

Northumbria Research Link

Citation: Graham, Laura, Holt, Victoria and Laing, Mary (2022) Understanding the Law's Relationship with Sex Work: Introduction to 'Sex Work and The Law: Does the Law Matter?'. *International Journal of Gender, Sexuality and Law*, 2 (1). pp. 1-18. ISSN 2056-3914

Published by: Northumbria University Library

URL: <https://doi.org/10.19164/ijgsl.v2i1.1253> <<https://doi.org/10.19164/ijgsl.v2i1.1253>>

This version was downloaded from Northumbria Research Link:
<https://nrl.northumbria.ac.uk/id/eprint/50233/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

Understanding the Law's Relationship with Sex Work: Introduction to 'Sex Work and The Law: Does the Law Matter?'

Laura Graham, Victoria Holt and Mary Laing¹

Abstract

This special issue of *The International Journal of Gender, Sexuality and Law*, edited by Laura Graham, Victoria Holt and Mary Laing, brings together a range of voices and knowledges on the issue of *Sex Work and the Law: Does the Law Matter?* Mirroring global and national sex worker campaigns, official consultations, policy and wider debates over the last two decades, there has been much academic interest in the legal responses to sex work (Scoular and O'Neill, 2007; Graham, 2017; Munro and Della Giusta, 2008). Much of this work has evaluated the varied current legal responses to sex work, how they impact sex workers' lives, and how the law might be reformed. There is also significant academic and governmental interest in comparative research looking at legal responses across jurisdictions (Armstrong and Abel, 2020; Levy, 2014). This special issue takes a broad, critical approach to the relationship between sex work and the law, inspired by Jane Scoular's (2010) question: does the law matter in sex work? In doing so, this special issue offers an interdisciplinary exploration of the complex relationship between law and sex work. This issue addresses global trends towards criminalisation of sex work, often predicated upon stopping trafficking, and considers the impact of these trends on sex workers, their rights, their working practices, and their marginalisation. It further examines the law's response to new and emerging issues, such as COVID-19 and digital sex work, reflecting particularly on the varied impacts of over- and under-regulating sex work spaces. This special issue finally reflects on sex workers' resistance – to current laws, to the expansion of laws, and to their lack of inclusion in debates around law. Throughout this issue, the voices of sex workers are integrated and prioritised, reflecting a commitment to inclusion of expert knowledges around the world.

¹ Laura Graham, Northumbria University. Email: laura.n.graham@northumbria.ac.uk

Victoria Holt, Roehampton University. Email: holtv@roehampton.ac.uk

Mary Laing, Northumbria University. Email: mary.laing@northumbria.ac.uk

Citation Format: Graham, L, Holt, V and Laing, M, 'Understanding the Law's Relationship with Sex Work: Introduction to "Sex Work and The Law: Does the Law Matter?"' (2022) 2 *International Journal of Gender, Sexuality and Law* 1.

Keywords

Sex work; Law; Justice; Human Rights; Criminalisation; Decriminalisation

Introduction

This special issue of *The International Journal of Gender, Sexuality and Law*, edited by Laura Graham, Victoria Holt and Mary Laing, brings together a range of voices and knowledges on the issue of *Sex Work and the Law: Does the Law Matter?* Mirroring global and national sex worker campaigns, official consultations, policy and wider debates over the last two decades, there has been much academic interest in the legal responses to sex work (Scoular and O'Neill, 2007; Graham, 2017; Munro and Della Giusta, 2008). Much of this work has evaluated the varied current legal responses to sex work, how they impact sex workers' lives, and how the law might be reformed. There is also significant academic and governmental interest in comparative research looking at legal responses across jurisdictions (Armstrong and Abel, 2020; Levy, 2014). This special issue takes a broad, critical approach to the relationship between sex work and the law, starting with Jane Scoular's (2010) question: does the law matter in sex work? In doing so, this special issue offers an interdisciplinary exploration of the many-layered relationship between law and sex work. This issue addresses global trends towards criminalisation of sex work, often predicated upon stopping trafficking, and considers the impact of these trends on sex workers, their rights, their working practices, and their marginalisation. It further examines the law's response to new and emerging issues, such as COVID-19 and digital sex work, reflecting particularly on the varied impacts of over- and under-regulating sex work spaces. This special issue finally reflects on sex workers' resistance – to current laws, to the expansion of laws, and to their lack of inclusion in debates around law. Throughout this issue, the voices of sex workers are integrated and prioritised, reflecting a commitment to inclusion of expert knowledges around the world.

Background to the Special Issue

Sex work is one of the most divisive issues in modern feminism, and questions of how the law should regulate the sex industry remain as relevant as ever. Conversations about the regulation of sex work are situated among broader concerns about gender equality, globalisation and globalised sex markets, human trafficking, immigration, public health, and sex worker safety and rights. Yet, in much official political and legal discourse, this latter issue

– sex worker safety and rights – is deprioritised to focus on the others. This is reflected in global trends towards criminalisation of the sex industry.

