



Master's Thesis in Women's and Gender Studies

**Social Justice for Sex Workers:  
The Effects of Neoliberalism's Punitive  
Turn on Sex Work Policy in Spain**

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Faculty of Humanities, Utrecht University, The Netherlands, 2021

Main Supervisor: Dr. Eva Midden, Utrecht University

Support Supervisor: Dr. Ana Alcázar-Campos, University of Granada





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**Abstract**

There is no specific law regulating sex work in Spain, nor is the selling and buying of sexual services between consenting adults criminalized under the Criminal Code. Nevertheless, it could be argued that Spain's legal framework is akin to the prohibitionist model as it encompasses a series of laws and policies that indirectly criminalize sex workers. Following neoliberalism's punitive turn (Garland, 2001), the behaviors that are considered crimes are no longer addressed through penal welfarism and rehabilitation, but through discipline, punishment, and incapacitation. Extending to all spheres of society, the punitive turn had reverberations in feminist movements who in the 1970s and 1980s began to revindicate harsher penal sentences for crimes of gender violence, including sex work and sex trafficking. Using a decolonial and penal abolitionist feminist approach, this thesis seeks to answer the following question: How do neoliberal politics influence sex work policy in Spain and what are the consequences on sex workers? I use critical discourse analysis to examine two legislative documents that control sex work in the public space in Spain: the "Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona" and the "Organic Law 4/2015, of 30 March, on Citizen Protection and Security." I show how, under the pretense of coexistence, civility, and citizen security, these policies exacerbate stigmatization, vulnerability, and physical, mental, social, and economic violence for sex workers. I argue that the penal system is unfit to address the harms related to sex work as it systematically reproduces violence against racialized and marginalized communities. I argue for social, racial, and economic—rather than penal—justice for sex workers. I conclude by reflecting on possible alternatives to criminalization, including New Zealand's decriminalization model.

**Key words**

Sex work, neoliberalism, criminalization, feminism, Spain

**Resumen**

No existe una ley concreta que regule el trabajo sexual en España. La venta y compra de servicios sexuales entre adultos con consentimiento no está tipificada como delito en el Código Penal. Sin embargo, el marco legal es afín al modelo prohibicionista, ya que engloba una serie de políticas que criminalizan indirectamente a las trabajadoras sexuales. Con el giro punitivo del neoliberalismo (Garland, 2001), las conductas que se consideran delitos ya no se abordan mediante el asistencialismo penal y la rehabilitación, sino mediante la disciplina, el castigo y la incapacitación. El giro punitivo tuvo reverberaciones en los movimientos feministas que en los años 70 y 80 empezaron a reivindicar el endurecimiento de las penas por delitos de violencia de género, incluyendo el trabajo sexual y el tráfico sexual. Utilizando un enfoque feminista decolonial y anticarcelario, esta tesis pretende responder a la siguiente pregunta: ¿Cómo influye la política neoliberal en las leyes sobre el trabajo sexual en España y cuáles son las consecuencias para las trabajadoras sexuales? Realizo un análisis crítico del discurso de dos documentos legislativos que controlan el trabajo sexual en el espacio público: la Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona y la Ley Morada. Muestro cómo bajo la pretensión de convivencia, civismo y seguridad ciudadana,

estas políticas exacerbaban la estigmatización, la vulnerabilidad y la violencia física, mental, social y económica de las trabajadoras sexuales. Sostengo que el sistema penal no es apto para abordar los daños relacionados con el trabajo sexual, ya que reproduce sistemáticamente la violencia contra las comunidades racializadas y marginadas. En lugar de justicia penal, defiendo la justicia social, económica y racial para las trabajadoras sexuales. Concluyo reflexionando sobre posibles alternativas a la criminalización, incluido el modelo de despenalización de Nueva Zelanda.

**Palabras claves**

Trabajo sexual, neoliberalismo, criminalización, feminismo, España

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We are abolitionists of all forms of exploitation, and we are pro-rights: we claim the rights that correspond us from our condition of workers in the structure of this market society...

—Sindicato OTRAS

Abolition means a world where we do not use prisons, policing, and the larger system of the prison industrial complex as an ‘answer’ to what are social, political, and economic problems. Abolition is not just an end goal, but a strategy today.

—The CR10 Publications Collective

Those of us who stand outside the circle of this society’s definition of acceptable women; those of us who have been forged in the crucibles of difference – those of us who are poor, who are lesbians, who are Black, who are older – know that *survival is not an academic skill*. It is learning how to stand alone, unpopular and sometimes reviled, and how to make common cause with those others identified as outside the structures in order to define and seek a world in which we can all flourish. It is learning how to take our differences and make them strengths. *For the master’s tools will never dismantle the master’s house.*

—Audre Lorde, *Sister Outsider*

## Introduction

In the night of July 7, 2016, an eighteen-year-old woman survived a gang rape that transpired during Spain’s week-long Festival of San Fermín<sup>1</sup>, a case now famously known as *La Manada*<sup>2</sup>. It sparked a nation-wide feminist movement that continues to effect change in Spain’s criminal justice system today. Delivered in the wake of the #MeToo<sup>3</sup> movement and after five months of trial, the sentence pronounced by Navarra’s Superior Court of Justice in April 2018 condemned the five men implicated in the rape to nine years of prison on the charges of sexual abuse (rather than sexual aggression<sup>4</sup>). This provoked indignation and a profound sense of injustice amongst feminists who saw reflected in this ruling the ubiquitous heteropatriarchal culture entrenched in all spheres of Spanish society. It set off a wave of protests across the country that foreshadowed an extensive societal debate about the social and legal understandings of sexual abuse, sexual aggression, and rape. More broadly, it questioned the complicity of the judicial system in

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<sup>1</sup> The Festival of San Fermín is an annual event held in Pamplona, in the autonomous community of Navarra in the North of Spain.

<sup>2</sup> The case is known as *La Manada*, which translates to English as “the herd.” This was the name of the Whatsapp group where the perpetrators shared photos and videos of the rape. It was symbolically adopted by the media and the feminist movements to refer to the case and extended to subsequent cases of gang rape (Barbano, 2020).

<sup>3</sup> In Spain, the equivalent of #MeToo is #Cuéntalo and the bulk of the sexual assault and rape accusations took place as this notorious case unfolded.

<sup>4</sup> Spain’s Criminal Code differentiates between sexual abuse and sexual aggression. The latter requires the use of violence or intimidation. The crime of rape is an aggravating circumstance of sexual aggression and implicates longer prison sentences (LOCP, 1995). In this case, the judges considered that neither violence nor intimidation was used and, in accordance with Article 181.3 of the Criminal Code, the perpetrators were accused of sexual abuse with undue influence (SSAPN, 2018).

permitting, reproducing, and justifying state violence against women through the brushing-off of certain offenses, the revictimization of women in legal proceedings, and the profoundly gender-biased views of many judges and operators of the judicial system (Daich and Varela, 2020). After more than two years of legal procedures and unrelenting protests, Spain's Supreme Court of Justice finally overturned the initial conviction in July 2019 and sentenced the five offenders to fifteen years of prison on the grounds of sexual aggression<sup>5</sup>.

This case—not without precedents—culminated in a call for action to create a legislative framework for crimes of sexual violence and define women's consent and sexual autonomy in Spanish jurisprudence. To this end, Spain's Ministry of Equality presented in March 2020<sup>6</sup> the preliminary draft of a new legislation: the “Organic Law on the Comprehensive Guarantee of Sexual Freedom” (APLO, 2021), colloquially referred to as the law “only yes is yes.” Following the recommendations of the Istanbul Convention on preventing and combating violence against women and domestic violence (ratified in 2014 in Spain), the draft bill's main propositions are to make clear affirmative action a requirement for sexual consent (indicating that silence does not entail consent) and eliminate the distinction between sexual abuse and sexual aggression from the Criminal Code<sup>7</sup> (making clear that rape does not only occur when there is violence or intimidation, but primarily stems from the lack of consent). The majority of feminists in Spain agree that this law project represents a step in the right direction for a more egalitarian justice system, especially since feminist movements in Spain have long fought for the eradication of this distinction from the Criminal Code. Instead of centering on punitive methods to respond to offenses of sexual violence, the legislation favors a holistic approach that encompasses attention, prevention, education, and reparation of harm. Yet, the second and latest version of the draft bill, issued in October 2020, incorporates new penal sanctions for sex work, an issue that had not been included in the first draft. I introduce the topic of sex work with this case (to which I will come back to later on) because it represents a recent example of neoliberal politics creeping into the feminist demands for laws and policies that regulate sex work in Spain. And this will be the central focus of this thesis.

Before entering the heart of the matter—sex work—I want to briefly discuss my linguistic choices and the sociopolitical implications of the words and concepts I use in this research. As the linguistic turn of the 20th century made clear, power dynamics are

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<sup>5</sup> Two of the five men were subsequently charged with an additional three years and three months of prison time for robbery with intimidation of the victim's mobile phone (“Confirmada la condena a dos miembros de La Manada por grabar la violación grupal”, 2020).

<sup>6</sup> In March 2020, a national lockdown was imposed in Spain due to the COVID-19 pandemic. Brothels were closed because they were considered a source of infection, resulting in the eviction of thousands of sex workers who lived and worked in these spaces (Medina Martín, 2020). Many sex workers could not access Spain's minimum vital income (ibid.) and found themselves in a situation of extreme precariousness. Despite this, the sex worker community showed great resilience; associations including AFEMTRAS, Colectivo de Prostitutas de Sevilla, Putas Indignadas, Putas Libertarias del Raval, (N)O.M.A.D.A.S, Sección Sindical de Trabajadoras Sexuales de la IAC, Sindicato OTRAS and APROSEX collaborated to launch an emergency fundraising campaign to help sex workers affected by the COVID-19 pandemic: [https://www.gofundme.com/f/tqv3h8?utm\\_medium=email&utm\\_source=product&utm\\_campaign=p\\_email%2B2300-co-team-welcome](https://www.gofundme.com/f/tqv3h8?utm_medium=email&utm_source=product&utm_campaign=p_email%2B2300-co-team-welcome)

<sup>7</sup> The Criminal Code would preserve only sexual abuse as an offense encompassing a wider range of circumstances and penalties (Serra, 2021).



at play in knowledge production; language is neither neutral nor universal. Language not only is a crucial tool in lawmaking, but it is also consequential in constructing the collective imaginary. The distinctions between the terms “sexual abuse” and “sexual aggression” or “prostitution” and “sex work” are much more than discursive; they have very real ideological, material, emotional, and corporeal implications. Because languages express a history and power relations, many words and expressions are imprecise or incomplete (Ricordeau, 2019). As queer theorist Stacey Waite advises, “If there is not a word for what/who you are/mean/do, make one up: queertext, genderqueer, bicurious, cisnormativity. Words become words when we say, write, and circulate them” (Waite, 2019, p. 46).

While some sex workers have recently reclaimed the term “prostitute” (*prostituta*<sup>8</sup> or *puta*<sup>9</sup> in Spanish), in this thesis I use the term “sex worker<sup>10</sup>” to take a political stance in recognizing sex work as a form of work (unless referring to statements or people who use another terminology). Molly Smith and Juno Mac (2018), writers and sex workers, claim that “to say that prostitution is work is not to say it is *good* work, or that we should be uncritical of it” (p. 44). They argue that naming work as work has historically been a key feminist strategy to obtain labor rights. In the 1970s, Wages For Housework declared: “[...] naming something as *work* is a crucial step in refusing to do it – on your own terms” (p. 46). While the sex work industry<sup>11</sup> encompasses an array of different forms of work, such as night clubs, live shows, striptease, BDSM, massage parlors, phone lines, and webcamming (counting with the recent popularization of digital platforms like OnlyFans), my research is strictly concerned with sex work as the exchange of sexual services between consenting adults for some form of remuneration.

In this text, I address two forms of abolitionism: sex work abolitionism and penal abolitionism. Some sex workers, especially Black sex workers in the United States, find the term “abolitionist” inadequate to speak of sex work abolition because it originates from the history of slavery abolition in the United States (Maynard, 2012). Robyn Maynard reasons that:

By hijacking the terminology of slavery, even widely referring to themselves as ‘abolitionists’, anti–sex work campaigners [...] in pushing for criminalization [...] are often undermining those most harmed by the legacy of slavery. As Black persons across the Americas are literally fighting for our lives, it is urgent to examine the actions and goals of any mostly white and conservative movement who [claim]

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<sup>8</sup> In *A Curious History of Sex*, Kate Lister (2020) explains that “[...] when the Spanish conquistadors colonized the Aztecs in 1521, they translated the Aztec Náhuatl word *ahuienime* as ‘prostitute’ or ‘whore’. But this translation was done by Spanish Catholics, and what they saw as ‘prostitution’ was not what the Aztecs saw at all. The word *ahuienime* is more accurately translated as ‘the bringer of joy’, and has religious, spiritual connotations” (p. 9).

<sup>9</sup> The word *puta* (whore) comes from the Latin word *putida*, which refers to something rotten or foul-smelling (Mac and Smith, 2018). Despite its enduring pejorative connotation, the term *puta* has recently been reclaimed by various Spanish-speaking sex workers.

<sup>10</sup> The term “sex work” was first used by the sex worker and activist Carol Leigh in 1978 (Mac and Smith, 2018). In this thesis I use the term sex worker, but it must be said that different communities prefer different terminologies. In Argentina, for example, native sex workers call themselves “women of the night” (*mujeres de la noche*) (Daich and Varela, 2020).

<sup>11</sup> Here, industry refers to the economic and social organization of the selling of sexual services (Gall, 2016).

to be the rightful inheritors of an ‘anti-slavery’ mission which aims to abolish prostitution but both ignores and indirectly facilitates brutalities waged against Black communities. (as cited in Mac and Smith, 2018, p. 78)

As a substitute for “abolitionist,” these sex workers suggest using, for example, the term “prohibitionist.” I must clarify that sex work prohibition and sex work abolition belong to different currents and embody distinct philosophies. Carried by religious and puritan movements, prohibitionism criminalizes all actors involved in the sex work industry, including sex workers. Moreover, prohibitionists typically fail to account for the lived experiences of trans women (even though trans women are widely overrepresented in the sex work industry<sup>12</sup>). In fact, sex work prohibitionists, as well as sex work abolitionists, are sometimes associated with the “trans-exclusionary radical feminist” (TERF) movement. This is because many of them are radical feminists and *some* radical feminists (also referred to as “radfems”) do not consider trans women to be women because, they argue, trans women do not experience the same vulnerabilities (Álvares Ferreira, 2018). It is important to note that, of course, not all prohibitionists and abolitionists are TERFs. For their part, abolitionists do not endorse the criminalization of women because they consider that sex workers are victims. Instead, they target pimps, clients, and other third parties. Despite these discrepancies, for the above-mentioned reason and for the sake of clarity, I use the term “prohibitionist” to refer to sex work abolitionists and “abolitionist” to describe those who defend the abolition of the penal system. Lastly, because this thesis focuses on the Spanish context, there are several words, titles, and citations that I freely translate myself from Spanish to English.

Spain’s current governing coalition is formed by the Partido Socialista Obrero Español<sup>13</sup> or PSOE (translates to English as “Spanish Socialist Worker’s Party”) and the left-wing party Unidas Podemos (translates to English as “United We Can”). The Spanish government and the Ministry of Equality adopt a prohibitionist stance on sex work. On its website, the PSOE states:

[...] while other parties remain in an ideological limbo with respect to prostitution, the PSOE is firmly and decisively committed to its abolition [...] Prostitution represents a flagrant violation of the human rights of the women and children who suffer it on a daily basis. (Ribera, 2020)

Martínez Ribera from the PSOE is right to say that women implicated in the sex industry see their rights violated. However, as this thesis maintains, fostering the abolition and persecution of sex work without first addressing the structural factors that produce it constitutes one of these human-rights violations. In the political sphere, prohibitionist discourses prevail in Spain, but in the legal domain, the country has only partially adopted the prohibitionist model (Villacampa, 2017). There is no specific law overseeing sex work, nor is the selling and buying of sexual services between consenting adults outlawed

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<sup>12</sup> In fact, transgender women of color in the sex trade were the firsts to develop various resisting strategies, including “bad date sheets” that they would distribute in the community to warn each other of potentially dangerous clients (Kaba, 2021).

<sup>13</sup> The Spanish Socialist Workers’ Party is a social-democratic party that has been led by Pedro Sánchez since 2018.

under the Criminal Code<sup>14</sup>. But it could be argued that Spain's current legal framework is akin to the prohibitionist model because it encompasses a series of laws and policies that indirectly criminalize sex workers, including the "Organic Law 4/2015, of 30 March, on Citizen Protection and Security," commonly known as "Law Mordaza" (subsequently referred to as LOPSC), implemented at the state level, and the various civic ordinances enforced at the municipal level. These will be subjected to analysis in the fifth chapter. The forthcoming "Organic Law on the Comprehensive Guarantee of Sexual Freedom" (APLO, 2021) could also impinge on the sex worker community, as will be touched upon in the conclusion.

In this investigation, I start from the assumption that sex work is a patriarchal, sexist, misogynistic, and racist institution—like most other contemporary institutions under patriarchal capitalism. While the statistics concerning the profile and number of individuals involved in the sex work industry are few, contradictory, and inconclusive (largely due to the informal character of the industry), it is fair to say that women are overrepresented. They are the ones who most frequently make use of sex work as a short- or long-term migratory/survival strategy within neoliberal capitalism or, less frequently, opt for it as a preferred career choice. While the majority are women (and women—trans and cis—will be the focus of this thesis), it remains important to acknowledge that people of all genders sell sex; "transgender and cisgender men, non-binary people, and those with indigenous or non-western genders such as hijra, fa'afafine and two-spirit people" (Smith and Mac, 2018, p. 3). Moreover, sex workers generally belong to the most socially and economically vulnerable populations of society. In Spain, trans, racialized, and migrant sex workers—hailing from Eastern Europe, Africa, and South America—represent 91% of the total number of sex workers (Cruz, 2018). Of these, approximately 43% work in clubs and bars and 33% work in apartments (Gall, 2016). Sex work is thus shaped by structural forces and powerful institutions, as well as women's position within them.

Sex work can only be understood as a central part of the political economy in which it takes place, which inevitably means that contemporary sex work is also a capitalist institution<sup>15</sup>. Case in point: Sex work is a multi-million-dollar industry in Spain, intimately intertwined with the black market and illegal economies that operate within the broader global capitalist system. The country currently boasts with the third largest sex work industry in the world, after Thailand and Puerto Rico, and the biggest in Europe, with four out of ten men affirming that they have previously paid for sex (Cobo, 2017). While sex work cannot be effectively researched without taking into consideration the insidious and far-reaching effects of capitalism, according to Brooke M. Beloso (2012)

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<sup>14</sup> It should be noted that sexual exploitation is sanctioned through Article 177 bis. and Article 188.1 of the Criminal Code. Article 177 bis. persecutes human trafficking for the purposes of sexual exploitation and Article 188.1 sanctions "Whoever induces, promotes, favors or facilitates the prostitution of a minor or a person with a disability in need of special protection, or profits from it, or exploits in any other way a minor or a person with a disability for these purposes, will be punished with prison terms of two to five years and a fine of twelve to twenty-four months" (LOCP, 1995).

<sup>15</sup> In her book *Caliban and the Witch* (1998), Silvia Federici describes how with the emergence of capitalism in 16th-century Europe, the privatization of land, and the commercialization of agriculture, many poor women from the countryside migrated to the cities and began exercising sex work. Paradoxically, the massification of sex work of the capitalist era coincided with its growing control and criminalization, supported by the Protestant Reformation.

many feminists frame their analysis of sex work focusing exclusively on gender and sexuality, eclipsing questions of class. Indeed, feminists tend to see sex workers “[...] as victims who always happen to be women (or girls) but never workers” (p. 50). This suggests, for Martha Nussbaum (1999), that “[...] some of our feminist theory may be insufficiently grounded in the reality of working-class lives and too focused on sexuality as an issue in its own right, as if it could be extricated from the fabric of poor people’s attempts to survive” (p. 278). But sex work is *work* and “[...] the exploitation endemic to some sex work is not just something that happens to prostitutes; rather, it is part and parcel of everything that happens under the sign of capitalism” (Beloso, 2012, p. 65-66). Sex workers are consequently subject to exploitation—like any other worker—and they must fight for their labor rights (even more so than other workers due to the stigma associated with their work).

Most feminists—sex work prohibitionists and sex workers’ rights activists alike—tend to agree on this structural analysis of socioeconomic and gender disparities and, I would argue, ultimately want to create a world in which nobody is forced to sell their body (or mind) in order to survive. However, where there is a strong clash between the two is in defining the appropriate way to build such a world. Prohibitionists generally believe that prostitution<sup>16</sup> is inherently violent and exploitative. They value the end goal (abolition) rather than practical and immediate demands and claim that state legalization is not an appropriate objective because sex work is, ultimately, the epitome of gender oppression (Weeks, 2016). While abolition and legalization (also referred to as regulation) are often thought to be the two main positions on sex work, this is a false dichotomy that needs to be debunked. Indeed, many sex workers’ rights activists (also called pro-rights)—and I include myself—are, just like sex work prohibitionists, opposed to the legalization of sex work because it prioritizes financial gain over women’s rights (this will be clarified in chapter three). However, they disagree on the role that the penal-legal apparatus should play in overseeing sex work. Most sex workers’ rights activists want the full decriminalization of sex work (Aliadas TransFeministas, 2019), while a large number of feminists still believe that sex work should be at least partially criminalized. Seeing as the injustices associated with sex work are in part produced by its criminalization, the impulse to address them with the legal-criminal system needs to be assessed.

