

EÖTVÖS LORÁND UNIVERSITY OF BUDAPEST

European Master's Degree in Human Rights and Democratisation
A.Y. 2018/2019

Are we working for the mafia?

The Feminist Dilemma and the Fight Against Sex Trafficking in Women
in the European Union

Author: Fernanda Campanini Vilhena
Supervisor: Dr. Orsolya Salát

ABSTRACT

The aim of this work is to analyse the current anti-(sex)-trafficking framework, with a special focus on the European Union context, given the position that the region occupies when it comes to the globalised migration structures and transnational movement of people. Initially, the focus will be on the historical background of the concept of human trafficking, followed by the evolution of legal instruments dealing with it. The discussions will show how women's movements have influenced the legal and policy framework on the matter, and how the understandings about the sex industry on the whole have affected the way sex trafficking is countered nowadays. Having traced a contextualised understanding of the formation of the anti-(sex)-trafficking structures, the focus of the study will turn to the operability of the current legal and policy regimes on prostitution/sex work, always with regard to their effects on the fight against exploitation and trafficking. Here, I will question whether the idea of harmonising the regulatory system dealing with the sex industry would represent a positive answer to sex trafficking and will propose that there might be a gap on the questioning itself. So, I will justify my statement on the need for recognising the real impact of Governance Feminism in this fight, finally proposing that a common ground might be reached both in the theoretical and in the practical spheres, with the aim of building a more comprehensive and coherent response to sex trafficking.

ACKNOWLEDGEMENTS

To Professor Dr. Orsolya Salát, for being present even when I was not. For your support, patience and, above all, understanding and respect.

A special mention to Dr. Susana Broglia Feitosa de Lacerda, one of my greatest examples of woman and professional, who will always have my gratitude in my works, for having supported me in life.

Paloma and Chrysanthi, for your strength, loyalty and love. You encourage me and bring hope to our unequal world. This thesis is just the beginning of endless talks in the kitchen.

My heartfelt thanks to Stefano, for your presence, interest and care in reading and listening to my words day by day. Grazie per la tua fiducia.

Finally, to my eternal partners: Neuza, Carlos and Fabrícia. No matter how far, no matter how hard, we are one. Continuo porque tenho a vocês.

You are all part of this work.

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS	6
INTRODUCTION	7
METHODOLOGY	13
NOTES ON TERMINOLOGY	14
CHAPTER I	
1. FROM SLAVERY TO TRAFFICKING IN HUMAN BEINGS	15
1.1 TOWARDS THE ‘WHITE SLAVE TRAFFIC’	15
1.2 THE EVOLUTION OF THE INTERNATIONAL LEGAL RESPONSES	17
CHAPTER II	
2. DEFINITIONAL ISSUES	21
2.1 DEFINING TRAFFICKING	22
2.2 PROSTITUTION: BETWEEN THE VOLUNTARY AND THE FORCED	25
2.2.1 Prostitution: Patriarchal Violence	26
2.2.2 Prostitution: Freedom of Choice	28
2.3 CONCLUDING NOTES	32
CHAPTER III	
3. THEORY REPRESENTED IN PRACTICE: REGULATING PROSTITUTION	36
3.1 REGULATORY MODELS	37
3.1.1 Criminalisation	38
3.1.2 Legalisation	40
3.1.3 Decriminalisation	42
3.2 PROSTITUTION: HARMONISATION OR CHANGE OF PERSPECTIVE?	43
3.2.1 Ending Demand to Combat Sex Trafficking	44

3.2.1.1	The Nordic Model Questioned	49
3.2.2	Is Decriminalisation the Solution?.....	52
3.2.2.1	Decriminalisation: A Doubt	59
3.3	CONCLUDING NOTES	62
CHAPTER IV		
4.	A CHANGE OF PERSPECTIVE.....	66
4.1	RECOGNISING GOVERNANCE FEMINISM.....	68
4.1.1	Feminists: Towards a Common Ground.....	71
4.2	RETHINKING LEGISLATION	77
4.2.1	The ‘Prioritizing Safety for Sex Workers Policy’: An Inspiration?	83
	CONCLUSION.....	87
	BIBLIOGRAPHY.....	89
	FIGURES	98
	TABLES	99

TABLE OF ABBREVIATIONS

AI – Amnesty International

EP – European Parliament

EU – European Union

EWL – European Women’s Lobby

CATW – Coalition Against Trafficking in Women

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

COE – Council of Europe

DOSW – San Francisco Department on the Status of Women

GAATW – Global Alliance Against Trafficking in Women

GF – Governance Feminism

GRETA – Group of Experts on Action Against Trafficking in Human Beings

ICMPD – International Centre for Migration Policy Development

MEP – Members of the European Parliament

NSWP – Global Network of Sex Work Project

OHCHR – Office of the High Commissioner for Human Rights

OSF – Open Society Foundations

PRA – Prostitution Reform Act of New Zealand

PSSWP – Prioritizing Safety for Sex Workers Policy

SAGE – Standing Against Global Exploitation

THB – Trafficking in Human Beings

UN – United Nations

UNODC – United Nations Office on Drugs and Crime

UNTOC – United Nations Convention against Transnational Organised Crime

WHO – World Health Organisation

INTRODUCTION

If the effects of a contemporary transnational world open the way to countless forms of exploitation of human beings, it is also true that the commodification of persons began long before the boom in the globalisation process. Although the conceptualisation of the phenomenon has evolved along with the new global realities, an observation of the ‘old slavery’ and the current scenario of human trafficking shows that they share a crucial characteristic: they both take advantage of situations of vulnerability and oppression to recruit and force people to exploitation.

Indeed, the primary difference between the old and the modern slavery is that the latter is recognised as illegal throughout the world. However, notwithstanding the attention given to the phenomenon by the international community, governmental and non-governmental institutions, it seems that the measures designed to combat human trafficking are always one step behind the “feared mafia” that leads it. According to David Batstone, founder of *Not for Sale*¹, the lucrative activity of THB is only possible within the mysterious organised crime structures, sustained by the meticulous efforts of its members to remain clandestine.²

Such obscure structure makes it arduous to precise data on THB such as the numbers of trafficked victims. Moreover, not only the obscurity limits its combat, but also the fact that the gathered data are “an amalgam of information from different sources, collected in different ways, at different times, using different definitions of trafficking, by different agencies for very different reasons.”³

On February 2009, UNODC released the first *Global Report on Trafficking in Persons*. Already at that time, the document indicated a considerable discrepancy between the number of trafficked women and girls compared with men and boys, especially in the case of trafficking form sexual exploitation.⁴ Nine years later, the UNODC 2018 Global Report has shown that apparently the situation remains similar: it informs that, globally, 49% of detected victims of

¹ Not for Sale <<https://www.notforsalecampaign.org/about-us/>> accessed 20 March 2019.

² Batstone, David. *Not for Sale: the return of the global slave trade – and how we can fight it*. (Harper-Collins Publishers, 2010, pp. 159-160)

³ Anderson, Bridget; Davidson, Julia O’Connell. ‘Trafficking – a demand led problem? A multi-country pilot study’ (*Save the Children Sweden*, 2002, p. 15)

⁴ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* [2009] p. 6

THB are women and 23% are girls, compared to 21% and 7% of men and boys, respectively. Among all forms of exploitation, trafficking for sexual purposes is the most detected. While 83% of women and 72% of girls are sexually trafficked, the percentages regarding men and boys are 10% and 27%.⁵

Precisely when it comes to Europe, the continent is indicated as one of the prevailing areas of detected victims of sexual trafficking, being this the most prevalent form of exploitation on the continent.⁶ The *Data collection on trafficking in human beings in the EU 2018* indicates that 56% of the registered cases of THB within the zone relate to sexual exploitation, of which 95% are women or girls.⁷

In analysing the first UNODC report, it can be seen that already in 2009 it was stated that one of the biggest obstacles to combating THB is the fact that many states are either blind to the problem or ill-prepared to fight it.⁸ Although some trends have changed during the years, the 2018 report still shows important limitations, especially in relation to the accuracy of the data collected. In its exact terms: “globally countries are detecting and reporting more victims, and are convicting more traffickers. This can be the result of increased capacity to identify victims and/or an increased number of trafficked victims.”⁹

An article recently published by Delta 8.7¹⁰ also highlights that although reports issued by the UNODC, the United States Department of States, the European Parliamentary Research Service, and the Council of Europe present official statistics on THB, we do not know whether they fully represent reality or not. The explanation for this statement is that the collected information is based on the sub-group of trafficking cases that were reached by the authorities, without accounting the cases that have not been identified. These numbers are, therefore, the representation of the anti-trafficking responses, which may vary from place to place.¹¹

Such observations on the uncertainties of statistical data, however, do not mean that all gathered information is erroneous and should not be taken into account. The point is that we shall be alert not to fall into the delusion that non-comprehensive analysis will suffice to bring

⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* [2018] pp. 10 and 28

⁶ *ibid.*

⁷ European Commission, *Data collection on trafficking in human beings in the EU* [2018] pp. 55 and 65

⁸ UNODC (n 4) p. 6

⁹ UNODC (n 5) p. 7

¹⁰ Healy, Claire. ‘What Do We Really Know About the Prevalence of Human Trafficking?’ (2018) Delta 8.7 <<https://delta87.org/2018/09/what-do-we-really-know-about-the-prevalence-of-human-trafficking/>> accessed 28 May 2019

¹¹ *ibid.*

about changes in the trafficking landscape. In this context, the collected data serve as a primary basis for the development of a wider range of indicators that consider a variety of specific aspects to determine the outlook for trafficking.

In legal terms, THB involves such a wide range of activities – or crimes – that for many states it is difficult to comprise them in the national legislation comprehensively. This is the case when it comes to trafficking in women for purposes of sexual exploitation. It involves issues and divergences ranging from the sex industry in general to international migration; from the migrant who is compelled to leave her own country in search of better opportunities to the client who pays to enjoy some moments alongside a prostitute. The consequence is that, depending on how national states deal with each of the factors individually, the approaches and results of anti-trafficking measures are affected in different ways.

This is precisely one of the points of this research. The development of laws and policies on trafficking for sexual purposes has been strongly influenced by social and political divergences concerning the understandings of prostitution. On the one hand, the neo-abolitionists (derived from the old abolitionism, formed mainly by radical feminists) sustain the eradication approach, arguing that all prostitution is a form of exploitation and violence against women. According to this perspective, measures against prostitution are also actions to combat sex trafficking in women. Precisely regarding the legal ground, neo-abolitionists advocate for the so-called “Nordic Model” – also known as the “Swedish” or the “End-demand” model – that targets what it calls the ‘demand side’ of prostitution as a form of eradicating the phenomenon.^{12 13}

On the other hand, transnational feminists join the sex workers’ movements and reject the assumptions that selling sex intrinsically represents a victimisation of women and that the purchase of sexual services is always a form of exploitation. Concerning sexual trafficking, the position calls the attention to the importance of differing it from prostitution, since the latter is not always forced, rejecting the victimisation of all women involved in prostitution. As for the legal treatment of the activity, the position argues for the rights of prostitutes and for the recognition of prostitution as a regular form of work that should not be regulated under oppressing strict restrictions.^{14 15}

¹² O’Neill, Maggie. *Prostitution & feminism: Towards a politics of feeling*. (Polity Press, 2001)

¹³ In sum, the model does not criminalise the act of selling sex but does criminalise pimps and users.

¹⁴ O’Neill (n 12)

¹⁵ Criminally speaking, the position argues for the complete decriminalization of acts involved in prostitution.

Such convergences have built an international debate between theoreticians, governmental and non-governmental institutions, and whether because of political, economic or moralistic reasons, no consensus has been reached on how to define and treat prostitution yet. As a consequence, international and regional legal instruments that deal with THB such as the Palermo Protocol and the EU Anti-trafficking Directive, in order to allow more States to ratify them, do not take a stance and leave undefined the terms ‘sexual exploitation’ and ‘exploitation of the prostitution of others’ in their texts.¹⁶

The situation described above leaves room for open interpretations of the legal instruments dealing with THB by both converging perspectives and keeps the debate on the legal treatment of prostitution unsolved. Accordingly, the various interests and opinions of governments, human rights entities and feminist movements on the matter end up affecting the way sexual trafficking is combated in the practice.¹⁷ How the fight against sexual trafficking is influenced by the mentioned disagreements on prostitution policies, and how such debates have limited effective international cooperation and legal responses to the phenomenon are then a key consideration point for the central objective of this research.

Therefore, through an analysis that will consider the diverse interests and arguments in vogue on the subject, I will explore the social and legal evolution in trafficking in women for sexual purposes, in order to answer the following questions: is there a model to regulate prostitution capable of producing significant and positive effects in the fight against sex trafficking if implemented as a common legal system among EU member states? If so, is such a harmonisation achievable in practice? If not, is there any other possibility to counter sex trafficking within the Union in a more efficient manner?

Here, I justify the consolidation of the European Union as the central focus of the research on the fact that THB depends in particular on the movement of people and contexts of vulnerability, and the region is currently the hub of a strong migratory flow that favours the trafficking expansion.¹⁸ In this context, while organisations such as the European Women’s

¹⁶ United Nations Office on Drugs and Crime, Working Group on Trafficking in Persons. *Analysis of key concepts of the Trafficking in Persons Protocol: Background paper prepared by the Secretariat*. [2010] pp. 3-4

¹⁷ Piscitelli, Adriana. ‘Between ‘Mafias’ and ‘Help’: Building of Knowledge on Human Trafficking’. (*Cadernos Pagu*, n. 31, p. 29-63, Jul/Dec 2009) <http://socialsciences.scielo.org/scielo.php?script=sci_arttext&pid=S0104-83332008000100004#_ftn4> accessed 7 June 2019

¹⁸ Jagori. *Migration, Trafficking, and Sites of Work: Rights and Vulnerabilities*. In *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005, pp. 159-175)

Lobby¹⁹ and The Open Society Foundations²⁰ have mobilised to implement a common regulatory model of prostitution in national legislations as a means of seeking international cooperation among states in the fight against sex trafficking, no consensus has been reached yet.

Thus, to develop possible answers to such questions, in the first Chapter, I will begin the research by briefly analysing the historical background of the commodification of human beings in society, in order to contextualise the debates that will be under observation throughout the main discussions of this research. Divided into two sections and relying on works of sociologists and historians, the Chapter will firstly focus on the path towards the emergence of the ‘White Slave Traffic’, pointing out the possible origin of the concept of human trafficking and giving special attention to the social and legal treatment of women in the process. Secondly, particularly contemplating the European context, it will explore the legal responses that have led to the recognition of sexual trafficking of women as a crime. At this point, the evolution of the United Nations legal instruments will be under scrutiny, and some of the critiques of the feminist movements in relation to such instruments will introduce the rise of the debate on the understandings of prostitution.

The core focus of the second Chapter concerns to definitional issues. Based on the analysis of international and European legal instruments, I will discuss the convergences on the conceptualisation of ‘sex trafficking’ and ‘prostitution’ by theoreticians, governmental and non-governmental institutions, which lead to the adoption by national states of different – and sometimes opposing – approaches in the fight against sex trafficking. Firstly, I will draw attention to the definitions of THB in general and precisely for sexual purposes. Secondly, feminist theories will guide the discussion of convergent approaches to the understandings of prostitution. Finally, I will elucidate how the definitional issues influence the development of policies and legal instruments that deal with sex trafficking.

The discussions held in the first and second Chapters will provide a contextualised and theory-based perspective on which basis the debates about the understanding of prostitution affect the way in which the policy and legal grounds deal with sex trafficking. Such contextualisation will ground the analysis of the third Chapter, that will examine the representations of the theoretical arguments in the legal setting.

¹⁹ That advocates for the so-called ‘Nordic’ model in support of a neo-abolitionist perspective.

²⁰ Defending a pro-sex-work position that does not criminalise acts related to prostitution.

Precisely, the aim of the first section will be to explore the different legal models that regulate prostitution in the EU member states.²¹ The analysis will be divided into three subsections that will represent the broad categories of the regulatory systems, namely, *criminalisation, legalisation, and decriminalisation*. Throughout the discussion of each category, the different models of regulating prostitution in practice – *prohibitionism, abolitionism, neo-abolitionism, legalisation, and decriminalisation* – will be under examination.

Subsequently, considering the implications of the debate between the neo-abolitionist and decriminalisation perspectives on the implementation of a harmonised legal system to deal with prostitution within the EU and its consequences on anti-trafficking policies, the second section of the Chapter will evaluate the two legal models supported by the converging perspectives – the so-called Nordic and Decriminalisation Models – in order to assess their respective deficiencies and strengths. The analysis will rely mainly on the arguments put forward by international and regional organisations such as the Coalition Against Trafficking in Women, the European Women’s Lobby, the Global Alliance Against Trafficking in Women and the Open Society Foundations, that lead the movements and the conflicting debates for a common legal treatment of prostitution within the EU.

For a comprehensive examination of the regulatory models, various aspects on how such systems affect women in prostitution will be considered, nevertheless, the core focus of the analysis will remain on their impact on the fight against sex trafficking. The in-depth analysis of the arguments sustained for and against each system is aimed at concluding whether one of the proposed legal models is capable of significantly improving anti-trafficking measures if implemented as a common regulatory system.

Either theoretically or legally speaking, the answers provided in such discussions will show that there might be a gap in the questioning itself; precisely, I will argue that instead of asking “which one-sided stance we should take,” we could ask “which measures are possible in the different regimes.” Based on this reasoning, the fourth and final Chapter will serve as a first step to develop an innovative answer to the feminist dilemma on the understandings of the sex industry and to propose rethinking the legislative sphere.

²¹ Except for the *decriminalisation* system, which will be illustrated with the example of New Zealand, since no EU member state has implemented it yet.

To do so, I will focus on what I see as the two influencing layers for a transformative process. Firstly, I will argue that feminism – although not institutionalised – is not a powerless spectator when it comes to the evolution of the legal instruments and policies on prostitution and sex trafficking, since discordances between feminists have shown to be yet another influencer of the lack of coordination and cooperation in anti-trafficking structures. I will identify this influencer phenomenon as ‘Governance Feminism’, and this will drive us to a discussion on the need for more awareness on the part of feminists as to the impact of their own contradictions. In this sense, I will suggest that it is possible to find a common ground between apparently extreme feminist positions, with the intention of strengthening the power of the movement itself and producing transformative feminist proposals.

Secondly, the focus will be turned to the legislative. Aiming at fitting the ideas proposed in the first section into the legal practice, I will make a call for a collaborative and context-sensitive approach to anti-trafficking structures, suggesting the ‘Prioritizing Safety for Sex Workers Policy’, enacted in San Francisco in 2018, as an inspiration to transform the EU landscape.

METHODOLOGY

The development of the present work was, in its foundations, based on a multidisciplinary approach and carried out a descriptive research with exploratory components. Although it has followed a traditional legal analysis, elements coming from philosophy, sociology, social sciences and history have played a crucial role in forming a richer and more comprehensive understanding of the reality of sex trafficking and its current legal and political context.

In procedural terms, the research relied on the analysis of primary and secondary sources. The work was mainly conducted based on an interdisciplinary range of literature revision, with the support of the study of national and international laws and policies, and other technical documents such as regulations, reports and commissioned studies.

Not being the core objective of the study, the analyses of statistical data were carried out as a means of exemplifying and demonstrating the operability of different systems, thereby serving as complement and not as an object of study. Similarly, while feminist and philosophical discussions have been used throughout the work descriptively, what remains as

the core focus of the analysis are the implications of such narratives at the legal and policy levels.

Therefore, the work has followed a dogmatic legal method for the analysis of the systems governing the sex industry, essentially presenting a qualitative character that explores the subjective aspects of the anti-(sex)-trafficking framework.

NOTES ON TERMINOLOGY

Before starting the discussions of the present research, I would like to emphasise that the use of terms such as ‘prostitution/prostitute’ and ‘sex work/sex worker’ throughout the exposition of arguments is not intended to support a specific feminist discourse. As a general – but not strict – rule, the terms ‘prostitution/prostitute’ tend to be more present when an abolitionist view is under consideration, while ‘sex work/sex worker’ tend to appear in references of the pro-sex-work discourse. The opinion of the author on the matter, however, is not to be discussed in the present work, and the use of any of the terms is in no way construed as derogatory.

Furthermore, I would like to clarify that is not the intention of this research to conflate the terms ‘prostitution’ and ‘sex trafficking.’ Once more, this does not represent a stance in favour of a specific feminist perspective, but rather it allows the study to openly consider both contexts in their specificities.

CHAPTER I

1. FROM SLAVERY TO TRAFFICKING IN HUMAN BEINGS

The legal definitions currently attributed to trafficking in human beings have been drawn recently. However, history shows that the commodification of persons has been witnessed in the history of humanity since classical antiquity, and despite the different technical concepts and major purposes of such a trade – that used to be mainly focused on forced labour – women slaves have been sexually exploited since then.

In recognising the sexual trafficking of women as a legal definition – that is often evolving other concepts and migrating to other areas of law to reach the goals of its combat measures – the aim of this Chapter is to analyse the achievements and retreats in the legal evolution process of the phenomenon, in order to understand how the international legal framework available today has been reached.

To this end, counting essentially on works of sociologists and historians, the first section of this Chapter will briefly point the possible origin of the concept of human trafficking – hitherto technically recognized as slavery – and analyse the evolution of history until the emergence of the ‘white women slavery’, giving special attention to the social and legal treatment of women during the process.

The second section will initially rely on historians and sociologists who based their studies on slavery and trafficking in Europe and in the Americas, to expose the legal responses that have led to the recognition of women’s trafficking for sexual purposes as a crime, with particular concern to the European context. Subsequently, the focus will be on the evolution of the United Nations legal instruments on trafficking in human beings. At this point, some of the critiques raised in the feminist movements regarding such instruments will be pointed out, in order to contextualise and support the discussions that will be carried out later in this work.

1.1 TOWARDS THE ‘WHITE SLAVE TRAFFIC’

Although the commodification of human beings in the past was not technically recognised as ‘trafficking’, the first records of this market – where slaves were given the legal

status of a ‘thing’ (*res*) – refer to civilisations such as Greece and Rome, being considered then the most probable origin of the concept.²²

In turn, the black slavery, used mainly in European colonies, had its basis on forced labour, both in domestic services and in agriculture. Notwithstanding the main representation of black slavery as forced labour, already at that time, enslaved women were sexually exploited by their ‘owners.’²³ While some of those women were offered for the clients of their families, others were even obliged to offer sexual services on the streets and harbours. The common rule was one: the profits earned with the activities belonged to the owners.²⁴

Specifically in the European context, the evolution of anti-slavery measures had its beginning when Britain, motivated by both economic and humanitarian causes, made illegal the slave trade in its colonies, through acts consolidated in 1824 and 1844.²⁵ Curiously, it was at the end of the nineteenth century – when the empires and nations suppressed black and indigenous slavery, and the Industrial Revolution reached a peak that moved populations to cities in search of better living conditions – that arose in the British Empire a new phenomenon: the ‘White Slave Traffic’.²⁶

This new form of slavery, derived from the previous one, defined as human trafficking coercive prostitution and the sexual trafficking of women and girls, and slavery became then associated with sex and prostitution.²⁷ In this context:

the woman, transformed into simple merchandise, who was sold through photos stamped on business cards, became one of the products that Europe exported to the other continents at the time of imperialism: a new slave trade that defied the values considered sacred by the capitalist order, explaining a whole world of contradictions.²⁸ [my translation]

The emergence of the ‘White Slave Traffic’ came together with several moralistic judgements on the ‘socially expected female’, often linked to virginity, purity and submission.

