their boundaries without fear that they will be arrested or prosecuted – not to mention harassed or extorted – for being sex workers. Indeed, reports have shown that sex workers in decriminalized settings are more likely to report violent crimes committed against them in comparison to their criminalized counterparts.[48,49,64,95,151,152,141,137,163,170] Recall, sex workers who are criminalized often avoid law enforcement at all costs,[5,95,151,152] even when they've been the victim of a violent crime, due to the not unfounded fear that either they will be arrested themselves[3,5,95,151,152] or that the crime committed against them will not be taken seriously,[153,154] or even that they will be taken advantage of by law enforcement personal.[39,41,51,89-93,96,100,106-109,112,151,155] However, in decriminalized contexts sex workers have the option of legal recourse to report violent crimes without fear of arrest, abuse or neglect.[49,141,155] As such, sex workers are more likely to report violent clients to law enforcement *and* law enforcement are more likely to take those reports seriously. This results in violent clients actually getting prosecuted and removed from the community, making all sex workers in the community safer in the process.[48,49,64,141,137,163,170] Additionally, an environment in which violent clients consistently face legal consequences sets a new standard for clients in the sex worker community. While violence against sex workers in criminalized contexts can be committed with impunity due to sex workers unwillingness to report, violence against sex

workers in decriminalized contexts decreases and the community as a whole becomes a safer place for both workers and their clients. [48,49,64,102,103,105141,137,163,170,]

Furthermore, without the fear of prosecution that comes with criminalization, sex workers in decriminalized environments are able to collectivize and publicize standards of behavior for their clients, further increasing their bargaining power around things like condom use, and decreasing clients' ability to harass, threaten or use violence to push, pressure or coerce sex workers into doing something that they do not want to do, such as engaging in a particular kind of sexual activity or engaging in sex without a condom.[51,60-62,132,135-140,147-150] This is an important function of collectives West Bengal's DMSC and why they were able to increase their condom utilization rate to 93% among their clients.[60-62] Nor is the effect unique to DMSC alone. Indeed, studies in countries where sex work has been decriminalized demonstrate marked improvement in metrics of safety and violence, in addition to consistent condom use and health care utilization. [49,51,132,135-140,147-150] The trend can even be seen in the United States, where in the small pockets of decriminalization that do exist, such as Nevada, where condom utilization rates among legal brothel workers are also very high.[99]

Interestingly, in some parts of the United States where sex work is still criminalized, politicians and law enforcement are trying to apply the same trend to address harmful aspects of criminalization.[155] For example, after hearing sex workers describe years of routine abuse, violence and rape by law enforcement officers in their city,[157] San Francisco law makers lobbied for and passed an "amnesty law" protecting sex workers from prosecution for prostitution when reporting violent crimes.[156] The law itself includes explicit language describing criminalization and fear of police as an important

reason why sex workers don't come forward when they have witnessed or been made victim of a crime, stating, "The criminalization of sex work is one of the primary barriers to reporting violence to law enforcement. Sex workers report fear of arrest as a barrier to reporting violent crimes."157 The policy was the result of years of advocacy by sex worker-run organizations, such as COYOTE-SF, in partnership with the city councilmembers.[155] However, while advocates supported the new policy as a step in the right direction, they explicitly noted it did not go far enough, pointing out that the law still allowed space for law enforcement to arrest sex workers who came forward to report violent crimes – just not for prostitution. They also noted that the policy would have limited efficacy in the context of continued criminalization, including laws like FOSTA-SESTA, which not only jeopardizes the important safety platforms sex workers use to keep themselves and each other safe from violence clients, but also allows law enforcement to arrest sex workers not for prostitution, but for human trafficking.[188,189,191]

Taken together, the response of legislators and law enforcement to attempt to address the harms associated with criminalization by creating an "amnesty law" only highlights the growing awareness among government officials that these policies are problematic and detrimental to public safety. However, as sex worker advocates pointed out, one small loophole is unlikely to neutralize the larger system of structural violence created by criminalization, particularly in the face of increasingly draconian legislation that continues to be passed, such as FOSTA/SESTA. This further underscores the necessity of decriminalization on a national level, as well as the moral imperative the medical community should have to publicly support and champion it.

Lastly, conversations about sex workers as patients and as a population of interest in the context of public health often revolve around questions regarding the transmission and prevention of STIs and HIV/AIDS. However, statistics on the prevalence of STIs among sex worker populations in countries in which sex work is criminalized are often marred by problematic sampling and confounding factors. This is particularly true in countries like the United States, where the criminalization of sex work makes it difficult for researchers to recruit sex workers into studies.[49,63,147] As a result, research involving sex workers tends to focus primarily on those who are easiest to identify, namely, street-based and outdoor sex workers,[67-71,147] even though street-based and outdoor sex workers only represents a small minority of the sex worker population as a whole. While definitive statistics are difficult to come by, primarily due to fear of disclosure to healthcare providers, advocates and public health researchers estimate outdoor workers account for just 20% of all sex workers in the United States.[63] Additionally, street-based sex work tends to be associated with lower income and greater vulnerability overall, including higher rates of physical violence and sexual assault,[148,151,163,166] injection drug use,[147,163] and even death,[148,151,163] all of which represent significant confounders. In fact, studies have shown that outdoor sex work is a high-risk setting in and of itself,[101-103,108,109] due to it being associated with significantly higher rates of violence and murder. For example, one study looked at legislation like FOSTA/SESTA and the effect it had on the safety of sex workers were forced to work in street-based settings after the internet platforms they had previously used to meet and screen clients had been shut down.[180,183] The study found that street-based sex work was associated with significantly higher rates of violence compared to working indoors.[101-103,108,109] Interestingly, the study profiled two cities in which a new website where sex workers could meet and screen clients was recently introduced. The study researchers found that rates of violence and homicide dropped significantly, leading them to conclude that moving sex workers indoors had saved hundreds of sex workers lives within the first year.[101-103,108,109] With this in mind,

studies that recruit street-based and outdoor sex workers alone are likely to produce results that are skewed by these important and significant confounders that are highly associated with sex work in a high-risk setting, rather than sex work itself or the larger sex worker population as a whole. Indeed, arguments against the decriminalization of sex work[69] often cite concerning statistics regarding STI prevalence and transmission, but further inspection of these sources will reveal studies whose patient populations that are almost exclusively street-based, outdoor and/or survival sex workers,[67-71] with no acknowledgment of the fact that the vast majority of sex workers (~80%) in the United States work indoors.[53-57,63,65,72] It is important to acknowledge these discrepancies when discussing studies that look at outcomes such as the prevalence of STIs and substance use disorder (SUD) among sex workers in criminalized environments, especially when using them to draw conclusions and make policy recommendations that concern the larger sex worker community as a whole, as this kind of narrow sampling can produce results that do not accurately represent the entire sex worker population, just one fraction of it.