In recent years, evidence from academic, medical, intersectional feminist, and human rights fields has supported the arguments for decriminalisation of sex work (UNAIDS, 2012; UNDP, 2012, Harcourt et al, 2010). Decriminalisation, it has been argued, is the best way to ensure sex workers' safety, health and human rights. In contrast, political and legislative moves have become more regressive and focused on criminalisation. Legal jurisdictions vary in their legal approach to the sex industry, but nearly all frame the issue as a criminal matter. With the exception of New Zealand, New South Wales and Victoria in Australia and most recently Belgium, every jurisdiction regulates sex work to some degree through a criminal framework.

The past 20 years have seen a sweep of End Demand style laws across the Global North, beginning in Sweden in 1999. These laws criminalise the purchase of sex with the purported aim of ending demand for commercial sex and thus reducing the sex industry, and sending a symbolic message that sex work is unacceptable (Kulick, 2003). Many jurisdictions that have implemented such laws, such as Northern Ireland and Israel, have explicitly framed them around stopping trafficking. With a similar ostensible aim of reducing sex trafficking in the US, the Fight Online Sex Trafficking Act (FOSTA) and Stop Enabling Sex Traffickers Act (SESTA) criminalised any and all websites advertising any form of sex work. Research has shown that criminalisation of sex work, regardless of whether it focuses on sex workers, clients, third parties, or platforms, reduces sex workers' ability to work safely and manage risks (Graham, 2017).

Legal and regulatory frameworks take myriad forms, yet there has been less consideration of how the law, beyond the criminal law, impacts the day to day lives of sex workers. This special edition is framed around the question posed by Jane Scoular (2010), 'does the law matter?' This is an important question, given that legal debate on sex work often focuses on the differences between regulatory approaches, yet evidence demonstrates that contrasting legal approaches often produce similar results (Scoular, 2010). Much ink has been spilt on the harm reduction benefits of decriminalisation, and the dangers of criminalisation, but neither of these ideological opposites - nor the partially criminalised framework or legalisation model - reduce, remove, or increase the numbers of those selling sex. Indeed, sex worker activists often point out that varying levels of criminalisation do not stop people buying sex, nor do they prevent people from selling it. Perhaps, then, it is time to question which laws we evaluate and, further, question the relevance of law at all. This special issue

takes up and carries Scoular's question, to consider law in its multiple forms and its complex and iterative relationship with sex work.

In compiling this special edition, it was important for us to draw on knowledges from academics, activists, and especially sex workers from around the world to examine the intricacies of law and sex work. In doing so, we acknowledge that expertise comes in many forms, and that sex workers' lived experience must be prioritised to understand both the realities of sex work and its relationship with regulation. Across the editorial team, we have experience of sex work, activism, and academia, and we explicitly placed emphasis on a range of knowledges in both our call for papers and by mentoring authors to support writing from a range of communities. We received submissions from all over the world, with some well-known issues being reconceptualised and reimagined, and some new and emerging issues being considered in depth for the first time. We have split the resulting articles into the following themes: End Demand Laws and their Impact; Trafficking and New Laws; COVID-19; Online Spaces of Sex Work and Regulation; Stigma, Citizenship and Colonial Legacies; Resistance; and Reports. The rest of this editorial examines these themes and summarises the papers which feature in the special issue.

End Demand Laws and their Impact

Regulation of sex work across the world appears to be in a state of flux, and in many countries, an uncritical understanding of sex work as a form of violence against women has informed policy and law. As already noted, this has led to the adoption of End Demand-based laws in Sweden in 1999,² Norway³ and Iceland⁴ in 2009, Northern Ireland in 2015,⁵ France in 2016,⁶ Ireland in 2017,⁷ and, most recently, Israel in 2018.⁸ In Petra Östergren's (2017) typology of policy responses to sex work, she calls this approach 'repressive', as compared to 'restrictive' or 'integrative'. This repressive approach aims to eliminate the sex industry, using criminal law and other repressive measures. The negative impacts of End Demand laws have been widely

² 1999 Act Prohibiting the Purchase of Sexual Services (SFS 1998:408).

³ Norwegian General Civil Penal Code, Section 202a: The law against buying sexual services.

⁴ Icelandic Law No. 54 of 2009, which amended the General Penal Code, s206.

⁵ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, s.15.

⁶ Act no 2016-444 of the 13th April 2016, Aiming to Strengthen the Fight Against the Prostitution System and to Assist Prostituted Persons, Article 20, creating Article 611-1 of the Penal Code and amending Article 225-12-1 of the Penal Code.

⁷ Criminal Justice (Sexual Offences) Act 2017, s25, which amends Criminal Law (Sexual Offences) Act (1993) to include s 7A, which criminalises any 'person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute'.