²² Torres, Hédel A. *Tráfico de Mulheres – Exploração Sexual: Liberdade à Venda*. (Rossini Corrêa, 2012, pp. 71-75)

²³ *ibid.*

²⁴ Freyre, Gilberto. *Casa-grande & senzala*. (Global, 2006, pp. 537-538)

²⁵ Sherwood, Marika. *After Abolition: Britain and the Slave Trade Since 1807*. (I.B.Tauris, 2007, pp. 1-2)

²⁶ Devereux, Cecily. “‘The Maiden Tribute’ and the Rise of the White Slave in the Nineteenth Century: The Making of an Imperial Construct.” (Victorian Review, v. 26, n. 2, 2001, pp. 1-23)

²⁷ For a fuller explanation of the subject, see Devereux, Cecily. [*The Maiden Tribute and the Rise of the White Slave in the Nineteenth Century: The Making of an Imperial Construct*. Victorian Review, v. 26, n. 2 (2001), pp. 1-23]

²⁸ Menezes, Lená Medeiros. *Os Indesejáveis: Desclassificados da modernidade. Protesto, crime e expulsão na Capital Federal (1890-1930)*. (edUERJ, 1996, pp. 153-155)

The increasing independent female migration during the late nineteenth century created a social perception that those women were doing so to work as prostitutes, “which led to a racially and sexually based panic that gave rise to the fear of white slave trafficking.”²⁹ At the beginning of the twentieth century, women involved in such contexts were then marked as enemies of family, morality, civilisation and work, being considered even by medicine as a synonym of impurity and disease. Instead of exploitative, trafficking in women was considered immoral, and such immorality was placed on the victims – the women.³⁰

In analysing this historical evolution, two differences between black slavery and the white women slavery warrant attention: *I*) the second was illegal and; *II*) the black slaves were replaced by the considered ‘demoralised white women’³¹. The sexual exploitation of women acquired then a new characterization as capitalism and the European expansion redrew the world, promoting the internationalization of markets and the expansion of pleasures. In this panorama, women started to be exported from Europe to other continents, especially the Americas.³²

1.2 THE EVOLUTION OF THE INTERNATIONAL LEGAL RESPONSES

As mentioned above, the first movements for the abolition of the black slavery were not uniquely influenced by humanitarian reasons, but also – and maybe mainly – by economic ones.³³ Such an emergence was followed by the new phenomenon of white women slavery for the exploitation of prostitution and sexual trafficking.

It was in 1904 that the first international document prohibiting the white slavery was consolidated: The International Agreement for the Suppression of the White Slave Traffic. The agreement was followed by the creation of the International Convention for the Suppression of

²⁹ Santos, Boaventura de Sousa; Gomes, Conceição; Duarte, Madalena. ‘The Sexual Trafficking of Women: Representations of Illegality and Victimisation’ (2010) *Revista Crítica de Ciências Sociais* <<https://journals.openedition.org/rccsar/247>> accessed 14 May 2019

³⁰ Rago, Margareth. *Os prazeres da noite: prostituição e códigos da sexualidade feminina em São Paulo (1890-1930)*. (Paz e Terra, 1991, pp. 195-214)

³¹ Although the denomination has been criticized by the fact that the new trade not only involved white women, but also yellow, brown and black women.

³² Menezes (n 28) p. 172

³³ For a fuller explanation of the subject, see Eltis, David. [*The Economic Impact of the Ending of the African Slave Trade to the Americas*. *Social and Economic Studies*, v. 37 (1988) p. 143] <<https://www.jstor.org/stable/pdf/27862932.pdf?refreqid=excelsior%3A4f08d8fedc019ac17737bc3712995891>> accessed 13 May 2019

the White Slave Traffic, in 1910, however, as one might imagine, although the development of international legal instruments, the socially constructed idea of the women involved in the context did not follow the improvements.³⁴

Not so many years after, the creation of the League of Nations in 1919, aiming to promote better working conditions around the world and based on the ‘balance of interests of large and small powers’, launched the International Convention for the Suppression of the Traffic in Women and Children (1921); the International Convention for the Suppression of Trafficking in Adult Women (1933) and; the Amendment Protocol of both Conventions (1947). At that time, however, women’s agency was not an active part of the discussion, nor it was women’s power over their own bodies, but rather the voices of women involved in such activities were simply disregarded in the legal field.³⁵

Alongside with the creation of the United Nations in 1949, we witnessed the launch of the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and its Final Protocol. Here, the goals were no longer the same as before: the debate was focused on *human beings* (not only on women).

In the 80s, however, during the coexistence of the Second and Third Waves of the feminist movement, the 1949 Convention was heavily criticised. The rise of debates on women’s oppression, sexuality, empowerment, and gendered violence has fuelled the criticisms of the legal instrument, specifically for leaving out non-transnational situations of trafficking and other forms of human trafficking.³⁶ In response, the UN launched, in 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In article 6, it provides the obligation of the signatory countries to “take all appropriate measures to suppress all forms of traffic in women and exploitation of the prostitution of women.”³⁷

Despite having expanded the legal scope, the CEDAW was also insufficient to close the debates on sexual trafficking in women. To understand such debates – that are still present in the current context – we must look at the discursive dispute that began in the 1980s and 1990s, which is closely connected to the different positions on the legal treatment of prostitution and their impact on sexual trafficking. On the one hand, the *abolitionist* position (currently the *neo-*

³⁴ Rago (n 30)

³⁵ *ibid.*

³⁶ Castilho, Ela Wiecko. *Tráfico de pessoas: da Convenção de Genebra ao Protocolo de Palermo*. In Brasil, Ministério da Justiça, *Política Nacional de enfrentamento ao tráfico de pessoas*, 2007, p. 9

³⁷ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. art. 6

abolitionist)³⁸ understands all situations of prostitution as coerced and violent; on the other hand, the pro-sex-work model³⁹ distinguishes ‘forced’ and ‘voluntary’ prostitution, arguing that the activity *per se* is not exploitation, but rather the poor working conditions. The core disagreement between the two opposing perspectives is the ‘issue of consent’, that leads to the support of partial criminalisation (by neo-abolitionists) and complete decriminalisation (by the transnational feminism) of acts involving prostitution.⁴⁰

In order to clarify the basis of this debate, it is worth examining the positions adopted by the UN in its legal instruments until then. While the 1949 Convention clearly supported the old abolitionist perspective, expressively considering prostitution “incompatible with the dignity and worth of the human person”, regardless of whether it is consensual or not, the CEDAW was elaborated without taking any clear posture on the theme, leaving it open for interpretation. What happened is that some of the international legal instruments dealing with the subject contained, contradictorily, features of both perspectives in the same text.⁴¹

Changes in this panorama began when, in 1995, during the UN Fourth Conference on Women in Beijing, delegates from the Network of Sex Work Projects and the GAATW lobbied for the final conference document to include the term ‘forced’ before every mention to prostitution, thereby displacing the old abolitionist discourse from the text. In 1996, when GAATW was appointed to prepare an international report on trafficking in women, forced labour, slavery practices in marriage, domestic labour and prostitution, presented to the then UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, the distinction between ‘forced’ and ‘voluntary’ prostitution was confirmed at the UN level.^{42 43}

The new adopted position – contrary to the neo-abolitionist idea – was then criticised not only by the obvious opponents but also by its own supporters. Firstly, the criticisms concerned the fact that the way international instruments and organisations were dealing with the distinction between voluntary and forced prostitution were entailing the victim’s ‘innocence’ to determine the side of the dichotomy to which she should be subject in practice:

³⁸ Supported by the Coalition Against Trafficking in Women (CATW)

³⁹ Supported by the Global Alliance Against Trafficking in Women (GAATW)

⁴⁰ Santos; Gomes; Duarte (n 29)

⁴¹ Doezema, Jo. *Rethinking Sex Work*. In Doezema, Jo; Kempadoo, Kamala. *Global Sex Workers: Rights, Resistance, and Redefinition*. (Routledge, 1998, p. 30)

⁴² *ibid*, pp. 40-41

⁴³ The commissioned research was published as Wijers, Marjan; Lap-Chew, Lin. ‘Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.’ (STV, 1997) <<http://lastradainternational.org/lisidocs/1137-Trafficking%20in%20women%20Wijers-Lap%20Chew.pdf>> accessed 14 May 2019

worthy of more or less protection. Moreover, the recognition of such a position by the UN Special Rapporteur on Violence Against Women did not mean that the international community had agreed to this approach. In fact, other UN agencies and reports have continued to use the terms ‘trafficking’, ‘prostitution,’ and ‘sexual exploitation’ in general as sordid, dangerous, and inhuman.⁴⁴

It was then that, supplementing the Convention against Transnational Organised Crime, the UN developed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (ordinarily known as the Palermo Protocol) in 2000. It is this international document that currently requires state parties to adapt their national legislation on the subject. Encompassing the different modalities of exploitation by trafficking in persons, it incorporates mechanisms to act on three strategic axes against the crime: *prevention, protection and repression*.

With the Protocol, some of the deficiencies faced in the former instruments were solved: the same international legal document now considers all *human beings* as victims of trafficking, giving a special concern to women and children, and other forms of exploitation were included in the document. Nevertheless, the Protocol have not assumed a position on its interpretation of prostitution.⁴⁵

As a consequence, the instrument was also unable to end the discussions on the matter. Continuing to be part of debates in the governmental and non-governmental spheres, the ‘neo-abolitionist vs. pro-sex-work split’ often characterises the main argument in the discussion on combating sex trafficking in women, sometimes neglecting what is ought to be the essential goal of the fight: to leave no women behind.

Furthermore, having been developed as a supplement of the UNTOC, the Protocol also falls short because it has its roots in law enforcement, which leads to the consequence that many initiatives on the subject are taken on the basis of the fight against organised crime, hindering a truly human rights-based approach.⁴⁶

⁴⁴ Doezema (n 41) pp. 40-42

⁴⁵ Castilho (n 36) p. 14

⁴⁶ McRedmont, Penelope; Wylie, Gillian. *Human Trafficking in Europe*. (Palgrave Macmillan, 2010, pp. 2-3)

CHAPTER II

2. DEFINITIONAL ISSUES

The above Chapter has shown that while the international community has attempted to fill the gaps that limits the fight against THB through the progress of its legal instruments, the debate over the legal treatment of prostitution and its impact in addressing sex trafficking in women remains unsolved. The divergences on the understanding of the concepts consist of the different interpretations given to the term ‘prostitution’ by theoreticians, governmental and non-governmental institutions, which consequently leads to the adoption by national states of different approaches to combating sex trafficking.

In order to cover the main question of this research in a comprehensive manner, it is essential to clarify the aforementioned divergences and debates on the terms ‘prostitution’ and ‘sex trafficking.’ While some theoreticians conflate the two, others argue that they cannot be confused. Thus, to structure the further analysis that will be carried out throughout this work, this Chapter will explore the definitional aspects of the concepts and the possible connections between them.

To this end, the first section will examine the definitions of trafficking in human beings in general – and precisely of sex trafficking – provided by legal instruments at the international and European level. The analysis will be based mainly on how such documents define the term and will count on the support of literature to further interpretations.

The second section will draw attention to the distinct approaches on the understandings of prostitution. To this end, the study will rely on feminist theories developed by authors from diverse fields, such as philosophy, sociology, political sciences, and law. While the discussions in this section will occasionally address debates on the ‘issue of prostitution’ that have no direct connection to trafficking, such expositions are unavoidable for a comprehensive analysis of how the interpretations of the first affect the treatment of the second.

Finally, the third section will elucidate how the opposing positions present in the discussions on the treatment of prostitution have influenced the formulation of legal instruments dealing with THB at the international and European Union level. Such considerations will form the background that will orient the analysis of the main question of this research throughout the following Chapters.

2.1 DEFINING TRAFFICKING

As discussed in Chapter I, the understandings of THB have evolved throughout the decades, following social changes and revindications, along with the need for new legal responses to the phenomenon. Indicated by political leaders as one of the “three evils” of the globe – together with drug trafficking and terrorism – the fight against THB suffers from competing definitions on the concept among researchers, policy makers, and activists, which leads to considerable limitations in the development of legal and policy measures.⁴⁷

Trafficking itself cannot be seen as an isolated violation of rights; the phenomenon comes together with diverse social, economic, political and cultural influences.⁴⁸ Some theoreticians such as the political scientist Kamala Kempadoo, an expert in feminism, trafficking and development, criticised the so-called ‘contemporary hegemonic discourse on trafficking.’ In a transnational world, trafficking is represented by the trade and exploitation of women and men in a variety of activities. In this context, however, the need for central studies on trafficked women in particular is due to the disproportionality in which they are affected by poverty, documentation issues, debt-bonded situations, and the international migrant workforce.⁴⁹

The same idea is followed by Sietske Altink, a key figure in the prostitution studies in the Netherlands. She states that “to traffic women means to work upon their desire or need to migrate, by bringing them into prostitution under conditions that make them totally dependent on their recruiters in ways which also impact their rights.”⁵⁰

Analysing the legal provisions on trafficking, in turn, the current – and very first – internationally agreed definition to ‘trafficking in human beings’ is provided by the 2000 Palermo Protocol and refers to situations in which individuals are explored for economic gain, whether in cross-border or internal contexts.⁵¹ Precisely, article 3 defines it as follows:

⁴⁷ Kempadoo, Kamala. *From Moral Panic to Global Justice: Changing Perspectives on Trafficking. In Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights.* (Paradigm Publishers, 2005, p. vii)

⁴⁸ Santos; Gomes; Duarte (n 29)

⁴⁹ Kempadoo (n 47) p. ix

⁵⁰ Sietske Altink. *Stolen Lives: Trading Women into Sex and Slavery.* (Harrington Park Press, 1995, p. 1)

⁵¹ United Nations Office of the High Commissioner for Human Rights, *Fact Sheet No. 36, Human Rights and Human Trafficking* [2014] p. 1

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 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.⁵²

Commenting on such definition, the OHCHR calls the attention to some important features that interest the main topic of this research. Firstly, it mentions the fact that the list of forms of exploitation is ‘open-ended’, meaning that it is open to the identification of new or additional forms in the future. Secondly, it clarifies that the expressions ‘receipt’ and ‘harbouring’ mean that THB will not only be characterised when individuals are moved into exploitation, but also when persons are maintained in such a situation. Further, citing the Legislative Guides for the Implementation of the UNTOC and the Protocols Thereto⁵³, the OHCHR notes that “once it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence.” Finally, precisely regarding trafficking for sexual exploitation, the OHCHR specifically mentions ‘enforced prostitution’ and ‘sex tourism’ as trafficking-related practices.⁵⁴

Since the consolidation of this international instrument, its interpretation has been incorporated into other international, regional and national legal instruments on the theme.⁵⁵

At the European Union level, specifically, Decisions 2006/618/EC and 2006/619/EC ratify, on behalf of the EU, the Protocol.⁵⁶ The main legal instrument dealing with THB in the Union is the Anti-trafficking Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011. The document provides an almost identical definition to that of the Protocol for the term, with some explanations on the use of certain expressions.

Precisely, when defining THB, the Directive clarifies that “a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to

⁵² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319. art. 3

⁵³ *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (United Nations, Sales No. E05.V.2), p. 270

⁵⁴ United Nations Office of the High Commissioner for Human Rights (n 51) pp. 3-7

⁵⁵ *ibid*, p. 2

⁵⁶ EUR-Lex, ‘Summaries of EU Legislation: Protocol against the trafficking of people’ (2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133700>> accessed 29 May 2019

submit to the abuse involved.”⁵⁷ As for the reference of the instrument to trafficking for sexual purposes, it is limited to the indication of ‘the exploitation of the prostitution of other’ or ‘other forms of sexual exploitation.’⁵⁸ As a directive, the instrument binds EU member states to develop and implement prevention, protection and prosecution measures against all forms of THB, “in line with the highest European standards.”⁵⁹

Still at the European level, but specifically within the context of Council of Europe, the document that informs THB is the COE Convention on Action Against Trafficking in Human Beings, an instrument that focuses on preventive measures, protection of victims, prosecution of traffickers, and the promotion of coordinative international and national actions.

When compared to the UN and EU perspectives on the definition of THB, the COE document presents considerable specificities that deserve attention for the purposes of this work. Precisely, while both the UN and the EU mostly deal with THB as an organised crime, article 2 of the COE Convention explicitly mentions that its application is not only focused on situations connected with organised crime.⁶⁰ Holding a comprehensive scope of application, the document has as its main added value a human rights perspective.⁶¹

Regarding sex trafficking, the Explanatory Report to the COE Convention refers to the fact that the ‘modern form of the old worldwide slave trade’ treats human beings as a commodity by forcing them into the sex industry, complementing, moreover, that although men are also sometimes victims of trafficking, the most identified are women.⁶²

In considering the above, it is seen that the definitions of human trafficking, and precisely sexual trafficking of women, are presented in the legal documents in a rather general way. As will be explained in more details later, more superficial definitions of trafficking for sexual purposes in legal instruments are necessary for their ratification and collaboration by different national states. This is due to the fact that the understandings on prostitution considerably vary, and such variations have a direct impact on how measures against sexual trafficking are taken.

⁵⁷ European Parliament and Council Directive. (EP/EC) 2011/36 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] art. 2(2)

⁵⁸ *ibid.*, art. 2(3)

⁵⁹ European Commission. ‘The EU Anti-trafficking Directive 2011/36/EU’ [2011] L 101/1

⁶⁰ Council of Europe Convention on Action against Trafficking in Human Beings. (Treaty, adopted 16 May 2005, entered into force 01 February 2008) CETS No. 197. art. 2

⁶¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* [2005] p. 1

⁶² *ibid.*

Hence, for a complete and contextualised examination of such definitional variations, besides conceptualising THB, it is necessary to consider the discussions surrounding the understandings on prostitution.

2.2 PROSTITUTION: BETWEEN THE VOLUNTARY AND THE FORCED

Understanding prostitution requires more than merely analysing its definitions according to a legal and objective perspective. To reach a comprehensive view of the current legal framework in which the phenomenon is involved, we must take into consideration the different discourses that permeate the activity. Precisely, this section will explore the two main approaches held by feminist theories on prostitution and its relationship with sexual trafficking, since such movements have strongly influenced the legal and policymaking process in the fight against trafficking.

The controversial matters surrounding prostitution were briefly mentioned in Chapter I, where it remarked the influence of feminist revindications in the evolution of the international legal instruments dealing with THB, especially as regards the interpretation of the documents in relation to sexual trafficking. The main disagreement concerns to the ‘issue of consent’; in other words, whether prostitution should be seen as necessarily coerced and violent or not. Yet, neither the international community nor theorists have reached a consensus on the matter. Therefore, this section will not demarcate thick definitions to the concepts and their relationship, but rather it will expose the competing positions on the theme and their respective argument, in order to ground the analysis that will be developed throughout the next Chapter.

The approaches on the matter have been undergoing changes since the debate on prostitution has settled within the feminist movement. In the early stages of the feminist analysis of prostitution, it was treated – in a reductionist manner – as a deviant activity. More recently, it has come to be seen as a reasonable and understandable response to socioeconomic needs understood in a context of consumer culture. Although various views on feminist approaches to prostitution can be found in the literature, two are the dominant perspectives on the subject: the *neo-abolitionist* and the *decriminalisation* perspectives.⁶³

⁶³ For a fuller explanation on the other variations of feminist approaches, see O’Neill, Maggie. [*Prostitution & feminism: Towards a politics of feeling*. Polity Press, (2001)]

2.2.1 Prostitution: Patriarchal Violence

Supported by CATW, the *neo-abolitionist* position interprets prostitution as an inherent form of oppression against women, advocating that exploitation and violence are intrinsic and inextricable features of it. This branch has among its most well-known defenders Kathleen Barry⁶⁴, Carole Pateman⁶⁵, Julia O'Connell-Davidson^{66 67}, and Sheila Jeffreys⁶⁸ who argue that there is no autonomy and choice in prostitution, and that the activity represents a form of female slavery.

To introduce the explanation of this position, I shall mention the ideas of Barry, a cofounder of CATW. For her, the belief that women are not forced into prostitution reinforces the silence regarding the extent of the violence that encompasses the activity.⁶⁹ By stating that, the author virtually equates prostitution with trafficking in women; and she actually declares expressly that “virtually the only distinction that can be made between traffic in women and street prostitution is that the former involves crossing international borders.”^{70 71}

Further, Barry highlights that the practice of prostitution by women implies not only “an unjust social order and an institution that economically exploits women” but also a sexual domination, which she recognises as the first cause of sexual power.⁷² She stresses that what primarily determine the victims of prostitution are the procurers and their interests, while the class, age, and race of those women would act as a secondary factor.⁷³ In sum, the author defends the idea that prostitution “intersects with the domination of women at all levels of society.”⁷⁴

Holding a neo-abolitionist perspective, when talking about what she calls ‘modern patriarchy’ in her work *The Sexual Contract*, Pateman argues that “men still uphold the terms

⁶⁴ Barry, Kathleen, *Female Sexual Slavery*. (New York University Press, 1984)

⁶⁵ Pateman, Carole. *The Sexual Contract*. (Polity Press, 1994)

⁶⁶ Davidson, Julia O'Connell. *Prostitution, Power and Freedom*. (Polity Press, 1998)

⁶⁷ Even though she has later written that she also has sympathy with some arguments pro-sex-work feminism (see Davidson, Julia O'Connell, ‘The Rights and Wrongs of Prostitution’, *Hypatia*, vol. 17, no.2, Spring/2002, p. 84) <https://www.jstor.org/stable/3810752?seq=1#metadata_info_tab_contents> accessed 30 May 2019

⁶⁸ Jeffreys, Sheila. *The Idea of Prostitution*. (Spinifex Press, 1997)

⁶⁹ Barry (n 64) p. xi

⁷⁰ *ibid*, p. 7

⁷¹ Noting here that the first edition of her book was in 1979, just when CEDAW, encompassing non-cross-border trafficking situations, was consolidated.

⁷² Barry (n 64) pp. 9-10

⁷³ *ibid*, p. 121

⁷⁴ *ibid*, p. 137

of the sexual contract”⁷⁵ and mentions prostitution as “an integral part of patriarchal capitalism” because men have buyable access to women’s bodies in the capitalist market.⁷⁶

With these assertions, the author explains what she considers as the “problem of prostitution” by comparing the relationship between capitalism and the workers to the one between patriarchy and prostitution. To introduce the comparison, she calls attention to the fact that prostitution is often seen as a *problem of women* who engage in the activity; for her, this is the same as attributing the problem of capitalism to deficiencies in the consciousness of the workers. Precisely, she explains that if we assume that the problem of prostitution is the prostitute, we would divert attention from the real causes – the actual problem – of the phenomenon: the patriarchal sexual contract that sustains the systematic subordination of women to men.⁷⁷

Further, when arguing against the rise of movements that advocate for the idea of prostitution as a profession, Pateman states that the subject of the contract in prostitution is the body of the woman, and stresses that “no form of labour power can be separated from the body, but only through the prostitution contract does the buyer obtain unilateral right of direct sexual use of a woman’s body.” In her view, therefore, it would not be possible for a woman to provide sexual services without also transferring her sexual freedom.⁷⁸

Following the same reasoning, Davidson explains that the powers wielded by ‘clients’ over the sexualised body of the prostitute are “not the kind of powers that many people wish to transfer indiscriminately to anonymous others.”⁷⁹ She determines that such transference occurs only under specific social, political and economic conditions – such as situations in which women are in a position to choose between abject poverty or prostitution, or between violence or prostitution – that limit the actual choice of the prostitute. By this, the author means that all prostitutes are subject to materialistic and personalistic forms of power, because “the degree of economic compulsion operating on prostitutes also affect the degree of control they exercise over whether, when, how often and on what terms they prostitute.”⁸⁰

⁷⁵ Based on her theory of the social contract that sees it as complementary to the sexual contract; she means that the social contract is based on a previous sexual one: the systematic subordination of women to men. For more details, see Pateman, Carole. [*The Sexual Contract*. Polity Press (1994)]

⁷⁶ Pateman (n 65) p. 50

⁷⁷ *ibid*, p. 193

⁷⁸ *ibid*, p. 204

⁷⁹ Davidson (n 66) p. 3

⁸⁰ Davidson (n 66) pp. 3 and 17

Developing an even stronger criticism against the pro-sex-work theory, Jeffreys refuses to use the terms ‘sex worker’ and ‘client’, claiming that it normalises prostitution and does not portray it as a form of violence and a crime against women; instead, she even argues for the use of the term ‘prostituted women’ rather than ‘prostitute.’⁸¹ Based on Barry’s ideas, Jeffreys states that the language that categorises prostitution into ‘forced’ and ‘voluntary’ (in her words, ‘the language of choice’) blames the victim (in this case, the prostitute) and places the responsibility of violence upon women.⁸²

The author criticises the liberal sexual ideology and argues that “prostituted women suffer a social excommunication arising from their work, which is surely unprecedented in other forms of work.”⁸³ Further, Jeffreys compares prostitution to slavery and states that the “capitalist and patriarchal conditions create the sexual needs of men and the ways in which women fulfil them.” By doing so, she concludes that sexual equality is not attainable in prostitution.⁸⁴

On the whole, in considering prostitution as inherently violent, neo-abolitionists support the eradication of the ‘forced’ versus ‘voluntary’ distinction, arguing that all prostitution is somehow enforced. As a consequence, the relationship between the activity and sex trafficking becomes closer: for them, measures to eradicate prostitution are also considered actions against sex trafficking.⁸⁵

2.2.2 Prostitution: Freedom of Choice

On the other side of the debate, represented both by the transnational feminism and the sex workers movement, the *decriminalisation* position is supported by the affiliation of organisations Human Rights Caucus⁸⁶ and defends that prostitution is not inherently exploitative and coercive, but rather that the violence involved in the activity is related to the conditions under which it is exercised. For the supporters of this trend, prostitution reflects women’s control over their own bodies, and it is freely chosen by many women as a job. To

⁸¹ Jeffreys (n 68) p. 5

⁸² *ibid.*, p. 139

⁸³ *ibid.*, p. 177

⁸⁴ *ibid.*, p. 185

⁸⁵ Santos; Gomes; Duarte (n 29)

⁸⁶ Comprised by other collectives such as the Global Alliance Against Trafficking in Women (GAATW) and the Network of Sex Workers Project (NSWP).

expose the arguments of this perspective, I will rely on the critique voiced by Camille Paglia⁸⁷, Wendy Chapkis⁸⁸, Kamala Kempadoo, Jo Doezema and the contributors of their cooperative work⁸⁹, and Ronald Weitzer⁹⁰.