Additionally, it is for this reason that while there do exist many studies that look at the prevalence of various STIs among sex workers in countries in which sex work is criminalized, it is somewhat difficult to ascertain their utility. Results of these such studies are quite variable, even within the same study population, making it difficult to draw conclusions regarding STIs in the sex worker population in criminalized environments. However, studies that look at sex workers in countries where sex work has been decriminalized have the benefit of being able to recruit a wide range of sex workers (due to decreased fear of disclosure to health care providers) as well as being able to control for confounding factors more easily. For example, one Australian study looked at rates of cervical human papillomavirus (HPV) among 288 sex workers and compared them to 266 'non-working' controls who attended the same sexual health clinic.[158] The

study found no significant difference in the rates of cervical HPV infection in sex workers (31.6%) and controls (24.4%). Interestingly, factors found to be independently associated with HPV infection were the use of non-barrier contraception, age under 36 and the number of *non*-paying sexual partners, while the number of paying sexual partners was found to be non-contributory.[158]

Another study, also in Australia, attempted to compare various sectors of the sex worker industry, including male and female private (or intendent, non-agency associated) sex workers, brothel-based sex workers, and illegal (predominantly street-based) sex workers.[159] The study found that sex workers in all three sectors had higher self-reported *lifetime* prevalence of STIs than compared to the lifetime prevalence of the general population. However, it also found that (current) rates of STIs among the independent and brothel-based sex worker cohorts was either lower than or equivalent to that of the general population, depending on the specific infection. The study discussed possible explanations for the discrepancy between lifetime prevalence and rate, including a higher rate of "medical scrutiny" among sex workers, as sex workers in the study reported routine testing as frequent as once a month to once a year, compared to the general population who may receive sexual health testing only rarely.[159] Another proposed explanation was greater recall of past infections among sex workers due to "their broad knowledge of sexual health," adding "Indeed, within Queensland sex workers are encouraged (and licensed brothel workers are required) to complete a 'sexual health workshop' that presents information about STIs, safer sexual practices and how to check clients for visible signs of infection," meaning that sex workers may have self-reported

higher lifetime prevalence of STIs simply because they were better educated and more aware of their own sexual health, rather than an inherent risk.[159]

Similarly, while studies providing accurate representations of STI prevalence among sex workers in criminalized environments remains limited and difficult to ascertain, results from studies in recently decriminalized settings (as in, comparing rates of STIs before and after decriminalization of sex work was passed) can provide a useful window into the issue. For example, one study of sex workers in Melbourne found prevalence of STIs had improved with decriminalization (0.61, 0.11, 0.79, and 0.17 for chlamydia, *Trichomonas vaginalis*, genital warts, and herpes, respectively) and noted that most new infections were related to partners outside of work.[160]

Studies such as these consistently show that STI rates among sex workers in decriminalized settings are quite low and often comparable to rates seen among the general public. This trend highlights yet another benefit that results from the decriminalization of sex work: Because sex workers in decriminalized environments have greater access to health care services, they are more easily recruited from all sectors for studies. These studies can easily compare specific populations of sex workers with specific populations of the general public and can much more easily control for confounding factors. They also show how sex workers in these environments take their sexual health very seriously, seeking out sexual health screening services at greater frequency than the general population, being more proactive about their sexual healthcare when necessary, and receiving more sexual health education than the average person. Indeed, studies have shown that in when sex work is decriminalized, sex workers exhibit

a low level of "high-risk" behaviors, leading to many of the positive health outcomes seen in these settings:[147]

> The low level of risk practices found in this study can be partly explained in terms of the relative lack of organizational obstacles to safe practices for [sex workers] working in legalized brothels in Victoria. A number of social, political, economic, and legal factors contribute to the situation wherein women working in these brothels are able to maintain such low levels of sexual risk. These factors include: the informal work culture which favors consistent condom use with clients and discourages anal sex; the State funding and support for a sex worker organization which promotes safer sexual practices; brothel managers allowing the sex worker organizations to conduct education programs in the brothels; brothel managers providing condoms and lubricant for workers; and legislation which exempts [sex workers] working in legal brothels from legal sanctions. This study has demonstrated that woman working as [sex workers] in an environment where prostitution is decriminalized, and where there are structural supports for safer sexual practices, can and do engage in sexual practices which involve little risk of HIV or STD infection to themselves or their clients.[174]

These findings stand in stark contrast to the numerous studies which show issues of access and usage of healthcare services as well as some of the poorest health and safety outcomes countries in which sex work is criminalized,[49,124-128,161-163] partially criminalized,[164-166] and "Nordic Model" settings,[167,170] noting, interestingly, that partially criminalized environments had the some of the poorest health and safety outcomes of all three settings studies,[168-170] despite availability of resources and outreach to sex workers within these spaces. This again highlights how the most important factor influencing poor health outcomes for this population is not the availability of health resources for sex workers or outreach to them, but criminalization of sex work itself, as sex workers are unlikely to feel safe utilizing health or legal services allocated for them in any context where the risk of incarceration remains.

The results of the many studies cited in the preceding chapters outline the many ways in which the criminalization of sex work creates a system of structural violence that sex workers cannot escape, leading to consistently poor health care outcomes in areas that are largely preventable.[87-95,107-109,142-146] Whether these poor outcomes are due to low health care utilization or inconsistent condom use, the underlying trend that links them all is fear. Sex workers who exist in criminalized environments are forced to choose between incarceration and their safety or incarceration and their health, and it is the fear of incarceration that drives them to avoid law enforcement, avoid health care providers, forego condom utilization, or work in spaces where they are isolated and vulnerable to violence and coercion. When sex work is decriminalized, that fear of incarceration disappears, and the force that pushes sex workers into these unnecessarily dangerous and high-risk situations disappears along with it. This concept is supported by the many studies looking at health care outcomes in decriminalized settings and their overwhelmingly positive findings,[49,51,60-62,99,131-140,147-150] as well as the first-hand accounts and relentless advocacy of sex worker activists around the world.[46, 47, 81, 106, 107]

If the principle of beneficence involves doing the most possible good for people, including anticipating and avoiding preventable harm and the structures that perpetuate them, then it is hard to deny that decriminalization of sex work is an ethical and necessary move. The previous chapter on nonmaleficence outlined the many ways the criminalization of sex work causes harm, much of which is preventable and certainly anticipated, at least by human rights organizations and sex worker advocates who have been fighting to draw attention to them for decades. [22,28,46,47,81,106,107] This chapter, however, sought to highlight the benefits that result when the barriers and harms

associated with criminalization are removed. That is, that health care utilization improves, health care outcomes improve, violence decreases, homicide decreases, and STI rates become comparable to the rest of the public population. Multiple reports have shown that this is a population that *wants* to be safe, that wants to care for their physical and sexual health, that wants to practice safe sex, but criminalization is standing in the way. Previous chapters have shown the ways in which law enforcement in criminalized settings will use sex workers' attempts to practice safe sex as pretext to arrest and incarcerate them. Under these conditions, it is hardly surprising that sex worker may exhibit "high-risk" behaviors and health outcomes worsen as a result. But decriminalization resolves this issue, and studies have shown again and again, that in the absence of the fear of what law enforcement might do, sex workers are extremely proactive in practicing safe sex and caring for their sexual health.

The practice of using the possession of condoms as evidence against sex workers by law enforcement is just one example in which the criminalization of sex work often criminalizes the function of safety in order to entrap sex workers. Allowing simple possession of condoms to be used as evidence essentially criminalizes safe sex and allows discriminatory profiling of sex workers. Similarly, purposefully vague legislation criminalizing websites that facilitate or promote "prostitution" – an issue which will be elaborated upon further in the following chapter – is another way in which mechanisms of safety are made criminal for sex workers. These websites served a vital safety function for sex workers, allowing them to screen and avoid violent clients. Under criminalization, many of these websites were forced to shut down, taking away yet another of the very limited tools sex workers have to keep themselves safe. Additionally, study after study

shows sex workers being too afraid to report violent crimes to law enforcement, even when they are the victim themselves, because they fear they will be arrested if they do. These are all ways in which the criminalization of sex work criminalizes health and safety at every level, making it highly unethical. Decriminalization, however, removes all of these barriers, and if beneficence is concerned with doing the most good for the most people, it is difficult to argue anything less. No individual should fear carrying condoms or wanting to practice safe sex. Just as no one should fear reporting being the victim of a violent crime. Indeed, the principal of beneficence argues that the medical community is ethically obligated to support policies that foster a culture of safety for our patients. If sexual health and violence are some of the most important issues that face the sex worker community and their healthcare, then it is the responsibility of the medical community for support policies that make sure sex workers feel able to practice safe sex, receive adequate and comprehensive sexual health care, and report violent crimes against themselves and their peers without fear of arrest, incarceration, and living with a criminal record for the rest of their lives. Decriminalization removes the single most important barrier that prevents this from happening. Unlike our current policies, the decriminalization of sex work would, over time, allow the fear of arrest and stigmatization to be lifted, which would empower sex workers to report violent clients without fear, practice safe sex without worry, and speak openly to medical providers about their health care needs and concerns without stigma or shame, enabling health care personnel to accurately and openly counsel their patients on how to protect themselves and keep their bodies safe, directing them to necessary resources and increasing safety,

health, and well-being in a way that is impossible in an environment of fear, mistrust, and misinformation.