⁸ Prohibition of Consumption of Prostitution Services and Community Treatment (Legislation Amendment) Act 2018, s1, which amends Penal Law 5737-1977[1] to amend s206 whereby 'whoever purchases prostitution services shall be sentenced to six months imprisonment'.

evidenced in Sweden (Levy, 2014), and other jurisdictions (McGarry and Fitzgerald, 2019; Calderaro and Giametta, 2019), highlighting particularly the increase in violence against sex workers under such systems.

In their paper, Thiemann and Shamir add to this evidence, using the case study of Israel. They assess the changes in working practice since Israel adopted the 'Prohibition of Consumption of Prostitution Law (hereafter, End Demand Law) in 2018, coming into effect in 2020. Before the End Demand Law came into force in 2020, Israel had regulated sex work through a set of criminal laws, described by Thiemann and Shamir as 'restrictive'. Yet on the ground, enforcement shifted from permissive to more enforcement-focused over the last decade, with sex workers operating 'in the shadow' of the law. While End Demand style legislative moves have been enacted in countries throughout the world, not all End Demand style laws are the same; Langford and Skilbrei (2022) have drawn attention to the ways that Israel has emphasised the welfarist approach to sex workers and rehabilitation rather than punitive responses regarding client criminalisation. In their paper, however, Thiemann and Shamir suggest that the informal permissiveness that existed in the past, while allowing sex workers to operate, was vulnerable to criticism. They explore the effect of the legislation on sex workers, drawing a nuanced understanding of the ways regulatory approaches interact with the realities of sex work, building on Östergren's typology, and further analysing the distinction between law on the books and law in action. To do so, Thiemann and Shamir pay attention to sex workers' voices not only as the most affected population, who were marginalised in the legislative process, but also as political actors, activists, and aspiring 'governance feminists' in the Israeli context.

Trafficking and New Laws

Alongside a growth in globalisation and increased border control, there has been a rise in economic migration, as well as human trafficking for sexual, domestic, agricultural, and hospitality labour. Within this dislocation and movement of people, some migrant women become involved in sex work (Agustín, 2007; Doezema, 2010). It is clear that the number of migrant sex workers is increasing (NSWP, 2008; Agustín, 2008), and there is significant evidence to suggest that the paradigmatic image of the young and naive (assumed to be female) victim lured and coerced by traffickers is not representative of what is happening (Doezema, 2010). Nevertheless, of all the types of human trafficking, none has commanded quite the same levels of moral outrage as sex trafficking (Connelly, 2015).

The problem with collapsing trafficking into 'prostitution' or perhaps even 'forced prostitution' is that, while debates about the commercial sex trade have (hopefully) moved past the freely chosen/forced dichotomy, radical feminist analysis locates the construction of sexual labour within gendered relations of power: all sex work is exploitation and so the conceptual leap from economic migration to sexual exploitation is not too far. According to this analysis, both of these phenomena are founded on violence and male entitlement and, in both cases, consent is impossible (Ward and Wylie, 2017). If all prostitution is violence against women, then, any migration of sex workers can be 'sex trafficking', sidestepping any need to question or interrogate wider concerns of borders and migration. The conflation creates specific challenges for migrant sex workers as it has stepped up the urgency to eradicate the problem of sexual exploitation and sex trafficking through increasingly punitive means.

With this combined moral indignation and lack of nuance, the eradication of sex trafficking is thus bound up with the eradication of the sexual commerce sector: one necessitates the other. As Doezema (2010) has pointed out, the desire to help unwilling workers and the abused is mixed with a maternalistic desire to discipline those who refuse to acknowledge their victimhood. These combine to form what Agustín (2007) terms a 'rescue industry'; one in which 'social helpers' aspire to save women from 'sex slavery,' but in so doing, limit migrant women to the role of passive victim. Through the construction of the passive victim, the rescue industry's intervention into the lives of migrant women can be justified and the migrant female body can be controlled (Doezema, 2010; Connelly, 2015). These constructions of vulnerability, of victims, and the punitive action to help is the subject of examination in our next papers.

Using Bacchi's (2009) What is the Problem Represented to be? (WPR) methodology, Chandrasena's paper begins with the 'problem' of human trafficking as it is represented in the Australian policy document *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery*. Considering the concept of human trafficking, Chandrasena works backward to the meaning of the word itself, examining the assumptions, silences, and representations of what a 'victim' of human trafficking looks like (Bacchi, 2009; Bacchi and Goodwin, 2013). In this paper, Chandrasena does not assume the meaning of words such as 'trafficking' or 'victim'; instead, she destabilises taken-for-granted claims of 'knowledge' and 'truth' which are presented in the report and exposes how these are used to uphold broader hostility toward migrant workers, compounding their barriers to accessing justice.

The issue of trafficking regularly takes centre stage in the devising and enforcement of legislation around sex work, and this was no different with the creation of FOSTA and SESTA

in the USA. In her paper, Jones demonstrates that marginalised sex workers have suffered the most harmful effects of FOSTA. People of colour, transgender and non-binary people, people with disabilities, and working class and migrant sex workers have undergone economic devastation and severe impacts on their safety since the enactment of FOSTA, not just in the USA, but across the world. Using in-depth qualitative interviews, Jones' paper is a valuable analysis of the undulating effects of the law, and considers its impact on risk, precarity, and inequalities.