Throughout this thesis, I want to reflect on the reasons why the solution to the “problem” of sex work has historically been—and presently is—assumed to be found within the bounds of the criminal justice system. As a feminist researcher, I am deeply invested in problematizing the meanings of justice and society’s reliance on penal law to defend the rights of women and other groups whose subjugation and afflictions are often associated with this very system. Why does criminal justice continue to be perceived as *the* most appropriate response? In their book *Los feminismos en la encrucijada del punitivismo* (Feminisms at the Crossroads of Punitivism), Daich and Varela write:

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<sup>16</sup> Here I use the term “prostitution” to reflect the refusal of most prohibitionist feminists to recognize sex work as a form of work (Watson and Flanigan, 2020). Prohibitionists tend to argue that prostitution is a form of sexual exploitation that violates human rights, never a choice. Some claim it is equivalent to rape (Cobo, 2017). But equating sex work with rape is problematic as it entails that accusations of rape made by sex workers can never be taken seriously by the police or the court system (Abel et al., 2010).

The punitive matrix [...] not only often hegemonizes legal strategies; it also outlines our practices, our passions and our horizons of justice, sets the coordinates of our ethical-political imagination, makes possible certain modes of conflict resolution within our collectives and our affective networks and, in broader terms, produces worlds and ways of inhabiting them. (2020, p. 31)

If, as the authors claim, our ethical-political imagination is caught in a punitive matrix, how can we break away from the logics of carcerality and imagine a future that fosters social—rather than penal—justice for sex workers? Feminists may need to question and deconstruct the steps that are considered advances at a certain point in time, such as defending the criminal justice system on the count of gender equality. Because this taken-for-granted system—supposedly designed to protect us—actually entrenches gender and racial inequalities, excludes the most economically and socially vulnerable, and systematically reproduces violence (Richie, 2012). It ultimately leaves unaddressed the structural causes of crime and the factors that generate the sex work industry in the first place.

In this thesis, I explore these questions and I consider how criminalization exacerbates stigmatization, vulnerability, and physical, mental, social, and economic violence for sex workers. More specifically, I engage with the following question: How do neoliberal politics influence sex work policy in Spain and what are the consequences on sex workers? In order to respond to this question and carry out this investigation, I use critical discourse analysis (Fairclough, 1989) to analyze the following policies: the Barcelona civic ordinance and the Law Mordaza enforced at the state level. Both policies are inscribed in neoliberal politics and regulate street-based sex work, indirectly criminalizing sex workers with administrative sanctions.

My analysis of sex work policy is guided by decolonial feminist theory and abolitionist feminist theory. Decolonial theories are essential in this research as they shed light on why, within the neocolonial and neoliberal order of contemporary society, racialized or migrant women represent the overwhelming majority of the people involved in the sex work industry. Moreover, decolonial feminisms reveal how hegemonic feminisms—largely Western/from the Global North—essentialize gender and culture, continually portraying [racialized] sex workers as victims and designing protectionist interventions that rely on the state and the penal-legal system to “rescue” them (Kapur, 2005)—depriving them of any conceivable form of agency. Building on the legacy of Black feminist and decolonial thought, abolitionist feminism similarly focuses on racial-colonialist-capitalist systems of oppression, looking specifically at the function of the criminal justice system in surveilling, criminalizing, and incarcerating racialized and marginalized populations (Richie, 2012). Because many women of color rely on sex work as a survival strategy within neoliberal capitalism, they are the ones who often end up caught up in a spiral of disputes with the law. Juxtaposing both decolonial feminist theory and abolitionist feminist theory exposes the irony in seeking to “liberate” sex workers through the very carceral system that oppresses and criminalizes them. Decolonial and abolitionist feminist theories thus offer a solid structural analysis of the socioeconomic inequalities that generate, reproduce, and sustain the sex work industry, an in-depth understanding of why the penal system is unfit to address the harms related to sex work, as well as the theoretical

and practical tools necessary to foment social, racial, and economic—rather than penal—justice for sex workers.

In the first chapter of this thesis, I provide the theoretical framework for this research; I highlight the significance and practicality of both decolonial feminist theory and abolitionist feminist theory to study the criminalization of sex work. In chapter two, I address the reasons why I chose to study sex work, the politics of producing knowledge about sex work, and how these concerns influenced my choice of methodology and research methods. In chapter three, I map out the history of the regulation and criminalization of women's bodies and sexuality. I look at how the rise of neoliberal politics triggered a punitive turn and the expansion of the carceral state in Spain, with repercussions on both feminist movements and sex work policy. In the fourth chapter, I consider the impacts of globalization, neoliberalism, and neocolonialism on migrant sex workers in Spain, uncovering the intersections between sex work, sex trafficking, and migration. I explain how the anti-trafficking campaigns that aim to rescue sex trafficking victims inadvertently criminalize migrant sex workers. Lastly, chapter five delves into the legislative analysis of the laws and policies that regulate street-based sex work. I conclude this thesis with an overview of the current state of affairs in Spain, the possibilities that the New Zealand model and alternative forms of justice offer for the decriminalization of sex work, the value of sex workers organizing and unionizing, and a call to create feminist alliances across and between all feminist movements concerned about sex workers' rights.

## Chapter I. Theoretical Framework

...it's not possible to talk about abolition—not only of prisons but also of the enduring legacy of slavery in all state institutions—without simultaneously supporting Indigenous decolonization movements.

—Robyn Maynard, *Policing Black Lives*

### Decolonial Feminist Theory

Feminist scholars such as Silvia Rivera Cusicanqui, Laura-Mercedes Oyhantcabal, Ochy Curiel, Yuderkys Espinosa, Karina Bidaseca, Karina Ochoa, Chandra Talpade Mohanty, Gayatri Chakravorty Spivak, María Lugones, Ratna Kapur, Rita Segato, Rocío Medina Martín, and Harsha Walia have all advanced decolonial feminist scholarship. Decolonial feminists start from a common understanding that while colonialism may have formally ended and former colonies may now be independent countries, in the current postcolonial or neocolonial order, modern European nation-states—like Spain—continue to exercise control over their former colonial subjects (Oyhantcabal, 2021).

Capitalism and Western modernity function according to global and structural rationales that are both colonial and racial (Césaire, 2000), rationales that impose Eurocentric values and ways of thinking and knowing, and that divide the world between colonizers and colonized (Fanon, 1994). Decolonial feminists critique hegemonic feminisms—starting with first and second wave white feminisms in the second half of the 20th century in Europe and North America—for reproducing these universalizing and Eurocentric ways of living and thinking characteristic of coloniality. They jointly disrupt and challenge the essentialist, universalist, ethnocentric, Eurocentric, heterosexist, and colonial character of hegemonic feminisms (Oyhantcabal, 2021). Indeed, because they usually essentialize gender and fail to address issues of race and class, many women of color<sup>17</sup> have not felt seen, heard, included, or represented by hegemonic feminisms (predominantly white, middle-class, and heterosexual).

Kimberlé Crenshaw (1995) is often cited when referring to the theory of intersectionality, now widely considered one of the most useful tool to think about the intersections between the various forms of oppression that women experience—showing that patriarchy is only one of them; class oppression and white supremacy are others. Oyhantcabal (2021) clarifies: “Intersectionality does not imply the sum of all the axes of subordination, but rather the conformation of new realities and experiences of oppression and resistance” (p. 111).

María Lugones borrows Crenshaw’s concept of intersectionality, as well as theorist Aníbal Quijano’s notion of coloniality of power, to conceptualize what she calls the

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<sup>17</sup> The term “women of color” was first used by women victims of racial discrimination in the United States. According to María Lugones (2008), “It is not simply a racial marker, or a reaction to racial domination, but a horizontal solidarity movement [...] ‘Women of color’ does not point to an identity that separates, but to an organic coalition between Indigenous, mestizo, mulatto, Black women: Cherokee, Puerto Rican, Sioux, Chicana, Mexican, Pueblo [...]” (p. 75).

“coloniality of gender,” looking at the intersections between race, class, gender, and sexuality. In Lugones’ words:

In thinking of the coloniality of gender, I complicate his understanding [Quijano’s] of the capitalist global system of power, but I also critique his own understanding of gender as only in terms of sexual access to women. In using the term *coloniality* I mean to name not just a classification of people in terms of the coloniality of power and gender, but also the process of active reduction of people, the dehumanization that fits them for the classification, the process of subjectification, the attempt to turn the colonized into less than human beings. (2010, p. 745)

Indeed, according to decolonial scholars, one of the outcomes of this dehumanization, classification, and subjectification is that women from the Global South are constructed as “Other”; object rather than subject. The subject, according to Quijano (2007) “[...] is bearer of ‘reason’, while the ‘object’, is not only external to it, but different nature. In fact, it is ‘nature’” (p. 26-27). This distinction between object and subject is particularly revealing when considering the fact that sex workers are under no circumstances accorded the status of subject. They are the *object* of hegemonic feminist theory, the *object* of penal and administrative policy. Sex workers are comparably portrayed as Other, framed as deviants, criminals, drug users, or transmitters of sexual diseases (Abel et al., 2010). In her book *Erotic Justice*, Ratna Kapur theorizes about this subaltern position. Subalternity is a concept first coined by Gramsci and the Marxist tradition to refer to the underclass and then extensively theorized by Spivak (1988) in the context of anti-colonial struggles in India to define those excluded from the hierarchies of power. In regard to the subaltern position and the law, Kapur (2005) writes:

[...] ‘the subaltern’ is also a device that brings a normative challenge to the assumptions on which law operating from a postcolonial location – with its claims to universality, neutrality, and objectivity – is based. The subaltern is a peripheral subject, and is deployed by postcolonial theory to situate these challenges within a specific historical, cultural and political context, and reveal how critical it is to understand the ways in which colonial discourse informs the postcolonial present. (p. 3)

Decolonial feminist theory not only exposes the reasons why colonized/underprivileged women are overwhelmingly involved in the sex work industry, but also reveals the imperialist and essentialist systems of knowledge that continue to inform contemporary feminist interpretations of women’s subordination (Kapur, 2005). Indeed, as mentioned earlier, a great number of feminists continue to frame sex work as a problem of sexual exploitation, but making sexual exploitation or gender oppression the sole issue obscures the influences of neocolonial power structures. This also explains why many feminists continue to perceive sex workers as victims or, as Kapur (2005) would say, the “postcolonial or third world victim subject.” She points out:

The search for universal solutions to women’s concerns continues to ignore both the significance of the colonial encounter for the situation and understanding of women in the postcolonial world, and also how their struggles for rights are tethered to the legacy of this encounter in the contemporary moment. (2005, p. 4)



According to the author, hegemonic feminisms usually interpret women's involvement in the sex trade from their own privileged position within the postcolonial order and this significantly informs the justice-seeking projects that are created on behalf of these subaltern subjects. Karina Bidaseca adds: "(...) there is a disturbing closeness between, on the one hand, colonial discourses and those of some representatives of Western feminism, who express themselves in "salvationist" terms, along the path of the Western model..." (as cited in Martín, 2013, p. 58). Kapur (2005) notes that we need to recognize who speaks, for whom, how, and where. As will be made clear in the chapter "Border Imperialism," the justice-seeking projects of many feminists include the efforts deployed to halt sex trafficking and sexual exploitation through penal law and border restrictions—that can result in the detention and deportation of migrant sex workers.

In a brilliant book titled *Undoing Border Imperialism* (2013), Harsha Walia introduces the readers to what she calls border imperialism, describing how exclusions along the lines of race and class materialize in and on territory through borders—allowing Western nation-states to maintain their imperialist power over their former colonial subjects. Harsha Walia (2013) defines border imperialism as follow:

[...] first, the mass displacement of impoverished and colonized communities resulting from asymmetrical relations of global power, and the simultaneous securitization of the border against those migrants whom capitalism and empire have displaced; second, the criminalization of migration with severe punishment and discipline of those deemed 'alien' or 'illegal'; third, the entrenchment of a racialized hierarchy of citizenship by arbitrating who legitimately constitutes the nation-state; and fourth, the state-mediated exploitation of migrant labor, akin to conditions of slavery and servitude, by capitalist interests. (p. 8)

Border imperialism is useful as an analytical framework to understand the processes by which migration and exclusion are structurally created as well as maintained (Walia, 2013) and it is especially valuable to appreciate how border restrictions reinforce illegal economies and sex trafficking, making migrant sex workers more vulnerable.

Decolonial feminist theory thus provides an anti-colonial and anti-racist standpoint and the epistemological, theoretical, and practical tools necessary to uncover and challenge the current systems of power and subjugation that influence all sectors of the postcolonial world, including the sex work industry.

### Abolitionist Feminist Theory

Strongly influenced by decolonial, Black, Indigenous, Chicano, trans, queer, and anarchist feminisms, abolitionist feminist theory (or anti-carceral feminism) comes out of the work of scholars and activists such as Angela Davis, Ruth Wilson Gilmore, Michelle Alexander, Beth Riche, Andrea J. Ritchie, Mimi E. Kim, Robyn Maynard, and Mariam Kaba (in North America) and Laia Sierra Rodriguez, Cecilia Varela, Deborah Daich, Encarna Bodelón, María Luisa Maqueda Abreu, and Gwenola Ricordeau (in Europe and Latin America). Like decolonial feminists, abolitionist feminists critique hegemonic feminisms (in this case carceral feminism specifically and the white feminist anti-violence

movement) for conceiving gender inequality as the main factor of violence against women, disregarding issues of race and class (Richie, 2012).

The systems of crime control of contemporary society (and this will be made evident in the third chapter) stand in stark contrast with those of the Middle Ages or the first half of the 20th century, indicating that penal law—and what we define as crime—does not exist beyond the bounds of the social. According to Dutch criminologist Louk Hulsman, amongst the firsts to theorize about abolitionism, “crime has no ontological reality. Crime is not the *object* but the *product* of criminal policy. Criminalization is one of the many ways to construct social reality” (1986, pp. 300-301). As Serra (2021) maintains, justice and the law have always been tools of power that favor those who have created them. In Spain, the Criminal Code prescribes the behaviors that are defined as crimes and the penal and administrative sanctions assigned to them. Gender violence offenses, for example, have only recently begun to be typified as infractions, in part owing to the fight led by feminist movements in the 1960s and 1970s.

In her book *Pour elles toutes: Femmes contre la prison* (For All of Them: Women Against Prison), Gwenola Ricordeau contends:

The offenses defined by the Penal Code are [...] far from covering all the prejudices: they could even distract our attention from the most serious of them, which are generally of a structural nature (let’s think here of environmental destruction, capitalism, racism or patriarchy). In other words, the current construction of the category of ‘crime’ largely neglects the crimes (understood here in the common sense) of the powerful, such as white-collar crime and state crimes. (2019, p. 26)

The fact that the criminal justice system fails to account for many injustices is at the heart of the critiques put forward in the 1970s by American and European critical criminologists and penal abolitionists such as Louk Hulsman, Nils Christie, and Thomas Mathiesen. These critical thinkers denounced the arbitrariness of the definition of crime, the punitive character of criminal sanctions, and the individualization of criminal responsibility (Ricordeau, 2019). They argued that criminal law does not fulfill the objectives on which it bases the right to punish: dissuade individuals from committing crimes, provide retribution for the crimes committed, and rehabilitate the people who committed crimes (ibid.). Indeed, crime rates have no correlation with incarceration rates (Richie, 2012). According to Saied (2012):

What prisons actually achieve, especially maximum ‘security’ ones, is the reproduction and inducement of more of institutionalized patriarchal (sexist/homophobic) and racist violence, and the exacerbation—if not creation and proliferation—of disease and health problems (including mental health deterioration), among other deleterious effects. (2012, p. 3)

Not only does the criminal justice system fail to meet its alleged goals, but it also has devastating impacts on racialized and impoverished communities, and this is what abolitionist feminists condemn. Abolitionist feminist theory holds that the criminal justice system maintains, reproduces, and legitimizes conditions of structural, economic, and racial violence in the context of neoliberal politics and welfare cutbacks (Kim, 2018). Interpersonal forms of violence are inevitably shaped by structural conditions, including poverty,

racism, and sexism (Kim, 2018). In other words, racialized gender violence and state violence are inextricable (Kaba, 2021).

Conceptualizing this, Critical Resistance, an abolitionist organization that emerged in the United States in 1998, developed the now widespread concept of “prison industrial complex<sup>18</sup>”:

The prison industrial complex (PIC) is a term we use to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems. Through its reach and impact, the PIC helps and maintains the authority of people who get their power through racial, economic and other privileges. There are many ways this power is collected and maintained through the PIC, including creating mass media images that keep alive stereotypes of people of color, poor people, queer people, immigrants, youth, and other oppressed communities as criminal, delinquent, or deviant. (Critical Resistance, 2021)

Indeed, the penal system serves to manage those deemed “deviant,” “illegal,” or “terrorist,” ultimately reinforcing colonial ideologies (Walia, 2013). According to Richie (2012), in the neoliberal world order, the state prefers to incarcerate and forsake precarious populations rather than provide them with the basic material conditions they need to survive. Similar to the concept of prison industrial complex, Richie (2012) speaks of the “prison nation” to explain neoliberalism’s punitive turn and the public policies that increase the criminalization of racialized populations and weaken their civil and human rights. In thinking about the prison nation and feminist movements, she says:

[...] the convergence of repressive shifts in social policy and conventional feminist rhetoric around violence against women, a rhetoric that privileges a gender-specific analysis while virtually ignoring how race, class, and sexuality can create particular vulnerability to violence. This convergence creates a significant disadvantage for Black women in low-income communities where persistent poverty and more general problems of crime exacerbate the experience of male violence. (Richie, 2012, p. 103)

Here, we can think of how hegemonic feminisms privilege a gender-specific analysis of sex work, ignoring how race and class influence the specific conditions of racialized, migrant, and trans sex workers. The laws that criminalize sex work ultimately fail to address the structural conditions that commercial sex is rooted in. Because as long as global economic disparities, gender injustice, and poverty amongst women continue to exist, sex work will remain one of the few survival strategies available to women within global patriarchal capitalism (Vanwesenbeeck, 2017).

Criticizing the impacts of the prison industrial complex, abolitionist feminist theory is a political vision that provides a theoretical-structural analysis of inequalities and a practical strategy to transform the social world (Kaba, 2021). Penal abolitionists do not only advocate for the abolition of the prison, but also of the systems of punishment that extend beyond the prison walls; parole, surveillance, policing, asylums, childcare centers,

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<sup>18</sup> In the context of the United States, we can also refer to mass incarceration, lockdown, carceral archipelago, the ceiling of America, the American gulag, and the New Jim Crow (Richie, 2012, p. 103).

detention centers for immigrants, etc. (Ricordeau, 2019). In her foundational book *Are Prisons Obsolete?* (2003), Angela Davis says:

An abolitionist approach [...] would require us to imagine a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscapes of our society. In other words, we would not be looking for prisonlike substitutes for the prison, such as house arrest safeguarded by electronic surveillance bracelets. Rather, positing decarceration as our overarching strategy, we would try to envision a continuum of alternatives to imprisonment—demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance. (p. 107)

In other words, abolitionist feminism opposes the reformation of the criminal justice system as this would legitimize and reinforce the existing systems of crime control (Kim, 2018). Here, we can think of the measures that partially penalize the sex work industry for example and how they ultimately reinforce illegal economies, the criminalization of the most marginalized, and the overall legitimacy of the judicial system in criminalizing sex workers.

While all of this may seem utopian, penal abolitionism is not idealistic. In fact, its core proposition is simple; restructure society so as to cover everyone's basic needs (food, shelter, education, health, clean water) (Kaba, 2021). Abolitionist feminists know that conflicts are an unavoidable part of life, but they want to transform the way we conceive and address them. They ask us to transform society, but also ourselves and the way we perceive conflicts, our punitive tendencies at an interpersonal level for example. They want to deconstruct the dichotomy between offender and victim, recognizing that all of us can generate and receive harm at different points in time (Daich and Varela, 2020). Rather than individualize crime, they advocate for the collectivization of criminal responsibility, reducing people's interaction with the criminal legal system and making individuals, communities, and governments accountable and involved in conflict resolution. In order to make this possible, various strategies have been elaborated over the past decades (largely influenced by Indigenous traditions), including community accountability, restorative justice, and transformative justice.

In sum, abolitionist feminism advocates for the overhaul of the criminal justice system and the building of strong and caring communities, fostering social and economic justice rather than penal justice. To build this world, abolitionist feminists, just like decolonial feminists, argue that the most oppressed of our societies need be at the forefront. *Sex workers need to be at the forefront.*

## Chapter II. Methodological Considerations

Under certain circumstances, failing, losing, forgetting, unmaking, undoing, unbecoming, not knowing may in fact offer more creative, more cooperative, more surprising ways of being in the world.

—Jack Halberstam, *The Queer Art of Failure*

### Feminist Epistemology and Sex Work Research

In this chapter, I critically reflect on my position as both a feminist and a researcher. I first describe how such identities have shaped my interest in sex work and my approach to the topic. I then outline the politics of producing knowledge about and *with* the sex worker community from a feminist standpoint, contemplating the benefits and downfalls of both approaches. Lastly, I discuss how these ethical concerns influenced my choice of methodology and research methods.

From the very beginning of the investigation process, I was concerned about the fact that, paradoxically, sex workers are an over-researched community whose access to and presence within academic structures—as well as political and legal institutions—is scarce. Doing this research—producing knowledge about sex work—would necessarily be political and have repercussions on the sex worker community, whether they be in the form of prospective policy reforms or through the immediate psychological bearings of going through an interview process. For these reasons, as a feminist, it was crucial for me to practice reflexivity, a “[...] multilayered and sustained critical reflection on the conscious and unconscious beliefs, assumptions, attitudes, motivations and actions influencing a researcher (as cited in Sinha, 2017, p. 894). Reflexivity was a tool for me to interrogate my motives for investigating this particular collective and question the methods through which I would obtain the data.

