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## Sex Work Decriminalization and Feminist Theory

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## **Thesis Summary**

This thesis explores the history and nuances of sex work and feminist philosophy, especially within the context of commercial sex and feminist legal theory. Through an analysis of four different feminist philosophies that stemmed from the “sex wars” of the 1980s such as abolitionism, neo-abolitionism, decriminalization and legalization and their perspectives on sex work, the belief systems of these perspectives and their relation to feminist jurisprudence, as well as a comparative study of decriminalized sex work in Amsterdam, the capital of the Netherlands and Juárez, Mexico, this research shows the ramifications of decriminalization of sex work on progressive feminism.

## **Abstract**

The discussion of sex work is one of the few international taboos that has transcended time and place. Individuals, particularly women, who engage in sex-for-profit are often deemed societal undesirables and their contribution to the workforce and larger economy is unrecognized. As states, territories, and nations around the world adopt more socially progressive policies such as the decriminalization of sex work, the debate over the topic of female engagement in commercial sex has become increasingly more divisive. While first and second-wave feminism have recognized sex workers as victims of exploitation and non-feminists, many third-wave feminists have adopted a moral shift that emphasizes sex work as an act of empowerment or reclamation. Other feminists have theorized sex work as labor without taking a moral or ethical stand. This thesis explores the history and nuances of sex work and feminist philosophy, especially within the context of commercial sex and feminist legal theory. Through an analysis of the consolidated opinions of four different feminist philosophies that stemmed from the “sex wars” of the 1980s such as abolitionism, neo-abolitionism, decriminalization and legalization and their perspectives on sex work, the belief systems of these perspectives and their relation to feminist jurisprudence, as well as a comparative study of decriminalized sex work in Amsterdam, the capital of the Netherlands, and Juárez, Mexico, this research shows the ramifications of decriminalization of sex work on progressive feminism.

## I. Introduction

In almost every society around the world for thousands of years, humans have exchanged money and goods for sex. Often euphemized as “the world’s oldest profession,” the definitive boundaries of what sex work is and is not has changed dramatically, particularly in the last century. The individuals who have served in the sex service industry (predominantly women) are diverse with varied positions in a variety of social classes, and have been stereotyped as poor, helpless young girls, or thieving, adulteress vixens. The implications of the socially taboo nature of sex work has largely overshadowed conversations of consent, economic, legal, and social progress, and the perception of female sex worth in feminist theory until the late twentieth and early twenty-first century (Berg, 2014).

The topic of sex work has caused great strife and division in feminist discourse and has become a major dialogue within feminist legal theory. Many women who believe in a woman’s right to choose what she does with her body support the removal of discriminatory criminal statutes that are often utilized to harass women. However, other feminists believe sex work is morally wrong as it promotes subservient, oversexualized perceptions of women that encourage trafficking and abuse (Jeffreys, 2010). While feminist anthropological academia continues to progress by considering cross-cultural narratives of sex work, one question remains: can sex work legislation advance the roles of women, or does its perceived exploitative and misogynistic nature hinder social and legal advancement?

Through explorations of the “sex wars” between abolitionists and neo-abolitionists, sex-positive feminists, and feminists who advocate decriminalization and regulation, abolitionist, neo-abolitionist, decriminalization, and liberal/pro-legalization movements, this thesis aims to understand the relationships between feminist theory and their stances on sex work laws. This

thesis will examine several different factors of the correlation between sex work and women's social progress including definitions of sex work, sex work as a form of capital, women's subordination through labor, and one's ability to consent. Mexico and the Netherlands, two nations that legalized sex work after a history of decriminalization, serve to illustrate the realities of stigma associated with commercial sex despite legalization.

This thesis does not aim to argue whether sex work as a practice is socially acceptable, whether sex work is a valid practice as a form of work in the larger economy, or how sex work should be constituted in the eyes of the law. This thesis seeks to reframe sex work as more than just a social taboo, but as an intimate labor practice with workers who exercise different levels of legal agency and social privilege, which is therefore subject to the power of the legal system.

## **2. Background**

### ***2.1. Definitions of Sex Work***

One of the most significant arguments within the debate over decriminalized sex work is how one defines “sex work” as a term. Defined as “the exchange of sexual services, performances, or products for material compensation,” the greater anthropological community recognizes sex work only as the voluntary act of sexual acts in exchange for money or other goods (Freeman, 1989). However, the term “sex work” is often conflated with prostitution, stripping, and other sexual acts. For the purposes of this thesis, the definition of sex work as defined by the World Health Organization will be used. The World Health Organization defines sex work as sex-related services (including penetrative sex, cyber-sex, pornography, stripping, etc.) in exchange for a profit. Prostitutes, camgirls, and sugarbabies are recognized in this thesis as sex workers in

the field of sex work, however no single source of sexual service will encompass or replace the definition of sex work. Sex workers are individuals “...who receive money or goods in exchange for sexual services, and who consciously defined those activities as income generating” (Berg, 2014).

The broadness of this working definition of sex work is due to several constraining factors. Due to differing cultural interpretations of sex work and the illegality of sex work in nations around the world, the boundaries of what sex work is and is not is generally unknown, making it extremely difficult to include all forms of sexual services and obtain a representative sample (Jeffreys, 2010).

## ***2.2. Definitions of “Consent” and “Choice”***

A contentious debate within feminist discourse specifically vocalizes criticism for definitions of “consent” and “choice” in the context of sex work. These terms are particularly significant in feminist and legal attempts to create non-intersecting, separate definitions of sex work and sex trafficking. For the purpose of this thesis, consent will be defined as the following:

- The actions of an adult who willingly enters the field of sex work. One verbally says “yes” in situations where sex is exchanged for profit, permits for an act to occur
- Actions in which no coercion, deception, use of force, or blackmail is used to enter into the field of sex work
- Autonomously sets the boundaries of each and every sexual activity in any given exchange, and sets prices/parameters of exchange for each sexual activity in agreement with patron

- The ability to end a sexual activity without fear for personal safety
- The ability to leave the profession of sex work without fear for personal safety
- The ability to renegotiate over time (i.e. Informed consent) (Doezema, 2002)

When discussing sex workers and their contributions to the field of sex work, sex trafficking and sexual slavery will not be included in this dialogue. Sex work does not pertain to minors or children, individuals who have been deceived or threatened, individuals who are unable to refuse to work for fear of personal safety, or individuals who engage in sexual activity for a profit they are unable to keep (Doezema, 2002).

The question of consent is also significant when considering the role of racism and class-based inequality among female sex workers. Historically, feminist dialogue has neglected the perspectives and narratives of women of color, even concerning issues that impact communities of women of color differently than that of white middle-class women (Butler, 2015). Intersecting roles of race, gender, and class subordination effect both conversations about legal institutions and commercial sex as a whole. Stereotypically, women of color are often characterized as prostitutes and hyper-sexual women who participate in commercial sex more than white women, yet they are simultaneously ignored in public discourse about issues of coercion in commercial sex and trafficking. Because the majority of the feminist debate supporting the decriminalization of sex work is based on the “young, white female experience,” it is important to acknowledge that women of color demonstrate constrained levels of agency that impact their ability to consent to sex work. The legal and economic barriers that push women of color into the sex industry differ greatly than that of white women who benefit from social privilege, and therefore many of the scenarios in which women of color participate in prostitution or other commercial sex acts better align with definitions of modern-day trafficking. Women of color are statistically more

likely to engage in commercial sex under false pretenses such as coercion, engage in prostitution in which the boundaries of consent are obscured, and view their sex work as entrapment or survival sex (Butler, 2015).

Because the role of intersectionality and the complex relationships between racial privilege and agency in the commercial sex industry, I have chosen to compare a sex work industry in a global South country (Mexico) to the sex work industry in a country located in the global North (the Netherlands). This example seeks to explain the differences between within the global sex industry and how levels of privilege experienced by sex workers in differing socioeconomic climates impact the feminist view of the role of the law. When thinking about the role of decriminalization of sex work and its effect on feminist theory, it is important to acknowledge the lack of “universals” experienced by women around the world; women who actively engage in sex work may not definitively “consent” by the Western feminist definition, but their perspectives are significant to a larger dialogue about the impact of the law on the feminist view of commercial sex (Gerassi, 2015).

