

2019

The Future of Sex Work in California: A Proposal for Inclusive Sex Worker Centered Legislation

Cate Barber

Colgate University, cbarber@colgate.edu

Follow this and additional works at: <https://commons.colgate.edu/theses>

Part of the [Law and Gender Commons](#), [Legislation Commons](#), [Sexuality and the Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Barber, Cate, "The Future of Sex Work in California: A Proposal for Inclusive Sex Worker Centered Legislation" (2019). *Senior Honors Theses*. 19.

<https://commons.colgate.edu/theses/19>

This Thesis is brought to you for free and open access by the Student Work at Digital Commons @ Colgate. It has been accepted for inclusion in Senior Honors Theses by an authorized administrator of Digital Commons @ Colgate. For more information, please contact seblack@colgate.edu.

The Future of Sex Work in California: A Proposal for Inclusive Sex Worker Centered Legislation

Cate Barber
Professor Meika Loe
Women's Studies Honors Thesis
Spring 2019

Table of Contents

- I. Part 1:
 - A. Introduction
 - 1. Theoretical Frameworks
 - 2. Methods
- II. Part 2:
 - A. What is Sex Work?
 - B. Different Legislative Approaches to Sex Work
 - 1. Criminalization
 - 2. Decriminalization
 - 3. Legalization
 - 4. Nordic Model (Partial Criminalization)
- III. Part 3:
 - A. California Law
 - 1. Language of the Law
 - 2. Legislation and Critique
 - 3. Stigma
 - B. Sex Workers Voices
- IV. Part 4:
 - A. Proposed Legislation
 - 1. Rollout
 - B. Conclusion

Introduction:

I first came across academic and feminist examinations of sex work while studying abroad in Copenhagen. I took a class titled, "Prostitution and the Sex Trade in Europe" which introduced me to feminist theory regarding the sex trade and the complicated nuances in laws concerning sex work. For instance, decriminalization may make sex work legal but it will not disrupt the various systems that aim to criminalize sex workers. I started to critically think about the intersection between law and the everyday reality for sex workers' while abroad. Through this class, I was afforded the opportunity to talk with former sex workers, active sex workers, and clients. I heard about the variety of experiences that each individual had and how their unique experiences led to their own opinions on the law. It is important to note that before taking 'Prostitution and the Sex Trade', I myself had my own biases regarding sex work. People's viewpoints can and will change over time. In the same vein, many of the academics and sex workers referenced in this thesis do not always have the same things to say and their viewpoints may change over time.

This class allowed me to explore a variety of perspectives about sex work, while also acknowledging that the professor herself did not want to propose a set notion of what the correct viewpoint is since it might vary based on the social location of those involved in the sex industry. The professor challenged my beliefs and values about sex work while encouraging me to understand more about how I was taught to think about the sex industry and how my social location may have influenced my opinions of sex work. We were encouraged to complicate every ingredient of sex work, including the law, which is often seen as something concrete and unchanging. During this class, the students also had to challenge the professor's notion of sex work, as she continually referred to sex workers as women. Not all sex workers are women, and the extent to which people feminize prostitution is incredibly high. Trans sex workers or non-

binary sex workers are often not discussed, and we rarely acknowledged their reality in this class. In the class, we did consider how written law and the application of that law are two very different realities in most countries and the frameworks used to police sex work through the law vary. This dichotomy is more prevalent when looking at the extent to which trans sex workers and sex workers of color are criminalized through the law, which leads to increased police surveillance and brutality.

I grew up in a small, affluent suburb right outside of San Francisco. I attended public and private school and was afforded diverse opportunities that many children are never given. My school was close to Oakland, and at the height of the Black Lives Matter protests, students at my school became actively engaged in conversations about race, sexuality, and feminism. My senior year I joined a club called 'Feminism', but I never fully examined my own feminism until I got to college. At Colgate, I learned about white feminism, ecofeminism, black and womanist feminism, and intersectional feminism. I now know that I am a white woman practicing intersectional feminism, and I acknowledge that I used to be a white feminist before critically thinking about my positionality at Colgate and beyond. When I decided to go abroad to Copenhagen to study prostitution my mother had a field day telling all her friends and family what I was studying, most of whom were astonished and didn't quite know how to respond. To this day, I'm not sure my parents even fully understand many of my viewpoints on sex work, and why I feel like sex work should be treated the same as any other manual labor job. Furthermore, this paper is meant to be accessible to the everyday reader in an effort to decolonize the relationship between 'academic' sources and everyday language. Sex work is work and through this paper, I hope to help readers think about their own prejudices and biases regarding sex work. I want readers to learn new perspectives, to think about it the issue differently, and maybe, just

maybe, have the heart to see why listening to what sex workers want is important when it comes to determining legislation that impacts them.

This paper aims to be a starting point for analyzing the greater implications of California's sex worker laws. As progressive as the state of California is in comparison to other states, lawmakers still maintain the stance that they have a 'moral' obligation to protect these 'victims' of prostitution. This stance assumes that all individuals involved in the sex industry are helpless victims who need to be protected. Across the United States, sex work is a stigmatized profession. This is not unique to California, but what is unique is California's reputation for being 'the most liberal state' (Business Insider). California law, despite having good intentions, is over policing what people can and cannot do with their own bodies. The structural realities of the law, as well as the micro-level agencies sex workers have all play into the way in which sex work is criminalized.

California law, which was created to 'protect' sex workers, was predicated on the notion that sex work is immoral, and that 'moral stigma' has broad implications for sex work in California today. California law may not explicitly use language that alienates the stigmatized sex workers, but the inclinations behind the words do just that. Melissa Hope Ditmore, an academic who created a historical overview of prostitution in the United States says, "These possibly well-intentioned aims [laws/statutes] frequently masked an underlying agenda to regulate morality, and even a certain prurience on the parts of those that opposed them" (Ditmore, 69). These laws were originally formed to 'protect' citizens by regulating and maintaining a certain moral reality. Since these laws are still in effect today, they imply that the only valid 'moral' reality is one that views sex workers as victims and maintains the broad stigma that affects the sex industry. Social stigma prevents sex workers from ever becoming full-

fledged members of society, and if these sex workers already have marginalized identities, they have less of a chance of being accepted by society. As Read demonstrates, “San Francisco’s distinct history, geography, and demographics have created a particularly unique climate for sex work...many of the interviewees for this study discuss the differences of sex work in San Francisco versus the other cities where they have worked” (Read, 97). The application of stigma within the law intentionally dehumanizes sex workers and has real-life consequences for their well-being, but it is also unique in San Francisco and California. Especially, considering how San Francisco is known as a ‘free’ city where anyone can be who they want, except for being a sex worker. The World Cities Culture Forum says, “Since the mid-20th century San Francisco has been known worldwide as a centre for counterculture.” (World City Culture Forum). Sex work is inherently against the typical ‘culture’ because of the moral implications surrounding the stigma of sexuality and sex work. The stigma in California works differently than it would in other cities because of the expectation of freedom of expression. San Francisco, in particular, is known to be a haven for LGBTQ individuals and hub for social activism. Each person's individual identity and experience is going to influence the amount at which the stigma affects them. Trans sex workers and sex worker of color are labeled and treated more harshly because of their intersecting identities, and the stigmas attached to them.

The goal of this paper is to show the wide variety of perspectives between sex workers about their own labor, while also finding a common ground that laws could be built off of – laws that are inclusive, supportive and sex worker centered. I also want to emphasize the importance of trans sex worker’s voices and experiences and those of color in informing the law nationally. These are some of the only sex workers who are not heard from or who are the most underrepresented within the law. Trans sex workers and sex workers of color are unfairly

punished through the law, and this proposed legislation aims to combat those injustices. No sex worker should be punished, including those who are pushed into this work through structural and economic realities, and those who are victimized to the point where the law disregards their agency.

I do not want to alienate those individuals who are forced into prostitution and do not have a choice in engaging this work. I am not trying to downplay a large number of individuals who are forced into prostitution through human trafficking or otherwise. I want to acknowledge the various ways in which someone may enter sex work, and how individuals of certain identities, such as trans individuals or individuals of color, are more prone to being forced into this work (through constrained agency or otherwise), but I mainly perform content analysis of the arguments presented about sex workers who are asking for labor rights protections. This is because the law is more readily available to protect sex workers who are forced into this job, rather than those who chose it. Many of the current laws in California focus on protecting only those who are sex trafficked, and even then, the law fails them. Sex trafficking is defined as a form of modern-day slavery in which a person is forced to perform “commercial sex through the use of force, fraud or coercion” (National Trafficking Hotline). Sex worker is a term used for those are not engaged in sex trafficking, but it is also a term that acknowledges that those in sex work can be influenced by certain structural forces that push them into sex work. Sex workers deserve the safety, health resources, and trauma-centered care that other physical laborers, like miners, receive. Changing the laws and policies regarding sex workers is critical to deconstructing the stigma that works against sex work. Sex worker's voices should be involved in this process in order to create laws that benefit them and their work. To start, I will cover the various legislative approaches to sex work, and then I will examine the current California laws

regarding sex work. Lastly, I propose a set of policies or laws that California may use in the future to support sex workers and their trade, while also maintaining the importance of worker-centered laws.