Paglia, a major critic of modern feminism, introduces her discussion on prostitution by criticising the fact that feminists are contradictorily supportive with sex workers while denouncing prostitution as a system of inherent male exploitation and slavery. Precisely, she states that “in reducing prostitutes to pitiable charity cases in need of their help, middle-class feminists are guilty of arrogance, conceit, and prudery.”⁹¹

The author says, moreover, that during the 1960s, she used to believe that prostitution would become unnecessary because of the emancipation of women. Her views have changed, however, as she realised that sexuality cannot be fully contained in social forms; hence she came to regard the prostitute as a symbol of “the ultimate liberated woman, who lives on the edge and whose sexuality belongs to no one.”⁹² According to her, sex workers are the target of moralism and ignorance because of their “lowest common denominator,” meaning that women engaged in prostitution are often the image of addictiveness and sickness, which is not necessarily true. Such a perception, in her opinion, is erroneous and does not consider the invisibility of successful prostitutes who enjoy their freedom and power within the activity.⁹³

Paglia’s conclusion regarding the regulation of prostitution is that the activity should be decriminalised and respected as a “consensual private behaviour;” for her, what should be the crux of state intervention is the focus on eradicating violence and protection against disease within the activity.⁹⁴

Likewise, Chapkis recognises prostitution as an ‘emotional labour’ which is not necessarily harmful to the worker. When considering sex and emotion, the author emphasises that if we strip the “presumed unique relationship to nature and the self, it no longer automatically follows that their alienation or commodification is simply and necessarily

⁸⁷ Paglia, Camille. *Vamps & Tramps: new essays*. (Vintage Books, 1994)

⁸⁸ Chapkis, Wendy. *Live sex acts: women performing erotic labour*. (Cassell, 1997)

⁸⁹ Kempadoo, Kamala; Doezema, Jo. *Global Sex Workers: Rights, Resistance, and Redefinition*. (Routledge, 1998); Kempadoo, Kamala. *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005)

⁹⁰ Weitzer, Ronald. *Legalizing Prostitution: From Illicit Vice to Lawful Business* (New York University Press, 2012)

⁹¹ Paglia (n 87) pp. 56-57

⁹² *ibid*, pp. 58-59

⁹³ *ibid*, p. 58

⁹⁴ *ibid* p. 60

destructive.”⁹⁵ In other words, according to this perspective, the object of prostitution is the ‘sexual service’ and not the person of the sex worker as a whole.

Following the same sense, Kempadoo states that prostitution is a form of women’s self-determination and emphasises the need to guarantee sex worker’s human rights. She states that defenders of the pro-sex-work perspective do not deny that women engaged in prostitution can suffer violence and be victims of trafficking; however, she advocates for the recognition that women are simultaneously ‘victim’ and ‘agent’ in this context since they resist the patriarchal system of domination through prostitution.⁹⁶

In joint work with Kempadoo, Doezema brings the argument that, although the distinction between ‘forced’ and ‘voluntary’ prostitution have been noticeably recognised in the discourses permeating THB, the international community, national governments and organisations continue to interpret and implement legal instruments in a way that does not fit into what was the main purpose of recognising such a distinction. She exemplifies her claim, drawing attention to the fact that many reports on sex trafficking in women still show the need to state whether victims knew they would be prostituted before they were trafficked or not. According to the author, such a need ends up giving a wrong importance to the ‘victim’s innocence’ in the process, which clearly does not focus on ensuring rights for all women, regardless of any moralistic bias.⁹⁷

Doezema goes even further and criticises the fact that many reports focus on the aspect of poverty when talking about ‘forced prostitution.’ Precisely, she disagrees with the ‘poverty as force’ approach, arguing that this idea leads to racist and classist implications. To consider that no ‘normal’ woman would choose prostitution as a job unless coerced by poverty is an idea that, again, drives to the establishment of a necessary ‘innocence’ of the victim of trafficking to be eligible for human rights protection. According to her, these classist and racist perceptions are represented by paternalistic voices that advocate a rigid sexual morality under the excuse of protecting women. In this way, trafficking is used by States to justify restrictive policies that are not concerned with the promotion of human rights.⁹⁸

⁹⁵ Chapkis (n 88) p. 76

⁹⁶ Kempadoo, Kamala. *From Moral Panic to Global Justice: Changing Perspectives on Trafficking. In Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights.* (Paradigm Publishers, 2005, p. xxiii)

⁹⁷ Doezema, Jo; *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy.* In Kempadoo, Kamala; Doezema, Jo. *Global Sex Workers: Rights, Resistance, and Redefinition.* (Routledge, 1998, p. 43)

⁹⁸ *ibid*, pp. 44-45

Specifically regarding the discussion of this research, Alison Murray, a contributor of Kempadoo's and Doezema's work, was clear when she said that "it is the prohibition of prostitution and restrictions on travel which attract organized crime and create the possibilities for large profits, as well as creating the prostitutes' need for protection and assistance."⁹⁹ She further complements that the lack of definitions and involvement of sex workers in policymaking is what allows groups like CATW to gather forces to sustain "a radical abolitionist agenda."¹⁰⁰

Likewise, Jo Bindman claims that "the exclusion (of prostitutes) from society contributes to the worldwide association of the sex industry with slavery-like practice." In other words, the author says that it is the exclusion of 'the prostitutes' from other individuals in society – and not prostitution itself – that prevents them from enjoying rights and freedoms, such as protection against violence at work and to leave their employers. She concludes that it is only when we identify prostitution as work that these women will be protected, like all other workers, from exploitation and discrimination.¹⁰¹

An interest comment on the matter was made by another contributor of Kempadoo's and Doezema's work, Jyoti Sanghera. She clarifies that, to provide trafficked women with effective protection, it is necessary to distinguish sexual trafficking from prostitution, explaining her statement with the following comparison:

in the case of trafficking for the purpose of domestic work, forced marriage, or work in carpet factories, the objective of anti-trafficking interventions must be to target the abuse, forced labor, and violation of rights that is endured by those affected by trafficking and not to eradicate marriage as an institution, or domestic work and the carpet industry as sectors of employment. Similarly, attempting to eradicate the sex industry in a bid to prevent the harm of trafficking may be an unrealistic agenda. Not all victims of trafficking are prostitutes, not are all prostitutes victims of trafficking.¹⁰²

Finally, proposing a view on the legalisation of prostitution, Weitzer affirms that those who see the idea of decriminalisation as 'impossible' and 'disgusting' are embedded in a

⁹⁹ Murray, Alison; *Debt-Bondage and Trafficking: Don't Believe the Hype*. In Kempadoo, Kamala; Doezema, Jo. *Global Sex Workers: Rights, Resistance, and Redefinition*. (Routledge, 1998, p. 60)

¹⁰⁰ *ibid*

¹⁰¹ Bindman, Jo. *An International Perspective on Slavery in the Sex Industry*. In Kempadoo, Kamala; Doezema, Jo. *Global Sex Workers: Rights, Resistance, and Redefinition*. (Routledge, 1998, p. 65)

¹⁰² Sanghera, Jyoti. *Unpacking the Trafficking Discourse*. In Kempadoo, Kamala; Doezema, Jo. *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005, p. 11)

“surface understanding” of the context of the activity. He argues that the denial of the legalisation of the activity “does not come close to recognizing the myriad dimensions of sex for sale, how it is experienced by workers and clients, and the value of considering policy alternatives ‘outside the box’ of criminalization and marginalization.”¹⁰³

In sum, defendants of the pro-sex-work perspective argue that prostitution is conceived as an act of sexual self-determination; as such, the fact that most prostitutes have been exploited does not necessarily mean that others should not be allowed to freely choose the work.¹⁰⁴

In considering that the activity itself is not harmful, they state that its criminalisation would not be able to solve the problem of exploitation within the context, but rather it would force prostitutes even more underground. For them, an automatic connection between sex trafficking and prostitution is “often invoked to block the legalisation of prostitution and the establishment of sex workers’ rights.”¹⁰⁵ In considering that traffickers benefit from the illegality of migration and the sex industry, decriminalisation advocates sustain that laws prohibiting the activity would act as the main obstacles in fight against trafficking.¹⁰⁶

2.3 CONCLUDING NOTES

In analysing the two branches exposed above, we observe that prostitution can be presented both as the maximal representation of the exploitation and victimisation of women and of their liberation and self-determination. It is worth noticing, here, that no extreme perspective will be able to englobe the whole reality of prostitution and sex trafficking in women. If decriminalisation supporters are concerned with the simplistic abolitionist view, they also shall be alert not to fall into another simplistic approach that only considers a one-sided view. In other words, if victimisation is not intrinsic to sex work, it is also not true that all women feel liberated by prostitution; thus, it would be unfair and irresponsible to ignore one or other group.

Nevertheless, exploring the debates on the definitions of sex trafficking and prostitution as well as the (in)existing link between them is essential to the understanding of the limitations in implementing of legal instruments dealing with trafficking by the international community

¹⁰³ Weitzer (n 90) p. 3

¹⁰⁴ *ibid*, p. 6

¹⁰⁵ Santos; Gomes; Duarte (n 29)

¹⁰⁶ Piscitelli (n 17)

and national states. The logics of the feminist debates on prostitution closely affects the struggle over the definition of sex trafficking. In this context, if ideology has strongly contaminated knowledge on the sex industry, “it may also be argued that nowhere has the treatment of sex work in social policy been more contaminated by religious and feminist dogma than it has in the debate on trafficking.”¹⁰⁷

During the negotiations for the Palermo Protocol, the major international legal instrument dealing with THB, feminist lobbyists from the two main opposing positions were presented. On one side, supporters of CATW endorsed that all prostitution is a form of trafficking. On the other, Human Rights Caucus representatives stated that there is no trafficking without a violation of consent.¹⁰⁸

The crafting of the Protocol was then impacted by the debates on whether the document should recognise the distinction between ‘forced’ and ‘voluntary’ prostitution. Given that the conclusions have not reached a consensus, and since prostitution is considered a matter outside of the scope of THB, the terms ‘sexual exploitation’ and ‘exploitation of the prostitution of others’ were left undefined in the text of the international instrument.¹⁰⁹

Australia, Germany, the Netherlands, and New Zealand, among others, were very clear that they would not sign a protocol that would require them to change their national laws to outlaw prostitution. Their sentiments on this matter are in line with the Human Rights Caucus. Similarly, nations such as Iran, Iraq, the US, and the Vatican would not have signed a protocol requiring them to decriminalize prostitution in their jurisdictions.¹¹⁰

In reading the text of the instrument, the only necessary elements for the characterisation of THB are “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.” The text leads to the interpretation that a person may consent to work, but not in slavery or servitude.¹¹¹ The practical consequence of this is that the Protocol can be understood by both perspectives on prostitution: it leaves room for those who see prostitution

¹⁰⁷ Ditmore, Melissa H.; Levy, Antonia; Willam. *Sex Work Matters: Exploring money, power and intimacy in the sex industry*. (Zed Books, 2010, p. 36)

¹⁰⁸ *ibid*, p. 37

¹⁰⁹ Santos; Gomes; Duarte (n 29)

¹¹⁰ Ditmore, Melissa. *Trafficking in Lives: How ideology shapes policy*. In *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005, p. 115)

¹¹¹ *ibid*, p. 115

as a freely chosen form of work, and for those who do not distinguish the activity from sexual slavery.

The background paper of the UN Working Group on Trafficking in Persons, which analyses the key concepts of the Palermo Protocol, stresses that the decision of leaving the terms ‘sexual exploitation’ and ‘exploitation of the prostitution of others’ undefined was made in order to allow more States to ratify the instrument, while maintaining their autonomy when legislating on prostitution at the national level.¹¹²

The analysis of the mentioned paper on the interpretation of the key concepts is clear when it says that the Protocol does not address whether states should legalise, regulate, tolerate or criminalise prostitution, but rather it only refers to the context of trafficking. Precisely, the analysis explains that the term ‘exploitation of prostitution of others’ refers to the “unlawful obtaining of financial or other material benefit from the prostitution of another person” and that “the term ‘unlawful’ was added to indicate that this has to be unlawful in accordance with the national laws on prostitution.” Regarding the term ‘sexual exploitation’, the same reasoning is followed.¹¹³

Within the specific context of the EU, the Anti-trafficking Directive 2011/36/EU reflects the same (un)definitions as the Palermo Protocol and does not precisely conceptualise ‘sexual exploitation’ and ‘exploitation of the prostitution of others.’ As is the case at the international level, EU member states continue to hold diverse interpretations of the text and, consequently, to legislate on prostitution in the way that best suits them at the national sphere; the specific provisions of national legislation determine the nature and extent of sexual trafficking in each place.¹¹⁴

It is clear, therefore, that the harmonisation and implementation of legal instruments regarding THB are affected by political conflicts that sustain convergences and consequent misunderstandings between the logics that permeate the actions of people considered to be in a traffic situation. Consequently, the overlapping of interests of governments, human rights entities and feminist movements conduct to different interpretations and political agendas on the fight against sexual trafficking.¹¹⁵

¹¹² United Nations Office on Drugs and Crime (n 16) pp. 3-4

¹¹³ *ibid*, p. 3

¹¹⁴ Ditmore (n 110) p. 115

¹¹⁵ Piscitelli (n 17)

Such convergences and particular interests, however, are often part of debates that end up focusing on how the criminal law deals with prostitution; in other words, attention is generally drawn to the criminal model of regulating prostitution applied in national states.

All the considerations above are crucial to answer to the main question of the present research: if the heart of the debate is on how the criminal law should treat prostitution, would there be a specific criminal model to regulate prostitution capable of positively impacting the fight against sex trafficking? In order to develop an answer to this question, the following Chapter will cover how the aforementioned theoretical and political disputes are represented in the legislative sphere within the EU and its member states.

CHAPTER III

3. THEORY REPRESENTED IN PRACTICE: REGULATING PROSTITUTION

As discussed in the second Chapter, the debate over prostitution is not a consensual field among feminists, much less between national states. This is due to the fact that the phenomenon involves more than objective concerns, but moralistic and cultural ones, leaving room for many variations and interpretations. While the previous Chapter discusses the abolitionist and pro-sex-work perspectives from a theoretical point of view, the purpose of the following sections is to expose the practical framework portrayed by such positions in legislation.

It is worth noting at this moment that although the mentioned perspectives currently represent the two dominant positions on the matter of prostitution, these are not the only models currently in use among EU member states. Within the European Union, there is no common model to regulate prostitution. On the contrary, each member state holds a different approach to face the activity, either by fully or partially prohibiting, legalising, or decriminalising it.¹¹⁶

In general, the regulatory approaches are often divided into three systems: prohibitionist, regulationist, abolitionist. Within each of them, other subcategories with specific features are found. In sum, the first holds a zero-tolerance and penalises all actors involved in the activity; the second regulates prostitution, but do not criminalise the acts involved; and the latter does not penalise prostitutes but does so with procurers and sometimes clients.¹¹⁷

For the purposes of this work, in order to structure the current regulatory approaches adopted by EU member-states jurisdictions, the analysis of the first section of this Chapter will be divided into three broad categories: criminalisation, legislation and decriminalisation. Such categories will indicate a first and general classification degree, that will then be subdivided into other groups that represent the specific exiting legislative models.

At this point, it is necessary to have in mind that, given that national states hold the competence to legislate on the matter, specificities in each country and their respective legislations vary considerably. Therefore, not being the intention of this research to focus on

¹¹⁶ For an overview of the implemented regulatory models on prostitution in the European region, see Figure 1.

¹¹⁷ Jane Scoular, 'What's Law Got to Do With it? How and Why Law Matters in the Regulation of Sex Work' (2010) v. 37, n. 1, *Journal of Law and Society*, pp. 12-39: 12
<https://www.jstor.org/stable/25622006?seq=1#metadata_info_tab_contents> accessed 18 June 2019

specific countries and the particularities of their regulatory instruments on prostitution, this section will be aimed at working on the basis of the generic legislative models and forming a reasonable structure that connects the theories discussed above with the legal practice in the EU. To this end, some countries will be generally mentioned as examples of the systems under consideration.

In turn, the second section of the Chapter will reflect on the two current dominant positions on the debate for a harmonised legal system to treat prostitution within the EU. Initially, the discussion will be focused on the Nordic Model, supported mainly by neo-abolitionism representatives, followed by the analysis of the Decriminalisation system, advocated by liberal and transnational feminism.

The final goal is to put them in confrontation, in order to assess whether the proposed legal models are indeed capable of providing a significant and positive impact on anti-trafficking measures if implemented in a harmonised manner among EU member states.

3.1 REGULATORY MODELS

Literature has not reached a consensus on the precise classification of the regulatory models that regulate prostitution yet.¹¹⁸ For the purposes of this work, I will be based then on the three categories mentioned above – criminalisation, legalisation, and decriminalisation – that will compose the three subsections of this section. Given that they represent broad categories that can be divided into specific and different models of regulating prostitution in practice, the subsections will then expose such “sub-models” that are grouped into each of them.

Specifically, within the criminalisation model, the prohibitionist, abolitionist, and neo-abolitionist approaches will be discussed, and examples of the system in existing laws will be demonstrated based on EU member states that hold it. Subsequently, the legalisation approach will be analysed and practically exposed with the examples of the Netherlands and Greece. Finally, the attention will be drawn to the decriminalisation approach and, given that no EU member state has yet implemented such a model, the case of New Zealand will be under consideration.

¹¹⁸ Post, Che; Brouwer, Jan G.; Vols, Michel. ‘Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?’ (2019) 25:99-118 *Eur J Crim Policy Res*, p. 103
<<https://link.springer.com/content/pdf/10.1007%2F978-93-323-9371-8.pdf>> accessed 18 June 2019

The analysis will be mainly based on comparative studies of existing regulatory models and specific case studies from different countries in order to reflect on practical examples. Moreover, it will rely on reports and surveys that have been conducted for national governments to evaluate the efficacy and specificities of the diverse legal systems.

3.1.1 Criminalisation

While the reading of a ‘criminalisation’ approach to prostitution can be interpreted as the criminalisation of all practices related to the activity, meaning that both prostitutes, clients and third parties would be penalised for their acts, the current legal frameworks in EU member states fall in three categories, namely, *prohibitionist*, *abolitionist* and *neo-abolitionist*.

First, although the manifestation of the *prohibitionist* view on prostitution among EU member states has been significantly decreased in the past decades, its aspects remain present in Croatian legislation. Technically, the prohibitionist approach consists in criminalising all prostitution-related activities, including the penalisation of prostitutes, brothel keepers, and clients.¹¹⁹

Such a system is rarely aimed at protecting prostitutes from harm; on the contrary, prohibitionist instruments often ban the activity because it is seen as contrary to public decency, holding a ‘zero tolerance’ stance.¹²⁰

It is worth noting, however, that, while prohibitionists seek to eradicate prostitution through criminal law enforcement, the cases in which the state enforces the law against traffickers and clients are rare. In this context, prostitutes are forced to work outside of the social security system, since the criminal responsibility often falls to them.¹²¹ Furthermore, besides the security risks suffered in relation to the clients, sex workers are, under this system, more likely to suffer violence from state authorities. Therefore, prohibitionist view is widely contested and rejected by feminist authors.¹²²

¹¹⁹ Crime and Justice Research Centre, *International Approaches to Decriminalising or Legalising Prostitution, review prepared for the Ministry of Justice of New Zealand* [2007] p. 5

<<http://chezstella.org/docs/IntApproachesDecrim-LegalisingProstitution.pdf>> accessed 18 June 2019

¹²⁰ *ibid*

¹²¹ Aronowitz, A. A. *To punish or not to punish: What works in the regulation of the prostitution market*. In Persak, Nina; Vermeulen, Gert. *Reframing Prostitution: From Discourse to Description, From Moralisation to Normalisation?* (Maklu, 2014, p. 231)

¹²² Shrage, Laurie. *Moral Dilemmas of Feminism: Prostitution, Adultery, and Abortion*. (Routledge, 1994, p. 82)

Second, while prohibitionists consider prostitution an affront to public decency, *abolitionism* (both the ‘old’ and the ‘neo’) is represented by radical feminists who see it as sexual exploitation of women and make no distinction between ‘forced’ and ‘voluntary’ prostitution. Although the narrative on the power relations – of men over women – argued by abolitionists has changed throughout the different moments of the movement, it remains based on the argument that prostitution is oppressive and discriminatory against women.^{123 124}

A movement founded by Josephine Butler¹²⁵ for the eradication of regulationism, *abolitionism* is represented in law by a partial criminalisation of the activity, being often described as “the middle ground between prohibitionism and legalization.”¹²⁶ In jurisdictions where the ‘old’ abolitionism is applied, procurers and brothel managers are prosecuted but not prostitutes themselves, and public solicitation is prohibited in order to keep the social order.¹²⁷

Examples of the abolitionist model in the EU are the Portuguese and Spanish legislations, which adopted this position in 1983 and 1995, respectively. In both countries, prostitution is not prohibited; sex workers and clients are not penalised for their acts. Activities such as procuring and brothel keeping, however, are considered illegal.¹²⁸

Such legislative system is often criticised for its vagueness regarding the recognition of the rights of those engaged in the activity. As in the cases of Portugal and Spain, it is argued that the current models correspond to a ‘legal vacuum’ that, in practice, does not develop public policies on the matter, ignoring the existence of the activity and refraining from protecting sex workers from abuse and exploitation.¹²⁹ Moreover, in places where soliciting is illegal,

¹²³ Piscitelli, Adriana. ‘Feminismos e Prostituição no Brasil: Uma Leitura a partir da Antropologia Feminista’ (*Cuadernos de Antropología Social*, 2012, n. 36, pp. 11-31)

<<http://www.redalyc.org/pdf/1809/180926074002.pdf>> accessed 18 June 2019

¹²⁴ While it was concerned about the White Slave Trade during the second half of the nineteenth century and with violence against women during the 1970s, it is now focused on the perception of prostitution as sexist violence – the latter mostly argued by neo-abolitionism.

¹²⁵ With the British, Continental and General Federation for the Abolition of Prostitution.

¹²⁶ Canadian Parliament, Legal and Social Affairs Division, *Prostitution: A Review of Legislation in Selected Countries, Background paper prepared by the Parliamentary Information and Research Service*. [2011] p. 2 <<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2011-115-e.pdf>> accessed 20 June 2019

¹²⁷ Che; Jan; Vols (n 118) p. 104

¹²⁸ Graça, Marta; Gonçalves, Manuela. ‘Prostitution: Which Juridical-Political Model for Portugal?’ (*Dados*, v. 59, n. 2, Apr/Jun 2016) <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0011-52582016000200449#aff1> accessed 18 June 2019

¹²⁹ *ibid.*

prostitutes have reduced access to clients and safe negotiation on the streets; this context increases the need for intermediaries, which, in turn, increases the chances of trafficking.¹³⁰

Since 1999 then, when the *neo-abolitionist* Swedish model¹³¹ on prostitution came into effect as an innovative answer to the issue, it has received much international attention. Holding the same approach as the ‘old’ abolitionist view, the neo-abolitionism system does not penalise prostitutes for offering sex for payment and prohibits pimping and brothels keeping. The new characteristic – and the core point of the neo-abolitionist view – is that it not only criminalises third parties who economically benefit from prostitution, but also the *buyers* of sexual services.¹³²

In Sweden, after the adoption of the Act Prohibiting the Purchase of Sexual Services, prostitution became a matter included in the government’s commitment to eradicate gender inequality in the country; currently, the national Penal Code defines prostitution as a grave form of male violence against women. The international impact and attention received by the neo-abolitionist system has then inspired France and other countries such as Norway, Iceland and Northern Ireland to adopt the Swedish system in their national legislations, and currently strong movements at EU level advocate for its implementation as the common regulatory model among member states of the Union.¹³³

3.1.2 Legalisation

In contrast to criminalisation, in states where the *legalisation* model is applied to regulate prostitution, ‘voluntary’ and ‘forced’ prostitution are distinguished and only the latter is regarded unlawful, such as situations in which procurers or brothel keepers force someone into the activity. In ‘voluntary’ prostitution, however, neither the offer nor the purchase and facilitation of sexual services are illegal. The activity is controlled under certain state-specified conditions, and the term ‘legalisation’ means that specific criminal law, labour law and other legislations are developed to regulate the activity as a form of work.¹³⁴

¹³⁰ World Health Organisation, *General Conclusions and Recommendations prepared by Rudolf P. Mak* <https://www.who.int/hiv/topics/vct/sw_toolkit/general_conclusion_recommendations_english.pdf> accessed 20 June 2019

¹³¹ Currently also known as the ‘Nordic’ or ‘End-demand’ model.

