Freeing the “Whore”: Competing Feminist Theories and the Liberatory Potential of Sex Work Policy

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Freeing the “Whore”:
Competing Feminist Theories and the Liberatory Potential of Sex Work Policy

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Senior Politics Honors Thesis
Professor Friedman
December 10, 2021
ABSTRACT

With a reputation as humanity’s oldest profession, sex work has been the subject of social and political debate for centuries. Feminist scholars, in particular, have given a great deal of attention to the profession, questioning whether the existence and prevalence of sex work have had a positive or negative impact on the advancement of women’s rights. This feminist debate has formed a binary between sex-positive feminists and abolitionists who starkly disagree on the role sex work plays for women, while each side simultaneously believes that their argument provides the greatest opportunity for the liberation of women from the oppressions of patriarchy. Sex-positive feminists advocate for the normalization of sex work as an avenue for women to reclaim their sexuality whereas abolitionists argue that women’s sexuality has been so deeply embedded in patriarchal structures that women can’t behave sexually separate from these structures. Beyond the theoretical arguments, both sides of this debate advocate for policy approaches that advance their beliefs, with sex-positivists favoring legalization or decriminalization and abolitionists pushing for criminalization. Although both sides of this debate aim to advance women’s liberation, the polarized binary feminist scholars have formed has inhibited positive policy progress regarding sex work and has even led to the emergence of a third, middle-ground body of theory. The standstill of the feminist theoretical binary has established the need for the determination of the most liberatory policy approach for sex workers so that feminist advocacy can direct its energy at the policy that will most effectively attack the patriarchal oppression women have been subjected to. As such, through this thesis, I aim to analyze and compare the impact that the criminalization and legalization of sex work have on sex workers to determine which policy approach, and the feminist theory that backs it, is more liberatory. I use Nevada and New York as my comparative case study for this research, contrasting their approach to sex work based on the impact each legal policy has on the health, safety, and perspectives of workers. Ultimately, I found that the decriminalization of sex work offers the greatest potential for liberation from harmful systems of oppression, however, I argue that policy alone is insufficient to fully deconstruct the oppressive structures that women and their sexuality exist within.

INTRODUCTION

During the summer of 2019, while on a road trip down the West Coast, I found myself caught off-guard as I listened to two of my favorite podcaster apologize to their audience for their use of the term “prostitute.” These two women explained that a listener had contacted and informed them that the appropriate term for the profession was ‘sex worker,’ and so the podcasters apologized for their misuse of language and vowed to adjust this moving forward. At this moment, I felt dumb. Priding myself as being a feminist dedicated to advancing women’s equality, I was disappointed in myself for not having had this prior knowledge of the appropriate terminology. In referring to the practice as prostitution, had I been using a derogatory term against women? It wasn’t until years later that I was able to begin to understand the implications behind this difference in terminology and the larger feminist debate regarding the commercialization of sex. Here, I think that it is appropriate to note that I will primarily employ ‘sex work’ as my terminology to refer to the exchange of sexual acts for money moving forward. I believe this language accurately depicts the solicitation of sex as a legitimate and essential form of work for women, which my research revealed it to be. However, I implore you to not let this use of terminology entirely
determine your perception of the argument I will ultimately be making, at least not until you understand the complex structural and individualistic factors that led me to this choice of wording and the broader implications it holds.

The sex industry is a deeply gendered one, namely in that the majority of sex workers identify as women—both cisgender and transgender—while the primary consumers of such are cisgender men. Patriarchy, a structural power dynamic in which men hold power while women are subjected to a lower status, operates in such a way that women are often reduced to their physical being to appease male desire. This is especially apparent in the sex industry, an industry in which women are often sexually stigmatized and socially marginalized while men encounter few consequences. Throughout history, women who solicit sex have been subjected to fatal physical and sexual violence, negative stigmatization, robbery, harassment, and have been routinely ignored, silenced, and further harmed by state actors they turn to for help. These gendered harms that permeate the sex industry have made the issue of commercial sex a central one to feminist ideology. Feminist scholars and activists have made it a priority to work to combat the injustices that the sex industry poses against women. Despite this common interest in advancing women’s rights and gender equality, feminists are deeply divided in terms of their perspectives on the sex industry and the action they believe is necessary to combat its harms. These differing perspectives give rise to a complex, contentious debate surrounding the societal and personal implications of sex work, in which one side makes a social-structuralist argument while the other advocates for individual agency. This thus raises the question: which of these perspectives makes the more viable and positively-impactful argument for the advancement of women’s freedom from the harms of the sex industry and the factors that make this industry so harmful?

Through this thesis, I will be analyzing the competing feminist theories concerning sex work to determine which body of theory makes the most valid argument as to the liberatory potential of sex work. Through this research, I am trying to determine which of the dominant theoretical arguments is the most liberatory for sex workers when applied in practice through public policy. In doing so, I intend to figure out whether or not the criminalization of sex work, which is the predominant policy approach to this issue, creates the conditions for the autonomy and liberation of women from oppressive structures and male dominance or if a different policy solution may be more effective. This research will help illuminate the complex patriarchal power dynamics that work to oppress sex workers, and women in general, and determine whether or not sex work can be a mode of liberation from this oppression or if it only furthers female subordination. Answering this question will help guide feminists, activists, and other concerned actors towards the methods that most effectively advance the liberation of sex workers, and women as a broader gender identity, from oppressive structures. Ultimately, these liberatory actions will work to ensure that further harm, both physical and structural, is not perpetrated against sex workers.
To answer this question, I will first engage in a literature review that highlights key elements and scholars within the larger conversation around sex work theory. Here is where I will introduce and more thoroughly explain the competing feminist theoretical approaches in this debate and touch on key arguments from each side. I will then move on to explain the methods I employed to conduct my original research. Following my methods, I will present my research findings, making a claim based on the different policy approaches I researched, and will present the evidence I collected that led me to this claim. Finally, I will conclude with an analysis that draws on my original research and ties it back to the theoretical conversation, ultimately answering the entirety of my research question and posing a potential direction for future research.

**LITERATURE REVIEW**

**Overview:**

There are two dominant feminist theories regarding sex work: abolitionism and sex-positivism. These theoretical approaches contradict each other, with abolitionist feminists looking at the social construction of female sexuality within the realm of patriarchy whereas sex-positivism takes a much more individualistic approach, looking at the individual agency women can achieve through different expressions of their sexuality. The two main bodies of feminist theory that focus on sex work differ in that abolitionists believe that prostitution is inherently rooted in exploitation and male dominance as a result of these patriarchal social structures whereas sex-positivists believe sex work is an avenue for female agency and liberation. These competing theories lead to starkly different perspectives as to the legality of sex work, which has driven some feminist scholars to argue that this theoretical debate has hindered positive socio-political progress for women and has driven them to take a third approach that aims to dismantle the binary divide between these two theories.

Abolitionism is the body of feminist theory that believes female sexuality is a socially-constructed concept rooted in male dominance.\(^1\) It draws attention to the way sexual coercion has been systemically embedded in social structures and normalized to the point that it escapes public attention.\(^2\) Based on this understanding of sexuality, abolitionist feminists argue that prostitution is inherently oppressive and must be criminalized because it only serves to reinforce patriarchy and actively victimizes

\(^1\) MacKinnon, C. 1982. “Feminism, Marxism, Method, and the State: An Agenda for Theory.” In Feminist Social Thought: A Reader, 65-91. doi:10.4324/9780203705841-12. https://www.scopus.com/inward/record.uri?eid=2-s2.0-8507118460&doi=10.4324%2f9780203705841-12&partnerID=40&md5=aa32e3beadb740c1197de0b5d0ff078. Abolitionism is also often referred to as “radical feminism” but I will be sticking to abolitionist terminology unless quoting an author who uses a different terminology

women as sexual objects for male consumption.\(^3\) Abolitionist feminists also use sex trafficking, which is the forced, cross-border exchange of people for commercial sexual purposes, as evidence for the inherent coercion and exploitation of the commercial sex industry.\(^4\) Scholars within this branch of theory use the term ‘prostitution’ rather than ‘sex work’ to convey the practice as exploitative and an illegitimate form of work.\(^5\) The primary goal of abolitionist theory when applied in policy is to end the demand for prostitution and eradicate the industry altogether, which abolitionists argue can be achieved through criminalization.\(^6\)

Sex-positivists, on the other hand, theorize that women cannot be liberated until they gain the right to autonomously choose what they do with their bodies, and policies that restrict such rights are rooted in patriarchy and limit female liberation.\(^7\) Sex-positive feminists argue that limiting a woman’s right to choose how she uses her body-commercially or otherwise-inhibits her ability to use her body as a source of personal agency. A primary goal of sex-positive feminism is to challenge the good girl/whore binary that places a woman’s worth on what she does with her body. If she is sexual outside of the confines of socially-acceptable sexuality (typically heterosexual, monogamous, and procreative) she is deemed a whore and thus worthless. Instead, sex-positivists argue that a woman who is sexual outside of these confines, who commercializes her body or otherwise explores the wide range of sexual expressions, still holds the same amount of value as a woman who chooses not to do such.\(^8\) Based on these beliefs, sex work should be a legal or decriminalized and socially-accepted industry because it represents a woman’s right to choose and operates as an avenue for bodily autonomy, agency, and liberation from sexually-oppressive structures.\(^9\) Contrary to abolitionists, sex-positivists refer to the practice as ‘sex work,’ thus acknowledging it as a legitimate form of work. These broad understandings of the feminist theoretical debate regarding sex work and prostitution establish a foundation upon which to analyze the specific

Mackinnon 1982

\(^4\) Barry 2008; Cavaleri 2011


\(^7\) Gerassi 2015

\(^8\) Bateman 2021

\(^9\) Bateman 2021; Comte 2014
arguments that scholars on each side make, as well as begin to identify the downfalls of a binary approach to feminist theory.