These are just a few reasons why decriminalization is fundamentally, healthier, and safer for sex workers, their clients, their families, and even victims of human trafficking. In fact, many proponents of decriminalization argue that sex workers can be crucial allies in identifying and reporting victims of sex trafficking, traffickers and other coercive or abusive bad actors. For example, Freedom Network-USA, the nation's largest network of anti-human trafficking organizations, argues just that:

> Decriminalization, instead, allows sex workers and survivors to contact law enforcement and other helping professionals for protection, and to report all forms of abuse and exploitation without fear of harm. Absent fear of criminalization, sex workers and customers, who know much more about the industry than outsiders, will be more willing and able to identify trafficking victims, provide them with information and resources, and report instances of exploitation and abuse.[113]

In this way, the benefits of decriminalization go beyond removing the harms, the violence, the barriers to health care and safe sex for sex workers alone; it goes beyond re-affirming the right to bodily autonomy for sex workers, and the discriminatory profiling and policing to which they are subjected, it goes beyond producing markedly improved outcomes in violence, safety and health, it also benefits those individuals who are victims of human trafficking, enabling them to be identified more easily and allowing funds that were previously being diverted and wasted on prosecuting consensual sex workers, to be directed towards those who are in truly trapped.

Taking into account with the harms criminalization causes, both directly and indirectly, the benefits decriminalization will produce are only strengthen the argument for why the medical community should support it. But this list is not exhaustive by any

means. Indeed, these are just a few of the many reasons why the decriminalization of sex work is consistent with the principle of beneficence and nonmaleficence. However, it is our current and active policy of criminalization and its inconsistency with the principles of bioethics that make the situation all the more urgent. Taken together, knowing that so many harms are being caused by a set of policies that is not only unethical, but violates human rights as fundamental to ethical practice as bodily autonomy, with the knowledge that a viable, beneficial, well-researched alternative exists makes the moral imperative to act even greater.

CHAPTER 5

JUSTICE

In conversations of bioethics, the principle of justice often refers to distributive justice, a concept which, according to Childress and Beauchamp, refers to "the distribution of all rights and responsibilities in a society, including, for example, civil and political rights."[1] These authors, however, outline a number of theories of justice through which healthcare providers and policy makers can practically apply such concepts. While these theories of distributive justice may vary in their fundamental ethos, their priorities, and even their applicability, it is argued here that the bioethical obligation to decriminalize sex work is consistent with each and every one. It should be noted explicitly that this work is not concerned in any way with discerning whether one theory of justice is better or more useful than another. Rather, the goal of this chapter is to show that it is specifically because it does not matter which theoretical framework of justice one chooses is what makes the need to address ethical implications of the criminalization of sex work so necessary. The fact that the decriminalization of sex work can be sufficiently argued for by each of these approaches to justice only further highlights the bioethical imperative for the medical community to being advocating for its adoption.

For example, one of the first frameworks of justice Childress and Beauchamp address in their work is libertarianism, which emphasizes one's rights to "social and economic liberty."[1] The authors refer to the works of Robert Nozick, and his concept of "entitlement theory" of justice, which is described as follows:

> ...government action is justified if and only if it protects citizens' rights (10). [Nozick] argues that a theory of justice should affirm individual rights rather than create patterns of economic distribution in which governments redistribute the wealth acquired by personas under the free market. … Accordingly, justice consists in the operation of just procedures (such as fair play), not in the production of just outcomes (such as an equal distribution of resources).[1]

Under libertarianism, liberty and personal autonomy - including from an individual, social, and economic standpoint- are paramount. This means concepts such as bodily autonomy, freedom of movement, freedom of commerce, and, often, by extension, free-market principles are considered more important to a just society than any attempt to redistribute wealth or distribute social goods equally.[1] With this set of values in mind, it is virtually impossible to argue for the criminalization of sex work. Bodily autonomy and personal liberty are absolutely fundamental to this conception of justice. Therefore, the idea that consenting adults should be not only prohibited from doing what they wish with their bodies (in so far as they are not harming or infringing upon the rights of others) but criminalized and punished for it as well is the absolute antithesis to what this concept of justice stands for. Furthermore, libertarian theories of justice define the role of governments as primarily that of *non-interference*, stating that governing bodies and public policy should primarily *affirm* individual persons' right to choose what to do with their own bodies and money, including their occupation and recreational activities.[1] As noted above, libertarian theory states that government action is only justified when its object is to protect the individual rights of liberty and autonomy of its people. But in the case of the criminalization of sex work, in which all parties are, by definition, consenting adults, the object of government action is the exact opposite. In this way, criminalization not only disregards the important rights sex workers, like all people, have to bodily

autonomy and self-determination, it also implicitly imposes external morality on consensual, transactional sex even though that morality is completely arbitrary.

Additionally, Childress and Beauchamp note the important influence concepts of the "free-market" have had on conversations regarding health care in countries like the United States, stating that under this conception, "a just society protects rights of property and liberty, allowing persons to improve their circumstance and protect their health on their own initiative."[1] Importantly, health care is not a right under this conception, but the free market is. Therefore, nothing could be more inconsistent with such an ideology than the criminalization of consenting adults selling a form of labor for which there exists demand in the market. Sex work is not inherently different than other forms of physical labor, such as construction work, house cleaning, masonry, or any other form of labor in which the use of one's body is a central component. At the same time, sex work often has an interpersonal component that is in many ways not unlike the work of a therapist, a psychologist, or a social worker. Regardless of how one chooses to categorize the labor of sex work, the fundamental fact remains that sex work is work, and in so far as there a demand for it in the marketplace, not only in there no reason to interfere with its commerce, much less criminalize it, it would be unethical to do so under libertarian theories of justice.

Furthermore, the ethical justification for libertarianism as a viable approach to justice lies in the theory that, given the right to personal autonomy, property, and free commerce, individuals can sufficiently ensure and protect their own health.[1] Yet there are countless examples within the preceding chapters that explicate the ways in which the criminalization of sex work not only denies sex workers their right to personal autonomy,

but actively impedes in their ability, and even their active attempts, to ensure their own health and safety - both directly and indirectly. Study after study shows that criminalization is associated with poorer access to health care and decreased utilization of health care services by sex workers. Meanwhile, in decriminalized settings, these disparities all but disappear, when controlling for other socioeconomic determinants of health. Under criminalization, law enforcement officers around the world, from the United States to South Africa to China, confiscate and destroy sex workers' condoms, often using them as sufficient grounds to arrest, incarcerate, interrogate, and prosecute them for a crime. There is no argument consistent with the right to liberty of person and property that can defend this practice, yet it is endemic to countries where sex work is criminalized. Under criminalization, sex workers are routinely robbed of their ability to practice safe sex, practice in safe working conditions, with safe community. Criminalization forces sex workers to forgo safe sex for fear of prosecution, just like it forces sex workers into spaces of isolation where they're at increased risk of violence.

