

Governing Sex work: An Agonistic Policy Community and its Relational Dynamics*

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Abstract:

Few policy scholars have analyzed prostitution laws and the governance of sex work. This is unfortunate because the policy area is associated with societal problems, and the systematic study of public policy was initially conceptualized to address such problems. Moreover, this dearth is problematic for reasons related to how we conceptualize policy processes, actors involved in them, relationships among them, power structures characterizing them, and ultimately the significance of the policy. Prostitution laws in Canada, in terms of recent policy changes through constitutional challenges to criminal provisions and through practices of implementation in local governance, suggest the analytical usefulness of the policy community heuristic in capturing important relational dynamics. With a focus on relationships and not merely on structural and strategic linkages, it can capture many nuances in why dynamics change and what the implications of this change are for policy. Conceptually, this study suggests that agonistic relations emerge within policy communities that may be deeply divided when members experience or perceive catalyst events, cannot easily refute the evidence concerning factors contributing to these events, and converge on a clearly defined response to address problems associated with these events.

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Introduction

Few policy scholars have taken on prostitution law and analyzed the governance of sex work.¹

As Hendrik Wagenaar and Sietske Altink state, despite ‘the abundance of scholarly and popular literature on prostitution, publications on prostitution policy are remarkably scarce’ (2012, 280).²

The buying and selling of sex among consenting individuals, may not appear at first glance to be among the ‘fundamental problems’ of humankind as early proponents of policy analysis might have understood them. But it has gone on for a very long time, and, over the course of its history, it has been associated -- although not necessarily associated -- with discrimination, marginalization, exploitation, violence, drugs, and disease. Often socially stigmatized, forced to work in hidden or darkened places, and exposed to certain potential harms without means of protection or recourse, sex workers have long been vulnerable members of society. Sex workers’ physical safety, psychological wellbeing, and basis of respect have long been at stake. The international body of evidence concerning harms associated with sex work in a criminalized context is increasingly unambiguous. As Kate Shannon, Chris Bruckert, and Frances Shaver state, a “large body of scientific evidence from Canada, Sweden and Norway (where clients and third parties are criminalized), and globally clearly demonstrates that criminal laws targeting the sex industry have overwhelmingly negative social, health, and human rights consequences to sex workers, including increased violence and abuse, stigma, HIV and inability to access critical social, health and legal protections” (Shannon et al. 2014; see Chu & Glass 2013; Csete & Cohen 2010; Dodillet & Östergren 2011; Lazarus et al. 2012; Lowman 2000; Lowman 2004; Shannon 2010; Shannon & Csete 2010; Shannon et al. 2008; Skarhed 2010; Skilbrei & Holmström 2013;

and World Health Organization 2012, cited in Shannon et al. 2014). Yet, there is not only a lack of consensus about the appropriate policy and governance response but also visceral antagonism between those who seek decriminalization and those who seek continued criminalization.

This dearth of analysis focusing directly on prostitution law and sex work governance is problematic for another set of reasons. These reasons relate to how we conceptualize and understand public policy, the processes by which it is formulated, implemented, and enforced, the actors and power structures among them in those processes, and ultimately the significance of the policy. Generally, public policy theory has been developed on the basis of taxation, energy, health, agriculture, resource management, transportation, and industrial policies (e.g., Atkinson and Coleman 1989; Coleman, Skogstad, Atkinson 1996; Hajer 1996; Hecló 1978; Howlett, Ramesh, and Perl 2009; Jordan 1981; Laumann and Knoke 1987; Rhodes and Marsh 1992; Sabatier 1987; and Sabatier and Jenkins-Smith 1993). From extensive studies of these areas, policy scholars have generated a set of primary heuristic devices and models to enable accurate descriptions of and compelling rationales for the particularities of policy processes. Policy cycles, subsystems, networks, and coalitions have emerged as the dominant heuristics. Exploring more obscure policy areas -- areas hidden from the more traditional perspectives of policy scholars, policy makers, and the general public -- can surface (or resurface) the importance of alternative concepts. Indeed, the case of prostitution law and sex work governance in Canada, specifically in recent changes through constitutional challenges to criminal provisions and through local practices in implementation, suggests the analytical usefulness of the concept of policy community in capturing important relational dynamics.

This policy area is complicated in any jurisdiction, and Canada is no exception. The terrain is demarcated by a federal legal framework in which the buying and selling of sex among consenting adults is legal. However, certain fundamentally related activities have been and continue to be understood as crimes. For example, the *Canadian Criminal Code* prohibits owning, operating, or working in bawdy-houses or brothels, living on the avails of prostitution, and communicating in public for the purposes of prostitution. Based on a consideration of extensive evidence, including government-commissioned reports, academic articles, legally sworn testimonies, and experiential accounts, the Supreme Court of Canada unanimously found that these provisions exacerbate serious risks faced by sex workers and violate their security of person interests (Attorney General of Canada 2013). Given the strength of the evidence that these provisions increase risks of violence against sex workers, sex workers and their ally organizations were successful in their legal arguments before the Supreme Court. Although the Court ruled that these provisions were unconstitutional, it suspended its judgment of invalidity until December 2014.