I have no prior experience in the field of sex work research, nor any personal tie to the sex work industry or the people who participate in it. My relationship to sex work is as an ally, a feminist scholar, and a person genuinely interested in fomenting social justice. I come from Canada, where I was privileged enough to complete two undergraduate degrees; in film production and sociology. During my studies in sociology, I developed a strong interest in critical criminology and abolitionist feminism, questioning the reasons why some collectives are constructed as deviant and criminal. Simultaneously, I was introduced to the fascinating work of sociologist Arlie Hochschild and I became interested in her theory on emotional labor (Hochschild, 2003). Wanting to combine both of these interests, I had initially thought of writing my thesis on the emotional labor performed by sex workers who use online applications as part of their work, an area of study still under-researched. Over the course of my studies, I also worked part-time in a research center in oral history and digital storytelling, where I developed a set of skills in the methodology of oral history.

While I already had a pretty good understanding of the power relations implicated in research and the significance of engaging with and listening to research participants

(as these are the central tenets of oral history), my courses in feminist methodology at the graduate level underscored the importance of collaborating with research participants in defining the actual *focus* of the research, especially when it comes to investigations with marginalized communities. This means that non-sex worker researchers should work alongside sex workers to define their research's objectives, methodology, and research methods. As Elena Jeffreys (2009) advises, feminist academics interested in studying sex work should begin their endeavor by asking the following questions: "What do sex workers think is important for researchers to investigate?" and "How can researchers support sex workers in developing policies and programs that benefit them?". In this case, it was clear that emotional labor was not a pressing issue for sex workers. On the other hand, concerns about the increasing criminalization of the sector, especially in the Spanish context (where I have been living and studying for the past two years), is for many sex workers an urgent matter. In their manifesto "Feminist Demands and Revindications on Sex Work in Spain," more than thirty sex workers associations demand the complete decriminalization of sex work and the repeal of all laws and regulations that criminalize them (Aliadas TransFeministas, 2019). Considering this, I chose to refocus my research on sex work policy in an attempt to do research that might actually feel relevant in the lives of sex workers.

According to my understanding, three contemporary phenomena epitomize the need to continue researching sex work: the destructive effects of global-patriarchal capitalism that leave many women with no other option than to occupy feminized and precarious occupations, the increasing use of punitive measures to address social issues, and the ongoing acts of violence against sex workers worldwide<sup>19</sup>. While my investigation may not directly improve sex workers' living and working conditions, I think it is important to continue researching the impacts of neoliberal politics and the criminal justice system on sex workers. Moreover, sex work investigations from an abolitionist feminist standpoint remain scarce.

### The Politics of Producing Knowledge About/With the Sex Worker Community

Doing research about and *with* marginalized populations raises important ethical issues that must be carefully examined to reduce the risks of harmful investigations. While traffickers, pimps, police forces, and governmental bodies may be thought of as those who generate the most harm to sex workers, [feminist] researchers also represent authoritative figures that can cause significant damage. Historically, researchers who have investigated sex work have tended to perform cognitive imperialism (as cited in Walia, 2013) or discursive colonization (Mohanty, 1988), disregarding the input of sex

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<sup>19</sup> Amongst the many (and frequent) instances of violence against sex workers figures the event that took place on March 18, 2021: a group of Asian women massage workers were killed at their workplace in the state of Georgia in the United States. In Spain, we can think of the murder of Florina Gogos, a nineteen-year-old woman who was found dead in the Valencian municipality of Silla on January 30, 2021; it took seven months for someone to be arrested for her murder ("Un detenido por estrangular a Florina Gogos, la joven desaparecida en Silla (Valencia)", 2021). These horrendous acts of gender violence are emblematic of the stigma and hatred that perdures against sex workers, Asian women, immigrants, and working-class communities (Ho, 2021).

workers in their research. And what Yarbrough (2020) calls oppressive forms of knowledge production can pathologize, paternalize, and promote the “extractive exotification” of sex workers. Academia has yet to welcome sex workers as fully-fledged and engaged participants and creators—which, unsurprisingly, has led to unethical investigations that do not serve the best interests of this community.

A broad range of social movements and groups with diverging values, perspectives, and agendas have influenced the study of sex work over the years (Wahab and Sloan, 2004). This research has resulted in:

[...] the initial scapegoating of sex workers as transmitters of disease following the onset of the AIDS epidemic, the feminist ‘sex wars’ on pornography and prostitution, international attention to trafficking issues, the founding of sex workers rights groups, and a growing number of sex workers involved in academic research. (Wahab and Sloan, 2004, p. 3)

Most research on sex work has depicted sex workers as either deviants, criminals or, more recently, victims—almost never as the protagonists of their own lives—and such depictions have necessarily shaped the theories that inform research, how investigation results are used, and the general public’s views (*ibid.*). Even feminist researchers with good intentions can make mistakes that result in unintentional consequences, such as the misinterpretation or misuse of the research findings by the media, the government, policy makers, or anti-sex work movements (Jeffreys, 2009)—ultimately undermining the efforts of sex workers’ rights advocacy and activism. To alleviate these potential risks, researchers must (whenever possible) treat sex workers as active participants in the research: as researchers in their own right<sup>20</sup>, as gatekeepers<sup>21</sup>, as facilitators, as translators, as critics (*ibid.*). According to Donna Haraway:

Situated knowledges require that the object of knowledge be pictured as an actor and agent, not as a screen or a ground or a resource, never finally as slave to the master that closes off dialectic in his unique agency and his authorship of ‘objective’ knowledge. (1988, p. 592)

While researchers may have the scientific and methodological skills necessary to conduct investigations, sex workers possess valuable life experiences that can enrich research, which is why participatory and community-based approaches should be fomented, in line with abolitionist feminist perspectives. Yarbrough (2020) suggests doing what she calls solidarity research, which is “[...] characterized by a politics of humility, dialogue, and accountability to marginalized groups fighting for transformative change” (p. 59).

As a non-sex worker researcher, as noted above, I was concerned about opting for a methodological approach that would allow me to investigate this collective in a non-invasive and non-harmful way. That being said, it was important for me to include the voices of sex workers in my research, which is why I first pondered upon the possibility of conducting in-depth interviews. Doing so in the midst of a global pandemic and during

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<sup>20</sup> Several authors (Wahab and Sloan, 2004; Jeffreys, 2009) have argued that sex workers should be given the tools and training to conduct their own research.

<sup>21</sup> The term “gatekeeper” refers to individuals or organizations that act as a bridge between the researchers and the participants (Sinha, 2017).

the preparation of International Women's Day<sup>22</sup> proved to be challenging. While I contacted many sex workers associations, unions, and organizations, I initially received very few responses. My understanding of sex workers' agency needed to include an interpretation of silence (Malhotra and Rowe, 2013); their refusal to speak could possibly be a form of resistance—and this had significant connotations for the legitimacy of data collection. In trying to dislocate hegemonic speech and practice active listening (ibid.), I was reminded that sex workers had urgent matters to attend to—material, physical, psychological, and emotional needs that would definitely *not* be solved with theory. Following authors and sex workers Mac and Smith (2018), this investigation prioritizes a material (rather than symbolic or ideological) approach that takes into account women's immediate conditions and acknowledges the limits of academia in effecting change in sex work policy.

Consequently, my methodological preferences not only included theoretical justifications, but also ethical sensitivities; my research methods needed to consider (and adapt to) the current social and economic realities of the community in order to first and foremost ensure their health and safety. Considering this and the fact that sex workers frequently experience research fatigue<sup>23</sup>, I took this opportunity to reflect on the necessity to produce my own data for this project. Could this research be undertaken without interviewing sex workers? Was the information needed to answer my research questions already available? In her feminist reflection about methodology, Elena Casado and Amparo Lasén (2014) claim that while secondary analysis of quantitative data is a widespread practice amongst social science researchers, the “recycling” of qualitative materials (such as in-depth interviews) is practically inexistent. Seeing as feminist researchers have a propensity for generating their own qualitative data, they suggest that re-readings of previously published materials could offer new and collaborative analytical possibilities (ibid.).

Taking the above-mentioned concerns into consideration, I took a political stance and decided not to force interviews as the main data collection method for my investigation in order to reduce the risks of generating further harm on the sex worker collective, especially during the COVID-19 pandemic. Instead, I opted for an in-depth, qualitative study of policy documents. It seemed to me the most appropriate option seeing as my investigation seeks to uncover the effects of neoliberal politics on sex work policy.

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<sup>22</sup> In Spain, International Women's Day (*Día internacional de la mujer*), colloquially called 8M, is a massive event and all of the country's feminist associations, entities, unions, and organizations are invested in its preparation. The event brought together 600,979 protesters in 2020 (“El Gobierno cifra en 600.979 los asistentes a las manifestaciones del 8M”, 2020). Despite the COVID-19 pandemic, it assembled 4,5000 people in Barcelona in 2021 (demonstrations were prohibited in certain cities, including the capital, Madrid) (“El feminismo resiste en Barcelona”, 2021).

<sup>23</sup> The term “research fatigue” refers to the fatigue experienced by typically marginalized communities that have been over-researched, frequently tired of being “used” for research without seeing any improvement in their living conditions (Sukarieh and Tannock, 2012). Moreover, sex work research is often conducted with the same groups, such as street sex workers, drug users, and those implicated in the criminal justice system (Sanders, O'Neill and Pitcher, 2009). Because outreach organizations are usually the first to be contacted, street sex workers are over-sampled and over-researched (despite the fact that they represent a minority within the wider industry) (ibid.).



### Methodology: Critical Discourse Analysis

I opted for the qualitative methodology of critical discourse analysis (subsequently referred to as CDA) to examine the policy documents selected for this investigation. I chose this methodology because it offers the theoretical tools necessary to analyze the ways in which discourses about sex work create and legitimize ideologies that sustain power relations between sex workers and the law within the context of neoliberal politics in Spain. CDA is especially pertinent for this study because it looks at text not for what it says *per se*, but for what it does and for its political effects, in this case on sex workers. CDA goes beyond textual analysis to interpret and explain social reality (Fairclough and Wodak, 1997).

Discourse analysis was developed by sociolinguists in the 1970s as part of the linguistic turn in social theory. Norman Fairclough's methodology of critical discourse analysis is rooted in social constructivism and considers language to be an intricate part of social life. Language is both a form of *discourse* and a social *practice* (Fairclough, 1989). CDA investigates how language produces, maintains, and influences ideologies and social relations of power, exploitation, and domination in contemporary society (*ibid.*). It holds that power relations are exercised and negotiated through discourse; discourse constitutes and is constituted by society, culture, and history (*ibid.*). CDA can be employed as an instrument to critique social problems and provide practical solutions in the social, cultural, political, and economic spheres (Fairclough and Wodak, 1997). Ultimately, CDA reveals the relationships of causality between texts, discursive practices, and sociocultural processes. Fairclough describes these three dimensions as follow:

[...] it is a spoken or written language *text*, it is an instance of *discourse practice* involving the production and interpretation of text, and it is a piece of *social practice*. These are three perspectives one can take upon, three complementary ways of reading, a complex social event. In analysis within the social practice dimension, my focus is political, upon the discursive event within relations of power and domination. (2013, p. 94)

As Sandra Taylor upholds, critical discourse analysis:

[...] is particularly appropriate for critical policy analysis because it allows a detailed investigation of the relationship of language to other social processes, and of how language *works* within power relations. CDA provides a framework for a *systematic* analysis—researchers can go beyond speculation and demonstrate how policy texts work. (as cited in Graham, 2011, p. 665)

In accordance with CDA, policy texts about sex work operate within contemporary power relations that establish a relation of authority and hierarchy (Fairclough, 1989) between the state, political actors, the law, policymakers, and sex workers. On the one hand, politicians and lawmakers get to make key pronouncements about sex work policy; they control the progression of the lawmaking process and oversee the implementation of said laws and policies. On the other hand, sex workers must comply with these regulations—no matter the emotional, physical, and material cost that these might incur—as they risk severe social and penal ramifications. In other words, discourses about sex work produce sex workers as both object and subject within particular power relationships, maintaining

them within a particular social hierarchy. Discourses speak of and constitute the subject; laws about sex work both speak of sex workers and dictate their self-conceptualization and behaviors, as well as the attitudes that the general population has towards them.

Institutional practices that appear universal and commonsensical, like creating penal or administrative sanctions for sex work, originate in the dominant class and reinforce the state's political and economic power (ibid.). This power can be exercised in two ways according to Fairclough (1989): through coercion with physical violence or through coercion with the manufacture of consent. For the author, the manufacture of consent is realized through ideology (e.g., neoliberal, capitalist, carceral, and patriarchal gender ideologies). These ideologies are at the service of power; they establish and sustain ways of being, identities, actions, and practices. In the particular case of policymaking, the ideological workings of language are particularly apparent because legislative texts about sex work (the product) have a direct influence on public debates and behaviors concerning sex work (the discourse). Every act of meaning-making through language thus contributes to the reproduction and maintenance (or resistance) of the social order (Fairclough, 1989).

### Research Methods: Critical Policy Analysis

In order to carry out this investigation, I analyze two specific policy documents that regulate street-based sex work in Spain: the “Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona” and the “Organic Law 4/2015, of 30 March, on Citizen Protection and Security.” The former was implemented at the municipal level, in the city of Barcelona in 2005, while the latter was enforced at the state level in 2015. These legal documents were conceived and implemented with the aim of maintaining peaceful coexistence and civic behavior in the urban environment, with a focus on citizen protection. They regulate the rights and duties of individuals in the public space, prohibiting certain types of behavior, including the selling and purchase of sexual services—ultimately prohibiting street-based sex work.

I selected these policy documents specifically because they seemed the most appropriate to answer my research question: “How do neoliberal politics influence sex work policy in Spain and what are the consequences on sex workers?” While Spain does not officially criminalize sex work, both of these legislative documents indicate that Spain nevertheless regulates and prohibits sex work in the public space through administrative sanctions. These legal documents administratively penalize sex workers and their clients and they were both implemented at the beginning of the 2000s in the midst of mounting neoliberal politics in Spain, which is particularly illustrative of the unrelenting and growing punitive tendencies that I explore in this thesis. I include both a municipal ordinance and a state-level bill to have a sample that covers distinct legislative levels, allowing me to examine how they interact with one another, and provide a broader frame of comprehension of the legal model for sex work in Spain. While there exist civic ordinances in several Spanish cities, I chose the one in Barcelona because it was the first to be implemented in 2005 and it subsequently served as a model for other cities who sought to create their own ordinances. It also has a longer trajectory, which allows for an evaluation of its effects on sex workers across time.

In order to evaluate these policy documents, I make use of Norman Fairclough's (1993) analytical framework, operationalizing his theoretical considerations to establish a systematic method that draws on intertextuality, interdiscursivity, and hegemony. I chose this research method because it allows for an assessment of the relations between legislative texts and sociocultural processes. More explicitly, to do this, I abide by the following steps (Fairclough, 1993):

1. Description (text analysis);
2. interpretation (processing analysis) and
3. explanation (social analysis).

First, I introduce the objects of analysis: the "Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona" and the "Organic Law 4/2015, of 30 March, on Citizen Protection and Security." I describe the linguistic properties of the documents, the manner in which these language texts are presented and expounded. I assess what elements are included in the documents and what elements are excluded. I weigh what stands out, what is foregrounded, in comparison to what is not emphasized (Fairclough, 1989). I analyze what seems to be considered immutable, fixed, permanent truths and norms. I search for recurrent themes and patterns within the documents and I classify these themes in distinct categories (e.g., "coexistence," "civility," "right to security," and "freedom of movement").

Following the first step, I describe how the concepts and themes identified in step one shed light on ideological, interpersonal, and textual meanings. I interpret the connections between these texts and the discursive processes at play, as well as the processes through which the objects of analysis are produced and received (Fairclough, 1989). I come back to my research question (How do neoliberal politics influence sex work policy in Spain and what are the consequences on sex workers?) to find out exactly how these processes operate. In what context are these policy documents created and implemented? How do these policy documents reproduce or sustain neoliberal politics if they do so? Who are the actors involved in their production and implementation (e.g., sex workers, policymakers, clients, the general population)? How are these actors involved? I then look at what identities, actions, and practices are constructed as normal and desirable and which ones are constructed as pathological and undesirable (Fairclough, 1989). I examine what these policies permit and what they prohibit and penalize with administrative sanctions.

Lastly, because CDA is interpretative and explanatory, it goes beyond textual analysis to explain sociocultural impacts (Fairclough and Wodak, 1997). As part of the third and final step, I thus explain the connection between the discursive and sociocultural processes or conditions that govern these processes, the materializations and manifestations of these discursive practices (Fairclough, 1989). I combine insights from the two previous steps to look at the results of my analysis, reading between the lines and inferring what power relations, ideologies, and norms are constructed, reproduced, and legitimized through these policy documents. I look at how these legislative texts are inscribed in the neoliberal order, for example, and what this tells us about the trajectory of sex work policy in Spain. I assess how these policies portray sex workers and how they affect their living and working conditions. How do these texts maintain power relations between the various

political and legislative actors and sex workers? How does the texts reflect or propagate neoliberal politics and punitive tendencies? I describe what this tells us about the current legal framework regulating sex work in Spain, as well as the interests being mobilized and served by these policies. I conclude by showing how texts, discursive practices, and sociocultural contexts reveal the power relations at play between sex workers, the law, and the state.

### Chapter III. Crime

#### From Mesopotamia to Modernity: The Age-Old Policing of Women's Bodies and Sexuality

In this second chapter, I locate the origins of the deep-rooted authority of the criminal justice system in managing sex work today. To do this, I begin by drawing on the work of philosophers Michel Foucault and Silvia Federici to outline the control of women's bodies and sexuality throughout history as it ties into the evolution of criminality and the systems of punishment of modernity. I subsequently delve into the effects of neoliberalism and global capitalism on contemporary forms of crime control (specifically looking at the post-Franco era), building on the theories of sociologists David Garland and Loïc Wacquant. With the help of Elizabeth Bernstein's feminist approach to this area of study, I document how punitiveness operates in and through carceral feminism, ultimately leading to an increasingly prevalent form of sex work prohibition called neo-abolitionism.

While sex work is actually not the world's oldest profession<sup>24</sup>, there are written accounts of its regulation dating back to two thousand years B.C. throughout Ancient Mesopotamia. Still puzzling historians, "sacred prostitution" (also referred to as "temple prostitution" or "cult prostitution")—the commodification of sexual relations for the worship of gods or goddesses—allegedly originated in Babylonia, later extending to Egypt, Phoenicia, Greece, and India (Altxorra, 2003). Understood by some scholars as a rite of fertility and by others as one of "deflowering"<sup>25</sup>, the then-law required all unmarried women of the land to have intercourse with a stranger in exchange for money before devoting themselves to one man only for the rest of their lives. In the Assyrian Empire that dominated Mesopotamia in the second millennium B.C., the Middle Assyrian Law differentiated, classified, and potentially criminalized women according to their social standing and sexual practices: "Domestic women, sexually serving one man and under his protection, [were] here designated as 'respectable' by being veiled<sup>26</sup>; women not under one man's protection and sexual control [were] designated as 'public women,' hence unveiled" (Lerner, 1986, p. 135). Thus, while sacred prostitution dictated with whom women could have sexual relations, the symbol of the veil pointed to the treatment reserved to them based on these sexual activities.

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<sup>24</sup> In *A Curious History of Sex* (2020), Kate Lister disproves the claim according to which sex work is the oldest profession; she points to scholars who argue that it could be medicine or midwifery. While professions only come to existence by means of commercial exchange, Lister notes that the Maori population of New Zealand had no record of selling sex before being colonized by the British in the 19th century (Lister, 2020).

<sup>25</sup> The concept of "deflowering" is highly problematic; the verb "deflower" refers to both the despoiling of beauty and innocence and the depriving of a woman's virginity (Merriam-Webster, 2021). "Virginity" is not a medical nor a scientific term; it is a social, cultural, and religious construct based on the idea that women's sexuality must be preserved for marriage (World Health Organization, 2018) and it is associated with ongoing practices that violate women and girls' human rights, such as virginity testing and hymenoplasty. It is also emblematic of the prevalence of phallogocentric sexual relations in contemporary society.

<sup>26</sup> Veils, burkas, and similar garments have historically been understood as a way to protect women against men's uncontrollable sexual drive (Pitch, 2010).

Rather than vanish, in the years preceding modernity, the processes of categorization, instrumentalization, and commodification of women's bodies and sexuality were transformed and refined. With the advent of settler colonialism and the trafficking, enslavement, and genocide of entire populations, these new methods of domination spread across the Atlantic and facilitated the strengthening of a burgeoning capitalist system. As Brigitte Vasallo (2018) illustrates, European colonizers divided women's sexuality and reproductive capacities according to race ideologies and white supremacy<sup>27</sup>. On one hand, enslaved Black women in the colonies were systematically raped by white men<sup>28</sup> and forced to pro-create (but deprived of their parenting rights) in order to supplement the labor force of the slave economy while, on the other, the biological and moral responsibility of white women in Europe was to reproduce within the bounds of marriage<sup>29</sup>. Rita Segato (2015) argues that patriarchal systems imposed by colonialism constructed racialized women as sexually accessible and white woman as passive, fragile, and virgins to be protected. In settler-colonial states such as Canada and the United States, Jennifer Nez Denetdale explains that the rape and prostitution of Native women constituted an integral part of colonial conquest and the imposition of a modern state formation, which also included the reconfiguration of gender roles (as cited in Walia, 2013).