Theoretical Frameworks:

Throughout this paper, I will be using various feminist frameworks to inform my arguments. Feminist theory seeks to encapsulate the way in which oppression frames an individual's identity and life. Furthermore, it seeks to address the potential future liberation from oppression and how that may come to take place. These theories will help guide me through the project without constraining me to a certain opinion or idea and will help the reader understand how I formulated my arguments.

To start, I want to address the most popularized theory that influences the sex trade. Victimization is the theory that all sex workers are victims because of the work they chose to engage in. This is the idea that simply because of the industry they chose, sex workers are more prone to violence, and have experienced violence in their past. There are sex workers are not victims and seek out this industry because it empowers them. In this paper, I will be trying to unpack why the victimization theory cannot and should not apply to sex workers. Abolitionist feminists and others view sex work as an inherently patriarchal profession that dehumanizes women. Julie Bindel, a self-described abolitionist feminist states, “abolitionists reject the sanitizing description of “sex worker”, and regard prostitution as a form of violence in a neoliberal world in which human flesh has come to be viewed a commodity, like a burger” (The Guardian, 2017). While sex work operates under a patriarchal ideology, as many professions do, we should reject the notion that all sex work is violence. Furthermore, one could argue that other professions, such as domestic workers are also trading their bodies as a commodity (Lacsamana, 401). Constrained agency is a large part of why sex workers may choose this profession, but it

should not discount an individual's ability to use their own agency. Structural agents, such as poverty or homelessness, can have a large impact on an individual's decision to participate in sex work, but it does not mean they shouldn't be offered the same support as those who actively choose this work. The point of my proposed legislation is that all sex workers, including those who are constrained to sex work through structural forces, can find support and protection.

As many feminist scholars before me have done, I will also be using intersectionality as a key framework for my research. It is important to me that I maintain and acknowledge the way different identities intersect with sex work, as well as the ways in which my own identity informs my opinions on sex work. Intersectionality, a term coined by Kimberle Crenshaw, was created to voice the interconnected nature of multiple identities that were connected to the oppression of black women. As Audre Lorde states, "Some problems we share as women, some we do not. You fear your children will grow up to join the patriarchy and testify against you; we fear our children will be dragged from a car and shot down in the street, and you will turn your backs on the reasons they are dying" (Lorde). Audre Lorde demonstrates the way intersectionality and identities can frame people's responses to tragedies and racism. Gender, race, and sexuality are just a few of the categories I will be using to discuss the nuanced experiences within sex work. I want to acknowledge the different ways these categories inform the stigma put on sex workers. Intersectionality will become increasingly important when acknowledging the lived experiences of trans sex workers. Furthermore, I want to use intersectionality as an always overarching theme for my paper, and I don't want to lose sight of that when I talk about the laws. In particular, I want to demonstrate how California's laws disproportionately criminalize sex workers of color and trans sex workers.

Another theoretical framework that will be present throughout my paper and has informed the way in which I do my research is sex positivity. Sex positivity is the theory that sex workers are actively choosing what they want to do with their own bodies. This theory brings together many sex workers who may not agree and seeks to empower all sex workers, even those who do not want to participate in it anymore. Lara Gerassi states, “Advocates of this perspective hold that sexuality, including paid forms, is consensual in many cases and that a woman should be free to make her own decision regarding the type of work in which she chooses to partake. Similarly, sex positivists argue that the notion of intimacy and what actions or sexual acts are considered intimate should be decided by the woman” (Gerassi,4). This viewpoint directly affected my research because I actively was looking for journals, academics, and sex workers whose work fit within this framework. The abolitionist framework on the other side discredits sex workers and put them under a large umbrella of victimization without considering individuals experiences. For instance, Julie Bindel states, “prostitution is inherently abusive, and a cause and a consequence of women’s inequality” (The Guardian, 2017). This broad statement leaves out sex workers who may not identify as women, but it also operates under the assumption that every sex worker views sex work as abusive. It is important to me that I am using a framework that allows for nuances and complications within my research and does not imply broad assumptions about sex work.

Last, but not least, I want to use feminist legal theory. Since the majority of my research and paper is about the laws in reference to sex work, I looked at the practical application of those laws and how the stigma and exploitation within the laws have consequences for sex workers. Feminist legal academics state “the importance of lived experience and actual dialogue, often in collective consciousness-raising settings, [is] as a basis for critical knowledge” (The Bridge,

Harvard). I want to emphasize the importance of listening to sex workers' voices and basing proposed legislation on the lived realities of sex workers, therefore this theory helps me to maintain the importance of lived experience. Furthermore, this framework helps me contextualize the way in which laws disproportionately affect marginalized communities within sex work. Feminist legal theory is committed to analyzing the law from the perspectives of all women, or individuals, and to critically think about the way in which the law was created (The Bridge, Harvard). This become particularly important when discussing the basis of California law later on. All of these theories helped me formulate my arguments in a unique and informative way.

Methods:

I conducted content analysis using primary and secondary sources about sex work in the US. I found a variety of sources, books, academic sources, newspaper articles, videos, and more that grapple with the complicated relationship between sex work and the law. As I have mentioned, it is important to me that I don't exploit and traumatize any sex workers during this process. Therefore, I have been committed to finding sources that treat sex workers and their opinions with the respect they deserve.

To start, I went to the Colgate University library and ventured into the section that had various books and resources about prostitution. To my surprise, I found invaluable books from a variety of authors about sex work and the history behind it. These sources were imperative to my understanding of the various ways in which sex work has permeated society since the beginning.

Next, I started to research a wide variety of academic sources online. I had the history behind sex work and now I needed to focus my search to California. I found a wide variety of sources detailing the changes in laws in California and how sex work is seen within some of the

cities in California, namely San Francisco. In my search, I found an amazing dissertation discussing the stigma surrounding sex work in San Francisco.

After doing the background research for California, and sex work in general, it was time for me to find sources from sex workers themselves. This research was a bit harder but after some time I was able to find reliable sources, from sex workers, who talk about the ways that stigma affects their work and the way in which law plays a huge part in the stigma. The aspect of the work was incredibly important, as it was necessary to find written work from trans sex workers and sex workers of color. Most of these sex workers advocate for the decriminalization of sex work.

I have found many sources that helped me formulate my main idea for this paper, which is to find a way to integrate inclusive law into practice, within California, that supports all sex workers, including the most marginalized, without harming their businesses. I aim to craft and promote sex worker-centered legislation that affords protections and safety to sex workers in an effort to diminish the unjust reality marginalized sex workers face every day.

Part 2:

What is Sex Work?

Sex worker deserves the same recognition, rights, and labor protections as workers in other professions. Sex work is a profession that utilizes emotional and physical labor to create connections between the customer and the sex worker for a monetary gain. The conversation between who is a sex worker and what is sex work varies. Sex work may take many different forms, including but not limited to stripping, sugar daddy relationships, street work, escorts, and porn stars. At its most basic definition, sex work is the exchange of goods for sexual favors (World Health Organization). The law views this work as only the exchange of money for sex,

but stripping is also considered sex work even if the workers are not engaging in sex acts with the client. Sex workers are individuals who actively choose to engage in this work, and while it is important to note that constrained agency is often a part of why this lifestyle is chosen, these sex workers are using their own agency to make a choice about their bodies and their own physical labor. The definition of who is a sex worker is trickier to define. Vicky Funari, a sex worker, says it best,

“There is no standard sex worker. Each woman [sex worker] has her [their] own reasons for working, her [their] own responses of boredom, pleasure, power, and/or trauma, her [their] own ideas about the work and her [their] place in it. This work can be oppression or freedom; just another assembly-line job; an artistic act that also pays well; comic relief from street realities; healing social work for an alienated culture” (Nagle, 28).

Sex workers experiences are not interchangeable and identical. Therefore, the law itself cannot encapsulate every single sex worker experience. Each sex worker has their own unique background that led them into this profession. Some sex workers feel empowered and liberated through sex work, while others feel traumatized and oppressed through sex work. Laws surrounding sex work cannot and never will fully encapsulate all the various manifestations of sex work. They should attempt to support the multiplicity of experiences within sex work. The law I will be proposing will attempt to center itself around diverse sex workers and their needs. I want to focus on aspects of the law that can further support trans sex workers and sex workers of color. There are four main frameworks used to put policy into law in regard to sex work. These four legislative approaches are all very different, but it is important to recognize the variety of

impact these laws can have on a community. One structure is not always better than another, even when it presents itself as so on paper.