Abolitionism:

Abolitionist feminists argue that prostitution is inherently harmful and oppressive to women because of the patriarchal social structures that constructed female sexuality as an avenue for male dominance. To set the stage for this argument, Catharine MacKinnon analyzes the social construction of female sexuality. MacKinnon argues that the concept of “woman” and what it means to be such was constructed to appease men. According to MacKinnon, a woman is someone who is defined by their sexuality, more specifically, by the fact that their sexuality exists for a man. A woman’s sexuality is not something that is her own or under her control but rather something that was created within the realm of patriarchy to satisfy men. This establishes an inherent power dynamic surrounding female sexuality where a woman cannot operate in a sexual way that is separate from male domination or patriarchy. Connecting this back to the sex industry, MacKinnon explains that the social construction of female sexuality as a mode of male domination creates a situation in which what is appealing to men is degrading for women, and thus in order to sell sex to men, it must be harmful to women. Prostitution, she argues, is not merely a product of patriarchy but an active perpetuation of this structure and the power dynamics it established. MacKinnon’s argument displays a core belief abolitionist feminists hold: that sex, specifically the selling of sex, cannot be disentangled from male-centric power dynamics because female sexuality was socially constructed in a patriarchal society. Women then have no agency in sex-whether commercial or otherwise-as sex can only be something done to them, by and for men. No matter the decision a woman thinks she is making, these structural power dynamics will always be in place and inhibit her ability to establish agency that is genuinely separate from them.

MacKinnon expands on this theory alongside Andrea Dworkin in their book Pornography and Civil Rights: A New Day for Women’s Equality. In the chapter “Pornography and Civil Rights,” MacKinnon and Dworkin criticize the then-recent legalization of pornography. The two feminist scholars argue that the social and legal perspective on pornography has been incredibly flawed because it focuses

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10 Throughout this section, I will be using the term ‘prostitution’ to describe the selling of sexual acts because that is the terminology used by abolitionist feminists.
11 MacKinnon 1982, 531
12 MacKinnon 1982, 533
13 MacKinnon 1982, 534
14 MacKinnon 1982, 532
15 MacKinnon 1982
on obscenity and morality rather than on the harm caused to women. They attempt to redirect attention to the ways that individuals-mainly women-suffer from the sex industry and how this victimization should be the basis for criminalizing pornography. MacKinnon and Dworkin build upon MacKinnon’s original argument by explaining that the construction of female sexuality as an avenue for male dominance is reinforced by pornography to the point that the exploitation and victimization of women via sex has become normalized. They explain this argument by analyzing how the perception of pornography by the consumer (men) is that what is being portrayed on the screen is a mere representation of reality rather than a genuine, individual experience. This separates the subject (often a woman) from what they may be experiencing: they are no longer real and thus any harm that is portrayed on screen is not real either. Thus, the sex industry, in this case, pornography, is so deeply rooted in the victimization of women that this victimhood becomes normalized and is seen as their natural state, rather than the consequence of active harms and exploitation for male pleasure.

Dworkin and MacKinnon also touch upon the good girl/whore binary by explaining that because a woman’s worth is inherently tied to sex, a woman who sexually commodifies her body is seen as worthless and thus any harm or exploitation she suffers from is permitted or, more often, not recognized as harmful. In response to this phenomenon, these two scholars advocate against the legalization of pornography because it serves to perpetuate and normalize violations against women. Though Dworkin and MacKinnon are concerned with pornography in this book, their abolitionist perspective and the additions they make to this body of theory are relevant to the broader sex industry. Their key argument that the commodification of sex is founded on the exploitation of women, making women who engage in the sex industry into unreal objects for male consumption can equally be applied to commercial sex. Thus, according to these two scholars, because the sex industry was built upon the degradation of women, there is no way for a woman to establish agency within the realm of prostitution, leading them to argue that prostitution cannot be socially accepted or legally permitted. Kathleen Barry goes even further with this argument, equating the treatment of women in the sex industry with a human rights violation.

Barry agrees with MacKinnon and Dworkin by touching on the fact that effective marketing of the sex industry succeeds in normalizing the sexual exploitation inherent to prostitution. Unlike these other scholars, however, Barry claims that prostitution constitutes a human rights violation and must be

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17 Dworkin, MacKinnon 1988, 26
18 Dworkin, MacKinnon 1988, 28
19 Barry 2008, 27-31
dealt with as such. To make this argument, Barry expands upon the social structuralist perspective that Dworkin and MacKinnon employ. Barry introduces into the conversation what she calls “objective harm,” which identifies harm beyond the direct violation of will, such as rape, but looks at how an act in itself may be harmful. This means that an act can be harmful without deliberately being coercive. Barry uses drug abuse as an example of an objective harm, describing how whether or not someone chooses to partake in drug use is not the central issue looked at when determining it is a harmful act. Drug use is harmful in and of itself and resources are provided to addicts regardless of how they become addicted. Connecting this back to prostitution, Barry argues that commercial sex is an objective harm because it reinforces power dynamics in which men are uplifted while women are objectified and subordinated regardless of whether or not the woman chose to enter into the industry. Men gain power from prostitution because they are the primary consumers while it is mainly women who are the subjects, thus making the practice a specifically gendered form of exploitation.

In making her argument, Barry also addresses the sex-positivist argument that women can consent to prostitution, which would suggest that it is not an exploitative or inherently coercive industry. Barry counters this suggestion by arguing that to claim that a woman can consent to prostitution is to ignore the structural and class conditions that make prostitution an exercise of power over a subordinated class. The patriarchal society we live in operates to keep women in a second-class status compared to men. Women are made to be objects that exist for male pleasure or care, solely defined by their body and sexuality. This core foundation of gender relations has been woven into tangible forms of subordination which, Barry argues, make women unable to genuinely liberate themselves or make consensual decisions regarding sex. For example, sex traffickers often target impoverished or low-income communities, taking advantage of these women and making prostitution seem like their only option for financial gain. This framing could lead women to believe they are entering the industry out of personal will (similar to how anyone else would take an entry-level job due to financial need) but, in actuality, patriarchal structures created the conditions in which women are both economically desperate and led to believe that their body is the only asset they have to utilize. Thus, at its core, prostitution takes advantage of the exploitation and objectification of the female class, making it impossible for a woman to decide to enter the industry in a way that is separate from these structural factors.

Barry argues that the exploitative and gendered nature of prostitution aids in the dehumanization of a class of people for the benefit of another, making prostitution an objectively harmful act. This

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20 Barry 2008, 29
21 Barry 2008, 30
22 Barry 2008, 30
23 Barry 2008, 30
objective harm constitutes a human rights violation and so prostitution must be viewed by the international community and dealt with as such.\textsuperscript{24} In making this complex argument, Barry both confirms Dworkin and MacKinnon’s social structuralist approach to abolitionist theory and introduces a direct explanation for how prostitution cannot escape exploitation no matter the consent given by the subject. This point also serves as a counterargument to the opposing feminist theory: sex positivism.

**Sex-Positivism:**

Sex-positive feminists argue that a woman’s worth is not determined by what she does with her body and that sex work can operate as an avenue through which women can establish sexual agency and bodily autonomy while maintaining self-worth. Sex-positive feminist theory aims to counter and discredit the abolitionist approach by demonstrating that sex work is not inherently oppressive. Scholars who identify with this theoretical approach contend that to claim sex work is harmful to all women is denying a woman the power to liberate herself through sex. In her article “How Decriminalization Reduces Harm Within and Beyond Sex Work: Sex Work Abolitionism and the ‘Cult of Female Modesty’ in Feminist Form,” Victoria Bateman constructs a compelling counter-argument to the abolitionist theory, employing sex-positivism to prove that the abolitionist argument causes more harm than good and thus feminist theory must go in a new direction. Bateman’s central argument is that abolitionist theory perpetuates the brain/body (or good girl/whore) binary that women are subjected to which portrays sex workers as whores who are undeserving of respect. She argues that the abolitionist approach promotes the idea that sex workers are victims, even going so far as to suggest that sex workers unconsciously cause the harm men inflict on them rather than consciously choosing to engage in sex work out of individual desire. Bateman argues that by conflating the experience of all sex workers, abolitionist feminists devalue the individual feelings, experiences, and needs of sex workers. This aids in the silencing of sex workers and depicting them as victims and whores who would never “in their right mind” choose to participate in sex work.\textsuperscript{25}

By trying to eradicate sex work as the remedy for female subordination, abolitionists perpetuate the social perception of women as sex objects by reducing them to their sexuality and suggesting that women cannot autonomously establish agency in a sexual way.\textsuperscript{26} Instead, Bateman argues that feminism must operate to challenge what she calls the “cult of female modesty” which determines a woman’s value by what she does with her body. Bateman responds directly to MacKinnon’s explanation of the good girl/whore binary, critiquing her solution for it. Rather than submitting to the social norms set out by this binary, Bateman argues that women must directly counter it. A woman should not have to surrender her sexuality to be considered worthy of respect. Instead, the entire conflation of womanhood with their

\textsuperscript{24} Barry 2008
\textsuperscript{25} Bateman 2021, 3
\textsuperscript{26} Bateman 2021, 3
sexuality, and the social respect that stems from that, must be dismantled.\textsuperscript{27} Eliminating the criminal penalties from sex work would provide greater protections for sex workers and help normalize the practice so a sex worker is not considered immoral but rather a legitimate worker who embodies a range of qualities and characteristics beyond her physical being.\textsuperscript{28} While removing legal restrictions to sex work is one of the primary goals of broad sex-positivist theory, a new branch of this theory has emerged which argues specifically for the decriminalization of sex work.

