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Silencing the Sex Worker

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ABSTRACT

This Article argues that sex workers are silenced when they attempt to contribute to lawmaking processes. As a result, they are unable to contribute their knowledge in a meaningful way. The consequence is that laws reflect only one perspective of life in the sex trades: the prostitution abolitionist position that all sex work is inherently a form of violence against women. Without the ability to help shape this narrative, sex workers will continue to be silenced by the allegation that they are a danger to the feminist movement, courts will make harmful rulings, and legislatures will continue to enact laws that put sex workers in danger.

This Article makes several contributions. Firstly, it contributes to feminist philosophical literature by coining the “Cycle of Epistemic Oppression” as a tool to excavate silencing within the law. It then examines how this cycle operates in the context of sex work policy making. Finally, this examination demonstrates the wide applicability of the Cycle of Epistemic Oppression to diverse areas of law.

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INTRODUCTION

“But how do you know they’re not being controlled?” That’s a common question posed when discussing whether to take sex worker’s stated beliefs at face value. “How do we *know* that an individual has enough control over their circumstances, over their trauma, to *know* that decriminalization is the right choice? How do we *know* that they’re not a puppet being controlled by the strings of a pimp or a trafficker?”

This is a question grounded in epistemology, the study of knowledge. Epistemology allows us to interrogate what we know or don’t know, who is considered credible, and what information we are willing to accept from another person. Typically, when members of a particular profession provide their testimony (such as expert witnesses), audiences readily find them credible or engage in a process by which they can be found credible.¹ This is not usually the case with sex workers. Not only are they presumed noncredible, but the position they often take (supporting the full decriminalization of prostitution)² is deemed the “wrong” answer. But why is this the “wrong” answer and criminalization the “right” answer? Why is it that a population (people with sex trade experiences) are deemed credible when they reach the “right” answer of continued carceral involvement, but

1. See, e.g., *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993).

2. Sex work, as a general term, takes many forms. This Article focuses on physical, sexual transactions, typically referred to as prostitution. In prostitution, money is exchanged for sexual acts. Individuals can participate in consensual sex work by choice or circumstance. Choice recognizes the agency of individuals who decide to participate in the sex industry while acknowledging the “limited and oppressive power structures of race, class, gender, and sexuality” within it. Meg Panichelli, Moshoula Capous-Desyllas & Yvette Butler, *From Fallen Women to the Tumblr Ban: Representing the Landscape of Sex Work From a Historical and Legal Perspective*, in *THE ROUTLEDGE INTERNATIONAL HANDBOOK OF SOCIAL WORK AND SEXUALITIES* 512, 513 (SJ Dodd ed., 2021). Circumstance recognizes that life is messy, and someone may not be clearly making a choice or clearly being coerced. Perhaps it is one of few options to earn money and the individual is engaging in survival sex work where they consider it less of an employment option and literally just a way to get a roof over their head and some food in their stomach. Perhaps because of their marginalized status they face significant discrimination in mainstream employment. This Article generally uses the term sex work to refer to prostitution, but still uses the term prostitution, particularly when referring to statutory language. See ERIN FITZGERALD, SARAH ELSPETH PATTERSON, DARBY HICKEY, CHERNO BIKO & HARPER JEAN TOBIN, *MEANINGFUL WORK: TRANSGENDER EXPERIENCES IN THE SEX TRADE* 5 (2015) (primarily using the term sex work, but using “prostitution” when referencing statutory language).

noncredible when they reach the “wrong” answer of diminished or eliminated use of the carceral system?

The proposition that it is unjust to ignore someone’s contributions based on nothing but their identity should not be controversial. Surely it would be unjust to disbelieve women *because* they are women, for what does their womanhood have to do with the truth of their claim?³ It would be similarly wrong to tell a woman she cannot possibly know that she has or has not been assaulted because she lives her life as a woman. Yet sex workers are disbelieved *because* they are sex workers. They are told that their judgment is impaired *because* they have experienced violence. Sex workers who argue for the full decriminalization of sex work are not credited as sources of knowledge based on their experiences *because* they argue for the full decriminalization of sex work. Consider the following derogatory claims by feminists who argue against full decriminalization:

- “The English Collection of Pimps.”⁴
- “When the pimp lobby (disguised as ‘sex workers’) call for the decriminali[z]ation of [prostitution], most don’t reali[z]e they mean leagali[z]ed pimping.”⁵
- “Accept that you have lost this debate. Every piece of credible research (excluding propaganda from pimps) shows [the decriminalization of prostitution] is [a] disaster.”⁶
- “[N]ot genuine survivors.”⁷
- “[H]appy hookers.”⁸

These claims dismiss sex workers as noncredible and a part of a lobby to undermine the anti-violence against women movement. As I argue in Part III, this perspective is privileged over that of sex workers in policymaking.

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3. Of course, as this Article touches on in Part III, this is essentially what happens to survivors of domestic and sexual violence.
 4. Frankie Mullin, *In Full Sight: ‘The Pimp Lobby’ at the Amnesty AGM*, VERSO (Apr. 11, 2017), <https://www.versobooks.com/blogs/3162-in-full-sight-the-pimp-lobby-at-the-amnesty-agm> [<https://perma.cc/ASF9-BS55>] (“That was the slur thrown at a small group of women—all current or former sex workers—who were waiting to speak at the Amnesty UK Annual General Meeting (AGM) on Sunday. The women were there to defend Amnesty International’s support for the decriminalisation of the industry; their adversaries to call for its end. [The term is] a clumsy, defamatory take on the name of the UK’s oldest sex worker-led organisation, the English Collective of Prostitutes.”).
 5. Julie Bindel (@bindelj), X (TWITTER) (Jan. 31, 2013, 1:21 AM), <https://twitter.com/bindelj/status/296911119799447552?lang=en> [<https://perma.cc/93CS-BDDE>].
 6. Julie Bindel (@bindelj), X (TWITTER) (Jan. 31, 2013, 3:40 AM), <https://twitter.com/bindelj/status/296946065352036352> [<https://perma.cc/2DPM-BTFM>].
 7. Mullin, *supra* note 4.
 8. *Id.*

This Article considers the consequences of allowing only privileged knowledge to shape the law. Specifically, this Article considers the harm committed when sex workers are discounted as credible sources of knowledge, particularly when they argue for the full decriminalization of prostitution. This line of inquiry is an important one. Above all, problems facing sex workers help us understand any number of legal issues. They are often the proverbial “canary in the coal mine” in a number of legal areas, including discrimination in financial regulatory schemes⁹ and on social media,¹⁰ the evolving nature of work (such as gig work),¹¹ the surveillance and policing of advocates,¹² and much more.¹³ Moreover, people who engage in commercialized sex often experience discrimination by various state actors. Their experiences can and should inform legal system responses to

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9. See, e.g., Lydia Veljanovski, *Why Is OnlyFans Banning Content? Visa and Mastercard Blamed for Shock Move*, NEWSWEEK (Aug. 20, 2021, 12:34 PM), <https://www.newsweek.com/why-visa-mastercard-being-blamed-onlyfans-banning-explicit-content-pornography-1621570> [<https://perma.cc/W69Y-DESX>]; Samantha Cole, *Sex Workers Say Mastercard Ignored Their Concerns About New Regulations*, VICE (Oct. 15, 2021, 3:13 PM), <https://www.vice.com/en/article/bvzwk3/mastercard-new-regulations-for-adult-content> [<https://perma.cc/9U6W-74DA>]; Kalyeena Makortoff, *Sex Discrimination: Why Banks Shun Workers in Adult Entertainment*, THE GUARDIAN (Oct. 16, 2021, 11:00 AM), <https://www.theguardian.com/business/2021/oct/16/sex-discrimination-why-banks-shun-workers-in-adult-entertainment> [<https://perma.cc/G4KQ-9BAZ>].
 10. See, e.g., EJ Dickson, *Sex Workers Worry They're Going to Be Purged From Twitter*, ROLLING STONE (Feb. 2, 2021), <https://www.rollingstone.com/culture/culture-features/sex-worker-twitter-deplatform-1118826> [<https://perma.cc/9XZJ-8T57>]; DANIELLE BLUNT & ARIEL WOLF, HACKING//HUSTLING, ERASED: THE IMPACT OF FOSTA-SESTA & THE REMOVAL OF BACKPAGE (2020), https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf [<https://perma.cc/6AJM-73X6>]; Allison Tierney, *Sex Workers Say They're Being Pushed Off Social Media Platforms*, VICE (Apr. 2, 2018, 5:26 PM), <https://www.vice.com/en/article/3kjawb/sex-workers-say-theyre-being-pushed-off-social-media-platforms> [<https://perma.cc/T5FX-9M77>].
 11. See, e.g., Yvette Butler, *Aligned: Sex Workers' Lessons for the Gig Economy*, 26 MICH. J. RACE & L. 337, 352–53 (2021) (discussing sex workers as the original gig workers and pioneers of the internet); I. India Thusi, *Reality Porn*, 96 N.Y.U. L. REV. 738, 751–68 (2021) (discussing free speech protection for sexual performance where technological advances blur the line between pornography and prostitution).
 12. See, e.g., DANIELLE BLUNT, EMILY COOMBES, SHANELLE MULLIN & ARIEL WOLF, HACKING//HUSTLING, POSTING INTO THE VOID (2020), <https://hackinghustling.org/posting-into-the-void-content-moderation> [<https://perma.cc/RUD6-WBGN>] (discussing findings on platform policing, COVID, BLM, chilled speech, disruption of movement spaces, financial technology, catfishing, marketing, and providing platform and policy recommendations); Erin Taylor, *Sex Workers Are at the Forefront of the Fight Against Mass Surveillance and Big Tech*, OBSERVER (Nov. 12, 2019, 10:43 AM), <https://observer.com/2019/11/sex-workers-mass-surveillance-big-tech> [<https://perma.cc/8LJN-XL4N>].
 13. See BLUNT ET AL., *supra* note 12.

discriminatory child custody determinations,¹⁴ profiling by police,¹⁵ and mass incarceration.¹⁶ As this Article demonstrates, discussions about whether to decriminalize sex work fit closely with broader discussions about preventing and remedying sexual violence, defunding the police, and transformative justice more broadly. Voices of sex workers matter in discussions about what laws to adopt and how courts should interpret and apply those laws.

In recent years, places like New York City¹⁷ and the District of Columbia¹⁸ considered fully decriminalizing prostitution. With these developments came a number of discussions regarding the consequences of fully or partially decriminalizing prostitution. Full decriminalization would decriminalize all parts of the sexual transaction, including the buying (soliciting), selling (prostitution), and third-party facilitation of the sale (pandering, pimping, management) of sexual services. Partial decriminalization, or what is generally known as the Swedish or Nordic model or “end demand” model, only decriminalizes the sale of sexual services by sex workers themselves but continues to criminalize solicitation and facilitation.¹⁹ The scale of these conversations is new in the United States—the antitrafficking movement has grown and sex worker advocacy has seemingly never been so prominent in this country, at least in mainstream sources.²⁰ Along with these discussions came allegations that the so-called

14. See, e.g., Janette Norrington, *Does Parental Sexual Behavior Influence “Parental Fitness” and Child Custody Determinations?*, 3 U. MD. MCNAIR SCHOLARS UNDERGRADUATE RSCH. J. 161, 161 (2011) (discussing how LGBTQ parents and sex workers risk losing their children to the state due to stigma).

15. See Thusi, *supra* note 11, at 791–94.

16. See *id.*

17. See S.B. 6419, 2019–2020 Leg., Reg. Sess. (N.Y. 2019).

18. See B23-0318, 23d Council (D.C. 2019).

19. German, Dutch, and other models, which include ample amounts of state regulation of prostitution, are outside the scope of this Article. In the United States, the main point of friction is whether to decriminalize commercial sexual exchange fully or partially. As this Article explains, the tension is focused on the harms of the criminal system. Future work, however, will consider splits within the sex worker advocacy community on whether and how to regulate commercial sexual exchange, particularly as it serves as a low barrier to entry job for those on the margins. Many types of regulation would interfere with that low barrier.

20. These conversations are so prominent that presidential candidates disclosed their positions on sex work decriminalization. See EJ Dickson, *Why Sex Workers Are Wary of Kamala Harris*, ROLLING STONE (Aug. 14, 2020), <https://www.rollingstone.com/politics/politics-news/kamala-harris-sex-workers-joe-biden-vice-president-1043941> [<https://perma.cc/KHZ4-2LM9>].

pimp lobby was involved and that full decriminalization would actually work to harm women and girls.²¹

The narrative of life in the sex trades²² has evolved significantly in recent years. People engaged in the sex trades have gone from being demonized from a primarily religious or moral perspective,²³ to vectors of disease,²⁴ to criminals who should be cleaned up from the streets,²⁵ and, finally, to victims (like the perspective espoused by abolitionist feminists). What the narrative needs is nuance, which would result from listening to the perspectives of sex workers.

Feminist theory has many competing narratives of life in the sex trades. This Article tackles two of those competing narratives. One comes from Prostitution Abolition Radical Feminists (PARFs). This narrative argues that people (primarily women) are “prostituted” and do not and cannot voluntarily choose to sell sexual services.²⁶ As such, PARFs have argued for

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21. See Tina Frundt & Yasmin Vafa, *There's a Way to Decriminalize Prostitution Without Putting Women at Risk*, WASH. POST (Aug. 2, 2019, 4:47 PM), https://www.washingtonpost.com/opinions/local-opinions/theres-a-way-to-legalize-prostitution-without-putting-women-at-risk/2019/08/02/b4ba9ec2-a742-11e9-9214-246e594de5d5_story.html [https://perma.cc/342X-Q2ZE].
 22. While some use the term “sex trade” (singular) and others use the term “sex trades” (plural), references to the trade or trades of sexual services are about the diverse types of activities that one may engage in, such as sex work, pornography, or escorting. See Butler, *supra* note 11, at 344–45.
 23. See generally JOHN D'EMILIO & ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (3d ed. 2012) (arguing that sex workers, gender nonconforming people, and others pose a threat to dominant notions of sexual morality).
 24. See, e.g., Teela Sanders & Barbara G. Brents, *Prostitution and Sex Work*, in *THE OXFORD HANDBOOK OF SEX OFFENCES AND SEX OFFENDERS* 566, 568 (Teela Sanders ed., 2017) (discussing sex work as a “lightning rod” for social anxieties and “disease-testing policies” springing from “medical rhetoric” used “to police moral behaviour”).
 25. See, e.g., Penelope Saunders & Jennifer Kirby, *Move Along: Community-Based Research Into the Policing of Sex Work in Washington, D.C.*, 37 SOC. JUST. 107, 107, 116 (2010) (discussing “move along” orders and prostitution-free zones in an effort to be tough on crime).
 26. While many disagreements between PARFs and Sex Work as Work Radical Feminists (SWAWRFs) are situated around the meaning and feasibility of consent to engage in the sex trades, this Article builds on a universe of existing scholarship and does not rehash old arguments, except as necessary to help situate the reader within several decades’ worth of discussions. Readers who are unfamiliar with the tensions, particularly arguments around whether one can “voluntarily” or “consensually” engage in the commercial sex industry, are encouraged to engage with other scholarship in tackling those questions. See Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995); Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN'S L.J. 47 (1995); Lacey Sloan, *Who Owns Prostitution—and Why? Why Decriminalizing Prostitution Is the Right*

partial decriminalization of prostitution, which would only decriminalize the sale of sexual services. The other narrative, advanced by Sex Work as Work Radical Feminists (SWAWRFs),²⁷ argues that *people* (cisgender or transgender women and men, gender nonconforming, and LGBTQ) can and do engage in sex work²⁸ voluntarily.²⁹ SWAWRFs argue that because of violence from the state, the entirety of a sexual transaction must be fully decriminalized. This Article primarily critiques the PARF narrative and the way it enforces a monolithic narrative of involvement in the sex trades and perpetuates mandatory law enforcement intervention. While the critique is

Thing to Do, FREE INQUIRY, Fall 1997, at 18; Carole J. Petersen, *Sex Work, Migration, and the United States Trafficking in Persons Report: Promoting Rights or Missing Opportunities for Advocacy?*, 25 IND. INT'L & COMPAR. L. REV. 115, 123 (2015). But I have no interest in tackling those questions here. See, e.g., Adrienne D. Davis, *Regulating Sex Work: Erotic Assimilationism, Erotic Exceptionalism, and the Challenge of Intimate Labor*, 103 CALIF. L. REV. 1195, 1201 (2015) (discussing the Article's purpose in evolving the arguments within the "pro-sex-work" camp while sidestepping the "intractable fight" between sex work abolitionists and advocates, as well as breaking free from the "stalled feminist debates").

27. My use of "radical feminism" here is intentional, as varying theories can become linguistically complicated. Firstly, and most simply, there is an interesting understanding of radical feminism within the advocacy world of radical feminism as "Sex Worker Exclusionary Radical Feminism" or SWERFs and "Transgender Exclusionary Radical Feminism" or TERFs (discussed briefly in Part IV.A). The fact that there can be an "exclusionary" suggests an "inclusionary" strain of radical feminism. Consequently, radical feminism as a concept would not fundamentally view commercial sexual exchange as inherently violent, even if most radical feminists (from the Catharine MacKinnon-Andrea Dworkin school of thought) would exclude commercial sex from definitions of work. Secondly, one competing school of thought is "sex radical" feminism. The MacKinnon and Dworkin school of "radical feminism" is synonymous with the view that sex work cannot be a form of labor. But "sex radical feminism" does not perceive sex work as inherently violent and does recognize it as a form of labor. Thus, in the pursuit of clarity, instead of referring to "radical feminism" and "sex radical feminism," I refer to the MacKinnon-Dworkin school as "Prostitution Abolitionist Radical Feminism" and the group of critical theorists who could all be labeled "sex radical" as "Sex Work as Work Radical Feminists." For more on these schools of thought, see I. India Thusi, *Radical Feminist Harms on Sex Workers*, 22 LEWIS & CLARK L. REV. 185 (2018); Ummni Khan, *Let's Get It On: Some Reflections on Sex-Positive Feminism*, 38 WOMEN'S RTS. L. REP. 346 (2017); Kate Sutherland, *Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade*, 42 OSGOODE HALL L.J. 139 (2004); Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, 5 BERKELEY WOMEN'S L.J. 75 (1989).