Criminalization:

Criminalization is by far the most common legislative approach to prostitution. This model means that all aspects of prostitution and sex work are criminalized and punished. Laws and policies prevent sex workers from carrying condoms, meeting up with buyers or even standing on the street. Criminalization means sex workers, and those who are sex trafficked are often just as punished as buyers. It removes agency from the sex workers and conflates sex trafficking victims to sex workers. This model also pushes sex work more underground making it even more dangerous. Those who are most policed by these laws are the most visible sex workers, likely the streetwalkers. Criminalization of prostitution and sex work is seen in Russia, USA and South Africa.

Decriminalization:

On the opposite side of criminalization is decriminalization. Decriminalization removes any criminal penalties for all parties involved in sex work and sex workers receive protection just like any other labor workers. The hope is that this model decreases the amount at which sex workers are harmed from encounters with police and that all parties are protected from criminal prosecution. Other laws referencing sex trafficking and child exploitation exist alongside decriminalization of sex work. This model is idealized by many sex workers because of the implication of total freedom under the law. Although, the total freedom does not ensure any support from the government, which can further alienate marginalized sex workers. The only place that uses this legislative model is New Zealand.

Legalization:

Legalization is the middle ground between criminalization and decriminalization. This is essentially governmental regulation of sex work with laws regarding where, when, how, sex work should take place. This model often requires sex workers to register themselves within the system. Legalization is also called the ‘backdoor criminalization model’ because there are often some strict requirements many individuals cannot abide by. This model is often harmful to those sex workers who cannot abide by the strict regulations and it particularly affects marginalized sex workers, as it pushes their work ‘underground’ and makes it more dangerous for them to do their job. On the other hand, it allows the government to support sex workers with mandated resources including healthcare, trainings and community centers. Senegal, The Netherlands, and Germany are some of the only places that use this legislative model.

Nordic Model (Partial Decriminalization):

The Nordic Model makes the purchasing of sex illegal but the selling of sex legal. In effect, buyers are criminalized while sex workers are not. On the face of it, this model seems to support sex workers, and the labor itself, but there is no legal way for sex workers to partake in sex work if it is illegal for clients to pay for their work. This legislative model forces sex work underground, as the buyers are much less likely to want to tell sex workers their names or go to a public location. This model also facilitates a ‘savior’ complex towards sex workers and encourages the general population to view sex workers as victims. On the other hand, this model does have systems put in place for sex workers who wish to leave their profession, and healthcare resources. The Nordic Model is present in Sweden, Norway, and Iceland.

In California, sex work is criminalized, and the majority of this paper will focus on criminalization, but it is important to know all the different models and the implications of each in order to understand a sex worker's own experience with the law. This experience is often contingent on their own identity, as those with marginalized identities are often more criminalized through the law. Each of these models is often tailored to each city or country in which they are present. For instance, Amsterdam, the capital of the Netherlands, has very specific regulations underneath their legalization framework that directly refer to the Red-Light District. Unlike the Netherlands, California does not have a city in which prostitution or sex work is legalized, it is criminalized across the state.

Part 3:

California Law

I propose a law that is sex worker-centered, meaning it aims to represent the voices, experiences, and desires of sex workers, voices we don't often hear from. California is seen as one of the most progressive states within the United States of America and yet, many of the policies in place stigmatize and disenfranchise large amounts of people through the criminalization of sex work. Trans sex workers and sex workers of color are even more dehumanized and disenfranchised through these laws.

Language of the Law

The language in the law is just as important as the way in which the law is applied. Therefore, I will focus on the particular language of the law in order to begin the broad critique of the legislation. Certain words within the law can imply the who, what, and where of sex work without acknowledging the diverse range of sex workers and their work. As defined by California law, prostitution includes anyone who exchanges sexual services for compensation.

California's laws concerning prostitution criminalize any behavior indicative of sexual labor. Customers, pimps, and sex workers themselves are criminalized by these laws. Moving forward, I will be using prostitution and sex work interchangeably to refer to the acts that a sex worker may engage in. I will not be using the term prostitute, as the stigma relating to that term is far greater than the stigma relating to the term sex worker. Furthermore, the term prostitute often implies a gendered lens, whereas the term sex worker is less gendered and can be applicable to all sex workers, rather than just women, (iNews, 2017). The term prostitution is necessary to acknowledge when addressing California laws, as that is the only term the law itself refers to when discussing the acts of sex workers. Sex work is not deemed the correct term under the law, in part because this word has only gained popularity in the last ten years. Furthermore, the law seeks to 'other' sex workers by using the language of prostitution and refusing to mention the word sex. The term sex is highly stigmatized and many of these laws were created in the context of conservative values when it was improper to even mention the word sex within legal documents.

Currently, the laws present in California provide insight into the greater social view of sex work within California. California is unique in that the conversation of legalizing sex work has come up quite a bit in the past few years. The language in the laws reflects the social ideology that sex workers are only victims of the patriarchy. By conflating the notion of sex work and sex trafficking the laws insinuate that one cannot willingly participate in such labor. The laws that currently exist within California often conflate sex work and human trafficking. Section 647 (b)(1) of California law states, "An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person". It may not be as obvious as to the connection between

sex trafficking and sex work in this quote, but if you look closer and pay attention to the particular language used, it is evident that ‘who agrees to engage in’ and ‘who engages in’ are two very different things. On one hand, ‘who engages in’ refers to those who do not want to be doing this work, but they will still be criminalized for participating even though they do not consent to it. On the other hand, ‘who agrees to engage in’ refers to those sex workers who are actively choosing to participate in this physical labor. Essentially, by lumping those who want to participate in sex work and those who are forced into sex work, the law makes it clear that anyone participating in this work is ‘immoral’. Additionally, lumping sex workers in with those who are sex trafficking immediately assumes that anyone who sells sex is a victim, without considering that people choose to participate in this type of physical labor. The current law needs input from sex workers in order to display an accurate representation of the difference between sex work and sex trafficking. Because this partnership doesn’t exist many members of society still view sex workers as victims of the patriarchy. These laws were created because of the social stigma surrounding sex work and sex workers face intense scrutiny and disenfranchisement from these laws.

California law also states, “The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution... no one circumstance, or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.” (653.22 (c)). Intent within prostitution can be very different based on the individuals who are soliciting sex. The intent of a person who is involved in sex trafficking and a sex worker is very different. These laws focus on sex workers’ ‘intent’, but they refuse to see a different form of intent other than that of someone who has been sex trafficked, which in turn reinforces the patriarchal

stereotypes surrounding sex work. Furthermore, not all prostitution occurs on the street, and the laws seem to only refer to “area (s). known for prostitution”. By focusing in on the intent and making it clear that choosing to engage in this work is not a valid excuse for intent, this law explicitly lumps together sex trafficking and sex work. They cannot be considered one under the law, and to do so takes away the agency of sex workers who want to engage in sex work. It is imperative that sex workers are a part of the process, as these laws have the potential to make or break their future. Furthermore, it is appalling that the law does not talk about other forms of sex work and doesn’t acknowledge the various forms of sex work. Although, this could be seen as a good thing because some forms of sex work may not be ‘technically’ penalized under the law.

Legislation and Critique

The language of the law is not the only important aspect of the legislation that has to be critiqued and expanded upon. Another aspect of the law that further stigmatized and dehumanized sex workers was the statute that allowed the presence of condoms as evidence for prostitution or other criminal activity (SFGate). Thankfully, in 2013 the San Francisco police department superseded the statute, DB- 13-006, to say that the presence of open/unopened condoms can no longer be considered evidence of loitering (Department Bulletin, 2013) Although, in the time frame where it was still legal to use condoms as evidence, it created an unsafe work environment where sex workers, who were afraid of being arrested, chose not to use or carry condoms that could protect them from STDs, pregnancy and more. This law further disenfranchised transgender sex workers, where the prevalence of HIV is much higher than that of other sex worker populations (Wurth, 1). It is also important to note that using condoms as evidence is still legal statewide in California. In 2013, Assemblyman Tom Ammiano of California's 13th district attempted to present AB 336, a statute that would make it illegal for

condoms to be considered evidence of prostitution statewide. Sadly, this failed and there has not been any talk of it since. The notion of age is often used to keep laws, like this condom policy, in place. Many people in favor of the criminalization of sex work state that these laws are in place to protect the abundance of minors in that line of work. In reality, the average age of sex workers is 21, and minors constitute a small population within sex workers (SFGate). Also, the laws regarding sex between an adult and a minor still remains illegal (SFGate).