DeLacey also questions the validity of FOSTA by considering the assumptions made in its creation. She explores how powerful narratives about sex trafficking were used to convince lawmakers to vote in favour of legislation, while those who spoke out against this narrative were ignored or silenced; those who were expected to be most impacted by FOSTA (e.g. sex workers) were excluded from the discussion. By using phonetic analysis (Flyvbjerg, 2001) and Bacchi's (2009) WPR, DeLacey gives insight into the law-making process and how it can be shaped by various actors and ideologies. She highlights how it is not just the letter of the law that can matter, but that the very mechanisms by which the law comes to be will impact and shape how sex workers negotiate their work in what is already a hostile and criminalised context.

COVID-19

The past two years have shown us with stark urgency the fluidity of the law in both implementation and meaning. Towards the end of 2019, and into 2020, COVID-19 swept the globe. In efforts to prevent transmission of the infection, national lockdowns were announced in many countries. These took different forms, but most involved restrictions of movement, closure of all except the most essential business and services, schools, colleges and universities, and the implementation of a mandate to stay at home and work from home wherever possible. Lockdown rules were in many places enforced by laws with fines for those breaking them. The pandemic also meant that many people lost jobs and businesses, or were furloughed on a partial salary; those caring for children were also told to provide home schooling, potentially in addition to working from home (if they were able). This particular set of circumstances generated significant challenges, and new forms of scrutiny for sex workers. Many were unable to access government support schemes because of the criminalised nature of their work. Some of those who had before the pandemic provided in-person services, moved to working solely online, or alternatively saw fewer in-person clients. They were joined by a wave of people (including those who had not done any form of sex work before) who sought out additional income through digital platforms facilitating the sale of sexual services and

content, like Only Fans, whose registered profile numbers went from 7.5 million in November 2019, to 85 million by December 2020 (Boseley, 2020).

Some sex workers, however, were unable or unwilling to work online and many experienced extreme hardship and poverty during the pandemic. Moreover, the strict lockdown rules led to both the police and public condemning and enforcing power against those they deemed to be illegally or misguidedly stepping out into public spaces. Thus, sex workers, along with other minority groups, were on the sharp end of what could be described as punitive enforcement of lockdown rules and vigilantism from the public; they were hyper visible both in how they worked and if they worked at all. Sex workers were therefore not only punished for working, but in the global absence of state responses to financially support those working in the now decimated in-person sex industry, responsibility fell to sex workers themselves to respond to the pandemic and its economic toll (Platt et al, 2020; Santos et al 2021).

Globally, sex workers responded to the diverse needs of their community. SWARM, a UK based sex worker collective set up a hardship fund for sex workers financially impacted by the pandemic, and in 2020 was able to provide over £300,000 in hardship funds to sex workers at imminent risk of severe hardship (Swarm 2020). In South Africa, the Sex Workers Education and Advocacy Taskforce and Sisonke, the National Movement of Sex Workers in South Africa, created a 'solidarity fundraiser' for allies to donate to sex workers requiring emergency funds (SWEAT and Sisonke, 2020). In the Netherlands, the Dutch Emergency Fund (n.d) was set up, making small grants of 40 euros available to sex workers to purchase basic items (food, medicine, transport). These are some of the many examples of the ways sex workers have, in solidarity, supported each other through the pandemic. Moving forward from this immediate emergency response, there remains important questions to ask in this context: How did sex workers continue to earn a living during Covid? How were current punitive and repressive laws intersecting with the pandemic? What can the adaptability of sex workers and their will to survive tell us about the importance of law? Two of our papers go some way in addressing these.

Ros and Molnar shed light on some of these issues in their paper detailing collaborative research with a Swiss NGO. They draw on Scoular's (2010) interactionist approach taking into account law, discourse, and social practice, and Rhodes' (2009) framework of the 'risk-producing environment' to look at the how the law produces risk as much as it attempts to manage it. Examining the particular difficulties faced by sex workers in the context of the COVID-19 pandemic, they propose a multi-scalar analysis to better understand the varied

challenges faced by sex workers. They conclude that although the legalisation of sex work has a number of benefits, legislation alone is insufficient if its implementation does not provide 'real access to rights'. In addition to this, they argue that there needs to be careful consideration of the rights of migrants and a focus on inclusive public policy wherein the expertise and experiences are sex workers valued.

Similarly, Giametta, de Riquet-Bons, Macioti, Mai, Bennachie, Fehrenbacher, Hoefinger, and Musto interviewed migrant sex workers in France in the first year of the pandemic in order to consider whether law enforcement and the government response to COVID-19 impacted their extant precarity. Their analysis considers institutional racism within policy and enforcement practices as well as increased stigmatisation by those purchasing their services and civil society more broadly. Manifesting as racism and other types of hate, the authors argue that systemic discrimination against sex workers has been significantly exacerbated by the pandemic, whilst options available to sex workers to make money and survive more broadly have been curtailed. They conclude that there is a vital need for 'intersectional and collaborative public advocacy to end racial profiling in the Covid-19 pandemic response'.