Fixations on the monitoring of human conduct and sexual behavior are intimately intertwined with socioeconomic and political considerations and this is what Michel Foucault brilliantly demonstrates throughout his extensive body of work, and more comprehensively in his book *The History of Sexuality* (1978). Produced by modern capitalism in the 18th century, the industrialization and urbanization of Western societies brought a mounting concern for the management of an ever-growing population. In Foucault's words:

One of the great innovations in the techniques of power in the eighteenth century was the emergence of 'population' as an economic and political problem: population as wealth, population as manpower or labor capacity, population balanced between its own growth and the resources it commanded. Governments perceived that they were not dealing simply with subjects, or even with a 'people,' but with a 'population,' with its specific phenomena and its peculiar variables: birth and death rates, life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and habitation. All these variables were situated at the point where the characteristic movements of life and the specific effects of institutions intersected: 'States are not populated in accordance with the natural progression of propagation, but by virtue of their industry, their products, and their different institutions. (Foucault, 1978, p. 18)

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<sup>27</sup> White supremacy can be defined as "historically based, institutionally perpetuated system of exploitation and oppression of continents, nations, and peoples of color by white peoples and nations... for the purpose of maintaining and defending a system of wealth, power, and privilege" (as cited in Walia, 2013, p. 38).

<sup>28</sup> The stereotype of the "Black Jezebel" depicted Black women as promiscuous and hypersexual sexual deviants, which served to absolve white men of the sexual violence they perpetrated against them (Maynard, 2017). As Maynard (2017) explains, "After slavery's abolition, while the mere suggestion of the rape of a white woman by a Black man led to a widespread outcry and political action, the rape of a Black woman elicited no public outrage" (p. 44).

<sup>29</sup> Meanwhile, the sanctions on contraception, abortion, and infanticide multiplied (Foucault, 1978).

Indeed, capitalism's systems of production—its institutions, industries, products—established what Foucault calls a disciplinary society, one that disciplines and exploits the human body to create a docile and productive labor force at the service of capital accumulation, sanctioned by the interests of both the state and the clergy. For this political economy of the body to efficiently function, a sexuality that is economically profitable and politically conservative had to be ensured and methodically replicated, thus guaranteeing the reproduction of the labor force.

In his book *The History of Sexuality* (1978), Foucault convincingly disproves the repressive hypothesis according to which sex progressively became more repressed throughout the Victorian era. According to him, modernity saw an upsurge in power-imbued narratives about sex; scientific discourses related to precocity, sterility, birthrate, the age of marriage, the frequency of sexual relations, contraceptive methods, and so on. The human body was gradually turned into an object of knowledge placed under scrutiny. Mapped by the gaze of scientific experts—doctors, psychologists, psychiatrists, educators—sexual behaviors were observed, categorized, and recorded through an archive of the body<sup>30</sup>, a series of reports and registers of information about the human body (ibid.). This produced a field of scientific and positivist knowledge about the bodies of sex workers; objectifying them, depicting them as strange, repulsive, hazardous, infectious—possessing a threatening and voracious sexuality. Black women's sexuality, especially, was perceived as a threat and:

though selling sexual services for money resulted in no measurable harm and likely complemented Black women's income in an era of extreme economic deprivation, involvement in the sex trade was widely regarded as a public danger, purportedly responsible for the degradation of society. (Maynard, 2017, p. 45)

Black sex workers were thus highly stigmatized and constructed as particularly promiscuous, corrupting white settler society (ibid.). At the beginning of the 19th century, sex workers were registered in the databases of the municipalities in which they worked and saw themselves obligated to undergo periodic sanitary controls aimed at preventing the spread of venereal diseases (Guereña, 1997). At the end of the same century, Italian criminologist Cesare Lombroso studied the bodies of marginalized women—sex workers, women of the working class, women of color<sup>31</sup>—alleging that sex workers' sexual anatomy was abnormal and primitive (Mac and Smith, 2018). As Foucault explains, the body

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<sup>30</sup> Today, this archive of the body lives on as bodies are transformed into data, identification documents to be analyzed and classified—constructing risk profiles in order to predict and prevent crime or the spread of diseases (Pitch, 2010). An example of this can be found in the Covid passport, a vaccine passport created following the COVID-19 pandemic for people to freely travel across borders and access establishments or events, all the while constructing risk profiles and making probable discriminatory practices.

<sup>31</sup> There is a long and brutal history of medical experiments on Black bodies, notably the gynecological surgeries performed on enslaved Black women in the 19th century (Cooper Owens, 2017). Today, immigrant women are still being forcibly sterilized in ICE detention centers (Immigrations and Customs Enforcement) in the United States (Manian, 2020)—which could arguably be considered a contemporary form of eugenics. Further, it is only in December 2020 that the “Organic Law 2/2020, of 16 December 2020, Amending the Criminal Code for the Eradication of Forced or Non-Consensual Sterilization of Persons with Disabilities Who Are Judicially Incapacitated” prohibited the forced sterilization of women with disabilities in Spain (Efeminista, 2020).

was compelled to uncover its “objective” truth, it was made to confess its purported true nature:

[...] while the language may have been refined, the scope of the confession—the confession of the flesh—continually increased. [...] I am not talking about the obligation to admit to violations of the laws of sex, as required by traditional penance; but of the nearly infinite task of telling—telling oneself and another, as often as possible, everything that might concern the interplay of innumerable pleasures, sensations, and thoughts which, through the body and the soul, had some affinity with sex. (Foucault, 1978, p. 14)

Such confessions of the flesh gave rise to the formation of new categories. Forbidden activities and practices were no longer simple acts, they were now part of complex and comprehensive identities that dictated who people were and what they could be. For instance, the “[...] homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology” (Foucault, 1978, p. 33). People were no longer committing “sodomy”; they were homosexuals. They were no longer committing crimes; they were criminals. Women were not exchanging sexual favors for money; they were “prostitutes,” a totalizing identity that denied them all other potential roles and characteristics—worker, friend, mother—a form of stigma that endures today. According to Vasallo (2018), sexual characteristics and practices that defy heteronormativity have always existed (although perhaps hidden), but their categorization as identities—“hermaphrodites<sup>32</sup>,” asexual, bisexual, heterosexual, homosexual—only occurred at a specific time, echoing what society deems normal or pathological.

Undeniably, with distinct identities comes varying degrees of stigma—and stigma is a fundamental component when it comes to understanding the criminalization of sex work. According to Erving Goffman (1963), stigmatized individuals possess a spoiled identity that socially undervalues, underpowers, discredits, and excludes them. As previously mentioned, the veil (or any other physical trait or defining characteristic) marked the bodies of sex workers as different and thus enabled their identification as stigmatized individuals. In 16th-century England, sex workers were branded on the forehead with burning irons to leave a mark that represented the devil, and they were supposedly recognized for their “evil eye” (Federici, 1998). Further, the mental health of sex workers has long been put into question. In the 1950s, the “pathology” of sex workers was rationalized by the commonly held belief that women selling sex were in fact lesbians who suffered from an Oedipus complex (Mogul et al., 2011)—pointing to the stigma of both sex workers and lesbians. As a social process (Link and Phelan, 2001), stigma labels sex workers as either mentally ill, sinners, social deviants, delinquents, criminals, or victims, and this label is greatly influenced by the historical period and the specific legal framework. With criminalization, sex work is considered immoral and illicit, which inevitably reinforces the stigma of sex workers, clients, and all others involved in the sex industry—individualizing crime and ignoring structural factors of inequality.

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<sup>32</sup> In the 19th century, those pejoratively referred to as “hermaphrodites” (intersex individuals) were considered criminals or the children of crime, all because their genitals challenged the gender-binary construct (Foucault, 1978).



In Spain (and I will return to this in the concluding remarks), some feminist organizations have been fighting to legalize OTRAS, a sex workers union based in the city of Barcelona. This case study is particularly illuminating to understand how the stigma surrounding sex work operates today. The refusal to recognize sex work as a form of work is strongly intertwined with stigma and the autonomy assigned to women who do decide to have sexual relations in exchange for money (something that, in theory, no “sane” woman should accept to do). As previously argued, recognizing sex work as work has historically been used as a feminist strategy for women to acquire rights, notably in the case of domestic work. I do not believe that recognizing sex work as work will send the message that it is acceptable for women to be sexually exploited. Quite the contrary, I think that it will promote the idea that *all* women—including the most vulnerable and marginalized—are worthy of being listened to and are deserving of basic human rights. Like all other people who choose (amongst their very limited options) jobs that are risky, sex workers should be able to organize themselves and acquire the legal tools to fight for their rights. Recognizing sex workers as political subjects is a first step in reducing their stigma and ultimately allowing them to decide for themselves what the future of their work will look like—whether it be implementing safer working conditions, working towards the dismantlement of the industry, or both at once.

Back to history: With modernity, certain sexual behaviors were increasingly encouraged, while others—extramarital relations or adultery, “sodomy,” incest, rape—were prohibited by the powers of law, religion, surveillance, normalization, and homogeneity (Foucault, 1978). In her book *Caliban and the Witch: Women, the Body, and Primitive Accumulation* (1998), Silvia Federici notes that, as early as the 16th century, those forms of sexuality and relationships that were not useful to the capitalist system were prohibited and punished. According to Foucault, the capitalist system extracts the maximum amount of time from the workers<sup>33</sup>—transforming them in rational machines devoid of feelings—by impeding “unproductive” [sexual] relations. Because the female body is the one that possesses the capacity to reproduce—the species, the nation, the family, the labor force—women’s sexuality is generally the one deemed valuable or risky<sup>34</sup> for the social and symbolic order, the one that must be efficiently monitored and standardized. In the 16th century, sex workers were considered promiscuous women and sex work—along with adultery, births outside marriage, infanticides—was becoming increasingly criminalized, with brothels gradually closing down (Federici, 1998).

To guarantee relations that are productive for the capitalist system, monogamy was imposed as the relational system *par excellence*, a hierarchical structure based on

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<sup>33</sup> In the 21st century, this thrust for capitalizing on time can be seen in, for example, the research being done by the Pentagon on white-crowned sparrows (birds that can go days without sleep during long-distance migration) to create sleep-resistant and ultraefficient U.S. soldiers (a sort of post-human body)—and, most probably, ultraefficient wage laborers and consumers (Crary, 2013).

<sup>34</sup> That being said, at the end of the 20th century, the AIDS epidemic constructed not only the sexuality of sex workers as risky, but above all that of homosexuals—the disease was conceived as God’s punishment for their immoral sexual behavior (Pitch, 2010). In much the same way, sex workers and migrants are often accused of spreading diseases. This can be seen in the current increase in discrimination against sex workers and Asian people instigated by the COVID-19 pandemic.

heterosexual matrimony and the reproductive nucleus<sup>35</sup> (Vasallo, 2018). In order to comprehend its insidious, far-reaching, continuous, and internalized effects, one only has to look at how in most contemporary societies this system still “[...] dictates how, when, whom and in what way to love and desire, and also which circumstances are reasons for sadness, which are reasons for anger, what hurts and what does not” (Vasallo, 2018, p. 32). So deeply entrenched in our lives is the monogamous system that it even prescribes our emotions—what to feel, when to feel, for what reasons. While the capitalist system found a way to capitalize on the sex work industry (and I will explore this in more details in the next section), sex work nevertheless threatens the workings of the monogamous system as it fosters non-productive and non-reproductive sexual relations that take place outside the bonds of marriage (or the monogamous relationship). For patriarchal capitalism, non-procreative women—the old woman, the sterile woman, the trans woman, the sex worker—are all contemplated as disposable, bodies that can be enslaved, tortured, sold, trashed. Federici (1998) offers a useful analogy to illustrate how the perception of sex work was altered by the emergence of capitalism:

Of particular significance is the relation the witch-hunt established between the prostitute and the witch, reflecting the process of devaluation which prostitution underwent in the capitalist reorganization of sexual work. [...] while in the Middle Ages the prostitute and the witch were considered positive figures who performed a social service for the community, with the witch-hunt both acquired the most negative connotations and were rejected as possible female identities, physically by death and socially by criminalization. For the prostitute died as a legal subject only after having died a thousand times on the stake as a witch. (Federici, 1998, p. 197)

As Federici maintains, “[...] the prostitute died as a legal subject only after having died a thousand times on the stake as a witch” (ibid.). While there is truth to this claim, it seems to me that sex workers have never truly been regarded as legal subjects, or *subjects* for that matter. Whether considered positive figures who provide a social service (in favor of men), whether deemed a threat to the integrity of the monogamous union, whether instrumentalized by the capitalism system, sex workers have never been recognized as fully-fledged members of society—with their own needs, desires, rights, and autonomy.

Throughout the centuries, as the first part of this chapter made clear, sex workers have been humiliated, excluded, marginalized, victimized, criminalized, fined, imprisoned, banned, exiled, and tortured (Federici, 1998). Federici notes that in 16th-century France the rape of sex workers was not considered a criminal activity. Meanwhile, in the city of Madrid, sex workers who were found sleeping on the streets were tortured and exiled (ibid.). In *Discipline and Punish* (1995), Foucault relates the reorganization of the established systems of punishment and the emergence of a disciplinary society founded

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<sup>35</sup> In her essay “Monogamous Mind, Polyamorous Terror,” Brigitte Vasallo makes an interesting analogy between the monogamous system and the nation. She argues that the nation is monogamous “[...] not only because its laws benefit and legitimize only one type of union [...] but because the way in which the sense of belonging to the nation is constructed – both in terms of nationalism and of patriotism – is a direct result of monogamous thinking in its three basic characteristics: hierarchy, exclusion, and confrontation” (2019, p. 687).

on the development of modern capitalism in Europe. As the author upholds, along with the new forms of capital accumulation and relations of production of the 18th century came a shift from violent crimes and violent punishments to a majority of property crimes and a significantly less bloody, less arbitrary, and more humane penal system, with sentences “rationally” calculated in prison years. With modernity, imprisonment took precedence over corporal punishments; rather than mutilated or executed, sex workers were isolated in a range of institutions—prisons, asylums, convents, brothels<sup>36</sup>—what Foucault calls disciplinary institutions, which facilitated their surveillance, management, and prospective rehabilitation. As the power to police and punish was gradually taken away from religious and secular authorities, it was concentrated in the new institutions of the criminal justice system. And this will be the core of the next section.

### Neoliberal Politics, Criminal Welfare, and the Punitive Turn

In the first part of this chapter, my goal has been to demonstrate how, throughout history (focusing specifically on the years leading up to modernity), women’s sexual practices have been a fundamental concern for governing bodies—putting women at the mercy of social and penal sanctions. In doing so, my main objective was not to defend women’s sexual freedom (although I do believe that women should have decision rights over their own bodies), but, rather, to show that sex workers have been—and continue to be—instrumentalized and stigmatized by the system; deprived of both their humanity and autonomy. In this next section, I pursue in this vein, turning to the decades following the crisis of Fordism, up until today, and I contemplate the effects of neoliberalism in what David Garland (2001) calls the “punitive turn.” Interested in its reverberations in feminisms, I look at the intensifying dependence of some feminist movements on the carceral system to respond to gender violence and sex trafficking, producing what Elizabeth Bernstein (2010) terms “carceral feminism.” I examine its effects on sex work policy.

The fact that in the 20th century Spain’s Civil and Criminal Codes legally sanctioned women who committed adultery with two to six years of prison—and that these matrimonial laws were in vigor until the 1980s (Martínez and Burgueño, 2019)—is exemplary of the criminal justice system’s grip on the intimate lives of *all* women, not only sex workers. That being said, as the previous section made clear, criminalization (and victimization) does not impinge on all women equally; some are more frequently criminalized (and victimized) than others, and this depends on sexual behavior, but also on drug consumption, social class, education level, ethnicity, and various other factors. Amongst these, racialization manifestly and distinctively structures the construction of delinquency, criminality, and victimhood. In Spain, immigrant women represent 10.49% of the total number of women in the general population and 28% of the total number of incarcerated women (APDHA, 2020). Further, while the Roma population makes up 1.4% of Spain’s population, Roma women represented 25% of the prison population back

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<sup>36</sup> Between the 13th and 14th century, France saw a proliferation of publicly managed and tax-funded municipal brothels, which were considered an antidote to homosexuality (Federici, 1998). At this time in the city of Amiens in France, sex work was officially recognized as a public service and women could approach their clients anywhere in the city, even near churches (ibid.).

in 2005<sup>37</sup> (ibid.). Nearly all of these women were imprisoned for crimes related to drug traffic<sup>38</sup>, an offense that significantly increased following the 1995 Criminal Code reform—pointing to a possible rise in the percentage of incarcerated Roma women and revealing the fabricated nature of criminality, the escalating incarceration rate of female offenders, and a gendered fear of crime<sup>39</sup> (Bernstein, 2010). Such increase is illustrative of a broader global shift towards progressively more punitive neoliberal states, starting to unfold in Spain at the end of the Francoist dictatorship.

In a similar vein as happened during the transition to modernity, the 1970s and 1980s underwent a considerable revamping of the forms of social governance and systems of punishment, this time conforming to the socioeconomic conditions of post-Fordism. In Spain, it took place as the dictatorship was coming to an end, with the country's reorganization as a parliamentary democracy, member of the European Union. Prominent sociologist David Garland (2001) documents this shift of paradigm in his analysis of the systems of crime control in the United States and the United Kingdom throughout the end of the 20th century. In his book *The Culture of Control: Crime and Social Order in Contemporary Society* (2001), he argues that late modernity and the soar of the free-market economy destroyed the essence of penal welfare (also referred to as criminal welfare), characteristic of welfare states. In the 1950s and 1960s, nation-states interfered in and regulated the economy to redistribute economic resources and diminish the consequences of social inequalities (Pitch, 2010). In this context, the causes of delinquency and criminality were understood to be social and the responsibility to rehabilitate those who committed crimes was collective, legitimizing intervention policies. For most of the 20th century, incarceration was seen as a solution of last resort. On one hand, penal welfare encouraged individualized treatment and social, psychological, psychiatric, educative, and re-integrative policies, and, on the other, it prioritized monetary penalties, indeterminate sentences, early releases, parole supervision, probation, and other forms of community supervision (Garland, 2001). Because, as Ignacio González Sánchez (2020) argues, social policies directly impact incarceration rates, the budget cuts that came with neoliberal politics had devastating consequences in Spain.

In the forty years that followed the end of Spain's dictatorship (a period marked by the multiplication of neoliberal policies), the prison population quadrupled—while crime rates have remained steady since the 1980s (Sánchez, 2020). Following the

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<sup>37</sup> This is not an isolated case, but a recurring pattern across the world. In Canada, for example, Indigenous women make up 42% of all federally sentenced women, while First Nations people represent about 5% of the total Canadian population (McGuire and Murdoch 2021). In Western Australia, Indigenous women represent 54% of the female prisoner population while constituting only 2% of the state's population (Walia, 2013). There is a clear correlation between marginalized populations and high incarceration rates, illustrative of the impulse to do away with "undesirable" populations.

<sup>38</sup> According to Bernstein (2012), non-white women and women from the Global South represent the fastest-growing prison population and are typically incarcerated for drug crimes. There was a 2,800% increase in incarcerated women between 1970 and 2001, coinciding with the implementation of neoliberal policies (ibid.).

<sup>39</sup> The gendered bias of the current penal system can be seen in, for example, the fact that women's violence is not treated in the same way as men's violence: "In cases of intimate partner murder, behaviors classified as masculine, such as the use of force motivated by anger or alcohol, may be used as mitigating factors, while feminine strategies, which are less violent but may include planning and postponing the murder, are considered aggravating factors" (Daich and Varela, 2020, p. 56).

implementation of the so-called democratic Criminal Code in 1995, there has been approximately one Criminal Code reform per year, leading to the creation of new offenses (including offenses related to gender violence, which will be addressed below) and the ensuing escalation in imprisonment rates. Paradoxically, Spain now has one of the highest rates of incarceration in Europe (with prison sentences usually double the length of the European average), while also being one of the countries with the lowest crime rates in Europe (ibid.). This radical upsurge in carceral measures is part of what Garland (2001) calls the “punitive turn.” The punitive turn, as the author expounds, is characterized by a transition from the rehabilitative model of welfarism to a form of state interventionism that is disciplinary and that incapacitates, isolates, punishes, and incarcerates offenders rather than rehabilitate them. Constantly adapting to these varying models of governance, according to Garland and Young (1983), the penal system is:

A specific *institutional site* that is traversed by a series of different social relations. Political, ideological, economic, legal and other social relations not only ‘influence’ or ‘shape’ or ‘exert pressure on criminality’ but *operate through it* and are materially inscribed in its practices. Penalty is thus an overdetermined place that transmits and condenses a set of social relations within the specific terms of its own practices. (p. 21)

Indeed, penalty encompasses an array of categories, discourses, and practices devised to generate, maintain, and disseminate criminal law (Sánchez, 2021), and, as Garland and Young explain, political and socioeconomic ideologies operate in and through the penal system.

In a similar line as Garland, in his book *Punishing the Poor: The Neoliberal Government of Social Insecurity* (2009), Loïc Wacquant investigates the causes and effects of the punitive turn, which, according to him, are directly connected to neoliberal politics. Wacquant’s definition of neoliberalism rests on four pillars: economic deregulation (complemented by the unregulated global circulation of capital) fostering the privatization of the public sector; the decentralization of the welfare state; the promotion of individual responsibility and the glorification of meritocracy<sup>40</sup>; and (and this is his main contribution) an expanding criminal justice system. The purpose of this growing penal system, according to him, is to control the population that threatens the social order, impose precarious working conditions<sup>41</sup> on the middle and lower classes, isolate the surplus labor and prevent it from participating in the illicit economy<sup>42</sup>, and, finally, reaffirm the authority of weakened nation-states (Sánchez, 2020). Wacquant’s analysis reveals that neoliberalism is thus a political and economic strategy aimed at managing and containing marginalized (and recently disenfranchised by the breakdown of the welfare state)

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<sup>40</sup> Meritocracy, as an ideology and system of contemporary capitalism, rationalizes social inequalities as the direct consequence of individual effort, essentially claiming that the most economically vulnerable are “just not trying hard enough.”