California's law is insufficient in other ways too. Many other professions have state protections that seek to reinforce the law and support individuals. The criminalization of sex work forces the protection of disenfranchised sex workers onto individuals' agencies and nonprofits. As sex work is illegal, the state does not have to offer protection to those who participate in this type of labor. They are exempt from protecting a large portion of the population, and as such non-profits took on the role of 'protecting' sex workers. These organizations rely on public support, monetary and verbally, to continue running. Lenore Kuo notes that public policy change is not enough, and that the government has to be willing to provide excess support systems that are necessary for the proposed law. Kuo states, "the failure to specify necessary support services along with a legal approach as a part of a larger proposed policy package often results in government abdicating responsibility for the provision of such services." (4). This can then be more detrimental for sex workers. In order for a law to be passed that supports sex workers, the government also has to provide other various support services. By forcing the support services to NGOs or outside organizations the government makes sex workers disenfranchised from state support. For example, ESPLER, the organization advocating for sex workers rights on a broad scale in California, provides education and research that supplements their advocacy. In addition, COYOTE no longer exists in San Francisco, but the

founder of COYOTE has created a new safe haven for sex workers called St. James Infirmary. St. James Infirmary provides sex workers with an abundance of services; Needle Exchange Supplies & Harm Reduction Supplies, Primary Care, STI Counseling and Testing, Mental Health and Peer Counseling, Holistic Services, Transgender Hormone Therapy Programs, Trainings & Support Groups, and a Bad Date List. All of these services seek to support the safety of sex workers and lessen the extent to which sex workers are dehumanized and stigmatized. Furthermore, it is important to note the explicit protections and support St. James Infirmary provides for trans sex workers. They laid out specific aspects of their organization that would go towards supporting trans sex workers, such as the Transgender Hormone Therapy Programs. This job should not be left to non-profits who are often constrained by money and labor costs.

In this paper, I propose a framework for laws that will support all sex workers, and in effect will afford them protections and services that NGOs are currently providing. In addition, these nonprofits do not benefit all sex workers, as trans sex workers are sometimes left out of the conversation. As Kuo brings up, prostitution is a diverse, complex job profession that cannot be contained within one broad generalized law (17). The law must reflect the complexities of everyday life for sex workers. Furthermore, the gendered lens Kuo utilizes to complete her analysis is necessary to acknowledge race, class, gender, and sexuality, which are all necessary to view prostitution in its entirety.

Penal Code 647 (b) deals with prostitution, and solicitation. The last time this law was actively changed was in 1995, when prostitution was named a misdemeanor, meaning these acts are punishable for up to 6 months in jail and a fine up to \$1,000 (California PEN 653.26). California law states, “it is unlawful for any person to loiter in any public place with the intent to commit prostitution... “commit prostitution” means to engage in sexual conduct for money or

other consideration” (California PEN 653.22 (a)). Sex workers who chose to participate in sex work are actively consenting to exchange money for sex. There is consent on both ends, and yet the legislature does not view sex work as a ‘private sexual experience’. This is complicated by the notion that many trans individuals’ private sexual experiences are not seen as ‘real sex’ by most people in society. Therefore, policemen and the lawmakers have an easier time criminalizing their consensual sexual experiences through the law. Naturally, since this law has not been changed for the past 18 years, activists based in the Bay Area have been trying to change that since the 1970s.

Since that time, COYOTE (Call Off Your Old Tired Ethics), has been advocating for sex workers rights. In particular, COYOTE emphasized the decriminalization models and firmly believed in protecting the lives of sex workers. Interestingly enough, in 1993 the San Francisco Board of Supervisors decided to create a task force designed to specifically combat prostitution. Lutnick and Cohan state, "Their report, issued in 1996, recommended that the City of San Francisco decriminalize prostitution" (Lutnick and Cohan, 39). The city of San Francisco ignored their recommendation until 2008. On the San Francisco General Election Ballot in 2008 Proposition K proposed the decriminalization of prostitution (Lutnick and Cohan, 39). Despite this proposition being endorsed by public health officials, the California Sexually Transmitted Diseases Controllers Association, the San Francisco Democratic Party, the Sex Workers Outreach Project, and COYOTE, it failed. Not surprisingly, only 42% of San Franciscans voted in favor of it. In spite of this, multiple organizations and sex workers kept fighting, and still are today.

In 2017, The Sex Workers and Erotic Service Provider Legal, Educational, and Research Project (ESPLER Project Inc.) filed a motion challenging California's anti-prostitution law,

saying that it is unconstitutional (ESPLER). Their argument was based largely on *Lawrence v. Texas (2003)*, a 2003 Supreme Court case that nullified sodomy laws nationwide (Weissmueller, 52). *Lawrence v. Texas (2003)* laid out the law that Americans had a constitutional right to sexual privacy. ESPLER's case made it to the Supreme Court, but in January 2018 the Supreme Court of the Ninth Circuit dismissed their case. ESPLER is now fighting to challenge the California Penal Code in the California State Court system (ESPLER). This is now a continuing case, but it points to the changing nature of California's social atmosphere. Nonprofits like ESPLER are able to challenge and have the support to challenge, the base of a law that has been in place for hundreds of years. The California law is outdated and doesn't sufficiently allow room for those who consent to participate in sex work to do so. While activists before ESPLER were able to keep the conversations about sex work going, they were unable to create concrete change within California as a whole. ESPLER seeks to address California's laws as a whole, rather than attack certain city policies as COYOTE did. It is hard to say which strategy is more efficient, as each has its own pros and cons. In the end, it is important to recognize all the invisible and visible work that has been done and is still being done by sex workers rights activists in California. The law does not accurately reflect the needs or desires of sex workers and their allies.

Stigma

Kathleen Read interviewed 31 sex workers in San Francisco, California in 2012 in order to document the lived realities of sex workers and to understand the impact sex work had on participants' identities. She found the discourse surrounding sex work, that is created by the 'dominant' culture has a negative effect on the sex workers' identities (Read, i). The law played a large part in the way sex workers viewed their own work, and how they are treated. In looking at

San Francisco sex workers lived experiences, Read found a law that specifically meant to respond to the moral panic brought about the 1900s. The White-Slave Traffic Act (1910) sought to quell the moral panic surrounding prostitution (Read, 19). This 'moral stigma' has transformed into the 'whore stigma' we see today. The dehumanization and characterization of sex workers have been present since the beginning but has now transformed into the policing of sexuality. The stigma is not isolated to today's culture and goes all the way back to when the government and sex work first started. This is largely where California's enforced prostitution laws began, they all started as moral responses to the dominant culture. The fact that the dehumanization of sex workers has been ingrained in our laws for so long means that it is even more imperative to start reversing the damage as soon as possible. Reversing the law now would lead people to speak about this issue, and it would also lead to the safety and security of sex workers. The law today still seeks to enforce the stigma against sex work in order to quell the 'moral' panic that would be brought about through embracing individuals' sexuality.

Anne Jennings, a California anthropologist, examined the impact of criminal law on prostitution in California in 1976. While this analysis may be outdated, it informed me of the various ways in which governmental attempts to suppress prostitution were not successful because of various social, economic, and physiological pressures that perpetuate sex work (Jennings, 1235). Jennings states, "At the root of laws giving prostitution criminal status is the judgment that it is sufficiently immoral that it ought not to be given legal toleration" (Jennings, 1249). This was in 1976, and yet sex work is still consistently viewed as an immoral profession. The laws about sex work must be as complex as the notion that these laws are implying prostitution is immoral by just existing. At this moment in time, I believe it would be ignorant to think that making all laws magically disappear would fare better for sex workers. These laws

have permeated our society since the early 1900s when it first started to become more stigmatized. In fact, I think in order to maintain support for sex workers, California must create a law that imposes the use of intersectional and feminist language to emphasize its stigmatization. The language of the law must acknowledge the intersectional and broad experiences of sex workers, while still considering the various identities and people who utilize sex work as a means of survival. This law cannot be created without the assistance and language of sex workers themselves. The law must also offer other provisions that protect sex workers. Jennings brings up another important point and states, "moral legislation" is the belief that such laws validity reflect a social consensus of moral behavior that ought to be enforced" (Jennings, 1249). Certain members of society, often time the rich white population, have imposed the notion that sex work is immoral, thereby influencing the government to create laws that reflect the moral ideology of the dominant culture within the United States. This moral ideology has led to a law that further stigmatizes sex work in California, and I hope to change that.

The majority of the sex workers in the next section of this paper reference the effect that stigma has had on them, but in order to fully understand how this stigma affects an individual, we need to understand what stigma itself is. Erving Goffman talks about stigma as a concept that affects both the stigmatized, and the ones creating the stigma. (Read, 99). It is a two-way phenomenon that acts as a social process to disenfranchise large groups of people. Oftentimes those who are stigmatized are dehumanized which has immense consequences on their well-being (Read, 100). In this case, the 'whore' stigma aims to criminalize and victimize sex workers. It creates an 'othering' of sex workers from the general population, and the law facilitates this 'othering'. The stigma surrounding sex work often frames participants as dirty and frames the sex workers as 'whores' or victims. Class plays a large role in how sex workers of color and trans

sex workers are perceived and treated. Consequently, marginalized sex workers are more greatly affected by the stigma surrounding sex work, and yet they are the ones often left out of the conversation.