Jacqueline Comte introduces decriminalization as its own body of theory that differs from both sex-positivism and abolitionism. Decriminalization and sex-positivism hold the same goal of removing the social stigmas and legal prohibitions of sex work. Both branches of the theory believe the abolitionist goal to criminalize sex work only serves to enhance the social stigmatization of sex workers which portrays them as sexually deviant and unworthy of social respect.\textsuperscript{29} Comte and Bateman both make the argument that there are other forms of gendered work that cause female subordination or gender-based violence but do not face the same legal or social stigmatization as sex work. These forms of work include care work, domestic work, or sweatshops. This, they argue, suggests that the issue abolitionists are concerned with is more about sex and sexual deviancy rather than the harm caused to women. In acknowledging this discrepancy, these scholars dispute the abolitionist claim that criminalization is intended to protect sex workers and instead argue that abolitionist feminists aid in the reduction of women to their sexuality. Bateman and Comte both argue that by targeting the patriarchal nature of sex work and ignoring that of other gendered professions, abolitionist feminists are not advocating for the safety and liberation of women from these structures but instead paint sex workers as immoral and strip them of their sexual agency.\textsuperscript{30}

While sex-positivism and decriminalization do have similar goals, Comte explains that feminists who specifically argue for decriminalization tend to do so with the goal of constructing sex work as a legitimate, protected form of work. Sex-positivists consider sexual exploration and the expression of sexuality as one of the benefits of sex work. The strictly-decriminalization approach does not take this explorative stance and instead focuses on how the decriminalization of sex work provides legal protections and reduces the vulnerability of sex workers. The decriminalization approach looks at sex work as a viable economic service that requires the same rights and protections as any other legitimate form of work. Comte builds upon Bateman by arguing that the vast majority of sex workers choose to enter the industry out of personal will and once again relates this to how people choose other forms of

\textsuperscript{27} Bateman 2021, 11
\textsuperscript{28} Bateman 2021
\textsuperscript{29} Comte 2014
\textsuperscript{30} Comte 2014; Bateman 2021
work based on opportunity and benefits. This counters Barry’s argument by clarifying that sex work is the same as any other form of work and thus women can, in fact, consciously choose to enter the industry for a range of reasons such as personal interest or skillset. Thus, Comte expands the sex-positivist theory to include a branch that advocates for the legitimization of sex work as a profession separate from the sexually liberatory aspect that sex-positivism typically centers on. Comte is not the only feminist theorist who diverts from the dominant bodies of theory in this debate: other scholars work to challenge the theoretical binary as well.

**Middle-Ground Feminism:**

There is also an emerging area of feminist scholarship that argues the binary approach to sex work theory inhibits positive progress for sex workers. Instead, this new body of theory aims to find a middle ground between the two dominant theories that is more effective for gaining the liberation and protection of sex workers. This branch of theory, coined “middle-ground feminism,” attempts to combine the fundamental approaches to sex work that abolitionists and sex-positivists take. Middle-ground feminists incorporate the abolitionist emphasis on social structures with the sex-positivist focus on personal agency in an effort to develop a theoretical approach that holistically addresses the range of issues that sex workers face. In doing so, these feminists work to dismantle the binary that polarizes feminists and prevents positive, impactful change for sex workers. To set the stage for this argument is Breanne Fahs.

In “‘Freedom To’ and ‘Freedom From’: A New Vision for Sex-Positive Politics,” Fahs presents a primarily sex-positive argument, however, they emphasize that this body of theory must also incorporate the abolitionist perspective which primarily focuses on a woman’s freedom from oppressive structures. Fahs argues that sex-positivism centers a “freedom to” approach which advocates for a woman’s right to do things, such as engage in the consensual commodification of sex. Sex-positivism has made ground-breaking progress in how society views sex. It has worked to deconstruct the good girl/whore dichotomy, increase education and services for sexual health, and is largely responsible for the ever-increasing normalization of sexual expressions outside of monogamous, heterosexual relationships. As such, Fahs acknowledges that this freedom to do things will not result in complete liberation for women or sex workers because it does not fully address the structural issues in place.

Sex-positivism, while promoting these progressive freedoms for women, fails to emphasize that women have an equal freedom to deny men access to their bodies. To combat this shortfall, Fahs claims

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31 Comte 2014
that feminist theory must employ a “freedom from” or “negative liberty” approach which advocates for women to have the freedom from unwanted sex, heterosexist constructions of sex, and sexist assumptions of their pleasure. In making this argument, Fahs is showing how a singular approach to sex work theory is insufficient to combat the entirety of the issue. Sex work is both an individual and a structural issue and therefore both bodies of theory must be incorporated into an approach that allows women to use sex as a liberatory tool while also working to dismantle the larger social structures that systemically oppress women. Fahs is not alone in taking a middle-ground approach to sex work theory, other scholars have also proposed a “third-way” feminist theory.

Shelley Cavaleri agrees with Fahs’ argument, claiming that the theoretical debate surrounding sex work has fallen into a dangerous binary that creates an ideological and political battleground through which sex workers suffer. Cavaleri, like the other scholars mentioned throughout this essay, compares dominance feminism (what other scholars call abolitionism) to sex-worker-rights advocates who root their argument in a liberal approach to feminism, a realm of theory in which sex-positivism falls. Cavaleri corroborates Fahs’ argument by claiming that dominance feminism fails to recognize the individual circumstances and agency of women who enter the sex industry. They argue that dominance feminists conflate all cases of sex work as being inherently involuntary due to the social structures that cause female oppression and sexual coercion, and criticize this approach for not taking the individuality of women into account. At the same time, Cavaleri critiques sex-worker-rights feminists for looking at the issue of sex work too narrowly and only focusing on the individual circumstances of workers while largely ignoring the larger structural factors at play. According to Cavaleri, the shortcomings of each of these theoretical approaches and the subsequent binary opposition that forms is counterproductive to the goals of feminists on both sides.

By engaging in this debate, feminists are exhausting valuable time and energy that should be put towards figuring out a solution that effectively addresses sex work and aids victims of violence in the industry. To combat this issue, Cavaleri proposes a “third-way” feminist theoretical approach that falls in the middle between, as Cavaleri puts it, “victimhood and agency.” Cavaleri’s third-way approach thus adopts the abolitionist perspective that is focused on the system of oppression women face and that perceives these oppressions from the social, rather than individual perspective. Additionally, Cavaleri borrows from the sex-positive feminist belief in a woman being able to narrate her own story and

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33 Fahs 2014
34 Fahs 2014
35 Cavaleri 2011, 1444
36 Cavaleri 2011, 1445
37 Cavaleri 2011, 1444
38 Cavaleri 2011, 1417
determine her own terms and leaves open the possibility for women to take agentic action even in the face of oppression.\(^\text{39}\) Cavaleri, along with Fahs and other middle-ground feminists, opens the door to a new body of theory that dismantles the binary approach to sex work, however, the question remains whether this is actually more effective when applied in public policy.

Based on this overview of the dominant theoretical approaches to sex work, it remains unclear which one will have the most liberatory impact with respect to guiding policy. On the one hand, the social structuralist argument that abolitionists make is very convincing. MacKinnon, Dworkin, and Barry all make well-founded arguments that female sexuality was constructed as a mode of male domination and the maintenance of patriarchy. Looking at sex work within this framework, it becomes almost obvious that there is no way for women to establish agency under these structural conditions. Based on this, perhaps criminalization is the best approach to combat the harms of sex work. However, the argument for criminalization as an “end-demand” solution is less convincing when considering the expansive sex work industry in America despite its predominant criminalization.