> Policing and criminalization of the industry, including of clients and workplaces, is associated with 3x more violence against people in the sex trades.78 Police harassment and arrest not only displace sex workers into isolated work locations, disrupt their peer support networks, discourage condom carrying and reduce their negotiation opportunities, they also increase stigma against and dehumanization of sex workers, normalizing violence…without decriminalizing sex work, communities cannot organize for labor rights including safer working conditions, shorter working hours, higher pay, and freedom from harassment, transphobia and racism in the workplace.79 Such labor rights reduce the likelihood of exploitation.[17]

However, decriminalization recognizes sex workers' right to self-determination and capacity to make choices about their own bodies. It allows sex workers to take the steps to protect their health and physical well-being without fear that doing so will cause

them to be arrested. Under decriminalization, sex workers can run their businesses as collectives and in spaces in which standards are enforced openly, increasing their occupational safety, and decreasing violence against them. In this way and many more, decriminalization ensures sex workers have the right to personal and economic liberty.

In contrast to libertarianism, utilitarian approaches to justice prioritize the goal of maximizing the net social good for the overall society. Beauchamp and Childress note that it can be difficult to delineate exactly what rights should be enforced and for whom, given that social utility is subject to change.[1] This may make for complicated conversation when it comes to allocation of and funding for health care, but regarding the criminalization of sex work, it need not be so complex. For example, the criminalization of sex work and its conflation with human trafficking results in millions of dollars in federal funding wasted on stings and raids to identify, arrest, and incarcerated commercial sex workers, rather than going to the assistance of actual victims of human trafficking. A society that has already passed these laws and allocated these funds for the purposes of decreasing human trafficking and assisting its victims in escaping this awful violation of human rights, has already decided that such a goal serves a social good. Therefore, changes should be made to maximize that good, that is, by making sure those funds actually get to the victims who need it, rather than be wasted on the unnecessary arrest, incarceration and traumatization of consenting adults engaging in commercial sex work and cultivating such great fear and distrust of law enforcement that sex workers are afraid to step forward when they see or are victims of violence, abuse, or exploitation.

If funding the assistance of people who have been victimized by human trafficking is something as society has decided serves that social good, then

decriminalization is the first and most important step legislators and policy makers can take to make sure those funds and resources are actually being maximized. This fact is even more pressing when we consider all forms of human trafficking, of which sex trafficking is only a small minority. Indeed, according to the United Nations, the vast majority of the victims of human trafficking are trafficked not into sexual labor, but into agricultural labor, domestic labor and textiles,[8,82,171] which makes the targeting of federal funds towards sex workers even more displaced. This is true both for the United States specifically, and the larger human trafficking trade worldwide. Therefore, if a society is to maximize the funding it has allocated to assisting victims of human trafficking, it would be prudent to consider where exactly those funds are currently being spent. Under criminalization, those funds are spent on harassing, harming, and arresting adult people who chose to work in the sex trade, the vast majority of whom do not have pimps, and are not being trafficked, but simply came to sex work as a form of income-generation that suited their needs, economic or otherwise.

There are many more ways one can argue that decriminalization creates greater "net good" than criminalization, not least of which are the health statistics. In previous chapters, many studies have been presented detailing the various ways in which criminalization put sex workers at greater risk of harm in general, whether in the form of increased stigma,[3,4,5,6,9,20,23,48,49,63,77,81,106,107,108,109] and violence,[3-6,9,20,23,34,36,41,48,49,77,81,106-109,151] or in the form poor health outcomes specifically,[161-163] such as lower health care utilization[48,49,63,65,71,81,95,97,98,124,-128,161-163] and greater risk of STIs such as HIV/AIDS.[63,65,86,95,97,98,124] Previous chapters also demonstrated how in countries and legislative contexts in which sex work was not criminalized, most, if not all, of these

disparities disappeared,[131-136,147,158-160] further highlighting how it is criminalization - not something inherent to sex work or the "high risk" behaviors of sex workers - that causes this harm.[3,4,6,49,107,147,158-160] Indeed, the behaviors we consider "high risk" on the part of sex workers, such as not using condoms consistently or not seeking out regular health care services, are directly related to the positions sex workers are forced into specifically because of criminalization. Therefore, these harms noted above are preventable harms, not to mention harms that cost the health care system money. Under decriminalization, where sex workers have greater access to health care services and are far more likely to utilize them,[131-136] health care outcomes among the population improve, often to rates equal or better than the general population.[147,158-160] On a smaller scale, the waste of health care resources under criminalization is exemplified by the absurd cycle of condoms distribution and confiscation which sex workers are subjected to. On one hand, money is spent on public health programs that outreach and provide condoms to "at risk" populations such as sex workers, while on the other hand law enforcement targets and harasses sex workers carrying condoms, confiscating them, destroying them, and even using them as pretext for arrest. The wastefulness is absurd, but the ethical implications are worse. However, under decriminalization this foolish cycle ceases and, as a result, condom usage among sex workers drastically increases, in many cases, becoming virtually universal,[49,51,60-62,99,132,135-140,147-150] creating a healthier environment for sex workers and every client who sees them.

Therefore, if utilitarianism is concerned with the maximization of social goods and resources, criminalization does little but waste them and has even worse health outcomes to show for it. The decriminalization of sex work is most logical, practical, and

ethical way to maximize the funding societies allocate to public health in general and human trafficking specifically, while producing the greatest overall good in public health outcomes, and therefore is the most just from a utilitarian perspective.

Communitarian approaches to justice, which "emphasizes either the responsibility of the community to the individual… or the responsibility of the individual to the community,"[1] also present a problem of deciding exactly what the criteria for a just society are, specifically because they depend on each community's unique set of values. Childress and Beauchamp note that, for communitarians, justice is pluralistic "deriving from as many conceptions of the good as there are diverse moral communities" and "what is due to individuals and groups depends on these community-derived standards."[1] However, given this basic conceptual framework, there are two major "community perspectives" that may be considered most relevant for this perspective. The sex worker community and the larger society that concerns itself with sex worker and sex trafficking directed legislation.

Based on the preceding chapters, it should be fairly clear how the sex worker community feels about criminalization, as sex worker activists and sex worker-run advocacy groups around the world have been advocating for decriminalization of sex work for decades. One may consider the most popular slogans of sex worker advocates and advocacy groups - such as "sex work is work" and "rights not rescue" - to deduce what set of priorities and values the sex worker community holds; namely, that sex workers want their labor and livelihood validated by larger society as real and valid work and to see that same society recognize their human rights - including their right to bodily autonomy and self-determination - as well as their capacity to exercise those rights, rather

than attempt to "save" them from something they chose to do. Sex workers are telling us in so many ways, [46-48,53-57,51,77,81,106,107,109] that the conflation of all sex workers with victims of sex trafficking is paternalistic and condescending, as it implies that these individuals are not capable of making their own choices about where, when, and under what circumstances to engage in sexual activity. Indeed, in so many ways, sex workers around the world have been and continue to explicitly state that not only are they exercising a consensual choice, but that the decriminalization of sex work is what this community wants[46,47,81,106,107] and is the only way that justice for their constituents can be achieved. Yet, those words continue to fall on deaf ears. For decades, sex workers across the globe have been advocating for the decriminalization of their labor because criminalization both denies them their rights to self-determination and causes so many forms of harm to sex workers and victims of human trafficking alike - from poor health outcomes, to worse rates of violence, to fear and stigma so extensive that sex workers will avoid talking to police and, indeed, health care providers, even when they've been the victim of a violent crime. By the standards of the sex worker community, the social and public health policy that best fits this community's standards is, explicitly and implicitly, decriminalization. It is what this community wants. Furthermore, it's what the victims and survivors of human trafficking want as well, [113,120] as these individuals know all too well the ways in which time, funding, and energy spent on policing and punishing sex work only takes away from the fight to prevent and assist those victims of human trafficking.[37, 47-49, 77, 81]

The sex worker community, true to communitarianism ideology, wants to take care of itself and its constituents. This is a community that *wants* to create accessible on-

line screening platforms and client blacklists that all sex workers, and even victims of human trafficking, can use to stay safe and avoid violent clients. This is a community that *wants* to use condoms and work in collective spaces so that they can protect each other and increase their bargaining power against clients who would try to pressure them into unsafe practices. It is criminalization that gets in the way of these attempts sex workers make to support their own community. Decriminalization would allow sex workers to work in collective spaces, where they can support each other in setting and upholding standards of safe sex and a culture with no tolerance for violence. It is the criminalization of sex work leads to the shutting down of screening websites and the community-run databases of violent clients that sex workers worldwide access to protect themselves, while decriminalization allows these spaces to flourish. In this way, decriminalization allows the sex worker community to "fulfill [its] particular community-endorsed conception of social goals" as is consistent with communitarian approaches to justice.