This case, especially when focused on actors in Vancouver, British Columbia stands out as the site of important shifts in policy processes in which sex worker organizations and ally organizations have been the driving force. In response to the risks increased by criminal laws, sex workers formed organizations such as the Downtown Eastside Sex Workers United Against Violence Society [SWUAV] and worked with advocacy and support organizations (e.g., Pivot Legal Society and Providing Alternatives Counselling and Education Society [PACE]) to seek changes to federal criminal laws, municipal policies, and enforcement practices. Through their persistent efforts, these organizations would eventually develop strategic relationships with the

City of Vancouver and Vancouver Police Department (VPD) -- relationships that now extend over more than a decade. These relationships are complex and not easily characterized in terms of the dominance of one policy coalition over the other, as one might expect. Nor can they easily be characterized as collaborative governance. Agonism in this sense refers to relationships that are not based on widespread trust and that are not aimed at consensus building, which are traits typically associated with collaboration in policy processes (Ansell & Gash 2007 and Innes & Booher 2010). Instead, these relationships are better characterized by a deep antagonism that over the years has yielded to forms of agonism in order to respond to a particular problem, which, in this case, is the violence against street-based sex workers and other marginalized women -- violence that includes serial murder. These relationships are productive because they are focused on addressing a specific problem with an acceptable solution framework. They are bolstered, but not solidified, by a convergence on the idea and principles of harm reduction that, in the early- to mid-2000s, had come to be accepted as a response to fatal injection-drug overdoses in Vancouver.³ This ‘collaboration,’ which remains very tense and tenuous, has given rise to important local initiatives aimed at mitigating harms associated with sex work.

In exploring the particularities of this case, the importance of the policy community heuristic becomes apparent. The concept is especially helpful in conveying the diversity of actors, including historically marginalized groups, non-profit civil society organizations, as well as state entities. It also helps in articulating the complexity of relationships, as they evolve over years, among these actors. With a focus on relationships and not merely on structural and strategic linkages, it can capture many nuances in why dynamics change and what the implications of this change are for policy. The emphasis on interaction and communication can

serve in identifying a rationale for policy change. Conceptually, this case study suggests that agonistic relations emerge within policy communities that may be characterized by deep division and animosity when members experience or perceive catalyst events, cannot easily refute the evidence concerning factors contributing to these events, and converge on a clearly defined framework to address problems associated with these events.

I begin with an illustrative overview of the concept of policy community to highlight its essential features. This is followed by a brief discussion of the challenges associated with this policy area. I then shift to a detailed analysis of the organization and mobilization of policy actors, and the development of relationships among them, that have resulted in changes in prostitution laws and sex work governance.

Policy Actors, Relationships, and Community

The concept of policy community is important both as a metaphor and model. Metaphorically, it encourages the student, scholar, and analyst of policy to think broadly about all of the actors coming into communication with the intention of addressing a policy problem. This broad community includes what Paul Pross (1986) and William Coleman and Grace Skogstad (1990) identify as the ‘attentive public’ and ‘sub-government.’ As a metaphor, policy community is more helpful than Michael Howlett, M. Ramesh, and Anthony Perl’s ‘policy universe’ (2009) by conveying communication, understanding, and relationships as opposed to an ever-expanding constellation of actors and potential actors. As a model, the term may serve in yielding an accurate conceptualization of actors, their emotional as well as professional commitment to

addressing a policy issue through increased organization and strategic mobilization, the dynamics of the relationships among them as they evolve in response to catalyst events within the policy area, and, when also incorporating institutional, political, and/or ideational factors, why they are successful in creating policy change. As a model, it alone cannot tell us which of these factors is salient, but it can highlight relevant relationships among actors as they seek to respond to these factors and bring about policy change.

As Skogstad point outs (2008), Coleman and herself employed the concept as a reference ‘to the set of actors, public and private, that coalesce around an issue area and share a common interest in shaping its development’ (208). With reference to works by Hugh Hecllo and Paul Pross respectively, Michael Atkinson and Coleman note that the term has an ‘anthropological’ tenor and implies a ‘shared belief system, code of conduct, and established pattern of behavior’ (1992, 158). They go on noting that the term suggests organic connections among actors (159). From their perspective, the term policy network is reserved ‘for describing the nature of the “linking process” that occurs within this community’ (158). The term policy network captures the structural or power relationship between the actors in the sub-government -- those actively involved in policy formulation and implementation -- of this policy community (Coleman and Skogstad 1990). As Atkinson and Coleman write: ‘Communities suggest people in communication with one another; networks suggest contact’ (1992, 161). Frank Fischer takes a similar angle, noting that ‘policy networks are immersed in larger policy communities’ and that these ‘communities include a variety of policy actors who may or may not be represented in policy networks’ (2003, 33). All members of a policy community share a concern for the policy area and are politically engaged in seeking policy reform. For Fischer, policy community is a

broad and inclusive category of actors and potential actors, 'who need not possess a hard and fast consensus about problems or the appropriate solutions' (ibid.). He goes on: 'The concept of a policy network, in contrast is more restricted to a subset of community members who interact with each other on a regular -- even routinized -- basis, sharing more specific knowledge-based understanding about problems and solutions' (ibid.).

A strength of this distinction between policy community and network is the inclusion of the attentive public composed of those who keep an interested watch on policy developments, but who are excluded from the sub-government/policy network comprising those who make policy decisions (Skogstad 2008, 208). However, as Skogstad notes, the conceptualization of policy community and networks developed by David Marsh and R.A.W. Rhodes (1992) has become predominant. At one end of their continuum are policy communities, which are integrated, stable and exclusive. At the other end are issue networks comprising multiple, loosely-connected, and frequently conflict-ridden members. On Howlett, Ramesh, and Perl's account, community has become a more specific reference to epistemic or discourse communities that monitor and recommend policy options (2009, 83-84). Given the dominance of these conceptualizations, the term policy community has become analogous to, as Skogstad puts it, the Betamax *vis à vis* the VHS video (2008, 209).

Nonetheless, the initial understanding of policy community has analytical strengths, which include capturing a broad and diverse range of actors, who move in and out of the attentive public, the sub-government, policy coalitions, and policy networks. It also captures the personal commitments of actors that contribute to their developing relationships over time. These relationships are developed not strictly in forms of communication focusing on the policy issue

but spill over into less structured and more informal settings. They are, however, bound by a shared concern for the policy area and demarcated by specific contexts, sites, and spaces. Diane Stone (2008) uses the metaphor of an *agora* or public square/market in which policy communities develop. Policy community also has the potential of providing insights into why policy changes by encouraging a focus on evolving relationships among actors. It encourages a focus on the attributes of the community in terms of constituent relationships as they evolve with respect to events, evidence, as well as to institutional, political, and ideational factors.