### ***2.3. Existing Feminist Theoretical Frameworks and Perspectives on Sex Work***

In the latter half of the sexual revolution movement in the 1980s, the discussion of sex work’s societal implications on women and feminism was dominated by two different feminist movements. Abolitionist feminism evolved from a brand of feminism described as dominance feminism. It is a framework defined by Kathryn Abrams, a distinguished feminist legal theorist at University of California-Berkeley, as a “strand of feminist theory that locates gender oppression in the sexualized domination of women by men and the eroticization of that

dominance through pornography and other elements of popular culture.” (Abrams, 1995) This movement was largely successful in raising awareness about oversexualization and sexual aggression against women, and a fierce anti-pornography, anti-sex work platform emerged in 1983 and 1984 to protest against the mass sexual coercion of women. Dominance feminist and legal theorist Catharine MacKinnon argues that pervasive cultural imagery of women was shaped by sexual content and normalized societal degradation against women in her work “Difference and Dominance: On Sex Discrimination” in 2005. This theory also worked on the underlying notion that freedom and sex were on opposite ends of a spectrum, in which a woman could not “choose” one and also have the other.

According to Abrams, the dominance feminist movement was met with criticism from an emerging group of feminists known as sex-positive feminists and/or feminist sex radicals, which included perspectives from individuals such as political activist Amber Hollibaugh and anthropologist Carole Vance. This group believed that dominance feminist theory was shaming women from understanding their own sexual engagements and pleasure and aimed to create a “false consciousness” of how all women should view their experiences. By embracing the many dimensions of female sexuality and also including non-heteronormative interpretations of sex, sex radicals believed in sex as a form of self-expression and discovery that could be sought through pleasure and desire. Dominance feminists and sex radicals differed on their approach to the incorporation of the law on feminist matters- dominance feminists, who supported the legal regulation of pornography and believed in the interjection of the state, made a palpable impact on feminist legal theory and the incorporation of the law into feminism, and sex radicals, who had not generated any framework for legal analysis, have been incorporated into modern sex-positive theories (Abrams, 1995).

The sex wars had a profound influence on the relationship between feminist theory and legal institutions. While the sex wars were predominantly focused on pornography and how it impacted women around the world, these debates would later be cited in relation to sex work legislation because commercial sex is seen as another extension of female sexuality in society. As a form of “sexual expression” that is directly influenced by the law, this thesis argues feminists have become divided in a similar fashion to the sex wars of the 1980s, in which differing frameworks pose that the power and social influence of the law could normalize female sexuality for better or for worse. As a result of the fragmentation within feminism on women’s sexuality, several frameworks have been adopted by different feminist groups, theorizing how legal institutions should respond to sex work.

According to Cheryl Nelson Butler, abolitionism is one of the major feminist legal approaches to sex work, a framework that argues that the act of sex work is inherently degrading to women. Abolitionist feminists stem from the dominance feminist framework, and similarly believe that prostitution is a “manifestation of gender oppression and exploitation” (Butler, 2015). Believing that the nature of sex work lies in gendered subordination, abolitionists believe that most women cannot truly consent to sex work because the commercial sale of women’s bodies represents the sexual domination of women’s oppression. Butler goes on to argue that some abolitionists do believe that women can sell sex in a consensual manner, however, the issues faced by women of color differ from issues faced by white women in systemic and structural oppression. Because these harmful systems unfairly oppress women of color, some abolitionist feminists support the criminalization of both the purchase and the sale of sex (Butler, 2015). Criminalization proponents within both abolitionist and neo-abolitionist frameworks believe that the best way to protect women from sex work-related violence is to punish both sex workers and customers for

partaking in the buying and selling of sex. Early reformers in abolitionism from first-wave feminism identified the issue of sex work as an epidemic in which male lust lures innocent women into depraved lives as prostitutes, which has fueled current abolitionist beliefs of commercial sex as an exploitative institution that is harmful to both women involved and the roles of women everywhere. Janice Raymond, a radical feminist, argues that these activists believe that in order to prevent violence against women, clients, pimps, and participants should be punished so that the entire institution can be destroyed. This policy approach has been criticized as a “paternalistic” belief system that poses women as helpless victims of circumstance by liberal feminists, which further supports misogynistic social norms that disempower women (Raymond, 1999).

Neo-abolitionism, also called the Nordic or Swedish model, is a legal framework used in Sweden, Norway, France, and other Western socio-progressive countries. While selling sex is not criminalized under this approach because sex workers are portrayed as “victims of circumstance”, the buying of sex is illegal. Melissa Farley, a neo-Abolitionist, argues that participation in sex work willingly is a decision made by women in the absence of alternative life choices (lack of education, institutional poverty, etc.), and therefore decisions to voluntarily engage in sex work cannot accurately be described as a consensual (Farley, 2004). Neo-abolitionists claim models in which clients are prosecuted do not punish sex workers, but instead penalize those who purchase sex from sex workers. This model is heavily criticized within feminist jurisprudence because it causes sex workers to engage in business in areas with less police or law enforcement presence, which often makes it more dangerous (Berg, 2014). Melissa Farley released a study with her colleagues in 1998 called “Prostitution, Violence, and Posttraumatic Stress Disorder” that suggested that violence is fundamental to the very nature of

commercial sex because the chances of experiencing violence increase the longer one is engaged in sex-for-profit. Concluding that sex work can be multi-traumatic in all forms, Farley cited the legalization of sex work in the Netherlands as an example of an institution in which the legalization of commercial sex has led to an escalation in violence and negative attitudes towards women. She states that over 90% of the sex workers tend to show symptoms of Post-Traumatic Stress Disorder as a result of interpersonal violence from their work, and that women engaged in sex work were still seen as morally objectionable and disposable. Therefore, these proponents advocate for abolitionism of the practice via criminalization of patrons as a method of protecting women and the goals of feminism (Farley, 1998).

Liberal feminist or “regulationist” theoretical frameworks have supported two approaches to the role of the law in response to sex work; legalization and decriminalization. According to Ane Mathieson, legalization is defined as “the regulation of prostitution through labor laws that legalize the majority of the following: pimping, buying, brothel ownership, and the sale of prostitution sex.” (Mathieson, 2016, 378) Within societies that legalize sex work, the government regulates all commercial sex through the taxation of sex work business and extends legal worker’s rights to sex workers in the same way laws are extended to workers in other industries. Through legalization, sex workers are protected by the police and law enforcement, unionization, and government monitoring such as STD testing.

Decriminalization is defined as “the elimination of laws and penalties associated with all or some parts of the prostitution industry.” (Mathieson, 2016, 380) Decriminalization is largely in the control of local governments and local law enforcement instead of national laws, and councils may be put in charge of hiring staff and financially supporting authority to investigate, penalize,

and regulate the sex work industry. The decision to decriminalize sex work is often made in response to the benefits of prostitution to the tourist industry and tax revenue from sex work.

As feminist frameworks, the legalization or decriminalization of sex work have similar belief systems that support sex work as a pathway to sex-positivity and the sexual independence and agency of women. Instead of believing that prostitution and other forms of commercial sex disenfranchise women and treat them as objects, both of these frameworks see sex work as a way to reduce the asymmetries between male and female power by allowing women to engage in the labor market (Mathieson, 2016). By affording women both sexual and fiscal responsibility over their bodies, decriminalization and legalization show sex work as beneficial to feminism because women can both profit from and enjoy the pleasures of sex supporting the idea that commercial sex can be used as an aid to deconstruct social ideas that women should remain chaste, virginal, and have sex solely to mollify male desire (Mathieson, 2016). In countries that legalize or decriminalize prostitution, it is no longer prohibited or persecuted, and existing legislation to control and regulate sex work exists to uphold standards of business. The extent and type of legislation varies from country to country, and may be regulated by work permits, licensing, or tolerance zones. This framework has been both praised and criticized by feminist jurisprudence. While this framework is praised for granting women bodily autonomy within their theory and the ability to use their body consensually in exchange for another good as a business practice, it is criticized by feminists such as Cheryl Nelson Butler and Janice Raymond for permitting what many consider to be a morally objectionable act and ignoring questions of agency among women with circumstances that remove their ability to completely “consent” (Butler, 2015). Sex work advocates who are fighting for legalization or decriminalization of commercial sex believe that current criminal statutes that prosecute consensual sex acts among adults produce a black market

which increases societal harms such as human trafficking and sexual assault. Butler criticizes the current Western legal attitude towards sex work, which adopts a “paternalistic” approach to sex workers as individuals in need of rescue or saving. This approach does not actively distinguish the minority of individuals engaged in commercial sex who are coerced from the vast majority who participate in sex work “voluntarily”. Pro-legalization and pro-decriminalization feminists such as Ronald Weitzer and Gayle Rubin are cited by Brooke Beloso, a professor of women’s studies at Butler University, in her work “Sex, Work, and the Feminist Erasure of Class” as feminists who argue that the legal definition of sex work defines commercial sex as inherently violent, which has created a “moral panic” that influences legal and political discourse on the topic. The fear of a loss in social mores has led to conflation between trafficking victims and individuals engaged in commercial sex. Weitzer and Rubin argue that this can result in major backlash because it does not protect those women who voluntarily enter into sex work (Beloso, 2012). However, Dr. Ine Vanwesenbeeck, expert on human sexuality, states that statistics have shown that greater legal and medical resources for sex workers actually reduce rates of exploitation and coercion from trafficking networks and other illegal procurers of sex (Vanwesenbeeck, 2017).