Additionally, it is important to think about the real-life consequences of the 'whore stigma'. The "whore stigma" is the most generalized version of stigma sex workers may experience (Read, 102). California laws are based on this 'whore' stigma and the societal implications of the law create the realities of sex work. As one sex worker states, changing the laws, "might change the way people perceive or think about sex workers...because that would kind of start to heighten people's awareness about how this moral stigma has affected us" (Lunick and Cohan, 41). The law recognizing sex work as physical labor and justified workforce will enable sex workers to start unions, and freely (without punishment) talk about what they do. Decriminalization or legalization would mean that the government understands the immense emotional and physical labor that goes into sex work, just like doctors or miners. The current law places the blame on sex workers and enforces the stigma. Furthermore, the current law allows policemen and the community to increasingly criminalize trans sex workers and sex workers of color. By reinventing the law, as a worker-centered policy, future laws could lessen the extent of the stigma affecting sex workers. Often times, this occurs through the conflation of human trafficking and sex work through laws. The victimization that occurs in sex work is a direct result of this conflation, but human trafficking and sex work are so interconnected legally that it is hard for individual members of society to separate the ideas.

The law is just one-way sex workers are continually victimized and criminalized, and the extent to which they are criminalized depends on their identity. Trans sex workers and sex workers of color are some of the most underrepresented and dehumanized individuals under the

law and through the practical application of the law. As Kai, a transgender sex worker states, “With the work I do, [saying I’ve been raped] is kinda difficult to say to some people, and you can go to the cops and they’re not going to do anything most of the time” (Read, 115). Kai’s experience is evidence that policemen must be trained to execute the law in a way that actually protects sex workers. There are steps that California can take to accurately support individuals who are continually disenfranchised under the law. The various macro and micro forms of violence that sex workers experience under the law inform my proposed legislation. In the next section, sex workers will talk about their experiences, and what effect the law or stigma has had on them.

Sex Workers Voices

Another perspective that I wanted to include in my paper, is that of sex workers themselves. No one should be told what to think, or how to act and there is no better way to understand how sex workers feel about the laws than to hear it in their own voices. Sex workers are often silenced by the broader community, and through the law are forced to become invisible. By not acknowledging the emotional labor and physical work sex workers do to survive the law makes their efforts and identities invisible. I want to change that. Only recently did the voices of sex workers begin to permeate society on a broad scale. I will not be interviewing sex workers, as I view that process to be highly exploitative since I cannot offer anything in return, nor am I a sex worker myself. Instead, I will be looking at previous literature written by sex workers to understand various sex workers viewpoints on laws that they say keep the rampant moral stigma present in society.

Jill Nagle, a previous sex worker and now academic, says, “Feminist activism and discourse has done an excellent (though unfinished) job of clearing space, creating support for,

and theorizing women's stories of victimization around commercial sex. In the process, it has silenced feminist whores." (Nagle, 4). Her book, *Whores and Other Feminists*, aims to highlight the voices of activist sex workers. She does mention that she has made a point to exclude writings by sex workers who see themselves as victims or anti-feminists. Although, it is necessary to recognize that being able to freely choose sex work is a privilege, particularly when considered in relation to individuals who are facing greater structural forces that force them into sex work (Lacsamana, 398). Many of these sex workers may not have had the same influence of structural forces that many marginalized sex workers' experience. Nagle was cognizant to specifically include workers who desired the law to change and were critical of the social stigma. This was in an effort to uplift the voices of 'feminist whores' because such perspectives are not heard or seen in the public. Not all sex workers share the same views on the law and the criminalization of sex work. Each individual's experiences inform their opinions, and the area of sex work they are in can also have a profound effect on their perspectives. Vicky Funari, a sex worker, says it best,

"There is no standard sex worker. Each woman has her own reasons for working, her own responses of boredom, pleasure, power, and/or trauma, her own ideas about the work and her place in it. This work can be oppression or freedom; just another assembly-line job; an artistic act that also pays well; comic relief from street realities; healing social work for an alienated culture" (Nagle, 28).

Funari demonstrates the wide range of perspectives and experiences in sex work that makes changing the laws so difficult. The laws have to address sex workers who need protection and who are victims, but it also has to protect those who chose this line of work and want it to be considered work. Furthermore, the law is selective in whom it chooses to inadvertently protect. Damian, a

trans man sex worker in San Francisco states, "I don't think that male sex workers get policed in the same way, so I don't have the same worries about getting entrapped by cops" (Read, 112).

Damian's positionality allows him to circumnavigate the consequences of participating in sex work. He is able to become empowered through sex work because he isn't affected by the constant police surveillance of prostitution. Another sex worker named Cosi Fabian proclaims that sex work has empowered her. This is one of her many powerful poems:

"I am proud to be called "whore."
When I became a whore, I declared my religious convictions.
When I became a whore, I declared my creativity to be as worthy as motherhood.
When I became a whore, I shouted my defiance of the machine that is our "male-voiced culture."
When I became a whore, I transformed tragedy into strength, loss into freedom.
Having become a whore, I have become a teacher of spiritual and psychological transformation.
Having become a whore, I have been honored as poet and performer.
Having become a whore, I have discovered my true voice. I live by the rhythms of the moon and the wisdom of my body.
Having become a whore, I have been enlightened by the tender and worshipful nature of men's desire for "The Wondrous Vulva." (Nagle, 44)

This poem directly shows the large impact sex work can have on an individual. In this perspective, sex work empowered her and gave her a segway to a better version of her life. For me, this poem aims to address the connotation that 'prostitution' is inherently bad, and all sex workers are victims. It brings up again the notion of the 'feminist whore' that Nagle talks about in her introduction. For Cosi and Nagle, it is possible to be a feminist and still engage in the sex industry, therefore for them, it is imperative that the law reflects and supports them. Annie Sprinkle identifies as a sex worker and a feminist. She states, "As I grow older, wiser, and more educated about feminism, and the more I learn to love myself and other women, the more I see

how we do get wounded and oppressed...the nature and stigma of sex work make ours [problems] uniquely challenging" (Nagle, 66). Incorporating feminism into the law is necessary to acknowledge the effort and emotional labor sex workers partake in to do their jobs.

Many sex workers who are often silenced and invisible to the public are sex workers of color and trans sex workers. The law has to reflect these sex workers and has to listen to what they have to say. Madeleine Lawson states, "I want to let people know that I am an intelligent and beautiful Black woman who refuses to be at the bottom of the sexual totem pole anymore...I want to be a Black woman who educates and stimulates others to explore Black female sexuality" (Nagle, 208). Sex work has repeatedly left out women of color from the conversation of empowerment of female sexuality. Sexuality should be celebrated and engaged within the law in a respectful and humanizing way. There has to be specific avenues built into the law whereby marginalized sex workers can have a voice. Furthermore, it is important to note that sex work itself seeks to break down the strict heteronormativity of society. One of the main functions of sex work in society is to reframe what we think of as 'normal' sexuality and to complicate our ideas about sex. As Madeline says, black woman have to empower other black women to explore their own sexuality, and sex work in general parallels that idea, even when put up against the broad stigma of sex work.

Sex workers are very aware of the stigma put on them through the law and consistently deal with dehumanization and discrimination in their everyday lives. A sex worker named Tracy states, "I think [sex work] being illegal really adds to the stigma and upholds it. I mean, it was stigmatized long before it was illegal, but [being illegal] really adds to [the stigma] that I'm a criminal just for selling sex. I'm a criminal" (Read, 106). Tracey has even begun to internalize the notion that she is a criminal for having sex for money. Stigmatization can have harmful and

egregious effects on sex workers. Therefore, a law that seeks to treat sex workers as human beings, and individuals with their own agency is key.

Lutnick and Cohen talked to sex workers in California about what type of law they thought would be best for them. One said, “You know, I don’t want someone else telling me how to work. And I don’t think it is necessary really. Yeah, I think decriminalization gives us the most freedom” (Lutnick and Cohen, 41). The notion of autonomy and control over their own businesses and lives is incredibly important to sex workers. They deserve the same amount of freedom as any other physical laborer. The laws in California that criminalize sex work take away sex worker freedoms, by not allowing them to engage in their own profession, and at the same time takes away an individual's agency to their own body. Another sex worker states, “It might change the way people perceive or think about sex workers...because that would kind of start to heighten people’s awareness about how this moral stigma has affected us” (Lutnick and Cohen, 41). This particular sex worker is extremely aware of the impact the law can have on public opinion. The moral stigma is uplifted and encouraged by the law, therefore creating a law that seeks to diminish the moral stigma is the best option for sex workers. Freedom, safety and support are key aspects of what many sex workers in Lutnick and Cohen’s study talked about. Decriminalization would allow these sex workers more agency in their own lives, but also the ability to feel safe from the police and to build open communities with other sex workers. This type of freedom, to participate in sex work wherever and whenever they want gives sex workers the agency to dictate their own lives. Furthermore, if sex work were decriminalized the police might be able to protect sex workers, in dire situations such as rape, whereas right now they cannot go to the police because they will be arrested for prostitution. Decriminalization was the

best option for most of the sex workers, but there were some who voiced the desire for legalization.