<sup>41</sup> Initially accepted as the solution to an extremely high unemployment rate in Spain, short-term work contracts proliferated in the 1980s, sustaining precarious working conditions and failing to provide workers with adequate social protection (Jiménez Franco, 2013).

<sup>42</sup> While sex work is an activity without any kind of legal recognition or rights in Spain, it is calculated as part of the national GDP like any other activity (APDHA, 2019) and, according to the National Statistics Institute (*Instituto Nacional de Estadística*), “prostitution” represents 0.35% of the total GDP, equivalent to approximately 3,7 billion euros (ibid.).

populations through the apparatuses of the carceral system (ibid.). According to abolitionist feminist Beth Richie (2012), the control of marginalized groups and mass incarceration strategies are part of a larger scheme devised by economic elites to maintain their political and economic power. In looking at the specificities of gender in the management of impoverished populations, Wacquant asserts:

[...] the invention of the *double regulation of the poor* in America in the closing decades of the twentieth century partakes of an overall (re)masculinizing of the state in the neoliberal age, which may be understood in part as an oblique reaction to (or against) the social changes wrought by the women's movement and their reverberations inside the bureaucratic field. Considering that feminist social scientists have conclusively demonstrated that one cannot explain the constitution and trajectory of welfare states without factoring gender into the core equation, there is reason to think that fully elucidating the rise of the penal state will likewise require bringing masculinity from the periphery toward the center of the analysis of penalty. (Wacquant, 2009, p. 15)

Wacquant claims that the “remasculinization” of the neoliberal state may have been a response to the societal changes brought by an intensifying women's movement. This is a noteworthy hypothesis, and it prompts me to explore the influences of neoliberal politics on feminist movements and the management of sex work.

### Is Defending Sex Work a Neoliberal Endeavour?

In her essay “Prostitution: Reconsidering Research” (1999), Wendy McElroy asks: “If the feminist stance on prostitution was based on observable facts, how could the same act be liberating in the mid-seventies and enslaving a decade later?” (as cited in Beloso, 2012, p. 49). While the doctrines of neoliberalism—privatization, disparities, competition, individualism—are generally associated with conservative politics and heteronormative morals, the fluctuating trajectory of neoliberalism had contradictory effects on sex work policy over the last decades of the 20th century. In the 1960s, the women's liberation movement and the second wave of mainstream feminism created a sexual revolution, defending the [neoliberal] ideals of individual choice and sexual freedom, which were successful in improving the rights and conditions of gender and sexual minorities, including sex workers. Until the mid-1990s, the sex workers' rights movement had sought to decriminalize and destigmatize women's sexual labor and gain rights and protections for sex workers within a labor frame (Bernstein, 2018). In the Netherlands and in certain parts of Australia, sex work was legalized (Brents, 2016), but, ultimately, these victories benefited the neoliberal system that capitalized on this market-driven “liberty.”

Examining such incongruities, Paula Sánchez Perera (2017) asks an important question: “Does defending sex work mean defending neoliberalism?” Most so-called pro-sex feminists do indeed defend the sex work industry on the basis of personal liberty, sexual freedom, and empowerment within the economic system, which coincides with neoliberal attitudes and beliefs. Perhaps promoting sexual liberty has been a strategy to advance sex workers' rights at a certain point in time. But what is clear is that it undermines the idea that sex work is work and that sex workers, like other workers, need rights.

Neoliberal discourses of sexual freedom ultimately reproduce market-driven inequalities, the control of women's bodies by the state, and the normalization of the commodification of women's sexuality in favor of the global capitalist system—without giving any importance to women's rights. In Spain, the liberal party *Ciudadanos* epitomizes such posture. Cristina Garaizábal (2018), cofounder of the sex workers collective *Hetaira*, clarifies:

In general, in matters that can be reduced, simplifying as much as possible, to the functions of women's bodies that are usually ascribed to the private sphere (reproduction, sex...), the position of *Ciudadanos* exemplifies an almost caricatural entrepreneurial liberalism, insisting that converting an activity into a commodity (surrogacy, prostitution...) automatically confers to the 'owner' of that commodity the absolute freedom to trade with it. The praise of this supposed freedom hides any material consideration, and turns us all, by the fact of exercising the 'property of oneself', as Locke would say, into businesswomen, rubbing shoulders on equal terms with the financial elite. (Garaizábal, 2018, p. 25)

In other words, the liberal ideology of the party sought to capitalize on women's poverty and disregard the fact that most women who work in the sex industry are compelled to do so by the precarious economic conditions that neoliberalism created for them. Sex workers collectives, in Spain and abroad, tend to disagree with the neoliberal regulatory model<sup>43</sup> (implemented in, amongst other countries, the Netherlands, Germany, Uruguay, and the state of Nevada in the United States) because it transforms sex work into one more business for the profit of corporations that end up controlling women's bodies and disregarding their human rights. In the state of Nevada, independent contractor contracts have non-compete agreements that state that sex workers "[...] will not provide services with Company customers, other than Independent Contractor's spouse or domestic partner, outside of the Premises" (Watson and Flanigan, 2020, p. 108). In other words, women's sexuality quite literally becomes a property of the business. While sex workers have a formal right to refuse particular clients or their demands, in practice anti-discrimination laws mean that sex workers can also be fined for refusing a client (*ibid.*). Moreover, under legalization women in the sex work industry are required to undergo weekly medical exams<sup>44</sup> that they often must pay for themselves. For lack of financial recourses or for fear of deportation, many migrant sex workers cannot comply with these regulations and end up exercising sex work outside the bounds of legality (*ibid.*)—when they are not already prohibited from exercising sex work.

In the mid-2000s, in Spain there was attempts to regulate sex work, but they ultimately failed due to the demographic of the sex work industry (migrant sex workers, self-employed workers, etc.) (Gall, 2016). Brothels, on the other hand, are tolerated by the

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<sup>43</sup> In Spain, in 1999 the parliament of the autonomous community of Navarra entered into talks about a bill that would recognize sex work as any other business, but, in the end, it did not come to fruition (Osborne, 2004).

<sup>44</sup> This is reminiscent of 19th-century Spain when sex work started to be conceived as a social problem that needed to be controlled. Sex work was then regulated with the registration of sex workers in the databases of the municipalities and with mandatory periodic sanitary controls aimed at preventing the spread of venereal diseases. Sex workers who did not comply with these requirements risked being fined (Guereña, 1997).

state, but its owners cannot financially gain from the sale of sex as this would be considered pimping and this is an offense criminalized under the Criminal Code. And:

although jurisprudence has considered hostessing—the provision of remunerated services to stimulate the consumption of alcoholic drinks in premises where sexual services are also offered—to be an employment relationship, it has not adopted the same position with regard to the provision of sex work, whether the provider is self-employed or working as an employee. (as cited in Villacampa, 2017)

Hence, sex workers are not recognized as workers; they are not allowed to register with the national social security system (Villacampa, 2017). While Spain does not officially regulate sex work, there are laws and public policies that could be considered regulatory (with more of a local or regional character, coordinated by the central administration). Perhaps one of the most obvious example can be found in the LOPSC and the municipal ordinances<sup>45</sup> that sanction both sex workers and their clients with fines for exercising sex work in certain areas (these will be addressed in the analysis). These regulations primarily serve to conceal sex work from public view by banishing sex workers from urban perimeters and relegating them to the peripheries of the city or to remote nightclubs (*clubes de alterne*), which increases their vulnerability and profits trafficking networks<sup>46</sup> and mafias.

Ultimately responding to the question she poses, Sánchez Perera (2017) argues that pro-rights feminists cannot possibly defend neoliberalism since they fight against its very own principles—labor exploitation, institutional violence, discrimination—defending a collective (not individual) freedom that accounts for the rights of *all* women.

While the feminist movements of the 1960s produced an upsurge in sex-positive discourses, paradoxically, they also raised concern surrounding gender and sexual violence, and the overall dangers of sexuality<sup>47</sup>. There was an increasingly clear consensus about the discriminatory and androcentric nature of the criminal justice system and its failure to protect women—as well as racial and sexual minorities—from this violence. Sadly, as a whole, this has not changed. The criminal legal system replicates, sustains, and bolsters social inequalities and because this is endorsed by a state institution, its political agenda (and arbitrary character) is ignored. If all are evidently *not* equal under the law and do not have access to the same economic and legal resources, then should the law really continue to impose the same requirements to all? Daich and Varela (2020) explain that one of the first mandates of the feminist movements was to request the implementation of laws that took into consideration the particular status and needs of women—not surprisingly, this really meant the status and needs of privileged women. Simultaneously, a regime of truth about gender and sexual violence<sup>48</sup> was taking form: a “[...] set of

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<sup>45</sup> In the 19th century, various provisions were established in the Criminal Code to increase police surveillance and confine sex workers to specific neighborhoods outside urban centers. Sex work generally occurred in four distinct spaces controlled by the state: brothels (where sex was sold), hospitals (where venereal diseases were treated), women’s prison (where sex workers were incarcerated), and women’s homes (where deviants were rehabilitated) (Guereña, 1997).

<sup>46</sup> Working in a nightclub is often a migratory strategy for migrant sex workers since they can stay in Spain legally without having to do the legal procedures to obtain residency (Arella et al., 2007).

<sup>47</sup> This was instigated by the moral panic created by the AIDS crisis of the 1980s and 1990s. Sex was thus simultaneously associated with freedom and danger.

<sup>48</sup> Under the PSOE government, the first gender violence legislation was passed in 2004: the “Organic Law 1/2004, of December 28, 2004, on Comprehensive Protection Measures against Gender Violence”



knowledge, regulations, bureaucracies, and social, political, scientific, and mass media discourses aimed at determining what should be understood by gender violence and what interventions it calls for (Daich and Varela, 2020, p. 150). The contemporary feminist antiviolence movement of the early 1960s and 1970s helped to legally typify gender violence in the form of, for example, “domestic violence<sup>49</sup>,” “sexual abuse,” “rape,” “femicide<sup>50</sup>,” “feminicide<sup>51</sup>,” “sexual exploitation,” “sexual trafficking,” and so on (as social and political problem, not personal problems). Feminist legal reform was seen as a solution to address harm rather than radical social change (Russo, 2018). Within this framework, the law not only presents itself as the solution to gender violence, but it also has a symbolic power; it dictates how society understands gender violence and women or, in this case, sex workers. In the 1990s, feminist struggles for the recognition of these new types of gender violence offenses led to the continual modification of Spain’s Criminal Code, increasing criminalization and extending the reach of the criminal justice system—ultimately contributing to the punitive turn of the 20th century. But, as Kaba argues, “we cannot under any system ‘prosecute’ our way out of harm” (p. 143). In fact, it has been proven that the criminal legal system does not prevent sexual harm (Daich and Varela, 2020).

Looking at the intersections between neoliberalism, the carceral state, and the politics of sex and gender, Elizabeth Bernstein traces the influences of the punitive turn in the feminist struggles against gender and sexual violence. According to Bernstein (2012), feminists (Duggan 2003; Bedford 2009) previously argued that when the welfare system collapsed, women lost their possibilities for social relations and social protection and this not only increased their demands for criminalization, but also reinforced the ideology of

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(LO 1/2004). While the law was praised at an international level, many local feminists (Coll-Planas, Moreno, Rodríguez and Navarro-Varas, 2008) have since drawn attention to the fact that the legislation fails to account for all types of gender violence. It also forces women to file a criminal complaint in order to receive social assistance (this is reminiscent of sex trafficking laws that force women to adopt the role of victim in order to benefit from aid, which I will come back to later), although women may not want to see their partner going to jail, they may want to avoid lengthy judicial procedures or they may want to circumvent the risk of being criminalized themselves if they are not legal residents (Martínez and Burgueño, 2019).

<sup>49</sup> In Spain, the far-right party VOX, presided by Santiago Abascal, only refers to “domestic violence”; it refuses to recognize “gender violence” as part of its war against “gender ideology” and its demands for the repeal of the “Organic Law on Comprehensive Protection Measures against Gender Violence” (Martínez and Burgueño, 2019). Martínez and Burgueño (2019) maintain that the state, institutional feminist organizations, and NGOs tend to make a distinction between domestic violence (or gender violence) and systemic violence, addressing only the former and leaving structural and capitalist violence unproblematic. The authors mention that gender violence was incorporated in the agenda of international organizations, such as the FORD Foundation and the World Bank—the latter arguing that gender violence was likely to cause employee absenteeism and hinder economic productivity (ibid.). We can see here how gender violence is instrumentalized by financial elites to protect the global capitalist system, leaving unaddressed the greatest violence of them all (capitalism itself).

<sup>50</sup> In criminal law and in the media, a femicide was hitherto called a “crime of passion,” a sexist term to refer to a crime spontaneously committed (as opposed to premeditated) and provoked by “passional love.” Today, international organizations produce global indicators of violence against women based on the number of femicides that occurs in a country each year, legitimized by its presumed scientific objectivity and a politics of number (Andreas and Greenhill, 2010) that produces statistics to determine what social problems should be included in the political agenda.

<sup>51</sup> Latin American feminists make a legal distinction between “femicide” and “feminicide” to account for the responsibility of the state in sustaining and reproducing systemic gender violence.

family values. As Duggan (2003) contends, the institution of marriage is founded on the privatization of social reproduction and care through personal responsibility realized in the family and in civil society, which transfers the costs from the state to the individual<sup>52</sup>. Bernstein expands from Duggan's perspective:

The demise of the welfare state and the ascendance of law and order politics, both premised upon the promotion of 'personal responsibility' and the condemnation of public disorder, are thus directly correlated not just as institutional alternatives to managing the racialized poor (as Wacquant has suggested) but via 'the dense interrelations' among neoliberalism's economic and (gendered) cultural projects. (Bernstein, 2012, p. 250)

According to Bernstein (2012), the punitive inclinations of liberal feminists from the professional middle classes have produced a neoliberal and institutional type of feminism she calls "carceral feminism." It refers to "[...] a vision of social justice as criminal justice, and of punitive systems of control as the best motivational deterrents for men's bad behavior" (p. 58). She argues that "[...] evangelical and feminist antitrafficking activism has been fueled by a shared commitment to carceral paradigms of social, and in particular gender, justice [...] and to militarized humanitarianism as the preeminent mode of engagement by the state" (p. 47). Mimi E. Kim adds that over the past four decades feminist anti-violence movements have collaborated with "[...] the *carceral state* or that part of the government most associated with the institutions of police, prosecution, courts, and the systems of jails, prisons, probation, and parole" (Kim, 2018, p. 220). Bernstein uses the concept of carceral feminism to look specifically at the mobilization of the criminal justice system as a response to sex trafficking and the consolidation of a securitarian paradigm that instrumentalizes sex trafficking discourses. In the author's words:

Until the mid-1990s, an incipient sex workers' rights movement had sought to decriminalize and to destigmatize women's sexual labor and to gain rights and protections for sex workers from within a labor frame, but in more recent years these efforts have been undercut by a bevy of new federal, state, and international laws that equate all prostitution with the crime of 'human trafficking' and which imposes harsh criminal penalties against traffickers and prostitutes' customers. (Bernstein, 2012, p. 242)

These harsh criminal penalties against traffickers and clients can be seen in the model now commonly referred to as the "Swedish model" (or the Nordic model). With the "Sex Purchase Act" of 1999, the Swedish parliament pioneered in sex work policy by being

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<sup>52</sup> That being said, in Spain (as in many other countries), with the advent of the two-earner family model, the personal or familial responsibility of upper-class and middle-class families for domestic labor and care has been commodified, privatized, and outsourced; transferred to migrant women from the Global South, part of what Nancy Fraser (2016) calls the "global care chain." Arlie Hochschild (2014) argues that first-world countries are "importing" maternal love from the Global South, seeing love as a resource that can be sold. According to the author, "first-world" children are obtaining the "surplus" love that is taken away from children from the so-called "third-world." The great majority of these jobs, casually referred to as services, are not regulated or formalized, in part because of the enduring exclusion of traditional female labor from definitions of economic productivity. In this context, it is interesting to consider reproduction theory as it brings up the question of what kinds of jobs are "necessary" to human life. The COVID-19 pandemic clearly showed us which jobs are truly essential for society to function.

the first country to criminalize only the *purchase* of sexual services (up until that point, sex workers were also criminalized) (Vanwesenbeeck, 2017). Many countries have subsequently followed suit and adopted this legislative framework: Finland in 2006, Norway in 2009, Iceland in 2009, Canada in 2014, France in 2016, Northern Ireland in 2015, the Republic of Ireland in 2017, and Israel in 2018 (Armstrong and Abel, 2020). Despite its propagation, sex workers' rights activists, along with numerous international human rights organizations, affirm that the criminalization and penalization of sex work (whether it be the selling or the purchase of sex) violates human rights: the right to autonomy, non-discrimination, privacy, health, education, housing, expression, favorable conditions of work, family life, and so on (Amnesty International, 2016). Moreover, a great number of investigations (Kilvington et al., 2001; Kulick, 2003; Krüsi et al., 2014; Levy and Jakobsson, 2014; Vuolajärvi, 2019) evidence that criminalizing the demand for sex work (clients and other third parties) increases sex workers' vulnerability to violence (I will elaborate on this over the next chapters).

While Bernstein's analysis regarding the interrelation between sex work and sex trafficking will be the core of the next chapter, her perspective on carceral feminism is useful to understand how some strands of feminism have accepted (and normalized) the penal matrix as the foundation on which to build debates about gender and sexual violence. By calling for punitive interventions, feminists legitimize the penal system and feminism is thus contaminated by the discriminatory discourses on which the penal system is based (simultaneously promoting an imperialist form of feminism<sup>53</sup>, and extending the sphere of interference of the criminal justice system in the sex work industry. As will be demonstrated throughout the next chapter, this has led to the push for neo-abolitionist policies.

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<sup>53</sup> Radical feminists such as Catharine MacKinnon (2005) argue that women are all sexually subordinated to men and that their situation in the legal system is defined by this sexist oppression (but this is instrumentalized to essentialize the experience of all women and their sexuality). But, as Kapur (2005) argues, the fact that women do not come from a shared social position and may not prioritize issues of sexuality or sexual violence in the same way, is not addressed by MacKinnon.

### Chapter IV. Border Imperialism

1,950 mile-long open wound  
 dividing a pueblo, a culture,  
 running down the length of my body,  
 staking fence rods in my flesh,  
 splits me, splits me  
 me raja me raja  
 This is my home  
 this thin edge of  
 barbwire.

—Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza*

There is no migrant solidarity without prostitute solidarity and there is no prostitute solidarity without migrant solidarity.

—Mac and Smith, *Revoluting Prostitutes*

#### Neoliberalism, Globalization, and Migration: Disentangling the Myths Surrounding Sex Trafficking

In the following chapter, I explore the realities of migrant sex workers<sup>54</sup> under neoliberalism, who represent the majority of sex workers in Spain (Cruz, 2018). In accordance with abolitionist feminism and border imperialism, and in keeping with the main focus of this thesis, I seek to uncover how the propensity for criminalization characteristic of neoliberal policymaking—be it the criminalization of the working environment of sex workers or, in this case, the criminalization of migration—aliments the violences associated with sex work and fails to address the root causes of the global inequalities that generate and sustain the sex work industry. The first part of this chapter delves into the junctures between migration, sex trafficking, and sex work, and the second part deals with neo-abolitionism and the efforts deployed against sex trafficking, as well as their consequences, namely the creation of the nonprofit industrial complex.

In May 2021, thousands of Moroccans and sub-Saharan (amongst them an exceptionally high number of unaccompanied minors) crossed the border between Morocco and Spain—entering the cities of Ceuta and Melilla<sup>55</sup>—triggering yet another migratory

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<sup>54</sup> While many migrants are European citizens who migrate to other European countries, the denomination “migrant” is usually assigned to non-Europeans (Agustín, 2007). Agustín (2007) explains that “According to nations’ statuses (first-world, poor, at war, non-European), governments decide whether to label people migrants, refugees, guest workers, tourists, students or business travellers; according to which label is assigned, the traveller is subject to more or fewer rights and obligations” (p. 18). Moreover, because migration is a process, the migrant identity, as Agustín argues, is temporary rather than fixed. It could be argued that the sex worker identity is transitory as well since many women who sell sex do so only as a short-term survival strategy. In fact, many migrants in the sex trade do not define themselves as sex workers (ibid.) and it may be in part for this reason.

<sup>55</sup> Melilla fell under Spanish rule in 1497, while Ceuta was ceased by Portugal in 1415, and then transferred to Spain under the Treaty of Lisbon in 1668. Both cities have remained under Spanish dominion

crisis on Spanish territory<sup>56</sup>. As is now well-documented, refugee crises have been on the rise in recent years, instigated by the ongoing wars and belligerent occupations worldwide, ethnic conflicts, unregulated globalization, the catastrophic impacts of ever-increasing natural disasters, and the so-called feminization of poverty in the Global South, to name only a few factors. Rather than seeking solutions to these major social problems (and admitting their complicity in creating them), most advanced liberal-democratic states have responded to these exoduses by strengthening their immigration policies and reinforcing their borders<sup>57</sup>. These border regimes<sup>58</sup> (Walia, 2013) engender social, political, economic, and cultural hierarchies between countries from the Global North (such as Spain) and countries from the Global South (e.g., Morocco or sub-Saharan countries) that ultimately sustain racial capitalism (Robinson, 1983). At the end of June 2021, the Spanish Ministry of Interior extended the entry ban for arrivals from Morocco (effective since March 2020 due to the COVID-19 health crisis) until the end of July 2021—all the while 75,000 French tourists have been coming and going since the beginning of June (Aráez, 2021). Because Spain represents a gateway to the European Union, the country is both a route of transit and one of the world's most important destination for migration (especially to metropolises like Madrid and Barcelona), but also—and this is where sex work comes in—for sex trafficking.