### **III. Sex Work and the Law**

#### ***3.1. Legal Rights of Sex Workers***

Legal protections for sex workers are defined by feminist Kathi Weeks, an associate professor of Women’s Studies at Duke University, as a part of a large institution of goals actively pursued around the world by individuals and organizations that specifically promote the legal and labor

rights of sex workers and their clients. The aims of these movements are diverse and fall within the feminist jurisprudence framework, and aim to decriminalize and destigmatize sex work, and ensure fair treatment through legal and cultural forces on a local and international level for all persons in the sex industry (Weeks, 2011).

The decriminalization of sex work is defined as “the removal of criminal penalties for sex work” (specifically prostitution). Sex work, when defined as the consensual provision of sexual services for money or goods, is criminalized in most countries (Weeks, 2011). Decriminalization is considered one of the most important initial steps in achieving legislation and regulative practices that would ensure better protections for women in the sex exchange industry.

Advocates for decriminalization claim that removing or lessening criminal prosecution for sex workers allows sex work to be regulated, creates a safer environment for sex workers, and prevents sex trafficking. However, opponents of decriminalization, such as feminist Sheila Jeffreys, argue that sex work protections actually increase trafficking and put sex workers at greater risk of harm, and that the act of regulation itself could pose many issues for governments and municipalities such as enforcement and affordability (Jeffreys, 2010).

### ***3.2. Criminal Statutes and Anti-Sex Work Laws***

Feminist Janice Raymond argues that criminalizing acts or behaviors via the law are the strongest social expression of disapproval or social correction. Laws in favor of criminalization of sex work also aim to protect vulnerable groups from violence and other abuses. In most countries, lawmakers and governments create sex work law in favor of abolition by prohibition.

Criminal law can prohibit activities such as transactions themselves, but often pertain to other actions correlated to commercial sex such as solicitation, brothel-keeping, communicating with the attempt at exchanging sex for a profit, and facilitating acts of sex transactions. Harsh penalties such as long prison sentences, large fines, and the removal of one's ability to earn public assistance or a job are among the most common forms of punishment (Raymond, 1999).

Dr. Lynzi Armstrong, a feminist criminologist, states that sex work can also be prosecuted under other forms of anti-prostitution laws, such as public indecency, loitering, impeding the flow of traffic, or disorderly behavior. While these crimes do not generally result in long prison sentences, police may have the authority to arrest, and can use possession of sex-related items such as condoms as reason for probable cause. "Unnatural offenses" laws that generally target laws criminalizing homosexuality have also been used to prosecute sex workers that do not participate in work that demonstrates clear sex exchange, such as cyber-sex workers and escorts (Armstrong, 2018).

Neo-abolitionist laws, which support the criminalization of buyers of commercial sex instead of the persecution of sex workers themselves, strive for abolition by aiming to end the demand for sex work. This can be achieved by criminalizing the act of purchasing sex and imposing harsh penalties on clients/patrons of sex workers. This legal approach is often in attempt to protect workers from exploitation, specifically women sex workers (Armstrong, 2018).

### ***3.3. Support for Decriminalization and Legalization of Sex Work***

The legalization of sex work, which is defined as the "removal of criminal penalties that apply to sex work and aspects of sex work," often entails regulation through additional restrictions and

requirements placed on sex workers as well as registration with official government offices (Mathieson, 2016). The removal of punishments such as fines, probation, arrest, and other sentences is supported by many feminist activists. Legalization involves a focus on laws put in place to protect the rights of sex workers, such as those against coercion into or to stay in sex work, while all consensual sexual contact between adult sex workers and adult clients would not be criminalized (Beloso, 2012).

Decriminalization is highly nuanced and does not necessitate legalization in order to remove criminal penalties. Decriminalization can make certain aspects of sex work legal while others remain illegal, and certain actions may still be considered infractions of the law (Vanwesenbeeck, 2017). However, decriminalization efforts aim to shift a societal view that sex workers are not criminals and therefore should not be given harsh penalties. Ronald Weitzer, a well-known proponent for the legalization/decriminalization of prostitution, stated that the use of nonscientific evidence about prostitution has contributed to a "moral panic" because opponents commonly use the argument that prostitution is inherently violent and unable to be regulated. However, he also claims that other governments have been able to reject this notion and find ways to regulate it (Weitzer, 2010).

While decriminalization and legalization differ in their perspectives of how to incorporate the law in regard to sex work, both guarantee the belief that sex work is a form of consensual labor in which women engage with personal and fiscal agency to some extent (Gerassi, 2015). Below are some of the main premises that support these beliefs:

- Prostitution is a transaction where no one is harmed, and the persons involved are consenting adults;
- Prostitution is a free choice;

- Sex work is no more moral or immoral than other jobs;
- Sex trafficking and coercion into the industry can be effectively reduced if sex work is legalized or decriminalized;
- Decriminalization or legalization can protect sex workers from violence most effectively;
- The spread of diseases can be hindered through the legalization or decriminalization of prostitution;
- The rates of rape could decrease if prostitution were legalized or decriminalized;
- Sex work could become a legal business, and human rights and worker's rights could be enforced by effective regulation;
- Prostitution is a career option in which the free market is being taken advantage of and women's claims over their own bodies (Gerassi, 2015).

According to pro-legalization feminists, the criminalization of sex workers only exacerbates problems that they are already facing. Therefore, the decriminalization or legalization can be a starting point to addressing these issues. Decriminalization is largely supported by academics, human rights organizations such as Human Rights Watch and the American Civil Liberties Union, UN agencies such as UNAIDS, WHO, and UNDP, LGBT organizations such as ILGA and Lambda Legal, and anti-trafficking organizations such as the Global Alliance Against Traffic in Women, La Strada International, and the Freedom Network USA (Weitzer, 2010).

However, organizations such as Amnesty International who advocate for the rights of sex workers, have been met with criticism from neo-abolitionists and activist groups who argue that brothel owners, pimps, and buyers should be subjected to legal persecution.

The legal status of managers or employers such as pimps or brothel owners varies from country to country. In countries that employ the Swedish Model, all parties and/or individuals involved in

the purchase of sex are persecuted by the law. However, other countries that have decriminalized or legalized sex work such as the Netherlands or New Zealand permit the use of pimps or brothels. Despite these permissions, pimps and brothel owners are often unregulated or taxed by the government. Lobbyists for decriminalization such as United States Senator Brad Hoylman consider pimps and other intermediaries to be entrepreneurs within the commercial sex industry similar to sex workers. However, both activists who support criminalization and decriminalization efforts alike, such as attorney Katie Beran and human rights scholar Berta Esperanza Hernandez-Truyol, argue that procurers of commercial sex are often coercing and abusing women to engage in sex-for-profit and should be persecuted by the law via human trafficking legislation (Beran, 2012).

Legalization or decriminalization proponents believe that the selling and buying of sex exchange will continue no matter what, and that the neo-abolitionist approach is more harmful to sex workers than helpful. Therefore, the only way to effectively prevent sex crimes and violence is to acknowledge this and for government to build policies and laws that deal with the issue through regulation of the business. Proponents of this view also recommend that policies are built that place restrictions on trafficking and exploitation of sex workers (Belenso, 2012).