Online Spaces of Sex Work and Regulation

The last decade has seen an expansion of research and literature on sex work happening online and across digital platforms. The role the platform economy plays in our economic, social, cultural and political life is important, and especially so when platforms are key to the 'production, consumption mediation and exchange of many sexual services' (Swords et al. 2021: 2). The regulation of platforms and their use by sex workers is an important issue and is operationalised at multiple levels; for example, platform companies must comply with relevant national legal restrictions but in addition to this, they will have Terms and Conditions to which their users must sign up. Adding an additional layer of complexity, many platforms integrate third party digital solutions into their offer (which also come with Terms and Conditions); one of the more common ways in which this is done, is the integration of payment processors (e.g. Paypal. Apple Pay). Thus, a sex worker signing up to a platform for work purposes will likely have several sets of 'rules' with which they must negotiate and adhere.

In addition to this already complex workspace, important community research has demonstrated that platform spaces can be hostile towards sex workers (Blunt and Wolf, 2020). Punitive implementation of discriminatory Terms and Conditions, sex worker exclusionary third-party payment processors, as well as algorithms and content curation practices are

frequently weaponised against sex workers and those creating NSFW content; shadowbanning⁹ is also common. The active targeting of sex workers in digital spaces has been described as ‘algorithmic warfare’ by Smith, who argues that women, queer people, people of colour, and sex workers are most often victimised (Smith, 2020). In this special issue, two papers consider the impact of non-criminal regulation on sex workers operating online.

Beebe’s article on sex workers’ financial exclusion considers the impact of the private financial industry in the US on sex workers, arguing that third party payment processors act as ‘extra-legal regulation of sex work’. Given many of the platforms used by sex workers globally are based in the US, their framework of criminalisation is exported beyond national boundaries; thus, technologies which stigmatise sex workers, worsen their labour conditions, and ‘enhance vulnerabilities, and exacerbate inequities’ are prevalent and ‘incentivised’. In order to address this, Beebe concludes by recommending global decriminalisation of sex work and the de-gentrification of physical and digital public spaces so communities can be served democratically.

Rachel Stuart’s article examines what a lack of state-level regulation in camming spaces means for sex workers. Drawing on Deleuze and Guattari’s (1988) theory of Smooth Space and zemiological approaches to social harm, Stuart examines how camming site regulations cause performers to experience harm that state level laws do not address. She argues that lack of state level regulation means that damages experienced by female performers are not generally criminal but nonetheless are harmful, and when performers do experience crime, the non-territorial nature of the internet prevents action from being taken. Stuart explores whether law can be relevant in the context of webcamming, arguing that law will always limit the potential profit of any form of sex work. The further from the law a form of sex work is situated, she argues, the greater likelihood of corporate involvement and profiteering; in the case of webcamming, corporations situate themselves beyond state control, beyond the paywall. Finally, she argues that knowledge of other areas of the law, and particularly copyright law, can help camming performers to protect themselves from some of the harms faced in camming.

⁹ Shadowbanning is the practice of making online content (and often that which is deemed risky) less visible, invisible, or un-searchable on platforms or websites.

Stigma, Citizenship and Colonial Legacies

Colonial relations have played a significant role in shaping laws and attitudes to sex, sexuality, and sex work in former colonies. Kozma (2017) has described how European colonisers controlled the migration of sex work within, between, and from their colonies, and set the policies and laws that restricted sex work. Colonial powers also controlled urban planning, segregating 'vice' from 'respectable' areas of the colonised countries (Kozma, 2017). Through this control, colonialisation has and continues to spatially separate sex workers from other members of their communities. The effect of colonialisation relates not only to physical space; rather, colonial attitudes which have shaped and continue to shape understandings of 'acceptable' sexualities. For example, colonial stereotypes of African and Asian women as 'exotic' and hypersexual (Said, 1978) shape attitudes about sex work in and sex workers from former colonies. Research has also noted the effects of colonisation on sex work, including deep societal stigma whereby sex workers are seen as 'vectors of disease' and sexually immoral, creating barriers to sex workers advocating for legal reform or for their rights (Mgbako and Smith, 2011).

Aantjes, Crankshaw, and Freedman's article in this issue continues with this line of research, considering sex work and the law in four Southern African countries. In their research, they find that although sex work is not fully criminalised, the colonial past of the region is visible in societal norms and stigmatising attitudes towards sex workers that manifest through 'relic understandings of social order and gender roles'. They outline how historic concerns around gender persist, leading to a context wherein sex workers are at risk of violence from both the system and the community. As per Scoular (2010), Aantjes, Crankshaw, and Freedman recognise the importance of decriminalisation, but stress that that the criminal law is one mechanism of control amongst many; and crucially, that navigating the tension between the global north and south amid colonial history is complex.