¹³² Canadian Parliament (n 126)

¹³³ *ibid.*

¹³⁴ Aronowitz (n 121) p. 233

Such a model is implemented by states “based on the need to maintain public order, defend morality, protect women and minors from forced prostitution and sexual exploitation, and stop the spread of HIV/AIDS and other sexually transmitted diseases.”¹³⁵ In this context, the administrative legislation regulating prostitution often relate to licences, age and city sectors limits for the exercise of the activity, regular inspections of brothels by the police, health protection and tax control.¹³⁶

Currently, some countries in the EU such as the Netherlands, Germany and Greece implement the legalisation model to regulate prostitution. Widely known for its ‘red light districts’, the Netherlands adopted the system in 2000, aiming at protecting prostitutes from exploitation, fighting sexual trafficking, combating sexual abuse of juveniles, improving prostitutes’ working rights, eliminating criminal involvement in the prostitution market, and limiting the number of non-EU citizens engaged in prostitution in the country.¹³⁷

Among the measures taken by municipalities in their regulatory instruments are “restricting the number and location of brothels; imposing criminal background checks on prospective owners and managers; introducing stringent health, hygiene, and safety requirements; and limiting whom brothel owners can employ.”¹³⁸ Although it is not the case of the Netherlands, in other countries where prostitution is legalised, as in Greece and Germany, STD or HIV/AIDS testing are also imposed to sex workers.¹³⁹

The legalisation model of regulating prostitution is, however, much criticised by its inefficiency in providing women engaged in prostitution with access to public services, gender equality, and consequently with protection from exploitation. Even though the exercise of prostitution is not considered illegal in jurisdictions where the activity is legalised, most times the acts of prostitutes become *de facto* illegal, given the strict imposed restrictions regarding the living, organisation and advertising rules. In other words, the requirements imposed in regulations developed specifically to control prostitution are sometimes impossible to fulfil; hence, sex workers still find themselves in two-tier legal and illegal situations.^{140 141}

¹³⁵ *ibid.*, p. 230

¹³⁶ *ibid.*, p. 234

¹³⁷ Canadian Parliament (n 126) p. 10

¹³⁸ *ibid.*

¹³⁹ World Health Organisation (n 130)

¹⁴⁰ World Health Organisation (n 130)

¹⁴¹ Jaén, Amaranta Heredia, ‘Sex work is work. That’s the problem... and the key’ (*Eurozine*, 23 January 2019) <<https://www.eurozine.com/sex-work-work-thats-problem-key/#footnote-8>> accessed 22 June 2019

First, although recognising prostitution as a regular job, in states where the legalisation model is implemented, the specific regulations on sex work often present much greater state control over sex worker than over other categories of job, leaving room for marginalisation and stigmatisation in the context.¹⁴²

Second, many aspects of the laws regulating prostitution prevent prostitutes from having access to safe sex. For instance, laws that establish mandatory STD or HIV/AIDS testing at a fairly high frequency and prohibit people who are infected to work, as in the case of Greece, instead of guaranteeing the control of diseases and protection for sex workers, influence them to avoid registration in the municipalities. The consequence is that, once unregistered, prostitutes become liable for legal prosecution, which drives them to an underground context where they are more likely to be exposed to human rights violations and trafficking.^{143 144}

Third, regulations such as the Dutch do not allow migrants to be eligible for sex work licenses. Again, considering the dependence of trafficking structures on the movement of people and vulnerable situations, such a restriction, by forcing migrants into illegality, also exposes them to a high risk of exploitation and trafficking.¹⁴⁵

As noted above, although the legalisation system has been created having as one of its objectives the disconnection of prostitution with criminal actions such as sex trafficking, many of its characteristics have shown that, in practice, the effects are not as expected. On the contrary, strict regulations have led prostitutes further into the underground, where no protection is ensured, and the trafficking industry takes place.

3.1.3 Decriminalisation

Advocated by the sex workers movement and transnational feminists, the *decriminalisation* approach to prostitution is an innovative proposal to deal with the matter. The new perspective distinguishes ‘voluntary’ and ‘forced’ prostitution and consists in the

¹⁴² *ibid.*

¹⁴³ World Health Organisation (n 130)

¹⁴⁴ The Greek case of sex workers who, after having undergone forced HIV testing in Athens in April 2012, were seriously harmed by police officers, arrested and had their photos and names published in the media, is described in the documentary ‘Ruins: Chronicle of an HIV Witch Hunt’, produced by Zoe Mavroudi < <https://ruins-documentary.com/en/#>> accessed 22 June 2019

¹⁴⁵ Jaén (n 141)

removal of all criminal provisions related to the activity when not coerced, meaning that selling, purchasing or facilitating it is legal.¹⁴⁶

Although they seem to share some aspects, it is worth noting that decriminalisation and legalisation hold different approaches, especially in their core emphasis. While legalisation seeks to protect the social order, decriminalisation emphasises the need for a human rights perspective to deal with prostitution. Generally, the key difference between the two models is that although both recognise the activity as a regular form of work, the decriminalisation regime does not impose any prostitution-specific rules, regulating the activity through the ordinary statutes and generic labour norms.¹⁴⁷ In other words, prostitution becomes not only a regular work, but it is treated like any other occupation.

In the EU, no member state has implemented the Decriminalisation Model yet. Thus, in order to illustrate the practical application of such a system, I will mention the case of New Zealand, where the model has been operated since 2003. With the consolidation of the Prostitution Reform Act (PRA), adult prostitution, solicitation, operation of brothels, and living off the avails of prostitution became legal in the country.¹⁴⁸

It is seen then that decriminalisation defenders not only advocate against the criminal punishment of acts related to prostitution but also oppose a strict regulatory system specifically to sex work. Concurring with the neo-abolitionist approach – represented by the Nordic Model, – the decriminalisation system is also presented by strong organisations as a possible common regulatory model to treat prostitution in the EU, as will be discussed in detail in the following section.

3.2 PROSTITUTION: HARMONISATION OR CHANGE OF PERSPECTIVE?

As mentioned above, different movements have been lobbying for the harmonisation of the legal treatment of prostitution among the member states of the EU, as a means to promote gender equality and combat sexual trafficking in women. While the existing systems currently regulating prostitution in the region vary strongly, there are two dominant positions: on the one hand, neo-abolitionist representatives advocate for the Nordic – also known as the Swedish –

¹⁴⁶ Crime and Justice Research Centre (n 119) p. 12

¹⁴⁷ *ibid.*

¹⁴⁸ Canadian Parliament (n 126) p. 6

model; on the other, the decriminalisation system is defended by the sex workers' movement and transnational feminists – also called the 'pro-sex-work perspective'.

Given that the disagreements over how to legally deal with prostitution lead to a lack of cooperation between EU member states to effectively combat sex trafficking, the purpose of this section is to deeply understand the strengths and deficiencies of the two dominant models that have been advocated as the common legal system to be adopted in the EU, namely, the Nordic and the Decriminalisation systems. Such an analysis will be based on literature and on specific country cases, especially Sweden and New Zealand. It is worth clarifying at this point that, since this research is not intended to develop an in-depth analysis of statistical results, country-specific data will be used as a means of exemplifying and demonstrating how the 'opposing systems' work in practice, and discussing the existing arguments in favour of and against each of them.

To this end, I will rely on the arguments put forward by international and regional organisations that have been leading the movements for a harmonised legal treatment of prostitution within the EU. On the one hand, supported by the European Parliament Committee on Women's Rights and Gender Equality, CATW and the European Women's Lobby advocate for the Nordic system to be implemented as the common regulatory model; on the other, GAATW and the Open Society Foundations defend the Decriminalisation approach.

The final objective is to answer the first core question of this research, that is: is there a model to regulate prostitution capable of producing significant and positive effects in the fight against sex trafficking if implemented as a common legal system?

3.2.1 Ending Demand to Combat Sex Trafficking

Advocating for the consolidation of the Swedish or Nordic Model as the common system for regulating prostitution within the European Union, supported by the European Parliament, the Coalition Against Trafficking in Women (CATW) and the European Women's Lobby (EWL) are the major and most influential representatives of the neo-abolitionist movement as a means to combat sex trafficking in women.

In a joint project coordinated by both organisations, arguments on how prostitution is interlinked with sex trafficking and gender inequality are put forward. On the whole, the document developed for CATW and EWL argues that the male demand for sexual services is

the ‘root cause’ of trafficking for sexual exploitation. Other circumstances such as globalisation, the feminisation of poverty, migration, and changes in gender parity are presented as the creating conditions. In its exact words:

male demand for a supply of women and children is the root cause of prostitution and trafficking. Gender inequality, globalisation, poverty, racism, migration and the collapse of women’s economic stability are global factors, which create the conditions in which women are driven into the sex industry.¹⁴⁹

As per the mentioned document, the constant demand for ‘new merchandise’ allows the international sex trade of women; in other words, it says that “if men did not take for granted that they have the explicit right to buy and sexually exploit women and girls, the trade in females would not exist.” From this perspective, prostitution should not be distinguished from trafficking because male buyers of sexual services do not care whether the prostitute is forced into the activity or not.¹⁵⁰

Specifically considering the criminal treatment of prostitution and its relation with sex trafficking, CATW and the EWL state that, by legalising the sex industry, sexual exploitation is legitimised and the exploiters become to control the market; in this context, the State ends up operating as a “facilitator/pimp” (sic).¹⁵¹ Legalisation or decriminalisation systems, in the neo-abolitionist opinion, do not take into account conditions such as poverty, violence and inequality that drive women into prostitution – here understood as intrinsically sexual exploitation, – and economic and political interests are pointed as the reasons sustaining the legitimisation of the activity:

unlike domestic abuse, sexual exploitation makes billions of dollars that lines the pockets of pimps, traffickers, brothel owners, legitimate businessmen, and, sometimes, government officials. (...) Viewing sexual exploitation as work rather than abuse shields the industry from a powerful critique that could lead to legislative and policy changes that would impinge on the industry’s profit.¹⁵²

¹⁴⁹ Healy, Grainne; O’Connor, Monica. *The Links between Prostitution and Sex Trafficking: A Briefing Handbook, prepared for the Joint Project Coordinated by CATW and EWL* [2006] p. 6 <<http://www.catwinternational.org/Content/Images/Article/235/attachment.pdf>> accessed 24 June 2019

¹⁵⁰ *ibid*, p. 10

¹⁵¹ *ibid*, p. 5

¹⁵² Leidholdt, Dorchen A. *Presentation to UN Special Seminar on Trafficking, Prostitution and the Global Sex Industry, Position Paper for CATW* [2011] <<http://www.catwinternational.org/Home/Article/59-presentation-to-un-special-seminar-on-trafficking-prostitution-and-the-global-sex-industry-postion-paper-for-catw-part-two>> accessed 24 June 2019

The approach held by CATW and the EWL is derived from the radical feminism view that understands prostitution as inherent violence against women. In fact, the Nordic Model is strongly focused on the need for the criminalisation of the purchase and third-party activities in prostitution, however, is this the only goal of such a system?

To address the question in a structured way, I will start by mentioning the explanation of Cecilie Høigård, one of the researchers for the implementation of the Nordic Model in Sweden – the first country to adopt the approach – on how it came about. She explained that several years were spent in field research with marginalised prostituted women who told them about their experiences of past abuse, poverty and violence, and stated: “the research group disagreed about many things, but we shared the same feelings of despair about the women’s pain and the punters’ lack of understanding of the consequences of their actions.”¹⁵³

The Act Prohibiting the Purchase of Sexual Services was consolidated in Sweden in 1998 as part of a legislation that was focused on violence against women in a broader sense. At the time of the launch of the new position, the Deputy Prime Minister expressed that prostitution in general is a consequence of gender inequality and therefore it is a government’s goal to eradicate it.¹⁵⁴

The primary arguments of the Swedish government are two: first, it sustains that by criminalising activities such as brothel keeping, as well as the purchase of prostitution, those who are responsible for prostitution would be tackled, while prostitutes would be protected; second, by recognising all prostitution as violence against women, it considers that measures against prostitution are also actions that fight sex trafficking in women.¹⁵⁵

Besides the criminal measures taken to combat prostitution, the Swedish government has also taken other actions to encourage prostitutes to leave the activity, including education, employment in other areas and outreach programs.¹⁵⁶ Among the targeted measures, the Swedish government has implemented awareness actions with taxi and hotel companies to train staff on indicators of prostitution and THB and training courses were developed for police officers operating at the borders. Moreover, the government relies on a multidisciplinary group of actors to tackle the issue, formed by social services, NGOs, shelters, psychologists, the

¹⁵³ Nordic Model Now! ‘What is the Nordic Model?’ <<https://nordicmodelnow.org/what-is-the-nordic-model/>> accessed 25 June 2019

¹⁵⁴ Canadian Parliament (n 126) p. 13

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

police, the Migration Agency, prosecutors and lawyers to provide assistance to accomplish with the new regulation.¹⁵⁷

It can be seen, therefore, that not only the criminalisation of third parties and buyers of sex services are the emphasis of the Nordic or Swedish model. The complementation between legal and policy actions, on the whole, has the aim of discouraging people from purchasing sex and ending the demand for prostitution as a means of combating sexual exploitation of women – in other words, trafficking. As urged by the movement ‘The Nordic Model Now!’: “we do not want to criminalise people. We want to change behaviour. And for those who are in it, we want to provide support to help them make a new life outside it.”¹⁵⁸

As mentioned before, the change of regulation in Sweden has received significant attention and had a great impact at the international level. Since then, the idea has been vastly spread at the European and international level; many countries have adopted the system in their national legislations and there have been strong campaigns for the adoption of the Nordic Model as a common system within the EU.

Precisely, in 2010, the EWL launched a campaign spreading the idea of prostitution as a form of male violence against women and arguing for EU actions to end prostitution in the region. The ‘Together for a Europe Free from Prostitution’ campaign has as one of its goals the abolition of the system of prostitution at the EU level through the adoption of the Nordic Model among its member states.¹⁵⁹ In a conference held in 2012 in the European Parliament, the EWL, in cooperation with the Foundation Scelles and Mouvement du Nid France, collected around 200 signatures of NGOs from 25 EU member states and four other countries, in support of the Brussels’ Call ‘Together for a Europe Free from Prostitution.’¹⁶⁰

Among all its arguments, the EWL campaign has produced explanatory materials through which the neo-abolitionist idea is spread. It argues, for instance, that prostitution is not a job like any other since 60 to 80% of workers are regularly abused, and most of them are migrant women who do not belong to Western Europe. It calls, moreover, for labour market

¹⁵⁷ Group of Experts on Action Against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings* [2018] p. 23

¹⁵⁸ Nordic Model Now! (n 153)

¹⁵⁹ European Women’s Lobby ‘Together for a Europe Free from Prostitution, Background’ (17 June 2011) <<https://www.womenlobby.org/Background?lang=en>> accessed 25 June 2019

¹⁶⁰ European Women’s Lobby ‘The Brussels’ Cal Together for a Europe Free from Prostitution’ (16 December 2012) <<https://www.womenlobby.org/Background?lang=en>> accessed 25 June 2019

access, qualification recognition and family reunification rights for those women instead of providing them a false economic independence through prostitution.¹⁶¹

Contradicting the arguments in favour of prostitution as sexual freedom, the campaign is strict when it states that prostitution is not about sex, but about male power over women. According to the EWL, legalising prostitution does not remove the stigma on prostitutes, and thereby does not provide them with more access to rights and protection from exploitation. As a consequence, specifically regarding the idea that eradicating prostitution is a way to combat sex trafficking, the campaign expressly states that “trafficking is profit-drive, and has a direct link with the prostitution markets, where the demand fuels the supply.”¹⁶²

In 2014 then, a strong majority of the Members of the European Parliament (MEP) adopted the so-called Honeyball resolution, providing that the system of prostitution represents an inherent violence against women, which is contradictory to the EU Charter of Fundamental Rights. The same resolution mentions the Nordic Model as “one way of combating the trafficking of women and under-age females for sexual exploitation and improving gender equality.”¹⁶³

Finally, following the same sense, in 2016 the European Parliament adopted a resolution on the implementation of the EU Anti-trafficking Directive on preventing and combating trafficking in human beings and protecting its victims from a gender perspective. The terms of the resolution are clear in defending that the demand for prostitution is a decisive factor for sex trafficking and that “the demand reduction can be achieved through legislation that shifts the criminal burden onto those who sell it.”¹⁶⁴

From the above, it can be seen that the movement in favour of the Nordic approach as a means to combat sex trafficking has been persistently represented by prestigious and influential organisations across Europe, and clearly supported by the European Parliament. It cannot be ignored, however, that while the implementation of the neo-abolitionist model has shown positive results in some of the targeted areas, what remains unanswered is whether the system is truly the only and most capable approach to tackle sex trafficking. To answer this question,

¹⁶¹ European Women’s Lobby ‘18 Myths on Prostitution’
<https://www.womenlobby.org/IMG/pdf/prostitution_myths_final_ewl.pdf> accessed 25 June 2019

¹⁶² *ibid.*

¹⁶³ European Parliament Resolution 2013/2103(INI) on sexual exploitation and prostitution and its impact on gender equality. Committee on Women’s Rights and Gender Equality [2014]

¹⁶⁴ European Parliament Resolution 2015/2118(INI) on preventing and combating trafficking in human beings. Committee on Women’s Rights and Gender Equality [2016]

I will look at some of the reactions to the legislative change in Sweden – the country that holds the most positive responses among those where the system was adopted – and expose opinions from researchers and MEPs who hold critical views of the neo-abolitionist position.

3.2.1.1 The Nordic Model Questioned

The international impact of the consolidation of the law prohibiting the purchase of prostitution in Sweden has caught the attention not only of the countries where the model was later adopted but also of critics of the system.

Initially, keeping in mind the case of Sweden, following the consolidation of the new law, the first reactions of the police in the country showed that the operations were suffering from a considerable difficulty in actually charging the purchasers of sex, since the methods for their identification were difficult to define. Moreover, criticisms were launched in the sense that prostitution had not been eradicated with the ban of purchasing, but rather pushed into hidden contexts such as the Internet, cell phones, restaurants, hotels, etc.¹⁶⁵

In response to questions about the effects of the legislative change, in 2010 the Swedish Government commissioned a Committee of Inquiry to develop an evaluation of the 1992 Act. The evaluation report, despite having concluded that the new law “contributed to combating prostitution and human trafficking for sexual purposes,”¹⁶⁶ also confirmed some of the criticisms pointed out earlier. It showed that, after the implementation of the new model, prostitution has decreased by 50% in the country; most of this percentage, however, concerned street prostitution, since other forms, such as prostitution on the Internet, had in fact increased.¹⁶⁷

More recently, the last report produced by the Group of Experts on Action Against Trafficking in Human Beings (GRETA) has shown that the mentioned deficiencies persist in the Swedish context. In the exact words of the report, it affirms:

the authorities have stressed that the ban has reduced the prostitution market in Sweden and thereby demand for sexual services provided by victims of THB and has contributed to making the purchase of sex socially unacceptable. (...) On the

¹⁶⁵ Canadian Parliament (n 126) pp. 12-13

¹⁶⁶ Government Offices of Sweden, Ministry of Justice, *English Summary of the Evaluation of the Ban on Purchase of Sexual Services*. [2010] pp. 29-34
<<https://www.government.se/4a4908/contentassets/8f0c2ccaa84e455f8bd2b7e9c557ff3e/english-summary-of-sou-2010-49.pdf>> accessed 24 June 2019

¹⁶⁷ *ibid*, pp. 34-35

other hand, research by the CABS and the Swedish Association for Sexual Education (RFSU) about the effects of the ban on purchasing sex shows that while there has been a clear reduction in street prostitution, the offer of sexual services on the Internet has markedly increased.¹⁶⁸

As per the same report, consequently to the fact that the Swedish regulatory change has driven sex workers into underground and hampered the operation of harm reduction programmes by NGOs, it might even be a counterproductive measure to anti-trafficking actions.^{169 170}

First, the strongest criticism relies on the fact that prostitutes, by being pushed underground, are more likely to “end up in the hands of pimps or other third parties to help find clients and keep the police away.” When hiding from the police, besides not being found by social workers, prostitutes also become afraid of reporting exploitative situations, as it could lead to loss of clients and even to a possible discriminatory surveillance of their own activities by the authorities.¹⁷¹

Second, some opponents argue that the way the model is applied in practice ends up making prostitutes afraid of being themselves investigated and jeopardised by the police.¹⁷² This statement is explained on the basis that, in the context of the Nordic approach, surveillance of sex workers may be the easiest method to identify purchasers, but it may also pave the way for abuse of power by the authorities and thereby oppression of prostitutes in other spheres of life:

it still renders their work highly dangerous and forces them underground. It puts them at high risk of becoming homeless or being blackmailed by their lessor (who could be charged with pimping). They are also put at risk of being prosecuted themselves when they work or live together, since they can be accused of ‘pimping’ each other. Neither can they hire a secretary or security services. (...). The ‘unintended consequences’ of criminalization also include police harassment, all the way up to rape. Police are not trained in outreach work and are often violent.¹⁷³

¹⁶⁸ Group of Experts on Action Against Trafficking in Human Beings (n 157) p. 22

¹⁶⁹ *ibid.*

¹⁷⁰ Although Sweden has implemented outreach measures to assist prostitutes, other countries such as France are still much criticised because of the lack of policies other than the criminal ones. See Kohn, Sebastian. [*The False Promise of ‘End Demand’ Laws*. Open Society Foundations (02 June 2017)] <<https://www.opensocietyfoundations.org/voices/false-promise-end-demand-laws>> accessed 24 June 2019

¹⁷¹ Aronowitz (n 121) p. 240

¹⁷² Group of Experts on Action Against Trafficking in Human Beings (n 157) p. 22

¹⁷³ Jaén (n 141)

Third, along with the mentioned risks, criticisms are raised in the sense that the Nordic system promotes policies that directly affect the housing situation of sex workers. It is precisely when the police find out the address of a sex worker – whether through investigations or through the reporting of a crime – that landlords are contacted and pressured to evict the worker from the house. Such a situation usually leaves no possibility for prostitutes other than to take more risks at work and to undergo exploitation and trafficking conditions.¹⁷⁴

Fourth, opponents of the Nordic Model call attention to the fact that, since clients are at risk of being investigated and prosecuted for buying sexual services, they are also reluctant to report exploitative conditions that they might witness. Although supporters of the system defend that men who buy prostitution do not care whether the prostitute is exploited or not, critics of this approach sustain that such belief cannot be generalised.¹⁷⁵

Fifth, another essential point to be taken into account when assessing the effectiveness of the system is the fact that anti-trafficking policies are also used for border control by states. Suffering from an intense immigration crisis, rather than protecting migrants against trafficking, the priority of national states is often to limit migration. As pointed out by Amnesty International in its report on the application of the Nordic Model in Norway, anti-trafficking actions “are used interchangeably in opportunistic ways, or in concert with each other,” meaning that the enforcement of sex work laws are often used to remove migrants and proceed with systematic deportation of migrant sex workers.¹⁷⁶ Thus, when a migrant prostitute is at risk of being evicted or deported, she is hence forced to obey the exploitative structures of trafficking and violence to remain hidden. The consequence of such a context is that the trafficking industry ends up being the most benefited from undocumented migrant’s vulnerability and exclusion.¹⁷⁷

¹⁷⁴ Jordan, Ann. ‘The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering’ (*Center for Human Rights and Humanitarian Law*, 2012)

<https://www.nswp.org/sites/nswp.org/files/Swedish%20Law%20to%20Criminalise%20Clients_A%20Failed%20Experiment%20in%20Social%20Engineering_2012.pdf> accessed 24 June 2019

¹⁷⁵ Scoular, Jane; Carline, Anna. ‘A critical account of a ‘creeping neo-abolitionism’: Regulating prostitution in England and Wales’ (*Criminology and Criminal Justice*, v. 14, 2014, pp. 608-626)

<https://www.researchgate.net/publication/280771839_A_critical_account_of_a_'creeping_neo-abolitionism'_Regulating_prostitution_in_England_and_Wales> accessed 24 June 2019

¹⁷⁶ Amnesty International. ‘The Human Cost of ‘Crushing’ the Market: criminalisation of sex work in Norway’ [2016] p. 71 <<https://www.amnesty.org/download/Documents/EUR3640342016ENGLISH.PDF>> accessed 24 June 2019

¹⁷⁷ Scoular, Jane; Carline, Anna (n 175)

The final point considered significant to the assessment of the possible countereffects of the Nordic system was raised in the minority opinions of MEPs who were opposed to the terms of the 2014 EP resolution. Precisely, the opinions of Angelika Niebler, Christa Klass and Astrid Lulling, from Germany and Luxembourg, were based on the need for cooperation between states to combat sex trafficking; according to them, the adoption of the Nordic system in some EU member states limits the possibility of a comprehensive approach to trafficking:

forced prostitution and human trafficking pose a cross-border problem that cannot be solved by any Member State acting alone. On the contrary, the Member States must cooperate closely to combat forced prostitution, human trafficking and organised crime. A ban on the purchase of sexual services in some Member States but not in others leads to such services increasingly being offered in (neighbouring) countries that do not criminalise clients.¹⁷⁸

Considering all the above, we can see that the Nordic Model to regulate prostitution has as its main argument and objective to fight sex trafficking in women by addressing the male demand for sexual services and encouraging women to leave prostitution. Since the inception of laws holding the neo-abolitionist approach, a number of evaluations have been undertaken; the indicators, however, vary from report to report, and such variations are for the most part easily explained when one take into consideration the political positions of those who produce the information and express their opinions.