28. See discussion in *supra* note 2.

29. For more on this perspective, see Panichelli et al., *supra* note 2, at 513 (explaining that when some radical feminists support "a single view of sex work" and fail to acknowledge "the various experiences of women" and "transgender, nonbinary, and gender-diverse sex workers," they fall into a trap of ignoring agency within the complex and contradictory role of "culture, class, race, gender, and other intersecting identities" within sex work); see also Saunders & Kirby, *supra* note 25, at 108–09.

focused on the PARF narrative, I want to be clear: I am not seeking to lay the blame of this epistemic erasure solely at the feet of PARFs. It is my contention that PARFs play a role in perpetuating a monolithic narrative and harmful interventions, but it is not my goal to blame feminists for some of the structures that were built long before they had any control over shaping them. They should, however, be helping to dismantle these structures instead of maintaining them.

People with sex trade experience (STE),³⁰ particularly those who identify as sex workers, often appear to be stuck in a no-win situation. They are deserving of protection as long as they are considered victims,³¹ silenced by an abuser and an exploitative society. As victims, they are supposedly empowered to tell their stories by the service providers, prosecutors, and law enforcement who claim to be helping them. When perceived as victims, they are celebrated. “Listen to her! Do not make policy without her!”³² But if they tell their stories and the stories do not align with the narrative that they are victims, they no longer deserve protection. Their voices no longer matter. Their experiences no longer matter. They are silenced by the very same people who cared about their experiences when they were perceived as victims.

30. I use the term “sex trade experience” (STE) in this Article as an umbrella term to describe anyone involved in selling sexual services, whether by choice, circumstance, or coercion. I do not use an acronym for commercial sexual exchange (CSE), because that is often used as an acronym for “child sexual exploitation” and could cause confusion. The use of the STE umbrella is an attempt to refer to all involvement in the sale of commercial sex, without attaching the political weight of terms like “sex work” or “the life” or other terms that folks with STE may use to describe their experiences in the sex trades. It is also an attempt to avoid essentializing STE (particularly in an Article about essentialism and stereotypical narratives), given the political weight of other terminology. PARF and SWAWRF are used to indicate the political or theoretical position of both advocates and people with STE.

31. This Article uses the terms “victim” and “survivor” interchangeably. In some contexts, it is wise to use “victim” particularly because many legal remedies require a legal “victim.” See Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 83 n.1 (2020) (articulating that “for many, ‘survivor’ speaks to a sense of empowerment,” and that when deciding whether to use “victim” or “survivor,” many suggest it is best practice to use the term preferred by “the person who has experienced the violence”); see also AYA GRUBER, *THE FEMINIST WAR ON CRIME* 96–97 (2020) (“[T]o some, [t]he victim label confines women to one identity—the object acted upon by a private wrongdoer Sensing that this flattened construction can be constraining and demeaning, many choose the term *survivor* instead.”). Moreover, some have critiqued the “victims and victimizers” dichotomy as harmful to “structural, social, and institutional accounts of harm and toward punishment.” *Id.* at 97 (citing Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1433 (1993)).

32. See *infra* Part III (discussing cis-het normative language).

PARFs often argue that SWAWRFs are either incapable of recognizing that their trauma is behind their support for decriminalization, or they are part of an alleged pimp lobby and are out to undermine feminist goals.³³ This Article argues that either accusation, without more evidence to support those conclusions, is an epistemic harm that unjustly discounts the knowledge of SWAWRFs. Moreover, these accusations overlook, ignore, and exclude the contributions of anti-oppression, intersectional scholarly movements such as Critical Race Theory, Multicultural Feminist Theory, Queer Theory, and Disability Theory, which all heavily criticize carceral logic in addressing both private and state violence against systemically marginalized groups. While this one Article cannot fully engage with the scholarship of all of these critical theories, it will highlight important contributions that would benefit the debates about how to regulate sexual economies.

This Article lays out what I refer to as the “cycle of epistemic oppression.” Part I diagrams the theoretical framework underlying that cycle. This conceptualization is grounded in feminist philosophical conceptions of epistemic injustice, as well as critical legal theories. I describe a cycle that occurs when subjugated ways of knowing are excluded from our dominant collective knowledge resources and thereby fail to shape the law. More accurately, it is a cycle of prejudicial epistemic oppression because, as discussed later, bias does not have to be present in all forms of epistemic oppression, but bias is the focus of this Article.

Part I explains how valuing testimonies and personal experiences are consistent with feminist method. Despite this consistency, feminism has been criticized for being essentialist.³⁴ That essentialism dismisses the vital perspectives of other subjugated groups, which means missing out on vital perspectives that could improve the way laws impact subjugated groups. The law is a hermeneutical resource that criminalizes sex work due to an essentialist narrative of the sex trades as inherently violent. But that narrative overlooks alternate understandings grounded in transformative justice and penal abolitionist thought. A focus on the sex trades that only pursues carceral ends unjustly ignores this rich literature by many Black and brown women theorists.

Part III discusses this rich literature on transformative justice and penal abolition by feminist theorists as applied to the domestic and sexual violence movements. This discussion highlights the relationship between anti-sexual

33. See *infra* Subpart IV.C.

34. See *infra* Part II.

violence movements and its interconnectedness to movements for race, gender, and class equality. Part III provides important connective tissue between ending violence against women, sex workers rights, and anti-essentialist movements for racial, gender, and socioeconomic justice.

Part IV applies the framework laid out in Part I. It describes my methodology in searching for and presenting testimony specifically from people with sex trade experiences who support the full decriminalization of prostitution. Those testimonies demonstrate the falsity of the essentialist narrative by prostitution abolitionist feminists. Key to this discussion is my examination of laws, such as FOSTA-SESTA,³⁵ adopted without the contributions of SAWRFs. SAWRFs are often extremely vocal opponents of laws that encourage more carceral interventions due to the ways that those carceral interventions put them in harm's way. Yet, SAWRFs are pathologized or dismissed as part of a pimp lobby and their warnings are left unheeded.

Finally, Part IV ends with a discussion of cooptation. PARFs fear cooptation of the anti-violence against women movement, which could lead to the adoption of laws that would undermine the purposes of the movement³⁶. In their attempts to prevent that cooptation, they commit an epistemic oppression when they essentialize the narrative of people with sex trade experiences. The essentialized narrative is then used to control what is perceived as knowledge and who are seen as knowers. PARFs then use that essentialized narrative to push for policies that favor carceral interventions to the sex trades. Those carceral interventions harm sex workers—thus, a cycle of epistemic oppression.

Ultimately, it is beyond the scope of this Article to present a suggestion as to whether to partially or fully decriminalize prostitution or whether to legalize and regulate it. It nonetheless argues that while no one experience or set of experiences should mandate a policy response, all genuine experiences should be meaningfully heard and considered.³⁷

35. Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), Pub L. No. 115-64, 132 Stat. 1253 (2018) (codified as amended in scattered sections of 18 and 47 U.S.C.); Stop Enabling Sex Traffickers Act (SESTA), S. 1683, 115 Cong. (2017) (incorporated into FOSTA).

36. While this seems to be a PARF fear, there are scholars who would argue that such a cooptation has already happened, which separated the anti-violence against women movement from its more radical origins. *See* GRUBER, *supra* note 31, at 41–66.

37. A future Article will consider how to appropriately balance competing narratives. This Article should not be understood to argue that all narratives are created equal or should be taken as “true” where there is reason to be suspicious of the motivations behind a speaker’s offering. *See infra* Part IV.B (addressing cooptation concerns).

I. THEORETICAL FRAMEWORK: EPISTEMOLOGY AND STORYTELLING

Epistemology, a branch of philosophy, is the study of knowledge, including what it is, where it comes from, and which of its sources are considered credible.³⁸ Leading scholars in feminist epistemology, like Miranda Fricker and Kristie Dotson, have expanded this study of credibility and participation in meaning-making processes in critical ways that are explained in this Article. Combining epistemology with Critical Race Feminism and other “outsider” legal theories demonstrates the importance of centering marginalized voices and questioning the processes by which those voices are marginalized.

In epistemology and critical legal thought, experience and narrative are valued knowledge. Feminist and Critical Race scholars³⁹ center the experiences of marginalized groups because “diverse understandings of social reality”⁴⁰ highlight how the experience of law and the legal system often operate differently through their “stories from the bottom.”⁴¹ Narrative storytelling creates “cohesion, shared understandings, and meanings.”⁴²

Traditionally, the “Western epistemic tradition” had “biased conceptions of reason,” such that one’s humanity was a measure of whether or not they were capable of making valuable contributions to mental

38. Matthias Steup & Ram Neta, *Epistemology*, STAN. ENCYC. OF PHIL. (Apr. 11, 2020), <https://plato.stanford.edu/entries/epistemology> [<https://perma.cc/P3R5-4AUR>].

39. Critical Race Theory has a long and rich history of using narrative, highlighting the value of unique voices, and bringing the silenced to the forefront. *See, e.g.*, Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 471 (1976) (critiquing the singular litigation focus on desegregation to the exclusion of client desires); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 331 (1987) (discussing consciousness-raising in critical legal theory and the value of contributions from those with lived experience); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1267–68 (1993) (identifying a task of Asian American legal scholarship of breaking silence through personal narrative to challenge the perception that there is no bigotry against Asian American people. “To focus on the black-white racial paradigm is to misunderstand the complicated racial situation in the United States. It ignores such things as nativistic racism. It ignores the complexity of a racial hierarchy that has more than just a top and a bottom.”).

40. P. ISHWARA BHAT, *IDEA AND METHODS OF LEGAL RESEARCH* 558 (2019).

41. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2322 (1989).

42. Delgado, *supra* note 39, at 2412.

pursuits.⁴³ This tradition “resulted not only in conceptions of the maleness of reason, but in women and marginalized men being viewed as less capable of reason and more fitted for emotional or manual labor.”⁴⁴ Subjugated men, women, and other gender, sexual, racial, and ethnic minorities, were deemed too subjective, invested, and emotional to be knowers—to be fully human. Their knowledge was unworthy, and their lives were unworthy.⁴⁵

Even if subjugated individuals were seen as knowers with something valuable to contribute, they may still be perceived as *noncredible* knowers. Patricia Hill Collins, Patricia Williams, Audre Lorde, bell hooks and other Black feminist theorists have explored this experience. For example, Collins argued that Black women are “systematically ... undervalued as ... knower[s].”⁴⁶ This is because “[B]lack women are less likely to be considered competent due to an audience’s inability to discern the possession of credibility beyond ‘controlling images’ that stigmatize [B]lack women as a group.”⁴⁷ The stereotypes at play about Black women as “mammies, matriarchs, welfare mothers, mules, or sexually denigrated women”⁴⁸ make “racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday life.”⁴⁹ hooks argued that naming “one’s reality is an act of resistance” that many oppressed and exploited individuals engage in.⁵⁰

When legal system actors decide to privilege or subjugate certain narratives of experience, those actors are essentially declaring some stories more credible or less credible and gatekeeping what knowledge is and which knowledge is valuable.

A. Epistemic Resources to Participate in Knowledge Production

While the language of epistemology is often unfamiliar, the concepts are not. If asked how you know something, your answer could be grounded in a

43. Nancy Tuana, *Feminist Epistemology: The Subject of Knowledge*, in THE ROUTLEDGE HANDBOOK OF EPISTEMIC INJUSTICE 125, 126–27 (Ian James Kidd et al. eds., 2017).

44. *Id.*

45. *See id.* at 127 (referring to Judith Butler’s inquiries, “Who counts as human? Whose lives count as lives?”).

46. Kristie Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, 26 HYPATIA 236, 242 (2011) (citing PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT (2d ed. 2000)).

47. *Id.*

48. COLLINS, *supra* note 46, at 99.

49. *Id.* at 69.

50. BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 109 (2d ed. 2015).

quantitative study, sharing personal experiences, intuition, deduction, or some other method. If someone asks what color the sky is, one may respond by merely looking up. They have used their visual capacities to check. On a sunny day, the sky is blue. Perhaps there is an overcast and the sky is gray. Maybe it is sunrise or sunset and the sky resembles a beautiful canvas.

In order to “know” something, mental resources—such as “language to formulate propositions, concepts to make sense of experience, procedures to approach the world, and standards to judge particular accounts of experiences”⁵¹—are required. By way of a particularly benign example, in the Northeast United States, “soda” is the word for a sweet, carbonated beverage. In the Midwest, “pop” is used instead. In specific portions of the South, they say “coke,” regardless of whether they are asking specifically for the Coca-Cola brand of drink or any other sweet, carbonated beverage. If someone from the South wanted a Sprite and said “coke,” someone from the Northeast or the Midwest would probably take their request quite literally and bring them a Coca-Cola. They probably did not know that the Southerner was merely asking for a sweet, carbonated beverage, so they failed to ask any follow-up questions on what kind. These individuals from different regions have different languages to refer to a similar drink.

Epistemology also contributes to our understanding of much more high stakes issues. Epistemic resources help us to make “sense of and evaluat[e] our experiences ... [through] language, concepts, and criteria.”⁵² Good epistemic resources are not “independent[] of experience.”⁵³ The standards and concepts are “right” or “adequate” when they make sense of experiences and alleviate any “tension between [epistemic] resources and the experienced world.”⁵⁴ Whose experiences and knowledge count in drafting legislation, interpreting a constitution, and establishing precedent, for example, leads to meaningful consequences. For example, centering “history and tradition” as the deciding factor in constitutional law means that only a limited few had the positioning required (such as whiteness, maleness, and status) to influence the content of the U.S. Constitution.⁵⁵ Starting reasoning

51. Gaile Pohlhaus, Jr., *Relational Knowing and Epistemic Injustice: Toward a Theory of “Willful Hermeneutical Ignorance”*, 27 *HYPATIA* 715, 718 (2012).

52. *Id.*

53. *Id.*

54. *Id.* at 719.

55. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231, 372 (2022) (Breyer, Sotomayor & Kagan, JJ., dissenting) (arguing that if the Court looks to “history and tradition” as beginning in 1788 or 1868, women were not even considered “full members of the community embraced by the phrase ‘We the People’”).

from “history and tradition” almost certainly limits the language, concepts, and criteria used in answering the legal issue in a way that stacks the deck in favor of those belonging to privileged positions in society. It may minimize or erase the language, concepts, and criteria coming from marginalized perspectives.

In making sense of the world, not only are a variety of perspectives—particularly those from the bottom—relevant and important, but other interpretive strategies are as well. One of the strategies is the use of hermeneutical resources to understand what others are communicating. Hermeneutical resources involve the ability to interpret social experiences. They are the “interpretive capacities of the knower and her relation to the collective body of social knowledge used to help make her experiences legible”⁵⁶ both to herself and to the dominant social group. Interpretive capacities are aided by reference to concepts, language, grammar, vocabulary, and other tools to make sense of an experience.⁵⁷ Those tools help communicate an experience to others and communicate “experiencing and feeling wrongs or rights, misdeeds, affection, compassion, pain, anguish, etc.”⁵⁸ Without the labels to understand these experiences and feelings or make them intelligible to others, a person suffers a hermeneutical injustice by lacking an understanding of their own experience,⁵⁹ or they are marginalized by the audience’s inability to understand what is being communicated. This is illustrated further in Part I.D, discussing the dominant conceptions in law and medicine used to define what it means to be transgender.

Kristie Dotson defines epistemic oppression in a way that does not require social or political subjugation, as there can be privileged and nonprivileged vantage points that give rise to different experiences, which one might testify are not related to prejudice.⁶⁰ Ultimately, what matters is that there are gaps in hermeneutical resources, such that the nonprivileged group is unable to communicate their experience with the rest of the epistemic community.⁶¹ Essentially, their attempts at communicating their experience are rendered unintelligible due to this gap in resources to

56. B. Lee-Harrison Aultman, *Epistemic Injustice and the Construction of Transgender Legal Subjects*, 15 WAGADU: J. TRANSNAT’L WOMEN’S & GENDER STUD. 12, 14 (2016).

57. *See id.* at 17.

58. *Id.* at 14.

59. *Id.*

60. *See generally* Kristie Dotson, *Conceptualizing Epistemic Oppression*, 28 SOC. EPISTEMOLOGY 115, 126–27 (2014).

61. *Id.* at 127.

understand what is being communicated.⁶² This is illustrated further in Part I.D in discussing the development of sexual harassment laws and evolving understandings of gender nonconformity.

B. Successful and Unsuccessful Communication

When a speaker chooses to exercise their agency to communicate with an audience (as opposed to remaining silent), they rely on their audiences to “hear” them. Such communication can be successful or unsuccessful. A “successful linguistic exchange” is where an audience understands the speaker’s speech “as it is meant to be taken.”⁶³ The audience “understand[s] the speaker’s words” as well as “tak[es] the words as they are meant to be taken.”⁶⁴ In essence, both a speaker’s words and the speaker’s goals are understood.⁶⁵ A linguistic exchange is unsuccessful if both of these conditions are not met. The “success of a speaker’s attempt to communicate ultimately depends upon audiences.”⁶⁶ Thus, if an audience does not understand the speaker’s words or goals, the attempt at communication has failed.