The policy community brought into focus in this paper includes traditional state actors as well as non-traditional civil society actors. We see the organization, mobilization, and persistent participation of historically and politically marginalized actors in policy processes. We see traditional state actors such as municipal politicians and law enforcement officials. We also see relations between these sets of actors characterized primarily by distrust and conflict. What these actors appear to have in common is a commitment to addressing issues associated with prostitution law and sex work, especially those related to violence, through a shared framework. Again, although remaining characterized by deep tension, apprehension, and suspicion, this policy community has worked to achieve goals of harm reduction in a conducive institutional and political context.

Prostitution Law and the Policy Challenges of Sex Work

Debates about the legal status of prostitution can be exceedingly polarizing. Generally speaking, two broad but deeply opposing positions exist among activists, scholars, lawyers, and current and

former sex workers. One position represents an abolitionist position that seeks an end to prostitution, typically by criminalizing the buying of sex and offering social programs to sex workers intended to enable them to leave the trade (Ekberg 2004). This position is based on a view of that society is characterized by profound and pervasive gender inequality (e.g., Benedet 2008; Farley 2004 and 2006; Johnston 2011; and Mackinnon 2011). From this perspective, all women are subjected to either the economic, political, or cultural dominance of men. Women who are in lower economic positions, who have been abused, or who are racialized tend to suffer the most. In Canada, remnants of colonization persist in the overrepresentation of Indigenous women in street-based prostitution (Native Women's Association of Canada 2012a and 2012b). In this context, prostitution in all forms is necessarily coercive and violent. Women do not choose to sell themselves for the sexual gratification of men. This is a forced 'choice'.

The other position seeks either the decriminalization or legalization (and regulation) of sex work. Proponents of decriminalization seek the striking down of criminal laws concerning adult prostitution. They do not necessarily seek sex industry specific regulations, but they do seek to ensure that standards, guidelines, and policies concerning workplace conditions and employment benefits are upheld for sex workers and that civil and criminal laws are enforced to ensure their safety. Proponents of legalization seek to strike down criminal laws relating to adult prostitution as well as to implement and enforce industry specific regulations for buying and selling sex, such as those aimed at addressing public health concerns. Some proponents of legalization would seek to uphold the criminalization of street sex work. Proponents of both decriminalization and legalization understand sex work as dangerous because social stigma and criminal provisions

prohibiting it essentially ‘drive it underground’ (e.g., COYOTE 1998 and First/Pivot Legal Society 2010).

Both positions are concerned with eliminating the exploitation of, violence against, and stigma faced by sex workers (or, in the language of the abolitionists, ‘prostituted people’). Both advance well-intended legal frameworks for achieving these objectives. However, it appears that whatever framework is in place, it is ineffective. Indeed, Isabel Crowhurst and her colleagues have recently found in their study of European prostitution law and policies that ‘whatever the regulatory approach upon which they are based -- e.g., criminalization, regulation, abolition -- ‘ they are ‘fraught with ambiguities, lacunae, and contradictions that are reflected in their implementation (or lack thereof), thus often further the vulnerability of individuals operating in the sex industry’ (Crowhurst, Outshoorn, and Skilbrei, 2012).

Is this growing empirical research suggesting that the area is resistant to potentially effective state intervention? Do the central actors participating in the market have strong incentives to resist and deflect legal and policy measures (Wagenaar and Altink 2012 and Pates 2012)? Do they tend to resist all ‘rationalizing schemes’ put in place to govern sex work (Agustín 2008)? I do not believe that this is necessarily the case. It may be, drawing from Wagenaar and Altink’s insights, that as a policy area it is simply ‘less developed than more established policy domains such as health, education, social welfare, or the environment’ (179). But, as they write, this neglect is not an accident, and ‘it is the peculiar nature of prostitution and, by implication, prostitution policy that has resulted in the dearth of attention for policy matters in the field of prostitution’ (181). Sex work typically takes place out of public view and is often shrouded in secrecy. It can be exceedingly difficult to acquire basic data concerning sex

workers, the conditions in which they work, the risks they may face, the social and health services they may need, and the opportunities they may have to exit the trade.

Prostitution laws have typically emerged from a ‘top down’ approach, in which policy makers do not consult with the broader policy community. In Canada, the US, and most European countries, there has been little knowledge transfer from individuals affected by, or organizations and agencies directly involved in navigating, implementing, and/or enforcing criminal laws, health and safety regulations, and licensing, zoning, and nuisance by-laws. Not only have the perspectives and interests of sex workers typically been excluded from these processes but the knowledge concerning the day-to-day realities of sex work and how risks are either exacerbated or mitigated has largely been ignored. This lack of knowledge has resulted in partial understandings of the real-world context in which prostitution laws function. Despite the consistent findings of government-commissioned reports concerning Canada’s criminal provisions against prostitution (e.g., Special Committee 1985; Lowman 1989; Federal/Provincial/Territorial Working Group 1998; Canada 2006; and Oppal 2012), as well as findings of numerous academic articles (e.g., Csete & Cohen 2010; Lazarus et al. 2012; Lowman 2000; Lowman 2004; Shannon 2010; Shannon & Csete 2010; and Shannon et al. 2008), the federal government has resisted reforming its laws. Local actors in Canadian jurisdictions, however, have been working hard to reform the existing legal regime and enforcement practices so that they are more responsive to the experiences and concerns of sex workers.