On the whole, while there are no doubts and confrontations of the outreach measures sustained and developed under the Nordic system to achieve gender equality and fight violence against women, the criminal solution supported by the model is still much criticised. In this context, the dispute scenario on whether the regulatory system is effective in fighting sex trafficking or not raises questions as to the role of law and its implementation.

3.2.2 Is Decriminalisation the Solution?

While neo-abolitionists fight for the implementation of the Nordic Model, transnational feminists and many sex workers' movements advocate for the Decriminalisation approach as a means to create a safe environment to women engaged in prostitution and combat sex trafficking. The proposal of the regulatory regime in question is that the mentioned goals would

¹⁷⁸ European Parliament, Report A7-0071/2014 on sexual exploitation and prostitution and its impact on gender quality (2013/2103(INI)) [2014]

be achieved through the removal of all penalties for prostitution-related acts and the promotion of outreach measures with sex workers and the society in general. Such a position is strongly defended by organisations as the Global Alliance Against Traffic in Women (GAATW), the Global Network of Sex Work Projects (NSWP), the Open Society Foundations (OSF), and Amnesty International (AI).

In this subsection, in order to understand the connection between the theoretical foundations for decriminalisation discussed in Chapter II and the practice of the regulatory regime, I shall begin by exposing the arguments defended by GAATW in its 2019 anti-trafficking review. The document underlines the fact that many anti-trafficking policies and legislations have been propelled by a moralistic agenda that end up targeting and harming sex workers' rights instead of promoting their freedom. When analysing the relation 'sex work and trafficking,' GAATW exposes that the moralistic approach that remains in the framework:

has taken the form of greater police surveillance of the sex industry, raids on sex work establishments, forced detention in rehabilitation centres, arrests and prosecutions of sex workers due to misinterpretations in victims' identification and a consequent non-application of the principle of non-punishment, and deportations of migrant sex workers.¹⁷⁹

According to the review, over the last ten years the trend of policies and legal regulations that directly affect sex workers' lives are more evident in countries where the neo-abolitionist approach – the Nordic Model – is adopted. It is stated in the document that the implementation of the Nordic Model by many countries is backed by a “global trend towards social conservatism, overreliance on punitive responses to address social and moral ‘problems’ which serve to bolster the conservative agendas of those holding political power.”¹⁸⁰

Advocating in the same sense of GAATW, around the same time of the launch of the EP resolutions supporting the Nordic Model in 2014 and 2016, Amnesty International developed the 'Policy Background Document on Decriminalisation of Sex Work', in which it opposed the criminalisation of activities related to *voluntary* prostitution. According to the document, instead of being identified as trafficking or illegal situations, such acts should be protected by the state as long as they are free from violence and exploitation. Precisely, the position of the organisation was explained as follows:

¹⁷⁹ Lepp, Annalee; Gerasimov, Borislav. 'Editorial: Gains and Challenges in the Global Movement for Sex Worker's Rights' (*GAATW Anti-trafficking Review*, issue 12, 2019, pp. 1-13: 2)

<http://gaatw.org/ATR/AntiTraffickingReview_issue12.pdf> accessed 29 June 2019

¹⁸⁰ *ibid*, pp. 1-13: 5

Amnesty International does not take a position on the morality of sex work. Our focus is on how to ensure that all human beings, including those who engage in sex work, are most empowered to claim their rights and live free from fear, violence and discrimination. Amnesty International believes individuals are entitled to make decisions about their lives and livelihoods, and that governments have an obligation to create an enabling environment where these decisions are free, informed, and based on equality of opportunity.¹⁸¹

When analysing the impact caused by laws and policies on prostitution, AI highlights that it is the responsibility of international bodies, national government and civil society to respect the agency of sex workers. For the organisation, “state responses to sex work that rely principally on enforcement of criminal laws against sex work to discourage and/or penalize those involved have a detrimental impact on sex workers’ human rights and do not offer support, or provide alternatives to people who sell sex.”¹⁸²

Specifically regarding the conflation that is often made between prostitution and sex trafficking, the same document states that many laws regulating the former, by considering the activity inherently violent, end up being contradictory when developing measures that simultaneously punish and help sex workers. According to AI, this is a reflection of a confusing, ambivalent and fearful positions about sex and women’s autonomy.

Amnesty International believes that the conflation of sex work with human trafficking leads to policies and interventions which undermines sex workers’ sexual autonomy, and causes them to be targets of exploitation and abuse, as well as may enable violation of their human rights. (...) Amnesty International believes that human trafficking laws and policies should clearly reflect that trafficking is a crime and a human rights violation. By contrast, laws and policies on adult sex work should reflect that those who voluntarily engage in sex acts, regardless of whether remuneration is involved, are exercising their autonomy, and as such, should be permitted to do so free from interference from the government.¹⁸³

Throughout the years, AI has maintained its perspective, and in 2016 it responded to the UN opened a consultation seeking views on the UN Women approach to sex work, the sex trade and prostitution in the same sense. The document – elaborated after the completion of a three-year development process of a policy on ‘state obligations to respect, protect and fulfil the human rights of sex workers’ by AI – was clear in setting out the organisation’s position on the

¹⁸¹ Amnesty International. ‘Decriminalization of Sex Work: Policy Background Document’ [2014] p. 1 <<https://pt.scribd.com/doc/202126121/Amnesty-Prostitution-Policy-document>> accessed 29 June 2019

¹⁸² *ibid*, p. 5

¹⁸³ *ibid*, p. 3

distinction between ‘sex work’ and ‘human trafficking into the sex sector.’ It argues that the former is a contractual arrangement between consenting adults, while the latter is non-consensual.¹⁸⁴

Furthermore, as already argued in its 2014 background document, the 2016 paper mentioned that the conflation of sex trafficking and sex work in laws and policies confuses practitioners, the media and civil society, harming victims of trafficking, migrants and sex workers. Precisely regarding trafficked victims, it is stated that conflating interventions can impede them “from reaching out for legal protection and support, and/or leaving commercial sex.” Moreover, in accordance with GAATW, AI described that such confusion could also lead to failures of the criminal justice system in the identification of victims and, consequently, of the application of the principle of non-prosecution or non-punishment of victims.¹⁸⁵

Overall, it is seen that the response given by supporters of the Decriminalisation Model to protect women engaging in prostitution and to fight sex trafficking do not involve criminal penalties of prostitution-related activities. At this point, it is worth remembering that, as explained by AI, decriminalising prostitution does not mean that no restrictions should be imposed to the exercise of the activity; what is advocated by such an approach, in fact, is that regulations should be coordinated and in compliance with international human rights law.¹⁸⁶

Although argued by some of the critics of the model, representatives of the Decriminalisation system affirm that they do not ignore the imperfect context in which many sex workers find themselves when choosing prostitution. Nevertheless, their aimed goal is not to tackle the issue through the criminal sphere, but rather to address the structural disadvantages such as poverty and lack of opportunities, through a policy based on human rights principles that prevent individuals from entering or staying in prostitution involuntarily.¹⁸⁷

Thus, because representatives of the Decriminalisation Model hold the idea that the criminal punishment of acts related to prostitution does not help women engaged in the activity, nor does it benefit measures against sex trafficking, they advocate for the importance of implementing the so-called ‘harm reduction actions’ in addition to decriminalising such acts. According to AI, the eradication of violence against all women and girls will not be achieved

¹⁸⁴ Amnesty International. ‘Consultation Seeking Views on UN Women Approach to Sex Work, the Sex Trade and Prostitution’ [2016] pp. 1-2

<<https://www.amnesty.org/download/Documents/IOR4051232016ENGLISH.pdf>> accessed 30 June 2019

¹⁸⁵ *ibid*, pp. 3-4

¹⁸⁶ Amnesty International (n 181) p. 1

¹⁸⁷ *ibid*.

if the high levels of violence against sex workers by state and non-state actors are not considered, nor will the elimination of sex trafficking be reached without comprehensive measures between international human rights and criminal law.¹⁸⁸

The idea that grounds the mentioned harm reduction actions is explained in an advocacy toolkit published by the NSWP. As per the document, the harms suffered by prostitutes at work are variable and the initiatives developed to address them should be politically neutral, meaning that it should not be their goal to reduce sex work *per se*, but the harms associated.¹⁸⁹

Specifically, the approach in question considers that although the Nordic Model claims that sex workers are legally protected under the system, the criminalisation of any prostitution-related acts “creates disengagement between sex workers and service providers and state-sponsored protection.”¹⁹⁰ In this context, decriminalisation defenders argue that its opposition to the neo-abolitionist perspective is not only related to the direct outcomes of the law, but to the ideas that frame it, “which are informed by ideological generalisations” when considering all prostitutes as victims and deprived of autonomy.¹⁹¹

Providing a more practical explanation of the ‘harm reduction actions’ in question, the Open Society Foundations developed a document entitled ‘10 Reasons to Decriminalize Sex Work,’ in which it explains how the proposed approach would protect women engaging in prostitution and fight sex trafficking.

Precisely on what matters to this research, it is firstly argued by the OSF that the decriminalisation of sex work not only respects the human rights and dignity of all women regardless of their choices in life, but it also helps to protect them from violence and abuse both by clients and the authorities. Secondly, it states that decriminalisation improves access to justice, given that in such context sex workers are not afraid of being sued when denouncing situations of exploitation to the police. Finally, OSF emphasises that decriminalising prostitution is an effective means of providing responses to trafficking, as sex workers themselves can be natural allies in anti-trafficking actions; in the exact words of the

¹⁸⁸ *ibid*, pp. 6-7

¹⁸⁹ Global Network of Sex Work Projects. ‘The Real Impact of the Swedish Model on Sex Workers, Advocacy Toolkit’ [2015] p. 3:1
<<https://www.nswp.org/sites/nswp.org/files/The%20Real%20Impact%20of%20the%20Swedish%20Model%20on%20Sex%20Workers%20Advocacy%20Toolkit%2C%20NSWP%20-%20November%202015.pdf>> accessed 29 June 2019

¹⁹⁰ *ibid*.

¹⁹¹ *ibid*, p. 3:6

organisation's document, "when freed from the threat of criminal penalties, sex workers can organize and collaborate with law enforcement."¹⁹²

On the whole, it is seen that, according to representatives of the system, by avoiding the double standard of the criminalisation approaches and refusing them through state control of the legalisation model, the decriminalisation system "shifts the power away from the state and clients to sex workers themselves."¹⁹³ From a similar perspective, by decriminalising prostitution, the social exclusion that makes prostitutes more likely to be exploited could be avoided, and the two-tiered reality of legal and illegal operations that force sex workers underground would move away.¹⁹⁴ In this context, besides having access to social security benefits, sex workers would be free to work as freelancers, to be hired by a brothel, to work together, and even to join a cooperative.¹⁹⁵

As mentioned in Part I of this Chapter, since no EU member state has yet adopted the decriminalisation regime, in order to expose the practical application of such a model, it is useful to discuss the case of New Zealand as an example. When analysing the 2003 Prostitution Reform Act (PRA) – specifically its purposes – in the country, it is seen that the new legislation was designed to allow sex workers to leave the underground sector, creating a safer environment for them. Article 3 of the instrument expressly establishes that it decriminalises prostitution "while not endorsing or morally sanctioning its use," with the aim of safeguarding the human rights of sex workers and protecting them from exploitation.¹⁹⁶

As shown above in the exposition of AI's position, it is not the intention of the Decriminalisation Model to leave prostitution completely deregulated, but to regulate it free of moral prejudice and social exclusion. In the case of New Zealand, for example, the reform did not create 'red-light' districts, but it regulated areas of the cities where the activity is permitted, provided an environment in which the practice of street prostitution is safer and regulated, and imposed rules on licensing for the exercise of street prostitution, especially when it involves individuals working for a third party.¹⁹⁷

¹⁹² Open Society Foundations. '10 Reasons to Decriminalize Sex Work' [2015] pp. 2-6
<<https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>> accessed 30 June 2019

¹⁹³ Crime and Justice Research Centre (n 119) p. 13

¹⁹⁴ *ibid.*

¹⁹⁵ Jaén (n 141)

¹⁹⁶ New Zealand, Prostitution Reform Act 2003 (adopted 27 June 2003, entered into force 28 June 2003) Public Act 2003, n. 28, section 3

¹⁹⁷ Canadian Parliament (n 126) p. 7

In addition, specifically to prevent exploitation and THB, the New Zealand PRA provides that no immigration permits shall be granted to individuals intending to operate or invest in the prostitution sector in the country, as well as prohibits those who hold a temporary or limited permit to do so. Such a rule is explained on the fact that the definition of human trafficking in the country requires the international movement of persons.^{198 199}

The results of such a reform, according to the Prostitution Law Review Committee's Report, signed that the PRA "has had a marked effect in safeguarding the rights of sex workers to refuse particular clients and practices, chiefly by empowering sex workers by removing the illegality of their work." Moreover, many argue that the reform was well-received by prostitutes themselves, who have expressed that they feel safer after the new regulation.^{200 201}

Overall, according to Sebastian Kohn, project director for sexual health and rights at the Open Society Foundations, "decriminalization is not a magic bullet, but it's a better way to protect sex workers' health and human rights." He explains that by decriminalising prostitution, the focus of the fight against violence in prostitution and sex trafficking would shift from criminal law enforcement to prevent exploitation and abuse, and consequently trafficking.²⁰²

In analysing the theoretical arguments discussed in Chapter II and the practical aims of the decriminalisation approach, it is seen that the central point of its supporters is to shift the focus of responses to the 'issue' of prostitution from the criminal law enforcement to a comprehensive regulatory framework which protects sex workers and cooperates in combating sex trafficking. What is left to be answered, however, is whether the adoption of the decriminalisation system would be able to effectively fight sex trafficking, as it proposes. In order to build a fair answer to this question, as it has been done in relation to the Nordic Model, the next subsection will consider the criticisms levelled against the idea of decriminalising prostitution.

¹⁹⁸ New Zealand, Prostitution Reform Act 2003 (n 194) section 19

¹⁹⁹ Canadian Parliament (n 126) p. 7

²⁰⁰ Ministry of Justice of New Zealand, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* [2008] p. 14

²⁰¹ A documentary on the prostitution law reform from the perspective of sex workers in New Zealand fuller describes the changes in the industry in the country: New Zealand Prostitute's Collective <<https://www.nzpc.org.nz/The-New-Zealand-Model>> accessed 23 June 2019

²⁰² Kohn, Sebastian. 'The False Promise of 'End Demand' Laws' (*Open Society Foundations*, 2017) <<https://www.opensocietyfoundations.org/voices/false-promise-end-demand-laws>> accessed 24 June 2019

3.2.2.1 Decriminalisation: A Doubt

Although many are the supporters of the idea of decriminalisation as a means to promote safer working conditions to prostitutes as well as to fight sex trafficking, given to the thickly divided understandings on how to deal with prostitution, such a system is also target of criticisms.

A recently published article written by Janice Raymond, a feminist scholar-activist and the former co-director of CATW, in which she questions the reliability of the New Zealand Prostitutes' Collective, states that “when a country codifies prostitution as normal work, it is almost impossible for a governmental report to cast its evaluation and recommendations outside the labor paradigm.” In other words, when prostitution is decriminalised, exploitative situations would not be identified as violence against women, but a breach of labour relations.²⁰³

In contrast to the effective results of the adoption of the system shown by New Zealander government reports, Raymond expressively argues that after the PRA, prostitution has simply turned into a ‘full-fledged business’ in the country. The view of the author is critic when it comes to the practical implementation of the new regulation. Specifically on what concerns this research, she argues that the requirements for certification of brothels, for instance, are minimal. Still regarding the control of brothels, she affirms that few inspections have been conducted after the law was passed in 2003. Both statements call the attention to the question of whether safety standards have been controlled or not within the new system.²⁰⁴

When contesting the reliability of the implementation and evaluations of the Decriminalisation Model in the country, Raymond draws the attention to the fact that although the new regulation has been supported by the New Zealand Prostitutes' Collective, the organisation does not represent the view of all prostitutes. The author mentions that many prostitutes provided testimony before a parliamentary select committee in 2013, in which they claimed that the PRA “has simply played into the hands of the pimps and brothel owners and

²⁰³ Raymond, Janice G. ‘Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective’ (*Dignity: A Journal on Sexual Exploitation and Violence*, v. 3, issue 2, article 6, 2018, p. 4)

<<https://digitalcommons.uri.edu/cgi/viewcontent.cgi?referer=http://www.catwinternational.org/Home/Article/739-gatekeeping-decriminalization-of-prostitution-the-ubiquitous-influence-of-the-new-zealand-prostitutes-collective&httpsredir=1&article=1116&context=dignity>> accessed 30 June 2019

²⁰⁴ *ibid*, pp.2-3

enabled them to gain a façade of respectability while legally preying on the women they control.”²⁰⁵

Overall, the conclusions of the author recall the need for a longer-term impact evaluation of the PRA, since no review has been conducted since 2008. According to Raymond, there is a lack of representation and evidence-based information on the identity of the supporters of the new regulation in the country, which would be one of the important points to be focused on in order to develop a new and fair assessment on whether the PRA has provided sex workers with protection and combated sex trafficking in New Zealand.²⁰⁶

Indeed, an evaluation report from the government, developed in 2008, acknowledge that the assessment had been drawn up in a relatively short period after the adoption of the decriminalisation regime in the country, predicting that by 2018 – fifteen years after enactment – a longer-term assessment should be carried out. Yet, no further review has been presented.²⁰⁷

Still in attention to the evaluation commissioned by the government, although it has mainly pointed out positive effects of the PRA, the document itself has also confirmed two considerable failures of the system when it comes to the fight against trafficking. First, maybe because the definition of human trafficking in New Zealand requires the transportation of people across national borders, indicators show that there is a lack of identification of trafficking situations by the Immigration Service, that only monitors the indoor sector of the sex industry. Second, the report recognises that “some people working in the sex industry are doing so in breach of their immigration status,” and highlights that such workers may be victims of exploitation since they are not protected under the PRA.²⁰⁸

Complementing the issues addressed above, a Shadow Report elaborated by CATW New Zealand for the CEDAW Committee on the situation of the country argues that articles 5 and 6 of the Convention in question are violated by the decriminalisation of prostitution. Specifically, the report asserts that decriminalising the activity “increases the worth of the industry and transforms it into a respectable market sector, with a vast illegal subsector.” Precisely, it points out that small owner operated brothels – ‘soobs’ – are not controlled by the state regularly, since they do not need certificates to be set up. The consequence, according to

²⁰⁵ *ibid*, p. 10

²⁰⁶ *ibid*, p. 12

²⁰⁷ Ministry of Justice of New Zealand (n 199) p. 168

²⁰⁸ *ibid*, p. 167

CATW New Zealand, is that “the lack of control of soobs is likely to be open to abuse,” building up then a clear link between prostitution and organised crime.²⁰⁹

Although not being directly related to anti-trafficking actions, CATW Shadow Report also states that the PRA compromise of reducing harms has failed. It mentions, particularly, that the removal of police monitoring in brothels makes it harder for the state to provide women engaging in sex work with efficient protection, as well as that, after the implementation of the new legislation, there has been a rise of underage street prostitutes.²¹⁰

Precisely when it discusses the context of trafficked and illegal workers after the adoption of the PRA, the Shadow Report confirms the alleged by the government’s evaluation and outlines that there has been an increasing number of immigrants who have started prostituting illegally in the country since then. It stresses that although the official national reports have not identified internationally trafficked victims either to or from New Zealand, “the U.S. State Department has noted that there is evidence that women from Asia, the Czech Republic, and Brazil are working illegally in the commercial sex industry,” especially in areas of education facilities, since those women often enter the country with student visas and remain illegal after its expiration.²¹¹

When analysing the assertions of CATW New Zealand, one might think that it does not make sense to insert police monitoring if prostitution is legal in the country, nor would it be reasonable to consider a problem that migrant women have engaged in the sector. We shall clarify, however, that such emphasis on the lack of police control of brothels is due to the fact that it leaves room for trafficking situations and for underage prostitution – both acts that are recognised as crimes under national legislation and are out of sight of the government. In addition, specifically with regard to the problem of women from foreign countries working in the sex industry, it is worth remembering that under the national regulation no migrant is entitled to apply for a certificate to exercise sex work in New Zealand; those who do so without authorisation are then considered illegal in the activity.

²⁰⁹ Coalition Against Trafficking in Women New Zealand, ‘Shadow Report for the CEDAW Committee on New Zealand’ [2007] pp. 2-3

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwjg0Z_ho57jAhVvoYsKHawYCdYQFjACegQIAhAC&url=http%3A%2F%2Fwww.catwinternational.org%2FContent%2FImages%2FArticle%2F455%2Fattachment.doc&usg=AOvVaw1y3n-WxQcGfZh0OJ0DEJwT> accessed 30 June 2019

²¹⁰ *ibid*, pp. 3-4

²¹¹ *ibid*, p. 6

Based on the logic above, criticisms of the Decriminalisation Model demonstrate that although it proposes to reduce the harms of prostitution, to prevent underage girls from entering the activity, and to ban the engagement of foreign women in the sex industry, some of its practical effects have not been fulfilled as intended. Such an interpretation leads us to the following question: could we safely say that the system has not fallen into the same shortcomings when it comes to its anti-trafficking actions?

3.3 CONCLUDING NOTES

There is no disagreement on the fact that the sex industry is often associated with grave forms of violence and exploitation of women, and that such issues are present in the market all over the world. Given the moral and social aspects surrounding sexual activities, however, there is little consensus on how they are understood between different governmental entities, the international community, and even among feminists. As exposed in the sections above, such discordances lead to a variation of laws and policies dealing with matters such as prostitution and sex trafficking, that are sometimes contradictory and limit a collaborative and comprehensive response to the problems related to such phenomena.

Overall, the practical responses to the issues concerned to the sex industry still rely heavily on moralistic and political debates handled by different entities, based on very different reasons. This is clearly represented in the evolution of laws and policies dealing with prostitution: while the activity was firstly combated with the aim of defending morality and the social order, most current positions on the matter reflect – even if sometimes only in theory – the preoccupation of entities and the civil society with gender equality, the eradication of violence against women, and the promotion of human rights.