An example of a speaker’s attempt to create a successful linguistic exchange was demonstrated in the Netflix limited series *Anatomy of a Scandal*. Prosecutor Kate Woodcroft conducted a direct examination of Olivia Lytton about how her boss, James Whitehouse, a married Member of Parliament, sexually assaulted her in an elevator. Whitehouse was furious over an article in the press calling him arrogant. Lytton, whom Whitehouse had recently ended a 5-month affair with, told him that “sometimes arrogance can be terribly attractive.”⁶⁷ Prosecutor Woodcroft asked Lytton, “What did you mean by that? And of course, we know what the *words* mean, obviously, but what was your *purpose* in saying them?”⁶⁸ Lytton responded, “It was a test, I think . . . I did want to know what he wanted, and if he missed me.”⁶⁹ It was important to Woodcroft’s case for the fact finder (in this case, a jury) to understand not only the words that were spoken, but also the

62. *Id.*

63. Dotson, *supra* note 46, at 237 (citing Jennifer Hornsby, *Disempowered Speech*, 27 PHIL. TOPICS 127, 134 (1995)).

64. *Id.*

65. *Id.*

66. *Id.* at 238.

67. *Anatomy of a Scandal: Episode 3* (Netflix Apr. 15, 2022).

68. *Id.*

69. *Id.*

meaning behind the words. Lytton's words and the meaning behind her words would go to better contextualizing the assault that followed, promoting a successful linguistic exchange with the jury.

C. Epistemic Violence, Epistemic Oppression, Epistemic Injustice

Epistemic violence is a type of harm that can result in failed linguistic exchanges.⁷⁰ In this context, epistemic violence "is a refusal, intentional or unintentional, of an audience to communicatively reciprocate a linguistic exchange" as a result of a consistent epistemic gap, or is a consequence of "a predictable epistemic gap in cognitive resources" *and* "harms another person (or set of persons)."⁷¹ In other words, epistemic violence flows from a foreseeable, harmful kind of ignorance, as opposed to an innocent, harmless ignorance.

Innocent ignorance could look like failing to explain "voting practices in the state of Michigan" to a three-year-old.⁷² The three-year-old has gaps in their knowledge that one would expect that prevents them from understanding what a speaker may try to communicate about such voting practices.⁷³ This is not an example of epistemic violence, however, because it is hard to imagine how the young child's ignorance would be harmful.

But if a speaker warns the child to avoid playing with matches and the child starts a fire, the resulting property damage is harmful.⁷⁴ Such ignorance on the part of the child is expected, which is why adults closely supervise young children around matches.⁷⁵ Still, the child still acted "in an epistemically violent manner by not heeding the warning."⁷⁶ Intention is irrelevant.

Epistemic violence also occurs by way of various "practice[s] of silencing."⁷⁷ This silencing can occur in one of a number of ways, including testimonial smothering and quieting, which are explained below. Both can be understood as forms of "epistemic injustice," a broad term for the wrongful exclusion or silencing of another.

70. See Dotson, *supra* note 46, at 237.

71. *Id.* at 238.

72. *Id.*

73. *Id.*

74. *Id.* at 240.

75. *Id.*

76. *Id.*

77. *Id.* at 241.

Epistemic oppression goes beyond simple acts of epistemic injustice. Epistemic oppression is a *recurring* breakdown in communication due to structural power dynamics.⁷⁸ Failed linguistic exchanges between people or groups can happen on a recurring basis because of a structural problem.

This is where epistemic violence connects to epistemic oppression: there are systems that operate to commit epistemic violence against marginalized speakers. These systems are arguably the “interlocking, interdependent ... systems of domination”⁷⁹ like white supremacy, patriarchy, ableism, classism, and more. Feminists have written about how systems (like patriarchy) are maintained through enforcement mechanisms (like misogyny) and are justified by sexist narratives. For example, if the patriarchy is a system that entrenches the expectation that men are dominant and superior, then “[m]isogyny upholds the social norms of patriarchies by policing and patrolling them; whereas sexism serves to justify these norms—largely via an ideology of supposedly ‘natural’ differences between men and women with respect to their talents, interests, proclivities, and appetites.”⁸⁰

In other words,

[S]exism is the belief that women are natural mothers Misogyny enforces that narrative by forcing women into that role through abortion bans and other laws meant to limit women’s opportunities to take on other roles for which sexist narratives deem women unfit. The patriarchy—the system of male dominance—is strengthened by these laws, even though they are not *explicitly* patriarchal.⁸¹

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78. See Dotson, *supra* note 60, at 125–26. Dotson’s version of epistemic oppression (at least when applied to instances of individual and structural prejudice) can be limited through a number of techniques, many of which were developed in multicultural feminist method, such as “world traveling” and using a loving eye, as opposed to arrogant perception. The original draft of this work focused on frameworks by authors like María Lugones, Mariana Ortega, Isabelle R. Gunning, and more addressing the concept of arrogant perception by Marilyn Frye. That work will be used in a future article.
79. BELL HOOKS, *OUTLAW CULTURE* 290 (1994) (“Until we are all able to accept the interlocking, interdependent nature of systems of domination and recognize specific ways each system is maintained, we will continue to act in ways that undermine our individual quest for freedom and collective liberation struggle.”).
80. KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* 88 (2017).
81. Yvette Butler, *In Pursuit of Collective Liberation in Feminist Constitutionalism*, 122 MICH. L. REV. (forthcoming 2024) (manuscript at 8), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4634361_code3609361.pdf?abstractid=4634361&mirid=1&type=2 [<https://perma.cc/Y7YP-9XYV>].

Legislation (like abortion bans) and judicial opinions (like *Dobbs v. Jackson Women's Health Organization*)⁸² contribute to the production of dominant hermeneutical resources that associate women with mothering and caretaking roles.⁸³

In order to combat societally dominant narratives of sexism, racism, and other oppressive systems, alternate narratives or counterstories are required. Epistemic oppression works to hinder one's contributions to knowledge production.⁸⁴ It is "a persistent and unwarranted infringement on the ability to utilize persuasively shared epistemic resources"⁸⁵ in a way that creates difficulties for some individuals or groups to contribute their knowledge. People contribute to the creation of knowledge in the law through legislative testimony, testifying on the stand in court, and otherwise seeking to "speak" and be "heard" on the issues that are important to them, whether through legal scholarship or informal outreach to policymakers. Again, creating such knowledge is deeply important because individualized experiences often highlight the ways in which our system is unjust and must be modified.

One may opt to speak and risk being silenced, or one may not speak at all and be silent. The difference between being silenced or being silent is captured through the concepts of testimonial quieting and smothering.⁸⁶ Both concepts relate to one's ability to contribute to the creation of knowledge. Testimonial quieting is a practice of silencing because an audience (hearers) routinely fail to recognize speakers (such as Black women) as knowers due to controlling images.⁸⁷ Testimonial smothering is a form of self-censorship. It is the practice of coerced silence that results when "(1) the content of the testimony [is] unsafe and risky; (2) the audience ... demonstrate[s] testimonial incompetence with respect to the content of the testimony to the speaker; and (3) testimonial incompetence ... follow[s] from, or appear[s] to follow from, pernicious ignorance."⁸⁸

With testimonial smothering, there are situations that may feel "unsafe" for the speaker and could result in an audience failing to understand what is

82. 597 U.S. 215 (2022).

83. Butler, *supra* note 81 (manuscript at 18) (discussing *Dobbs* and abortion bans as legal enforcement of "a sexist conception of cisgender women as naturally made for a mothering role").

84. Dotson, *supra* note 60, at 116.

85. *Id.*

86. Dotson, *supra* note 46, at 242.

87. *Id.* at 242–43.

88. *Id.* at 244.

being communicated, such that it leads to a “formation of false beliefs that can cause social, political, and/or material harm.”⁸⁹ A common example of testimonial smothering is the pressure on Black communities to commit themselves to “politics of respectability” and intentionally suppress the problem of domestic violence as a strategy to avoid racist stereotypes.⁹⁰ Testimonial smothering nonetheless maintains a speaker’s epistemic agency. “They know when, where, and by whom they won’t be heard and when being heard might cause future harm, so they swallow their knowledge halfway.”⁹¹ These forms of testimonial injustice are particularly relevant in policymaking. Controlling images of sex workers stigmatize them as a group.⁹² Sex workers are routinely dismissed either as nonknowers or as noncredible knowers. While testimonial smothering may also be at issue (particularly due to the testimonial incompetence of listeners, including some feminists who simply cannot hear sex workers’ voices), smothering will not be the focus of this Article. Instead, this Article aims to make a more macro point about a cycle of epistemic oppression, of which smothering is only one aspect.

D. Law as Hermeneutical Resource

Earlier, this Article introduced the concept of hermeneutical resources. When one attempts to communicate their experiences, their communication can be rendered unintelligible due to this gap in resources to understand what is being communicated.⁹³ Some scholars argue that there are multiple sets of hermeneutical resources.⁹⁴ Communities, particularly marginalized ones, have their own sets of hermeneutical resources⁹⁵ that they create, maintain, and use.⁹⁶ “Subjugated knowledge refers to knowledge that is suppressed and largely unacknowledged outside of the epistemic

89. *Id.*

90. *Id.* at 244–45; see also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 159 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 601 (1990).

91. Email from Alison Bailey to Yvette Butler (Aug. 16, 2022) (on file with author).

92. See *infra* Part IV.C (providing accounts from sex workers regarding how they are perceived and stigmatized).

93. Dotson, *supra* note 60, at 127.

94. See, e.g., Kristie Dotson, *A Cautionary Tale: On Limiting Epistemic Oppression*, 33 FRONTIERS: J. WOMEN STUD. 24, 31 (2012); Rebecca Mason, *Two Kinds of Unknowing*, 26 HYPATIA 294, 299–300 (2011); COLLINS, *supra* note 46, at 108.

95. Dotson, *supra* note 94, at 31.

96. *Id.* at 31–32.

community that created and validated it.”⁹⁷ Subjugation involves the suppression of language, grammar, concepts, and other tools that challenge the dominant language, grammar, and concepts. As demonstrated by the following examples, dominant resources tend to control because they become embedded in law and society. Particularly illustrative examples of hermeneutical resources come from discussions of epistemic injustice and the experiences of transgender individuals. The dominant hermeneutical resources are particularly “intertwined with self-hatred” due to language with negative connotations, pathologized language, and a policed narrative that prevents other experiences of transgender identity from making their way into the dominant resources.⁹⁸

Dominant culture “denies, denigrates, [and] pathologizes” gender nonconformity.⁹⁹ The culturally available resources “privilege narratives of temporal and situational stability while ignoring, discounting, or even pathologizing experiences of gender that change over time.”¹⁰⁰ The dominant culture within the medical profession “does not leave room for fluid conceptions of identity.”¹⁰¹ There used to be (and to some extent, still is) a script that gender-nonconforming people must follow in order to receive medical assistance for their transition or share their stories through books and film. Historically, in the clinical setting, “trans people who presented with requests for hormones and surgery to facilitate gender transition were required to fit a very narrow set of criteria in order to access” medical assistance.¹⁰² “Trans people were expected to have a gender presentation and a sexual orientation that were normative for their identified gender” (for example, a trans woman with a traditionally feminine appearance and sexual attraction to men) and “to report a strong sense of loathing towards their bodies and to say that these experiences dated from their early childhood.”¹⁰³

97. Ngozi Okidegbe, *Discredited Data*, 107 CORNELL L. REV. 2007, 2049 (2022) (citing MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS 1972–1977* 8, 30 (Colin Gordon ed., Colin Gordon et al. trans., Pantheon Books 1980)).

98. Morgan Taylor Coyle, *Hermeneutical Resources Beyond the Male/Female Binary: Epistemic Injustice and the Advent of a Third Categorical Gender* 18 (May 2020) (B.A. honors thesis, Appalachian State University), https://libres.uncg.edu/ir/asu/f/Coyle_Morgan_Spring%202020_Thesis.pdf [<https://perma.cc/EMK2-QSHE>].

99. Aultman, *supra* note 56, at 21.

100. Coyle, *supra* note 98, at 22.

101. *Id.*

102. Miranda Fricker & Katharine Jenkins, *Epistemic Injustice, Ignorance, and Trans Experiences*, in *THE ROUTLEDGE COMPANION TO FEMINIST PHILOSOPHY* 268, 272 (Ann Garry et al. eds., 2017).

103. *Id.*

In this way, mental health stigma and anti-trans prejudice collided. “[T]he positioning of trans people as by definition experiencing a psychiatric disorder—‘gender identity disorder’—made them vulnerable to having their reports of their own experience dismissed on the spurious grounds that mental health problems made them unreliable or even deceptive.”¹⁰⁴ Healthcare workers with no personal experience as trans people were credited above the lived experiences of trans people due to “prejudicial pathologization.”¹⁰⁵

The media has been “most willing to publish work[s] . . . that focus[] on the process of transition, often in a sensationalizing way.”¹⁰⁶ Some trans people reported “being invited to participate in news articles or documentaries only to be dropped when it becomes clear that they will not pander to a preconceived narrative.”¹⁰⁷ This policed narrative contributes to “the mistaken idea that the desire for genital surgery is a necessary condition of being trans.”¹⁰⁸ The media also pushes the “wrong body narrative” borne from physicians gatekeeping “trans-specific medical interventions.”¹⁰⁹ This policed narrative maintains the gaps in hermeneutical resources “that eclipse the complexity and variety of trans subjectivities” and contributes to a maintenance of unintelligibility “when trans people whose lived experiences do not align with the wrong body narrative are unable to render their experiences culturally intelligible.”¹¹⁰ The wrong body narrative maintains hermeneutical resources that are ripe with negative connotations, “because it makes sense of trans experience through a framework of bodily alienation and dysphoria.”¹¹¹ That, along with the limited and pathologizing medical language available, “precludes the capacity of trans people to positively express their lived experiences of gender.”¹¹²

Miranda Fricker conceptualizes hermeneutical injustice as “the injustice of having some significant area of one’s social experience obscured from collective understanding.”¹¹³ One’s social experience is obscured because of structural prejudice against a particular group.¹¹⁴ Unlike Dotson’s

104. *Id.*

105. *Id.*

106. *Id.* at 273 (citation omitted).

107. *Id.*

108. *Id.* at 274.

109. Coyle, *supra* note 98, at 42.

110. *Id.* at 43.

111. *Id.*

112. *Id.*

113. MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* 154 (2007).

114. *Id.* at 155.

definition of epistemic oppression, here, prejudice against a social group is required. As is explained below, marginalized groups and dominant groups have their own collective resources that help them make sense of their worlds.

For example, women have always experienced sexual harassment and sexual violence. But there were not always the hermeneutical resources—in the dominant or subjugated group’s collective resources—to adequately interpret an action as harassment. Women as a subjugated group came to develop their own hermeneutical resources to understand their experiences with sexual harassment and no longer “struggled in isolation”¹¹⁵ to make sense of their personal experiences with harassment. But there was still a deficit in the dominant group’s hermeneutical resources. Unequal participation in knowledge transfer and production disguised actions like jokes and groping as flirting, and rejection of harassment by the subjugated group (women) as lacking a sense of humor.¹¹⁶ Particularly important to this Article is the lack of *legal* hermeneutical resources to adequately interpret an action as harassment.

In courts, marginalized litigants face “the preconceived notions of gender of the judges. They must also run their claims against the precedent that has already disclosed how gender will be adjudicated.”¹¹⁷ By way of example, transgender litigants have faced epistemic injustices in the courts because the dominant cultural norms are built upon a gender binary. Their experiences of gender fluidity are made only partially intelligible through precedent on sex stereotyping.¹¹⁸ Courts use their institutional power to “create the conditions for hermeneutical injustice” through establishing “what it means to be a man or woman.”¹¹⁹ While precedent on sex stereotyping can lead to legal protections for transgender litigants, most courts have made no effort to “arrive at any meaningful transgender experience of womanhood or manhood.”¹²⁰ Instead, litigants must stretch and bend to describe their experiences of discrimination through gendered lenses, instead of the unique ways that discrimination occurs against those who do not conform to the gender binary. Courts “erase[] the particular

115. *Id.* at 153.

116. *See id.* at 155; *see also* Dotson, *supra* note 94, at 30.

117. Aultman, *supra* note 56, at 13.

118. *See id.* at 20–22.

119. *Id.* at 21.

120. *Id.* at 22.

difficulties that transgender [people] face in their lived experiences as being transgender.”¹²¹

The ability to name an obscured experience demonstrates the existence of hermeneutical injustice, but the lack of terminology is not the hermeneutical injustice itself. Instead, hermeneutical injustice is rooted in “socioepistemic structures”¹²² that get in the way of making sense of our world.¹²³ The ability to make sense of the world, the knowledge that is produced, can be limited through structural prejudice, made up of the bias of the dominant group that undermines the contributions of the subjugated group.¹²⁴

Moreover, the decision to use a set of hermeneutical resources that is structurally prejudiced (due to the exclusion of a marginalized group) is unjust.¹²⁵ Hermeneutical resources can be structurally prejudiced when they interpret a marginalized group’s social experience and the interpretation is insufficient because of the bias and undue influence of the more powerful group.¹²⁶ Consequently, a community has the language to articulate their experiences, but those experiences are not utilized because of the biased resources used by the hearer.¹²⁷ This experience is particularly important in the law. The more powerful groups’ knowledge production is privileged and rooted deep in the law. The subjugated groups’ knowledge production is suppressed and does not inform the law.¹²⁸

E. Defining the Cycle of Epistemic Oppression Within the Law

In building from the concepts of epistemic injustice and testimonial quieting, my definition of the *cycle* of epistemic oppression in the law is as follows:

- (1) The hearer fails to identify the speaker as a “knower” due to systemic devaluation of the speaker’s social or identity group;

121. *Id.* at 24.