Stigmatisation also has an impact on sex workers' recognition as citizens and enjoyment of citizenship rights. Laws in many jurisdictions, whether former colonies or otherwise, symbolically and physically separate sex workers from the rest of the citizenry (Graham, 2017). Discourses, policy and law that frame sex workers as either the perpetrators or victims of crime perpetuate this separation, especially when citizenship is constructed around fear of crime (Graham, 2017; Simon, 2007). As Simon (2007: 109) notes, 'government programs not only serve citizen interests, they help constitute them'. As such, where individuals or groups are not understood as part of the citizenry, their interests are not prioritised as citizen interests and this has material impacts on their lives. Drawing on the

relationship between sex working and citizenship status, Gaynor and Gifford explore the extent of sex worker stigmatisation in law and policies in the UK. Rather than being protected as vulnerable, the operationalisation of citizenship has prevented sex workers from enjoying full status as citizens by way of discrimination, lack of resources, and stigma. Gaynor and Gifford demonstrate this by using the example of 'exiting' programmes in the UK, an under-researched area of sex work policy, showing how these programmes reinforce the exclusion of sex workers from society whilst ostensibly claiming to help, much like programmes claiming to help 'trafficked victims'.

Resistance

Resistance and defiance can take many forms. It can be sex workers resisting laws which criminalise their livelihood, and continuing to work and organise in the face of encroaching and oppressive legislation. It can be sex workers conducting their own research about their own communities, away from exploitative practices of neoliberal higher education. It can be finding ways to manage and reduce stigmatisation such as insisting on the term 'sex worker' and not 'prostitute'. These forms of resistance often pertain to the overarching legal framework, but here we suggest that by considering the space away from the decriminalisation vs. criminalisation debate, new discussions can be had about who is calling for sex workers to be protected and how; which knowledge is being produced and by whom; what language is telling us and how it is used. Three of the articles in this special issue consider these discussions, and the role of sex worker resistance.

Drawing on a community-based participatory research (CBPR) approach in Kenya, Woensdregt's article illustrates a close and mutually reinforcing nexus between criminalization of sex work and same sex activities, sex work stigma and homophobia, as well as a resulting climate of impunity for perpetrators. She examines sex workers' resistance to laws in Kenya, where criminal laws and stigma shape sex workers' vulnerability to violence. By understanding sex workers as agentic actors, she demonstrates how sex workers respond to, rework, and resist (Katz, 2004) this repressive landscape of violence. Woensdregt argues that sex workers mitigate the risk of experiencing violence by 'getting by' and 'getting ahead', while sex worker organisations support them to engage in collective resistance. This analysis supports an argument for a progressive and morally neutral means of governing sex work in order to promote Kenyan sex workers' safety. She emphasises, however, that action should extend beyond legal reform and include efforts to address stigma associated with sex work, including by funding sex worker led organisations to better equip them in their response to and resistance of violence.

Anti-police and anti-prison industrial complex politics, or 'abolitionism' is growing around the world, but in spaces of sex worker rights organising, the term 'abolitionism' does not have that meaning. Rather than being commonly understood as a racial justice movement, the term abolitionism has been co-opted by a particular strand of anti-sex work feminist activism that calls for increasingly punitive and carceral responses to abolish the sex industry. This has resulted in competing narratives about modern day slavery because, while abolitionist feminists such as Angela Davis (Brooks, 1999; Davis, 2003; Davis et al, 2022) explicitly call for the decriminalisation of sex work as part of their abolitionist politics, anti-sex work feminists wish to connect their attempts to 'abolish' the sex trade through criminalisation to the abolition of slavery (Smith, 2020). This semantic sleight of hand by those who wish to abolish the sex industry in the name of preventing slavery is criticised by Jackson in her article in this issue. By conducting an intersectional triangulation of US sex worker rights ideology, anti-sex work neo-abolitionism and racial justice abolitionism, Jackson illuminates how prostitution neo-abolitionism misleadingly uses US 'slavery language' to push for increased criminalisation and policing. This is in fundamental opposition to the racial justice and prison industrial complex abolitionists who challenge brutal policing and mass incarceration, which disproportionately targets people of colour, transgender, and gender non-conforming people, and those who engage in transactional sex. Jackson's article examines resistance to both the law and punitive sex work policy, and the language used to describe both.

For some, resistance against state control of sex workers means resistance against all laws, even when ostensibly created to support sex workers' rights, such as those looking to include 'sex worker' as a protected characteristic when considering hate motivated violence in the UK. The inclusion of sex workers in policing hate crime policy was implemented in Merseyside in 2002, and Yorkshire in 2017 (Sanders and Campbell, 2021). Sanders and Campbell (2021) have argued that this approach has its advantages: it encourages a more coordinated approach to crimes against sex workers, as well as having an educative and awareness raising function around the discrimination they face. In their paper, Holt and Gott resist the idea that increased hate crime legislation will reduce violence against sex workers, suggesting that it may in fact put sex workers at even greater risk of harm by increasing their interaction with the police. They emphasise that there is limited evidence that higher sentences deter hate crime offenders, and that it is almost impossible to assess whether this type of legislation even provides the educative function it claims to. Drawing on years of involvement in sex worker organisation, they instead argue that full decriminalisation of sex work is the most effective first step to responding to violence against sex workers, rather than increased legislation and tougher sentencing. In doing so, they resist the push for more law.