Policy Change Through the Courts

Indeed, in recent years, former sex workers, current sex workers, and organizations representing sex workers have mobilized and effectively challenged the constitutionality of these laws. In Vancouver, a very important organization has been Pivot Legal Society -- a not-for-profit organization providing legal advocacy for marginalized people in the Downtown Eastside (DTES). In response to the high number of homicide victims among sex workers, characterized as an ‘epidemic of violence,’ Pivot made safety for sex workers one of its original ‘key priorities’ (Pivot 2013b). Thus, in the early-2000s, Pivot partnered with former and current sex workers in a campaign for social and legal reforms. The campaign involved systematically amassing evidence with which to challenge prostitution laws. Pivot’s Sex Work Law Reform project began with 94 sex workers writing statements about the impact of the prostitution laws on their health and safety (Pacey and Bernstein undated). The statements were legally sworn, thus ‘forming a body of evidence based on the direct experiences of sex workers and their interactions with the law,’ and published in Pivot’s *Voices for Dignity* report (2004). This report would be presented to provincial and federal politicians, including to the House of Commons Standing Committee on Justice and Human Rights, Subcommittee on Solicitation Laws. The majority of members of this subcommittee would conclude that existing criminal laws concerning the exchange of sexual services among consenting adults contributed greater harm than good (Canada 2006). Perhaps more importantly for policy change, it would be used as evidence in constitutional challenges of Canada’s criminal provisions relating to adult prostitution.

Another important outcome of Pivot’s project was relationship building and the political organization and mobilization of sex workers in Vancouver. According to Pivot, ‘over 100

street-based sex workers were involved in the development of the project, as well as analysis, data gathering, report writing, public education, and media' for the project (Pacey and Berstein undated). During this project, 'many sex workers developed a strong connection with one another' (ibid.). In the mid-2000s, a group of them formed a steering committee to establish an organization 'run by and for female street-based sex workers that would carry on the fight for sex workers rights in Canada' (ibid.). The Downtown Eastside Sex Workers United Against Violence Society was established in 2005 and became a registered non-profit society in 2007. SWUAV now has a membership of more than 150 sex workers who attend meetings and participate in various projects promoting social and legal reforms to advance sex workers' rights (ibid.). According to Pivot, the 'Voices for Dignity project has been instrumental to Canada's sex workers' rights movement both by giving voice to the experiences of sex workers in legal and policy spheres, and by inspiring social movement participation' (ibid.).

Indeed, in 2007, SWUAV and Sheryl Kiselbach launched an important constitutional challenge of Canada's prostitution laws. Drawing from the evidence compiled in the *Voices of Dignity*, they sought to argue that sections 210 (bawdy-house), 211 (transporting a person to a bawdy-house), and 212 (living on the avails of prostitution), and 213 (communication for the purposes of prostitution) of the *Criminal Code* are violations of sections 2(b) (freedom of expression), 2(d) (freedom of association), 7 (the right to life, liberty and security of the person), and 15 (the equality right) of the *Canadian Charter of Rights and Freedoms*. Also that year, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott, sex workers in Ontario, launched a similar challenge -- a challenge that would make Canadian history. Pivot, SWUAV, and PACE became interveners in this case. In December 2013, the Supreme Court of Canada unanimously

ruled in favor of Bedford, Lebovitch, and Scott that all three provisions violated the security of person rights of sex workers (Attorney General of Canada 2013). The evidence, in the form of sworn testimonies, government reports, and academic papers, presented in *Bedford* very strongly supported the decriminalization of certain activities associated with prostitution.⁴

Sex workers thus took advantage of the institutional opportunity provided by the *Canadian Charter of Rights* to push policy change through the courts. They developed relationships amongst themselves in order to launch a concerted and focused effort to reform policy. In doing so, they moved from marginalized positions in the attentive public to active and influential positions in the policy process. Ultimately, the federal government will determine which actors are involved, and whose interests and perspectives become dominant, in formulating a new legal regime and legislation for prostitution. But any new laws must uphold the security of person rights of sex workers, which is a standard established in *Bedford* on the basis of evidence that they provided and arguments that they made.

Policy Change in Implementation and Enforcement

Other significant policy changes have occurred in implementation and enforcement on the ground. Vancouver's policy community focusing on sex work may well be ahead of the curve in North America in terms of the organization among constituent actors and the collaboration among them. Members of this community that are especially active in navigating and contesting existing laws to mitigate their harmful effects include sex workers, as well as advocacy and support organizations either working closely with and on behalf of sex workers. Other members

of this community that in recent times have attempted to address issues of violence against sex workers include the City of Vancouver and VPD. Historically, there has been intense animosity between sex workers, law enforcement officials, and the municipal government. It is well documented that City policies displaced sex workers to areas prone to violent crime and that the VPD failed to take seriously the claims of sex workers regarding violence against them (e.g., Oppal 2012, Vol. I, Vol. IIa, and Vol. IIb).

We can now understand these actors as forming an agonistic policy community focused on reducing harm associated with sex work. Local actors have interacted with each other for many years, and continue to interact with each other on a frequent basis through formal and informal links, channels, or networks. Again, generalized trust is not a dominant feature of this community. Moreover, it would be a stretch to claim that there is a common culture within this community, but cultural pluralism is true of many (if not most) modern communities. Indeed, beyond cultural pluralism, this community is characterized by diversity. There are traditional state actors involved in this community; there are also non-traditional non-state actors. Typically, non-state actors that are members of a policy community are well-funded and well-connected, especially those that are influential in policy processes. Having resources and standing, these more traditional non-state actors tend to include, for example, corporations, unions, consumer advocates, business and industry associations, national organizations representing Indigenous peoples, and large environmental non-profit organizations. In this case, we see active non-traditional non-state actors, often existing on meager budgets and meeting only sporadically. Their membership includes politically marginalized women who work or have worked in the sex trade. Many suffer the lingering effects of colonialism. Many

live in material poverty. As a consequence of Canadian laws concerning prostitution, many have been criminalized. These are grassroots, small-scale organizations consisting of highly motivated individuals who draw directly from lived experiences to seek legal reform and policy change.