122. Dotson, *supra* note 94, at 30.

123. The field of social epistemology is concerned with how people pursue truth in relation to others. See Cailin O’Connor, Sanford Goldberg & Alvin Goldman, *Social Epistemology*, STAN. ENCYC. OF PHIL. (Nov. 27, 2023), <https://plato.stanford.edu/entries/epistemology-social> [<https://perma.cc/KQR2-EYKS>].

124. See Dotson, *supra* note 94, at 31–32.

125. See *id.* at 32. Dotson refers to this phenomenon as “contributory injustice.”

126. See *id.* at 29; see also Fricker & Jenkins, *supra* note 102, at 269.

127. See Dotson, *supra* note 94, at 32.

128. See *infra* Part I.E (discussing how the PARF theoretical framework has shaped the current understanding of commercial sexual exchange in the law).

- (2) The communication attempt fails *because* a history of oppression led to the hearer's failure to accept what is being communicated;
- (3) An individualized epistemic harm is committed by the hearer against the speaker and a collective epistemic harm results because our dominant collective hermeneutical resources have been hampered; and
- (4) Laws are adopted and/or maintained that have a harmful effect on marginalized groups due to suppressed knowledge.

The first two "elements" reflect the influences of testimonial injustice and testimonial quieting, with a focus on prejudice. The third element recognizes that our dominant legal collective resources miss out on knowledge because marginalized groups—and the contributions grounded in their ways of knowing (personal experience)—are rejected for reasons grounded in prejudice. The results are twofold. Firstly, an individual epistemic harm is committed toward the speaker. Secondly, when the speaker attempts to share in their capacity as a knower for the purposes of law reform but experiences wrongful silencing, there is also damage done to dominant hermeneutical resources.

Finally, the fourth element captures the point where the cycle of oppression begins anew. When marginalized groups attempt to contribute their knowledge (by detailing the ways a proposed law may be harmful, for example), but their knowledge is sidelined, laws are adopted or maintained that have a harmful effect on their lives. In other words, the prejudice at the heart of epistemic injustice does not just result in harm to an individual. It shapes the decisions of policymakers, judges, and other key system actors by ensuring that they are only guided by certain sources of knowledge. Knowledge from subjugated sources fails to shape the law, which often means that the law will continue to harm those subjugated knowers.

As the sex trades are often discussed as a form of violence against women, the remainder of this Article focuses on analogies to domestic and sexual violence before discussing commercial sexual exchange more specifically. Additionally, the domestic and sexual violence arena has similar issues related to pathologizing victims and grappling with agency within the context of societal power structures. Ultimately, this Article argues that a cycle of epistemic oppression takes place through the passage and maintenance of laws addressing sex work through the carceral system when sex workers have been dismissed as noncredible knowers due to prejudice. That prejudice is perpetuated, in part, by a PARF narrative that reinforces the idea that anticarceral approaches to rectifying harm in the sex trades would

only be advocated for by people who mean to undermine the anti-violence against women movement or are too traumatized by past violence to be valuable sources of knowledge.

II. FEMINIST METHOD AND ESSENTIALISM SHAPING COLLECTIVE EPISTEMIC RESOURCES

Feminist method has long concerned itself with the visibility and inclusion of women's subjective experiences. Feminists (even before that term was coined), across time and place, have been asking "the woman question"¹²⁹ whereby they seek to uncover "how the law fails to take into account" women's experiences and how "existing legal standards and concepts might disadvantage women."¹³⁰ Feminist legal method has a number of goals, including: illuminating the "subjugated knowledge about women's experiences which traditional scholars ignored[;] ... asking the woman question and exploring diverse understandings of social reality about women's socio-economic position[;] ... and ... valuing multiple ways of knowing by hearing."¹³¹

It is in this tradition that feminist legal theory has been critiqued as being essentialist. Essentialism in this context "demonstrates an understanding of gender based only on the lived experience of middle-class white women,"¹³² with a heterosexual focus,¹³³ and centers the Global North and the West.¹³⁴ Dorothy Roberts is explicit about the heterosexual focus of dominance feminism or radical feminism, which is the strain of feminism most closely associated with the PARF narrative: "Catharine MacKinnon made a pivotal contribution to the feminist understanding of rape by explaining its origin in ordinary heterosexual relationships Rape is part of a system in which women's submission, humiliation, violation, and injury define sexual

129. See, e.g., BHAT, *supra* note 40, at 563–70 (detailing the "woman question" in India from "the Early Period" to the modern day).

130. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 837 (1990) (arguing that this question helps uncover how the law may actually fail to be neutral "in a general sense, but also [be] 'male' in a specific sense").

131. BHAT, *supra* note 40, at 558–59.

132. Nancy E. Dowd, *Introduction to FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER* 5, 5 (Nancy E. Dowd & Michelle S. Jacobs eds., 2003).

133. See Dorothy E. Roberts, *Rape, Violence, and Women's Autonomy*, 69 CHI.-KENT L. REV. 359, 369–70 (1993).

134. See Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1210–11 (2001).

excitement.”¹³⁵ Leti Volpp is also explicit about the United States focus of western feminism: “Male violence against women was believed to be the universal experience that could tie together women across the world [It] has served to shape what we envision as gender subordination.”¹³⁶ But “[t]he insistent focus on immigrant[s] and Third World women as victims also leads many to deny the existence of *agency within patriarchy*, ignoring that these women are capable of emancipatory change on their own behalf.”¹³⁷ Other scholars have also critiqued the way that sexual violence against men has been overlooked, asserting that an analysis inclusive of sexual violence against men does not take away from a feminist analysis, but rather bolsters arguments about structural power that contribute to sexual violence.¹³⁸

In challenging male dominance over women, feminist theorists articulated how structural power upheld through the law could disadvantage women. Some people are in more dominant or privileged societal positions that “allow their experiences to count more in the development and circulation of epistemic resources.”¹³⁹ The value of knowledge from subjugated individuals cannot be overstated. Marginalized knowers are “more likely than not to find gaps in the predominantly held epistemic resources for making sense of what is noticeable to [them] in view of [their] situatedness.”¹⁴⁰ This is a foundational concept that critical legal theorists, including feminist and race theorists, know well.¹⁴¹ Thus, the feminist method began with the imperative of women’s subjective experience.

135. Roberts, *supra* note 133, at 369–70 (citations omitted). It is important to note, however that Catharine MacKinnon does not define “women” or the experience of being a woman as one that can only be experienced by cisgender women. She sees no need for separate sex or gender classifications because “what we live as ‘woman’ is a social construction of male supremacy, and the notion that it is based in nature is its most pernicious delusion.” She sees sexuality is socially constructed, so “[t]ranspeople are doing their best to live and be loved under conditions in which people still pervasively believe the lie that gender is sex-based, meaning biologically-determined.” She subscribes to the feeling that “one is not born, one rather becomes a woman,” and it is not “our job to police” that becoming. Cristan Williams, *Sex, Gender, and Sexuality: An Interview With Catharine A. MacKinnon*, CONVERSATIONS PROJECT (Nov. 27, 2015), <http://radfem.transadvocate.com/sex-gender-and-sexuality-an-interview-with-catharine-a-mackinnon> [<https://perma.cc/3F6P-G9Y9>].

136. Volpp, *supra* note 134, at 1210.

137. *Id.* at 1211.

138. See, e.g., Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259 (2011) (challenging the legal understanding of rape as gendered); FRANÇOISE VERGÈS, *A FEMINIST THEORY OF VIOLENCE* 14–20 (Melissa Thackway trans., Pluto Press 2020).

139. Pohlhaus, *supra* note 51, at 718.

140. *Id.* at 719.

141. See discussion *supra* note 39.

Critical theorists have worked to expand feminist method in a way that more accurately and inclusively articulates societal power dynamics and account for the limitations of Western feminism. Having an unequal opportunity to engage in meaning generating practices as a result of subjugation in or exclusion from those practices is hermeneutical.¹⁴² Hermeneutical marginalization can lead to hermeneutical injustice. In other words, epistemic resources (language, concepts, procedures, standards) become hermeneutical resources, when they are shared understandings. The ability to make sense of the world and the knowledge that is produced can be limited through structural prejudice, made up of the bias of the powerful group that undermines the contributions of the marginalized.¹⁴³ The more powerful group's knowledge production is privileged and rooted deep in the law. The subjugated group's knowledge production is suppressed and does not adequately inform the law.¹⁴⁴

Ultimately, it is the combination of testimonial injustices, hermeneutical marginalization, and the suppressed intellectual traditions of critical feminist theories that contribute to a cycle of epistemic oppression. A PARF theoretical framework maintains an essentialist narrative of life in the sex trades. This narrative both overlooks and suppresses the contributions of marginalized groups' social experiences due to prejudice. The PARF framework continues to rely on biased resources to help shape the law. Just as men can have a dominant position that shapes mainstream collective understanding of various concepts, women—particularly those wedded to an essentialist narrative¹⁴⁵—can have a similar influence on mainstream collective understandings.

III. HERMENEUTICAL DEVELOPMENTS IN THE DOMESTIC AND SEXUAL VIOLENCE MOVEMENTS

*I have come to the conclusion that feminism is not a monolithic movement or way of thinking.*¹⁴⁶

142. Fricker & Jenkins, *supra* note 102, at 268–69.

143. Dotson, *supra* note 60, at 29–31.

144. See *infra* Part IV (discussing how the PARF theoretical framework has shaped the current understanding of commercial sexual exchange in the law).

145. See *infra* Part IV.A.

146. Siobhan Brooks, *Sex Work and Feminism: Building Alliances Through a Dialogue Between Siobhan Brooks and Professor Angela Davis*, 10 HASTINGS WOMEN'S L.J. 181, 185, 187 (1999) (concluding that the purpose of this dialogue was to “broaden the concept of what it means to be a feminist” and “look beyond dualistic ways of thinking about feminism, race and class”).

In recent years, places like New York City and the District of Columbia considered fully decriminalizing prostitution. With these developments came a number of discussions regarding the positive and negative effects of decriminalizing prostitution and discussions around whether to adopt the “end demand” model. The scale of these conversations is new—the antitrafficking movement is growing, and sex worker advocacy has seemingly never been so prominent in the United States.¹⁴⁷ Along with these discussions were allegations that the pimp lobby was involved and that full decriminalization would actually harm women and girls.¹⁴⁸

Crediting the pimp lobby as the only group that would argue for full decriminalization of sex work overlooks the efforts of critical theorists, particularly women of color, who have problematized reliance on the state to solve instances of interpersonal and state violence. Of course, no group is a monolith, so there are disagreements over whether all potentially harmful activities should be decriminalized and whether there are some activities that should remain punishable by incarceration. Yet, this is not the first time that noncarceral solutions have been proposed in the context of commercial sexual exchange. In other words, relevant hermeneutical resources to understand and critique carceral approaches exist, but are overlooked, erased, and misunderstood. Additionally, as is discussed below, others have recommended noncarceral solutions outside of the sex trade, such as in the context of domestic and sexual violence.

These concerns over punishment and incarceration are grounded in prison abolition, which is concerned with “the abolition of a society that could have prisons, that could have slavery.”¹⁴⁹ Prison abolitionists generally desire to create a society where sexual violence (and racism, classism, ableism, and other forms of subjugation) do not exist and are not reproduced in our systems of justice and accountability.¹⁵⁰ These are arguably the bedrock positions of transformative justice.

Transformative justice is “a community process developed by anti-violence activists of color, in particular,”¹⁵¹ who developed ways to not only respond to violence that are not accomplished by the criminal system, but also “build support and more safety for the person harmed, figure out how

147. See Dickson, *supra* note 20.

148. See Frundt & Vafa, *supra* note 21.

149. MARIAME KABA, *WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* 24 (Tamara K. Nopper ed., 2021) (e-book).

150. See *id.* at 24, 47.

151. *Id.* at 59.

the broader context was set up for this harm to happen, and how that context can be changed so that this harm is less likely to happen again.”¹⁵² Transformative justice means “challeng[ing] our punitive impulses, while prioritizing healing, repair, and accountability.”¹⁵³ Transformative justice often seeks to get away from punishment, particularly through incarceration, which, in the eyes of many women of color activists and scholars, reproduces patriarchy¹⁵⁴ and white supremacy.¹⁵⁵ It requires asking questions like “[w]hy did this happen? Why does it keep happening? And is there something we could change that would make [any number of tragedies] unthinkable in the first place?”¹⁵⁶ Transformative justice is a key part of arguments to decriminalize a number of activities.

In order for theorists to contribute to the “transformative” nature of work, their work must engage “between and among existing legal discourses of outsider and progressive critical scholars on mutually reinforcing sources or structures of privilege and subordination.”¹⁵⁷ Scholars, advocates, and scholar-advocates have long argued that there are mutually reinforcing structures that should be part of the calculus of the anti-violence against women movement.¹⁵⁸ As explained earlier, feminism has been criticized for

152. *Id.*

153. *Id.*

154. See ADRIENNE MAREE BROWN, *WE WILL NOT CANCEL US* (2020).

155. See generally *id.*

156. KABA, *supra* note 149, at 39 (2021); see also I. India Thusi, *Feminist Scripts for Punishment*, 134 HARV. L. REV. 2449, 2472–75 (2021) (reviewing GRUBER, *supra* note 31) (citing to a number of abolitionist scholars describing the goals of abolition).

157. Francisco Valdes, *Queering Sexual Orientation: A Call for Theory as Praxis*, in FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS 91, 93 (Martha Albertson Fineman et al. eds., 2016); see also Elizabeth M. Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of Latcrit Social Justice Agendas*, 19 CHICANO-LATINO L. REV. 503 (1998) (describing coalition building in anti-oppressive theories).

158. See COMBAHEE RIVER COLLECTIVE, *THE COMBAHEE RIVER COLLECTIVE STATEMENT* (1977) (documenting the generations of Black feminist thinkers who captured the gender shortcomings of the Black Liberation Movement and the racial shortcomings of the feminist movement that overlook “racial-sexual oppression”). The Statement continues: There have always been Black women activists—some known, like Sojourner Truth, Harriet Tubman, Frances E. W. Harper, Ida B. Wells Barnett, and Mary Church Terrell, and thousands upon thousands unknown—who have had a shared awareness of how their sexual identity combined with their racial identity to make their whole life situation and the focus of their political struggles unique.

Id. See also Crenshaw, *supra* note 90, at 140; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (1991) (chronicling the shortcomings of the antiracist and feminist movements in their attention to the unique harms faced by Black women).

being essentialist. PARFs are not alone in their essentialism. Sexual orientation theorists have also been criticized for looking at essentialized white and middle-class subjects and are encouraged to look to “the racialized and ethnicized dynamics of sexual orientation identities and issues as part of an evolving anti-subordination discourse.”¹⁵⁹

Scholar-activists like Angela Y. Davis are known for situating sexual violence in a larger network of racism, patriarchy, and state oppression. Davis describes the bombing of abortion clinics, loss of federal subsidies to obtain an abortion, sterilization abuse, prohibition of lesbian parentage, and more as “violence aimed at our reproductive choices and our sexuality.”¹⁶⁰ She makes the case that reproductive and sexual justice issues are “situated on a larger continuum of socially inflicted violence, which includes concerted, systematic violations of women’s economic and political rights.”¹⁶¹ Davis also argues that there is a close connection between sexual violence, imperialist violence around the globe, and racism at home and abroad. Because of this connection, sexual violence will not disappear unless women’s rights movements become further tied to labor struggles, environmental justice, the struggles of political prisoners, and more. Sexist violence will only be eliminated when “every form of oppression and violence against humankind is obliterated.”¹⁶²

In making her point, Davis describes rape as thoroughly situated in this larger network of systemic violation. The anti-rape movement of the 1970s (one part of the anti-violence against women movement) was helpful in changing the narratives around victimhood: “women militantly refuted the myth that the rape victim is morally responsible for the crime committed against her.”¹⁶³ It was also helpful in changing the narrative around the myth that “if a woman does not resist [sexual violence], she is implicitly inviting the violation of her body.”¹⁶⁴

Yet, racism within the movement and a focus on carceral solutions played a large role in alienating Black women from the anti-rape movement, despite the disproportionately high number of white men who rape Black women (as compared to the numbers of Black men who rape white

159. Valdes, *supra* note 157, at 93.

160. ANGELA Y. DAVIS, WOMEN, CULTURE & POLITICS 37 (1989).

161. *Id.*

162. *Id.* at 51.

163. *Id.* at 41.

164. *Id.*

women).¹⁶⁵ Just like in drug convictions,¹⁶⁶ Black men were disproportionately incarcerated for rape.¹⁶⁷ Black women were “understandably reluctant to become involved with a movement that might well lead to further repressive assaults on their families and their communities.”¹⁶⁸ The movement’s failure to acknowledge “the social conditions that foster sexual violence” and the “centrality of racism in determining those social conditions” resulted in the reluctance of women of color to get involved.¹⁶⁹

Racism was not the only factor in alienating allies from the anti-violence against women movement. Scholars have also complicated the domestic violence narrative to expose its cis- and heterosexism. Scholars writing on lesbian and queer people in relationships have noted that violence occurs not because of male dominance over women or women’s subjugation to men per se, but because of the subjugation of certain identities within society that reinforce gender and sex stereotypes. Such subjugation privileges certain identities and marginalizes others.