Reports

As editors we remain committed to grassroots knowledge production, and clearing the way for sex workers to generate their own reports and papers, instead of speaking through academics to have their ideas and arguments disseminated. We close our special edition, then, with two special reports created by sex workers themselves.

Our first report is by the English Collective of Prostitutes based on findings they presented at an event they held November 2020. *Sex Workers: Access to Justice* brought together sex workers, frontline workers, academics, and human rights organisations to listen to sex workers telling their experiences of violence, and the consequences of reporting these incidents to the police. Their stories were bleak. The report details the obstacles from all sectors of the state: from not being believed as victims, to being identified as a ‘victim of trafficking’ and forcibly repatriated. While these experiences are violent, aggressive, and carceral, the ECP report ends optimistically, with recommendations for action and future change.

Finally, Marshall, themselves a non-binary queer sex worker, spoke to other sex workers in the LGBTQ+ community about working during the pandemic. As we suggested earlier, sex workers became both hyper visible and forgotten; at once punished for working, and left out of state support. Marshall spoke to sex workers across the sex working spectrum – indoor and outdoor workers, content providers and strip club performers – to see how working in a criminalised climate during a pandemic, as someone who is marginalised, was experienced. Unsurprisingly, Marshall’s report provides a grim picture of what sex working could be like in a more criminalised climate (Holt, 2021). The multiple marginalisations of queer workers only heighten the risks of a livelihood already beset with violence and uncertainty.

Drawing together the fifteen contributions to this special issue, we can see that the relationship between law and sex work is multi-dimensional, situated, and goes far beyond the distinction between state-level criminal law responses. Sex workers interact in the law in many ways, from engagement with state actors such as the police, to responding to contractual terms of services on sex work platforms. Sex workers are not simply objects of the law; as agential actors, sex workers also negotiate and resist law. This special issue provides further evidence of the need for law and policy makers to listen to and include sex workers when creating policies that affect their lives.

References

Agustín, L. (2007). *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. London: Zed Books.

Armstrong, L. and Abel, G. (2020), *Sex Work and the New Zealand Model: Decriminalisation and Social Change*. Bristol: Bristol University Press.

Bacchi, C. (2009). *Analysing Policy: What's the Problem Represented to Be?* Australia: Pearson.

Bacchi, C., & Goodwin, S. (2016). *Poststructural Policy Analysis: A Guide to Practice*. New York: Springer.

Blunt, D., & Wolf, A. (2020a). Erased: The Impact of FOSTA-SESTA and the Removal of Backpage. *Hacking/Hustling*.

Boseley, M. (2020, 22 December). 'Everyone and Their Mum is On It': OnlyFans Booms in Popularity During the Pandemic', *The Guardian*, available at: <https://www.theguardian.com/technology/2020/dec/23/everyone-and-their-mum-is-on-it-onlyfans-boomed-in-popularity-during-the-pandemic> (last accessed 30 June 2022).

Brooks, S. (1999) 'Sex Work and Feminism: Building Alliances Through A Dialogue Between Siobhan Brooks and Professor Angela Davis'. *Hastings Women's Law Journal*, 10, 181 – 187.

Calderaro, C., and Giametta, C. (2019). 'The Problem of Prostitution': Repressive Policies in the Name of Migration Control, Public Order, and Women's Rights in France' *Anti-Trafficking Review*, 12, 155–171.

Connelly, L. (2015). 'The Rescue Industry: The Blurred Line Between Help and Hindrance'. *Graduate Journal of Social Science*, 11(2), 154-160.

Davis, A. (2003). *Are Prisons Obsolete?* New York: Seven Stories Press.

Davis, A., Dent, G., Meiners, E., Richie, B. (2022). *Abolition. Feminism. Now*. Chicago. Haymarket Books.

Deleuze, G., & Guattari, F. (1988). *A Thousand Plateaus*, trans. B. Massumi. London: Continuum.

Doezema, J. (2010). *Sex Slaves and Discourse Masters: The Construction of Trafficking*. London: Zed Books

Dutch Emergency Fund (n.d.). Available at: <https://www.dutchemergencyfund.nl/info> (last accessed 30 June 2022).

Flyvbjerg, B. (2001). *Making Social Science Matter: Why Social Inquiry Fails and How it Can Succeed Again*. Oxford: Cambridge University Press.

Graham, L. (2017). 'Governing Sex Work Through Crime: Creating the Context for Violence and Exploitation'. *The Journal of Criminal Law*, 81(3), 201–216.