Vancouver's policy community has grown out of a dynamic context characterized by both extreme violence against women living and working in the DTES and enormous perseverance of them, their friends, and families. The DTES is one of Canada's prime centers for trade in cocaine and heroin, and it is one of the country's poorest neighborhoods. Many suffer from the adverse effects of social alienation, destitute poverty, and colonialism. Women from the DTES have been abused, disappeared, and murdered for decades. In the mid-1980s and well into 1990s, the neighborhood witnessed an exponential increase in violence against sex workers, including serial murder (Lowman 2000 and 2004). As Lowman writes, after 1985, "the year in which the communicating law was enacted, there was a large increase in British Columbia of murder of women known to prostitute" (2000, 1003). Between 1995 and 1998, 16 sex workers had disappeared from the DTES; by 1999, this number grew to 22 (Lowman 2000, 995-996).

While the site of great tragedy, the DTES is also a nexus of strength, persistence, and organization all of which have contributed to effective political mobilization. In response to the violence against women from and in the DTES, members of the local community began organizing to provide support to vulnerable women, as well as grieving friends and families of victims of disappearance and murder, and to increase social and political awareness of this violence. At the forefront was the February 14th Memorial March Committee, which was established after the death of a Coast Salish woman on Powell Street in the heart of the DTES in

1991. For the last 23 years, this committee has organized an annual march on Valentine's Day to honor and remember missing and murdered women. The march, now held in cities across Canada, brings together thousands to express grief and anger at failures 'to protect women from the degradation of poverty and systemic exploitation, abuse and violence' (Women's Memorial March 2012). By the late-1990s, the Vancouver march had become a very public way of exposing violence against vulnerable women. Over the years, it contributed to increasing the visibility of issues related to missing and murdered women including biases within local and neighboring police forces and judicial system that impeded a more timely search for them and investigation of their disappearance. The persistent activity by family members of missing and murdered women, the Memorial March Committee, and organizations allied with it, fed directly into an awareness among City officials, provincial politicians, and police departments about the need to take seriously the disappearances of women from the DTES. As Lowman notes, in September 1998, the VPD announced that it would review 40 Vancouver missing women cases dating back to 1971 (Kines 1998, cited in Lowman 2000, 995).

The persistence of the Women's Memorial March, alongside victims' family members, contributed to a political climate conducive for policy change. Their persistence through the 1990s and into the 2000s served in pressuring for a formal response from the provincial government to the violence against women in the DTES. The VPD would, for "several years," privately with the Provincial government, as well as publicly, express concerns about the necessity of an official inquiry (VPD 2010). At the end of the lengthy trial of Robert William Pickton and his appeal to the Supreme Court of Canada, the Attorney General of the province announced the British Columbia Missing Women Commission of Inquiry. In 2002, Pickton had

been charged with the murder of women from the DTES. By 2005, he had been charged with murdering 26 women. In 2007, he was found guilty of the murder of six of them and sentenced to life without parole for 25 years.⁵ In 2010, the Supreme Court rejected his appeal. Announced in 2010, the Inquiry would be chaired by Wally Oppal, a former Attorney General of BC, to engage in fact finding with respect to police activities and investigations concerning women who were reported missing from the DTES between January 1997 and February 2002. Oppal was also given responsibility for fact finding with respect to the decision of the Criminal Justice Branch of the BC Department of Justice in January 1998 to enter a stay of proceedings against Pickton after he had been arrested for attempted murder, unlawful confinement, and aggravated assault in 1997.

In December 2012, Oppal released his report, which concluded that the ‘retrenchment of social assistance programs, the ongoing effects of colonialism, and the criminal regulation of prostitution and related law enforcement strategies’ combined to marginalize women in the DTES (Oppal 2012, Vol. III, 12). Although academic articles, government reports, and sworn testimonies had been substantiating such claims for many years, Oppal acknowledged

a clear correlation between law enforcement strategies of displacement and containment in the period leading up to and during my terms of reference and increased violence against prostitutes. The fear of police harassment or arrest leads prostitutes to rush transactions, jump into cars quickly, and move to dark or more isolated areas. The rushed transaction denies the sex worker the time to innately sense whether a client is a ‘bad trick,’ and moving to a darker, isolated area puts her in a more dangerous environment (Vol. I, 110).

In his words, this ‘tenuous status was reinforced by police failings that further discounted and discarded the women’ (Oppal 2012, Vol. III, 12). In his report, Oppal identifies multiple ‘critical,’ ‘colossal,’ and ‘complete’ failures on the part of the police to adequately respond to this crisis of missing and murdered women (Oppal 2012, Vol. IIa and IIb). Although widely criticized for reasons related both to the procedures by which it was produced and the substance of its findings and recommendations (e.g., Family of Diane Rock et al. 2011 and Coalition for Missing and Murdered Aboriginal Women and Girls 2013), the Commission’s report bolstered arguments that criminal provisions concerning adult prostitution exacerbate and perpetuate violence against sex workers.

The community organizing and mobilization that took place in the DTES served in raising awareness about the enormous violence against vulnerable women, many of whom participated or participate in sex work. In turn, this awareness, along with the Inquiry, contributed to a political context in Vancouver conducive to policy change in the implementation and enforcement of prostitution laws. The Inquiry, and the likelihood that it would expose police failures, may have further prompted the City and VPD to seek changes in their relationships with the sex worker community. The prescience of a damning report may have further spurred these actors to take concrete steps toward producing effective strategies to minimize the risks of violence associated with sex work. In addition to increased public awareness and heightened political pressure, the evidence was becoming increasingly irrefutable that containment policies and enforcement strategies were exacerbating the risks of violence faced by sex workers. Moreover, these actors converged on a framework for a solution comprising principles of harm

reduction, which had been effectively applied by the City to curb fatalities due injection-drug overdoses. Finding common ground on the framework of harm reduction, sex workers, the VPD, and City were able to focus on specific initiatives.