Violence within same-sex relationships did not receive adequate legal recourse, in part, because of misunderstandings about domestic violence as something that only happened within heterosexual relationships.¹⁷⁰ This misunderstanding is connected to a sexist conception of gender roles and who is usually perceived as a batterer (men) and who is usually perceived as a victim (women).¹⁷¹ Additionally, societal homophobia allows abuse to continue, as “victims may lose child custody, prestigious careers, and valued personal relationships,” among other consequences, as a result of being outed as gay.¹⁷²

Importantly—given state oppression and the regulation of sexual desire, relationships, love, and commitment—queer theorists (among others) are skeptical of the state’s ability to remedy violence and oppression

165. *See id.* at 43.

166. *See generally* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (illustrating how Black men are dramatically more likely to be imprisoned for drug crimes, despite the similar rates of drug use and sale among Black and white men).

167. DAVIS, *supra* note 160, at 43.

168. *Id.* at 44.

169. *Id.* at 45.

170. *See* Marnie J. Franklin, *The Closet Becomes Darker for the Abused: A Perspective on Lesbian Partner Abuse*, 9 CARDOZO WOMEN’S L.J. 299, 306 (2003).

171. *See id.* at 299.

172. Kathleen Finley Duthu, *Why Doesn’t Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23, 31 (1996).

when it has itself been guilty of violence and oppression, particularly through law enforcement.¹⁷³ Class theorists also feel similarly.¹⁷⁴ The state punishes poverty as opposed to remedying it through several practices, including criminalization of homelessness

(through loitering and vagrancy laws),¹⁷⁵ modern-day debtors' prisons,¹⁷⁶ and debilitating fines and fees from court cases.¹⁷⁷

Arguing that there is only one way of knowing what violence looks like and that the only way to combat it is through mandatory carceral intervention undermines the contributions of others fighting for an anti-oppressive world. Those fighting for an anti-oppressive world seek strategies that support cisgender women, in addition to other vulnerable groups.¹⁷⁸ These critical theories all call attention to the blind spots that result from an insufficiently intersectional lens. Feminists have worked hard to have their epistemic resources pierce the dominant hermeneutical resources through the development of many—now mainstream—narratives that capture the experience of women within an unequal society. It took hundreds of years to combat the perception of women as property of

173. Furthermore, since the Supreme Court handed down *Dobbs* in the summer of 2022, there are renewed concerns about states prohibiting same sex intimacy, as its substantive due process protection may now be on rocky legal ground. See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

174. See KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 37 (2017) (exploring a moral construction of poverty that justifies state surveillance of poor parents); see also Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207, 226 (2012) (discussing narratives of “good” versus “bad” immigrants and how those narratives shape advocacy and remedies).

175. See Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637, 1671–73 (2021).

176. See Anna Wolfe & Michelle Liu, *Think Debtors Prisons Are a Thing of the Past? Not in Mississippi*, MARSHALL PROJECT (Jan. 9, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/01/09/think-debtors-prisons-are-a-thing-of-the-past-not-in-mississippi> [<https://perma.cc/MG4D-QBX9>].

177. See C.R. DIV., U.S. DEP'T OF JUST., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/H2WH-BUW7>].

178. See, e.g., *About*, COLLECTIVE ACTION FOR SAFE SPACES, <https://www.collectiveactiondc.org/about> [<https://perma.cc/7QE8-WR5Z>] (describing a D.C. based non-profit pursuing public safety through research, education, art, storytelling, access to resources, and grassroots organizing that addresses state and patriarchal violence, which manifests as violence against women and transgender and gender nonconforming people).

their fathers and husbands, who had no civil identity of their own.¹⁷⁹ It took just as long to shift the narrative of women as infantile and in need of discipline from their husbands¹⁸⁰ and women as blameworthy for their own physical and sexual abuse.¹⁸¹

Our legal system has only recently begun to complicate the concept of consent and recognize the range of attitudes one might have to sexual violence. Criminal law used to require rape prosecutors to demonstrate that the victim resisted rape to the “utmost.”¹⁸² Feminists worked hard to complicate the narrative of an acceptable response to sexual violence beyond fight or flight to include freeze and “tend-and-befriend.”¹⁸³ There is no one right way to react to assault, at least in a physiological or moral sense. A right way in a moral sense focuses on the wrong person, the victim. The abuser and society should be the focus of criticism.¹⁸⁴ Importantly, lesbian and queer theorists have worked to complicate the cis-het normative focus of domestic and sexual violence.¹⁸⁵

As advocates in the domestic and sexual violence space began to witness harm befalling domestic and sexual violence survivors in the carceral system, the movement began to embrace survivor-centered advocacy and trauma-informed care as a way to be cognizant of the reality of coercive control without reproducing a pattern of coercion between advocate and survivor. The adoption of trauma-informed and survivor-centered or victim-defined practices refers to understanding how trauma manifests and prioritizing victim security. Leading victim advocates have argued that the goal is to have

179. See Kevin C. Paul, *Private/Property: A Discourse on Gender Inequality in American Law*, 7 LAW & INEQ. 399, 404 (1989) (“In the two centuries that followed [the American Revolution] . . . women became the clearly established legal property of their fathers and husbands.”).

180. See Laura T. Kessler, *The Politics of Care*, 23 WIS. J.L. GENDER & SOC’Y 169, 190 (2008).

181. See Jerry von Talge, *Victimization Dynamics: The Psycho-Social and Legal Implications of Family Violence Directed Toward Women and the Impact on Child Witnesses*, 27 W. ST. U. L. REV. 111, 131 (2000).

182. Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 588–89 (2009).

183. See Shelley E. Taylor, Laura Cousino Klein, Brian P. Lewis, Tara L. Gruenewald, Regan A. R. Gurung & John A. Updegraff, *Biobehavioral Responses to Stress in Females: Tend-and-Befriend, Not Fight-or-Flight*, 107 PSYCH. REV. 411 (2000).

184. See DAVIS, *supra* note 160, at 41 (describing how “women militantly refuted the myth that the rape victim is morally responsible for the crime committed against her” and the myth that “if a woman does not resist, she is implicitly inviting the violation of her body”).

185. See, e.g., Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582 (1996) (arguing that conceptualizing domestic violence as perpetrated by men against women in heterosexual relationships overlooks different types of interpersonal power, control, and violence and deepens the plight of nonheterosexual victims of violence).

a survivor self-define their needs and work in partnership with them to achieve their goals.¹⁸⁶ This is a shift from saving a victim to supporting their agency—even if that means remaining in an abusive relationship, which an advocate may not prefer.¹⁸⁷ It is only in more recent years that statutes have memorialized the practice of trauma-informed care and survivor-centered advocacy.¹⁸⁸ In codifying these practices, legislatures have expanded survivor-centered policies to instances of human trafficking, but only time will tell how well the partnership and agency goals are met.

In the criminal system, the response to domestic and sexual violence is often met with strategies that are definitionally opposed to survivor-centered practice, such as mandatory arrest and no-drop prosecution policies.¹⁸⁹ Such policies are “by definition[] not dependent upon the expressed wishes of individual survivors. Many opponents of mandatory criminal policies argue that such policies deprive women of the ability to self-

186. See JILL DAVIES, NAT’L RES. CTR. ON DOMESTIC VIOLENCE, VICTIM-DEFINED ADVOCACY BEYOND LEAVING: SAFER THROUGH STRATEGIES TO REDUCE VIOLENT BEHAVIOR 4 (2019), https://vawnet.org/sites/default/files/assets/files/2020-05/NRCDV_VictimDefinedAdvocacyBeyondLeaving-Oct2019.pdf [<https://perma.cc/3YT7-WD7H>] (“Victim-defined advocacy is an approach that results in comprehensive plans to make victims safer. Victim perspectives and priorities determine the strategies, objectives, and direction of those victim-defined safety plans. The essential role of advocacy is to offer information, analysis, and resources—to work in partnership with victims to strengthen their plans. In addition to the work with individual victims and their families, this framework also calls for broader advocacy to improve systemic responses and increase safety options for all victims.”); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 604–05 (1999) (arguing that advocates can best meet the needs of survivors by empowering them to make decisions like pursuing arrest and prosecution, for example, rather than by dictating solutions).

187. See DAVIES, *supra* note 186, at 2–3 (reporting that reducing violent behavior is how domestic violence ends, so the responsibility to stop violence must fall on an abusive partner, rather than have the responsibility to leave be put on the victim of violence). “[W]e know the strategy of leaving and separation is not possible for every victim, that it makes life more difficult and dangerous for some, and that many adults and children remain in contact with a partner, ex-partner, or parent who uses violence. We also know that some victims want the violence to end, not the relationship.” *Id.* at 2.

188. See, e.g., CAL. PENAL CODE § 13750 (West 2023) (mandating that family justice centers must have certain policies in place for those who participate in affiliated survivor-centered support or advocacy groups); LA. CHILD. CODE ANN. art. 725.2 (2021) (making “licenses specific to survivor-centered and trauma-informed services for human trafficking survivors” required for safe houses); 110 ILL. COMP. STAT. ANN. 155 / 30 (West 2015) (mandating that “a higher education institution shall provide annual survivor-centered and trauma-informed response training to any employee of the higher education institution who is involved in” responding to reports of domestic or sexual violence).

189. See Erika A. Sussman, *Agency/Autonomy of Battered Women*, in *ENCYCLOPEDIA OF INTERPERSONAL VIOLENCE* 15–16 (Claire M. Renzetti & Jeffrey L. Edleson eds., 2008).

direct their own lives and may in fact jeopardize their safety and agency.”¹⁹⁰ These concerns are amplified in communities of color where increased policing, “mandatory arrests, escalation of violence[,] and excessive force by police officers” are all unintended consequences of past domestic violence and sexual assault laws that have a disproportionate effect on marginalized communities.¹⁹¹

Once a criminal case is initiated, the need for testimony and cooperation with law enforcement may also act to retraumatize survivors if not done properly. State actors can objectify survivors by seeing them “only as witnesses,” thus “ignor[ing] the critical needs of survivors and reduc[ing] them to ‘pieces of evidence’ in the criminal justice system.”¹⁹² Being forced to testify can undermine what could be an otherwise “empowering experience” for a survivor.¹⁹³

In order to maintain what some survivors have seen as an empowering experience, they must be provided the opportunity to exercise self-determination through the accountability process. Survivors “tend to regain security, trust and self-sufficiency much more quickly” where they are able to exercise self-determination.¹⁹⁴ “This ultimately contributes to their ability to serve as witnesses and ‘make for stronger witnesses in legal cases,’ whereas they tend to withdraw, withhold, and suffer re-traumatization when deprived of a sense of control.”¹⁹⁵ These same strategies are relevant for working with survivors involved in commercial sexual exchange.¹⁹⁶

Credibility is a major hurdle in domestic and sexual violence cases—precisely because of the trauma that victims have suffered. A victim may face a “credibility discount” because of “[r]ecurring tropes of disbelief” embedded in our culture, such as her maliciousness (meaning that she is therefore lying about assault), regretting giving consent (and therefore lying), or incapable

190. *Id.* at 16.

191. Alicia Gill, *Survivor-Centered Research: Towards an Intersectional Gender-Based Violence Movement*, 33 J. FAM. VIOLENCE 559, 560 (2018).

192. Sabrina Balgamwalla, *Trafficking Rescue Initiatives as State Violence*, 122 PENN ST. L. REV. 171, 197 (2017).

193. *Id.* at 196.

194. *Id.* at 213 (citing FREEDOM NETWORK, HUMAN TRAFFICKING AND DOMESTIC VIOLENCE 2 (2015), <https://freedomnetworkusa.org/app/uploads/2016/12/HT-and-Domestic-Violence.pdf> [<https://perma.cc/82VY-RRKY>]).

195. *Id.* (citing FREEDOM NETWORK, *supra* note 194, at 2).

196. *See, e.g.*, FREEDOM NETWORK, *supra* note 194, at 1–3; Ruby Rue, *Warning Signs: Patterns of Domestic Violence in Our Community*, SEX WORKERS OUTREACH PROJECT CHI. (Oct. 7, 2014), <https://redlightchicago.wordpress.com/2014/10/07/warning-signs-patterns-of-domestic-violence-in-our-community> [<https://perma.cc/CZ7R-TSFQ>].

of assessing whether she gave consent due to intoxication (and therefore lying).¹⁹⁷ Trauma-informed care includes understanding how a survivor's credibility can be minimized or even discounted based on the way they are behaving:

The symptoms of [domestic violence complainants'] trauma—the reliable indicators that abuse has in fact occurred—are perversely wielded against their own credibility in court. Because PTSD symptoms can make abused women appear hysterical, angry, paranoid, or flat and numb, they contribute to credibility discounts that may be imposed by police, prosecutors, and judges.¹⁹⁸

Additionally, victims report that they do not take claims to the police because “police would not or could not do anything to help.”¹⁹⁹ Police response to cases “involving women of color, immigrants, LGBTQ individuals, women in poverty, and *sex workers*” is particularly bad.²⁰⁰ Sometimes police are transparent about their concerns, stating that the sex was actually consensual or women wake up the next morning with guilt over their regrettable choices.²⁰¹ Prosecutors may also cave to societal bias when they are reluctant to “charge word-on-word rape cases,” because “[a] lot of the cultural attitudes about sexual assault come into play in a jury trial and

197. Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U.P.A. L. REV. 1, 7–9 (2017).

198. Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 422 (2019).

199. Tuerkheimer, *supra* note 197, at 29.

200. *Id.* at 31 (emphasis added). Other sources support this claim that sex workers face more difficulty reporting assault. Some may not even report due to fear that they will not be believed, will risk arrest and prosecution for engaging in sex work, or risk further sexual assault by police. See JUHU THUKRAL, MELISSA DITMORE & ALEXANDRA MURPHY, SEX WORKERS PROJECT AT THE URB. JUST. CTR., BEHIND CLOSED DOORS: AN ANALYSIS OF INDOOR SEX WORK IN NEW YORK CITY (2005), <https://sexworkersproject.org/downloads/BehindClosedDoors.pdf> [<https://perma.cc/8CJG-GFSJ>]. Additionally, society often views sexual assault as just “part of the job” for sex workers. See Melissa Farley & Vanessa Kelly, *Prostitution: A Critical Review of the Medical and Social Sciences Literature*, 11 WOMEN & CRIM. JUST. 29, 43 (2000); u/gothmarilyn, *My Boyfriend Made an Awful Joke*, REDDIT (Sept. 9, 2020), https://www.reddit.com/r/SexWorkersOnly/comments/ipskf5/my_boyfriend_made_an_awesome_joke (closed subreddit) (notes on file with author) (discussing a “joke” asking “if a [sex worker] gets raped isn't it just petty theft?,” while comments noted how this is akin to saying that a sex worker could not be raped because they are not “a person”). This “part of the job” dehumanizing perspective is bolstered when judges perceive rape as “theft of services.” See *Philly Judge Criticized for Rape Decision*, ABC NEWS (Feb. 18, 2009, 4:30 PM), <https://abcnews.go.com/TheLaw/story?id=3801167> [<https://perma.cc/H4W9-7F8G>].

201. See Tuerkheimer, *supra* note 197, at 32–33.

are part of the consideration about whether or not” they can prove assault “beyond a reasonable doubt.”²⁰²

Thus, the cycle of epistemic oppression is seen where (1) structural sexism undermines sexual assault victims as credible knowers when they report assault; (2) hearers (like police) fail to accept what has been communicated to them due to prejudice (she must be making this up or has regrets—she cannot be trusted);²⁰³ and (3) our dominant collective knowledge base is robbed of completeness. These incomplete hermeneutical resources deprive our law and society of the knowledge required to fully address the causes and consequences of sexual assault. In turn, the law cannot adequately address sexual assault. Future scholarship could certainly expand on the ways in which (4) laws are adopted or maintained that harm marginalized groups due to suppressed knowledge. As noted above, a shift in the narrative led to a shift in the law: criminal and civil statutes changed in response to effective advocacy and growing epistemic privilege.

Aya Gruber also contributed to this understanding of pathology and narrative essentialism in the domestic violence context. She explains how advocates feared (and in many cases, the fear was warranted) that a victim’s failure to leave an abusive relationship, take the children, and prosecute the abuser would be turned back on victims as a whole.²⁰⁴ As financial resources poured into the anti-domestic violence movement, so did the judgment. If there were resources to leave and resources to prosecute, why weren’t some women leaving their abusive relationships? Some drew the conclusion that women were at fault—if funding provided an opportunity to escape, then by not taking the opportunity, women should be punished for failing to use the opportunity.²⁰⁵

In order to fight this growing narrative of victim blaming, anti-violence against women advocates argued that victims were “pawns” of abusers who exercised “coercive control” through physical, emotional, and financial coercion.²⁰⁶ Instead of fighting for financial and material resources for women, “coercive control” was used to explain why women failed to work with law enforcement to arrest and prosecute abusers.²⁰⁷ Mandatory arrest

202. *Id.* at 39.

203. This gendered language is intentional because people of all genders face similar issues from the police, but the stereotypes can be different. Sexism undermines ciswomen victims specifically through the regret/fabrication prejudice.

204. *See* GRUBER, *supra* note 31, at 104.