In terms of larger society, the argument for decriminalization's consistency with a communitarian conception of justice is somewhat similar to the argument for its consistency with a utilitarian one: A community that has made the point of taking legislative action and has allocated large sums of public funds to the issue of human trafficking into exploitative sexual labor has made the statement that stopping such atrocities are a priority for said community. That being known, the best course of action for such a society is one that actually address human trafficking, where those laws specifically target the victims of human trafficking, and those funds are used specifically to help them. While the criminalization of sex work has the opposite effect - wasting funds and resources meant to go towards helping those who've been forcibly triffid on

harassing, prosecuting, and incarcerating consensual commercial sex workers - decriminalization is far more consistent with this goal. As has been shown through various studies across various countries and legislative contexts, the criminalization of sex work does not reduce human trafficking.[47-49,77] There is simply no sufficient evidence to support the claim that it does.[187-191] Instead, evidence supports the opposite, which is why national and international organizations, advocates, and experts on sex work and human trafficking alike, have been condemning the criminalization of sex work and urging nations worldwide to move to decriminalization for over a decade. These proponents include the likes of the World Health Organization and the United Nations (UNAIDS), to Amnesty International, Human Rights Watch, the ACLU and so many more. Additionally, in the United States, polls have showed that the general public is inclined to agree. According to polling by Data for Progress, an overall majority of all voters across political parties have supported the decriminalization of sex work since 2020.[171] The percentage is even higher among democratic voters and voters aged 18-44:

> It's very simple, decriminalizing sex work is the future. One, real wages haven't risen, 13% of Americans know someone who has died because they couldn't afford healthcare, and we have a $1.5 trillion student debt crisis. The economy is leaving people behind, so if you're not doing sex work, you know someone who is. It's harder to call for the criminalization of something that more and more people in your community are relying on for survival. Two, not only do young people see that, we understand that police and criminalization are not effective strategies for dealing with issues. In fact, they make things worse. Of voters age 18-29, only 9% strongly oppose decriminalizing sex work…Three, this movement is organizing, and it's organizing fast. Electeds and candidates seeking office should get with where the public is and move decriminalization and the defunding of vice policing forward, or you'll be voted out.[171]

It has been obvious for decades that the sex worker community supports the decriminalization of sex work, as least to anyone who listens. In the United States, the non-sex working public is increasingly in agreement. Both the sex worker community and our larger society overall want to see human trafficking stopped, but that doesn't mean sex workers need to be dehumanized and harmed in the process. Indeed, decriminalizing sex work is the first and most critically important step to achieving what the criminalization of sex work has not and cannot: justice to both of these communities in the way they are telling us *they* need, want, and value. That is, through rights, resources, health care and community - not incarceration.

Egalitarian conceptions of justice differ from other ethical frameworks as its focus is on equal distribution or access to "goods of life that every rational person values." These goods can include material goods, such as health care, but can also refer to intrinsic goods, such as human rights. In this sense, an egalitarian approach to justice may argue that all citizens should be afforded equal rights to autonomy and self-determination, which, since sex is a normal, healthy human behavior, should include sexual and reproductive freedom (with the understanding, of course, that any such activity is consensual for all parties involved). However, when sex work – which involves, by definition, competent consenting adults - is criminalized, this is not possible. The criminalization of sex work denies sex workers and their clients the right to sexual freedom and autonomy over their own bodies, under the paternalistic and condescending assumption that people, particularly women, are not capable of making decisions regarding where, with whom, and under what circumstances they engage in sexual activity on their own. Similarly, the criminalization of sex work interferes with equal

access to health care. A growing number of studies show that sex workers living in settings where their labor is criminalized have significantly less access to health care and lower rates of health care utilization, [48, 49, 63, 65, 71, 81, 95, 97, 98, 124-128, 161-163] trends that in decriminalized settings are all but reversed. [131-136, 147, 158-160]

Conversely, Norman Daniels, professor of ethics, global health, and population at Harvard University, argues for a "complex form of egalitarianism" which focuses on "equality of opportunity." In Principles of Biomedical Ethics, his thesis is summarized as follows:

> Daniels' thesis is that social institutions affecting healthcare distribution should be arranged, as far as possible, to allow each person to achieve a fair share of the normal range of opportunities present in that society… This theory, like Rawls's, recognizes the positive societal obligation to eliminate or reduce barriers that prevent fair equality of opportunity, an obligation that extends to programs to correct or compensate for various disadvantages. It views disease and disability as underserved restrictions on a persons' opportunities to realize basic goals. Health care, then, is needed to achieve, maintain or restore adequate or "species-typical" levels of functioning (or the equivalents of these levels), so that basic goals can be achieved. A health care system designed to meet these needs should attempt to prevent disease, illness, or injury from reducing the range of opportunity open to the individual. The allocation of healthcare resources, then, should ensure justice through fair equality of opportunity. Forms of health care that have a significant effect on preventing, limiting, or compensating for reductions in normal species functioning should receive priority in designing health care institutions and allocating healthcare.[1]

This interpretation of an egalitarian approach to justice is interesting because it is the first in which Beauchamp and Childress explicitly state the obligation of health care systems to address social inequalities.[1] In this regard, the criminalization of sex work is unjust not only because it limits access and opportunity to central rights and social goods, such as the right to bodily autonomy and equal access to health care, but also because it

produces significant harm, including in the form of disease, illness, and injury. Even more, it produces these harms in an unequal, and therefore unjust way, impacting specifically the lives and bodies of sex workers and victims of sex trafficking, and disproportionately those who exist at the intersection of additional forms of marginalizations, such as those who are poor, black, brown, transgender, migrant and/or undocumented. Under these criteria for justice, a society and health care system that condones the criminalization of sex work cannot be just because it permits these inequalities in access to human rights, levels of violence, and risk of disease, such as HIV/AIDS. Furthermore, contemporary attempts to address these trends of poor access to health care and increased risk of STIs among sex workers are rendered largely ineffective specifically because the structural violence of anti-sex work legislation is that much more impactful. Therefore, according to this understanding of egalitarianism, a truly just health care system is ethically obligated to address these inequalities, "to correct or compensate" for the harms, disadvantages, and disparities in the opportunity for healthy functioning these systems perpetuate. Indeed, a health care system that supports and advocates for the decriminalization of sex work is one that would "have a significant effect on preventing, limiting, or compensating for reductions in normal species functioning" suffered by sex workers, such as the increased levels of physical and sexual violence they are subjected to, the increased rates of STIs such as HIV/AIDS they are at risk of, and the decreased opportunity they have to access both health care services when they are sick or hurt, and just legal recourse when they've been the victim of a crime. The criminalization of sex work perpetuates all these inequalities in access to commonly accepted social goods, such as access to basic health care or law enforcement services when appropriate and

necessary, while also perpetuating disproportionate harms in the form of violence and poor health outcomes. Because the decriminalization of sex work directly and systematically addresses these multiple forms of structural violence and increases equitable opportunity for access to these commonly held public goods and decreases harms, it is far more consistent with egalitarian approaches to justice than our current system of criminalization.