## **IV. Feminist Jurisprudence**

### ***4.1. Definition of Feminist Jurisprudence***

Feminist jurisprudence, also known as feminist legal theory, is an assemblage of strategies and beliefs that states that law is essential to both the understanding the historic subordination and submission of women and to the change and elevation of the status of women. Jurisprudence, as

described by Janet Halley, a feminist legal scholar, suggests that the power of the law is mobile, fragmented, regulatory, and bureaucratic. Over the course of the last century, feminist ideas and theory have noticeably interacted and ingratiated with law at the national and international level. Examples of the power within feminist legal activism includes the incorporation of sex crime units in police forces, reproductive policy reform, the continuous fight for gender equal pay, and even legal rights for children (Jeffreys, 2010).

Feminist jurisprudence is incredibly complex and whilst having a foundation in a belief structure that supports the advancement and progress of women in the eyes of the law, the institution it depends on for its existence includes existing forms of power. With participation and intervention, feminist legal activism frequently engages with legal systems and often conflicts with law enforcement, policymaking, and legislation (Gerassi, 2015).

#### ***4.2. Feminist Jurisprudence and Perspective on Sex Work***

Feminist scholar Prabha Kotiswaran describes the relationship between feminist jurisprudence and sex work as one of a fractious nature. Feminist legal theory has been unable to resolve the originating dilemma over the terms in which sex work is permissible: is sex work a form of violence or is it a valid form of work? Do sex workers experience agency or are they ultimately coerced situationally? Most feminist legal theorists have accommodated for the abolitionist, neo-abolitionist, decriminalization, and pro-legalization frameworks. In other words, by assuming a middle ground that accounts for the concerns of arguments that perceive sex work as a form of subjugation of women as well as arguments that perceive sex work comparable to other business

practices, feminist jurisprudence is more invested in peace-making than adopting one extreme perspective (Kotiswaran, 2006).

Kotiswaran (2006) also states that feminists involved in legal theory explain the disagreement between abolitionists, sex-positive feminists, and neo-abolitionists with decriminalization/legalization feminists as one fueled by “different disciplinary frames and methodological imperatives” surrounding the topic of sex work. Abolitionists differ from decriminalization feminists because they see sex work as a larger structure or system meant to oppress women, while decriminalization advocates see it as a practice. While the liberal, sex-positive feminists advocate for more choice, radical anti-sex work feminism advocates for more power. Feminist legal theory is particularly important in current legal discourse because it results in more regulatory reform projects. Partial decriminalization and regulation efforts surrounding sex work largely contributed to the work of feminist legal theorists. These efforts have resulted in newly adopted non-controversial political perspectives in which national governments have found more benefits than costs for regulative legislation concerning sex for profit. This suggests that middle-ground, feminist legal theory has a higher probability of translating theory into governance.

The feminist legal theoretical framework does not have a uniform, accepted interpretation of how to discuss sex work. Some feminist legal theorists such as Dr. Alexandra Lutnick, a research scientist who works for RTI International’s Behavioral Health and Criminal Justice Research Division, argue that sex work is a form of work and thus sex workers deserve worker’s rights in that the possibility of harm and injury is high among them (Lutnick and Cohan, 2009). While the term “harms” is largely subjective, for the purposes of this thesis, harm is defined as physical, emotional, mental harm and exploitation. “Harms” are not unique to the practice of sex work;

they are seen in a variety of jobs, particularly jobs that demand physical labor. Individuals such as coalminers or construction workers see high rates of bodily injury and exploitation, yet they are protected by unions and are often given disability benefits if injury occurs. Emily Jackson, a legal fellow at St. Catharine's College, states that anti-sex work feminist legal theorists such as Catharine MacKinnon argue that the chances of bodily injury are high for individuals selling sex, and the physical violence associated with the nature of this profession should be considered human rights violations, and that systemic cultural devaluation of women that forces individuals to enter sex work is dangerous for all women (Jackson, 1992). Feminist legal theorists are critical of both the conservative and liberal feminist frameworks to sex work, disagreeing with the liberal feminist explanation of sex work as an act of “reclamation” over female sexuality since it does not necessarily align with feminist goals of ending oversexualization of women, and the anti-sex work feminist theory that portrays women solely as victims in need of legal protection instead of empowered women who can benefit from sex work legalization (Jeffreys, 2010).

Feminist legal theorists such as Prabha Kotiswaran argue that terms such as agency and choice are “poor tools” to examine the activities of sex workers. Feminist legal theorists believe sex for profit and the demand for a market for sex is largely multidimensional. The directions in which power flows regarding sex as a construct is complicated and consistently changing as further examinations of sexual subcultures come to light. Feminist jurisprudence argues that the examination of free will severely detracts from the debate of sex work since questions of choice should be reserved for conversations about sex trafficking and sexual slavery (Kotiswaran, 2006).

### ***4.3. Criticism of Feminist Jurisprudence***

Legal scholars and feminists such as Ine Vanwesenbeeck and Cheryl Nelson Butler alike have criticized feminist legal theory as a perspective with many unintended consequences and blind spots. Many feminist legal theorists make a distinct separation between the terms “prostitution” and “sex work”, and while many theorists consider themselves distanced from a perspective that declares a moral stance on sex for profit, almost all feminist legal theorists agree that the market for sex is a result of gendered power structures and the need for survival. The inability to participate in the debate of “presence or absence of coercion” has been a major source of criticism (Kotiswaran, 2006).

Some female legal theorists classify prostitution as a form of slavery, stating that prostitution is “not freedom, not just another job, but the abuse of women.” (Raymond, 1999) Sex work is better defined as a form of consensual transactional work that encompasses more than just stereotypical perspectives of sex work such as prostitution, but a form of work that includes stripping, pornography, etc. The staunch separation between the two terms by feminist legal theorists has been subject to anti-sex work feminists for two distinct reasons: the first being the lack of actual legal difference between the two terms (Vanwesenbeeck, 2017). The World Health Organization defines sex work as “the provision of sexual services for money or goods”, and the most basic legal definition of prostitution is “exchange of a sexual act for money.” The lack of discerning characteristics between both terms in the eyes of the law appears to be a blatant contradiction in the beliefs of feminist jurisprudence (Berg, 2014).

Feminist jurisprudence has also received criticism from sex-positive feminists such as Gayle Rubin who advocate for decriminalization and legislation because of the feminist legal approach to a moral stance on sex work. Women are portrayed as workers engaged in sex work as a

method of “survival sex”- exchanging sex as a way of feeding oneself and their family and paying necessary bills (Comte, 2013). According to Brooke Beloso’s “Sex, Work, and the Feminist Erasure of Class,” Rubin argues that the victimization of women is anti-feminist and harmful. Sex-positive feminists have claimed that many female sex workers do not consider themselves feminists specifically for this reason; they are portrayed as helpless victims of larger institutions, when many sex workers identify as women who voluntarily became involved in sex work in order to increase their personal capital. Many sex-positive feminists believe that sex work can be empowering for women, and feminist jurisprudence states that while the work itself is subjugating, the practice should be empowered in order to destroy the larger system (Beloso, 2012).

The most common criticism of feminist jurisprudence is the lack of input on the debate of coercion vs free will. By considering arguments of choice and consent a “waste of energy,” pro-and anti- sex work advocates criticize feminist legal theory’s seeming inability to make a clear distinction between what many consider to be sexual slavery from sex work (Freeman, 1989). Feminist legal theory adopts the capitalist economic approach in that any work that contributes to the greater economy should be protected and regulated. However, feminists who do not align with this perspective argue that technically, sex trafficking is a profit-making force. If the greater goal of feminist jurisprudence is to empower women by offering protections and regulations to ensure their safety, the argument of choice and consent should be fundamental to the argument of whether sex work should be criminalized or not (Kotiswaran, 2006).

## V. Effectiveness of Sex Work Law

### *5.1. Effectiveness of Criminalizing Sex Work*

The socio-economic implications of sex work criminalization are significant to the discussion of the relationship between decriminalization and contemporary feminism. Criminalization and persecution of sex workers has been a major tool to combat prostitution in the postcolonial age; a method used to combat the “immoral enemy” of the public. Feminist discourse may diverge in its opinions on whether or not the legalization of sex work aids in the goal of equality for women, however, it is universally accepted that criminalization has not decreased the market for sex. As contemporary feminism attempts to unravel the stigmas and dated definitions of sex work, it is important to understand if and how legislation effects commercial sex, and those who engage in this practice (Vanwesenbeeck, 2017).