On the other hand, Bateman and Comte also bring to light compelling arguments for the way that women can reclaim their sexuality via sex work. Sex-positivists claim that a woman’s worth is not defined by how she uses her body and thus her decision to sell sex should not impact the social perception of her or the legal rights she has. This serves as a convincing counter to the abolitionist argument, and criminalization as a policy solution, muddling my understanding of which approach is more beneficial. The potential efficacy of both theories and their respective policy solutions compels me to take seriously the argument of middle-ground theorists and entertain the idea that perhaps the issue of sex work is not a black or white debate. Middle-ground feminists may be on the most effective path because they are able to abandon the polarized arguments of the other bodies of theory and are instead able to recognize and utilize the strengths and weaknesses of each. While this approach is persuasive in theory, I am unconvinced that middle-ground feminism is the most liberatory approach to sex work when applied to policy. As such, my research will attempt to decipher the plausibility of each of these theoretical approaches as applied public policy and determine which one, if any, has the potential to liberate sex workers from the confines of patriarchy and their subjection to the “whore” status.

**METHODODOLOGY**

For my primary research, I aim to discover which of these three policy approaches is the most liberatory for sex workers when applied to public policy. To do this, I conducted a theory-testing qualitative comparative case study of two sex industries in the United States. I will be comparing the legal sex industry in Nevada with the criminalized sex industry in New York. Nevada is the only state in the

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\(^{39}\) Cavalieri 2011, 1447-1448
United States that has any form of legalized sex work, thus making it the best (and only) model for how a legal sex industry could operate in this country. I will be researching New York in opposition to Nevada because sex work is criminalized in New York so it serves as a case model of how criminalization policy operates and impacts sex workers. In addition to having opposite policy approaches to sex work, New York and Nevada also house the two largest commercial sex industries in the United States, making them appropriate states to compare as their respective industries share a similar size and scope. A comparative case study of sex work and sex work policy in Nevada and New York will help illuminate which of these two policies, or neither, offers the most potential for the liberation of sex workers. Understanding the more effective policy approach will help elucidate which theoretical approach to sex work, if any, is correct in its argument of what is liberatory for sex workers, which could ultimately help reorient feminists and activists on which position should be centered and pursued.

To conduct this research, I utilized data from studies that have been done on sex work and workers in both states. In addition to this data, I also heavily relied on direct quotes from sex workers that I found via these studies, through video interviews, and op-eds that they wrote. These sources provided ample insight into the ways that different policy approaches operate in practice. Further, these sources also illuminated the intersectional impact that these policies have, specifically on transgender sex workers in New York. The studies and other sources I used to research Nevada, however, did not include this same intersectional analysis. Many of the sex workers were anonymous and their gender identity was excluded from the source or not explicitly stated for those who were not anonymous. This inhibited me from analyzing the intersectional impact of legalization in the same way I did for criminalization. If there was further research on the policies surrounding sex work, I would recommend that it includes research into the experience of transgender sex workers under legalization.

Finally, I also set a standard through which to determine what is liberatory. For the purposes of my research, I will be looking at the liberation that is achieved via bodily autonomy. One of the defining features of patriarchy and the subordination of women in our society is the control of and limitation of her body. Thus, obtaining autonomy of her body is essential for a woman's liberation from these oppressive structures. Women will never be truly liberated until they have complete access to their bodies, that which is free from male control and dominant influence. To be clear, this is not the only avenue through which liberation can and must be achieved but it is the avenue that I am choosing to focus on because sex work, and female sexuality as a broader phenomenon, are deeply intertwined with the physical body. To analyze liberation via bodily autonomy, I am choosing to focus on two main areas: physical health and physical safety. Both of these factors play a central role in the relationship a woman has with her body, and a lack of agency over her health or safety conditions suggests a lack of complete bodily autonomy. Furthermore, many of the feminist scholars discussed above refer to the health and safety of sex workers as essential
elements to their respective arguments, further propounding the notion that these are core issues in the discussion of sex work. Thus, my research and subsequent analysis will employ a framework that relies on an understanding of bodily autonomy as being the defining feature of liberation and will focus on the physical health and safety of sex workers to determine which policy approach is the most effective to achieve this.

**SUMMARY OF PRIMARY RESEARCH SECTION**

In the following section, I will formulate an answer to my research question by presenting relevant reasons and evidence from the case comparison I conducted between Nevada and New York. This section will seek to answer which policy approach to sex work is the most liberatory for sex workers when looking at the issue through the lens of bodily autonomy. I will do so first by defining the three main policy models that pertain to sex work and their relationship with dominant feminist theories. I then will explain the policies that pertain to sex work in Nevada and New York before going into how these policies play out on the ground. My research will be divided into three subsections: health, safety, and workers’ thoughts. Each of these subsections will incorporate the evidence that I have found in each state as well as analyses of what those findings mean for public policy and sex work. Finally, I will end with an analysis that gets deeper into my findings and ultimately stakes a claim that answers my question based on the evidence presented throughout my research section.

**PRIMARY RESEARCH SECTION**

**INTRODUCTION**

“If I call them, they don’t come. If I have a situation in the street, forget it. ‘Nobody told you to be in the street.’ After a girl was gang raped, they said ‘Forget it, she works in the street.’ She said, ‘I hope that never happens to your daughters. I’m human.”

Carol, a sex worker based in New York said this when asked about relations with the police. While analyzing the theoretical perspectives on sex work and its impact on women is useful to gain an understanding of the various approaches to this issue, I must maintain focus on the core problem central to these theories. It can be easy to get lost in the debate, to choose a side and vehemently stick by that decision. But, central to this dispute is the recognition that women, sex workers and otherwise, have been victims to a male-centric society and subordinated to a second-class status. Sex workers in particular are mistreated, stigmatized, denied protections, and dehumanized, as Carol explains. As such, the research that follows aims to reveal the best-possible policy model to combat these conditions and put an end to the systemic, state-sanctioned violence against women and restore sex workers’ access to complete bodily autonomy. Based on the research I conducted,

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41 Carol is a pseudonym, sex workers’ identities were made anonymous in this survey.
I argue that the middle-ground approach to sex work is the most liberatory theoretical approach to sex work because it acknowledges the systemic issues that work to oppress women and feed male power, while also recognizing that sex work can be a source, even a temporary one, of liberation for women. Based on this claim, decriminalization is the best policy solution for sex work because it provides women with the agency to make autonomous decisions regarding their bodies while also having access to legal protections and resources. However, decriminalization alone will not work to combat the deeper structural issues that keep this industry within the strict confines of patriarchy and male-centrism.

**Guiding Policies:**

To effectively analyze the most effective policy approach to sex work, I feel it is necessary to establish a strong understanding of what each of the three main approaches are and what they aim to accomplish. The first is legalization. The legalization of sex work means that the practice would become fully legal and written into the law as such. This means that sex workers need to be licensed to legally work, their income and other areas of the industry are subject to taxation, and additional regulations on the industry and workers, such as a restriction on where a worker can conduct business, could be written into law. Fully legalized sex work is an uncommon policy approach, with only certain counties in Nevada and a limited number of countries internationally permitting the practice. Legalization is supported by many sex-positive feminists who believe that it provides the safest conditions for workers and will ultimately help to destigmatize the practice.

In contrast to legalization is criminalization. The criminalization of sex work makes the practice completely illegal, as it is in most states in the United States and many countries internationally. Under criminalization, someone who engages in commercial sex, either the buying or selling of sexual services, would be breaking the law and could be subjected to criminal penalties such as a fine or incarceration. Supporters of criminalization include abolitionist feminists as well as many conservative religious groups. While having different motivations for their support, both of these groups support criminalization because they believe it will reduce the size and scope of the sex industry and subsequently the physical and moral harm that they claim permeates sex work.

Finally, there is decriminalization. Decriminalization serves as an in-between to the other two approaches, as it allows for sex work to be exempted from criminal persecution but does not establish the same regulations or legal protections that legalization provides. Simply put, decriminalization removes the criminal penalties from the acts of sex work. Under decriminalization, sex workers would not face legal consequences for their profession and the industry would remain unregulated. That being said, the absence of criminal persecution does not necessarily guarantee complete safety as sex workers are still left to navigate an unregulated industry. Despite this, Many sex-positivists as well as middle-ground feminists support decriminalization because they believe it provides sex workers the greatest freedom to
determine how they use their bodies, while still opening the door for protections both from law enforcement as well as through resources that otherwise may be illegal. With this understanding of the three main policy approaches to sex work, I can begin to analyze how they operate in practice.

**Nevada v. New York:**

In this research section, prostitution in Nevada will be analyzed through the lens of legalization, helping to determine the effectiveness of this model for female bodily autonomy and liberation from oppressive structures. This will be analyzed in contrast to New York, which will serve as my model of criminalization. Nevada is the only state in which prostitution is legal in any form. Under the Nevada Revised Statute (NRS), prostitution is illegal in any county with a population of over 700,000 people. Based on the demographics of Nevada, prostitution is illegal in 6 out of Nevada’s 16 counties including Clark County which is home to Las Vegas. All other counties could engage in legal prostitution should they choose, however, not all of them do. Currently, there are 21 legal brothels operating in seven Nevada counties. This does not mean that prostitution is a free-for-all in these counties, NRS 201.354 explicitly prohibits the solicitation of sex anywhere outside of a legal house of prostitution (commonly referred to as a brothel). Brothels are houses, often connected to bars or restaurants, in which workers live and conduct their business. The brothel is owned by a licensed individual who helps bring in clients, monitors the negotiations, and sets up safety procedures in return for a share of the workers’ earnings. The workers who live in brothels are private contractors within the establishment: they do their own negotiations and set their own prices. In addition to the laws that establish prostitution, the NRS also contains additional regulations on legalized prostitution including where brothels can operate, advertise, and health requirements for workers which will be expanded upon in later sections.