The last two theories of justice outlined by Beauchamp and Childress are capability theories and well-being theories.[1] These two conceptional frameworks for approaching justice are similar in that they involve a set of criteria a society must achieve in order to be considered just, though they approach said criteria from different angles.

In capability theory, the emphasis of justice is placed in "the opportunity for individuals to reach states of proper functioning and well-being."[1] It is the freedom to achieve these states, analyzed in terms of capabilities or "actual opportunities for living well so that individuals can carry out or be what they value"[1] which indicates how just a society is. Originally conceived of by Amartya Sen,[1] this approach to justice approaches both a society's moral progress and the reduction of inequalities through "the development of capabilities." Analyzed by this framework, the criminalization of sex workplaces huge limits on sex worker's capabilities for freedom and development. As previously discussed, criminalization limits personal and bodily autonomy, sexual and reproductive freedom, and even the capability of the sex workers to collectivize and work together in community to ensure each other's safety. However, it is interesting to reflect on Martha Nussbaum's expansion of Sen's theory, which she uses to address larger social justice issues. According to Nussbaum, there are ten "core capabilities' that must be

made available to all citizens in order for a society to achieve a "minimal level of social justice"[1]:

1. *Life*. Being able to live a normal life without dying prematurely or existing in a reduced state making life not worth living
2. *Bodily health*. Being able to have good health, nutrition, and shelter
3. *Bodily integrity*. Being able to move freely, to be secure against violence, and to have opportunities for sexual satisfaction and reproductive choice
4. *Senses, imagination, and thought*. Being able to use these capacities in an informed and human way aided by an adequate and diverse education and in the context of freedom of expression
5. *Emotions*. Being able to have emotional attachments to persons and things so that one can love, grieve, and feel gratitude without having one's emotional development blinded by fear, anxiety, and the like
6. *Practical reason*. Being able to form a conception of the good and to critically reflect in planning one's life.
7. *Affiliation*. Being able to live meaningfully in the company of others, with self respect and without undue humiliation
8. *Other species*. Being able to live with concern for animals, plants, and nature generally
9. *Play*. Being able to play and enjoy recreation activities
10. *Control over one's environment*. Being able to participate as an active citizen in political choices pertaining to one's life and property[1]

Considering the ways in which the criminalization sex work results in the limitation of individual freedom and, thus, an unjust society, is made particularly stark when reflecting upon the above criteria. According to Nussbaum, these "core capabilities are essential to flourishing and must, as a matter of justice, be socially sustained and protected."[1] Consider the first three: Life, being able to live a normal life without premature death or existing in a reduced state; Bodily health, being able to live with good health, nutrition, and shelter; and Bodily integrity, being able to move freely, to be secure against violence, and have opportunities for sexual satisfaction and reproductive choice. The criminalization of sex work denies sex workers each and every one of these. Not

only are sex workers subjected to astonishingly high rates of physical violence, sexual assault and rape,[39,41,51,89-93,96,100,106-109,112,151,155,156] they are murdered at higher rates as well - numbers which skyrocket for sex workers who are marginalized in multiple ways, such as transgender women of color.[39,41,44,98,172] In fact, the ACLU published a piece in 2020 entitled "To Protect Black Trans Lives, Decriminalize Sex Work," penned by black transwoman, former sex worker and activist, Kaniya Walker:[39]

> Laws that criminalize sex work push the industry underground, which makes it more dangerous. Sex workers face high rates of violence because clients assume they can assault or rob sex workers and get away with it. They take advantage of the fact that so many of us are afraid of reporting for fear of what will happen to us. If we call the police, we could be arrested for selling sex. We could also be abused by law enforcement. Being a sex worker is dangerous whether you're trans, cis, LGBTQ, or straight. But it's especially dangerous if you are a trans woman of color.[39]

Walker's piece notes the connection between the rapidly accelerating rates of violence against black and brown transgender people and the criminalization. Studies by the non-profit Everytown for Gun Safety and the UCLA School of Law's Williams Institute found that the rates of murder of trans people had nearly doubled in the 4 years between 2019 and 2021, leading to the deadliest year for trans people on record.[177,178] Another report released by Transrespect Versus Transphobia Worldwide (TvT), noted a staggering 375 transgender people killed in 2021, most of whom, according to the report, were black and migrant trans-women of color and trans-sex workers.[172] In fact, over 58% of those murdered were sex workers, indicating "a worrying trend when it comes to the intersections of misogyny, racism, xenophobia, and hate towards sex workers." And even though the numbers did drop slightly in 2022 to 325,[173] the authors note both figures are likely vast underestimations as, according to the authors, "most cases [of hate crimes and

murders] continue to go unreported and, when reported, receive very little attention."[173,174] This trend of underreporting is likely exacerbated by the same fear Walker describes above,[39] which raises an important point: This violence described by sex workers, cisgender and transgender alike, is not just coming from civilians - it's coming from the police. According to a report by the National Center for Transgender Equality, nine out of 10 transgender sex workers or transgender people who were "suspected of being a sex worker" reported being harassed, attacked, or assaulted by law enforcement.[41] This kind of harassment and assault of sex workers, particularly those that are transgender workers of color, is a direct result of laws in place in many countries, including the United States, against "loitering for the purposes of prostitution."[175] These statutes are purposefully and intentionally vague, allowing state-sanctioned discriminatory profiling that permits police officers to stop, detain, search, and even arrest civilians for as little as "wearing a skirt" or "standing somewhere other than a bus stop or taxi stand:"[171,176]

> I've been arrested four times for prostitution. Only once was I actually doing sex work, the other three arrests were just profiling because I'm a trans woman. One time, I was walking and holding hands with my boyfriend and the police arrested me. Another time, my friends and I were waiting for some of our other friends outside a bar and two police officers jumped out of a van, pushed our faces against the wall, and searched our purses. They found condoms, which was apparently enough for them to charge us with loitering for the purposes of prostitution.[171]

While these reports highlight various aspects of the relationship between violence towards transgender people of color and the criminalization of sex work, they all come to the same conclusion: Decriminalize sex work.[39,171-174,177-179]

These trends of harassment, violence, and murder are heightened for sex workers of color and transgender sex workers of color, but they affect all sex workers, impinging on the entire community's capability for life, bodily health, and bodily integrity. Not to mention, the way criminalizing the consensual labor of adults is, itself, an explicit limitation of one's bodily integrity, in that it denies sex workers the autonomy to make choices about their own bodies and what they can do with them. Additionally, the laws designed to target and entrap sex workers are vague and open-ended by design, meaning sex workers can be arrested for anything from standing in the wrong place to wearing a skirt. These obvious impingements on sex workers' bodily autonomy, freedom to move- or not move - and dress as they wish is bizarre and frankly unconstitutional, but far more concerning is the way it sets up sex workers to be subjected to violence and illness, thereby severely limiting their capability for bodily health and life.