In modern days, while many countries are adopting legislation to decriminalize sex work, many other countries such as Iceland and Norway have adopted neo-abolitionist approaches. “Demand reduction” strategies are becoming increasingly more common in sex work legislation across socially conservative countries throughout Europe. Ine Vanwesenbeeck argues that these laws attempt to conflate the definitions of sex work and sex trafficking; both sex work and sex trafficking are illustrated to the public as exploitative, abusive, and controlled. However, the origins of modern criminalization are rooted in the moral rejection of sex-for-pay. Female sex workers are cast as undesirable and a corruption of society. The culture of social exclusion, discrimination, and immorality established by criminalization has larger implications than the effectiveness of the laws themselves (Vanwesenbeeck, 2017).

The mission of criminalization attempts to completely destroy the market for commercial sex, however, even criminalization laws in the most conservative countries in the world have been unable to control the demand for such work. Neo-abolitionist and repressive regimes against sex work force the market to make adjustments in order to navigate environments of heavy policing. Modern legislation such as “the Swedish model” (Sweden was the first country to introduce a law banning the purchase of sex in 1998) and other purchase-banning laws have been branded by politicians as “feminist policy” with aims to improve the lives of women by ridding the market of female objectification. However, Sweden still has a thriving commercial sex industry largely comprised of women while simultaneously maintaining the highest score in the EU on the Gender Equality Index (Lutnick and Cohan, 2009).

Criminalization is seen as an ineffective practice by critics because of the black market industry created in response to the banning of prostitution. A market for commercial sex exists with or without laws determining the legality of the practice, and both sex workers and patrons will choose underground methods that often pose greater safety risks to the buyer and seller. In economically vulnerable countries with low female labor market participation, rates of trafficking have increased in response to criminalization because of the lack of legal and economic venues made available to women (Lee and Persson, 2012). Women are more likely to be victims of coercive or forced commercial sex when the demand for a sex work industry is high, and the only markets that exist are black market industries that rely heavily on privacy from the law and secrecy. Without any form of regulation or management from the government, black market commercial sex industries are able to prey upon vulnerable women through means of manipulation and coercion because both patrons and sex workers are unlikely to report abusive practices out of fear of facing legal implications themselves (Lee and Persson, 2012).

According to Dr. Kathleen Deering, health risks of sexually transmitted diseases such as HIV, physical and sexual violence, and femicide against sex workers increase as laws become more constraining on the market. Dr. Deering's research showed a review of 42 international studies on violence against sex workers showed that the risk of violence increases up to seven times among sex workers in highly policed, highly legally repressive conditions (Deering, 2014).

Dr. Alexandra Lutnick and Deborah Cohan, research scientists who studied sex work in relation to public health, argue that the covert forms of sex work that take place in response to highly oppressive legislation harbor extremely dangerous conditions for sex workers. In institutionalized anti-sex work regimes, law enforcement becomes the biggest enemy of those engaged in commercial sex. Because of the lack of legal resources for sex workers, police officers and purchasers of sex can effectively commit egregious crimes and human rights violations against workers because the risk of arrest, detention, high fines, and even deportation among non-citizens are threatening to the lives of these women who are often already vulnerable (poor, migrants, LGBTQ+, etc.). Fearing the denial of access to legal representation, child custody disallowance, forced rehabilitation, imprisonment, and confiscation of property, sex workers in criminalized environments are subject to extreme personal risks. Assault, harassment, exploitation, and blackmail are seen more regularly against women who engage in sex-for-profit, and in the worst cases, many sex workers are murdered and will never see justice (Lutnick and Cohan, 2009).

I conclude that the conditions put forth by criminalization do not only impact sex work, but how women are perceived and treated by the law. Current criminalization efforts reinforce stigmas of "good" and "bad" women; women who are deserving of recognition and representation in the eyes of law and justice, and women who can be discarded. If feminist theory is to be interpreted

as a framework which seeks to grant equality and promote advocacy for all women regardless of their position in society, the discriminatory nature of criminalization may contradict this.

### ***5.2. Effectiveness of Decriminalization***

The legal effects of decriminalization are characterized by accessible and more approachable pathways of freedom, safety, and support, according to Dr. Alexandra Lutnick. Sex workers are able to access the benefits of police protection, obtain more rights as workers, and choosing non-sex work employment in the future. According to Dr. Lutnick, in her personal interviews with sex workers who voiced support for decriminalization, several women expressed that law enforcement and other forms of legal protection would be a source of support in relation to their personal safety if sex work was not illegal (Lutnick and Cohan, 2009).

Jacqueline Comte, a PhD student in sociology and sexuality, argues that other women engaged in commercial sex believe that decriminalization would both allow greater flexibility in negotiation with potential customers and would allow women to become “solo-practicing entrepreneurs” instead of workers under pimps, madams, and other procurers. If sex workers were able to determine their own working conditions (such as demanding the use of condoms by a patron, personal limits, contractual agreement of prices), they could facilitate safer encounters while doing sex work because the breech of these conditions by a patron would be illegal and punishable. Similarly, women could better negotiate working contracts with their “management” because of improved legal representation for sex workers. Women engaged in sex work could receive a larger percentage of their wages, decide which forms of sex to participate in, and leave their places of work more freely. Sex workers may also choose not to work under anyone since

they can better navigate the market without being “owned” by a procurer of sex work, fostering a culture of solo practice. The effects seen by the results of decriminalization would also improve definitions and protections against sex trafficking. If women engaged in sex work are granted accessibility and approachability from legal resources, coercion, enslavement, and violence in sex work is predicted to decrease dramatically as a result of the improvement of resources (Comte, 2013).

Comte goes on to argue that the most significant effect of decriminalization would be the destigmatization of sex work. Sex work culture revolves around the maintenance of secrecy and discretion to avoid social rejection. However, decriminalization aids in visibility for women who consent to an industry that works similarly to other markets; allowing women who identify as sex workers to be included in dialogues they have historically been rejected from, such as discussions of both worker’s rights and women’s rights, because of their legally enforced freedoms and protections. In these terms, decriminalization supports feminist theory by granting rights and representation for women, despite their work and how they identify socioeconomically (Comte, 2013).

Ane Mathieson, an outreach specialist for trafficked women, is a feminist who supports a variant of both criminalization and decriminalization via methods such as the Nordic Model. She argues that the legal prohibition of the purchase of commercial sex is a policy initiative that better protects women’s wellbeing. Based on the understanding that women’s equity depends on excising structural barriers that preclude women’s full economic, social, and political inclusion, feminists that support criminalization argue that the role of the law and social policy is to advance social egalitarianism. This model depends on the theory that sex work is an inherently violent institution from which women should be protected in order to preserve the safety of

women and advance their role in society, however the responsibility is placed on the buyer to compensate for the social asymmetries faced by both parties. The Nordic Model also criminalizes third-party profiteers such as pimps and brothel owners because there is no differentiation between the definition of prostitute and trafficked victim in this model, implicating third parties as contributors to gendered violence. Some feminists support the Nordic Model because of its emphasis on reaching gender equality by means of deconstructing degrading, misogynistic institutions that systemically devalue women. This model places legal responsibility upon the individual with the most power as opposed to other criminal statutes that unfairly discriminate against a vulnerable party and offers legal accessibility for sex workers while implicating individuals who abuse its practice (Mathieson, 2016).

## **VI. In Practice: Comparative Study Between Ciudad Juárez and Amsterdam**

### ***6.1. Ciudad Juárez and Amsterdam: Examples of Sex Work and the Law***

This comparative study of the industries of sex work in Ciudad Juárez and Amsterdam and their relationships to the law demonstrate two examples of how commercial sex and “visible” prostitution (otherwise defined as the recognition from the law that sex work is accessible to the public) are impacted by legal permission to practice sex work. While both the Netherlands and Mexico have legalized sex work, negative consequences of working in the commercial sex industry in each city are pervasive. Juárez and Amsterdam’s sex work laws and enforcement have evolved and have continued to become more repressive of the commercial sex industry. Sex workers are not given the same legal recognition or resources as other laborers, and the practice of sex work is only allowed in very specific circumstances and locations.