One sex worker states, “We would have more police protection if it was legalized too. Health services, mental [health] services, police protection, you know, not having to get thrown out of where you live because of what you do..the same rights as anybody else” (Lutnick and Cohen, 42). Police protection was and is a large motivating factor for legalization and gives sex workers the safety they desire. Legalization ensures increased surveillance on pimps/prostitution businesses and requires the state to care about sex workers well-being. On the other hand, decriminalization means that the police won’t interfere, but the sex workers are on their own in terms of creating communities, and mental/physical health services. Legalization automatically requires the state to care and acknowledge the well-being of the sex worker, which then ensures their safety.

On the other hand, legalization can also make sex workers concerned about the amount of surveillance and the amount of agency they would really have. One sex worker states, “To tell you the truth, and people say ‘I can’t believe you think this’, I like that it is illegal. And one of the reasons that I like that it is illegal is that I am not heavily regulated” (Lutnick and Cohen, 40). The regulations that often come with legalization can make it more difficult for poor, marginalized sex workers to meet the state’s standards, which in turn forces their businesses even more underground. Furthermore, it would make it impossible for undocumented sex workers to continue working and make a living. The state’s control over sex work would weed out undocumented workers, and homeless and poor sex workers. There is no legislative framework available that will continuously support all sex workers, and I want to complicate this notion by showing that there is way for a law to address the needs of all the various opinions of

workers. Camille, a trans sex worker of color states, “If they would make it legal, it just makes it easier for you, and then you can be more out there, and you can make better choices...” (Read, 120).

Sex workers are critically thinking about the role law plays in their business, and in order to create a law that actually supports sex workers, we must turn to sex worker themselves. No one knows the business, and subsequent moral stigma attached to it, better than a sex worker. As such, in the next section, the law that I propose is inherently based on the lived experiences and desires of sex workers. California must adopt a sex worker-centered law to fully support all citizens within their state.

Part 4:

Proposed Legislation

The main premise of this paper was to outline principles for a sex worker positive legislation. Though I started off thinking decriminalization would be to the benefit of all sex workers, now I think through my research that decriminalization allows trans sex workers and sex workers of color to still be dehumanized and criminalized under the law, which is unacceptable.

At this point, I believe that the legalization of prostitution is the best course for California. Legalization of sex work implies that the state views sex work as the same as any other physical labor profession. Furthermore, the legalization of sex work means that the state legally has to care about the well-being of sex workers, all sex workers. This would include trans sex workers. Trans sex workers tend to be some of the most criminalized and vulnerable under the law, and this law would seek to mitigate the current consequences for marginalized sex workers. The state would legally have to provide specific protections and implement programs

that benefit sex workers, instead of brushing them off to the side, which they may do if sex work was decriminalized. Legalization ensures that the stigma surrounding sex work is acknowledged and ideally starts the process of eliminating that stigma from pop culture. The legalization of sex work would imply that sex work is work, just like any other physical labor profession.

In order to start the legalization process, as with any other project, states need to know that the proposed legislation works. For this to happen, the program has to be implemented in one city to show that sex workers want these laws and that there are no underlying, unintended consequences that occur from the legalization of sex work. I propose that this program is piloted in San Francisco, as it is known as a haven for LGBTQ individuals and social justice activism. Furthermore, San Francisco is a place where many of the non-profits and sex workers who are fighting the current laws already reside. These laws will have to be voted into law by the public, and San Francisco was very close to voting Prop K through just a few years ago. Once this program is successful, meaning sex workers support it and approve of it alongside the community, it could move to other Californian cities like Los Angeles, or San Diego. For this reason, I will be designing a law for the city of San Francisco in the hope that it can eventually be used in other cities as well. This proposed legislation has been informed by the voices, and opinions of marginalized sex workers. The entire proposal will only be referring to San Francisco. It is unrealistic to assume the entire state of California would immediately legalize sex work but starting in one city could make an impact.

A key aspect of this law that must be emphasized is the voices of sex workers of color and trans sex workers. This law must represent and voice the concerns of those vulnerable populations, who are more likely to go underground in the event of legalization because of the strict parameters put forth by the law. To this effect, the language of the law must represent the

various sex workers and it must be inspired by and talked about with sex workers before being put into law. We will replace the term 'women' whenever necessary with sex worker. Women are not the only population that engages in sex work, and not everyone identifies within the strict binary of man/woman. Therefore, the term "sex workers" is a non-binary and non-gendered term to describe those the law is trying to protect. This term is also less stigmatized and more respectful than prostitute. Prostitution connotes a dirty illegal act and changing the language to sex work will help change the stigma behind the laws. This law is sex worker-centered and focuses on the changes that many sex workers themselves have wanted. The language implicated within the law can have unintended consequences and in order to eliminate those consequences, it is imperative to use gender-neutral language.

The Netherlands is the one country that people automatically point to when thinking about the legalization of sex work. That said, the laws and policies they adopted to make sex work legal unconsciously excluded a large portion of the sex worker population (Abdul, 2019). Amsterdam requires licenses for businesses or individuals who want to engage in the four categories of prostitution, which they say are window prostitution, private clubs, private houses and escort agencies (Amsterdam.nl). There are many other forms of sex work, including street prostitution, which they don't legalize. This can be problematic because it excludes a large portion of the population who make a living by finding clients on the street. I propose that the legalization of prostitution includes the legalization of street sex work in an effort to not marginalize those sex workers who cannot afford or do not have access to money to pay for licenses. Furthermore, many brothels and organized sex work rings do not accept trans sex workers, as they do not view them as the 'desirable sex worker'. Therefore, trans sex workers and poorer sex workers are more likely to be soliciting sex on the street. By ensuring that street

sex work is legalized, this supports a large portion of the sex worker population's way of living. As discussed previously, sex work takes many different forms, and forcing the most marginalized sex workers to stop earning a living just because their version of sex work was deemed unacceptable decreases a sex worker's access to income and enforces the stigma that sex work is dirty and unnatural.

The Netherlands may have made sex work legal but their laws ensure that poorer sex workers do not have a chance to practice sex work legally (Abdul, 2019). The continuous payments that sex workers have to make to healthcare companies, insurance companies, and for a license are expensive. A sex worker-centered law should specify that the city of San Francisco will bear the brunt of the cost for weekly or monthly check-ups for sex workers. I am not an economics major, nor am I adept at understanding the financial institutions within the state, but I do know that this is an option many sex workers are in favor of (Lutnick and Cohen, 40). Furthermore, this key aspect of the law will help marginalized sex workers stay in sex work and have the monetary ability to pay for it. Healthcare is expensive, and it's one of the many reasons that HIV is so prevalent among sex workers. Sex workers deserve access to healthcare and insurance and legalizing sex work gives sex workers the option to enroll in a program that affords them the same protections as other professions. One of the main reason's legalizations can be problematic is because the amount of money one may or may not have plays a large part in their ability to get licenses or to abide by the strict parameters put forth by the law. In an effort to alleviate the many costs for sex workers that come from legalizing sex work, the state will offer free licenses for sex workers, along with free healthcare check-ups. Sex workers may choose this work, but it is not without a certain amount of constrained agency, and many of the reasonings for doing sex work is for the money. The state paying for all of these services

alleviates the broad implication that sex workers can only be those who can pay for all these services.

The legalization of sex work in San Francisco will maintain broad parameters defining sex work in order to not exclude a large portion of the population who solicit clients on the street, or through apps. Furthermore, the definition of sex work must be broad enough to allow room for any changes within the way our society engages in sex work. Sex work is any intimate act in exchange for goods, but this doesn't always mean there has to be a monetary exchange. In particular, I am thinking about sugar daddy and sugar mommy relationships, which are becoming increasingly common, where an older individual may pay for schooling, fashion items or rent for a younger individual. The notion of sexual exchange must also be complicated because for many individuals that may mean vaginal sex but for others' moments of intimacy like cuddling can be considered a sexual act. Some of the sex workers in the Netherlands talked about how some of their clients just want company for that one hour, and how that is still a large part of their job. In addition, the evolution of technology has led to apps where sex workers can solicit clients, and the law must allow room for any more inventions that allow sex workers to seek clients. Maintaining a broad definition of sex work within the law is imperative to ensuring the law is able to change or adjust with the current reality.

This law must also include protections for sex workers, just like any other labor profession. For instance, miners have access to the Miners' Rights and Responsibilities under the Federal Mine Safety and Health Act of 1977 (U.S. Department of Labor). This act directly states their rights, as workers, and gives them the right to health check-ups, send complaints, and pieces of training. Sex workers deserve a similar statute within the law that establishes and outlines the various protections and rights that sex workers will have under the law. These rights

should include health insurance, police protection, and protection from discrimination. Most of the protections must also explicitly refer to trans sex workers and sex workers of color, which would address the de-humanization that is engrained with societal and structural norms. Many sex workers have expressed that not having access to health insurance and police protection has greatly impacted their own well-being and identity. A full document, made with input from sex workers, that details their rights is imperative in order to establish the ways in which sex workers will navigate sex work as a legal occupation. This document should also include the establishment of a sex worker union, which gives sex workers yet another way to access lawmakers and facilitate discussions with the government. There should be a specific sex worker union designed to benefit trans sex workers and facilitate discussions about trans sex work as well.