Unlike Nevada, prostitution in New York is illegal. New York State Penal Law classifies prostitution as a class B misdemeanor, which has the consequence of imprisonment for a minimum of 15 days but no more than 1 year. The Penal Law also criminalizes the purchasing of sex, which has varying penalties based on the nature of the transaction and the parties involved. In general, the penalties for purchasing sex are stricter than those for the selling of it. Penalties start with a class A misdemeanor (patronizing an adult for prostitution) which receives a maximum of one-year imprisonment and up to a

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42 Here, I will be referring to the practice as prostitution because that is the terminology used in Nevada law.
43 “Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution.” NRS 244.345, https://www.leg.state.nv.us/nrs/nrs-244.html#NRS244Sec3475.
45 NRS 201.356, 201.358, 201.360, 201.380, 201.390, 201.395, 201.400
46 I will be referring to it as prostitution in this sub section because New York State Penal Law refers to the practice as prostitution.
$1000 fine. The most severe penalty is a class B felony (aggravated patronizing of a minor for prostitution which is the purchase of sex from a person under the age of 11) which receives a maximum sentence of 25 years.\textsuperscript{48} In addition to the selling and purchasing of sex, New York State law also criminalizes the promoting of prostitution (commonly referred to as pimping), which is when someone controls the business of a sex worker and takes a portion of their earnings as repayment. New York law criminalizes pimping by prohibiting the advance of prostitution, which is the act of aiding someone else in committing prostitution, and the profiting from prostitution which occurs when an individual makes money off of prostitution that someone else engages in.\textsuperscript{49} New York State law includes no regulations as to the health of prostitutes nor does it permit the practice anywhere, regardless of county size or location. This serves as a stark contrast to Nevada laws, offering an opposing case study to the legalization approach.

**RESEARCH FINDINGS**

**Health:**

The legal regulations on the sexual health of sex workers in Nevada make the industry and workers much healthier compared to workers in New York, however, these regulations can also be limiting and harmful to workers suggesting that they do not provide women with complete bodily autonomy. The Nevada Administrative Code (NAC) establishes strict guidelines for the testing of sexually transmitted infections (STIs) in legal brothels. NAC 441A.800 requires that all people who intend to enter the industry submit both a negative blood test for HIV and a negative test for gonorrhea and chlamydia to the State Public Health Laboratory before they can be licensed and start working. Once licensed, sex workers must undergo monthly HIV testing as well as weekly gonorrhea and chlamydia tests.\textsuperscript{50} If any test comes back positive, the worker is prohibited from working and NRS 201.358 establishes the act of knowingly engaging in prostitution after having a positive HIV test as a class B felony (2-10 years in state prison and/or $10,000 fine).\textsuperscript{51} The NAC also contains a requirement for the use of a latex condom (worn either by the worker or their patron) for the entire duration of any engagement in anal, oral, or vaginal penetration by a penis.\textsuperscript{52} These regulations are seemingly in place to protect the health of both sex workers as well as their customers, however, there are no formal regulations on the health of said customers. Thus, the burden of testing and monitoring sexual health falls solely on the workers while the customers bear no responsibility in ensuring that they are not carrying any harmful

\textsuperscript{48} New York State Penal Law 230.04-230.13

\textsuperscript{49} New York State Penal Law 230.15, 230.19, 230.20, 230.25, 230.30, 230.32

\textsuperscript{50} “Testing of sex workers; prohibition of certain persons from employment as sex worker,” NAC 441A.800, https://www.leg.state.nv.us/nac/nac-441a.html#NAC441ASec805.

\textsuperscript{51} NRS 201.358

\textsuperscript{52} “Use of latex or polyurethane prophylactic required,” NAC 441A.805. https://www.leg.state.nv.us/nac/nac-441a.html#NAC441ASec805.
infections. This brings into question who these policies aim to protect and leads me to believe that while these policies appear to be in place to protect sex workers, in actuality they aim to protect patrons, who are predominantly male. If this is the case, then these policies take a male-centered approach, further reinforcing structures that work to uplift men while casting women to the side. Despite the fact that the customers’ sexual health is not formally regulated, the policies imposed on sex workers have been incredibly effective at keeping STIs out of Nevada’s legal brothels.

Data shows that there are very low rates of STIs in Nevada’s brothels. On April 7th, 2009, George Flint, a lobbyist for the Nevada Brothel Owners Association, testified at the seventy-fifth session of the Senate Committee on Taxation. At this session, Flint advocated for the continued legalization of prostitution as it made the industry safer and brought in money for the state. As Flint stated:

The brothel industry represents the safest approach to one of the world’s oldest professions. It is safe for the women and their clients. We represent the only arena of sexual activity in the world that remains AIDS-free. We have not had a syphilis exposure or positive test for 13 years, and gonorrhea is almost a thing of the past.53

This testimony indicates that very few cases of STIs have been reported within the legal brothel industry, suggesting that the regulatory policies have been effective. In addition to Flint, sex workers themselves have acclaimed such policies as being beneficial to their health and attribute them as one of the advantages of the legal industry. As one worker stated:

I would much rather see girls working in here, and doing it the healthy way and getting checked every week and using condoms, rather than being on the street having pimps, getting beat-up, raped, some end up dead. You know, there’s a certain protection. The whole health thing is like so important because a lot of women that work the street don’t use condoms.54

Another worker confirms this perspective, stating:

There isn’t to me a sucker that walks in here and pays enough money for you to take that chance. Apparently, us as hookers are doing it right since we haven’t had a single girl in the history of legalized prostitution working in a house of prostitution come down positive.55

Both of these quotes indicate that many sex workers in these brothels support the health regulations in place and value the health safety that they provide. Both of these workers also suggest that these regulations provide a better alternative to working the streets illegally (or even engaging in any other form of sex as the second worker suggests), as the health of these workers may be neglected and is certainly not regulated. Further, the quotes from these two sex workers help legitimize the statement that Flint made in

mining_Safety_Risk_and_Prostitution_Policy.
55Brents 2005, 286
regards to the effectiveness of mandatory testing because they are bearing the brunt of these policies. Flint’s testimony as well as the experiences of these two workers impart the notion that the regulatory laws written into the NRS and NAC serve to advance the sexual health of legal sex workers in Nevada. In doing so, these regulations provide workers with the freedom to engage in sex work without fear for their health by guaranteeing that this will be monitored on a regular basis. While this guarantee has been well received by many workers, there has been some research that indicates that these testing requirements may not be entirely liberating for sex workers.

A study conducted by the United Nations Programme on HIV/AIDS (UNAIDS) found contradictory evidence that suggests mandatory STI tests may not be entirely beneficial for sex workers. This study found that many countries in Asia require mandatory or compulsory HIV and STI testing for sex workers to remain in the business, similar to the regulations in Nevada. In these countries, it was discovered that this test requirement inhibited workers’ bodily autonomy and their right to privacy by offering them no choice of whether or not to take the tests or share their results. Additionally, this study found that mandatory and compulsory testing led to increased risk of discrimination, violence, and aided in the negative stigmatization of sex work as a profession. While this study did not look at Nevada, its findings could be applied to the mandatory testing that Nevada state law imposes on brothel workers because Nevada shares very similar policies to those that the study focused on. Though testing requirements keep sex workers healthy, they may be inhibiting full bodily autonomy for these women, suggesting that they are not entirely liberatory by my standards. To further this point, sex workers in Nevada also do not receive healthcare benefits through the brothels so much of this testing is paid for by the workers themselves. This further brings into question whether or not these mandatory STI tests contribute to the liberation of sex workers, or if their sole purpose is to reduce STI rates and protect customers. This builds upon the concern I raised above by suggesting that not only do these policies center the well-being of male patrons, they also aid in limiting a woman’s autonomy over her body and have the potential to increase stigmatization against sex work. Requiring workers to get regular tests assumes a level of disease in the profession, furthering the stereotype that sex workers are dirty, diseased “whores.” While this study draws concern as to what these tests actually accomplish, these policies do protect the health of sex workers which is more than can be said about New York.

57 Godwin 2012, 2
The criminalization of sex work in New York inhibits sex workers’ ability to consistently practice safe sex. In New York, there are no regulations or requirements regarding sex work and STI testing or condom use. On the contrary, condoms are a mode through which workers are targeted by law enforcement. A study done by the Providers and Resources Offering Services to Sex Workers (PROs) Network and Leigh Tomppert of the Sex Workers Project at the Urban Justice Center conducted surveys on the use of condoms as evidence in criminal cases. Of the 65 participants surveyed, 42.8% responded “yes” when asked if they had ever had condoms taken or destroyed by the police. Of those who responded “yes,” 40% engaged in sex work that day, half of whom did not use a condom. This data indicates that many sex workers undergo the confiscation of their condoms yet that does not always serve as a deterrent from engaging in sex work, with or without protection. As one participant stated, “I’m damned if I do, I’m damned if I don’t. I don’t want to get any disease but I do want to make my money…Why do they take your condoms, do they want us to die, do they want us to get something?”