Still, there are more capabilities that are denied by the criminalization of sex work, such as the capability for "affiliation" or "being able to live meaningfully in the company of others, with self-respect and without undue humiliation." Indeed, instead of allowing sex workers the capability to collectivize and work in community for greater safety and support, laws that criminalize sex work tear these communities apart. For example, sex workers who cannot afford their own space or hotels for seeing clients may seek to use spaces shared with other sex workers where they can store supplies for safe sex and have established protocols for violent clients, but criminalization makes establishing such locations difficult and dangerous, therefore forcing sex workers to meet their clients alone and in isolated locations where there is no way to escape or call for help if something goes wrong. Similarly, laws that were ostensibly created to address

human trafficking, like FOSTA/SESTA, instead resulted in the erasure of dozens of websites sex workers and human trafficking victims around the world used to alert each other of violent clients and share tips on staying safe. Likewise, while proponents of the Nordic Model or 'End Demand' legislation state its goal is to end trafficking and sexual exploitation, these laws make no real distinction between sex work and human trafficking, resulting in all the same harms as full decriminalization. Additionally, since "facilitating" or "promoting" sex work is a crime under these models, sex workers are similarly prohibited from working together in collective spaces, forcing them to instead work in the same dangerous, isolated spaces that cause further harm. This is also how "End Demand" legislation results in housing instability and homelessness for both sex workers and trafficking victims, as landlords are quick to evict tenants they suspect are involved in the sex trade for fear of being prosecuted for "facilitating" prostitution themselves, creating another limitation on the capability for bodily health and integrity.

Perhaps even more relevant is the capability for "control over one's environment" which Nussbaum defines as "being able to participate as an active citizen in political choices pertaining to one's life and property." Under criminalization, sex workers are denied access to fundamental rights of normal citizens, whether it be the right to autonomy, legal recourse when victim of a crime, or access to health care. However, what overlays all of this is the fact that, under criminalization, sex workers are not given a voice or a vote in the legislation, public or health care policies that concern them. Sex workers are routinely left out of conversations - if not actively ignored - in which legislation of sex work and human trafficking is being discussed, even though they are the ones who will be directly affected by these policies. For example, no sex workers or

sex worker advocates were consulted when constructing FOSTA/SESTA. Instead, legislators ignored the multitude of sex worker advocates, sex worker-led organizations, and even organizations of human trafficking survivors who spoke out against the bill.[118-121] Sex workers, trafficking victims, and their advocates stated explicitly that these laws would result in the removal of some of the most vital tools sex workers and victims of human trafficking have to avoid violent clients and keep themselves safe, in addition to asserting clearly and unequivocally that the proposed legislation would making finding and arresting traffickers harder, not easier. [118-121] Of course, those voices were ignored, FOSTA/SESTA was passed, vital websites were shut down, and violence against sex workers rose as a result.[180,183] Just a few months/years later, FOSTA/SESTA has been dubbed a failure by advocates and legislators alike.[187-191]

Meanwhile, in India, where over 65,000 West Bengali sex workers collectivized into Durbar Mahila Samanwaya Committee (DMSC), sex worker representatives of the community now sit on boards with law enforcement and policy makers, thus ensuring that their community's interests and needs are represented in conversations regarding the laws and policies that affect them.[60-62] Even more, DMSC members established a series of policies and protocols from everything from condom usage to the trafficking of underaged women and girls into their district, increasing safety for sex workers, opportunities for their children, and actively stopping human trafficking into their community.[60] Similarly, while research on sex workers in the United States tends to be limited to street-based, survival sex workers, leading to skewed results that are poorly representative of the sex worker population as a whole,[67-71] researchers in decriminalized environments such as Sydney, Australia, are capable of recruiting and enrolling a wide

variety of sex workers into their studies,[135-137,149,163,170] specifically because there is far less fear of disclosure to health care providers in the context of decriminalization. As a result, medical research on the sex worker population is more representative of the population as a whole and more useful in informing public health policy relevant towards the community.

Nussbaum's capability theory of justice states treating a society's individuals justly "requires, negatively, *not obstructing* the individual's attempts at flourishing through acts of coercion, violence or cruelty and also requires, positively, support of effects to flourish."[1] Criminalization stunts and represses sex workers capabilities for bodily autonomy, bodily health, bodily integrity, housing, security, freedom of movement, freedom of sexual and reproductive choice, freedom of affiliation, community, and control over one's own personal and political environment, primarily by creating a culture of fear and violence, where sex workers are forced to hide and stifle their capabilities rather than risk incarceration. Decriminalization relives sex workers of this fear - fear of disclosure to health care providers, fear of asking law enforcement for help when they've been victim of a crime, fear of forming community in which they are capable of keeping each other safe, and fear of publicly advocating for one's own rights – thereby allow these capabilities to flourish and grow. Indeed, communities such as DMSC are an incredible example of the flourishing that can happen when people's capabilities are centered and secured.[51] Today, DMSC had advocated for greater safety and dignity for their participants, schools for their kids who were formerly discriminated against as the children of sex workers, a community that dispenses loans for community members to small businesses in response to the financial discrimination sex workers

faced in banks.[60-62] They established partnerships with local hospitals and resident physicians for research projects and created a detailed program for supporting underaged girls who have been brought or were otherwise sold into the community, putting them into the community's school until their old enough to choose their own path for themselves.[60-62]

In contrast to capability theory, well-being theories of justice are concerned with well-being itself, rather than the capabilities for, access to, or distribution of public goods or rights that give individuals the option or ability to achieve well-being. Madison Powers and Ruth Faden, the original authors of this theory, argue there are six core elements of well-being by which social justice can be measured:[1]

1. Health
2. Personal security
3. Knowledge and Understanding
4. Equal Respect
5. Personal Attachments
6. Self-determination[1]

According to Powers and Faden, the "job of justice" is to secure the experience of each of these elements of well-being for every person, while also focusing on "the relationship between well-being and human-rights norms [and] the role that poverty and unfair disparities in power and advantage play in causing and perpetuating poor health and injustice in countries around the globe."[1] Also critical to their theory is the understanding that these elements of well-being do not stand alone. Instead, Powers and Faden argue that each of the six elements are explicitly interdependent and must be considered together. Beauchamp and Childress make an important observation regarding the application of this theory to public health, noting that, according to this framework of

justice, "the moral justification for health policies depends as much on the other five dimensions of well-being as it does health" and that "the job of justice is to correct these defects by making the six core elements of well-being embedded values in social policy."[1]

While this theory of justice may make for a daunting and complicated conversation in terms of larger conversations of public health, health insurance, health care access and distribution, it is quite fitting when applied to the argument for the decriminalization of sex work. If the overall question of justice is one of harm and inequality, then the criminalization of sex work causes harms in each of these six core elements of well-being. From health to personal security, to self-determination and respect. Even knowledge and understanding are affected because the health care community cannot adequately study and collect data on a population that is too afraid to disclose to healthcare providers who they are. Personal attachments are affected because sex workers see their attempts to collectivize, form community, and protect each other torn apart by all models of criminalization. Furthermore, the effects of criminalization and the complex system of structural violence it creates is a case-study in the ways in which these elements are interconnected: Because the criminalization of their livelihood denies sex workers their right to autonomy and self-determination, sex workers do not have a voice in the legislation and health care policy that affects them. Because these policies leave out sex worker voices, their labor continues to be criminalized. Because their labor continues to be criminalized, sex workers are unable to report when they've been the victim of a crime for fear, they will not be treated with equal respect by law

enforcement, nor can they ensure their own personal security through community and collectivization because by doing so they risk incarceration.

This network of interconnected and interactive harms is consistent with Powers and Faden's theory of well-being in that it is exemplary of an unjust system. Furthermore, according to Powers and Faden, it is the moral imperative of the healthcare community to take the necessary steps to rectify these interdependent inequalities through social and public health policy. In this way, the decriminalization of sex work is not only a viable option for achieving improved outcomes, it is an ethical obligation on the part of the health care community.

Moreover, the fact remains that the criminalization of sex work is consistently inconsistent with any concept of justice, no matter which framework one chooses. This should only function to highlight how truly immoral such a policy is, and given the immediate, continuous, physical, and social impacts it is having on the lives, rights, and well-being of sex workers today, should be a priority to be addressed.