While sex trafficking is a very serious problem that demands more attention (including from within the pro-rights movement), this thesis argues that criminalizing sex work will not end sex trafficking because sex trafficking is first and foremost a consequence of global inequalities, racial capitalism, illegal economies, and border imperialism. As Walia (2013) explains:

An analysis of border imperialism encapsulates a dual critique of Western state building within global empire: the role of Western imperialism in dispossessing communities in order to secure land and resources for state and capitalist interests, as well as the deliberately limited inclusion of migrant bodies into Western states through processes of criminalization and racialization that justify the commodification of their labor. Western state thus are major arbiters in determining if and under what conditions people migrate. (pp. 25-26)

On the one hand, capitalism, colonial empire, and state building (Walia, 2013) have created the conditions—violence, poverty, war, military occupation, the feminization of poverty, the dispossession, extraction, and annihilation of land, natural disasters, etc.—that force a large number of women from the Global South to migrate to Spain and get

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after the independence of Morocco in 1956 (following four decades of rule by Spain and France). Melilla and Ceuta are the only European territory on mainland Africa (Ukata and Madimba, 2021).

<sup>56</sup> The ongoing refugee crisis in the Canary Islands is yet another example. Harsha Walia (2013) contends that “The Canary Islands, off the coast of Morocco, are a critical convergence of colonial displacement, forced labor, capitalist circulation, and border securitization within border imperialism.” (p. 32).

<sup>57</sup> The far-right party VOX calls the refugee crisis to the Canary Islands an “organized invasion,” fomenting a fascist and xenophobic discourse. The party organizes protests for the expulsion of those arriving by sea to the archipelago and has even proposed to set up a naval blockade in the Canary Islands’ waters (“Vox pide al Gobierno un “bloqueo naval” de Canarias”, 2020).

<sup>58</sup> Wonders and Jones (2018) go one step further and, much like Judith Butler (1990) who famously argued that gender roles are performed, claim that borders, too, are performed—with actors behaving according to the laws of border regimes.

involved in the sex work industry. On the other, Western regimes implement immigration laws that govern, discipline, and criminalize migrant [sex workers] for transgressing state and colonial borders—and in the case of Spain, this is accomplished through the “Organic Law 4/2000, of 11 January 2000, on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration” (LO 4/2000).

Women are less frequently depicted by the media scaling electric fences and overcrowding perilous embarkations, and with reason; according to the UN Refugee Agency, in 2018 only 10.9% of the total number of people who entered Spain via the southern border were women. And while migration studies have historically underestimated their participation in the migratory process, women are an integral part of the massive displacements produced by the global political economy of neoliberal capitalism. Starting in the 1980s, there has been an important increase in the number of women from the Global South—South America, the Caribe, Eastern Europe, Africa—migrating to North American and European countries, including Spain (Sánchez and García, 2017), producing what has been named the “feminization of migration.” According to the Ministry of Equality’s Women Institute, today women represent 46% of the immigration population in Spain. It is clear that women *do* cross borders<sup>59</sup>. And they do so for a variety of reasons, including the globalization of women’s labor, households’ growing reliance on women’s income, and the overall necessity to support themselves and their families, in Spain or in their country of origin<sup>60</sup> (Juliano, 2004). Laura Agustín (2007) underlines that:

[...] migrations are commonly discussed in terms of ‘push-pull factors’. Armed conflict and loss of farms may push people away from home, while labour shortage and favourable immigration policy may pull them elsewhere: the basic concept is unarguable, but it also envisions migrants as acted upon, leaving little room for desire, aspiration, anxiety or other states of the soul. (p. 17-18)

Here, the author points out that women who migrate do so for diverse motives, for which their intentions cannot be reduced to stereotypical understandings that fail to recognize migrant women’s agency (albeit limited) in making their own choices. While migrant sex workers are very often portrayed as victims who lack any type of agency, according to Dolores Juliano (2004), the meanings of freedom of choice are contingent on sociohistorical factors. She refers to Hannah Arendt who points out that the ancient Greeks contemplated male citizens who owned land as the only ones who were truly free since they did not have to devote their time to work. In the contemporary world, economic limitations evidently still shape our freedom of choice; we take up the jobs that we need in order to survive within capitalism and this is especially true for racialized and marginalized women who lack employment options. Anna Saliente (2021) suggests using the term “strategy” because it recognizes sex workers’ capacity for decision-making. While both Agustín and Juliano make important points, it is imperative not to romanticize migrant

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<sup>59</sup> Agustín (2007) draws attention to the fact that women who migrate have long been perceived as deviants, an identity all the more stigmatized in the case of migrant women who get involved in the sex work industry. This stigma has much to do with sex work, but also with the disruption of gender norms that is associated with leaving the family home and temporarily ceasing to be the main caregiver.

<sup>60</sup> Various countries in Latin America rely on the remittances sent by emigrants that engage in migration processes that were previously “controlled migration,” driven by governments, to what is now called “autonomous migration,” outside the authorization of the State (Osborne, 2004).

women's situation as most are underprivileged women who, upon their arrival on Spanish territory, end up forming a part of the informal economic sector—domestic and care work<sup>61</sup>, agriculture, sex work—often lacking a formal contract, satisfactory labor conditions, and access to social security<sup>62</sup>. In effect, still according to the Women's Institute (Mujeres migrantes, n.d.), migrant women in Spain account for 40% of the immigration population who has access to social security. As Mac and Smith (2018) note, undocumented people are especially vulnerable to workplace exploitation, but, according to them, “low wages and workplace exploitation are tackled through worker organizing and labour law – not through attempts to limit migration, which *produces* undocumented workers who have no labour rights” (Mac and Smith, 2018, p. 55).

The bureaucratic impediments to immigration and their associated enhanced border patrol surveillance do not prevent non-European women from attempting to enter the so-called “Europe of Rights,” or, more accurately; “Fortress Europe.” But these restrictions do make the trip much more hazardous. While certain countries in Eastern Europe and Latin America can provide women with a short-term Schengen visa to travel to Spain<sup>63</sup> (admitting that women have access to a valid passport), a large number of women from Middle Eastern countries and Africa do not have access to any kind of visa to enter the country (Bessa, 2019). If they cannot enter the country legally with a tourist visa (and later either regularize their situation or overstay their visa), many women are left with no other choice than to enter the country illegally. Several gender and migration scholars (Arella et al., 2007) have shown that a great number of these women are forced to rely on smuggling/trafficking networks—in other words; pay a smuggler to cross the border. This generates, as Majidi and Dadu-Brown (2017) point out, new migrant-smuggler relationships<sup>64</sup> where smugglers can take advantage of border controls to manipulate and abuse the women they claim to help. According to Mac and Smith (2018), the bulk of people who are forced into an abusive situation were initially trying to migrate. The authors describe what this process can look like:

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<sup>61</sup> A great number of associations have self-organized, raising their voice to denounce their precarious working conditions and demand labor rights, including Las Kellys, an independent association formed by women who work in the domestic sector in Spain (Las Kellys, 2021).

<sup>62</sup> Being undocumented, according to the Organic Law 4/2000, signifies: “[...] in addition to being exposed to the constant threat of expulsion (art. 57), means not having the right to move freely within Spanish territory (art. 5), not being able to be heard by the Administration in matters affecting their interests (art. 6), not being able to exercise the right of assembly (art. 8), not having access to non-compulsory education (art. 9), not having the right to work for oneself or for others and not having access to the Social Security system (art. 10), no right to join a trade union or professional organization or to exercise the right to strike (art. 11), no access to the public housing assistance system (art. 13), no access to general and specific social security benefits and services (art. 14), neither is permitted family life since reunification is not allowed (art. 16 and 17), and no right to free legal assistance for issues not related to the administrative procedures of foreigners (art. 22) (Arella et al., 2004).

<sup>63</sup> Short-term stays are conditional on the conditions established by the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016, with which are established a code of norms according to which persons can cross borders (also known as Schengen Borders Code).

<sup>64</sup> While anti-trafficking discourses in Spain often allude to human trafficking mafias, Agustín's research (2007) shows that human smuggling services are not dominated by mafia-like criminal structures that monopolize all smuggling activities, but rather by a complex market and a range of smuggling services.

It is common for people to take on huge debts to smugglers to cross a border. So far, so good: clearly smuggling. But once the journey begins, the person seeking to migrate finds that the debt has grown, or that the work they are expected to undertake upon arrival in order to pay off the debt is different from what was agreed. Suddenly, the situation has spiralled out of control and they find themselves trying to work off the debt, with little hope of ever earning enough to leave. Smuggling becomes *trafficking*<sup>65</sup>. (Mac and Smith, 2018, p. 54)

In this excerpt, Mac and Smith illustrate with remarkable clarity the very thin line that divides smuggling and trafficking<sup>66</sup>—and how the former can quickly transform itself in the latter. But, as Alcázar-Campos and Cabezas (2017) note, this distinction is crucial as it can determine the rights to which migrant women are entitled to (according to the Palermo Protocol, a victim of human trafficking can access social and medical assistance whereas one who is victim of smuggling are mostly considered “illegal” immigrants). The term “illegal” is generally used to refer to poor migrants of color, even though tourists similarly often overstay their visas (Walia, 2013). Moreover, Maynard points out that “though a human being may be deemed ‘illegal,’ the alleged crime has no victim: within common discourses, the victim of this criminal act is the state, and the alleged assault is on its borders” (as cited in Maynard, 2017, pp. 164-165).

According to Agustín (2007), “Research shows that most migrants who work in the sex industry knew from early on that their work in Europe would have a sexual component” (p. 30). In other words, it is not infrequent for women who contract smugglers to accept selling sex upon their arrival in Spain to settle their debt, but “knowing beforehand” as Agustín specifies, “[...] is a poor measure of exploitation and unhappiness, since no one can know what working conditions will feel like in any future occupation” (ibid.). Moreover, it should be noted that sex work is not always static; someone could be working voluntarily and then experience trafficking at some point or vice versa (Capous-Desyllas et al., 2020). And because many migrant women enter Spain by making agreements with smuggling/trafficking networks (that may involve sex work) and these accords can involve dishonesty and abuse, the distinction between sex work and sex trafficking is all but straightforward. In spite of this, sex work prohibitionists usually streamline these complex relations by putting sex work and sex trafficking under the same [exploitative] umbrella. Prohibitionists tend to claim that abolishing sex work will terminate with sex trafficking (something that, as argued above, is not so easy). Conversely, those who defend the rights of sex workers commonly argue that sex work has nothing to do with sex trafficking, in an attempt to legitimize sex work by reinforcing the idea that it is voluntary, as opposed to coerced. Both positions are radically dichotomous and, according to me, fail to account for the intricacies of both the sex work industry *and* migration.

Human trafficking has been typified as a form of violence in several gender violence and anti-trafficking accords: the recommendations of the “Convention on the Elimination of All Forms of Violence against Women” (1979), the “Declaration on the

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<sup>65</sup> Emphasis is mine.

<sup>66</sup> Smuggling networks are usually used by migrants who have the means to pay smugglers upfront, while trafficking networks are typically used by more vulnerable migrants who must take on a debt to the smuggler to travel (Mac and Smith, 2018).



Elimination of Violence against Women” of the General Assembly of the United Nations (1993), the “Beijing Declaration and Platform for Action” (1995), and the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children”<sup>67</sup>, supplementing the United Nations Convention against Transnational Organized Crime” (2000), amongst others. The latter, also known as the Palermo Protocol<sup>68</sup>, is the main international instrument to fight human trafficking and was ratified in Spain in 2003. It defines the “trafficking in persons<sup>69</sup>” as:

[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (United Nations, 2021)

And according to the Spanish Criminal Code:

Shall be punished with five to eight years of imprisonment for trafficking in human beings whoever, either in Spanish territory, either from Spain, in transit or bound for Spain, using violence, intimidation or deception, or abusing a situation of superiority or need or vulnerability of the national or foreign victim, or by delivering or receiving payments or benefits to obtain the consent of the person who has control over the victim, captures, transports, harbors, or receives, including the exchange or transfer of control over those persons, for any of the following purposes:

- a) The imposition of forced labor or services, slavery or practices similar to slavery, servitude or begging.
- b) Sexual exploitation, including pornography.
- c) Exploitation to carry out criminal activities.
- d) The removal of their bodily organs.
- e) The celebration of forced marriages. (art. 177 bis., LOCP, 1995)

Both of these definitions make clear that several forms of human trafficking exist; not only “the exploitation of the prostitution of others,” but also “forced labour or services,” “slavery or practices similar to slavery,” and “servitude or the removal of organs.” But, curiously, in much the same way as smuggling and trafficking are often conflated, human trafficking is regularly employed to refer exclusively to sex trafficking—a distortion that

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<sup>67</sup> In anti-trafficking reports and legislation, women and children often fall under the same category, which is indicative of the infantilization of migrant women who are involved in the sex work industry, be it as sex workers or as victims of sex trafficking.

<sup>68</sup> According to Vanwesenbeeck (2017), both the Palermo Protocol and the North American “war-on-trafficking” initiated by the Bush administration had strong influences on Europe, with an increasing number of countries inverting funds in anti-trafficking initiatives.

<sup>69</sup> As per the data analysis conducted by the UN Office on Drugs and Crime, “[...] sexual exploitation is the most common aim of exploitation, two out of three victims of trafficking in human beings are women (of which 15%-20% are children) and the percentage of female victims rises exponentially in the case of trafficking for sexual exploitation” (United Nations Office on Drugs and Crime, 2010).

fails to account for these other forms of human trafficking and that makes it difficult to estimate the actual number of victims of sex trafficking (Bernstein, 2018). According to the recommendations of the Warsaw Convention (European Commission, 2005), all states should guarantee that competent authorities identify trafficking victims to ensure their protection and their access to justice. Regrettably, as many authors (Bernstein, 2018; Mac and Smith, 2018; Miller, 2019) indicate, as a descendant of the “Convention Against Transnational Organized Crime” (United Nations, 2000), the Palermo Protocol (like many other anti-trafficking protocols) was elaborated with a focus on crime control and law enforcement rather than human rights and labor protection—and for this reason victim identification is not a main priority. According to a report issued by Amnesty International<sup>70</sup> in October 2020, in Spain victim identification is a major problem. While authorities have the obligation to identify and protect victims regardless of their immigration status, Spanish authorities prioritize the prosecution of undocumented migrants over the safety of victims. So the rights of victims are put on the back burner while crime management and border policing are underscored and even encouraged—even if border restrictions make migrants more vulnerable by forcing them to take more risks, exposing them to exploitation and abuse during transport, and reinforcing migrant-smuggler relationships (Majidi and Dadu-Brown, 2017). Released at the beginning of the 21st century, the UN Protocol thus epitomizes—amidst intensifying migration in an era of globalization—a mounting preoccupation for the traffic in women and girls<sup>71</sup>, now widely referred to as modern-day slavery<sup>72</sup> (in Spain, the term “white slave traffic” or “white slavery<sup>73</sup>” [*trata de blancas*] is still of common usage).

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<sup>70</sup> See the report titled “Invisible Chains: Identification of Trafficking Victims in Spain” (Amnesty International, 2020).

<sup>71</sup> While a great number of trans people are involved in the sex work industry (due to, amongst other factors, employment and housing discrimination), anti-trafficking campaigns are mostly concerned with cis-gender girls under the age of eighteen (Musto, 2013).

<sup>72</sup> The legacy of chattel slavery in the United States is not sex trafficking, but the prison system (Richie, 2012). Mac and Smith (2018) clarify: “Slavery was not abolished but explicitly retained in the US Constitution as punishment for crime in the Thirteenth Amendment of the Bill of Rights, which states that ‘neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United State, or any place subject to their jurisdiction’ (emphasis is ours)” (p. 66). The book *The New Jim Crow* (2010) by Michelle Alexander and the documentary film *13th*, directed by Ava Duvernay in 2016, do a remarkable job at explaining this historical process.

<sup>73</sup> In Britain and the United States in the late 19th century, it was commonly believed that young white women were being coerced into sex trafficking by Black and Jewish men, a discourse fomented by women’s migration and economic independence, as well as a moral panic over “race-mixing” (Mac and Smith, 2018). In her book *Policing Black Lives* (2017) Robyn Maynard brilliantly traces the history of this phenomenon, describing how, following chattel slavery, Black men and women were thought to possess a pathological sexuality, creating the Black-male-as-rapist trope according to which Black men were dangerous and could corrupt the purity of white womanhood. In this context, the rape of white women was considered an affront against the property of white men, thus an affront against white settler society. In the same line, Mac and Smith (2018) add that trafficking anxieties stand for white nationalism, with white women’s bodies representing the nation, threatened by immigration.

### Neo-Abolitionism: Anti-Trafficking Campaigns and the Rescue Industry

This growing concern for sex trafficking is characteristic of what various scholars (Ward and Wylie, 2016; Vanwesenbeeck, 2017) call “neo-abolitionism.” Emerging at the end of the 20th century, neo-abolitionism is a new form of sex work prohibitionism (in its original sense) that moves away from the criminalization of sex workers and towards the criminalization of the demand for sex work. Contemporary sex work prohibitionists or neo-abolitionists no longer advocate for the incarceration or forced rehabilitation of sex workers<sup>74</sup>, but perceive sex work as the quintessential expression of patriarchal gender relations. They view sex workers as the ultimate victims of this oppression and conflate sex work with sex trafficking<sup>75</sup> in policymaking—playing out against a backdrop of radical state feminism and increased immigration (Bernstein, 2018). According to Vanwesenbeeck (2017), neo-abolitionist agendas are characterized by two core features: the implementation of the Swedish model and the dissemination of anti-trafficking discourses, laws, and policies that equate all forms of sex work with sex trafficking.

While Spain does not (yet) embrace the Swedish model, the current Ministry of Equality adopts a prohibitionist stance that, in accordance with neo-abolitionism, rests on the homogenization of the discrepancies between sex work and sex trafficking in the drafting of legislation. To reinforce this association, the PSOE and the Ministry of Equality constantly refer to a report called “Prostitution: Exploitation, Persecution, Repression” elaborated by the SCÉLLES Foundation in 2016, claiming that there are between 300,000 and 400,000 prostituted individuals in Spain, of which 90% are in a situation of trafficking (Fondation SCÉLLES, 2016). Paradoxically, according to the report “Trafficking in Persons to Europe for sexual exploitation” issued by the United Nations, one in seven women would be a victim of trafficking in Europe (United Nations Office on Drugs and Crime, 2010). While this report dates from 2010, such a drastic increase has not been statistically corroborated.

Such conflation creates a “trafficking discourse” that converts all women involved in the sex work industry—mostly working-class racialized women from the Global South—in passive victims<sup>76</sup>; incapable of enacting any form of agency over their situation or rationally reflecting on their experiences. In this context, governments and institutions from the Global North take it upon themselves to “save” these (mostly racialized) victims<sup>77</sup>, creating what Agustín (2007) calls the “rescue industry” or what Teju Cole (2012)

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<sup>74</sup> During the Francoist dictatorship, from 1941 to 1985, sex workers were held at facilities run by nuns through a program called “Women’s Protection Board” (*Patronato de Protección a la Mujer*) (Guereña, 1995).

<sup>75</sup> Both in the media and in the policies of Spain and the European Union, the term “trafficking” is increasingly being used to refer to what is one of the various forms of international migration (Mac and Smith, 2018). Trafficking generally refers to sex trafficking, while, as previously noted, there are many other types of trafficking.

<sup>76</sup> The media tends to portray sex trafficking victims as young (and white) women and girls that are abducted and subsequently enslaved; a telling example is the Madrid anti-trafficking campaign poster that depicts the leg of a woman in high heels enchained to a ball chain (“Madrid Lanza una campaña contra la trata con fines de explotación sexual”, 2020).

<sup>77</sup> Reminiscent of European colonizers’ so-called “manifest destiny” to civilize Indigenous populations, the bourgeoisie, as Agustín (2007) explains, has long believed it had the duty to civilize the working class, seen

terms the “white savior industrial complex.” But their alleged solutions are inscribed in the punitive turn of the late 20th and early 21st century and frequently result in the deportation of migrant women (ibid.). Like the global prison industrial complex, carceral anti-trafficking policy fail to differentiate voluntary from coerced migration and works to strengthen border restrictions (Kapur, 2005). Bernstein (2018) conceptualizes what she calls the “anti-trafficking industrial complex” to account for the ways in which local and transnational nonprofit organizations, governmental institutions, and corporations<sup>78</sup>, along with carceral feminists and faith-based activist groups, develop and promote operations against sex trafficking that encourage harsher criminal and economic penalties against traffickers<sup>79</sup>, pimps, and clients.

While their discourse focuses on women’s human rights (and this is somewhat ironic seeing as women from the Global South are essentially deprived of their humanity by being characterized as one-dimensional victims), organizations like Equality Now and Coalition against Trafficking in Women (CATW) encourage militarized humanitarian interventions<sup>80</sup> that center on sexual exploitation, leaving labor exploitation out of the discussion. According to Mai (2018):

The global rise of sexual humanitarianism corresponds with the imposition on the rest of the world of a North-centric, privileged, and profitable morality that does not recognize the ethical validity of migrants’ difficult ageing decisions to sell sex (and sometimes endure bounded forms of exploitation) in the short term in the name of a better future for themselves and their families. In the process, the world’s remaining moral zones are being sanitized by a privileged (mis)understanding of migrant agency that criminalizes underprivileged livelihoods as ‘trafficking’ in order to make way for the ethical and economic priorities of reinvented corporate and non-governmental moralities. (P. 114)

While anti-trafficking activists are generally well-intentioned, these interventions tend to increase “[...] border control and immigration restrictions; stepped-up enforcement of

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as lacking the capacity for rational thinking. In this context, middle-class women began to get involved in charity work with the aim of “rescuing” poor and racialized women. Ironically, in doing so migrant sex workers were deprived of their source of income, while middle-class women were provided with a new occupation in caritative work (ibid.).