Another participant expressed a similar sentiment stating, “I went about my business, luckily I had condoms in my Altoids box or I’d have to have raw sex. […] I have to make money regardless.” The criminalization of sex work in New York directly impacts the health of sex workers by taking away their primary source of protection from STIs.

While health remains a priority for sex workers and many reported carrying contraception on them, these quotes show that, at the end of the day, money is the ultimate goal. Sex work is the source of income for these workers and a lack of condoms does not always serve as a significant enough reason to lose money. Many sex workers do not have the privilege to prioritize their health over financial gain because economic stability is one of their only means for survival; hence, they have to risk their health if it means getting a check at the end of the day. Thus, economic necessity and the nonconsensual confiscation of condoms by the police inhibit the ability of sex workers to make autonomous decisions regarding their health. Furthermore, targeting by the police also impacts sex workers’ decisions to carry contraception.

The collection of condoms to be used as evidence not only leaves sex workers without condoms but also deters them from carrying them in the first place. The same study by the PROs Network and Tomppert found that 45.7% of respondents reported not carrying condoms out of fear, the highest reports of which came from transgender workers who are especially vulnerable to violence and harassment from

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60 Tomppert 2012, 21

61 Tomppert 2012, 19
law enforcement. As one respondent said, “I don’t feel safe. I feel more cautious. I feel scared to carry condoms.” This displays that the criminalization of sex work leads to the targetted confiscation of condoms by law enforcement which both takes away sex workers’ protection as well as deters them from carrying them in the future. This fear disproportionally impacts transgender sex workers, making them more vulnerable both to harassment by law enforcement and to the risk of STIs. The impact that criminalization has on condom use and the practice of safe sex by sex workers negatively impacts the health of workers.

By directly targeting the sexual health of sex workers, criminalization in New York restricts the freedom of workers to practice safe sex and to have complete control over their bodies. This increased risk was confirmed by a study of STI rates among newly incarcerated women in New York. The study’s findings showed that newly incarcerated female sex workers had higher rates of chlamydia compared to non-sex workers. Female sex workers in this study did not have higher rates of any other STIs but the high rates of chlamydia (one of the more prevalent STIs) still indicate that women in this industry are at increased risk of contracting an infection. While sex workers in New York have the freedom to decide whether or not to get tested or monitor their sexual health, a form of autonomy Nevada workers do not have, they also lose the protection of guaranteed safe sex. Workers in New York are subjected to external conditions, such as targeting by the police and their economic needs, which serve as different limitations to complete bodily autonomy. Not only does the sexual health of sex workers stipulate the autonomy of female-identifying workers, but their safety is also an essential factor to bodily autonomy and freedom from male domination.

Safety:

Although they are not a perfect model, legal brothels in Nevada provide safer conditions for sex workers compared to those who walk the street in New York because brothel workers work in a familiar environment, formulate solidarity with other workers, have a protective staff, and do not experience violence from law enforcement. A study of violence in Nevada’s legal brothels surveyed 40 prostitutes across Nevada and reported that only one had any personal experience with violence in the brothels. This study also surveyed 25 prostitutes, 21 of whom responded “yes” to the statement “my job is safe.” Both of these statistics offer reason to believe that many legal sex workers in Nevada experience safe working

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62 Tomppert 2012, 20
63 Tomppert 2012, 21
65 Brensts 2005, 287
Again, I will be referring to sex workers as prostitutes here because that is the terminology used by the study.
conditions. The issue of safety in these brothels, however, becomes more complicated when we look at the safety measures that are employed. Multiple sex workers have expressed that the systems for safety implemented by the brothel owners are insufficient at keeping them safe. As one worker expressed, “panic buttons are a joke. . . usually they’re across the room, but if you can get across the room you can get out the door.”66 Panic buttons are one of the most common safety precautions used in brothels, with each worker having one in their room. However, as this quote explains, these buttons are not always the most convenient or effective method if a worker is in immediate danger. Despite this limitation, brothel workers employ other forms of protection to keep themselves and the other women in the house safe.

One of the advantages of working in a brothel is that workers get to conduct business out of a familiar environment that they get to set up themselves. This allows workers to implement their own safety measures to ensure they have protection should they be subjected to danger or violence from a client. As one worker states:

You’re not trained in how to protect yourself. That is why the mirrors are on the wall, so you can see what the hell’s going on no matter what position you’re in. Girls don’t realize that. They think it is all for the trick’s sake, you know sex. No baby, that’s your security guard right there. You can see every move that Jock is making….When I train TOs, I teach them how you keep something as a weapon an arms length away….It doesn’t have to be a hammer, it doesn’t have to be a gun….A whorehouse room is very, ah, there is a lot of stuff because we live in there and we’re women, so there’s stuff everywhere. An ashtray, a brass ashtray, is a weapon. All you got to do is take out their eyes . . . If they can’t see you they can’t get you.67

By having the ability to control the environment that they work out of, sex workers in Nevada can ensure their safety, or at least take protective measures, in a way that the spontaneity of street work does not always allow. Brothels also create the conditions for community and solidarity among workers to form, which increases the likelihood that they protect each other. As one sex worker put it, “There’s nothing worse in this world than getting beat up by a bunch of angry hookers . . . cause they use stiletto heels and anything they can get their hands on . . . and they will beat the dude all the way out to the gate.”68 The workers themselves make up for where brothel owners fall short, keeping watch for other women and even going so far as beating up a client who is violent against a fellow worker, as this quote displays. This communal aspect is not absent among street workers but the shared living space and proximity to each other allow this to form much easier and more consistently in brothels than on the street.

While many sex workers criticize the official safety measures taken by brothels, some have expressed feeling protected by the staff. Ruby Rae, a sex worker in one of Nevada’s brothels, writes, “We

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66 Brents 2005, 280
67 Brents 2005, 283
68 Brents 2005, 283
have staff that would never let a man hurt us, and we have a clientele that do not come here to hurt us."\textsuperscript{69} Rae serves as an example of a sex worker who values the staff protection as well as the screening of clientele some brothels conduct, indicating that these measures can help guarantee the safety of the workers. Rae appears to be in the minority of workers who believe these measures to be effective, suggesting that perhaps the best mode for safety is to provide women a reliable, controllable environment with a community of other workers. Based on this finding, it becomes clear that the formal safety regulations that brothels employ are not the primary reason that sex workers in Nevada encounter a limited amount of violence. Instead, it is the informal methods adopted by sex workers that maintain their safety, suggesting that legal regulations which require safety measures such as panic buttons are non-essential to ensuring the safety of sex work. That being said, legalization still has the advantage over criminalization because it eliminates the threat of violence from law enforcement, a major issue that sex workers in New York face.

Sex workers in New York are much more vulnerable to violence compared to those in Nevada because criminalization brings in the risk of violence from law enforcement as well as a lack of reliable security methods to protect against violent clients. A study conducted by Juju Thukral and Melissa Ditmore of the Sex Workers Project at the Urban Justice Center discovered the most frequent response to the question of what makes sex work difficult was violence and danger, including that which came from the police. 80% of the 30 respondents had experienced either violence or threats while working and 60% had experienced violence or forceful behavior including rape, assault, and robbery from a male client.\textsuperscript{70} Looking at this in comparison with data from Nevada, we can see that cases of violence are much higher in New York with 24 out of 30 respondents reporting violence as compared to just one out of 40 respondents in Nevada. While this does not offer evidence for a direct correlation between legalization as a policy model and the safety of sex workers, it does suggest that working in a brothel is safer than working on the street. Further, the violence street workers experience is especially harmful to transgender sex workers who are at increased risk of harassment due to the intersectional relationship between their targeted gender identity and their profession. As one respondent stated:

The hardest thing is to be with a client, and then he wants way more than he paid for ... it hasn’t happened to me a lot, because I’m very justified when it comes to that, but it happens. ... I’m sure it’s happening, especially to younger transgender girls that are selling their bodies ... because there are clients who think they can take advantage of [transgender women], because they think you’re vulnerable, because you’re basically so-called ‘a man in a dress’ that you have no rights.\textsuperscript{71}

\textsuperscript{69} Rae 2018
\textsuperscript{70} Thukral 2003, 8
\textsuperscript{71} Thukral 2003, 45
Women who work the street are at increased risk of robbery (often in the form of a client taking more than he paid for), with transgender women being especially at risk. Without having reliable environments, security from other workers, or a staff protecting them, sex workers in New York are seemingly much more vulnerable to violence than those in Nevada. Not only is the lack of legitimate and illegitimate safety measures brothels have a disadvantage that New York workers face, but criminalization itself exacerbates violence against sex workers.