205. *See id.*

206. *Id.* at 104–05.

207. *Id.* at 105.

and no-drop prosecution policies enabled the system to work, regardless of the wishes of victims.²⁰⁸

With this framework, carceral feminists created an essentialist narrative: the one and only reason a victim would choose not to leave an abusive relationship or participate in the carceral system was because of coercive control. In other words, she had no choice because of the abuse she was suffering. The flip side is the expectation that all women experiencing domestic violence would seek criminal penalties if they could. There was a lack of acknowledgement for other reasons, like fearing a racist carceral system and the harm it could cause them or their communities, feelings of genuine love for the person who was abusing them, or any number of concerns a victim might have that would lead them to turn away from the criminal system. Additionally, advocates failed to recognize how their insistence on one right action was a form of coercion itself.²⁰⁹

In addressing the experience of domestic violence survivors in the “family regulation system,”²¹⁰ Professor S. Lisa Washington explains how poor Black mothers in particular are discredited as knowers because of stereotypes and survivor narratives about how and why victims of domestic violence act the way they do.²¹¹ Mothers who have experienced domestic violence are often described as “weak,” “bad mothers” who “favor their partner over their children,” and as “[having] no ‘insight’ into the abusive cycle they are . . . trapped in,” and are “[essentialized] as helpless, passive, and powerless.”²¹²

Professor Washington provides the example of Chelsea Williams, a Black domestic violence survivor who contacted child protective services (CPS) to get assistance for herself and her child when she decided to leave her abusive husband. As Ms. Williams was dependent on her husband for “financial support and housing stability,” she told protective services that she needed “time to find employment, assistance with finding stable housing, and physical and legal separation from her husband.”²¹³ Instead of providing her with those resources, protective services investigated her as well as her

208. *See id.*

209. *See id.* at 106.

210. S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1097 (2022) (describing “family regulation system” as the term to “more accurately describe the surveillance apparatus commonly known as the ‘child welfare system’”).

211. *See id.* at 1108.

212. *Id.* at 1121–22.

213. *Id.* at 1101–02.

husband for child abuse and “refusing” to seek counseling and medication for her child “who the school assumed might be on the autism spectrum and might have attention deficit hyperactivity disorder.”²¹⁴ Ms. Williams explained that she was perfectly open to seeking medication for her son, but did not have health insurance to seek a qualified mental health care provider because her abusive husband did not add her or their child on the insurance plan.²¹⁵ CPS required that she attend “domestic violence and parenting counseling sessions”²¹⁶ for this supposed refusal to seek care for her child.

Ms. Williams was discredited and thus harmed in her “capacity as a knower”²¹⁷ based on stereotypes of mothers who experience domestic violence. As such, she was subject to a testimonial injustice. She “communicate[d] her knowledge to the CPS caseworker. Her specific requests for support were ignored,” while CPS simultaneously mandated services that implicitly suggested that she “was a mother incapable of making an informed and autonomous decision about how best to support herself and her child.”²¹⁸ These suggestions were rooted in the societal narrative stereotypes about mothers who experience domestic violence. Moreover, not only did Ms. Williams suffer the injustice of not being perceived as a “knower,” but she had to secure the help she *really* needed from outside of CPS.²¹⁹

As explained previously, testimonial injustices²²⁰ have a direct impact on dominant hermeneutical resources, which in turn hamper law creation that addresses shortcomings that only marginalized groups can bring to the dominant group’s attention. In the family regulation system, Professor Washington grounds her findings in hermeneutical injustice where parents are excluded from “contributing to the collective understanding of child safety ... [and] domestic violence and its effects on their family ... which ultimately damages our collective pool of knowledge.”²²¹ If survivors were truly treated as knowers or credible knowers, their experiences would be credited as “expressions of knowledge” and there would be greater systemic

214. *Id.* at 1101.

215. *Id.*

216. *Id.* at 1137.

217. *Id.* at 1108; FRICKER, *supra* note 113, at 1.

218. Washington, *supra* note 210, at 1137.

219. *Id.* at 1102.

220. See FRICKER, *supra* note 113, at 7.

221. Washington, *supra* note 210, at 1140.

focus on a family's actual needs, such as "public housing, employment, access to medical treatment, and other structural issues of poverty."²²²

Thus, the treatment of individuals who experienced domestic violence contributes to the cycle of epistemic oppression in the law where (1) system narratives translate into victims not being recognized as knowers or credible knowers; (2) hearers (CPS) fail to accept what has been communicated to them by victims due to prejudice; and (3) our dominant collective knowledge base is robbed of completeness. Complete collective knowledge would be appropriately critical of the "family regulation system" and more attentive to antipoverty policy and practice. Under my epistemic oppression framework, Professor Washington has also called attention to the ways in which hearers resist suppressed knowledge and maintain insufficient, dominant knowledge resources, meaning that (4) laws and policies governing the "family regulation system" perpetuate harms against Black mothers, specifically.

Just as there is no one right way to react to assault, there is no one right way to imagine a bridge between the society that currently exists and the society that could exist. The sex work as work and anti-sex trafficking movements are not unique in struggling with issues of interpersonal violence, commercialization, and competing narratives. The anti-domestic violence movement is familiar with these competing issues of agency, victimization, and responding to survivors' differing experiences. Especially when criminalization is on the table, the anti-domestic violence movement is now fully aware of the unintended consequences to survivors of domestic violence when a criminal system focus is pursued.²²³

Importantly, Ngozi Okidegbe also demonstrates that epistemic injustice occurs when pretrial algorithms are created to address inequality in the carceral system.²²⁴ She argues that the knowledge of subjugated groups is dismissed in developing these technologies, resulting in a reproduction of "existing racial and socioeconomic inequities."²²⁵ One purpose of criminal institutions is to "produce knowledge about public safety that drives criminal legal policies, practices, and outcomes."²²⁶ But these institutions take for granted the assumption that public safety is promoted when people are

222. *Id.*

223. These consequences were not unforeseen by Black and multicultural feminist activists and scholars. More on their perspectives on transformative justice is discussed *supra* Part IV.B.

224. See Okidegbe, *supra* note 97, at 2007.

225. *Id.* at 2010–11.

226. *Id.* at 2025.

incarcerated.²²⁷ When carceral systems produce knowledge, that knowledge is often biased against racial minorities and pushes a narrative of “the public safety benefits of incarceration.”²²⁸ Knowledge produced by communities with “individual and collective lived experiences”²²⁹ interacting with the carceral system is often critical of the benefits of the carceral system. The knowledge produced by these sources should be credited with producing “more just outcomes” for “racially marginalized defendants.”²³⁰

Okidegbe asserts that “knowledge produced by community knowledge sources is a type of subjugated knowledge.”²³¹ This means that the knowledge is “suppressed and largely unacknowledged outside of the epistemic community that created and validated it.”²³² Certain communities are not considered credible, so the knowledge contained within them is not incorporated into the broader community knowledge source.²³³ This discredited knowledge is the same knowledge that has meaningful critiques of the efficacy of the system. Acknowledging these critiques should not be optional.²³⁴

IV. LEGAL CYCLE OF EPISTEMIC OPPRESSION AND THE SEX TRADES

When I was working as an attorney and policy advocate on issues affecting individuals in the sex trades,²³⁵ I was particularly concerned with the silos that existed between movements that shared similar vulnerability factors. There was a coalitional divide between sex worker advocates and anti-trafficking advocates. This divide persisted despite the importance of anti-oppression issues vital to anyone involved in commercial sexual exchange, such as housing, public benefits, criminal system reform, family law, victims’ rights, and more.²³⁶ Even more concerning, there was also a

227. *Id.*

228. *Id.* at 2026.

229. *Id.* at 2052.

230. *Id.* at 2058.

231. *Id.* at 2049.

232. *Id.*

233. *See id.* at 2051–52.

234. Thusi, *supra* note 156, at 2477.

235. This Article uses terminology like “sex trades,” “commercial sexual exchange,” and “sexual economy” synonymously to describe the commercial transaction where sexual services are exchanged for money or anything else of value.

236. Even the term “anti-trafficking” is problematic because it suggests that sex worker advocates are not anti-trafficking (they are).

devaluation of the perspectives and experiences of sex workers²³⁷ and their allies. While coalitional silos are problematic for a host of reasons, it is the second issue that will take center stage throughout this Article.

The issue of silencing racial and gender minority voices and discounting sex worker voices is explored in disciplines both inside and outside of the law. The importance of a unique voice and subjective experience is particularly valued in critical theories like Critical Race Theory, Feminist Legal Theory (Western and Multicultural), Queer Theory, and Disability Theory. Feminist theory has often been criticized for adopting a white, cis-het, Western-focused, middle-class normativity when discussing issues of sex work and trafficking. “Post-colonial feminist theory has challenged the very concept of a universal narrative and the tendency to focus only on gender discrimination while overlooking imperialism, ethnic discrimination, and the capacity of sex workers to exercise agency.”²³⁸ Thus critical theories bring important nuance to a discussion of the epistemic oppression of sex workers.

A. Evolving Narratives and Inclusive, Anti-Oppressive Frameworks

Discussions about the sex trades are often focused on cisgender women and heterosexuality. While these discussions started as a moral concern,²³⁹ many theorists pivoted toward addressing structural inequality and sexualized violence against women.²⁴⁰ There has been a greater acknowledgement in recent years that men, transgender, and gender-nonconforming people engage in and have always engaged in the sex trades and that these debates should not only concern cisgender heterosexual women, but should also focus on structural violence and subjugation of other gender and sexual minorities as well.²⁴¹ This expansion has its own critics, as

237. This Article focuses on the devaluation of perspectives from sex workers. This is not to say that there is never a devaluation of the perspectives of victims of sex trafficking or PARFs. For more on this, see *supra* Part II.

238. Petersen, *supra* note 26, at 123.

239. See, e.g., I. INDIA THUSI, *POLICING BODIES: LAW, SEX WORK, AND DESIRE IN JOHANNESBURG* 26 (2022); Panichelli et al., *supra* note 2, at 514–18 (describing the evolution of the conceptualization of the sex trades from the early 1800s).

240. See Panichelli et al., *supra* note 2, at 519–21.

241. See Jasmine Sankofa, *From Margin to Center: Sex Work Decriminalization Is a Racial Justice Issue*, AMNESTY INT’L (Dec. 12, 2016), <https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue> [<https://perma.cc/XT6C-LCB8>] (“Women of color, especially Black cisgender and

some feminists (colloquially referred to as Transgender Exclusionary Radical Feminists or TERFs) do not believe that non-cisgender women have a place within feminism, because they claim feminism is about cisgender male violence against cisgender women and the structural barriers that serve to subjugate cisgender women.²⁴²

Specifically, as to the importance of sex worker voices, India Thusi argues that when the PARF perspective labels sex workers as victims, they are inherently removing power from sex workers as agents of their own lives because “victims are not empowered. They require help and by definition are subject to the authority of those who deem them helpless.”²⁴³ Professor Thusi specifically discusses the role of voice and the capacity of sex workers as knowers: PARFs deprive “sex workers of aspects of their self-determination and ignor[e] their voices in the debates about what is best for them.”²⁴⁴ Importantly, it is sex workers’ own understandings of their lives and experiences that is in question.²⁴⁵ Ultimately, Thusi too draws the conclusion that PARFs, by claiming that sex workers are “victims of false consciousness” and by “silencing the voices of those sex workers with opposing views,” are actually committing a form of violence.²⁴⁶ This violence results in a policed narrative of life within the sex trades.²⁴⁷

Women’s Studies Professor and Philosopher, Lenore Kuo, commented on the feminist departure from a postmodern methodology, noting that “particularly U.S. feminists ... exclude [sex workers’] voices in the

transgender women, girls, and femmes, are particularly vulnerable. Because sex work and sex trafficking are conflated, interventions are focused on abolishing the sex industry instead of eliminating structural issues that drive exploitation.”).

242. See, e.g., Katelyn Burns, *The Rise of Anti-Trans “Radical” Feminists, Explained*, Vox (Sept. 5, 2019, 11:57 AM), <https://www.vox.com/identities/2019/9/5/20840101/terfs-radical-feminists-gender-critical> [<https://perma.cc/A3WH-UMP7>]; Brief of Amicus Curiae Women’s Liberation in Support of Petitioner at 11–13, *R.G. & G.R. Harris Funeral Homes, Inc., v. Equal Emp. Opportunity Comm’n*, 139 S. Ct. 1599 (2019) (No. 18-107), *consolidated sub nom. Bostock v. Clayton County*, 590 U.S. 644 (2020) (disputing the term “transgender” as a “discrete category of persons” and arguing that recognizing “gender identity” is harmful to the broader fight for women’s equality).

243. THUSI, *supra* note 239, at 136 (citation omitted).

244. *Id.*

245. *Id.*

246. *Id.* at 140.

247. See Thusi, *supra* note 156, at 2452–55 (reviewing GRUBER, *supra* note 31, and describing the narrative of “victim” (the ideal victim who is weak and in need of rescuing) and “villain” (the ideal villain is a cisgender man, a stranger hiding behind the bushes) tropes within the anti-violence against women movement. These tropes persist through the anti-sex trafficking movement as victims are young, white, weak, helpless women and villains are dark, shadowy men).

development of prostitution policy if those voices defended prostitution as a legitimate option for women.”²⁴⁸ Kuo detailed a variety of feminists who have commented on this silencing, such as Shannon Bell (“[p]ostmodern Feminism has shown that the [dominant strands of feminism] can oppress women of difference through the appropriation or occlusion of their spaces and the silencing of their voices”)²⁴⁹ and Gail Pheterson (“[n]ever have [sex workers] been legitimized as spokespersons or self-determining agents, not by those who defend them against male abuse and not by those who depend upon them for sexual service”).²⁵⁰

The exploration of voice, narrative, and inclusion in the development of policy impacting people with sex trade experience (STE) is particularly important because, in recent years, there has been an increased interest in the United States to focus antitrafficking policy around the Swedish end demand model of prostitution criminalization. This model is often presented as protecting presumptively cisgender women sellers of sex who are presumed to be victims of abuse by presumptively abusive men who buy sex.²⁵¹ It also assumes that any marketplace for sex is inherently harmful to women and cannot be rehabilitated.²⁵² Thus, even if men are not abusive per se, engaging in the transaction itself is abusive.²⁵³

There has been much criticism over the years from SAWRFs about the harmful criminal consequences following arrests and convictions for prostitution and related criminalized activities.²⁵⁴ In response, many United States PARFs have called for the adoption of the Swedish end demand model of criminalization that does not directly criminalize individuals who sell sex, but that criminalizes the market for sex by criminalizing those who solicit sex (often referred to as buyers or customers). Such a law is seen as a compromise and more “equitable” by its proponents.²⁵⁵

248. LENORE KUO, PROSTITUTION POLICY: REVOLUTIONIZING PRACTICE THROUGH A GENDERED PERSPECTIVE 20 (2002).

249. *Id.*

250. *Id.*

251. *See supra* Part I.

252. *See supra* Part I.

253. *See supra* Part I.

254. *See* Belkys Garcia, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 CUNY L. REV. 161 (2005); Jerald L. Mosley, *Decriminalizing Prostitution in Recognition of Fundamental Rights*, L.A. LAW. 36, Mar. 2016, at 36.

255. Although proponents of this “Equality Model” argue that it “promot[es] gender equality,” it overlooks sex workers’ agency by, for example, defining them as “prostituted persons”

This Article contends that, despite the global perspective that Sweden is an especially feminist country,²⁵⁶ the Swedish end demand model is typically adopted in ways that commit epistemic harms. Some people with STE, particularly SWAWRFs, view the end demand model as harmful.²⁵⁷ SWAWRFs historically have not been meaningfully included in policy making. They are rejected as noncredible sources of knowledge, meaning that their experiences are dismissed and their input excluded to the detriment of our collective laws and policies.²⁵⁸ This Article argues that the process of silencing the relevant voices of sex workers and their allies is a key part of the cycle of epistemic oppression²⁵⁹ that should be considered incompatible with feminism.²⁶⁰

As demonstrated above, there are a few ways in which the voices of survivors of violence are minimized or discounted. This Article is concerned with two. One way is by discounting the credibility of a survivor. Because of the trauma they have suffered, survivors exhibit behaviors that those who are not trauma-informed perceive as dishonest or misleading. The other way is by dismissing their narrative, which is grounded in personal experience,

and “victims of a crime.” See, e.g., *What Is the Equality Model?*, EQUAL NOT EXPLOITED, <https://www.equalitymodelus.org/why-the-equality-model> [<https://perma.cc/CY2E-D8TH>] (“The Equality Model was developed by listening to survivors of the sex trade At the heart of this model is the[] belief that treating prostituted or trafficked persons as victims of a crime, and not criminals themselves, is a critical first step”) (emphasis added).