Although Chapters I and II have, to a certain extent, considered some of the social and moral aspects that influence how the sex market is seen, it is not the core objective of this research to analyse the issue from this perspective. Such previous analysis was crucial, however, for a comprehensive exam of the legal framework that regulates prostitution and sex trafficking, in order to assess whether there would be a legislative model to regulate the former that is capable of providing significant and positive results in anti-trafficking actions.

In this Chapter, we have seen that while many are the existing regulatory models dealing with prostitution, two are the dominant positions in the current debate on a possible common

system to regulate the activity among EU member states. Along with the progress of the moral and social aims of regulating prostitution, legal models have also evolved: on the one side, if a prohibitionist system had been widely applied in many countries for decades, the total criminalisation of acts related to prostitution is currently rejected, and has been ‘replaced’ by abolitionist and neo-abolitionist strategies. On the other side, although legalisation systems have been adopted in self-identified ‘liberal’ countries, the rigid rules imposed in such regimes have also shown that they are not capable of protecting women in prostitution and of combating sex trafficking. Such liberal views began then to be represented by transnational feminism and sex workers’ movements, who currently advocate the full decriminalisation of sex work and its recognition as any other job.

These neo-abolitionist and transnational approaches are portrayed in two different – and sometimes opposing – regulatory frameworks: the Nordic and the Decriminalisation Models. While the former is often criticised for its ‘moral concerns’ that end up victimising all women engaged in prostitution, and thus holding a broader interpretation in identifying sex trafficking situations, the latter is also target of criticisms, receiving regular accusations of increasing sex trafficking. As mentioned in the sections above, both sides of the debate centre its arguments on the pros and cons of criminalising or not prostitution; the focus, therefore, is closely related to criminal law enforcement as a means to combat violence and trafficking.

In considering the practical effects of each regulatory system, it may be true that the criminalisation of acts related to prostitution can lead to some ‘unintended consequences’ such as police harassment and social oppression. Nevertheless, would it not also be true that decriminalisation regimes suffer from problems with similar consequences, such as the lack of police monitoring of exploitative situations? As far as we have seen so far in this research, both models still present considerable failures in the fulfilment of their proposed objectives.

Although representatives of each system expressly advocate their adoption as a common regulatory regime among all EU member states, the available data on the virtual results of their adoption by certain countries have not sufficiently proved that a specific criminal legislation on prostitution would significantly improve the anti-trafficking framework. This is also the conclusion of the UNODC:

while countries take very different approaches to prostitution (the range of national policies include complete prohibition and criminalization of both prostitutes and clients, through decriminalization combined with regulation and decriminalization combined with mere toleration, to legalization), there is no settled opinion yet

regarding which approach has the most positive effect in countering human trafficking.²¹²

Still in accordance with the UNODC considerations, among the essential points for the effectiveness of anti-trafficking measures are cooperation and coordination between national states themselves and other entities to ensure that, besides punitive initiatives, protective and preventive steps are taken to tackle the issue. Moreover, the UNODC calls for a more holistic and partnership approach to counter sex trafficking, including in what regards to the collection of accurate information on the undertaken measures and their outcomes.²¹³

What is outlined by the UNODC is of great importance when we realise that anti-trafficking laws and policies are often used for purposes other than trafficking prevention and protection of victims of the crime. While measures are elaborated under promises of tackling the structural causes of the issue and ensuring substantive protection to its victims, in practice, they are many times used as an excuse for situations such as border and immigration control, justifying uncontested visa denials, deportations and other institutional violations.²¹⁴

In this context, whether prostitution should be eradicated for moral reasons is not in question; the structural socio-economic factors that construct women as exploitable individuals, however, must be brought to light. With this in mind, I shall state that it would not be responsible to give a final and objective answer to the question of whether there is a legal model to regulate prostitution capable of significantly improving the anti-trafficking landscape.

One might think that such an answer is too vague and that ‘taking the middle road’ does not solve complex issues such as sex trafficking. Nevertheless, the dispute over what stance to take seems to have sufficiently proved that it is not even close to its end, and that anti-trafficking measures do not benefit in any way from the maintenance of this lack of consensus. The point of this research is that it is exactly the complexity of sex trafficking that requires not only simple responses but complex articulations that can rebuild an action plan that has been failing.

Thus, it is under such reasoning that the next Chapter will consider possible alternative answers to the issue in the EU, other than the ones based on criminal law enforcement. If sex

²¹² United Nations Office on Drugs and Crime, ‘Human Trafficking FAQs’ <https://www.unodc.org/unodc/en/human-trafficking/faqs.html#what_is_the_role_of_transnational_organised_crime_groups_in_human_trafficking> accessed 30 June 2019

²¹³ *ibid.*

²¹⁴ Jaén (n 141)

trafficking is today considered as one of the most serious human rights violations, there is no sense to keep a 'political war' among feminists, the international community, governmental and non-governmental entities on the subject; it is only when particular social, moral, economic and political interests will be moved away from the scene that the dilemma will be overcome.

CHAPTER IV

4. A CHANGE OF PERSPECTIVE

When I started the development of this research, I was questioned – in private conversations with some legal practitioners and even feminist activists – about why to grant “so much room” in my work to the feminist debate on how to treat prostitution if feminism is actually not institutionalised and does not wield direct power in decision-making. I confess that it made me wonder about possibly change the perspective of the work; in fact, I could have strictly worked on the analysis of court decisions and reports on legislative changes from a legal perspective to come to a conclusion on how to elaborate criminal laws on prostitution aiming to improve the anti-trafficking landscape.

Nevertheless, throughout the progress of this research, the lack of multidisciplinary and comprehensive approaches that often reaches the legal ground has shown to be present also in the context of sex trafficking. In analysing the evolution of the history of human trafficking and the legal and policy instruments elaborated to tackle it, I realised that not only objective legal parameters have influenced these processes but also – and maybe mainly – diverse other social and cultural aspects of society. As we have seen, such aspects are represented in the feminist debates on the understandings of the sex market and have strongly affected the institutional sphere. Having realised this, what I posed in question was: would it be possible to change a legal reality without taking into consideration other factors of society such as feminism?

For the purposes of the present research, my answer to this question was ‘no’. I justify my statement on the fact that, even though feminism is not necessarily institutionalised and does not exercise a direct legal and institutional power, it is neither a powerless spectator when it comes to the development of legal instruments and policies on prostitution and sex trafficking at the international, EU and national levels. As exposed in the previous Chapters, feminist movements holding different perspectives have strongly impacted international protocols, regional and national legislations on the matter. I see, therefore, that it would not be possible to assess the legal framework dealing with sex trafficking without considering the prostitution impasse in the ‘feminist world.’

From what we have seen so far, there is no settled opinion on which prostitution legal regime is more capable of improving anti-(sex)-trafficking responses. This lack of agreement is backed by the discordance among feminists themselves on the subject; we can state, therefore, that the lack of coordination in the existing responses to trafficking is not purely legal or political in nature, but rather it is also fuelled by feminism itself.

What is argued in the present Chapter is: if different – and apparently opposing – responses have shown similar results in the fight against sex trafficking, it is not reasonable to insist in what appears to be an ‘endless moral war’ among feminists around the sex industry while exploiters continue to benefit from this lack of agreement that limits a coordinated anti-trafficking structure among different stakeholders. With this in mind, the purpose of the following sections is to reason not only on the legislative systems of the EU, but also on the role of feminist organisations that maintain the ‘feminist impasse’ in addressing the issue. The final goal is to discuss possible first steps to overcome the contradictory debates that limit anti-trafficking actions.

In concrete terms, the first section will draw attention to the need to recognise the real impact of feminist initiatives on the development of legal and policy measures and to call for a common ground to be defined among them. Precisely, the proposal will focus on the analysis of the so-called ‘Governance Feminism’ (GF), with the aim of discussing what might be a lack of awareness on the part of feminists as to the impact of their own contradictions and consequently on the effects of this in the policy and legal framework. Subsequently, I will reason on the existing common objectives between the different feminist positions and discuss possible means to overcome the disparities and find common ground. The goal is to strengthen the consciousness of GFeminists and incite them to produce collaborative and innovative proposals.

The second section will look to the issue from a legislative perspective and will try to fit the ideas produced in the first section into the operational field. Initially, I will outline some of the most visible failures of the current anti-trafficking structures and expose how the lack of coordination between the member states of the EU has been diverting the focus and results of the initiatives in favour of interests other than countering trafficking. Followed by a call for a collaborative and context-sensitive approach to the issue, the last subsection will observe the ‘Prioritizing Safety for Sex Workers Policy,’ enacted in San Francisco in 2018, with the aim of showing that it is possible to reach common ground among a multiplicity of apparently

opposing stakeholders, provided that the central objective of all is to ensure rights and protection for those engaging in the sex industry and improve the anti-trafficking landscape.

4.1 RECOGNISING GOVERNANCE FEMINISM

It is impossible to look at the history of human trafficking in general and the evolution of the legal instruments dealing with it without considering women's movements that accompanied such processes. As mentioned above, although feminism is not institutionalised, it is also not a powerless spectator when it comes to the development of the understandings of sex trafficking in women and the actions taken to counter it. The analysis of the influence of feminism is, therefore, essential as part of a comprehensive study that takes into account all direct and indirect actors and their respective positions in the context in question.

We have seen in the present research that the lobbying initiatives undertaken by the different groups within the feminist movement have influenced decision making in non-feminist fields, thereby affecting the consolidation of the current legal and policy framework that deals with sex trafficking. Thus, in considering the importance of such initiatives in a possible transformative process of the legal sphere, we shall reflect on the idea of 'Governance Feminism' (GF).

Explaining the concept, Janet Halley, a legal scholar with expertise in critical legal studies and the chief proponent of GF, describes it as the "incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power." In addition to mentioning the influence of feminist ideas in the elaboration of legal and policy instruments on prostitution and sex trafficking, Halley exemplifies GF by demonstrating its role in humanitarian cases such as in the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda. She specifies that in such cases the involvement of women with expertise in gender crimes acting as judges, prosecutors and investigators was crucial to ensure the presence of political will to insert a gender perspective into the practice of the processes.²¹⁵

²¹⁵ Halley, Janet; et al. 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: four studies in contemporary governance feminism' (*Harvard Journal of Law & Gender*, v. 29, n. 2, 2006, pp. 335-423:340)
<<http://www.law.harvard.edu/faculty/jhalley/cv/HJLG.vol%2029-2.pdf>> accessed 05 June 2019

Further, Halley does not indicate the presence of GF only in the actuation of actors in direct decision-making positions (as is the case of judges) but describes its presence also in the participation of non-state and para-state entities such as NGOs during investigations, prosecutions and legislative processes of gendered and sexual crimes.²¹⁶ What the author means is that GF is the way through which feminist strategies evolve among legislators, law practitioners, governmental and non-governmental entities practices. It means feminism being represented as an expertise that aims to “devise, pursue and achieve reform to address the problem in the real world.”²¹⁷

In considering the involvement of organisations such as CATW and GAATW in the development of instruments governing prostitution and sex trafficking, we see that such interventions are not only political, but *feminist*. As Halley states, “we are seeing here a fascinating infiltration of specifically *feminist* activism into *generalist* forms of power-wielding,” which results in the transposition of feminist ideas into non-feminist grounds.²¹⁸ This is exactly the case of sex trafficking: different feminist groups have used existing opportunities to work on agenda setting and legal initiatives, aimed at inserting their ideas into non-feminist decision-making groups in order to achieve their respective goals.

However, what is to be questioned is: to what extent are feminists aware of the power they wield in the governance and legislative grounds? Do they calculate the unintended consequences of their proposals? Finally, is it worth persisting with moral divisions among feminists when it comes to the elaboration of measures to combat sex trafficking?

Specifically to what concerns this research, although it is true that GF makes the interests of women heard and thereby empowers women, it seems that there is still an insufficient self-awareness – maybe influenced by the will of winning the disputes among feminists themselves – encompassing the debate scenario on the matter of prostitution and sex trafficking. In the words of Hila Shamir, a researcher and professor on feminist legal thought, “the current form of GF tends to deny its own power, and consequently *systematically* overlooks the shifts in bargaining power, distributive consequences, and production of winners and losers yielded by feminist legislative reforms.”²¹⁹

²¹⁶ *ibid.*

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ Shamir, Hila; et al. ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: four studies in contemporary governance feminism’ (*Harvard*

Specifically regarding the question of the lack of awareness in GF, it comes with the need for a deeper and intersectional assessment of the long-term consequences of feminist efforts at institutional levels, especially in a globalised context that is represented by an increasing global inequality. In collaboration with the work of Halley and Shamir, Chantal Thomas examines the question and states that feminists, while exercising a significant influence in the regulation of sex trafficking, “may not be paying enough attention to the background rules and conditions, and the resulting distributional consequences of the laws and administrative practices they condone.”²²⁰

According to Thomas, the way GF has been operated has led feminist reforms to unintended consequences that have further harmed the people they intended to help. Precisely, GF has contributed to anti-trafficking actions that have been used for purposes other than preventing the crime or protecting its victims, such as for “border control agendas of states – particularly rich states.” An example of this are the provisions of the UN Palermo Protocol (an instrument that was heavily influenced by feminist ideas): while it *requires* the repatriation of victims, it only *encourages* assistance for them.²²¹ In Thomas’ words:

the NGOs involved in reform of the Protocol (...) were so busy fighting over discursive control of women’s bodies that they forgot or did not see that one of the primary effects of these instruments will be to increase the control of the state over the location of those bodies. (...) The energetic response to prosecution of traffickers (...) coupled with the repatriation of the victims themselves, indicates that border control vastly trumped victim assistance as a policy priority.²²²

At the EU level, the situation is not different. While an intense migration crisis has taken over the region, national states have increasingly monitored borders and restricted resident permits. In this context, the rights of migrant women in the sex industry are unlikely to be considered priority, and stigmatisation of ‘different classes’ of women tend to be even more strengthened.²²³

Journal of Law & Gender, v. 29, n. 2, 2006, p. 361)

<<http://www.law.harvard.edu/faculty/jhalley/cv/HJLG.vol%2029-2.pdf>> accessed 05 June 2019

²²⁰ Thomas, Chantal; et al. ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: four studies in contemporary governance feminism’ (*Harvard Journal of Law & Gender*, v. 29, n. 2, 2006, pp. 385-388)

<<http://www.law.harvard.edu/faculty/jhalley/cv/HJLG.vol%2029-2.pdf>> accessed 05 June 2019

²²¹ *ibid.*

²²² *ibid.*

²²³ Agustín, Laura. ‘Migrants in the Mistress’s House: Other Voices in the Trafficking Debate’ (*Oxford University Press*, 2005, pp. 96-104)

What is seen at the international and EU levels is that besides turning off the attention from efficient protective actions for trafficked victims and all other women – regardless of their choices, – the debate between feminist groups operating in GF also neglected to consider indirectly related political interests such as border control in feminist proposals.

An interesting comment on the topic is drawn by Christine Overall, an expert in feminist theory, when discussing the division in women's opinions about prostitution. She states that such a division may not be fuelled only by the very ideas of different feminist perspectives, but also by other stakeholders that benefit from the lack of agreement:

this division among women can also be seen as another case of patriarchal divide and conquer; although such a process is not necessarily a deliberate conspiracy, it functions effectively to keep women arguing with each other rather than with those who perpetuate and benefit from the practice.²²⁴

The author continues the observation, arguing that instead of despising the work of others that share our same final objectives – in this case, countering sex trafficking – we should focus on responding to the divergence of opinions more positively. In her exact words, we should “find a way to reconcile the views on each side.”²²⁵

Such comments lead us to the need to recognise the role of GF in the field of sex trafficking, and especially to consider the real impact that it holds in leading initiatives on the matter, in order to ensure that feminist stances proposals are aware of their consequences in the operational ground. On balance, to what extent it is worth persisting with a moral split between groups that hold considerably close final objectives?

4.1.1 Feminists: Towards a Common Ground

In the section above, we have seen that feminism – in this case, represented by GF – may have failed in recognising its own power within institutionalised grounds and hence in legislative decisions that have directly affected victims of sex trafficking. As well marked by Overall, while important actors in this fight remain arguing against each other, they might be

<https://www.researchgate.net/publication/236725930_Migrants_in_the_Mistress's_House_Other_Voices_in_the_Trafficking_Debate> accessed 10 July 2019

²²⁴ Overall, Christine. ‘What’s Wrong with Prostitution? Evaluating Sex Work’ (*The University of Chicago Press*, v. 17, n. 4, Summer 1992, pp. 705-724:707)

<https://www.jstor.org/stable/3174532?seq=4#metadata_info_tab_contents> accessed 03 July 2019

²²⁵ *ibid*, p. 708

forgetting to tackle their real opponents. The present subsection is, therefore, a proposal to find a common ground between apparently extreme feminist groups, in order to fulfil the gaps in their discourses and proposals and improve anti-trafficking measures effectively.

In considering the complexity of the current globalised context in which sex trafficking operates, we can state that each feminist regulatory perspective leads to gains and harmful consequences to different stakeholders. According to Hila Shamir, “GF – well intentioned as it may be – is pre-loaded with a strong tendency to overlook or underplay the costs it might cause to some and to fix its gaze on the benefits gained by others.”²²⁶

The proposal of the author to overcome the existing gaps in the legal and policy grounds dealing with sex trafficking is an inclusive analysis that considers the affected interests of a variety of stakeholders. Precisely, she nominates it as ‘*an inclusive distributional analysis*’ that is capable of predicting foreseeable consequences, thereby anticipating how proposed measures will affect specific groups if implemented in practice. In her words, “instead of focusing on the benefits of a suggested policy to one group, we should attempt to engage in a wider analysis of a policy’s effects – negative and positive – on various groups and allow these pragmatic insights to influence our policy proposal.”²²⁷

As examples of foreseeable consequences, we can mention the cases of Sweden and New Zealand, where the changes of legal regimes have followed the two currently dominant feminist positions on the subject. Specifically, we might have expected that the criminalisation of prostitution-related acts – although not the prostitutes themselves – would be more likely to present situations of abuse of power by the authorities against prostitutes, as well as that such regimes could take these women out of the streets but force them underground, thus keeping them in an indirectly illegal context (as critics point to be happening in Sweden). Likewise, it could have been predicted that decriminalising prostitution without implementing any monitoring system in small-scale prostitution would leave room for exploitative practices in such situations, as well as that denying migrants the right to sell sexual services would drive many women to an illicit subsector (as is the case of New Zealand).

In attention to the examples above, it is true that both countries have attempted to implement improvements on their policies to remediate the unintended consequences of the regime changes, such as information campaigns and education. Nevertheless, as argued by

²²⁶ Shamir, Hila; et al (n 219) p. 394

²²⁷ *ibid.*

Shamir, *post facto* measures are not as effective as would be those that predict side effects in advance:

these efforts are not as coherent and effective as a reform that accounted for these costs in advance would be. These after-the-fact reforms can be seen as insufficient or superficial when the state is simultaneously causing the harms through its policies while trying to remedy them by providing only partial, temporary rights, and limited information to victims of trafficking.²²⁸

In this context, the role of an inclusive and distributive analysis would be to explore many aspects that current discourses do not prospect. In practice, the main focus of the feminist debates would have to shift from the ‘question of consent’ to an intersectional analysis that considers the possible positive and negative effects of anti-trafficking initiatives in relation to all involved stakeholders. Through this analysis, the various dimensions of the trafficking reality and its background factors – such as the different contexts and economies, levels of inequalities and welfare, education, migration status and histories, social and class divisions, and gender relations – would be under consideration and a broader and more comprehensive strategy mensuration would be built to reach transformative feminist legal and policy regimes.²²⁹

Also drawing attention to the need for an alternative response other than the strict defense of criminal justice systems to counter sex trafficking, Noy Thrupkaew, an expert in human trafficking and a keen critic of the role of anti-trafficking actors, explains in a lecture how she sees the context, recalling the exploitative economic system that exists behind it:

we have mostly turned to the criminal justice system, but keep in mind: most victims of human trafficking are poor and marginalised, they are migrants, people of colour, sometimes they are in the sex trade, and for populations like these, the criminal justice system is too often part of the problem, rather than the solution. (...) Law enforcement is supposed to identify victims and prosecute traffickers, but out of an estimated 21 million victims of human trafficking in the world, they have helped and identified fewer than 50,000 people.²³⁰

With this in mind, whether a common ground on anti-trafficking strategies would include the harmonisation of the criminal legal treatment of prostitution among all member

²²⁸ *ibid*, p. 401

²²⁹ *ibid*, p. 408

²³⁰ ‘Human trafficking is all around you. This is how it works’ (TED2015, Noy Thrupkaew, 2015) <https://www.ted.com/talks/noy_thrupkaew_human_trafficking_is_all_around_you_this_is_how_it_works/up-next> accessed 30 June 2019

states strongly depends on the availability of feminists themselves and governmental entities to entirely take the focus off the question of prostitution as ‘violence’ or ‘choice.’ Nevertheless, many are the aspects that could perfectly be under consideration by both perspectives together when it comes to sex trafficking, as is the case of the examples given above regarding the unintended consequences of regime changes in Sweden and in New Zealand.²³¹ In finding common objectives and focusing on objectively countering trafficking instead of on winning debates based on moral divergencies, space would be created to form a collaborative and coordinated framework in both theoretical and practical spheres.

In considering the impressively organised structures behind trafficking, actions are expected to go beyond the implicit limitations of ‘prohibiting’ or ‘permitting’ prostitution/sex work and put forward a more complex and intersectional response to the problem. It is based on such rationale that Shamir defends that a distributive analysis holds two main strengths: “it manages to avoid the problems raised by contradictory empirical data, and it allows a more complex, multi-dimensional understanding of the motives and interests of various actors and a more accurate assessment of the effects of legal reform.”^{232 233}

Sharing the same idea, the anthropologist Laura Agustín, a scholar in migration, trafficking and the sex industry, also outlines the polarisation of feminist debates, recalling the variety of situations that go beyond the simple dichotomy between ‘violence’ and ‘choice.’ As part of her proposal, she calls for a wide differentiation of the categories of prostitution, mentioning possible variations such as ‘autonomous’, ‘semi-autonomous’, ‘semi-voluntary’, and ‘coerced.’ The objective is to show that there is no single regime of truth and, therefore, efforts to help trafficked persons should move away from socially constructed dichotomies in contemporary discourse on sex trafficking.²³⁴

Such perspectives follow the idea of a distributional analysis that has as its main goal to map both negative and positive consequences – to the most diverse affected actors, in their most variant contexts – of each proposed law and policy before the moment of decision. In considering the costs and benefits of different stakeholders involved in the sex trafficking

²³¹ See p. 71.

²³² Shamir, Hila; et al (n 219) p. 405

²³³ Here considering that depending on how prostitution and sex trafficking are understood empirical data will be changed and therefore never sufficiently accurate.

²³⁴ Agustín, Laura (n 223)

context, a more realistic view of the industry might be achieved, opening space for transformative feminist legal regimes based on distribution, self-awareness, and responsibility.

In the feminism sphere, it is about pairing the common interests and then discussing possible setbacks and advances on each side for achieving a common ground on the disagreements between the apparently extreme groups. At the regulatory level, in turn, given the proclaimed commitment of institutions and states with their respective feminist proposals and objectives, the change of strategy by GF would lead to a consequent pressure for changes of priorities also in the operational scope.

As mentioned above, a call for an alternative perspective that englobes the interests of actors from both sides of feminism does not rely on the naive idea that the current opposing perspectives would reach a consensus on the moral aspects that encompass the sex industry, and thereby a hegemonic regulatory system would be imposed. Rather, such a proposal believes that it is possible to find a *middle ground* in which preventive and protective measures against trafficking could be effectively carried out.

Here, it also is necessary to clarify that the intention to divert the focus from the moral discordances around the sex industry does not mean that those should be disregarded and that the theories that surround it are disposable. What is at issue in this research, however, is the *urgent* need for an adequate response to sex trafficking. For what we have seen so far, the lack of cooperation and coordination within GF has collaborated for the same gaps at the operational level; hence, I would venture to state that the law is not (yet) capable of dissolving the moral impasse in question.

Having said this, we shall keep in mind: *first*, anti-(sex)-trafficking measures do not necessarily depend on such moral debates to be efficiently proposed; *second*, it is not reasonable to wait until a whole social and cultural imaginary is changed and a moral disagreement is solved in order to build effective responses to trafficking.