CHAPTER 6

CONCLUSION

In Principles of Bioethics,[1] Beauchamp and Childress put forth four fundamental pillars of biomedical ethics that form the foundation from which we discuss issues of ethics in medicine to this day. This thesis has argued that the criminalization of sex work - defined as the provision of sexual services by consenting adults in exchange for money, goods, or commodities of value - is inconsistent with each of these four principles of bioethics and therefore is fundamentally unethical from a medical, public health, and human rights perspective.

Though often conflated with sexual and exploitation, sex workers are, by definition, consenting adult humans with autonomy and agency. Sex worker advocates and sex worker-led advocacy organizations consistently describe themselves and their labor as autonomous in nature. Similarly, sex workers demonstrate consistent autonomy by the criteria set forth by Beauchamp and Childress[1]: Sex workers are intentional, understanding, and not subject to external control. These extensive articles and reports published by sex workers demonstrate an acute understanding of their situation and intentionality in engaging with it. Furthermore, sex work is defined by consent, which means it is defined by non-control. These facts all support the conclusion that sex workers are, indeed, autonomous actors who can and do make choices for themselves. Therefore, the criminalization of adult humans' choice to participate in sexual activity under the conditions they choose denies sex workers' right to bodily autonomy, in addition to sexual and reproductive freedom. This stands in direct violation of the

principle of autonomy in that it takes away the right of competent, consenting adults to self-determination and, even worse, punishes them for it.

In terms of nonmaleficence, the ethical obligation of medical professionals to prevent harm and minimize risks to patients whenever possible, policies of criminalization are highly inconsistent. This thesis demonstrates how, time and time again, countries who criminalized sex work also criminalized safety and health. For example, the criminalization of sex work has enabled the criminalization of safe sex, as law enforcement in countries where sex work is criminalized routinely use the possession of condoms as pretext to harass sex workers and even as sufficient evidence to arrest them for solicitation. Policies such as these force sex workers into the position where they forego carrying condoms out of fear of being harassed or incarcerated for carrying them. The inability to carry condoms due to fear of incarceration puts sex workers at greater risk of STIs such as HIV/AIDS or unwanted pregnancies. This criminalization of safe sex is just one example in which the policies that criminalize sex work cause undue and preventable harm. Meanwhile, policies such as FOSTA/SETSA destroy the platforms and websites sex workers use to keep each other safe and avoid violent clients. Because of these laws, sex workers risk prosecution for human trafficking if they use these websites, so instead they are forced to meet clients without screening, in unsafe locations, putting them at greater risk of encountering a violent client they could have otherwise avoided. In these ways, and many more, the criminalization consciously puts sex workers in greater and greater danger and risk of harm and violence, and is therefore represents the antithesis of nonmaleficence.

Beneficence, which is essentially the opposite of nonmaleficence, and asks providers to act in the best interests of their patients. Sex workers have been advocating for the decriminalization of sex work for decades, arguing that while the criminalization of sex work is the cause of so many harms in their community, decriminalization can prevent or improve their outcomes. This argument is supported by a great deal of evidence from studies that have moved to decriminalize sex work which suggests a number of health and human rights improvements are seen with decriminalization, including increased health care utilization, extremely high rates of condom use, and even STI rates that are comparable to or lower than that of the general population. Studies show that in the absence of fear of criminalization and incarceration, sex workers are more willing to report violent crimes that have been committed against them and even the presence of traffickers or trafficking victims, resulting in a safer community for sex workers, their clients, and victims of human trafficking. None of these, however, can be achieved under criminalization, primarily due to fear of law enforcement. This demonstrates how the criminalization of sex work is also incompatible with beneficence because of the harms it causes. However, these studies also highlight how the decriminalization can relieve so many of these harms, making it far more consistent with the bioethical principle of beneficence. Furthermore, decriminalization is what sex workers themselves are advocating for. In this way, this thesis argues that not only is decriminalization more consistent with the principle of beneficence, but that there is a moral obligation on the part of health care providers to support sex workers in advocating for the policies that are in their best interests, the most important of which is decriminalization.

Lastly is the principle of justice. Beauchamp and Childress define justice as "the distribution of all rights and responsibilities in a society, including, for example, civil and political rights."[1] However, they note that the practical application of justice is much more complex. For this reason, they review a number of frameworks from which one may approach the practical application of justice in society. These frameworks of justice included libertarianism, utilitarianism, communitarianism, egalitarianism, capability theory, and well-being theory. However, no matter which framework of justice one chooses, the criminalization of sex work is fundamentally incompatible with a just society. For example, a libertarian approach to justice prioritizes bodily and economic freedom, but this is completely at odds with a set of legislative policies that makes it criminal for consenting adults to participate in sexual activity where and when they want to. Bodily autonomy is central to libertarian theories of justice, but under the criminalization of sex work, sex workers are categorically denied their bodily autonomy. Decriminalization, on the other hand, restores sex workers' right to bodily autonomy. Another example is capability theory, which is a very different approach to justice as it involves a set of "core capabilities" that all humans in a society must have in order for a society to be considered just. These include life, bodily health, bodily integrity, affiliation and control over one's environment. However, when sex work is criminalized, sex workers have no access to bodily integrity because their right to bodily autonomy is denied. The capabilities of life and bodily health are similarly stunted, as the criminalization of safety that results from the criminalization of sex work, in the form of criminalization the possession of condoms and making illegal the sites that sex workers use to screen clients, put sex workers at much higher risk of violence completely

unnecessarily. For this reason, sex workers are subject to high rates of violence, including homicide. Even affiliation and control over one's environment is denied under criminalization as sex workers are forced into increasingly isolated, unsafe positions. Under decriminalization, however, the opposite is true. Sex workers capacity for bodily integrity and autonomy is restored, and because the use of condoms and screening websites is no longer criminalized, safety and health increases and life and bodily health are restored. Similarly, sex workers in decriminalized environments can and have collectivized into organizations that have enabled much greater bargaining power for sex workers as a community. For example, sex workers in the DMSC now have representation on city council alongside law enforcement and public officials, enabling them to have a voice on the policies that will affect them., They created schools for their children and funded loans for community members who wanted to start small business, all of which show how important the capabilities of affiliation and control over one's environment are. The denial of these capabilities in the context of criminalization, coupled with the incredible impact they have in contexts of decriminalization provide further evidence of the injustice of policies that criminalize sex work.

Taken all together, it is overwhelming clear that the criminalization of sex work is inconsistent with each of these four fundamental pillars of biomedical ethics. Considering the harms criminalization causes, both directly and indirectly, together with the benefits decriminalization will produce should only strengthen the argument for why the medical community should condemn the criminalization of sex work. These policies are unethical from every important perspective. And still, this is not exhaustive by any means. Indeed, these are just a few of the many reasons why the decriminalization of sex work is

consistent with the principle of autonomy, beneficence, nonmaleficence, and justice. However, it is our current and active policy of criminalization, its inconsistency with the principles of bioethics, and the real-world harms it is causing sex workers and victims of human trafficking every day that make the situation all the more urgent. Knowing that so many harms are being caused by a set of policies that is not only unethical but violates the most basic of human rights as fundamental to ethical practice as bodily autonomy, with the knowledge that a viable, beneficial, well-researched alternative exists makes the moral imperative to take action even greater. These violations highlight how truly immoral such a policy is, and given the immediate, continuous, physical, and social impacts it is having on the lives, rights, and well-being of sex workers today, should be a priority to be addressed, especially in light of the viable, ethical, evidence-based alternative already exists. For these reasons and many more, medical community should move to stand with the sex worker community in its advocacy for the decriminalization of sex work.

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