256. See, e.g., Andrew Soergel, *Minding the Nordic Inequality Gap*, U.S. NEWS (Jan. 16, 2020, 6:59 AM), <https://www.usnews.com/news/best-countries/articles/2020-01-16/gender-equality-perceptions-versus-reality-in-nordic-countries> [<https://perma.cc/KL4C-79DU>] (indicating the perception of gender equality being the strongest in Sweden, Netherlands, Denmark, and Norway); Viola Gad, *Feminism Comes to the Forefront of Swedish Politics*, TIME (Sept. 12, 2014, 12:10 PM), <https://time.com/3319652/feminism-comes-to-the-forefront-of-swedish-politics> [<https://perma.cc/KWJ8-V33L>] (reporting that Sweden ranks as number 4 in the 2013 Global Gender Gap Index, making it one of the most equitable countries “in the areas of economics, politics, education and health”).
257. See generally MOLLY SMITH & JUNO MAC, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 140–75 (2018) (discussing the lived experiences of sex workers under the end demand model).
258. See *supra* Part III.
259. While epistemic injustice can happen to anyone, the focus here is the way in which it coincides with arguments about sex work as violence and the ways that it reproduces violence for the people that “end demand” proponents are trying to help—primarily, women.
260. Ample contributions by postcolonial theorists have questioned whether subaltern voices can ever really be heard, given broader structural inequality. They too raise questions about “epistemic violence” and the silencing of voices on the margins. See, e.g., Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 271 (Cary Nelson & Lawrence Grossberg eds., 1988).

because it deviates from the dominant PARF narrative. In the next Subpart, this Article explains how the cycle of epistemic oppression occurs in the context of sex work and sex trafficking law and policy.

B. Methodology

Drawing on testimony from a D.C. Council²⁶¹ hearing considering whether to fully decriminalize consensual commercial sexual exchange (and continue to criminalize trafficking),²⁶² this Article incorporates the firsthand accounts of people who identify as current or former sex workers in order to highlight their spoken wishes on this issue. It also incorporates the testimony of trafficking survivors, which is particularly important given the lack of a static boundary between choice, circumstance, and coercion in the sex trades. While the written and spoken testimony was public, this Article either anonymizes or merely uses initials in identifying the individuals, unless those individuals have been particularly vocal in the media.²⁶³ Although the hearing was about a local level policy change, it makes for a diverse sample of perspectives because both the SWAWRF and PARF perspectives were well represented by local and out-of-state voices.²⁶⁴ This Article also incorporates the findings from nongovernmental organizations, as appropriate, as many of them serve clients in the sex trades.

As mentioned in the introduction, I was involved in advocacy in the Washington, D.C. area. Not only was I involved in a SWAWRF coalition,²⁶⁵ but

261. This forum is equivalent to a “state” legislature, as D.C. is not a state.

262. The report is available at *Public Hearing on B23-0318 Before the D.C. Council Comm. on the Judiciary & Pub. Safety*, 23rd Council (D.C. 2019), https://lims.dccouncil.gov/downloads/LIMS/42712/Hearing_Record/B23-0318-Hearing_Record1.pdf?Id=129733 [<https://perma.cc/F2GY-9QTN>].

263. Most people testifying probably were not expecting their words to be memorialized in a scholarly article. For a variety of reasons, it can be dangerous for people with STE to speak publicly about their experiences.

264. While the out-of-state voices are helpful in this instance because they contribute to a more diverse set of opinions, it also irritates me as a former policy advocate who remembers how packed a room would get when PARFs, in particular, would show up to antitrafficking task force meetings when the issue of decriminalization was on the table. They would show up in full force, not for housing, not for economic justice, not for criminal record expungement, not for employment, but just to oppose full decriminalization. Given their testimony about the need for resources to help keep vulnerable people from entering the sex trade and to help create exit ramps from the sex trade, their absence was glaring.

265. This is known as the Sex Worker Advocate Coalition (SWAC). *Sex Worker Advocates Coalition*, HONORING INDIVIDUAL POWER & STRENGTH, <https://www.hips.org/sex-worker-advocates-coalition-swac.html> [<https://perma.cc/M55U-ULFN>]. I am still a member of this coalition, though I have not participated much since joining academia.

I was also a co-chair of the D.C. Human Trafficking Task Force Policy Working Group,²⁶⁶ as well as several other coalitions working on domestic and sexual violence issues in D.C. and northern Virginia. Membership in these groups would vary; some were incredibly siloed, while others had ample mixing. I share this history to indicate where any personal biases could lie, but also to demonstrate my attempts to focus on the legal reform solutions from the many perspectives I heard. Despite the disagreements around whether and to what extent the carceral system should be involved in responding to domestic violence, sexual violence, or commercial sexual exchange, there seemed to be agreement that antipoverty policies enhance access to housing, income, and other subsistence needs. Consequently, antipoverty policies were a widely shared priority in many spaces.

The narrative data I collected came from written testimony on the Community Safety and Health Amendment Act of 2019, submitted to the D.C. Council Committee on Judiciary and Public Safety on or around the October 17, 2019 hearing date.²⁶⁷ Testimony in support of or in opposition to D.C. Council bills are made available on the D.C. Council website as a matter of routine practice. Any and all testimony delivered in written form (no matter how lengthy and scholarly or short and informal) is incorporated into a report and uploaded to the site in connection with the corresponding bill and hearing. I incorporated written testimony and not oral, as the hearing was famously fourteen hours long.²⁶⁸ Most people who appear to testify orally also submit written testimony. Some people feel more comfortable submitting written testimony instead of appearing in person. Others do not have the time to appear in person and wait indefinitely, so they submit written testimony only. Given the barriers to giving oral testimony, it seemed

266. This task force was a collaborative effort between many within D.C. advocacy communities but was typically led and hosted by the U.S. Attorney's Office for the District of Columbia. As such, it clearly had carceral goals. *D.C. Human Trafficking Task Force*, U.S. ATT'Y'S OFF., D.C. (June 9, 2022), <https://www.justice.gov/usao-dc/human-trafficking> [<https://perma.cc/ZYQ8-V49P>] (describing that the main goals of the task force include increasing prosecutions and collaborations between law enforcement and nongovernmental organizations).

267. The October 17, 2019 record was open for submissions until November 1, 2019. See Notice of Public Hearing on Bill 23-0318, the "Community Safety and Health Amendment Act of 2019", 66 D.C. Reg. 012348 (Sept. 20, 2019). All references to testimony in this Article refer to the October 17 hearing date.

268. See Marissa J. Lang, *D.C. Effort to Decriminalize Sex Work Won't Move Forward After 14-Hour Hearing*, WASH. POST (Nov. 17, 2019, 5:40 PM), https://www.washingtonpost.com/local/dc-politics/dc-effort-to-decriminalize-sex-work-wont-move-forward-after-tense-14-hour-hearing/2019/11/16/b7c77358-06ef-11ea-ac12-3325d49eaca_story.html [<https://perma.cc/5XH9-65SJ>]

that the written testimony would provide the best opportunity to find helpful firsthand accounts.

I searched all 3083 pages of the record for testimony by (a) people who identified as having personal experience in the sex trades and (b) service providers who work directly with people who have experience in the sex trades. Occasionally, there was a particularly interesting perspective from a community member or nondirect services advocate that seemed important enough to note. Such perspectives are used sparingly, and references are descriptive enough to allow the reader to identify these perspectives that deviate from personal STE. There were many submissions from people with STE and not all of those made it into this Article. Despite my inability to include all STE testimony in this Article, I chose my examples in a manner that captures the broad themes reflected in the many STE submissions. These selections demonstrate a diversity of sexuality, gender, (dis)ability, and race. Finally, I privileged the contributions of those who supported the full decriminalization of commercial sexual exchange. It is my contention that the full decriminalization perspective by sex workers and SAWWRFs is wrongfully devalued in policymaking. As this Article demonstrates, their contributions are invaluable. Consider some examples.

The United States has a long history of criminalizing prostitution. This Article focuses on the ways in which PARFs perpetuate epistemic and other harms against sex workers. PARFs generally argue that all prostitution is forced.²⁶⁹ This is also typically the viewpoint adopted by those advocating for an “end demand” model. Under this viewpoint, prostitution is synonymous with human trafficking²⁷⁰ and women only enter into prostitution under some sort of duress or coercion—child abuse, coercion, kidnapping, a toxic society embedded with rape culture, or a lack of options for work. Believers

269. See CARISA R. SHOWDEN, CHOICES WOMEN MAKE: AGENCY IN DOMESTIC VIOLENCE, ASSISTED REPRODUCTION, AND SEX WORK 137 (2011) (“Abolitionist, or radical, feminists argue that all sex work is inherently a form of violence against women.”); Heleen de Jonge van Ellemeet & Monika Smit, *Trafficking for Exploitation Outside the Sex Industry*, in *TRAFFICKING AND WOMEN’S RIGHTS* 219, 221 (Christien L. van den Anker & Jeroen Doornik eds., 2006) (“In this []abolitionist or prohibitionist[] view, the phenomenon of [sex work] is lumped together with the one of [trafficking in human beings].”); KUO, *supra* note 248, at 38–39 (“Radical feminists . . . posit[] that ‘normal’ sex has been constructed on a continuum of violence with rape, murder, and other sexual abuse.”); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 13 (1993); Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 272–74 (2011) (discussing competing views on whether sex work is a result of lacking individual choice).

270. See Thusi, *supra* note 27, at 185.

of this view argue that no one would choose to be a sex worker.²⁷¹ If sex workers could leave the sex trade, they would. The fact that they do not leave means that they cannot leave, which proves that it is a form of forced labor and a form of rape. Many PARFs argue, above all, that sex work does not allow women to keep their dignity. Sex work is, in and of itself, exploitation and a denial of dignity. They want to criminalize prostitution (or at least, the purchase of sexual services) because as long as it continues, women will never realize their full human rights.²⁷²

So far, PARFs have succeeded in having sex work and trafficking conflated in the law. Prostitution is fully criminalized in the United States, except for certain counties in Nevada.²⁷³ This means that the entire sexual transaction—selling, buying, managing, brothel keeping, and more—are all criminal activities in every state. Moreover, as demonstrated in the following paragraphs, nonprofit organizations who espouse the PARF narrative have been more likely to receive funding, while those espousing the SWAWRF narrative are either less likely to receive funding or are barred from certain funding sources altogether.

When laws criminalizing prostitution have been challenged as violating the constitutional rights of sex workers, courts have indicated that states have a legitimate interest in criminalizing sex work because a large number of sex workers have been subject to violence and sexual assault.²⁷⁴ Additionally, since courts have not found a fundamental right at issue, they only have to consider challenges to these laws under rational basis review and reject sex workers claims that “the criminalization of prostitution makes erotic service providers more vulnerable” to violence.²⁷⁵ The conflation of sex work and sex trafficking—the perspective that all sex work is violence

271. See *Public Hearing on B23-0318*, *supra* note 267, at 2956 (statement of C.W., Associate Pastor at The Porch Community Church) (“For the sake of our daughters, sisters, mothers, and all women, please do not legalize prostitution in Washington DC. No little girl wants to grow up to be a prostitute so let’s create a culture where she isn’t pressured to do so.”). Interestingly, one person “J.,” who appears to be a community member, submitted one line of testimony that “[d]ecent parents should not want their son to be with ANY prostitute!” *Id.* at 2940.

272. See, e.g., *id.* at 2375 (statement of C.P., D.C. resident) (“The subtext of [full decriminalization] is that men are entitled to buy sex. Normalizing something as a commercial transaction creates a presumption that people (mostly men) are entitled to buy that thing (sexual access, mostly to vulnerable women and youth) if they can afford to pay.”).

273. Butler, *supra* note 11, at 354.

274. See, e.g., *Erotic Serv. Provider Legal Educ. & Rsch. Project v. Gascon*, 880 F.3d 450, 457–58 (9th Cir. 2018), *amended by* 881 F.3d 792 (9th Cir. 2018).

275. *Id.* at 458.

against women—is reflected in courts’ reasoning that interpersonal violence toward sex workers indicates that sex work is inherently violent. While these criminal laws were codified before the modern PARF movement,²⁷⁶ the PARF theoretical framework keeps these laws from being overturned.

Federal law also maintains this PARF narrative. The Trafficking Victims Protection Act defines both “sex trafficking”²⁷⁷ and “severe forms of trafficking in persons.”²⁷⁸ Sex trafficking itself merely refers to “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”²⁷⁹ A severe form of trafficking legally requires that someone participate in commercial sex through “force, fraud, or coercion,” or that they be under the age of eighteen.²⁸⁰

When FOSTA-SESTA²⁸¹ was passed, it also codified a conflation of sex work and sex trafficking to make clear that Section 230 of the Communications Decency Act²⁸² does not protect owners or managers of interactive computer services from liability when they “promote or facilitate the *prostitution* of another person.”²⁸³ A violation of FOSTA-SESTA leads to an aggravated violation if the owner of an interactive computer service intends to “promote[] or facilitate[] the *prostitution* of 5 or more persons” or “act in reckless disregard of the fact that such conduct contributed to sex trafficking.”²⁸⁴ In FOSTA-SESTA, promoting prostitution does not indicate that “force, fraud, or coercion” must take place in order to result in or lead to sex trafficking. In other words, according to the text of the law, promoting prostitution is equivalent to sex trafficking, regardless of whether force,

276. See RUTH ROSEN, *THE LOST SISTERHOOD: PROSTITUTION IN AMERICA 1900–1918* 36 (1982) (noting how after 1917 “the law had recognized a class of [sex workers] who would constitute a social group of criminal outcasts”).

277. 22 U.S.C. § 7102(12).

278. § 7102(11).

279. § 7102(12); see also 22 U.S.C. § 7102(4) (defining a “commercial sexual act” as merely “any sex act on account of which anything of value is given to or received by any person”).

280. § 7102(11)(A).

281. Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), Pub L. No. 115-64, 132 Stat. 1253 (2018) (codified as amended in scattered sections of 18 and 47 U.S.C.); Stop Enabling Sex Traffickers Act (SESTA), S. 1683, 115 Cong. (2017) (incorporated into FOSTA); Butler, *supra* note 11, at 358. The Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) were passed by Congress and signed into law by President Trump in April 2018. SESTA was incorporated into FOSTA.

282. 47 U.S.C. § 230.

283. 18 U.S.C. § 2421A(a) (emphasis added).

284. § 2421A(b) (emphasis added).

fraud, or coercion was actually present. Additionally, while engaging minors in prostitution is trafficking by definition, FOSTA-SESTA is not limited to minors. As such, the promotion of prostitution—not sex trafficking—involving adults (which, according to SWAWRFs, can occur due to choice or circumstance) is enough to expose an interactive computer service provider to civil and criminal liability. Thus, FOSTA-SESTA presumes that all sex work is harmful—in line with the PARF narrative.

Finally, the efforts to decriminalize sex work have been hampered by barriers to access to funding. Nonprofits who “do not take an abolitionist approach to prostitution” are denied access to government sources of funding.²⁸⁵ This commitment to the PARF narrative is found in National Security Presidential Directive 22: Combatting Trafficking in Persons (NSPD 22),²⁸⁶ the funding restrictions in the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003),²⁸⁷ and the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Leadership Act of 2003),²⁸⁸ among others.²⁸⁹

NSPD 22 advanced an “abolitionist approach to trafficking in persons” whereby “any related activities, including pimping, pandering, or maintaining brothels” are “inherently harmful and dehumanizing” and contribute to the existence of trafficking.²⁹⁰ This language specifically mirrors the PARF theoretical perspective of sex work as an inherent form of violence against women and something that must be abolished (with law enforcement as a key part of the abolition strategy).²⁹¹

TVPRA 2003 contained provisions that clearly funded organizations adopting the PARF narrative. It expressly placed a limitation that funds allocated under the TVPRA could not be used by recipients to “promote, support, or advocate the legalization or practice of prostitution.”²⁹² Similarly,

285. Eartha Melzer, *Trafficking in Politics*, IN THESE TIMES (Mar. 14, 2005), <https://inthesetimes.com/article/trafficking-in-politics> [<https://perma.cc/KK4Z-8SEA>].

286. National Security Presidential Directive/NSPD 22, Memorandum from the President on Combatting Trafficking in Persons (Dec. 16, 2002) [hereinafter NSPD 22], <https://irp.fas.org/offdocs/nspd/nspd-22.pdf> [<https://perma.cc/SD8W-RMWQ>].

287. Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 § 7, Pub. L. No. 108-193, 117 Stat. 2875, 2884–86 (codified at 22 U.S.C. § 7110(g)).

288. United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Pub. L. No. 108-25, 117 Stat. 711 (codified at 22 U.S.C. §§ 7601–7682).

289. Thusi, *supra* note 156, at 2458 (discussing the racial panic at the foundation of the Mann Act of 1910 or the “White Slave Traffic Act”).

290. NSPD 22, *supra* note 286, at 2.

291. *See id.* at 5 (“Local law enforcement officers play a crucial role in identifying trafficking in their jurisdictions.”).

292. TVPRA § 7.

the Leadership Act of 2003 contained congressional findings mirroring the PARF theoretical framework conflating sex work with “sexual victimization” and asserted that it is “degrading to women and children and it should be the policy of the United States to eradicate such practices.”²⁹³ It also found the “sex industry” to be one of the “additional causes of and factors in the HIV/AIDS epidemic.”²⁹⁴ As this law sought to eradicate HIV/AIDS, it mandated that part of the strategy would be “eradicating prostitution” and “the sex trade.”²⁹⁵ As such, similar to the TVPRA 2003, it prohibited providing funds to “promote or advocate the legalization or practice of prostitution or sex trafficking.”²⁹⁶

The Leadership Act of 2003 contained a clause known as the “anti-prostitution pledge” forbidding the use of federal funds by an “organization that does not have a policy explicitly opposing prostitution.”²⁹⁷ The clause was ruled unconstitutional by the U.S. Supreme Court²⁹⁸ in 2013.²⁹⁹ It was ruled unconstitutional not because the Court disagreed with the PARF narrative, but because the requirement to “explicitly agree with the Government’s policy to oppose prostitution” violates the First Amendment.³⁰⁰ “[F]reedom of speech prohibits the government from telling people what they must say.”³⁰¹ The anti-prostitution pledge went well beyond a selection requirement (forbidding funds from being used for promotion or advocacy of the legalization of prostitution ensures that much).³⁰² Rather, it required organizations “to pledge allegiance to the Government’s policy of eradicating prostitution.”³⁰³

Thus, the cycle of epistemic oppression is completed where the prejudices against sex workers leads to the sidelining of their knowledge.