As discussed earlier, one thing many sex workers note is that the current law conflates sex work and sex trafficking together by using language that criminalizes both those who are trafficked and those who chose to participate in sex work. Looping sex trafficking and sex work together within the law is and was extremely damaging to many sex workers, and oftentimes influenced their own interpretations of their work. This was seen when Tracy equated herself to a criminal for engaging in sex acts. The conflation of sex work and sex trafficking leads to sex workers internalizing the criminalized language used in the current law. The language in the proposed law will represent the active consent sex workers are giving to engage in this work and will maintain the section that criminalizes those who sex trafficked individuals. Consent will also have to be defined within the law, which becomes a tricky subject, as many of these individuals are participating in sex work with constrained agency. In the same effect, other marginalized workers, like miners and domestic workers are also operating under a certain amount of

constrained agency. None of these jobs are the most desirable and most privileged, but sex workers are still choosing sex work over domestic work for example. Sex workers are still engaging in consent to participate in this work, and those who are sex trafficked are not. The law has to account for this and have a way to define what consent is.

Consent is verbal, and not informed from the opinions of other people. For instance, a sex worker who verbally consents, but then says their partner takes all their earning from them like a pimp might not be fully consenting to the sexual acts. This definition of consent is not perfect, and there are many loopholes which have to be explored further, especially in terms of the law. As I will talk about soon, the rollout of the law will include resources for those who are sex trafficked and those who choose to participate in sex work. It is imperative that these two are separated within the law is because one is legal, and one should be illegal. Those who are sex trafficked still deserve protections, which they are not receiving right now from the state because the state conflates sex work and sex trafficking. Language can have far-reaching implications for stigma, and the hope with many of these changes is that the 'whore' stigma can have less of an influence on people's opinions of sex work.

The next aspect of this law will be focused on the communities it represents. Since this law will pilot in San Francisco it has to include certain parameters that directly pertain to the community. Community can be two different things, the social nature of sex workers' communities but also the immediate environment in which sex workers reside. There has to be a certain amount of buy-in from such communities in order for the law to truly have an effect. In all honesty, this may be one of the hardest parts of legalizing prostitution. How do you tell a white cis middle-class mother of a two-year-old that a sex worker is allowed to solicit clients from their street? This is where the importance of community conversations comes in. Most

individuals have been conditioned to think of sex work as morally wrong, instead of viewing sex work as meeting a certain need within the community. Maybe certain areas of the city are eligible for street prostitution, in order to ensure that marginalized sex workers still have a chance to participate in sex work but also that community members do not feel overburdened by the legalization of sex work. Certain aspects of sex work have to be normalized within these communities for the law to benefit sex workers. For instance, landlords will have to start renting to sex workers and thinking of sex work as actual work. Without policies and broad change in the mindsets of individuals, sex workers will still be continually criminalized by their communities.

Rollout

The last aspect of the law that is probably the most important and imperative is the rollout. How will this law be implemented in a safe and effective way? To start, the city must create multiple agencies and places where sex workers can go to feel safe. They must have a center where sex workers can get easy, fast and efficient healthcare check-up for STDs and more. This center must also cater specifically to trans sex workers and their healthcare needs. Similarly to ESPLER, which provides Transgender Hormone Therapy programs, this center will provide a sector that is dedicated to the well-being of trans sex workers and their overall needs. Another model for this is St. James Infirmary in San Francisco, which is already doing the work that the state should be. Like such centers already in place, this government center must have advocates available for any legal business they may need, including the award of licenses. These advocates will work with politicians and lawmakers to ensure any further laws concerning sex work are thought about with input from sex workers themselves. They will serve as the liaison between the city and sex workers. Furthermore, the city sex worker center should create support

groups for sex workers, where they may talk about their own intersectional and varying experiences in order to alleviate most of the loneliness that can occur from participating in acts that had been continually criminalized by society.

In addition to these functions, there should be a department of this center focused on rehabilitation that acknowledges the constrained agency many of these individuals may feel and can help them find out whether or not they would like to leave this profession. Many sex workers express feeling stuck and this center could help them get out of sex work if they wish, and it can also help those who are sex trafficking relocate or reorient their life in the direction they wish to go. One of the most difficult aspects of making a career change in this industry is that drugs and other constraining factors may be present in sex workers' lives. Ideally, this center would work as a rehab or a place where individuals can go to explore leaving sex work. Visitors of the center would not be obligated to leave sex work but would be given resources and the option of counseling to help leave if they wish.

Alongside the establishment of centers and state-funded programs, the city should provide a variety of training to politicians, educators, and the police. One of the main concerns from sex workers about legalization is that it will not change the policeman's minds about sex work, as many of them may still brush off a murder attempt or a rape because they think of sex work as a criminal act. This can no longer occur; the police should have extensive training to create relationships with sex workers that connote trust. This community building is imperative to the safety of sex workers and their professions. It is unclear which type of trainings will be the most transformative and influential, but it is clear that the trainings have to start from the bottom-up when policemen are still in the academy. Furthermore, politicians and various educators should be trained to view sex work as a legitimate profession. Changing the law is a great step,

but without changing the stigma from the law it may not have the desired effect and sex workers will still be ostracized from society. The police should be trained to deal with and learn about police brutality, and the intersecting ways in which race and gender often times elicit certain, sometimes deadly, responses from the police force. Ensuring that trans sex workers and sex workers of color are specifically protected from the police is imperative, as the police force will ideally stop criminalizing and dehumanizing these individuals to start actually protecting them. It is important to note that there is no guarantee that the training will do anything. There have been many police forces trained across the country about police brutality and race and yet there is still people dying every year at the hands of the police. Most of this work will be difficult, and changing people's minds is not an easy task, especially when dealing with a topic most people view as too taboo for the dinner table. The conversations surrounding sex work have to be brought to the surface and talked about just like any other profession. Training and outreach will hopefully help communities see that sex work is a valid profession just like any other labor profession.

As mentioned before, all aspects of this law and the rollout must include the opinions and viewpoints of sex workers. Sex workers should be involved in every single aspect of the law to ensure a sex worker-centered law that focuses on the safety and protection of sex workers while still allowing a certain amount of freedom in their work. The basis of this law should be the voices of sex workers themselves, and while it may seem far-reaching for any of this to occur at the present time, we have to think about the way in which many of these practices could be implemented today. In the end, not all of these proposals may be feasible, but San Francisco has demonstrated support for sex workers in the past and should now take steps to formally demonstrate support for their cause.

Conclusion:

“Human-rights violations are not individual crimes committed by "bad guys" outside on the street, be they clients, lovers, pimps, or vigilantes; they are crimes of commission and omission perpetrated by bad guys inside legislatures, police departments, and sometimes public health departments and ministries. If we want to make life safer for women [sex workers] who work as prostitutes, we must make sex work amenable to the same kinds of regulations that have reduced the harm to workers in coal mines, textiles and garment industry factories, construction sites, chemical and nuclear plants, and other sometimes hazardous work sites. And to do that, we must bring prostitution, sexual labor, above ground" (Alexander, 93).

California is one of the only places in the US to have recently grappled with the legalization of sex work. San Francisco, in particular, has the potential to be the first city to legalize sex work in the ideal way - with sex workers safety and freedom in mind. Nevada may have legalized prostitution but did so in a way that neither put sex workers first nor emphasized the importance of their work. Nevada only legalized brothels and did not decriminalize sex work in any other respects (The Nevada Independent, 2018). Therefore, sex workers who do not participate in brothels may still be criminalized under the law. Sex work is work, and it is imperative that the law reflects this notion. I did not create a legal framework without problems. All of this work needs to be complicated and critiqued in order to create a framework that actually benefits all sex workers, including those that are most marginalized under the law. This proposal is meant to be a starting point, where we can talk about the harsh realities of sex work, and how the law may be able to alleviate the multiplicity of nuances seen within sex work.

Sex work is not unlike any other physical gendered profession. Mining, for example, is seen through an extremely gendered lens. Miners are assumed to be strong, male, and willing to accept the health consequences of their work. Although, this comparison can be complicated by acknowledging that most of the miner's protections are only for looks, rather than for actual safety. Miners and other low-income positions within society are often not actually protected by

many of the policies put forth by large corporations or the government. To this point, the policies regarding sex work will be different because sex workers are not governed or paid by large corporations or the government, they are paid directly from clients. Sex work is similar to mining because it is gendered, to the extent that the law refers to “prostitutes”, within its legal framework, a term which automatically implies a feminization of sex workers. States were able to create nuanced and complicated laws that protected miners, so why not try to do so with sex work?