Harcourt, C., O'Connor, J., Egger, S., Fairley, C., Wand, H., Chen, M., Marshall, J., Kaldor, J., and Donovan, B. (2010). 'The Decriminalisation of Sex Work is Associated with Better Coverage of Health Promotion Programs for Sex Workers'. *Australian and New Zealand Journal of Public Health*, 34(5), 482-486.

Holt, V. (2021, 14 April). 'The Pandemic Has Given Sex Workers a Grim Taste of Criminalisation', *Novara Media*. Available at: <https://novaramedia.com/2021/04/14/the-pandemic-has-given-sex-workers-a-grim-taste-of-criminalisation/> (last accessed 30 June 2022).

Katz, C. (2004). *Growing up Global: Economic Restructuring and Children's Everyday Lives*. Minneapolis: University of Minnesota Press.

Kozma, L. (2017). 'Prostitution and Colonial Relations'. In Rodríguez García, M., van Voss, L., van Nederveen Meerkerk, E (eds.), *Selling Sex in the City: A Global History of Prostitution, 1600s-2000s*. Leiden: Brill.

Kulick, D. (2003) 'Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration'. *Anthropological Theory*, 3, 199

Langford, M., and Skilbrei, M. (2022). 'Branding the Nordic Model of Prostitution Policy'. In Byrkjeflot, H., Mjøset, L., Mordhorst, M., and Petersen, K. (eds.) *The Making and Circulation of Nordic Models, Ideas and Images*. Abingdon: Routledge, 165-191.

Levy, J. (2014). *Criminalising the Purchase of Sex: Lessons from Sweden*. Abingdon: Routledge.

McGarry, K. and FitzGerald, S. (2019). 'The Politics of Injustice: Sex-working Women, Feminism and Criminalizing Sex Purchase in Ireland', *Criminology & Criminal Justice*, 19(1), 62–79.

Mgbako, C., & Smith, L. (2009). 'Sex Work and Human Rights in Africa'. *Fordham International Law Journal*, 33(4), 1178-1220.

Munro, V., and Della Giusta, M. (2008). *Demanding Sex: Critical Reflections on the Regulation of Prostitution*. Ashgate: Aldershot.

Östergren, P. (2017). 'From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies'. Available at: <<https://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies>> (last accessed 30 June 2022).

Platt, L., Elmes, J., Stevenson, L., Holt, V., Rolles, S., and Stuart, R. (2020). 'Sex Workers Must Not be Forgotten in the COVID-19 Response', *The Lancet*, 396(10243), 9-11.

Rhodes, T. (2009). 'Risk Environments and Drug Harms: A Social Science for Harm Reduction Approach'. *International Journal of Drug Policy*, 20(3), 193-201.

Campbell, R., and Sanders, T. (2021). *Sex Work and Hate Crime: Innovating Policy, Practice and Theory*. London: Palgrave Macmillan.

Said, E. (1978) *Orientalism*. New York: Pantheon Books.

Santos, G. et al (2021), Economic, Mental Health, HIV Prevention and HIV Treatment Impacts of COVID-19 and the COVID-19 Response on a Global Sample of Cisgender Gay Men and Other Men Who Have Sex with Men. *AIDS and Behaviour*, 25, 311–321.

Scoular, J. (2010) 'What's Law Got to Do With It? How and Why Law Matters in the Regulation of Sex Work'. *Journal of Law and Society*, 37(1), 12-39.

Scoular, J., and O'Neill, M. (2007) 'Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution Reform'. *British Journal of Criminology*, 47, 764-778.

Simon, J. (2007). *Governing Through Crime*. New York: OUP.

Smith, B. (2020). Algorithmic Warfare. Available at: <https://hackinghustling.org/wp-content/uploads/2020/02/ALGORITHMIC-WARFARE-hh-feb2020.pdf> (last accessed 01 July 2022).

SWEAT and Sisonke (2020, 15 July). 'SWEAT and Sisonke say Thank You!', available at: <http://www.sweat.org.za/2020/06/15/sweat-and-sisonke-says-thank-you/> (last accessed 30 June 2020).

SWARM, (2020). How we Ran a Mutual Aid Fund: SWARM's COVID-19 Pandemic Response. Available at: https://static1.squarespace.com/static/58cea5cf197aea5216413671/t/5f3bfd8e95eb430ba8d5463b/1597767057163/SHFR_2020_Final.pdf (last accessed 30 June 2022).

Swords, J., Laing, M., and Cook, I. (2021). 'Platforms, Sex Work and their Interconnectedness'. *Sexualities*.

UNAIDS. (2012). *Guidance Note on HIV and Sex Work*. Geneva: UNAIDS.

UNDP Global Commission on HIV and the Law. (2012). *HIV and the Law: Risk, Rights and Health*. New York: Bureau for Development Policy.

Ward, E., and Wylie, G. (2017). *Feminism, Prostitution and the State: The Politics of Neo-Abolitionism*. London: Routledge.