<sup>78</sup> Several multinational corporations are legally obligated to do anti-trafficking work (Mac and Smith, 2018). Other corporations—including Google, the Body Shop, Manpower Incorporated, and AllSaints—are prominent advocates of anti-trafficking campaigns and provide funding and policy solutions (Agustín, 2007). Furthermore, it is common for NGOs from the United States operating in foreign countries to receive funding for anti-trafficking or HIV prevention, and, according to the contracts of these agreements, NGOs are not allowed to support the decriminalization of sex work (prostitution must be defined as sexual exploitation and gender violence). The United States is the biggest donor, so there is a strong incentive not to support decriminalization (Parmanand, 2021).

<sup>79</sup> Agustín (2007) contends that with the growing presence of migrant workers in Europe, the figure of the trafficker has come to replace the pimp. For her part, Mai (2018) proposes using the term “third-party agent” to define people who facilitate and manage the sex work of others, instead of trafficker or pimp because it reflects the variety of relationships that can exist between them.

<sup>80</sup> Bernstein (2018) expands the definition of “militarized humanitarian interventions” to include not only state-sanctioned military interventions in foreign countries, but also the use of punitive humanitarian strategies by non-governmental actors. Interestingly, Mac and Smith (2018) note that “[...] the HERO Act (which stands for the Human Exploitation Rescue Operations Act) takes funding from Immigration and Customs Enforcement (ICE) to train US military veterans to fight trafficking” (p. 52).

anti-prostitution, disorderly conduct, and public nuisance laws; and a growing array of mandatory ‘diversion’ and ‘victim services’ programs, which keep participants under state surveillance for longer and more intensified intervals (Bernstein, 2018, p. 48). Indeed, anti-trafficking campaigns and policies identify traffickers as the main problem and support law-and-order methods—such as border restrictions, arrests, and deportation systems<sup>81</sup>—that reinforce the neoliberal state, without addressing the state systems that push migrants into debt and force them in illegal economies (Mac and Smith, 2018).

Anti-trafficking policies can easily take the shape of anti-immigration and anti-sex work policies, where carceral feminists unwillingly support the detention or deportation<sup>82</sup> of migrant sex workers. Scholars from the field of criminology of mobility (Pickering, Bosworth, Aas, 2018) have widely documented the connections between immigration and criminality. In Spain, immigration detention centers (*Centro de internamiento de extranjeros*, abbreviated to CIE) are conceived as administrative rather than punitive (Maynard, 2017), but they are actually a form of incarceration; a practice that could be conceived as a “double punishment” since migrants are first incarcerated and then deported (Maynard, 2017). Moreover, “detention exacerbates post-traumatic stress disorders and depression, conditions that are vastly more common in detained asylum seeker compared to those who are not in immigration detention” (2017). These conditions are likewise more common in sex trafficking victims, which is especially disturbing since in Spain, sex workers and women victims of sex trafficking are overrepresented in immigration detention centers<sup>83</sup> and among them are a large number of unidentified victims—which may be explained by increased policing and recurrent raids (Bessa, 2019). In sum, punitive measures clearly do not work to reduce sex trafficking and it is urgent that we find solutions that do not result in the criminalization of migrant women.

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<sup>81</sup> According to Bessa (2016), deportation systems operate in immigration-receiving countries to repatriate migrants by identifying them, arresting them, and detaining them in ICE centers.

<sup>82</sup> In Spanish legislation, deportation is called “expulsion” or “return” (Bessa, 2019).

<sup>83</sup> Managed by the Ministry of Interior and supervised by the police, these so-called “administrative prisons” incarcerate undocumented migrants who are subject to deportation from Spanish territory (Calvo, 2013). They can be held in these centers for a maximum of 60 days (ibid.). According to the Organic Law 4/2000, these detention centers are not penitentiaries and are equipped with social, legal, cultural, and sanitary services. But the reality is another story. According to the “European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment and Amnesty International,” these centers violate human rights. Various cases of abuse and gender violence have been reported (Hierro, 2017). In 2017, there were 396 women and 7,841 men incarcerated in CIE, with an overwhelming number of women from Paraguay, Morocco, and Brazil (Bessa, 2019).

## **Chapter V. Analysis: The “Ordinance to Promote and Guarantee Civic Coexistence in the Public Space in Barcelona” and the “Organic Law 4/2015, of 30 March, on Citizen Protection and Security”**

### Coexistence and Civility

Before getting into the thick of the analysis, I want to briefly contextualize the implementation of these policies. Over the past decades, Spain has seen a significant growth in immigration rates, leading to a fluctuating demographic and a very large number of people concentrated in urban centers, notably in cities like Madrid, Barcelona, Valencia, and Sevilla. These sociodemographic transformations, along with an extremely precarious job market largely based on the tourist sector<sup>84</sup>, have entrenched social segmentation, unemployment rates, and urban inequalities; breaking down social ties and community solidarity and fostering a perpetual sense of crisis in the country—which the current COVID-19 crisis has only intensified.

Political powers have capitalized on this social climate<sup>85</sup> to instigate a rhetoric of insecurity in the wake of the wars on terror, drugs, and crime that spread across the United States and Europe in the 1980s. Quickly, Spanish criminal policy was, in turn, leaning toward securitization, risk management (Garland, 2001), crime prevention (Pitch, 2010), and punitive populism (Maqueda, 2015). The media played an important role in propagating some of these moral panics; in July 2005, the newspaper *La Vanguardia* published an issue portraying Barcelona’s urban landscape as chaotic and “out of control,” encouraging new penal sanctions for so-called “deviant” behavior in the public space, such as panhandling, alcohol consumption, and sex work (González and Becerra, 2018). In this context, “broken windows policing<sup>86</sup>” flourished, boosting surveillance and patrolling in an effort to “clean up the streets” of gentrifying neighborhoods—favoring real estate developers and the protection of private property<sup>87</sup> and ensuring that homeless people, drug addicts, and sex workers were hidden from the sight of tourists to preserve a pristine image of the Spanish metropolises. The civic ordinances enforced in most large and medium-sized cities in Spain since the beginning of the 2000s and the “Organic Law 4/2015, of 30 March, on Citizen Protection and Security” (LOPSC) implemented at the state level in 2015, emerge in the context of these intensifying crime prevention measures and neoliberal policies purportedly intended to ensure citizen safety through the prohibition of various types of behavior in the public space, including sex work.

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<sup>84</sup> Still recuperating from the 2008 financial crisis, Spain’s economic dependence on the tourist sector was recently ravaged by the coronavirus crisis, its revenues decreasing by 75% in 2020 (Gutiérrez, 2021).

<sup>85</sup> Today, the party VOX, amongst others, fuels anti-immigration, racist, xenophobic, and fascist ideologies and propagates fear amongst the general population by alluding to a need to protect the public from migrant crises, racialized youth organized crime and street gangs, and an epidemic of squatters.

<sup>86</sup> Broken window policing refers to George Kelling’s Broken Windows Theory, which claims that “poverty-related disorder attracts other more serious crime, and that the policing of low-level quality of life and property crime is crucial to neighborhood safety and violence prevention” (Yarbrough, 2020, p. 62).

<sup>87</sup> Tamar Pitch (2010) refers to Locke (1987) who theorized about private property being a means of protection as the ownership of goods and resources provides autonomy, independence, and self-ownership. Women have traditionally been excluded from this self-ownership as they have not been the owners of property, resources, or even themselves (*ibid.*).

In this chapter, I show that these administrative sanctions are inscribed in neoliberalism's punitive turn and revitalized efforts to control and manage impoverished communities including the sex worker collective (in its majority irregular residents). I demonstrate that rather than putting an end to street-based sex work or preventing exploitation, these regulations infringe sex workers' rights by subjecting them to policing and sanctions that can result in arrest or deportation and segregating them outside of the city center, enhancing their stigmatization and vulnerability to violence. According to the steps defined by Norman Fairclough's (1989) methodology of critical discourse analysis, I begin by describing these policies, their context of production, their content, and their stated objectives. I then go on to interpret the meaning of these policy documents and assess how they impact sex work policy in Spain and sex workers specifically. Finally, I explain these results and I look at how they are inscribed in the rise of neoliberal capitalism and the punitive turn of the end of the 20th and beginning of the 21st century.

Because of the lack of regulation of sex work at the state level, the municipal ordinances emerge in various Spanish cities to manage sex work in the public space<sup>88</sup>. The first civic ordinance is approved by the city council of Barcelona in 2005; the "Ordinance to Promote and Guarantee Civic Coexistence in the Public Space in Barcelona"<sup>89</sup>. It prohibits and financially sanctions the negotiation, solicitation, and acceptance of remunerated sexual services in the public space, with harsher sanctions when this is carried out at less than two hundred meters away from spaces where there are minors, such as educational centers (Campmajó, 2018). In 2012, the Ordinance was amended, the aim being of differentiating between the penalties and offences applicable to sex workers and those applicable to their clients (toughening the latter), but they ended up toughening both (Villacampa, 2017). The municipal ordinances implemented in Spain can be divided in two types: generic municipal ordinances of "civism" that include a section or article to regulate sex work specifically (and they sanction both sex workers and their clients) or municipal ordinances that directly regulate sex work in the public space (and sanction only the clients) (Campmajó, 2018). The one in Barcelona belongs to the first type. While many cities implement municipal ordinances, several do not. Instead, they rely on the more recent "Organic Law 4/2015, of 30 March, on Citizen Protection and Security"<sup>90</sup>, using the basis of "civility" to regulate sex work in the public space<sup>91</sup>. It sanctions the offering and soliciting of paid sexual services in public transit areas or areas used by minors, such as near educational centers.

According to Article 39 of the "Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona," the "Rules of Conduct" are:

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<sup>88</sup> In 2006, they were implemented in Valencia, Santader, Vic, Martorell, Mataró, and Leganés; in 2007, in Santiago de Compostela, and Lleida; in 2008, in Castellón, Seville, Huesca, and Ávila; in 2009, in Granada and Guadalajara; in 2010, in Alcalá de Henares, Bilbao, Palma de Mallorca, and Málaga; in 2011, Badajoz; and in 2013, in Murcia (Villacampa, 2017).

<sup>89</sup> Before the implementation of this policy, the Law of Danger and Social Rehabilitation (L 16/1970) prohibited the practice of sex work in the street, but it was repealed with the Spanish Constitution in 1978 (González and Becerra, 2018).

<sup>90</sup> This law replaced the previous Citizen Safety Act, which did not include the regulation of sex work (Villacampa, 2017).

<sup>91</sup> These include Madrid, Zaragoza, and San Sebastian (Villacampa, 2017).

1. In accordance with the purposes set forth in the preceding article, it is prohibited to offer or accept to provide paid sexual services in the public space.
2. Especially prohibited by this Ordinance is the solicitation, demand and negotiation of paid sexual services in the public space by potential clients.
3. Likewise, any conduct in the public space that favors and promotes prostitution or other forms of sexual exploitation are especially prohibited, including approaching clients.
4. The performance of the activities mentioned in the previous paragraph are especially forbidden when they are carried out in areas located less than two hundred meters away from schools or educational centers in which teachings of the general regime of the educational system are given.
5. Likewise, it is especially forbidden to have paid sexual intercourse in the public space. (p. 31)

The civic ordinance prohibits and sanctions the solicitation, demand and negotiation of paid sexual services (or maintaining sexual relations) in the public space. Unlike civic ordinances implemented in other Spanish cities, the Barcelona civic ordinance is a generic ordinance of “civism” (Campmajó, 2018), not an ordinance specifically about sex work, for which it includes a section about sex work (section two), stating that both sex workers and their clients can be fined. Similarly, Article 36.11 of the “Organic Law 4/2015, of 30 March, on Citizen Protection and Security” states:

The solicitation or acceptance by the plaintiff of paid sexual services in public transit areas in the vicinity of places intended to be used by minors, such as educational centers, playgrounds or leisure spaces accessible to minors, or when these behaviors, because of the place where they are carried out, may generate a risk to road safety. (p. 21)

The LOPSC does not sanction the offering of paid sexual services in the public space, but in “public transit areas in the vicinity of places intended to be used by minors, such as educational centers, playgrounds or leisure spaces accessible to minors.” That being said, sex workers can still be sanctioned by applying Article 37.5: “Carrying out or inciting acts that violate freedom and sexual indemnity, or performing acts of obscene exhibition, when it does not constitute a penal infraction” (LOPSC, p. 22), which constitutes a minor infraction. Because women can be criminalized for exercising street-based sex work, it could be argued that the legal framework regulating sex work in Spain is actually closer to a soft prohibitionist model than an abolitionist model (Villacampa, 2017). Here I need to make a clarification. In this thesis, as expounded in the introduction, I have been using the term prohibitionist to refer to sex work abolitionism even though in Spain, sex workers are not officially criminalized, in line with the abolitionist or neo-abolitionist model. That being said, the generic municipal ordinance and Article 37.5 of the LOPSC penalize sex workers, akin to sex work prohibitionism in its original sense.

According to its explanatory memorandum, the main objectives of the “Ordinance to Promote and Guarantee Civic Coexistence in the Public Space in Barcelona” are to:

[...] preserve the public space as a place of coexistence and civility, where all people can freely carry out their activities of free movement, leisure, meeting and recreation, with full respect for the dignity and the rights of others and the plurality



of expressions and diverse ways of life existing in Barcelona. It therefore adds to and, in some aspects, updates and improves the provisions already contained in other ordinances currently in force, and which also refer, in one way or another, and from different aspects, to the complex phenomenon of coexistence, such as, and among others, the Ordinance on the Use of Roads and Public Spaces, of 1998, or the General Environmental Ordinance, of 1999. (p. 1)

The municipal ordinance aims to “preserve the public space as a place of *coexistence* and *civility*,” suggesting that the offering and soliciting of paid sexual services in the public space are activities detrimental to both *coexistence* and *civility*. *Coexistence* can be defined as the state of being together in the same place at the same time (Merriam-Webster, n.d.) or the relationship between citizens and between citizens and their urban environment (Villacampa, 2017). According to Villacampa, “[...] the notion of civic coexistence [is] associated with public order—actions aimed at protecting goods or people and ensuring peace of mind—and the use of public space” (2016, p. 42). In Spain, still according to the author, the concept of coexistence is rooted in the local realm, in the municipal reality; associated with the concepts of urban safety and public safety.

*Civility*, on the other hand, or its lack thereof—adopting “uncivilized” behaviors—presupposes a breach of the social order, threatening peaceful and civil *coexistence*. But what behaviors are regarded as civilized or uncivilized largely depends on historical and sociopolitical factors; as mentioned earlier, activities such as panhandling or alcohol consumption in the public space have only recently been typified as uncivilized in Spanish law. The term civility originally comes from the Latin word *civis*, which means citizen (hitherto exclusively defining men who owned property; not unlike freedom of choice for the ancient Greeks, as mentioned earlier). It later became *civitas*, referring to the rights and duties of citizenship, and finally developed into *civilitas*, or the art and science of citizenship (Schaefer, 2015). Up until the 18th century, the notion of civility was employed to refer to a *process* rather than a *condition* and “civility contained the notions of ‘uncivilised’ or ‘barbarian’ Other, be it in a specific social group or in another country or nation” (Nehring, 2011, p. 313). Decolonial scholars have extensively theorized on the concept of “Other,” for which they provide insight into the systems of power and subjugation at play here. Kapur (2003) says:

[...] women, especially from the postcolonial world, are cast as either victims, incapable of decision-making or consenting, sexual deviants, disrupting the moral and social fabric of the sexually sanitized West and/or dangerous ‘Others,’ threatening the security of the nation state”. (p. 4)

In this context, sex workers—of color, migrant, trans—are cast as dangerous; immoral, deviant, uncivilized “Others,” jeopardizing not only the security of the nation-state, but also the peaceful coexistence between its citizens. These Others are not included in the notion of citizen, but rather, they are considered failed citizens, or non-citizens. We could even argue that they are not seen as human beings, but bodies—bodies that must be managed and put away: “the migrants, the vagrants, addicts, the mentally ill, the homeless of our cities all appear as the main figures of urban insecurity and fear [...] and what causes fear is locked away and segregated [...]” (Pitch, 2010, p. 61). Criminal (or administrative)

law serves to eliminate them from the public space, hence erasing them from society. In her book *Erotic Justice*, Ratna Kapur (2005) writes:

Law has been used not only as a site of empowerment, but also as a device for excluding the World's Others, or including them on terms that are quite problematic, both historically as well as in the contemporary context. These inclusions and exclusions have been produced in and through law, either by emphasizing the difference of the subaltern subject as incapable of choosing or consenting, and thus incapable of exercising rights, or as backward and uncivilised, to be redeemed and incorporated into the liberal project through the process of assimilation. A third approach is to regard the Other as dangerous and a threat to the security of nation-states, to be either incarcerated or annihilated. (p. 2)

The idea according to which subaltern subjects are “incapable of choosing or consenting, and thus incapable of exercising rights” is especially relevant in the context of sex work because sex workers are always either considered victims or uncivilized sexual deviants—in both cases they are devoid of agency and incapable of governing themselves.

Building on Foucault, in her book *Pervasive Prevention* (2010) Pitch describes self-governance or self-control as a fundamental requirement for individuality within democratic societies, as well as a crucial tool for maintaining social order. She says:

This modality of subjectivization was denied to women, and it is for this reason that they must be watched over: both in order to protect them from harm and to prevent the dangers they represented to men in general and to the symbolic and social order constructed by men. (Pitch, 2010, p. 17)

In this case, penal law, or the municipal ordinances and the LOPSC, serve to watch over women and uphold the symbolic and social order constructed by men so that those considered civilized (previously the colonizers; now the neocolonial state or the white, middle-class European citizen) can maintain power over the uncivilized (previously the colonized; now the racialized or migrant sex worker). In this way, these legislative texts effectively sustain the power disparity between the state, the law, and sex workers.

### Citizen Security

Now, I am going to turn to the “Organic Law 4/2015, of 30 March, on Citizen Protection and Security.” The preamble of the legislation states:

Citizen security is the guarantee that the rights and freedoms recognized and protected by democratic constitutions can be freely exercised by citizens and not mere formal declarations without lacking legal efficacy. In this sense, citizen security is one of the essential elements of the Rule of Law. Social demands for citizen security are essentially addressed to the State, social awareness that only the State can ensure a sphere of coexistence in which the exercise of rights and freedoms is possible, through the elimination of violence and the removal of obstacles to the full exercise of those rights and freedoms. (p. 5)

While the notions of civic coexistence and civility are closely connected to social order, the concept of citizen security is usually associated to how—or by whom—this social order is preserved, namely the police. The LOPSC legally implements the *right to security*: “*citizen security* is the guarantee that the *rights and freedoms* recognized and

protected by democratic constitutions can be freely exercised by citizens and not mere formal declarations without lacking legal efficacy” (LOPSC). But, as seen previously, exactly who is deemed deserving of this right and how it should be guaranteed is not exactly clear. In recent years, insecurity has been at the heart of post-industrial societies. David Garland (2001) notes that anxieties over insecurity have become a major social problem characteristic of our neoliberal societies. They “[...] go hand in hand with blood-and-soil, tradition, religion, all to be defended against dangerous aliens” (Pitch, 2010, p. 128). As Pitch (2014) argues:

Authoritarian populism feeds on masculine fears of women and their sexuality; it uses masculinist (and frankly sexist) vocabularies to legitimate itself, all the way down to implying that the ‘barbarian’ hyper-sexuality of coloured foreigners is one of the main threats to ‘security’. (P. 128)

In her book *Pervasive Prevention* (2010), Pitch discusses the question of insecurity and refers to Castel (2003) who identifies two types of insecurity; external and internal:

The first would have been dominant in the pre-modern era when the majority of threats were external – wars, invasions, illnesses. The second, conversely, prevailed in modern society, which was confronted with the emergence of the individual and the disintegration of family and social ties that constrained people in dependent and interdependent systems. Here, individual liberty is closely tied to widespread insecurity arising from the dissolution of alliances, loyalties, social relations and prior trust. (p. 13-14)

In contemporary society, as the author describes, individual liberty has come to occupy a prominent place and goes hand in hand with the discourses surrounding insecurity. According to abolitionist activist and social organizer Mariam Kaba (2020), a distinction must be made between security and safety. She says:

Security is a function of the weaponized state that is using guns, weapons, fear and other things to “make us secure.” Horrible things are supposed to be kept at bay by these tools, even though we know that horrible things continue to happen all the time – and that these very tools and the corresponding institutions are reproducing... (p. 106)

Most countries, as Kaba (2020) says, accept the principle of law-and-order as the price for safety and freedom. In this context, security has become a newly acquired right, legally implemented by a number of administrations (regardless of their political affiliations) to prevent crime (Pitch, 2010). In response to this growing generalized insecurity, a series of measures have been implemented in Spain to preserve safety in the public space, not only through penal law but also through administrative law sanctions. As González and Becerra (2018) explain:

For years we have been witnessing an expansion of criminalization strategies, which involves the construction of new legal spaces that are no longer the traditional ones of criminal law, in order to sustain the marginalization and subsequent criminalization of certain groups. The strengthening of administrative sanctioning law as an instrument for the affectation of these rights is one of the emerging elements in the new techniques of social control. (p. 72)

And “although citizen safety is not defined in Spanish law, it is listed in the Constitution as one of the tasks assigned to law enforcement agencies” (Villacampa, 2017, p. 42).