When Antagonism evolves into Agonism

Among these initiatives were the VPD's *Sex Work Enforcement Guidelines*, which may be unique in North America. These guidelines emerged from a long process, which in recent years involved collaboration with Pivot as well as other organizations working closely with and/or on behalf of sex workers (e.g., Women's Information and Safe House [WISH], BC Coalition of Experiential Communities, Peers Vancouver Resource Society, and PACE) (VPD 2013). In the *Guidelines*, there appears to be a substantial recognition of the reality in which enforcement takes place. As stated in the *Guidelines*, the police are obligated to enforce the laws of the country but they have 'considerable discretion' in this enforcement (VPD 2013, 2). The *Guidelines* go on to articulate basic principles to serve as guidance in this enforcement, which appear to be based on the experiences and knowledge of sex workers. Salient principles include ensuring the safety, respect, dignity, and well being of sex workers and maintaining a proportionality between the risk of a situation involving a sex worker and the enforcement response to this situation. The *Guidelines* state explicitly that sex work involving consenting adults is not an enforcement priority. According to the *Guidelines*, 'Enforcement action will be taken in situations deemed "high risk" due to the involvement of sexually exploited children/youth, gangs/organized crime, exploitation, sexual abuse, violence, and human

trafficking' (VPD 2013, 2). They make clear that the VPD's priority is to ensure the safety and security of sex workers and that 'police calls regarding violence against sex workers are a priority for assessment and response' (VPD 2013, 2). According to Katrina Pacey, Pivot lawyer and SWUAV counsel, this 'policy represents a very important shift in policing priorities' (Pivot 2013a).

Despite their collaboration in producing these *Guidelines*, members of the sex worker community are deeply skeptical that they will better ensure their safety. In light of this skepticism concerning VPD members' knowledge of and willingness to act on the *Guidelines*, in the early-new year of 2013, SWUAV and Pivot launched an initiative to inform sex workers about the *Guidelines*, to communicate their knowledge of them to police officers, and to encourage reporting of police misconduct. This initiative takes the form of a 'Know Your Rights' card that explains how the *Guidelines* require VPD officers to prioritize the safety of sex workers over the enforcement of the prostitution laws (Pivot 2013a). The card encourages sex workers to contact local organizations that they trust or the Office of the Police Complaints Commissioner to file a formal police complaint 'if they are harassed, targeted, intimidated, followed, told to move along, or arrested by police for prostitution-related offences' (Pivot 2013a). As DJ Joe, co-founder of SWUAV, states, 'Our hope is that by educating sex workers about the policy and the process for making a police complaint, we are sending a message that we are watching the police and, if we need to, we will take action to hold them to account' (Pivot 2013a). In the hopes that other police departments will learn from the Vancouver experience, Pivot and SWUAV have written to Royal Canadian Mounted Police as well as municipal police departments across Canada, encouraging them to engage local sex workers in the development of

a similar policy.

Another example of agonistic collaboration between local organizations and the Vancouver Police Department is the SisterWatch program -- a program that also emerged from collaboration with women serving organizations including Battered Women's Support Services, Aboriginal Front Door, and February 14th Women's Memorial March Committee (VPD, under SisterWatch). The goal of this program is to combat violence against women in the DTES and to improve safety in the neighborhood by providing 'an enhanced police and community response service' (VPD, under SisterWatch). This program came into existence after the death of a young woman who had fallen or been pushed from the window of a single room occupancy hotel in the DTES in 2010. Women from the DTES, their families, and supporters were once again outraged and protested the apparent failures of the VPD to adequately investigate the tragic incident. They occupied VPD headquarters, which at the time was located in the DTES. The VPD responded by developing with local organizations a program to combat violence against women in the DTES and to improve safety in the neighborhood by providing 'an enhanced police and community response service' (VPD, under SisterWatch).

The program has involved installing emergency phones at strategic locations in the neighborhood and implementing changes to how front-line emergency responders communicate with and treat victims of violence and the general public. The program involves a tip line, staffed by 'civilian women who are trained professionals in assisting callers who may be distraught, nervous or afraid' (VPD, under SisterWatch). The VPD sponsors regular SisterWatch town halls to share information and to encourage residents to articulate their concerns. Finally, there is a SisterWatch website serving to share news related to the project and

insights from women in the Downtown Eastside. Although criticized for being ineffective (Reid 2011), SisterWatch is another example of local initiatives being developed by a policy community consisting of traditional and non-traditional actors and organizations that draw directly from experiential knowledge of day-to-day activities within a specific context.

In addition to prompting substantive, context-specific responses from the VPD in implementation and enforcement, local organizing and pressure prompted the City of Vancouver to formulate an action plan and task force to prevent the sexual exploitation of youth and to protect vulnerable women and communities affected by sex work. In particular, the City has been responsive to the Living in Community project. This project grew out of local concerns in the early-2000s that the City's policy of maintaining sex work in the DTES was contributing to the vulnerability of sex workers. Motivated by a recognition that change was needed, and that identifying and addressing underlying issues associated with sex work was needed, 'resident groups, business improvement associations, community policing centres, and neighbourhood houses' formed a coalition that included sex workers and advocacy and support organizations (Gibson and Goldstein 2007, 9). In 2004, they formed a steering committee, which now includes representation from BC Coalition of Experiential Communities, City of Vancouver, Hastings North Business Improvement Association, Hustle Men on the Move, PACE, sex workers, Supporting Women's Alternatives Network (SWAN), Vancouver residents, Vancouver Coastal Health, VPD, and WISH Drop-In Centre Society (Living in Community undated). Its advisory committee members include Ministry of Justice and Ministry of Social Development and Social Innovation. Since its inception, the goals of Living in Community have been 'changes in neighbourhoods and throughout the city that will respect the human rights of all community

members and reduce the harms associated with sex work and sexual exploitation' (ibid.). During its first year, it developed a set of draft recommendations, which was the focus of an extensive community consultation process consisting of neighborhood dialogues, focus groups, and an online survey held throughout the fall and winter of 2006-07. This process resulted in an action plan of recommendations to make communities healthier and safer through prevention/education, harm reduction/intervention, exiting services, and legal responses (Gibson and Goldstein 2007, 5).