This comparison also aims to show how differing levels of agency of sex workers in both countries is impacted by the law. Mexico is a global South country, and the Netherlands is a wealthy, white country in the global North. It is important to the study of sex work to compare and contrast how women who lack social and racial privilege in one industry are both similar and different to women who can exercise privilege. Ciudad Juárez and Amsterdam are additionally recognized for currently having sex tourist industries which impact prostitution laws positively and negatively for sex workers as both cities continue to change the law to make way for infrastructural change.

## ***6.2. Ciudad Juárez and Sex Work***

Ciudad Juárez is the most populous city in the Mexican state of Chihuahua with an estimated 1.5 million people. Characterized by its large population and proximity to the U.S. border, the city is historically known as a place of industry with over 300 “maquiladoras” (assembly plants). Regarded as a “city of the future” by developers, Ciudad Juárez has worked steadily on plans of economic progress as the city expands into the tourism and entertainment industries. While Juárez is remarkable among other Mexican cities for its urbanization and development, the large city is impacted by many issues that plague all of Mexico such as high rates of crime, lack of safety, government corruption, and poverty (Wright, 2008). Over the last one hundred years, Ciudad Juárez has historically maintained a strong reputation on the Mexican- American border as a “sin city,” where male tourists would travel from the United States to legally purchase

commercial sex, consume liquor and drugs, and gamble as an escape from prohibitionist-era America (Fischer, 2013).

Robert Fischer, a historical researcher, studied the social and political issues faced by Ciudad Juárez in his work, “Mobility and Morality at the Border.” Analyzing the vice industries, crime, and the city’s reputation as well as the response and reaction from city officials, Fischer discusses sex work as an industry that has pervaded Juárez’s economy since the early 1900s. Melissa Wright is a researcher who studies the dynamics linking geography, women and gender studies, and politics in Northern Mexico along the border of the United States. In her 2008 work, “From Protests to Politics: Sex Work, Women’s Worth, and Ciudad Juárez,” Wright examines how the century-long battle between powerful figures in Juárez and women sex workers persists to the present day. Wright studies how discrimination and violence against women in Juárez has impacted dialogue around the value of women and the pervasive stigma associated with sex work.

Career options for women in Juárez are slim, and women dominate two significant parts of the city’s economy: sex work and factory work. However, both of these labor markets have been threatened by city officials who are attempting to reinvent the city’s public image, a persistent effort by the Juárez government for the last century (Fischer, 2013). While underpaid factory work in harsh conditions are remnants of the city’s once industrial past, Juárez’s sex work business has been deemed a “vice industry” in need of removal to make way for an improved, urban climate (Fischer, 2013). Wright shows how this issue has manifested in contemporary time. As the city rebuilds into a pro-tourist, high-tech, family-friendly environment, female participation in the commercial sex market in Juárez is being forcibly disappeared by law enforcement despite the legalization of sex work in Mexico (Wright, 2008).

The relationship between sex workers within Ciudad Juárez and the law has historically been a tenuous one. In the early 1900s, law enforcement attempted to “cleanse” the streets of sex workers and restrict prostitution activity to attract wealthier American tourists with higher moral standards. However, animosities between city officials and sex workers over these limitations and the costliness of losing the existing tourist market of Juárez hindered its effectiveness (Fischer, 2013). Therefore, institution of regulations such as the registration of sex workers, taxes, and medical examinations to prevent the spread of sexually transmitted disease were mandatory for women engaged in commercial sex. *Zonas de tolerancia* were monitored as the only legally protected areas where sex workers could attract customers. While the *zonas* constantly changed and other restrictions were instituted to reduce sex work activity, the commercial sex industry ultimately proved to be profitable and the presence of sex work has been historically intertwined with the success of local Juárez businesses (Fischer, 2013). Today, the majority of sex workers serve a predominantly working-class, Mexican, male clientele in an area presently known as *la zona de La Paz* (the zone of peace) to feed their families and pay bills. Ciudad Juárez has since removed restrictions and sex work-zones, allowing for a free flow of sexual services which many local business owners recognize as a benefit to the city’s economy (Wright, 2008).

According to Melissa Wright and her personal account of sex workers in the city of Juárez, the most recent battle between Juárez sex workers and the law began in October 2001, in which around twenty sex workers confronted top officials in law enforcement to demand freedom for sex workers from institutional abuse (Wright, 2008). Similar to the animosities between law enforcement and sex workers seen in early twentieth century Juárez, the removal of the commercial sex industry was seen as a necessary step towards modernization, and the

devaluation of prostitutes by city officials has been used as a justification of their forced disappearance (Wright, 2008).

The current structure of the sex work industry in Ciudad Juárez has allowed women sex workers to maintain independent entrepreneurship, a system in which sex workers do not belong to pimps and maintain solo responsibility for their work. They set the terms of their fees, services, hours, workspaces, and are able to collect all of their earnings (Wright, 2008). Sex workers in Juárez have a hierarchy to their success in which some women are better connected and have more dependable clients than others. The most successful women have been the chief organizers against “police clean-ups,” a citywide campaign to cleanse Juárez of sex workers and other immoral activity in order to create a more modern, Western climate for industry. The legality of prostitution in Mexico has been the foundation of the sex worker’s argument against city officials who believe it is their constitutional right to work, make a living, and sell their bodies to patrons (Wright, 2008).

One successful sex worker’s network allowed her to gain access to top officials within law enforcement to negotiate the city’s attempts to remove sex workers. The police openly acknowledge how much of the city’s commerce has been improved by sex work, and local businessowners have defended the presence of Juárez’s commercial sex industry since it is largely attributed as a way for businesses to grow their clientele. The supportive relationships between local businesses and sex workers has also allowed for further negotiation of anti-harassment measures against prostitutes working in the city.

However, criminalization legislation has been put in place that furthers the persecution of sex workers. These measures are incredibly severe, making the act of women merely standing in place a crime. In protest, sex workers walked nonstop, filling streetways and making it difficult

for both the sex work industry and local business to continue. Walking in protest to the standing laws not only made it easy for women to defy the authorities, it also represented a larger victory in the form of conversations about the value of sex work in Juárez (Wright, 2008).

The conditions for women in Juárez as a whole are violations of basic human rights. Women regularly “disappear,” kidnappings are common and often unsolved, and the police do very little when confronted with evidence (Wright, 2008). Murder and rape are among the ongoing issues among the women of Juárez that have been ignored by the government, and because of the stigma associated with sex work and criminalization, the idea that women “deserve” violence and harm because of their presumed profession in sex work has contributed to cultural issues of sexism and misogyny within the city. While state agents refuse to give visibility to these crimes, sex workers across Juárez have been the only proponents of drastic change. Demanding the city to confront the devaluation of women, sex workers have organized the fight to not only reassert their presence openly, but recognition of institutional abuses and degradations faced by Mexican women of all social statuses (Wright, 2008).

The fight for equality and visibility for women in Juárez would be impossible without the organization and social identity of sex workers. Women engaged in sex work are not only subject to the abuses they protest, but witnesses to pervasive social issues that impact the lives of Mexican women throughout the country. The sex workers of Juárez are the largest contributors to their local economy, the procurers of the next generation of Mexicans, teachers, activists, businesswomen, and in many ways, community leaders (Wright, 2008). The feminist activism of Juárez sex workers shows that in spite of discrimination and persecution by enforcers of the law, women engaged in commercial sex have maintained the economy of an entire city and their efforts to bring about social change to advance the worth of women throughout Mexico is crucial

to greater dialogue about how women should be treated by powerful institutions regardless of their social position.

### ***6.3. Amsterdam and Sex Work***

Across the ocean from Ciudad Juárez, Mexico lies an urban landscape internationally recognized for the global commodification of commercial sex. Amsterdam's red light district is one of the largest, most visible, and most visited zones for sex tourism in the world, even having been given the modern definition of the "quintessential and paradigmatic" red light district. Amsterdam is a port city that many believe would not have its international claim to fame without a prospering sex industry, which has created an aura of mythos around the liberal city (Aalbers, 2012).