To this end, not only theoretical positions shall be rethought, but their practical application must be redressed and properly monitored and assessed. According to Dianne Otto, known by her emphasis on melding theory with transformative practice, “we need a deeper understanding of how feminist ideas can become the tools of powerful actors (the dangers) and

to find better ways to combine our thinking and experience about how this can be contested (the power) by forging stronger links between activism and critique.”²³⁵

In conceptual terms, the view of such distributional and intersectional analysis would be represented by the (informally) called ‘middle-feminism,’ referring to those who are aimed at hybridising the opposing feminist fields or making peace between them. For them, both neo-abolitionists and pro-sex-work feminists can acknowledge the limitations of the single approaches, as well as find common ground between each other. As illustrated by Prabha Kotiswaran, an expert in transnational criminal law and feminist legal theory:

even structuralist feminists will acknowledge that sex workers have some agency, some of the time, and that the commodification of sex may be permissible on pragmatic grounds. So also, individualist feminists will recognize that sex workers choose to do sex work out of a highly restricted set of livelihood options and experience violence in sex work.²³⁶

In discussing middle-feminism as a ‘continuum’ of feminist positions that are invested in reconciling the apparently opposing groups, Kotiswaran poses what might be the central impulse of the idea:

it supports the rights of sex workers but not the right to sex work; it supports empowering practices of individual sex workers within the sex industry but is against the institution of prostitution itself; and it acknowledges the agency of sex workers but interrogates why sex work should be viewed as work.²³⁷

In practical terms, the author describes middle-feminist strategies as ‘*a politics of deferral*’, meaning that the realm of its policies would rely on a possible decriminalisation of prostitution as a short-term proposal, while still opposing its unequal practices and tackling the roots of capitalist patriarchy as a means to prevent violence and exploitation in the field.²³⁸

This rationale of a common ground distributional analysis, however, requires GF to keep two points in mind when working on lobbying initiatives in sex trafficking: first, it should acknowledge that until no common ground will be established within the feminist movement

²³⁵ Otto, Dianne. ‘Feminist Engagement with International law through the UN Security Council’ (*Australian Feminist Law Journal*, v. 32, n. 1, 2010, pp. 91,121:100)

<<http://www.austlii.edu.au/au/journals/UMelbLRS/2010/5.pdf>> accessed 08 July 2019

²³⁶ Kotiswaran, Prabha; et al. ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: four studies in contemporary governance feminism’ (*Harvard Journal of Law & Gender*, v. 29, n. 2, 2006, p. 409)

<<http://www.law.harvard.edu/faculty/jhalley/cv/HJLG.vol%2029-2.pdf>> accessed 05 June 2019

²³⁷ *ibid.*, p. 411

²³⁸ *ibid.*

itself, there will be no way to truly ensure cooperation and coordination between the international community, the EU and its member states. Second, being aware of their indirect but strong influence in legal and policy decision-making, feminists shall consider the extent to which they are capable of working on progressive measures to women, while also being critics of the institutions that are supposed to instrumentalise those measures in practice.

Such points are essential not to fall into a selective and inefficient engagement which will in practice be operated to serve institutional powers and interests that are not truly meant to pursue the well-intentioned objectives of GF's actions. It means, therefore, that the operation of innovative outcomes not only requires feminists to find a common ground among them but demands a considerable effort with and by operators (holders of direct decision-making power) for more comprehensive and realistic solutions, as will be discussed in the following section.

4.2 RETHINKING LEGISLATION

In the sections above, we have acknowledged the need for recognising the internationally differentiated nature of the sex industry and hence the various contexts, scales and conditions under which the phenomenon is structured. In perceiving that the fragmented focus on apparently progressive law strategies actually represent counter-productive effects in anti-trafficking measures, not only the theoretical discordances shall be addressed, but the operational field must be rethought and restructured. The present section, therefore, is aimed at transposing the theoretical discussions held above to the practical sphere, in order to reach possible alternatives to more effective anti-trafficking actions in the EU.

As discussed in the previous Chapters, while the EU Anti-trafficking Directive²³⁹ – the main document regulating the subject in the Union – does not take a stance on the legal treatment of prostitution, presenting the same undefinition as the Palermo Protocol, the European Parliament, in 2014, adopted a non-binding resolution²⁴⁰ in which it supports the Nordic Model to regulate the activity among its member states. Although the regulation of trafficking is governed at the EU level by an instrument that binds member states of the Union, this is not the case when it comes to prostitution. For being a matter of competence of individual

²³⁹ European Parliament and Council Directive. (EP/EC) 2011/36 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011]

²⁴⁰ European Parliament Resolution 2013/2103(INI) on sexual exploitation and prostitution and its impact on gender equality. Committee on Women's Rights and Gender Equality [2014]

member states, opinions on how to deal with prostitution are divided among EU countries and no single approach has proved to be the most efficient to fight violence and exploitation in the sex industry.

If my criticism of the fragmentation of feminist discourses refers mainly to the endless moral divergencies between them, when it comes to the operational field, I would state that the main obstacle is that both the prostitution and the anti-trafficking framework are often problematic because actions originally developed to address issues involved in the sex trade are having their focus distorted to the benefit of other interests.

As shown in a study elaborated by Marjan Wijers – a consultant, trainer and researcher in the field of human trafficking and sex workers’ rights – a number of problematic dominant issues has taken over the discussions on anti-trafficking structures after the fifteenth anniversary of the Palermo Protocol, diverting the focus of the measures from their primary objectives. Precisely, she argues:

the focus on recruitment and transport, rather than on abusive or coercive conditions of work, coupled with concerns about protection of national borders; the preoccupation with the innocence, read: the morality, of the women concerned; the conflation of trafficking and prostitution; and the reduction of women to passive victims without regard to conditions of coercion or consent.²⁴¹

The author gives examples on how such points are represented in the practical field of anti-trafficking measures, drawing attention to the EU context. She mentions that initiatives supposedly developed to fight sex trafficking are often used as a means to hinder visa grants, supervise international marriages, and to penalise third parties involved in the illegal entry or permanence of migrants in the Union. Specifically, Wijers illustrates that in some places such as in the UK, alleged prostitutes have been excluded from legal immigration on behalf of combating trafficking, while in others such as Hungary, the authorities have confiscated passports of alleged prostitutes, in order to prevent them from crossing the borders.”²⁴²

As already discussed in the previous Chapters, not only the UN Protocol has left some terms undefined as a means to reach more participant states. When it comes to the EU legal framework, the same lack is perceived in the Anti-trafficking Directive of the Union, and even

²⁴¹ Wijers, Marjan. ‘Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol’ (*Anti-Trafficking Review*, issue 4, 2015, pp. 56-79)

<<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/90/111>> accessed 15 July 2019

²⁴² *ibid.*

where the act of selling sex *per se* is permitted, the indirectly illegal and unprotected context in which prostitutes find themselves remain.

If such dynamic has always visibly affected women in prostitution, who have always had to prove their ‘innocence’ and victim status, now it has been doing even more: in addition to prove their victim status, women involved in the sex industry are also supposed to testify their legal migrant status, which ends up limiting women’s mobility. An example of this statement is how immigration officers have “stereotyped young women travellers from certain countries, such as Brazil and Nigeria, as potential sex workers or victims of trafficking and used this as an excuse to impede their entry.”²⁴³

Specifically regarding the situation of migrant women engaging in the sex industry in the EU, even when they meet the minimum documentation requirements to stay in the region, in many places they have no chance of getting to get a visa or work permit to be regulated in the sex industry, which leads them directly to an unregulated – and often illegal – status in which they are much more likely to end up in the hands of traffickers.²⁴⁴

As stated by Wijers, “from a human rights perspective, the primary concern is to stop exploitation of people under forced labour or slavery-like conditions, no matter how people arrive in such situations.”²⁴⁵ In practice, however, the anti-trafficking framework continue to target women working in prostitution and most governments restrict migration and harm people on behalf of countering trafficking.

In turn, not only the direct control of national borders has been blocking the efficacy of the anti-trafficking framework though. Another issue outlined by Wijers is that although preventive and protective measures are technically provided in priority level, the focus of states is frequently on the prosecution and punishment of traffickers, that is, on criminal law enforcement. In this sense, the author criticises many EU legal and policy structures that impose conditions such as cooperation with legal enforcement officials and investigations so that victims can have access to assistance and protection, expressing that states do so “only to pack them off home when they are not useful anymore.”²⁴⁶

²⁴³ Marshall, Phil; Thatun, Susu. *Miles Away. The Trouble with Prevention in the Greater Mekong Sub-region*. In Kempadoo, Kamala. *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005, p. 51)

²⁴⁴ Geymonat, Giulia Garofalo; Maciotti, P. G. ‘Sex workers speak: who listens?’ (2016) Open Democracy <<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-speak-who-listens/>> accessed 15 July 2019

²⁴⁵ Wijers, Marjan (n 241)

²⁴⁶ *ibid.*

Such approaches are clearly not concerned about possible reprisals from traffickers against deported victims, nor do they grant compensations and appropriate protection and rehabilitation for them. Commenting on both shortcomings of the anti-trafficking structures and providing an overview of the context, Heli Askola, an expert in migration flows and human trafficking in the EU, argues how individual stories about sex trafficking do not reflect its whole reality and calls for a more holistic view of the problem:

these stories are, however, mere manifestations of the broader global injustices that create exploitation. Trafficking in women for sexual exploitation in the Union Member States is a product of a complex interaction between and accumulation of several factors, such as poverty, exclusionary laws and practices against non-EU-nationals, sexist ideologies, discrimination against women, violence and corruption. This multi-faceted fabric forms the essential setting for the acts that are now defined as trafficking in women for sexual exploitation.²⁴⁷

With this in mind, I would like to recall what we have discussed in the previous sections, especially Overall's statement in the sense that the current debates in the feminist field are not only diverting the attention of the fight against sex trafficking to discussions that do not help exploited women, but are also forgetting to tackle those who benefit from the illegal industry and to pressure and monitor governmental institutions to fulfil their commitments with anti-trafficking proposals. Therefore, my intention is to, once more, pose the question: if different actions have shown similar flaws in affecting the people they are supposed to help, how could the operational field respond to a common ground when dealing with prostitution in order to form a coordinated and cooperative structure to combat sex trafficking?

As a first step to answer to this question, we shall keep in mind the need for a distributive and intersectional analysis as a means to achieve a comprehensive and substantial human rights approach to trafficking. The importance of maintaining the focus on distribution and intersectionality is that this perspective will prevent us from falling into human rights actions that are exclusively concerned with the rights of specific groups in the trafficking context, while neglecting attention to the vast reality that is impacted by anti-trafficking laws and policies.²⁴⁸

In practice, anti-trafficking laws and policies must be proposed and assessed as for the way they uphold rights *de facto*; it means to deprioritise actions that do not substantially meet their primary purposes. Specifically, we should shift the focus from exclusive concerns over

²⁴⁷ Askola, Heli. *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*. (Hart Publishing, 2007, p. 161)

²⁴⁸ Wijers, Marjan (n 241)

how and why women get into the sex industry to an extended concern that lays emphasis on the protection of the human rights of *all* those who are engaged in the industry.

When discussing the topic, Askola argues that EU anti-trafficking practices need a comprehensive and coherent approach to tackle the issue. She stresses that EU member states should deal with the matter cooperatively and rely on the EU framework to do so, given that the regional capacity might be more capable of providing substantial results than individual actions. The author suggests that a comprehensive approach is represented by an equilibrium between the ‘interests of the states and the Union’ and the ‘human rights of *all* individuals’. For this, she makes a call for an EU polity that fully understands “the heterogeneity of trafficking in women for sexual exploitation and its causes.”²⁴⁹

Subsequently, Askola continues and explains her statements more precisely, indicating that the EU needs to go beyond its current perspectives and question what is the “actual and desirable role of the Union” regarding the ‘Area of Freedom, Security and Justice’. According to her, it means:

crossing the boundaries of established policy areas; probing issues such as the relationship between increasing free movement of EU nationals and increasing limits on the movement of others through an increasingly Europeanised external migration policy; taking on board the role of transnational organised crime; studying the most appropriate law enforcement response both in Member States and at the Union level; and taking into account the situation of victims, both current and potential.²⁵⁰

In analysing the statements of Askola, we see that a comprehensive approach does not simply rely on specific anti-trafficking laws and policies. So far, measures to tackle the issue have removed some women from a victimised situation, however, have also left room for others to occupy the positions. With this in mind, it means that to achieve a substantial comprehensive approach, we should not only develop measures explicitly and exclusively aimed at fighting trafficking, but also tackle factors such as “poverty, gender inequality, the wealth demarcation between the rich and the poor and global economic and social injustices.”²⁵¹

In order to reach an approach capable of englobing the complex contemporary reality of sex trafficking and tackling it effectively, we should consider the law’s potential to transform and to be context-sensitive. While current debates revolve around the dispute over which

²⁴⁹ Askola, Heli (n 247) p. 8

²⁵⁰ *ibid.*

²⁵¹ *ibid.*, p. 162.

regime – repressive, restrictive or integrative²⁵² – is more capable of protecting people engaged in the sex industry and countering sex trafficking, what is actually perceived in practice is that the strict focus on the current legal regulations and on the will for a harmonised framework is more part of the problem than the a solution.

What I state in this research, therefore, is that – at this moment – no unilateral position will be able to bring significant improvements to the anti-trafficking framework without being considerably limited by opposing beliefs. To overcome such dilemma, I argue for a legal and policy approach that recognises all different perspectives and combine them, thereby contributing with a context-sensitive response to the issue.

My suggestion comes supported by the EU-funded project ‘Addressing Demand in Anti-Trafficking Efforts and Policies’ (DemandAT), developed under the coordination of the International Centre for Migration Policy Development (ICMPD). The project proposes that, instead of questioning “which stance to take” in the prostitution matter, we should think about “*which measures are possible in the different policy settings.*”²⁵³

The idea is to acknowledge the lack of moral and political consensus over the treatment of prostitution and therefore the existence of policy paradigms and crime-preventive measures presenting different perspectives and effects in practice, in order to apply a context-sensitive approach to deal with the matter more efficiently, even under a non-hegemonic system within the EU. As explained in the document:

the brief seeks to align the policy context-sensitive approach with the fundamental principles and recommendations aimed at increasing sex workers’ rights, health and safety, as adopted by major international human and labour rights organisations, and developed in collaboration between sex workers, service providers, researchers, government officials, NGOs, United Nations agencies and development partners.²⁵⁴

According to the DemandAT study, the overlapping, ambiguities and contradictions existing between the regimes in place makes it impossible to properly compare the systems and evaluate them with the aim of concluding which one would be the most promising for combating violence and exploitation. What is proposed is a more coherent analysis that takes

²⁵² Referring, respectively, to the legal regimes adopted in Sweden, Germany, and New Zealand. For more detailed information, see Table 1.

²⁵³ Östergren, Petra. ‘Preventing Exploitation and Trafficking in the Sex Sector’ (*DemandAT*, European Policy Brief, 2017, p. 2)

<http://www.demandat.eu/sites/default/files/DemandAT_PolicyBrief_Preventing%20Vulnerability.pdf > accessed 18 July 2019

²⁵⁴ *ibid.*

into account the intentions and respective actions performed by different member states to deal with prostitution and counter exploitation within the industry. Together with such comprehensive analysis, following the idea of holding a distributive methodology in the elaboration of legal and policy proposals, the brief also mentions the need for appropriate impact-assessing strategies that evaluate how specific policies react in different locals, contexts and actors.²⁵⁵

In its specific terms, it revolves around empowering communities, reducing the stigma against women associated with the sex industry, engaging public authorities and *all* stakeholders (here including sex workers) for the elaboration and implementation of policies, exploring outreached measures to tackle the structural factors that maintain trafficking (such as the vulnerability of migrant women, working conditions, etc.), with respect to the multitude of specific realities, and conducting precise impact assessment of adopted policies.²⁵⁶

With this in mind, recalling the question of “which measures are possible in the different policy settings,” I would say that it is about elaborating an agenda that seeks to tackle well-aimed objectives through duly evaluated action proposals, focusing on reducing violence, exploitation and sex trafficking in all systems that regulate the sex industry, truly balancing the interests of states and the human rights of *all* individuals.

4.2.1 The ‘Prioritizing Safety for Sex Workers Policy’: An Inspiration?

Having in mind the discussions held in the previous sections, this final subsection will be developed as an analysis of a practical example of the adoption of a system that fits in the objectives transcribed above: governed by a distributive and intersectional analysis and aimed at grounding a context-sensitive legal and policy framework. To this end, I will explore the ‘Prioritizing Safety for Sex Workers Policy’ (PSSWP) enacted by the San Francisco District Attorney’s Office and the San Francisco Police Department in 2018.

Designed with the heart goal of protecting sex workers from persecutions and reducing violence in the sex sector, the PSSWP is “a unique example of the way in which sex workers, people who have experienced trafficking, service providers, activists, women’s rights policy

²⁵⁵ *ibid*, pp. 2-3.

²⁵⁶ *ibid*, pp. 5-7

makers, the police department, and the District Attorney's office came together around a common goal.”^{257 258}

Although the San Francisco Department on the Status of Women (DOSW), together with a collaborative group formed by entities such as the District Attorney's Office, the Police Department and the abolitionist organisation Standing Against Global Exploitation (SAGE), received funds from the Demand Abolition's Cities Empowered Against Sexual Exploitation program to engage in a project aimed at reducing demand for sexual services in the county, throughout the researches concerns began to rise about the collateral consequences of the end-demand system. It was then that the DOSW expressed that its goal was not to advocate a one-sided position, but to identify a nuanced approach to deal with the sex industry and hence develop collaborative measures to be implemented among different stakeholders, since the Department “does not state an official position on either decriminalisation or abolition of sex work.”²⁵⁹

After several discussions between the groups working on the project, the wide range of perspectives gathered at the same table proved to be effective. A clear example of this is that SAGE, historically known for its objection to the idea of prostitution as sex work, accepted to be more open and participate in meetings to find a common ground with pro-sex-work organisations to carry out collaborative initiatives.²⁶⁰

The developed policy intends to decrease the harms suffered by those engaging in the sex industry by both clients, third parties or the authorities, and to fight mistreatment of victims by law enforcement policies and officers. To do so, it is backed by a broader objective of addressing violence against women, forming a scenario in which the relationship between the victims and the social and political environment is not infected by further exploitation and oppression. As expressed by the Police Chief William Scott:

we understand that many times sex workers are themselves victims of predators and human traffickers. Our policy is written in the spirit of encouraging sex workers to

²⁵⁷ Lutnick, Alexandra. ‘The ‘Prioritizing Safety for Sex Workers Policy’: A sex worker rights and anti-trafficking initiative’ (*Anti-Trafficking Review*, issue 12, 2019, pp. 140-154)

<<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/382/321>> accessed 16 July 2019

²⁵⁸ In addition to the District Attorney's Office and the Police Department, the policies were developed in collaboration with the Department on the Status of Women, local sex worker organisations, and the Sex Worker and Trafficking Policy Impact Committee of the Mayor's Task Force on Anti-Human Trafficking.

²⁵⁹ Lutnick, Alexandra (n 254)

²⁶⁰ *ibid.*

feel safe coming forward to law enforcement, with the knowledge that they will be treated with respect and their concerns will be taken seriously and investigated.²⁶¹

Besides including a wide array of behaviours to the definition of violent crime – here included human trafficking, threats, extortion, and others – the policy provides that those engaged in sex work/prostitution will not be arrested or prosecuted for prostitution-related practices or misdemeanour drug offences. As explained in an article written by Alexandra Lutnick, a social scientist and participant in the group working on the measure, the PSSWP is a comprehensive policy that englobes *all* those involved in the sex industry, regardless of how they entered the system.²⁶²

What differs the practice of the PSSWP is that it ensures that police officers who commit any kind of violence, retaliation, coercion or any misconduct against sex workers/prostitutes will be held accountable for their actions, and that “information gathered from a victim or witness of a violent crime who is engaged in sex work, or other forms of sex trade, will not be used in any manner to investigate and prosecute that person during the course of the investigation or in the future.”²⁶³

As one might imagine, the enactment of the PSSWP required not only that the working group reached a consensus, but also that specific policies were formulated by the District Attorney’s Office and the Police Department. Among its provisions, commitments were drawn up in the sense that sex workers/prostitutes will not be prosecuted for the practice of the activity and for minor drugs offences when they are victims of a violent crime, as well as that police officers will be accountable to any violent or harassing act against sex workers/prostitutes.²⁶⁴

The paths the group had to go through to set all policies was not that simple. For instance, they had problems in getting the full support of the Police Department due to provisions regarding police officers’ accountability, and even appealed to the press to report the obstacles they were facing to finally enact the policy.²⁶⁵

Specifically regarding law enforcement and the criminal treatment of prostitution, although in-depth discussions were held during the project meetings, in which many argued for

²⁶¹ Department on the Status of Women. ‘San Francisco Announces Prioritizing Safety for Sex Workers Policies’ (11 January 2018) <<https://sfgov.org/dosw/san-francisco-announces-prioritizing-safety-sex-worker-policies>> accessed 15 July 2019

²⁶² Lutnick, Alexandra (n 254)

²⁶³ *ibid.*

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

total decriminalisation of sex work/prostitution, it was concluded that “*an immediate and achievable goal* would be to end the criminalisation of sex workers who are victims of violent crimes.”²⁶⁶ This decision was taken on the basis that, even though a system of decriminalisation – if supported by well-implemented outreach measures and adopted by diverse actors – seems to be more likely to provide rights and safety to sex workers/prostitutes, such a consensus would have taken much longer to be achieved than the multifaced PSSWP.²⁶⁷

My intention in exposing the case of the PSSWP is neither to advocate a partial criminalisation of prostitution/sex work, nor to defend the full decriminalisation of the activity as a means to improve anti-trafficking structures and ensure rights to those involved in the sex industry. Rather, my aim is to show how a multiplicity of apparently opposing perspectives can be put together when stakeholders are willing to reach common ground.

Given how recently the PSSWP was implemented, long-term effects are still unknown. Nevertheless, it continues to represent an innovative example of how cooperation, inclusion and trust between stakeholders with different interests are achievable and may represent a turnaround in the sex trade.

²⁶⁶ *ibid.*

²⁶⁷ *ibid.*

CONCLUSION

Choosing a topic to research among the infinite range of emergencies to be discussed in the world of human rights goes beyond an academic decision; my choice comes from a mixture of fascination and saturation. While fascinated by the strength of women – especially of those who may not experience the same ‘safe feeling of being a woman’ as mine – I am also saturated with the ‘romanticism’ created over what has nothing to do with romance.

Let me explain myself. As a lawyer, I planned to develop a research after which I would be able to provide an objective response to the primary question of the study: is there a model to regulate prostitution capable of producing significant and positive effects in the fight against sex trafficking if implemented as a common legal system among EU member states? I must confess that I was initially inspired by a personal stance on which specific theoretical perspective would bring justice to trafficked women. My personal view, however, was left aside when I realised that because I see feminism as one of the greatest representations of the term ‘solidarity’, I would not be able to defend any of the currently dominant feminist positions on the understandings of prostitution/sex work without being plagued by too many ‘*buts*’.

The discussions of this thesis were, therefore, developed with the intention of building a founded comprehension of how we have reached the existing anti-(sex)-trafficking landscape, what are the bases that ground it, where are its frailties, and finally, how we could overcome its barriers and improve results to reach justice.

As feminism has been an active subject in the processes of shaping the legal and policy structures to counter violence and exploitation in the context of the sex trade, I found worthy of analysis the arguments put forward by declared opposing feminist sides. Theoretically, I have concluded that feminist views can be either extreme in nature or primordially in line. It will depend on the standpoint from which they are interpreted: if the ‘question of choice’ is to be the basis to form a stance on prostitution/sex work, they are extreme; however, if the ‘will to combat violence in the sex industry and sex trafficking’ represents the heart of the intentions, then feminists have never been divided. The ‘problem’ with discussing such feminist theories with a focus on ‘how to *legally* treat prostitution/sex work’ is that they are, in fact, not a legal or political discussion, but a *moral* one – and it was not the purpose of this research to argue in this regard.

The real objective of this thesis was to reason on what can be done to change the faulty setting of the current anti-trafficking framework. Along the research path, it was first concluded that the discussions over ‘abolishing’ or ‘decriminalising’ prostitution/sex work would not be able to provide us with a meaningful response to sex trafficking. In my opinion, there is no single regime of truth when it comes to prostitution/sex work; rather, as long as attention remains on the discrepancies rather than on the commonalities that exist among the most diverse groups, an effective response against sex trafficking will not be achieved.