The City would eventually respond by developing plans similar to those recommended by Living in Community, which were passed by the City Council in September 2011 (Vancouver 2011). This framework and action plan aim 'to address sexual exploitation and negative effects of sex work' (ibid., 2). Similar to the approach taken by Living in Community, the plans were shaped by input from a diverse range of stakeholders including those active in the local community supporting sex workers. The plans are based on a recognition that success is 'highly dependant upon the cooperation of all partners, including all levels of government, community and research stakeholders from across Vancouver and across the Metro region' (ibid.). They outline principles of 'enhancing prevention and awareness, supporting health and safety, investing in services and supports, including opportunities to exit sex work, and improving alignment with the City's regulatory objectives' (ibid.). They also articulate specific action-oriented directives to promote awareness, safety, and health of sex workers and individuals vulnerable to sexual exploitation.

The first of these is to establish a task force of community organizations, researchers, and government to implement the framework and action plan (Vancouver 2011, under Appendix C).

Comprised of committees that focus on youth, housing, training and awareness, services and support, and by-laws, the task force was involved with the development and reform of programs for improved social housing, medical services, employment, and education.⁶ Examples of specific endeavors include oversight of the following: 1) the enhancement of ‘training, development, and information-sharing opportunities for front line City staff and external government and non government stakeholders’; 2) the achievement of goals of the ‘2012-2021 Housing and Homelessness Strategy and 2012-2014 Action Plan on improving coordination with housing partners and improving the quality of existing services for the homeless, sex workers, youth, and adults who are exiting’; 3) the ‘interdepartmental coordination to enhance monitoring, information sharing, and enforcement action on problem premises where there are safety concerns and potential harm to sex workers, and/or where trafficking/exploitation may be taking place’; 4) the development of a ‘supported employment program’ that includes individuals exiting sex work; and 5) the strengthening of the License By-law in order ‘to better protect the safety and security of sex workers at premises where there is potential for safety risks, human trafficking/exploitation’ (ibid.). In addition, the task force is to oversee the pressuring of provincial and federal government to reinstate ‘funding for community based partnerships to respond to sexual exploitation and sex work,’ to fund childcare programs for Aboriginal people, peer-based life skills programs for First Nations individuals, a 24 hour shelter for sex workers, and to waive ‘processing fees and reduce waiting times for criminal pardons for low income sex workers convicted of prostitution and related crimes’ (ibid.).⁷

Another vital component of this policy community operating in terms of harm reduction are support organizations for sex workers. These organizations make direct contributions to

improving the health and safety of sex workers and mitigating the harmful effects of their criminalization. The WISH Drop-In Centre Society is one of the most organized, providing basic services and goods to street-based sex workers (WISH undated). These basics include hot meals, showers, personal care items, clothing, referrals to programs, basic educational programs, access to nursing care, caring staff and volunteers, and a place to relax with women who share their experience. In addition, the Sex Industry Liaison Officer of the VPD, a position established in 2008, regularly visits the center. In response to requests from sex workers, she visits the center wearing everyday clothes as opposed to her uniform. Her duties include taking bad-date calls, supporting street-based sex workers enter rehabilitation, and accompanying street-based workers going to court against offenders (Reid 2011). Beyond services provided at the WISH drop-in center, WISH in partnership with PACE operates a Mobile Access Project (MAP) (WISH undated, under programs and services). This program operates out of a van (i.e., the MAP van), which provides services to women working on the street from 10:30 pm to 6:00 am, seven nights a week. The MAP van is staffed by women, many of whom have experience in the sex industry. They make as many as 1,400 connections with women each month.

The Mobile Access Project is a prime example of the relational dynamics in the generation of local knowledge, which is relevant to formulating, reformulating, and implementing prostitution laws. The primary focus of the project is to increase the level of health and safety for vulnerable women working the strolls in Vancouver in the night, when few supports are available to them. MAP van staff provides brief respite from the street, coffee, juice and water as well as supplies, including condoms and clean needles. Staff also provides information concerning services specific to the needs of women street-based sex workers and referrals to

shelters and emergency services. MAP staff travel to different parts of the Greater Vancouver Regional District to provide support services, but in the process they also learn about the sex workers in particular corners and strolls, their concerns, and their needs. Navigating the boundaries of existing criminal laws and city bylaws, providing essential health services to sex workers, and learning about their living and working conditions, MAP staff play an important role in this policy area.

Another example of relational dynamics in the development of local knowledge is WISH's Peer Safety Patrol in the DTES (WISH undated, under programs and services). Peer Safety Patrollers are trained in introductory first aid, report taking, incident reporting, professional and personal self-care, de-escalation of conflict, safe handling of hazardous materials, violence prevention techniques, working as a team, communication skills, and self-defense. This training is a source of empowerment for sex workers acting as peer patrollers. In turn, the patrollers develop and expand their experiential knowledge base about the risks that sex workers face and about practices aimed minimizing those risks. While reaching out the sex workers to provide them with 'bad date lists,' personal protection aids, condoms, referrals, and hot chocolate, they also record details about sex workers they encounter, the particular corner they are working, and any concerns they may have.