A red light district is defined as an area within a city or town in which the predominant industry surrounding it is commercial sex. While some red light districts are characterized by prostitution, other districts may be characterized solely by sexual entertainment, such as strip clubs, adult theatres, and stores that sell sexual merchandise. Amsterdam differs from other large cities with red light districts because of culturally adopted attitudes of "regulated tolerance," a unique trait among Dutch citizens in which a more relaxed stance towards expression and experimentation is commonplace (Zuckerwise, 2012). The Netherlands became the first European country to legalize prostitution in 2000, with strict regulations aimed to control and protect the public from coercion and exploitation via licensing and the reduction of foreign nationals among voluntary prostitutes (Galusca, 2012).

The Amsterdam Red Light District was regulated before its legalization; sex workers put forth a set of administrative rules in order to coordinate activity to escape conviction from criminal law.

The debate of decriminalization and legalization was brought into legal dialogue by Dutch sex workers who demanded recognition and protection by the government. While sex work was, in a sense, decriminalized because of the vague and ambiguous laws pertaining to prostitution, sex workers believed themselves to be fundamental to the city's economy and therefore worthy of safety provided by the law (Aalbers, 2012).

Decriminalization existed throughout the 1980s-90s, however, the definition of decriminalization adopted included allowing private clubs and escort services to maintain business while individual prostitutes were considered illegal. The constraints of what was and wasn't legal became ultimately confusing for sex workers and legal officials alike and became a point of debate for sex workers who protested against the hypocrisies of this definition of decriminalization. As a result, legal flexibility was given to prostitution creating the atmosphere of today's red light district. The government maintains control of licensing, taxation, and legal action against illegal practices (such as trafficking or unlicensed sex businesses). Sex workers are required to register with their local chamber of commerce, declare their earnings, pay taxes, and disclose their activities openly (Aalbers, 2012).

Decriminalization and legalization legislation had both positive and negative effects on female sex workers. While EU nationals are legally able to become sex workers in Amsterdam, non-EU nationals have to obtain strict working permits that require Dutch and/or English language fluency. The majority of sex workers in Amsterdam are EU prostitutes which left non-EU sex workers vulnerable to the predatory control of illegal pimps because of their lack of legal protections. However, because of the legalization measures and regulations put in place for sex workers, this allowed for greater and more effective "clean-up" efforts on trafficking rings and other illegal activities. The Act Lifting the Ban on Brothels enforced monitoring measures and

criminalization of trafficking in women, and because these efforts have made trafficking drastically more difficult for predators, this has led to a decrease in victimization and violence of women (Post, Brouwer, and Vols, 2019). However, these purported lowered statistics are largely based off of decreased violence and assault against Dutch women specifically. Statistics on the impact of these legal measures on migrant female workers and non-EU women who live in the Netherlands are scarce, despite their high vulnerability to trafficking and physical harm.

Amsterdam has been the focal point of feminist discourse regarding morality and sexuality. The full decriminalization and legalization of prostitution in 1999 allowed for the national legalization of brothels, and the regulation of sex work to be allocated to policed “zones.” This was a result of the impact of the sex wars of the 1980s in which the fight for legal access became a focus for Dutch feminist groups. Dutch lawmakers sought to overhaul and remove sexist legislation, such as marital exemption from rape laws, at the encouragement of Dutch second-wave feminists, and controversially liberalized prostitution laws. The Dutch public, contrary to foreign opinion, has been mixed in response to the red light district (European Union, 2014).

While some view it as a part of the city’s history, other Dutch citizens view it as the legal allowance for the objectification of women. Anti-prostitution feminists argued that government regulations were normalizing women’s trafficking which they described as any occurrence in which women are involved in the sex industry (Galusca, 2012). In 2007, the Dutch government performed an evaluation about the impact of regulatory statutes on the sex work industry in Amsterdam, which produced surprising results. According to the evaluation results, the emotional wellbeing of prostitutes had declined because the extent of distress due to the regulations was higher, use of sedatives and other drugs escalated among sex workers, the majority of sex workers were not entitled to any social service benefits, and despite stronger anti-

trafficking measures, more than half of the prostitutes claimed that they were underaged when they began working (European Union, 2014). This report provided evidence for anti-prostitution feminists that believed the regulation of the Amsterdam Red Light District was more harmful than beneficial, and that the Dutch government had legalized and aided an institution that encouraged the normalization of violence and harm against women (Galusca, 2012).

Dutch sex workers are not only legally recognized, they are a part of larger discussions about systemic reform regarding the status of women. Sex worker unions discuss safer practices and worker's rights with government officials regularly and are deemed equal to other labor unions (Post, Brouwer and Vols, 2019). The Council of Ministers is currently overseeing new policies regarding prostitution which aims to create more inclusive and uniform laws nationwide. These measures would not only compel sex workers to register themselves with the government, they would additionally be briefed on the risks of sex work as a profession, alternative employment, and safety. Policies to change the age for employment as a prostitute from 18 to 21 are also undergoing negotiation (Zuckerwise, 2012).

Evolving sex work legal standards and policies in Amsterdam has left a remarkable impact on feminist theory today. Sex-positive feminists have both praised and criticized the current state of sex work perception and decriminalization within the city. Sex-positive feminist Marianne Marchand and her colleagues, Julian Reid and Boujke Berents, view the effects of the regulation structure in Amsterdam as a complex, multidimensional issue which has posed many issues for women who lack mobility and alternative job options, most of whom are poor migrant women (Marchand, Reid, and Berents, 1998). Marchand and her fellow international relations researchers argue that while legal protections for sex workers have moved the progressive needle in support of a commercial sex industry, the highly regulatory structure has also reinforced and

procreated systemic inequalities, particularly in regard to race and class since many of these regulations solely protect white, middle class Dutch women (Marchand, Reid, and Berents, 1998).

Many of the feminists who oppose decriminalization as a response to measures in Amsterdam diverge into two differing feminist groups: women who believe that sex work furthers oversexualization of women and the idea that women can be bought and sold, and women who are members of the “feminist” Dutch Christian population such as founder and social worker of the anti-sex work movement Exxpose, Sara Lous. The women in the first group consist of staunch anti-sex work feminists such as Sheila Jeffreys, who argue that the women who choose to partake in institutional misogyny via the sale of their bodies are contributing to the issue of objectification by portraying prostitution and other sex work as a “choice” (Jeffreys, 2010). In this conservative feminist framework, feminists believe that the perpetuation of the idea of women as commodities is furthered by regulation which manages women similarly to the way the market manages products. The latter group considers themselves feminists as well and are supporters of a larger movement known as Exxpose, initiated by a non-profit organization by the same name with the purpose of stopping the demand for prostitution and human trafficking. This group has started a protest called “I Am Priceless,” which shows different stories of feminists throughout the Netherlands and how prostitution is both a cause and consequence of gender inequality. With their petition against sex work, the Exxpose group aims to show how Dutch decriminalization is facilitating outdated and exploitative forms of female work (Zuckerwise, 2012).

#### ***6.4. Comparing Juárez and Amsterdam: Why It Matters***

Juárez, Mexico and Amsterdam, Netherlands are cities that, upon first glance, could not seem more different. Juárez is located in the Global South and faces incredible institutional and systemic problems often extending beyond the significance of gender equality. Drugs, gang violence, and government corruption in Juárez facilitate harm and endanger the lives of society's most vulnerable, and the lack of educational resources or alternative career options for women is consistent with the explanations provided for female involvement in sex work. Amsterdam is a progressive tourist site in the global North where women's engagement in sex work is one of the many forms of "vice" or "taboo" practices that takes place within the city. Women are perceived to partake in sex work as a way of reclaiming their sexuality and are seen as the business owners of their own bodies in a more liberal, open-minded society. One of these cities is a booming metropolis and a top-ranked bucket list destination, the other is a city plagued by high homicide rates and a lack of international visibility.

The differences between these cities is precisely why dialogue about decriminalization and feminist discourse is important. Each city has a unique, layered, and complex relationship with the world of sex work and its implications, and while decriminalization efforts were set forth in both countries, the effects of sex work and its relationship to the law drastically differ. Neither country is "correct" in their approach to the sex industry, and the cultures of each region impact how sex workers are recognized under the law. While Amsterdam has an international reputation for their Red Light District, Dutch culture is unique to other countries around the globe with adopted attitudes of tolerance, and therefore may not be a universal example feminists can use when discussing whether decriminalization is supported by feminist theory. The current state of the Red Light District is also the result of fairly recent policy changes, and the impact of these

changes may not be visible for some time. Juárez is largely ignored by feminist dialogue, and the few feminists who have studied sex work in the region debate whether the form of sex work practiced there is a form of valid labor or survival sex in which the circumstances of consent differ and therefore institutionally unsupported by feminist theory.