With this in mind – and recognising the importance of feminism in the history of sex trafficking and in the progress that still needs to be run in the legal and policy spheres – I argue that both the theoretical and the operational fields must be more aware of the role of Governance Feminism and of the consequences of its proposals to the political and legal treatment of the sex industry, whether it is considered legal or illegal. It is only when opposing feminist movements will be willing to place their similarities before their discrepancies that feminist proposals will come with innovative and positive responses. In the meantime, the focus of the fight against sex trafficking and violence in the sex industry remains diverted and feminists – strong actors of this fight – separated.

If ‘common ground’ may be interpreted as too naive for the reality we face today, I shall outline that what I mean with the term is neither that the feminist moral discordances will have to be completely overcome, nor that states will have to agree on a single legal regime to deal with prostitution in a short period of time. Such intentions might fit with a long-term objective; for this purpose, however, scholars and legislators will be required to go far beyond what we have achieved so far, especially because a full consensus will involve the need for moral issues to be outgrown.

Given that the ‘failure of the anti-(sex)-trafficking idea’ is a reality *now*, I argue that as we progress towards such ambitious social structural changes, short-term actions must be put in place, even if playing a ‘relief role’ – as, for example, provide migrants the same rights and priority as those provided to national citizens, and truly applying the principle of ‘non-punishment’ to victims. Such immediate responses that are urged by the problem in the present will serve as a means to inform long-term goals, and finally the question brought by a comprehensive approach will count on a touch of realism about “which measures are *possible* and *achievable* in the currently existing different regimes of prostitution/sex work.”

BIBLIOGRAPHY

PRIMARY SOURCES

International Treaties and Protocols:

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13

Council of Europe Convention on Action against Trafficking in Human Beings. (Treaty, adopted 16 May 2005, entered into force 01 February 2008) CETS No. 197

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319

EU Legislation and Policy Documents:

European Commission. 'The EU Anti-trafficking Directive 2011/36/EU' [2011] L 101/1

European Parliament and Council Directive. (EP/EC) 2011/36 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011]

European Parliament Resolution 2013/2103(INI) on sexual exploitation and prostitution and its impact on gender equality. Committee on Women's Rights and Gender Equality [2014]

European Parliament Resolution 2015/2118(INI) on preventing and combating trafficking in human beings. Committee on Women's Rights and Gender Equality [2016]

Non-EU National Legislation and Policy Documents:

New Zealand, Prostitution Reform Act 2003 (adopted 27 June 2003, entered into force 28 June 2003) Public Act 2003, n. 28

SECONDARY SOURCES

Books:

Askola, Heli. *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*. (Hart Publishing, 2007)

Barry, Kathleen, *Female Sexual Slavery*. (New York University Press, 1984)

Batstone, David. *Not for Sale: the return of the global slave trade – and how we can fight it*. (Harper-Collins Publishers, 2010)

Chapkis, Wendy. *Live sex acts: women performing erotic labour*. (Cassell, 1997)

Davidson, Julia O’Connell. *Prostitution, Power and Freedom*. (Polity Press, 1998)

Ditmore, Melissa H.; Levy, Antonia; Willam. *Sex Work Matters: Exploring money, power and intimacy in the sex industry*. (Zed Books, 2010)

Freyre, Gilberto. *Casa-grande & senzala*. (Global, 2006)

Jeffreys, Sheila. *The Idea of Prostitution*. (Spinifex Press, 1997)

Kempadoo, Kamala. *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work and human rights*. (Paradigm Publishers, 2005)

Kempadoo, Kamala; Doezema, Jo. *Global Sex Workers: Rights, Resistance, and Redefinition*. (Routledge, 1998)

McRedmont, Penelope; Wylie, Gillian. *Human Trafficking in Europe*. (Palgrave Macmillan, 2010)

Menezes, Lená Medeiros. *Os Indesejáveis: Desclassificados da modernidade. Protesto, crime e expulsão na Capital Federal (1890-1930)*. (edUERJ, 1996)

O’Neill, Maggie. *Prostitution & feminism: Towards a politics of feeling*. (Polity Press, 2001)

Paglia, Camille. *Vamps & Tramps: new essays*. (Vintage Books, 1994)

Pateman, Carole. *The Sexual Contract*. (Polity Press, 1994)

Persak, Nina; Vermeulen, Gert. *Reframing Prostitution: From Discourse to Description, From Moralisation to Normalisation?* (Maklu, 2014)

Rago, Margareth. *Os prazeres da noite: prostituição e códigos da sexualidade feminina em São Paulo (1890-1930)*. (Paz e Terra, 1991)

Shrage, Laurie. *Moral Dilemmas of Feminism: Prostitution, Adultery, and Abortion*. (Routledge, 1994)

Sherwood, Marika. *After Abolition: Britain and the Slave Trade Since 1807*. (I.B.Tauris, 2007)

Sietske Altink. *Stolen Lives: Trading Women into Sex and Slavery*. (Harrington Park Press, 1995)

Torres, Hédél A. *Tráfico de Mulheres – Exploração Sexual: Liberdade à Venda*. (Rossini Corrêa, 2012)

Weitzer, Ronald. *Legalizing Prostitution: From Illicit Vice to Lawful Business* (New York University Press, 2012)

Articles:

Agustín, Laura. 'Migrants in the Mistress's House: Other Voices in the Trafficking Debate' (*Oxford University Press, 2005, pp. 96-104*)
<https://www.researchgate.net/publication/236725930_Migrants_in_the_Mistress's_House_Other_Voices_in_the_Trafficking_Debate> accessed 10 July 2019

Anderson, Bridget; Davidson, Julia O'Connell. 'Trafficking – a demand led problem? A multi-country pilot study' (*Save the Children Sweden, 2002*)

Eltis, David. *The Economic Impact of the Ending of the African Slave Trade to the Americas*. (Social and Economic Studies, v. 37, 1988)
<<https://www.jstor.org/stable/pdf/27862932.pdf?refreqid=excelsior%3A4f08d8fedc019ac17737bc3712995891>> accessed 13 May 2019

Davidson, Julia O'Connell, 'The Rights and Wrongs of Prostitution', *Hypatia*, vol. 17, no.2, Spring/2002) <https://www.jstor.org/stable/3810752?seq=1#metadata_info_tab_contents> accessed 30 May 2019

Devereux, Cecily. “‘The Maiden Tribute’ and the Rise of the White Slave in the Nineteenth Century: The Making of an Imperial Construct.’ (Victorian Review, v. 26, n. 2, 2001, pp. 1-23)

Geymonat, Giulia Garofalo; Maciotti, P. G. ‘Sex workers speak: who listens?’ (2016) Open Democracy <<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-speak-who-listens/>> accessed 01 July 2019

Graça, Marta; Gonçalves, Manuela. ‘Prostitution: Which Juridical-Political Model for Portugal?’ (*Dados*, v. 59, n. 2, Apr/Jun 2016)
<http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0011-52582016000200449#aff1> accessed 18 June 2019

Halley, Janet; Kotiswaran, Prabha; Shamir, Hila; Thomas, Chantal. ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: four studies in contemporary governance feminism’ (*Harvard Journal of Law & Gender*, v. 29, n. 2, 2006, pp. 335-423)
<<http://www.law.harvard.edu/faculty/jhalley/cv/HJLG.vol%2029-2.pdf>> accessed 05 June 2019

Healy, Claire. ‘What Do We Really Know About the Prevalence of Human Trafficking?’ (2018) *Delta 8.7* <<https://delta87.org/2018/09/what-do-we-really-know-about-the-prevalence-of-human-trafficking/>> accessed 28 May 2019

Jaén, Amaranta Heredia, ‘Sex work is work. That’s the problem... and the key’ (*Eurozine*, 23 January 2019) <<https://www.eurozine.com/sex-work-work-thats-problem-key/#footnote-8>> accessed 22 June 2019

Jane Scoular, ‘What’s Law Got to Do With it? How and Why Law Matters in the Regulation of Sex Work’ (2010) v. 37, n. 1, *Journal of Law and Society*, pp. 12-39
<https://www.jstor.org/stable/25622006?seq=1#metadata_info_tab_contents> accessed 18 June 2019

Jordan, Ann. ‘The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering’ (*Center for Human Rights and Humanitarian Law*, 2012)
<https://www.nswp.org/sites/nswp.org/files/Swedish%20Law%20to%20Criminalise%20Clients_A%20Failed%20Experiment%20in%20Social%20Engineering_2012.pdf> accessed 24 June 2019

Lutnick, Alexandra. ‘The ‘Prioritizing Safety for Sex Workers Policy’: A sex worker rights and anti-trafficking initiative’ (*Anti-Trafficking Review*, issue 12, 2019, pp. 140-154)

<<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/382/321>> accessed 16 July 2019

Otto, Dianne. 'Feminist Engagement with International law through the UN Security Council' (*Australian Feminist Law Journal*, 32:1, 2010)
<<http://www.austlii.edu.au/au/journals/UMelbLRS/2010/5.pdf>> accessed 08 July 2019

Overall, Christine. 'What's Wrong with Prostitution? Evaluating Sex Work' (*The University of Chicago Press*, v. 17, n. 4, Summer 1992, pp. 705-724)
<https://www.jstor.org/stable/3174532?seq=4#metadata_info_tab_contents> accessed 03 July 2019

Piscitelli, Adriana. 'Between 'Mafias' and 'Help': Building of Knowledge on Human Trafficking'. (*Cadernos Pagu*, n. 31, p. 29-63, Jul/Dec 2009)
<http://socialsciences.scielo.org/scielo.php?script=sci_arttext&pid=S0104-83332008000100004#_ftn4> accessed 7 June 2019

Piscitelli, Adriana. 'Feminismos e Prostituição no Brasil: Uma Leitura a partir da Antropologia Feminista' (*Cadernos de Antropología Social*, 2012, n. 36, pp. 11-31)
<<http://www.redalyc.org/pdf/1809/180926074002.pdf>> accessed 18 June 2019

Post, Che; Brouwer, Jan G.; Vols, Michel. 'Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?' (2019) 25:99-118 *Eur J Crim Policy Res*.
<<https://link.springer.com/content/pdf/10.1007%2Fs10610-018-9371-8.pdf>> accessed 18 June 2019

Raymond, Janice G. 'Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective' (*Dignity: A Journal on Sexual Exploitation and Violence*, v. 3, issue 2, article 6, 2018)
<<https://digitalcommons.uri.edu/cgi/viewcontent.cgi?referer=http://www.catwinternational.org/Home/Article/739-gatekeeping-decriminalization-of-prostitution-the-ubiquitous-influence-of-the-new-zealand-prostitutes-collective&httpsredir=1&article=1116&context=dignity>> accessed 30 June 2019

Santos, Boaventura de Sousa; Gomes, Conceição; Duarte, Madalena. 'The Sexual Trafficking of Women: Representations of Illegality and Victimisation' (2010) *Revista Crítica de Ciências Sociais* <<https://journals.openedition.org/rccsar/247>> accessed 14 May 2019

Scoular, Jane; Carline, Anna. 'A critical account of a 'creeping neo-abolitionism': Regulating prostitution in England and Wales' (*Criminology and Criminal Justice*, v. 14, 2014, pp. 608-626)

<<https://journals.sagepub.com/doi/10.1177/1748895814543534#articleCitationDownloadContainer>> accessed 24 June 2019

Shage, Laurie. 'Should Feminists Oppose Prostitution.' *Ethics*, v. 99, n. 2, 1989, pp. 347-361) <https://www.jstor.org/stable/2381438?seq=15#metadata_info_tab_contents> accessed 18 July 2019

Wijers, Marjan. 'Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol' (*Anti-Trafficking Review*, issue 4, 2015, pp. 56-79) <<http://www.antitraffickingreview.org/index.php/atrjournal/article/view/90/111>> accessed 15 July 2019

Reports, Studies and Legal and Policy Summaries:

Amnesty International. 'Consultation Seeking Views on UN Women Approach to Sex Work, the Sex Trade and Prostitution' [2016] <<https://www.amnesty.org/download/Documents/IOR4051232016ENGLISH.pdf>> accessed 30 June 2019

Amnesty International. 'Decriminalization of Sex Work: Policy Background Document' [2014] <<https://pt.scribd.com/doc/202126121/Amnesty-Prostitution-Policy-document>> accessed 29 June 2019

Canadian Parliament, Legal and Social Affairs Division, *Prostitution: A Review of Legislation in Selected Countries, Background paper prepared by the Parliamentary Information and Research Service*. [2011] <<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2011-115-e.pdf>> accessed 20 June 2019

Castilho, Ela Wiecko. *Tráfico de pessoas: da Convenção de Genebra ao Protocolo de Palermo*. In Brasil, Ministério da Justiça, *Política Nacional de enfrentamento ao tráfico de pessoas*, 2007

Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* [2005]

Crime and Justice Research Centre, *International Approaches to Decriminalising or Legalising Prostitution, review prepared for the Ministry of Justice of New Zealand* [2007] <<http://chezstella.org/docs/IntApproachesDecrim-LegalisingProstitution.pdf>> accessed 18 June 2019

EUR-Lex, ‘Summaries of EU Legislation: Protocol against the trafficking of people’ (2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133700>> accessed 29 May 2019

European Parliament, Report A7-0071/2014 on sexual exploitation and prostitution and its impact on gender quality (2013/2103(INI)) [2014]

Global Network of Sex Work Projects. ‘The Real Impact of the Swedish Model on Sex Workers, Advocacy Toolkit’ [2015]
<<https://www.nswp.org/sites/nswp.org/files/The%20Real%20Impact%20of%20the%20Swedish%20Model%20on%20Sex%20Workers%20Advocacy%20Toolkit%2C%20NSWP%20-%20November%202015.pdf>> accessed 29 June 2019

Government Offices of Sweden, Ministry of Justice, *English Summary of the Evaluation of the Ban on Purchase of Sexual Services*. [2010]
<<https://www.government.se/4a4908/contentassets/8f0c2ccaa84e455f8bd2b7e9c557ff3e/english-summary-of-sou-2010-49.pdf>> accessed 24 June 2019

Group of Experts on Action Against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings* [2018]

Healy, Grainne; O’Connor, Monica. *The Links between Prostitution and Sex Trafficking: A Briefing Handbook, prepared for the Joint Project Coordinated by CATW and EWL* [2006]

Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto (United Nations, Sales No. E05.V.2)

Lepp, Annalee; Gerasimov, Borislav. ‘Editorial: Gains and Challenges in the Global Movement for Sex Worker’s Rights’ (In *GAATW Anti-trafficking Review*, issue 12, 2019, pp. 1-13) <http://gaatw.org/ATR/AntiTraffickingReview_issue12.pdf> accessed 29 June 2019

Leidholdt, Dorchen A. *Presentation to UN Special Seminar on Trafficking, Prostitution and the Global Sex Industry, Position Paper for CATW* [2011]
<<http://www.catwinternational.org/Home/Article/59-presentation-to-un-special-seminar-on-trafficking-prostitution-and-the-global-sex-industry-position-paper-for-catw-part-two>> accessed 24 June 2019

Östergren, Petra, ‘From zero tolerance to full integration. Rethinking prostitution policies’ (*Demand AT*, Working Paper, 2017)

<https://www.demandat.eu/sites/default/files/DemandAT_WP10_ProstitutionPoliciesTypology_June2017_0.pdf> accessed 18 July 2019

Östergren, Petra. 'Preventing Exploitation and Trafficking in the Sex Sector' (*Demand AT*, European Policy Brief, 2017)

<http://www.demandat.eu/sites/default/files/DemandAT_PolicyBrief_Preventing%20Vulnerability.pdf> accessed 18 July 2019

Rudolf P. Mak. *General Conclusions and Recommendations* (World Health Organisation)

<https://www.who.int/hiv/topics/vct/sw_toolkit/general_conclusion_recommendations_english.pdf> accessed 20 June 2019

United Nations Office of the High Commissioner for Human Rights, *Fact Sheet No. 36, Human Rights and Human Trafficking* [2014]

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* [2009]

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* [2018]

United Nations Office on Drugs and Crime, Working Group on Trafficking in Persons. *Analysis of key concepts of the Trafficking in Persons Protocol: Background paper prepared by the Secretariat.* [2010]

Wijers, Marjan; Lap-Chew, Lin. 'Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.' (*STV*, 1997)

<<http://lastradainternational.org/lisdocs/1137-Trafficking%20in%20women%20Wijers-Lap%20Chew.pdf>> accessed 14 May 2019

Online Publications and Press Releases:

Department on the Status of Women. 'San Francisco Announces Prioritizing Safety for Sex Workers Policies' (11 January 2018) <<https://sfgov.org/dosw/san-francisco-announces-prioritizing-safety-sex-worker-policies>> accessed 15 July 2019

European Women's Lobby '18 Myths on Prostitution'

<https://www.womenlobby.org/IMG/pdf/prostitution_myths_final_ewl.pdf> accessed 25 June 2019

European Women's Lobby 'The Brussels' Cal Together for a Europe Free from Prostitution' (16 December 2012) <<https://www.womenlobby.org/Background?lang=en>> accessed 25 June 2019

Kohn, Sebastian. 'The False Promise of 'End Demand' Laws' (*Open Society Foundations*, 2017) <<https://www.opensocietyfoundations.org/voices/false-promise-end-demand-laws>> accessed 24 June 2019

Nordic Model Now! 'What is the Nordic Model?' <<https://nordicmodelnow.org/what-is-the-nordic-model/>> accessed 25 June 2019

Not for Sale <<https://www.notforsalecampaign.org/about-us/>> accessed 20 March 2019

Open Society Foundations. '10 Reasons to Decriminalize Sex Work' [2015] <<https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>> accessed 30 June 2019

United Nations Office on Drugs and Crime, 'Human Trafficking FAQs' <https://www.unodc.org/unodc/en/human-trafficking/faqs.html#what_is_the_role_of_transnational_organised_crime_groups_in_human_trafficking> accessed 30 June 2019

Filmography:

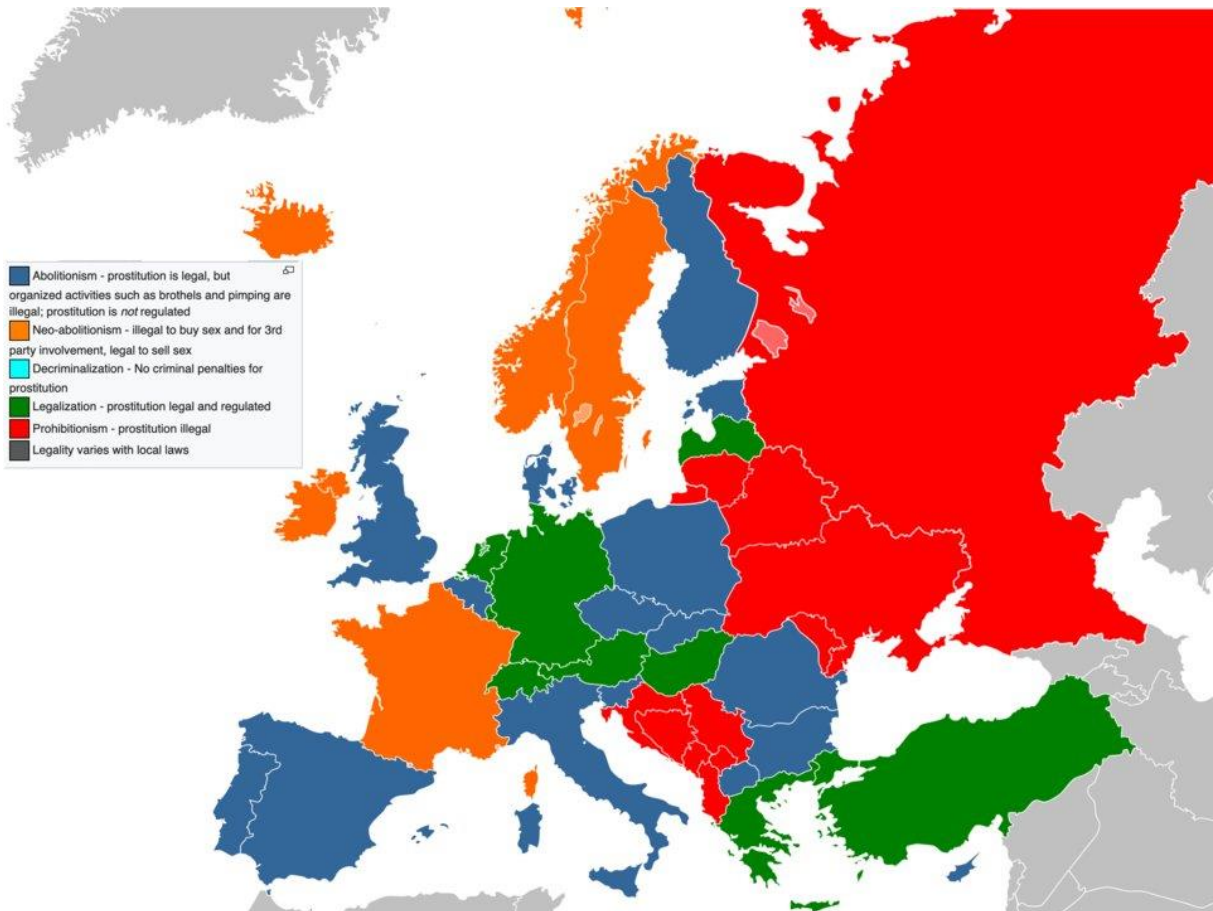
'Human trafficking is all around you. This is how it works' (TED2015, Noy Thrupkaew, 2015) <https://www.ted.com/talks/noy_thrupkaew_human_trafficking_is_all_around_you_this_is_how_it_works/up-next> accessed 30 June 2019

New Zealand Prostitute's Collective <<https://www.nzpc.org.nz/The-New-Zealand-Model>> accessed 23 June 2019

'Ruins: Chronicle of an HIV Witch Hunt', produced by Zoe Mavroudi <<https://ruins-documentary.com/en/#>> accessed 22 June 2019

'The laws that sex workers really want' (TEDxEastEnd, Juno Mac, 2016) <https://www.ted.com/talks/juno_mac_the_laws_that_sex_workers_really_want/up-next> accessed 30 June 2019

FIGURES



[Figure 1] *Map of models of regulation of prostitution in the European region.* Image from Wikimedia Commons.

TABLES

Policy type	Repressive	Restrictive	Integrative
<i>Understanding of commercial sex</i>	Negative social phenomenon.	Negative social phenomenon.	Multifaceted social phenomenon containing undesirable elements.
<i>Intention</i>	Eradicate the sex work sector in order to protect society and/or those selling sex from harm.	Restrict the sex work sector in order to protect society and/or those selling sex from harm.	Integrate the sex work sector into societal legal and institutional framework in order to protect those selling sex from harm.
<i>Ideology</i>	Religious, moral harm or radical feminist.	Religious or moral harm.	Rights-based.
<i>Policy instruments</i>	Criminal law prohibiting selling and/or purchasing sex and third-party facilitation. Campaigns aimed at deterring the sale and/or purchase of sex. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex.	Criminal and administrative law, and/or local ordinances regulating under which conditions sex sales can take place, i.e. laws against soliciting, zoning laws or licensing systems. Might prohibit third-party involvement. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex.	Labour, commercial and administrative law regulating sex workers' employment rights and obligations, and specific legislation protecting them from exploitation. Detailed implementation directives, and codes of conduct for authorities and operators. Campaigns and initiatives with the aim to combat stigma and promote collaboration between sector and authorities.
<i>Impact on sector</i>	Always operates illegally.	Can operate legally, but under conditions more restrictive than those of other service sectors.	Can operate legally under conditions similar to other service sectors.
<i>Impact on legal situation of sex workers</i>	No access to labour rights, not possible or difficult to access social security systems, seek social and medical assistance on own terms, self-organise, collaborate with each other and/or with authorities.	Partial or no access to labour rights, might have difficulty accessing the social security system, seeking social and medical assistance on own terms, self-organising, collaborating with each other and/or with authorities.	Full access to labour rights, can seek social and medical assistance on own terms, can self-organise, collaborate with each other and authorities, and influence self-regulation (i.e. develop codes of conduct and ethical standards in sector).

[Table 1] Main features of the repressive, restrictive and integrative policy types.²⁶⁸

²⁶⁸ Östergren, Petra, 'From zero tolerance to full integration. Rethinking prostitution policies' (*Demand AT*, Working Paper, 2017)
<https://www.demandat.eu/sites/default/files/DemandAT_WP10_ProstitutionPoliciesTypology_June2017_0.pdf>
> accessed 18 July 2019