Critics may ask why you would ever want sex work to be a dinner table topic or something their daughters may one day aspire to be. The goal is not to create a profession where daughters are aspiring to be sex workers, but it should also not be seen as a bad thing if someone grows up and wants to be a sex worker. Just like mining, sex work may not be the most desirable profession, but it is a realistic one for many people, and if people are going to engage in sex work the law has to protect them, just like it protects miners. Sex work should be viewed as work, and the law has to reflect the various complications present within sex work, including protecting trans sex workers and sex workers of color. I don't think we should be limiting our children to only participate in the work we may deem acceptable, and the law has to allow room for this profession. I do not think eradicating sex work is feasible under a patriarchal society, and I know that ensuring sex workers equal protection under the law gets us one step closer to justice for all. These injustices can be mitigated under the law.

Throughout this paper, I've confronted the harsh truth about sex work in California and engaged with the complicated and intricate intersections that go into sex work. Sex workers in San Francisco deserve a law that provides them with state-sponsored protections and educates communities on the nature of their work so as to start to eliminate the ‘whore stigma’. In this law,

I wanted to center the voices of those most marginalized sex workers who are often left off the table in discussions about legalization. Street prostitution is one of the more prevalent ways trans sex workers can solicit clients, and it has to be included in the law to allow trans sex workers the right to continue to solicit clients on the street. Many aspects of this law seek to uplift the voices of those who aren't usually heard in a prominent lawmakers' offices. Furthermore, the main premise of this law is to support all sex workers, including those who are stuck between the sliding scale of sex work and sex trafficking. Conversations need to continue to be built with sex workers to undo the damaging, systemic ways we have dehumanized and discriminated against them. The laws and legislation surrounding sex work are messy, and there is no denying that what works for one city may never work for another, but if we don't try and at least start to change these laws, are we willing to let the same cycle continue?

References:

- AB 336 – (2013) Condoms as Evidence in Prostitution, 336.
- Abdul, G. (2019, It's legal to sell sex in Amsterdam, but don't expect the same rights as other workers. *Foreign Policy*,
- Ball, C., Schacter, J., NeJaime, D., & Rubenstein, W. (1997). *Cases and materials on: Sexuality, gender identity, and the law* (6th ed.). St. Paul, MN: West Publishing Co.
- The business of sex* (2013). In Laxmi Murthy, Meena Saraswathi Seshu (Ed.), New Delhi: Zubaan.
- Buzzfeed (Producer), & BuzzFeed (Director). (2018). *Being A legal sex worker in a brothel*. [Video/DVD] youtube.com:
- Bindel, J. (2017, Wed 11 Oct). Why prostitution should never be legalized. *The Guardian*.
- California Penal Code 647 (b),
- California Penal Code 653.20 - 653.28,
- Ditmore, M. H. (2011). *Prostitution and sex work*. Santa Barbara, California: ABC-CLIO, LLC.
- ESPLER. (2018). *Sex work and erotic service provider legal, educational, and research project*, 2018, from <https://esplerp.org/>
- Federal Law (Title 8, Chapter 12, Sections 1182, and 1328)
- 8 U.S. Code § 1182 - Inadmissible Aliens
, 1182, 1328
- Fitzpatrick, A. C. (2013). Women of ill fame: Discourses of prostitution and the American dream in California, 1850-1890. *Bowling Green State University, Ann Arbor*, <https://search.Proquest.com/docview/1717825940?accountid=10207>.
- Gerassi, L. (2015). A heated debate: Theoretical perspectives of sexual exploitation and sex work. *Journal of Sociology and Social Welfare*, 42(4), 79-100.
- Grant, M. G. *Let's call sex work what it is: Work*. Retrieved December, 11th, 2018, 2018, from <https://www.thenation.com/article/lets-call-sex-work-what-it-work/>
- Grant, M. G. (2014). *Playing the whore: The work of sex work* Verso.
- Jennings, A. M. (1976). The victim as criminal: A consideration of California's prostitution law. *California Law Review*, 64(5)

- Kaba, M., & Schulte, B. (2018). *Not a cardboard cut out: Cyntoia brown and the framing of a victim*. Retrieved December 12th, 2018, from <https://theappeal.org/not-a-cardboard-cut-out-cyntoia-brown-and-the-framing-of-a-victim-aa61f80f9cbb/>
- Kesler, K. (2002). Is a feminist stance in support of prostitution possible? an exploration of current trends. *Journal of Sexualities*, 5(2), 219-235.
- Klausner, J. D. (2008). *Decriminalize prostitution - vote yes on prop. K.*, 2019, from <https://www.sfgate.com/health/article/Decriminalize-prostitution-vote-yes-on-Prop-K-3195777.php>
- Kuo, L. (2002). *Prostitution policy: Revolutionizing practice through a gendered perspective*. New York and London: New York University Press.
- Lacsamana, A. E. (2004). Sex worker or prostituted woman? an examination of the sex work debates in western feminist theory. In D. D. Aguilar, & A. E. Lacsamana (Eds.), *Women and globalization*. Humanity Books.
- The Bridge: Critical theory: Feminist legal theory*. Retrieved April 21, 2019, from <https://cyber.harvard.edu/bridge/CriticalTheory/critical3.htm>
- Lister, K. (2017). *Sex workers or prostitutes? why words matter*. Retrieved April 21, 2019, from <https://inews.co.uk/opinion/columnists/sex-workers-prostitutes-words-matter/>
- Lutnick, A., & Cohan, D. (2009). Criminalization, legalization or decriminalization of sex work: What female sex workers say in San Francisco, USA. *Reproductive Health Matters*, 17(34), 38-46. Retrieved from <http://www.jstor.org/stable/40647444>
- Nagle, J. (1997). *Whores and other feminists*. New York: Routledge.
- National human trafficking hotline*. Retrieved April 21, 2019, from <https://humantraffickinghotline.org/type-trafficking/sex-trafficking>
- O'Neill, M. (2001). *Prostitution and feminism: Toward a politics of feeling* Wiley.
- Penal Code: 653.22, Penal Code U.S.C. (a) (1) (2017).
- Policy: Prostitution - City of Amsterdam*. (2019). , 2019, from <https://www.amsterdam.nl/en/policy/policy-health-care/policy-prostitution/>
- Read, K. (2013). 'I ain't nobodies' ho': Discourse, stigma, and identity construction in the sex work community.
- Rindels, M. (2018, The Indy explains: How legal prostitution works in Nevada. *The Nevada Independent*,

- Scoular, J. (2004). The 'subject' of prostitution: Interpreting the discursive, symbolic, and material position of sex/work in feminist theory. *Journal of Feminist Theory*, 5(3), 343.
- Shugerman, E., & White, J. B. (2017). *Prostitution could be legalized in California after case is allowed to go forward - "why should it be illegal to sell something that it's legal to give away?"*, 2019, from <https://www.independent.co.uk/news/world/americas/california-prostitution-legalisation-sex-work-case-allowed-go-forward-a8011306.html>
- Sprankle, E., Bloomquist, K., Butcher, C., Gleason, N., & Schaefer, Z. (25-03-2017). The role of sex work stigma in victim blaming and empathy of sexual assault survivors. *Journal of Sexuality Research and Social Policy* (3/2018), 242.
- St. James Infirmary. (2014). *Condoms as evidence*. Retrieved March 1st, 2019, from https://stjamesinfirmary.org/wordpress/?page_id=2083
- Suhr, G. R. (2013). *Evidence relating to vice crimes (supersedes DB 13-006)* San Francisco Chief of Police.
- U.S. Department of Labor. (2017). *A guide to miner's rights and responsibilities under the federal mine safety and health act of 1977*
- Van der Meulen, E. (2011). Action research with sex workers: Dismantling barriers and building bridges. *Action Research*, 9(4), pp. 370-384.
- Van der Meulen, E. (2012). When sex is work: Organizing for labour rights and protections. *Labour/Le Travail*, 69, 147-167.
- Van, der Meulen, E. (2010). *Sex for work: How policy affects sexual labour, an argument for labour legitimacy and social change*. York University (Canada).).
- Weitzer, R. (2011). *Legalizing prostitution: From illicit vice to lawful business*. New York: NYU Press.
- Winegarner, B. (2018). *These sex workers have sued to legalize their profession*. Retrieved December 11th, 2018, from <http://www.sfweekly.com/culture/these-sex-workers-have-sued-to-legalize-their-profession/>
- World Cities Culture Forum. (2018). *San Francisco*. Retrieved March 13th, 2019, from <http://www.worldcitiescultureforum.com/cities/san-francisco>
- World Health Organization. (2019) *Sex workers: Part of the solution*. Retrieved April 21, 2019, from https://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf
- Wurth MH et al. *Journal of the International AIDS Society* (2013), 16:18626
<http://www.jiasociety.org/index.php/jias/article/view/18626> |
<http://dx.doi.org/10.7448/IAS.16.1.18626>