The Sex Industry Liaison Officer, Peer Safety Patrol, and Mobile Access Project serve in minimizing some of the harms that are exacerbated by the criminalization of prostitution related activities. The programs serve in ensuring that the implementation of these laws takes place in a context in which sex workers have access to basic information and support and health services. Those staffing the programs are essentially ancillary actors in the implementation of laws,

responding to them in ways that minimize their harmful consequences to those they immediately affect. They are also actors in the evaluation of laws in that they access and amass information concerning the lived experiences of sex workers with the law. They facilitate another portal into understanding how laws can have harmful implications for sex workers and how they should be reformed in order to improve the living and working conditions of sex workers.

Conclusion

The governance of sex work spans a complex set of relationships among laws, policies, practices, and actors. The policy community metaphor and model is helpful in making sense of this complexity. In addition to capturing the diversity of actors, it enables us to focus on relational dynamics forged in day-to-day activities that bring these actors together, sometimes antagonistically, sometimes agonistically. In terms of conceptual implications, this study suggests that policy communities characterized by deep division and distrust can become more agonistic in certain conditions. These include the experience or observation of catalyst events, public awareness, overwhelming evidence, and convergence on an established solution.

The community organizing and mobilization that took place in Vancouver's DTES served in raising awareness about the enormous violence against vulnerable women, many of whom participated or participate in sex work. In turn, this awareness, gave rise to a political context in the city in which policy change could transpire in the implementation and enforcement of prostitution laws. Productive relations among policy actors could not have yielded specific initiatives without their convergence of a framework for harm reduction. The Vancouver case

suggests that, when relations of antagonism evolve into forms of agonism, actors in this community can produce strategies to minimize the harms associated with sex work. By tracing their origins, we see that these strategies were driven by non-traditional members of the local policy community and based on their direct experiences with existing laws.

Finally, the case reveals the dispersed nature of policy-relevant activities and knowledge, bringing to the fore non-traditional actors and entities engaged directly in policy reform, implementation, enforcement, and evaluation. It demonstrates the fundamental connection between the laws of the land and practices at the local level, as well as the critical importance of drawing knowledge from the lived experiences of those directly affected by these laws in seeking to minimize the risks they face and maximize opportunities for their empowerment. Ultimately, the case reveals how sex workers have transformed themselves from objects of policy to subjects driving policy change by organizing, mobilizing, and taking advantage of institutional and political opportunities.

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Endnotes

¹ ‘Sex work’ and ‘sex workers’ are terms generally preferred by those who engage or have engaged in consensual commercial sex. Many who work or have worked in the area find ‘prostitute’ and ‘prostituted’ to be offensive. In this paper, sex worker refers to consenting adults who provide sexual services in exchange for money. Sex work is a broad term that includes a diversity of activities, including both contact- and non-contact sexual services. Here, I use it to refer only to contact sexual services. I use ‘prostitution’ only when specifically discussing laws in order to maintain consistency with the language of legislative and judicial actors.

² For exceptions, see Laura Augstín, ‘Sex and the Limits of Enlightenment: the Irrationality of Legal regimes to control Prostitution,’ *Sexuality Research and Social Policy* 5 (2008), 73-86; Isabel Crowhurst, ‘Approaches to the Regulation and Governance of Prostitution in Contemporary Italy,’ *Sexuality Research and Social Policy* 9 (2012): 223-232; Jane Scoular and Maggie O’Neill, ‘Regulating Prostitution: Social Inclusion, Responsibilization, and the Politics of Prostitution Reform,’ *British Journal of Criminology* 47 (2007), 764-778; Barbara Sullivan, ‘When (Some) Prostitution is Legal: The impact of Law Reform on Sex Work in Australia,’ *Journal of Law and Society* (2010), 85-104. 2010; Hendrik Wagenaar, ‘Democracy and Prostitution: Deliberating the Legalization of Brothels in The Netherlands,’ *Administration and Society*, 2006: 198-23; and Ronald Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* (New York: New York University Press, 2011).

³ Since the early- to mid-2000s, the City of Vancouver, the VPD, and local civil society organizations have extensive experience with harm reduction in the area of drug policy. See <http://vancouver.ca/people-programs/four-pillars-drug-strategy.aspx> and <http://vancouver.ca/people-programs/four-pillars-drug-strategy.aspx>, accessed 9 December 2013. See also <http://supervisedinjection.vch.ca/>

⁴ Conversely, the arguments against striking down the impugned provisions were unconvincing. See *Bedford v. Canada (Attorney General)* 2010. See also *Canada (Attorney General) v. Bedford* 2012 and *Canada (Attorney General) v. Bedford* 2013. See also *Factum of Respondents/Appellants on Cross Appeal, Terri Jean Bedford et al.*, SCC (2013) and *Factum of the Interveners, Downtown Eastside Sex Workers United Against Violence Society, PACE Society, and Pivot Legal Society*, SCC (2013).

⁵ The remaining charges were officially stayed. A guilty verdict would not have increased his sentence.

⁶ The task force concluded its work in December 2013. The City of Vancouver is currently overseeing the implementation of improvements.

⁷ The BC Government recently announced over \$5 million in grants to take further action on the Missing Women Commission of Inquiry recommendations and support the prevention of violence against women and youth crime prevention initiatives. These include a \$100,000 grant to PACE “to expand its frontline services by adding an Aboriginal-led outreach team to support sex trade workers of Aboriginal ancestry in Vancouver's Downtown Eastside” and a \$100,000 grant to Living in Community “to facilitate the implementation of the Living In Community collaborative model in other communities and deliver education and awareness workshops.” See

<http://www.newsroom.gov.bc.ca/2014/03/over-5-million-to-fund-mwci-recommendations.html>,

accessed 22 April 2014.