But who is truly kept safe with these policies? Are citizens safer when precarious populations are segregated and kept in situations of extreme precarity? And, most importantly, are sex workers protected under these prevention policies? The short answer is no. In fact:

[...] prevention contributes to maintaining and reinforcing inequalities, either because prevention costs, and whoever cannot afford it is simplicity under accusation, or because it is itself a method of discrimination which occurs against weak and vulnerable figures: prostitutes, poor migrants, vagrants, addicts. These people are usually not included among the members of ‘society’ who are told they are entitled to security, but are instead, as researches indicates, typically cast as figures of ‘fear’. (Pitch, 2010, pp. 76-77)

Both the municipal ordinances and the LOPSC are part of a rise in punitive policies that implement “administrative law of the enemy” (as cited in Iglesias-Lucía, 2018), striving to reduce crime levels, but only reducing perceived fear levels and insecurity amongst the general population.

### Free Movement

Now, I look at exactly how the civic ordinances and the LOPSC reinforce social inequalities by increasing police surveillance, criminalization, detention, deportation, and overall rates of violence. The “Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona,” in its Article 40, lists the sanctions associated with soliciting or requesting sexual services in the public space:

1. The conducts set forth in paragraph 1<sup>92</sup> of the preceding article shall be considered as minor and shall be punishable with a fine of 100 to 300 euros and when they are carried out in the public space at a distance of less than 200 meters from schools or educational centers in which teachings of the general regime of the educational system are given, with a fine of 300.01 to 750 euros.

Persons offering or agreeing to provide paid sexual services will be informed of the programs and services provided by the Agency for the Integral Approach to Sex Work (ABITS), and, if applicable, the possibility of substituting the economic sanction by an alternative measure under the terms established by the Decree referred to in art. 28.2 of the Ordinance regulating the sanctioning procedure and complementary regulations<sup>93</sup>.

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<sup>92</sup> This refers to Article 39.1: “In accordance with the purposes set forth in the preceding article, it is prohibited to offer or accept to provide paid sexual services in the public space” (“Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, 2005).

<sup>93</sup> This refers to Article 28.2 of the Ordinance regulating the sanctioning procedure and complementary regulations: “The determination of the work or services for the benefit of the community or other alternative measures to be carried out in substitution of the pecuniary sanction will be decided by the competent authority” (“Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, 2005).

2. The conducts set forth in paragraphs 2<sup>94</sup> and 3<sup>95</sup> of the preceding article shall be considered serious and shall be punishable with a fine of 1,000 to 1,200 euros, and when they take place at a distance of less than 200 meters from schools or educational centers in which teachings of the general regime of the education system are given, with a fine of 1,200.01 to 1,500 euros.
3. The conducts set forth in section 5<sup>96</sup> of the previous article will be considered as very serious, and will be punishable with a fine of 1,500.01 to 3,000 euros.

Similarly, in the case of the LOPSC, Article 39.1.b states that clients can be penalized with a “serious infraction,” while sex workers can be charged with a minor infraction according to Article 37.5: “For serious infringements, the minimum level shall include a fine from 601 to 10,400 euros, the medium level from 10,401 to 20,200 euros, and the maximum level from 20,201 to 30,000 euros.” (LOPSC, p. 24). In order to certify that these policies are implemented, surveillance and policing have been increased for street-based sex workers who circulate in the public space. Interestingly, the memorandum of the “Ordinance to Promote and Guarantee Civic Coexistence in the Public Space of Barcelona” states that the public space must be a space where “all people can freely carry out their activities of *free movement*” (p. 1). This is somewhat ironic and contradictory seeing as municipal ordinances result in increased surveillance and policing, expelling sex workers from the city and ultimately restricting their freedom of movement, not ensuring it. The public space becomes a space of fear, police control, and repression, rather than freedom. Once again, it is quite clear who is included in these policies and who remains excluded of these rights. Surveillance and policing affect racialized communities more than any other. In the United States:

Transgender women, particularly transgender women of color, are so frequently perceived to be sex workers by police that the term *walking while trans*, derivative of the more commonly known term *driving while Black*, was coined to reflect the reality that transgender women often cannot walk down the street without being stopped, harassed, verbally, sexually and physically abused, and arrested, regardless of what they are doing at that time. (Mogul et al., 2011, p. 109)

According to a report prepared for the United Nations in 2007, still in the United States, cis and trans Black women are subjected to high levels of profiling for possible sex work offences<sup>97</sup> (sex work is illegal in most of the United States). Because sex workers in Spain

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<sup>94</sup> This refers to Article 39.2: “Especially prohibited by this Ordinance is the solicitation, demand and negotiation of paid sexual services in the public space by potential clients” (“Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, 2005).

<sup>95</sup> This refers to Article 39.3: “Likewise, any conduct in the public space that favors and promotes prostitution or other forms of sexual exploitation are especially prohibited, including approaching clients” (“Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, 2005).

<sup>96</sup> This refers to Article 39.5: “Likewise, it is especially forbidden to have paid sexual intercourse in the public space” (“Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona”, 2005).

<sup>97</sup> That being said, as Maynard (2017) highlights, “[...] care must be taken to avoid falling into a trap of respectability politics, here defined as the practice of seeking to counter racist stereotypes by upholding Black female ‘virtue’ and sexual morality” (p. 140). Because, Maynard continues, “This politic promotes

are typically racialized, migrant, and trans women, it makes no doubt that they are overly surveilled. According to data from the Ministry of Interior, since the implementation of the LOPSC, from 2015 to 2017, police forces have given 591 sanctions nationwide against sex workers for allegedly performing acts “against freedom and sexual indemnity or obscene exhibition” (Article 37.5), which amounts to a total of 100,420 euros (Campmajó, 2018). Madrid is the community with the highest rate of imposition of sanctions, with 138 sanctions out of the total number at the state level (*ibid.*). Ironically, sex workers see themselves obligated to provide further sexual services or take on debt in order to pay the fines that these policies imply, which ultimately criminalizes poverty (Villacampa, 2017).

Moreover, studies suggest that street-based sex workers experience higher rates of poverty, violence, and health problems than sex workers who work indoors (Mellor and Lovell, 2012; Armstrong, 2014; Krüsi et al., 2014; Armstrong, 2017). For this reason, it seems logical that they should feel comfortable confiding in the authorities. But because street-based sex workers are more likely to be policed and criminalized, they often do not trust the authorities and perceive their interactions with them as negative experiences (Klambauer, 2017). In-depth interviews conducted with twenty sex workers who work in the city of Lleida found that the increased police controls, identification checks, and harassment amplified sex workers’ fear of the police (either because of the sanctions themselves or because of the women’s irregular status).

In fact, “[...] the women had developed escape strategies for when the police arrived” (Villacampa, 2017, p. 50). Moreover, “the respondents confirmed that the women were fined more than the clients or for walking along the street, whereas clients were only fined when they were caught directly engaging in sexual relations in the street” (Villacampa, 2017, p. 50). During the processing of the LOPSC, Amnesty International was quick to denounce the law and its broadening of the discretionary power of police officers, which risked increasing arbitrary or abusive police actions—something that has been proven to occur (Campmajó, 2018). These policing strategies do not reduce street-based sex work. There is no evidence showing that the number of sex workers has declined (Villacampa, 2017). But they do hide it from public view.

The municipal ordinances and the LOPSC are accompanied by increased policing and, in order to avoid these sanctions (or even deportation in the case of sex workers with an irregular status), sex workers are forced to exit the city center and exercise their work in the peripheries, in riskier environments such as industrial zones. In Madrid, these policies have displaced sex workers to the south of the municipality, to areas such as Polígono de Villaverde, and to lower income areas, such as Ventas, Tetuán, Arganzuela, Vallecas, or Usera (Perera, 2018). For sex workers, peaceful coexistence and civility translates into their exclusion from the public space, their stigmatization, and their social and physical segregation. An analysis of borders is warranted as the zoning practices that maintain a strict division between those from the Global South and those of the Global North are recreated—albeit at a smaller scale—through municipal ordinances. As Walia

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a duality between the innocent, respectable Black women who are falsely profiled as prostitutes, in opposition to the bad Black women who do, indeed, exchange sex for money, goods or security” (*ibid.*).

(2014) argues, “whether through military checkpoints, gated communities in gentrified neighborhoods, secured corporate boardrooms, or gendered bathrooms, bordering practices delineate zones of access, inclusion, and privilege from zones of invisibility, exclusion, and death” (p. 10). Indeed, municipal ordinances and the LOPSC trace lines of privilege, where sex workers are viewed as undesirable or expandable, deviant and criminal individuals that need to be excluded in an effort to “clean up the streets” and conceal sex work from public view. It establishes who belongs in the city and who does not; who belongs to the nation-state and who does not. As Walia (2014) argues:

The construction of illegals within border imperialism is part of a broader logic that constructs deviants in order to maintain state power, capitalist profiteering, and social hierarchies. Within mainstream narratives, criminals are never imagined as politicians, bankers, corporate criminals, or war criminals, but as a racialized class of people living in poverty. The word criminal becomes synonymous with dehumanizing stereotypes of ghettos, welfare recipients, drug users, sex workers, and young gang members.” (p. 37).

Clearly, we can see a resonance here as sex workers are kept outside the limits of the city in an attempt to protect capitalist profiteering, gentrification, and tourism in Spanish cities. Most sex workers’ rights activists and human rights organizations denounce the violation of fundamental rights that these policies imply; the right to health, freedom, and security. In fact, some have questioned the legality of these municipal ordinances which can regulate with unlawful norms the conducts that are part of the objective scope of fundamental rights (as cited in Iglesias-Lucía, 2018). Because the municipal ordinances and the LOPSC penalize the demand for sex work, like the Nordic model, it is possible to extrapolate on the impacts that these policies have on sex workers from the studies that were conducted about the consequences of criminalizing the demand for sex work.

Ascribing penal sanctions to the purchase of sexual services, as Dodillet and Östergren (2011) note, discourages clients from collaborating in legal proceedings against sex trafficking (as this could potentially incriminate them), which in due course undercuts the efforts to detect and prevent sexual exploitation. Criminalizing clients also reduces the number of work available and makes it more difficult for sex workers to access customers and negotiate the conditions under which the transaction will take place, forcing them to rely on third-party agents, accept riskier clients and situations, go to remote areas to avoid police surveillance (exposing sex workers to violence) or accept to have sexual relations without condom (*ibid.*). Sex workers find it more difficult to report violence; a recent study in Canada shows that when clients are criminalized this reduces the time that sex workers have to “screen” clients and decide if they want to enter their car (Krüsi et al. 2014). Additionally, criminalization usually does away with preventive campaigns against sexually transmitted diseases targeted at clients because these would entail endorsing and promoting the sex work industry. Furthermore, because criminalization expands police surveillance, for many undocumented migrant sex workers it results, as seen earlier, in arrest, custody, and deportation to their country of origin (Maynard, 2017). Criminalization inevitably heightens the stigmatization of sex workers as it associates their work to criminality and deviance—which, in turn, tends to deter women from

seeking help from the authorities in the case of abuse or accessing social and healthcare services.

To this day, no study has shown that sex work disturbs coexistence or creates problems of insecurity in Spain (Campmajó, 2018), but various investigations indicate that municipal ordinances and the LOPSC violate the rights of sex workers and make them unsafe (Villacampa, 2017; Iglesias-Lucía, 2018; González and Becerra, 2018; Campmajó, 2018). This begs the question: Wouldn't the "civilized" thing to do be to ensure safety for everyone and value sex workers as an integral part of our communities? Through the individualization of crime (Richie, 2012) and the deresponsibilizing of communities, sex workers have been excluded from the public space, but the social roots of sex work have not been addressed. This system of administrative responsibility follows a prevention politics model and has expanded the scope of the criminal justice system, which not only includes penal sanctions, but administrative sanctions for sex workers. The municipal ordinances and the LOPSC are thus illustrative of a shift toward increasingly punitive policies for sex work within neoliberalism.



## Conclusion

Concrete utopias are relational to historical struggles, a collectivity that is actualized or potential. In our everyday life abstract utopias are akin to banal optimism.

—José Esteban Muñoz, *Cruising Utopia*

The ultimate goal of *this* politics of sex work, one that draws on the vibrant legacies of abolitionism past and present, would not be to abolish prostitution per se, but rather to agitate for a reconfiguration of the relationship between work and life for *all* workers.

—Kathi Weeks, “Sex Work, Utopia, and What We Can Learn From Prison Abolitionism”

Throughout this thesis, I have argued against the use of the legal criminal system to address the harms associated with sex work, demonstrating that neoliberal carceral policies only push sex workers further into the margins, strengthening power dynamics of social inequalities and heightening vulnerability and violence. But, as Kaba (2021) asks, “how do we create safety outside carceral logics?” (Kaba, 2021, p. 127). This is an important and difficult question. According to my understanding, the reason why so many women are still involved in the sex trade today is, without a doubt, poverty. So the only way to put an end to the sex work industry is to overthrow capitalism and patriarchy. But whilst we fight to abolish the patriarchal capitalist system, what sex workers need to reduce the risks of potentially exploitative situations within the industry are not punitive solutions, but labor rights.

Like many other precarious or feminized forms of employment within the neoliberal economy, sex work is largely used by underprivileged women as a strategy (Saliente, 2021) to obtain the economic means necessary to cover their basic needs. Using a decolonial feminist approach allows us to see that any analysis of sex work needs to be intersectional and go beyond sex work as exclusively an issue of gender oppression, as not all women experience the sex work industry in the same way. Migrant women, for example, are usually not high-end escorts who can afford to defend a sexual freedom discourse; they tend to be street-based sex workers—making clear that this is also an issue of race and class. Paradoxically, while neoliberal politics created the conditions—unemployment rates, precarious labor conditions, the feminization of poverty *and* migration—that created this, the collapse of the welfare state also saw the development of the carceral state and a growing punitive tendency vis-à-vis sex work. In the previous chapters, I have tackled the ways in which this has been taking shape in Spain, looking at, for example, how feminist movements have not been immune to these extensive neoliberal transformations; their fight against gender violence has led to a push for increased state control, judicial prosecutions, and policing (Daich and Varela, 2020)—and this inevitably had repercussions on sex work policymaking.

The new provisions of the draft of the “Organic Law on the Comprehensive Guarantee of Sexual Freedom” (APLO, 2021), elaborated by the Ministry of Equality could be seen as one of these repercussions. It aims to curb pimping and sexual exploitation with additional penal sanctions. To carry out such task, Article 187 of the draft proposes

to reinstate the *tercería locativa*<sup>98</sup> in the Criminal Code, a stipulation that criminalizes anyone who “[...] for profit and in a habitual manner uses a property, premises or establishment, open or not to the public, to favor the exploitation of prostitution of another person, *even with their consent*”<sup>99</sup> (APLO, 2021). Accordingly, those charged with this offense could serve a prison sentence of one to three years and be fined with six to eighteen months. Additionally, Article 187.2 would amend the definition of the exploitation of the prostitution of others to account for situations “[...] where there is exploitation of a relationship of dependence or subordination” (APLO, 2021). The Plenary of the General Council of the Judiciary approved the report on the draft bill of the “Organic Law on the Comprehensive Guarantee of Sexual Freedom” (APLO, 2021) on February 25, 2021 (Trujillo, 2021). On July 6, 2021, Spain’s Council of Ministers approved the draft bill’s referral to Parliament. Seeing as the law has not yet been implemented—let alone posteriorly evaluated—it would be unwarranted to make preemptive pronouncements about the outcomes of these provisions. And while Spain’s political and economic conditions differ from those of other countries, the shortcomings of the very similar measures implemented in Norway and Argentina<sup>100</sup>, as well as the assessments and recommendations of the sex workers presently working in Spain, can help us shed light on its potential problems and how to prevent them.

In March 2021, more than 115 feminist organizations signed a manifesto called “Listening to Legislate: For a Sexual Freedom Law That Does Not Criminalize Women” (Feministas por los Derechos de las Trabajadoras Sexuales, 2020) to expose their concerns regarding these new penal sanctions and demand their removal from the draft bill. As the name of the manifesto indicates, sex workers were not consulted in the elaboration of the legislation—the first draft did not concern sex work, for which sex workers did not participate in the legislative session. Not only did officials fail to collaborate with sex workers on a law that will eventually affect them, but, paradoxically, this law on sexual freedom utterly negates their sexual autonomy and capacity to consent (as stated in Article 187). According to the authors of the manifesto, the key issue with these provisions is that they risk criminalizing the working environment of self-organized sex workers who rent or share property, ultimately increasing their stigmatization and precariousness, and weakening their support networks and safety (Feministas por los Derechos de las Trabajadoras Sexuales, 2021). The most socially and economically marginalized—trans, racialized, and migrant sex workers—would be disproportionately affected due to their heightened difficulties in obtaining employment and housing. Moreover, since the Ministry of Equality projects to use the money and assets obtained from the criminal penalties of this law to finance aid for the victims of sexual exploitation, authorities would be

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<sup>98</sup> After the collapse of the Francoist dictatorship in 1975, the new democratic Criminal Code repealed this provision with the implementation of the “Organic Law 10/1995, of 23 November 1995, of the Criminal Code.” The entire environment of sex work was decriminalized, including living at the expenses of sex workers and renting or ceding premises for sex work (Iglesias-Lucía, 2018).

<sup>99</sup> Emphasis is mine.

<sup>100</sup> In Argentina, identical legal changes were introduced in 1949 with the “Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others,” which criminalizes the exploitation or facilitation of the prostitution of others, *even with their consent*. According to Daich and Varela (2020), 40% of those subsequently prosecuted with these legal sanctions were women.

incentivized to increase police control and raids—once again unduly discriminating undocumented migrant sex workers who could be subjected to incarceration and deportation.

While Spanish law does not at the present moment openly criminalize the sex work industry, the above-mentioned bill foreshadows Spain's conceivable move towards a legislative model that sanctions the working environment of sex work, as well as all third parties involved. In doing so, it seems as though Spain is following in the footsteps of the several countries that have adopted the Swedish model. The members of the Global Network for Sex Work Projects (NSWP), including 237 sex work-led organizations from 71 countries across the world, oppose the Swedish model because it puts at risk their rights (NSWP, n. d.). Amnesty International, the Global Alliance Against Traffic in Women, the Human Rights Watch, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the World Health Organization all support them and argue, along with several scholars and activists (Goodyear and Cusick, 2007; Brooks-Gordon, 2008; Jeffrey and Sullivan, 2009; Armstrong, 2017) that decriminalization is the only legal framework that can ensure human rights, health, and safety for sex workers.

New Zealand provides a valuable reference point as it was the first country in the world to decriminalize sex work with its Prostitution Reform Act in 2003. It removed all the laws regulating sex work and sex-work related offences (Armstrong and Abel, 2020). New Zealand's approach to sex work policy is particularly noteworthy as it centers on a close collaboration with sex workers in policymaking; for the first time, sex workers were actually listened to and their opinions were considered during the law-making process. The results are clear: New Zealand's legal model focuses on ensuring human rights and safety, and reducing social exclusion and exploitation—and it was successful in doing both (Armstrong and Abel, 2020). While sex work prohibitionists claim that *decriminalization* promotes the sex work industry, according to Mac and Smith “it should be obvious that the real message of *criminalisation*<sup>101</sup> is that people who sell sex exist outside safety, rights, or justice” (2018, p. 179). Moreover, according to multiple studies conducted after the implementation of the Prostitution Reform Act, the number of sex workers in New Zealand has largely remained the same (Abel, Fitzgerald and Brunton, 2009; Rissel, Donovan, Yeung, Visser, Grulich, Simpson and Richters, 2017). The full decriminalization of sex work thus supposes a first step in the direction of stigma, harm, and violence reduction, as well as the recognition and defense—on the part of the state, the police, and, more broadly, society—of sex workers' human rights (Osborne, 2004). That being said, as Mac and Smith (2018) point out, this model is not perfect. For example, it does not ensure the rights of migrant sex workers—and evidently, this would be a big issue in Spain—but it still represents a huge improvement.

Similarly to the way in which we cannot advocate for the abolition of the prison or the penal system without proposing an alternative, the decriminalization of sex work would not be sufficient in and of itself—a panoply of measures would have to be implemented. These include: access to a minimum vital income, affordable housing, childcare services, social services, health care and social security for migrant sex workers, quality

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<sup>101</sup> Emphasis is mine.

courses and training, labor rights and protection, non-precarious and non-feminized labor alternatives, active participation in research, debates, and policymaking about sex work, community accountability, harm reduction tools, efforts to defund the police, and the right to organize and unionize.

The right to unionize stands out from this list as it has been the subject of heated debate amongst feminist movements for the past two years and a half in Spain. In August 2018, the General Direction of Labor (*Dirección General del Trabajo*) authorized the official registration of the sex workers union OTRAS, which sparked controversy and confusion. Since sex work is alegal in Spain, it was unclear whether or not a sex workers could legally form a union. Several prohibitionist feminist organizations were opposed to the union and took the opportunity to advocate for its dissolution, stating that it went against the dignity of women and that it would imply recognizing sex work as a legal form of employment (Garaizábal, 2018). Spain's National Court initially ruled against the union for including activities that cannot be the subject of a valid employment contract in Spain, such as prostitution for third-parties. After more than two years of resistance, in June 2021, the Supreme Court finally overturned this decision and recognized the right of sex workers to form a union, confirming that the members of OTRAS have the fundamental right to freedom of association.

While this is a very good news for sex workers in Spain, it also goes to show the extent to which feminists are still extremely divided on the issue of sex work. I think the question is actually quite simple: How can we ensure sex workers' safety? If we understand that sex work is part of a voracious political economic system called neoliberal capitalism, then it makes it easy to see that debates about the legitimacy of sex work are actually useless. What we need are broad alliances between feminists to fight against all social prejudices and promote a kind of justice that will ensure safety for all.

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