Despite the differences between Juárez and Amsterdam, both cities share quite a few similarities. Each city has faced ongoing issues concerning migration and sex workers. In Juárez, the proximity to the border has brought up concerns of sex work migration from the city into the United States, and Amsterdam's sex industry faces controversy over the permissions of EU vs. non-EU citizens in sex work engagement. Juárez and Amsterdam's sex workers are both broadly defined as solo practitioners, lacking pimps and other procurers of sex-for-profit. This form of entrepreneurship is actually very unique and uncommon, even among other cities that have decriminalized sex work, and can be largely explained by conditions in which women create work environments to engage in practices in which they can earn 100% of their profits instead of allocating a percentage of their wages to a middle man.

The sex workers in both cities are also composed of similar demographics. Both populations vary in age and appearance, however, sex workers in Juárez and Amsterdam often resort to sex work because they can receive money more immediately than normalized forms of work. Many perceive sex work as a better option than alternative career choices. For example, many women in Juárez engage in sex work because they can control their conditions, hours, rates, etc. while also making more than female factory workers. Women who practice sex work in Amsterdam have often given similar arguments when responding to questions about their decision to enter the market of commercial sex, and have stated they can make more money in a single night than

care workers or other forms of work they are “qualified for” earn in a week (Marchand, Reid, and Berents, 1998).

Most importantly, the women in both cities face a future of uncertainty and instability. Within both cities of Juárez and Amsterdam, conversations about further restrictions on the sex work industry endanger their jobs because visible, accessible commercial sex is seen as a setback to further gentrification and modernization. Sex workers have become symbols of the flawed pasts of both cities, and their erasure from public spaces is deemed necessary to each city’s future economic well-being. In Ciudad Juárez, sex workers fight to reassert their presence in their city’s downtown district protesting against the local political and economic leaders who believe the disappearance of sex workers is an advantage to development and investment (Wright, 2008). Similarly, efforts to repress prostitution in Amsterdam by the Dutch government have been met with protests by sex-positive groups and the Dutch sex worker union who see the intentional raising of taxes and property values within the Red Light District as a threat to their ability to earn a legal income (Aalbers, 2012). Amsterdam and Ciudad Juárez perceive “city cleanups” as a method to reach higher infrastructural goals, a necessary step in changing the reputation and foreign perception of their cities (Wright, 2008). The protests by sex workers in both cities are often ignored because of the stigmas associated with their jobs, and therefore sex workers become victims of gentrification policy changes (Aalbers, 2012).

The comparison of sex work in Juárez and Amsterdam attempts to frame sex work as more than a form of labor, but a highly nuanced, intimate practice that is entirely circumstantial. The world of sex work encompasses thousands of different practices, and the experiences individual women have in sex work are just as varied. Feminist theory is often quick to use ethnographic evidence

to support one existing belief about sex work or another, however, each city presents both positive and negative effects of decriminalization.

Juárez and Amsterdam illustrate how, despite legalization, sex workers are symbols of shame, vice, and backwardness. Because of the stigmas associated with their social position, strict abolitionist legal frameworks can worsen conditions for sex workers and the perception of women around the globe. The extreme measures taken by law enforcement and government officials endanger the lives of women, both engaged in sex work and not engaged in sex work, in societies where even a false accusation of prostitution can devastate a woman's reputation. Abuse, manipulation, and murder increase in response to laws that attempt to show sex workers as a social problem instead of individuals deserving of recognition and human rights. The sex workers in Juárez and Amsterdam face grave danger in light of dialogue that attempts to "cleanse" the streets of women engaged in commercial sex and are subject to larger institutional conditions set forth by individuals who are not engaged in sex work at all. The voices and personal narratives of sex workers who regularly engage in their practice have been neglected and ignored by feminist discourse at large, and are necessary to discuss the impact of decriminalized sex work on progressive feminism and the perception of women around the world.

## VII. Conclusion

The demand for a market for commercial sex is growing with the limitless possibilities presented by technological advancement and innovation. As societies around the world attempt to introduce discussions about the roles of women and gender discrimination, feminist theorists

must make decisions on who and what is protected by the greater goals of gender equality and advancement. Sex work, a practice largely employed by women, is subject to the same discussions held by feminists without much context given for its highly unique societal position. Feminist jurisprudence is the focal point of this discussion because the interpretation of feminist support is argued via legal institution and the aims of justice. As dialogue about decriminalization of sex work is considered a higher priority in feminist agenda, flexibility of existing norms and definitions is necessary. An inclusive and open-minded approach to the comparison of sex work to perceptions of labor as a whole is essential to this study because of the stigmas associated with commercial sex and women who participate in its practice. Sex-for-profit is similar to other jobs in that individuals who sell their bodies earn money to pay for their cost of living, specialize in different aspects of their field, take risks and, exercise personal limits just as any other laborer does. However, the sex industry does not only differ from other workplaces, individual commercial sex industries crucially differ from each other. Questions such as who decides to participate, when, how, why must be accounted for, and the variability within explanation for each circumstance is significant to sex work practice as a larger institution. Methods of regulation and decriminalization of sex work aim to give differing degrees of personal legal agency for practitioners in order to address greater risks and more significant problematic behavior in society, but the conditions that foster a woman's decision to engage in sex-for-profit should be better studied in order to understand systemic issues concerning the sexualization and exploitation of women's labor.

Sex work advocates and activists argue that sex work should be perceived and equated with society's interpretation of work and labor. Through decriminalization, sex workers would have infrastructural support that would allow them to be seen as equals to other laborers and afforded

similar basic protections by the law. The decriminalization of sex work debate has helped move the conversation of sex work to more than just one of morality, but a conversation on substantial policy and legal implication. The first part of this thesis aimed to articulate existing theoretical frameworks and how they view sex work and its effect on feminism. This is fundamental to unraveling common misperceptions of what feminism is and what it supports. Feminism, as a whole, is a large umbrella of movements, theories, perspectives, and ideologies in which multiple theories and ideas exist under the same label. Like other controversial debates, sex work is subject to the multiple interpretations and conceptions of its effects on women. More importantly, the first part of this thesis aimed to introduce the complex overlapping relationships of feminism, sex, commercialization, and the legal system. This is done by exploring existing terminology and definitions, common conflations, and how specification is needed when discussing sex work because of the ambiguity of vocabulary used to describe this practice, as well as examinations of specific feminist frameworks and their response to decriminalization.

The second part of this thesis aimed to explore how stigma and institutional discrimination against sex workers exists despite the legalization of prostitution. A comparative study between Juárez, Mexico and Amsterdam, Netherlands was performed to investigate how criminalization and abolitionist approaches to sex work harm women engaged in commercial sex, and pervasively negatively impact sex workers as anti-sex work attitudes become stricter. The issues and dangers faced by sex workers are deeply intimate, and environments facilitated by abolitionism encourage stigma associated with buying and selling sex.

Regardless of the personal and moral stances of feminist theory regarding sex work, sex workers and allies unanimously agree that feminism is the necessary foundation for the support of campaigns that aim to gain basic workplace protections for sex workers. Sex work is unlike

many other forms of employment, however, it is real work: sex work involves both physical and emotional labor and should be conceptualized this way. Creating labor solidarity is difficult in such a diverse field of work, however, the grassroots organization of women both engaged and not engaged in sex work shows that sex work is inherently essential to feminist discourse.

Women who are subjected to the oppressive and restrictive measures of pro-criminalization of sex work face individual and social discrimination for their choice of employment. Sex workers face harassment, persecution, detention, and the removal of their human rights. They face invisibility, lack of representation, and a lack of resources, all of which go against the very foundations of what feminism stands for (Berg, 2014). Decriminalization aims to provide more legal accessibility and protection without necessarily endorsing the practice as a morally acceptable one. By this definition, feminism should support decriminalization efforts in order to protect all women, regardless of their social status against discrimination and persecution from a patriarchal world.

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