Criminalization further puts sex workers at risk of violence because they do not have a legal resource through which to seek protection and are subjected to legitimized violence from law enforcement. One of the main faults of criminalization is that it leaves sex workers without any formal methods of protection from the violence they experience. As the survey stated, “Charlotte reported that she had been robbed three times. She also said ‘I was raped by a john before’ and ‘slashed on side of mouth’ by a different man. When asked if she reported any of these crimes, she replied ‘Of course not.’” Charlotte’s experience exemplifies the lack of resources that sex workers in New York have. Despite the violence that they face, which is a crime regardless of their profession, sex workers still do not feel safe going to the police for help. This leaves the crimes against them unpunished and the workers without resources to prevent such violence from happening again. Making this more dangerous is the way that police officers manipulate sex workers and use their criminal status to condone the violence the police commit against them. As transgender sex worker TS Candii writes:

> On the street, harassment and profiling by the police is a constant reality. I’m regularly stopped and frisked for ‘walking while trans’ and have been coerced into state-sanctioned sexual violence. I provided sexual favours in exchange for a ‘get out of jail free card.’

Candii’s experience shows how law enforcement manipulates the system to instill the fear of imprisonment or criminal persecution in sex workers to receive sexual favors, which, as Candii states, is a form of state-sanctioned sexual violence. Candii’s story also confirms the increased risk of violence that transgender sex workers face, that not only is the violence legitimised by her criminal status as a sex worker but also by her gender identity. The quotes from these workers and the data found in Thukral and Ditmore’s study denote the failure of criminalization to effectively prevent violence against sex workers. If anything, criminalization seems to exacerbate the violence that sex workers in New York face by subjecting them to additional risks while providing them with few protective resources. Removing the risk of state-sanctioned violence from police officers would reduce the general risk of violence against

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72 Thukral 2003, 45
sex workers, an act that inhibits bodily autonomy by subjecting sex workers to unwanted physical threats and harms. Beyond health and safety, the experience of sex workers in the industry is integral to determining the liberatory potential of different policies.

Workers’ Thoughts:

Quotes from sex workers revealed that workers in Nevada feel much more empowered by their profession compared to workers in New York, who put a stronger emphasis on the need for safety and the structural circumstances that drove them into sex work. The quotes I was able to gather from brothel workers in Nevada indicated high levels of support and empowerment that came from their jobs. As Rae wrote in response to a petition that aimed to eradicate legal brothels in Lyon County, “not only is this group trying to take away my livelihood, success and freedom, but also they are trying to take that away from the hundreds of women I work with and the hundreds of staff that these four brothels employ.”

Through this quote, Rae displays the clear support she has for her profession, as well as expresses the freedom that she gains from being able to partake in this industry. While she does not explicitly state that she feels liberated by her work in a brothel, Rae’s use of the word ‘freedom’ implies that the denial of such opportunity would inhibit her from having the complete autonomy to choose her preferred form of work.

Christina Perreira, a researcher-turned-sex worker, also adds to the positive perspective of working in a brothel. Perreira states, “how is that degrading? Or rather, who is that degrading for? Because she is getting paid a lot of money. That feels good, that doesn’t feel degrading. And he’s getting his needs met, so I always wonder who is it degrading for?” Here, Perreira refutes the common claim—one that is made by many abolitionist feminists—that sex work is degrading for women. Perreira emphasizes the mutual benefits that sex workers and patrons gain as reasoning for why sex work is not degrading. Both parties are seemingly satisfied with the transaction, one with sex and the other money, which causes Perreira to question the abolitionist argument. While this quote cannot speak for the experience of all sex workers, it shows that, at least for some, sex work does not feel degrading. This builds upon Rae’s sentiment suggesting that sex work doesn’t inherently make women feel objectified or mistreated. Another anonymous sex worker further confirmed this experience, saying, “I really started to understand just how valuable I am and what my worth really is as a woman and it’s really empowering to be able to say ‘I’d love to go with you to Vegas. I want to spend a couple nights with you and it’s going to

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be five figures.” Again, this sex worker is expressing the empowerment that they feel and the self-worth they have gained from engaging in sex work. All of these quotes articulate clear support for their professions as sex workers and are absent of any feeling of dissatisfaction or degradation. Further, they offer no indication that sex work hinders their bodily autonomy. If anything, these quotes suggest that sex workers feel in control and powerful in the freedom they have to do what they want with their bodies. The experiences of these three sex workers confirm what sex positivists and middle-ground feminists argue, that, for some, sex work can be an avenue for empowerment. While sex workers in Nevada reported positive experiences in the industry, sex workers in New York revealed very different perspectives of the industry.

Sex workers in New York spoke more on their concern about treatment by state agents and the circumstances that brought them into the industry. One of the main issues that New York sex workers discussed was the disproportionate impact criminalization, and the resulting violence from law enforcement has on transgender sex workers. In her article, Candii wrote, “Law enforcement makes it worse. I have been arrested for loitering and spent a miserable night in jail. I was in solitary confinement without clothes. The warden thought I was suicidal because I was a Black transgender woman. I am determined not to repeat that experience.” Candii’s experience reveals the exacerbated harm she is exposed to as a Black, transgender worker. Not only is she subject to violence and discrimination due to her professional status as a sex worker, but also faces an increased risk of harassment and mistreatment, as seen through her interaction with the warden, due to her marginalized gender identity and race. Based on this quote, it is clear that the experience of all sex workers is not linear and that those intersecting identities, in tandem with the policy in place, play a critical role in the experience that sex workers have. An anonymous transgender sex worker expanded upon the limitations that transgender sex workers encounter both in the industry and in our broader society. They stated:

I wish there was an agency for transgender women that could offer different jobs ... You know there are a lot of transgender women out there that are very talented and dedicated, but it’s very hard to get good jobs. I wish that there was an agency that allowed you to get in a position that you wanted to be in.

This statement brings to my attention a larger issue that transgender women who enter the industry face. As this sex worker explains, many transgender women are left without any options for other jobs. Their gender identity and the stigmatization that surrounds it force them into sex work, an industry in which they face further stigmatization. The lack of agency to attain other jobs does not stem from sex work itself, rather sex work as a livelihood is the consequence of larger social structures that limit job

77 Candii 2020
78 Thukral 2003, 63
opportunities based on gender identity. Sex work as a last resort, while perhaps more common or essential for transgender sex workers, appears to be a common experience amongst sex workers in New York.

Another sex worker surveyed by Thukral and Ditmore expressed that sex work is not always a deliberate choice for workers. This is not to say that the work is necessarily coerced, rather, women are left without any option but to turn to this form of work. As this worker explains:

People need to understand, every hooker is not out there because they want to be ... [there are] circumstances that keep people out there ... there are young kids out there ... voices that need to be heard ... You can say, ‘Get off my corner and move,’ but you don’t know if that person has any place to go to, you don’t know if that person has just been beat up, or forced to be out there, starving, hunger can really drive a person crazy.  

Here, it becomes clear that many sex workers choose to enter the industry out of necessity rather than desire or for empowerment. This draws on a larger issue that extends beyond sex work: the exclusion of women from avenues for economic gain. As this sex worker notes, there are specific circumstances that keep people, mainly women, on the street doing sex work. To connect this back to the theoretical debate, abolitionists would argue that these circumstances are the underlying patriarchal social structures that aim to keep women in a subordinate class. Patriarchy creates the conditions in which women are both inhibited from other sources of economic gain and are socialized to believe that their body is their only commodifiable asset. Thus, sex work is seen by many as the only feasible means for economic gain, however, this does not make it an autonomous choice. Instead, this decision to enter the industry is rooted in the imperative need for a source of income within a social system that is built upon the limitation of such for women. The role of patriarchal structures in the decision to enter the sex industry indicates a significant level of structural influence on this decision, which ultimately suggests that for many, sex work is not a liberatory or empowering form of work.

In terms of policy, the stark difference between the perceptions of sex workers in Nevada and those in New York suggests a potential correlation between legalization and empowerment that is largely absent amongst sex workers under criminalization. The agency that sex workers in Nevada feel, as well as the commentary on their desire to both enter and remain in the industry suggests that legalization makes sex work a more desirable and perhaps more normalized industry. Conversely, criminalization exacerbates negative stigmatization and victimization, making it an undesirable industry that women only resort to out of the necessity created by structural conditions. This appeals to the middle-ground feminist argument by showing how structural factors work to subordinate women and limit their opportunities yet,

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79 Thukral 2003, 62
at the same time, some women can and do employ sex work as an avenue for agency within these structures.

**Summary of Findings:**

The health, safety, and personal experiences of sex workers in Nevada and New York reveal the harsh consequences of a criminalization approach as well as the limitations to bodily autonomy that legalization poses. Looking first at criminalization, it is clear that the violence and harms that come from the hands of law enforcement are a major problem with this policy approach. By making sex work illegal, criminalization, as exemplified by New York, puts sex workers at risk of condom confiscation which increases the likelihood that they engage in unprotected sex and jeopardize their health. Economic desperation inhibits the ability of sex workers to refrain from engaging in sex work, indicating that targeted condom confiscation unwillingly inhibits a sex worker’s ability to engage in safe, healthy practices and thus limits their bodily autonomy. Further, sex workers not only lack protection from law enforcement but suffer from violence imposed by this arm of the state. Criminalization legitimizes the violence that police officers perpetrate against sex workers because their status as criminals subjects workers to a lower social status and justifies police interactions with them. Targeting by law enforcement poses limitations to the bodily autonomy of sex workers by inhibiting their ability to advance their health and by subjecting them to non-consensual bodily harm and coercive practices. In addition, the reasons that sex workers in New York stated for why they entered the industry reveal the deep patriarchal social structures that work to keep women, sex workers included, in a subordinate class with limited opportunities for financial gain. Based on these findings, it cannot be argued that criminalization advances liberation for sex workers as bodily autonomy and freedom from oppressive structures have not been achieved in New York. Unfortunately, legalization does not appear to be this solution either.

The legalization approach to sex work policy also fails to enable complete bodily autonomy and female liberation because it imposes strict controls on what workers do with their bodies. This can primarily be seen through the mandatory STI tests that Nevada brothels require. My research indicated that these tests are effective at keeping STIs out of brothels and maintaining the health of sex workers. However, looking at this through the specific lens of bodily autonomy, I identified how these tests limit the ability of a woman to control her health, an extension of her body. The mandatory nature of these tests puts sex workers in a position in which they lose the right to have complete control over their bodies to maintain their livelihood. Further, I found that the burden of testing falls solely on the sex workers whereas male customers encounter no health responsibilities before entering a brothel. This double-standard reveals how Nevada’s regulatory policies center the health and wellbeing of men while
disregarding that of women, reinforcing patriarchal power dynamics that uplift men while subordinating women. Beyond health, the safety measures taken in brothels revealed that while brothels served as a safer environment compared to street work, this was largely because of informal methods employed by sex workers, rather than the formal safety measures that brothels are required to take. The ineffectiveness of safety regulations as well as the limitations to and male-centrism of health regulations suggested that legalization does not establish the conditions through which bodily autonomy can be achieved. Looking at this in comparison to New York, I was able to identify that the primary advantage legalization had over criminalization was the removal of the harms perpetrated by law enforcement.

The apparent faults to both criminalization and legalization as policy solutions for sex work lead me to argue that decriminalization is the most liberatory policy approach for sex workers. Under decriminalization, the threat of criminal persecution and legitimized violence from law enforcement would be eliminated while also providing sex workers the freedom to monitor and control their work conditions. Thus, workers would have more autonomy within the oppressive structures that aim to hinder the freedom of women to make decisions regarding their bodies and stigmatizes any sexual expression that strays from the heterosexual-monogamous-procreative status quo. Decriminalization has the potential to normalize sex work by removing its association with criminal behavior, which could aid in the humanization of sex workers within the social eye. While decriminalization is the optimal policy approach to sex work, its failure to address the larger social structures that inhibit female liberation suggests that a policy approach alone is insufficient to attain true liberation. Thus, middle-ground feminists take the most accurate theoretical stance on sex work by acknowledging both the multiplicity of methods needed to address this problem, as well as the potential for empowerment to be achieved within the confines of larger modes of oppression.

**CONCLUSION**

The case comparison of Nevada and New York revealed that middle-ground feminism takes the most liberatory approach to sex work theory when applied to public policy. As my research illuminated, the sex industries in Nevada and New York both provide clear examples of the drawbacks to their respective policy models. While Nevada was safer and healthier than New York, the conditions that legalization created do not work to advance bodily autonomy for sex workers. On the other hand, I found sex workers in New York to be much less regulated yet criminalization opens the door for violence and harassment from law enforcement which victimizes sex workers and inhibits the rights they have to their bodies. Based on these findings, it became clear neither criminalization nor legalization could be
considered liberatory within the realm of bodily autonomy, suggesting that an alternate approach may be the most effective way to go. Although there is no state (yet) that has implemented decriminalization, this policy is arguably the most liberatory approach to sex work because it forms a middle ground between criminalization and legalization. Decriminalization delegitimizes the violence against and dehumanization of sex workers while also leaving workers the freedom to make decisions regarding their bodies that are not dictated by the state or patriarchal power dynamics. However, to determine the true impact of decriminalization, further research must be done testing how this policy plays out in practice, which I was limited from doing within the scope of this thesis. Bringing this back into the larger feminist debate, it becomes clear that a binary approach to sex work is ineffective at overcoming the subordinate status that sex workers, and women in general, are subjected to.

Abolitionist feminists are correct in arguing that patriarchy as a social structure plays an integral role in the experience of sex workers and serves as a barrier to their liberation. Both Nevada and New York exemplified the role that patriarchal structures and male-centrism played in their respective sex industries. As such, each of these cases revealed that neither legalization nor criminalization is effective at dismantling patriarchal influences and liberating women from such. Based on this revelation, it is safe to conclude that there is a major hole in the abolitionist feminist argument. Criminalization has never actualized the abolitionist goal of eradicating the sex industry, despite it being the dominant policy employed in regard to sex work. Furthermore, the quotes I gathered from different sex workers exhibit how the individual experiences of sex workers both within the same and under competing policies are far from uniform. This debunks the abolitionist argument that portrays the experiences and conditions of sex workers as a monolith. Despite these flaws in the abolitionist theoretical approach, my research also found that feminists on this side of the debate are not wrong in arguing that there are larger social structures at play, complicating the ability of women to liberate themselves while these structures persist. On the other side of the theoretical spectrum, the cases in Nevada and New York also both confirm and poke holes in the sex-positivist perspective.

The health and safety benefits that legalization presented, as well as my endorsement of decriminalization as the most formidable policy option, partially affirm the sex positivist approach which largely advocates for these two policy solutions. Because sex positivism differs from abolitionism in that its argument does not cleanly align with one specific policy model, I can’t make the same argument that sex positivism was wrong for the policy solutions it proposes. If anything, my comparison of New York and Nevada demonstrated many of the ways that sex-positivists were correct in arguing that sex work can be an avenue for empowerment and agency. This comparative case study especially confirmed the sex-positivist contestation of abolitionism for supporting criminalization, as this policy approach was found to be incredibly harmful. In tandem with this, the positive experiences that sex workers in Nevada’s brothels
had reaffirmed the sex positivist argument that individual agency and empowerment can be achieved through sex work. Despite this opportunity for empowerment, a closer look at sex positivism and the revelations from New York and Nevada air the major drawback to this body of theory: its failure to acknowledge the larger social structures at play. Both sex industries that I studied showed the pronounced impact that patriarchy has on sex work. The way that men are still held at the center of the enacted policies and the domination they can impose through sex work reveals how inescapable patriarchal structures are for women, especially within an industry that operates, in part, to appease male desire. By failing to fully acknowledge the role of patriarchy and the implications of such for sex workers as individuals and sex work as an industry, sex-positivism has a selective viewpoint on sex work that inhibits this body of theory from being entirely accurate on its approach to this issue. Based on this limitation to sex positivism and the faults of abolitionism outlined above, I argue that the middle-ground theoretical approach takes the best stance on sex work and the way that feminists should approach the issue.

Middle-ground feminists approach sex work theory to dismantle the binary divide that sex positivism and abolitionism form. The discoveries I made regarding New York and Nevada and the commentary that their policies give on abolitionism and sex positivism as theoretical models show that the middle-ground feminist theory may be the best way to approach sex work. Middle-ground feminism both acknowledges the role patriarchal structures play in sex work and understands that individual experiences of workers are not homogenous and thus sex work can be an avenue for female agency within these structures. This perspective is representative of the findings I made through my comparative case study, much more so than either sex positivism or abolitionism as stand-alone theories. This being said, to advocate for middle-ground feminist theory and the adoption of this theoretical perspective, I also must point out the middle-ground argument that a policy solution alone is insufficient to combating these larger structural issues at play. While middle-ground feminists discuss policy options in terms of sex work, they differ from the other two dominant bodies of theory in that they don’t employ policy as the primary or sole course of action. Thus, what remains is the need for a solution that not only allows women personal agency and autonomy under the conditions of patriarchy but also works to dismantle the system altogether. Unfortunately, even decriminalization falls short of accomplishing this.

Looking at decriminalization under the guise of middle-ground feminist theory, we can see that while this policy approach may offer the greatest potential for liberation within the conditions of patriarchy, it doesn’t work to dismantle the existence of this structure. Thus, decriminalization is also limited in its liberatory potential, which brings to light a larger issue at play here. Perhaps, a policy approach to sex work is not the mode through which liberation should be sought at all, at least not the sole one. This suggests that to achieve complete liberation for sex workers, that which allows them bodily
autonomy and frees them from the confines of patriarchal methods of power, action must be taken that extends beyond policy. The issue of sex work is not just a legal matter, it gets at one of the core structures our society has been constructed on and thus this new approach must dig into those roots to tear down the structure as a whole. Unfortunately, I do not have the answer as to what this approach (or approaches) is and, based on the fact that we are still here existing in a patriarchal society, I can infer that this solution remains to be discovered. Thus, I borrow from the middle-ground feminist argument in saying that feminist scholars and activists must abandon the theoretical binary that divides them and instead must put their energy towards not only advocating for decriminalization but, at the same time, seeking out the other modes through which to dismantle the social structures that maintain unequal, gendered, power dynamics. Only then can the sex worker, the prostitute, the woman, the “whore” be truly free.

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