293. § 2(23) (codified at 22 U.S.C. § 7601).

294. *Id.*

295. § 101(a)(4) (codified at 22 U.S.C. § 7611).

296. § 104A(e).

297. § 104A(f).

298. *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 221 (2013).

299. Fun fact: I was present in the SCOTUS courtroom for the very first time in my life to hear opinions handed down. I consider it extremely fortuitous that this was one of the opinions I heard delivered straight from the horse’s mouth.

300. *All. for Open Soc’y Int’l, Inc.*, 570 U.S. at 213.

301. *Id.*

302. *Id.* at 217–18 (“The first [clause]—unchallenged in this litigation—prohibits Leadership Act funds from being used ‘to promote or advocate the legalization or practice of prostitution or sex trafficking.’ 22 U.S.C. § 7631(e). The Government concedes that § 7631(e) by itself ensures that federal funds will not be used for the prohibited purposes.”).

303. *Id.* at 220.

Their contributions are dismissed and fail to shape the law. The result is that the adoption of laws is guided by a framework devoid of SWAWRF knowledge. These examples illustrate how the PARF theoretical framework has been heard by policymakers, recognized as legitimate, and used to create or further entrench a particular legal framework.³⁰⁴ Sex workers have made it clear that they have often been left out of policymaking. When they attempt to enter policymaking, their views are dismissed, and that harm results from the failure to accept them as credible sources of useful information.³⁰⁵ The SWAWRF arguments for decriminalizing prostitution continue to be ignored, denied, and pathologized. Sex workers are dismissed as knowers and their knowledge is sidelined. As such, the SWAWRF perspective is centered in this Article.

C. Epistemic Harm Resulting From Discounting Sex Workers

This Article opens with the derogatory terminology that is directed toward sex workers and their allies. Unfortunately, the derogatory terminology highlighted reflects the way that PARFs perceive people with STE who support the full decriminalization of prostitution. While PARFs have been a part of making positive shifts to the dominant legal epistemic resources in cases of domestic and sexual violence, they have been part of the problem when discussing people with STE who support full decriminalization.

Underlying those derogatory terms is a belief that there is only one way to experience the sex trades: as a victim. Scholars like Elizabeth M. Schneider, Angela Harris, Martha Mahoney, Dorothy Roberts, and Kathryn Abrams have argued for breaking free of dichotomies and adopting the messy and complex accounts of human nature. For example, an unnuanced account of women caught in the false dichotomy of only victims or only full agents does a disservice to them. We should “reject simple dichotomies, . . . learn to accept contradiction, ambiguity, and ambivalence in women’s lives, and explore

304. PARFs may argue that their framework has not worked beyond prostitution. For example, one of the main debates in the feminist “sex wars” was about pornography. Courts have protected pornography under the First Amendment. *See* *Am. Booksellers Ass’n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff’d*, 475 U.S. 1001 (1986). It is prostitution and not pornography, however, that is the focus of this Article. In a later piece, I may explore how the SWAWRF position has evolved since *American Booksellers*.

305. For a discussion of harm resulting from FOSTA-SESTA, see Butler, *supra* note 11, at 358–60.

more ‘grays’ in our conceptions of women’s experience.”³⁰⁶ Of particular note here, it is Critical Race Feminists who have often pointed at the complexity of human experience and oppression from both private and state actors. India Thusi has made significant contributions to this literature, specifically with regard to the experiences of sex workers:

The monolithic narrative of the sex worker as victim, without appreciation of the nuances of various sex worker life situations, variations between different classes of sex workers, or disregard for the colonial or post-colonial contexts of particular sex workers, serves only to benefit discussants promulgating a particular moral agenda, colored by their perceptions of appropriate female conduct.³⁰⁷

This is not to say that sex workers are not or cannot be victims. Rather, this unnuanced account of sex workers as always victims or lacking agency is problematic. Any narrative that refuses to recognize the complexity of victimization, exploitation, agency, and state violence is incomplete and runs the risk of committing forms of epistemic injuries.

This complexity of human experience is reflected in the testimony of people with STE. The role of interpersonal and state oppression is reflected in sex workers (and sex trafficking survivors’) firsthand accounts of their experiences in sex work. These accounts center stories of poverty and “othering” enforced by the criminal system. Many people enter the sex trades because of barriers to the formal economy, housing, education, and other necessities. These barriers could be because they have criminal records, are immigrants, face discrimination because they are part of the LGBTQ community, suffer racial discrimination, and more. What is at the heart of sex worker testimony (including sex workers who have been open about histories of human trafficking and exploitation) is survival and resistance:

- [A]ll I was trying to do was survive, take care of my kids and continue living free to be me I held jobs. Low wage, dead end jobs that were very discriminatory [against me as a Black, transgender woman] I went full time on Sex Work to survive.”³⁰⁸

306. Elizabeth M. Schneider, *Feminism and the False Dichotomy of Victimization and Agency*, 38 N.Y.U. L. REV. 387, 397 (1993).

307. Thusi, *supra* note 27, at 218; *see also* THUSI, *supra* note 239, at 140.

308. *Public Hearing on B23-0318*, *supra* note 262, at 331 (statement of Tamika Spellman, a HIPS Advocacy Associate).

- [I did sex work for the] “liberty and money but never thought of it as sex work—simply meeting my needs from those who were interested in me.”³⁰⁹
- [I started sex work when I was] “20 years-old and homeless. I needed money for body wash, makeup, food, transportation and other things that made me feel a little more accepted in the world we live in.”³¹⁰
- “I have been rejected from receiving disability benefits and have lost my appeal, so there truly is no other way for me to survive in an expensive world without sex work. I have several chronic health issues that are degenerative, so my body is only ever going to become more disabled from here, and any hopes to work in any other jobs are behind me. Please take into consideration that a very substantial percentage of sex workers are disabled or chronically ill and cannot work in any other capacity.”³¹¹
- “[I]t is the best choice for me out of a host of bad choices. I am mildly disabled but not eligible for social security disability benefits. I find that it is devastating for my health to work a 40 hour a week job, and part time work does not pay a living wage I do not have an education outside of a high school degree as my parents could not afford to send me to college, I could not fathom going into debt for it I am fortunate to be able to pay for an apartment, food and healthcare with the wages I earn through full service sex work.”³¹²
- [I work full time doing retail paying] “full commission, no base.” Some months were stable, and others “I could barely pay my half of the rent when sharing an apartment with another. The sex work brought my income up to where I was comfortable enough to eat, pay my bills, and have the luxury of shopping for thrift store clothes without fear of eviction.”³¹³

309. *Id.* at 2331 (statement of J.S., a gay Black man).

310. *Id.* at 2344 (statement of B.C., an Afro-Latina transgender woman).

311. *Id.* at 2920 (statement of Anonymous, a disabled sex worker).

312. *Id.* at 2921–22 (statement of Anonymous, a white, cisgender, disabled independent sex worker).

313. *Id.* at 2945 (statement of Anonymous, a sex worker from Florida (gender undisclosed)).

One transgender survivor of human trafficking stated that traffickers understand “systemic marginalization” and “exploit vulnerabilities and structures” that result:

“Convictions for quality of life infractions are barriers to housing and employment When you are denied housing, denied jobs, denied access to programs for convictions, drug history, and being a minority, you have no other options beyond working in informal economies or die.”³¹⁴

These contributions from people with STE could be used to de-essentialize the narrative of life with STE and shape the law accordingly. Yet despite these contributions mirroring previous contributions by sex workers, these epistemic resources have not pierced the dominant narrative due to the cycle of prejudicial epistemic oppression.

As discussed previously, SWARWFS and PARFS disagree on the appropriate legal and societal interventions to sex work.³¹⁵ Nobody disagrees that many individuals enter into sex work as a last resort,³¹⁶ that it can be a racist profession,³¹⁷ and may attract only certain people: the people with few other viable options.³¹⁸ Alternatively, some people who choose sex work may be particularly privileged with high education, high earning capacity, or other factors that make it more of a free “choice” than for others.³¹⁹ But SWARWFs see sex work as a legitimate form of labor. Many sex workers that are interviewed also say that they prefer sex work to other

314. *Id.* at 3060 (statement of N.P., a transgender survivor of human trafficking).

315. See KUO, *supra* note 248, at 39 (describing the views of “[s]ex radical feminists”); SHOWDEN, *supra* note 269, at 143. On sex radical feminists, Showden states: “[w]here [sex work] can be chosen, allowing it to be so is to permit women sexual autonomy and sexual experimentation while acknowledging that ‘dominant male sexual practice is . . . in dire need of therapy.’ One goal of such therapy is a reduction in the levels of sexual violence against women [A]buse is not inherent in sex work itself but is instead a function of how power currently works in a patriarchal culture.” *Id.* For sex-as-work feminists, Showden says: “most labor is exploitative, and that for sex workers, poverty and the low-paying jobs that they can obtain are more alienating than providing sex to strangers [W]hat needs to be challenged are the conditions under which sex workers labor, not the legitimacy of sex work or sex workers themselves.” *Id.* at 147.

316. See *Black Women and Prostitution*, SEX WORKERS EDUC. NETWORK, <http://www.bayswan.org/Racism.html> [<https://perma.cc/7M3Z-HVRH>] (discussing the impact of racism on Black women in the sex industry and stating “[f]or many women, because of poverty and lack of alternatives, prostitution has been their only option, yet the system targets Black women for punishment”).

317. See ANGELA JONES, CAMMING: MONEY, POWER, AND PLEASURE IN THE SEX WORK INDUSTRY 183–202 (2020).

318. See *Black Women and Prostitution*, *supra* note 316.

319. See *id.*

forms of labor.³²⁰ The work can be violent,³²¹ but is not inherently violent. Instead, sex work is only as exploitative as any other work in a capitalist society.³²² It is only as violent as any other form of work without protections for workers. And the law can make it safer and address an oppressive society that makes sex work a necessary survival tool for so many.

Earlier, this piece referenced sources that support the claim that sex workers face more difficulty reporting assault.³²³ While there is somewhat of a shift occurring, dominant epistemic resources view sex workers as less than human or objects that are unrapable.³²⁴ Society often views sexual assault as just “part of the job” for sex workers.³²⁵ Some may not even report due to fear that they will not be believed, will risk arrest and prosecution for engaging in sex work, or risk further sexual assault by police³²⁶ This demonstrates a problem with the dominant epistemic resources whereby sex workers reporting assault can be dismissed.

Similar to the narratives underlying carceral feminism—where a victim of domestic violence is expected to leave and support criminal penalties for an abuser—PARFs expect those involved in selling sexual services to support the elimination of sex work, particularly through carceral means. If they do

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320. See Natasha Burge, *Selling Sex: How Abolitionist Feminists Hurt Sex Workers*, CONDUCTIVE CHRON. (March 3, 2011, 7:15 PM), <http://cchronicle.com/2011/03/selling-sex-how-abolitionist-feminists-are-hurting-sex-workers> [https://perma.cc/8SVC-KA9K] (“[Daria] says she chose to sell sex after seeing her three older sisters barely making ends meet working as maids and cooks. ‘I didn’t want to grow old looking in toilets. I wanted to travel and I wanted to have money.’”); SHOWDEN, *supra* note 269, at 150 (“The fact is, there’s a livable wage to be made in the sex business, and we decide when, where and with whom we’ll do what.”); GILLIAN ABEL, LISA FITZGERALD & CHERYL BRUNTON, PROSTITUTION L. REV. COMM., THE IMPACT OF THE PROSTITUTION REFORM ACT ON THE HEALTH AND SAFETY PRACTICES OF SEX WORKERS 77 (2007). But see ELAINE MOSSMAN & PAT MAYHEW, KEY INFORMANT INTERVIEWS: REVIEW OF THE PROSTITUTION REFORM ACT 2003 53 (2007) (describing that from the perspective of a brothel owner, the women want to work “straight job[s]” but don’t earn as much that way).
321. See Stephanie Church, Marion Henderson, Marina Barnard & Graham Hart, *Violence by Clients Towards Female Prostitutes in Different Work Settings: Questionnaire Survey*, 322 BRITISH MED. J. 524 (2001).
322. See *Public Hearing on B23-0318*, *supra* note 262, at 2391 (statement of M.S., a nonbinary, queer, disabled person) (“I recently graduated with my masters degree and have a decade of professional experience in my field of study, yet I have been consistently degraded in non sex work jobs in my field because of my disabilities. I can assure the council that there is nothing inherently degrading about sex work in comparison to other professions.”).
323. See von Talge, *supra* note 181 and accompanying text.
324. See u/gothmarilyn, *supra* note 200 and accompanying text.
325. See, e.g., Farley & Kelly, *supra* note 200, at 29; *Philly Judge Criticized for Rape Decision*, *supra* note 200.
326. See THUKRAL ET AL., *supra* note 200, at 54.

not, they are either broken or an enemy. Moreover, as allegedly broken victims, any traumas they may have experienced in their lives are used to pathologize them (unless they are supportive of continued criminalization) and undercut their contributions to our collective knowledge base. This Subpart highlights sex workers as a unique and valuable source of knowledge that should be taken seriously. What follows are people with STE, primarily sex workers, describing how they are portrayed:

- “Many anti-sex worker advocates and sex worker exclusionary feminist[s] will vehemently tell you that I am a victim, that I suffer from false consciousness and that I need to be saved from an inherently violent industry. When these narratives are placed upon me, you are denying my agency and strengthening a criminalized framework that renders me fearful and vulnerable to violence from potential clients, the state and community members.”³²⁷
- “Everyone on the internet seems to have so much to say about what I or others engaging in sex work want in policy and legislation, it reminds me of when cis men debate abortion rights or cis people debate bathroom policy. So much outcry over our locally backed sex worker led campaign.”³²⁸
- There is a “false narrative[] about the reality about people in the sex trade [T]he idea that no one could ever possibly be in a position where they would want to get paid or pay for sex.”³²⁹
- When we criminalize the purchase of sex, it “signals that there is something wrong with being a sex worker, that the people who are sex workers are wrong, damaged, or immoral [S]o many people are targeting us day and night, attacking and murdering us Even though sex workers are looked at as disgusting and immoral, look at us as we truly are: we are survivors and business savvy people with a lot to offer the world.”³³⁰

Secondly, many sex workers are very clear that their interactions with the state have been exploitative and violent. Sex workers have argued that

327. See *Public Hearing on B23-0318*, *supra* note 262, at 2305 (statement of G.G., a queer Black sex worker).

328. *Id.* at 2321 (statement of E.T., a transgender Latina sex worker).

329. *Id.* at 2331 (statement of J.S., a gay Black man).

330. *Id.* at 2345 (statement of B.C., an Afro-Latina transgender woman).

they are victims of police violence³³¹ and indifference. “[I]t is common knowledge that sex workers are either laughed at or arrested when attempting to report sexual assault that occurred on the job.”³³²

Criminalization . . . , like the prohibition of alcohol, has led to violence and intimidation, driving sex work further underground, making it more stigmatizing and exploitative and creating a climate where sex workers are easy prey to violent men including serial murderers. Hundreds have died as a result. One example is in Los Angeles where over 200 Black women, many of them sex workers, have been murdered or disappeared. The Black Coalition Fighting Back Serial Murders, whose work was in part covered in the HBO documentary *Tales of the Grim Sleeper*, report that the murders were labelled NHI “no humans involved” by police and ignored. Sex workers are considered an easy target because we are stigmatized and criminalized.³³³

Sex workers have indicated that police do not make them feel safe. They feel “threatened and intimidated . . . as do the vast majority of Sex Workers, transgender women, LGBTQ people, immigrants, and Black or Brown folks in general.”³³⁴ Many report sexual pressure or violence at the hands of police.³³⁵ Relatedly, law enforcement are not only police officers, but can also be immigration enforcement or child welfare officials. Consequently, sex workers report family destruction and separation.

For the majority of us who are mothers, pushed into [sex work] by poverty and homelessness, we face terrible repercussions if we get arrested. Our kids can be forcibly taken from us, fostered or

331. *See id.* at 313 (statement of US PROStitutes Collective) (“Criminalization also encourages police corruption, racism and brutality. How many more scandals do we have to hear about of police abusing their powers and taking advantage of sex workers before things change?”).

332. *Id.* at 2921 (statement of Anonymous, a white cisgender sex worker with disabilities).

333. *Id.* at 313 (statement of US PROStitutes Collective).

334. *Id.* at 332 (statement of Tamika Spellman, an HIPS Advocacy Associate).

335. *See id.* at 2891 (statement of C.F., a sex worker) (“I have colleagues who have been pressured into sex with police officers (i.e. essentially raped).”); *id.* at 2952 (statement of N.L., a family member and friend to many sex workers) (“I’ve heard from them that this work is difficult and dangerous, and that one of their biggest threats is the police. In DC, one in five sex workers (or individuals profiled as sex workers) have been approached by police asking them for sex.”).

adopted. For those of us who are immigrant[s], we can get deported and separated from our children.³³⁶

Especially in the current political moment when BIPOC and LGBTQ communities are expressing desires to defund the police and so many are physically harmed or killed as a result of police interactions, it comes as no surprise when sex workers claim that “the safety and well being of Black and Brown people as a whole will never come from the police”³³⁷ or broader structures of criminalization.

Finally, all of these rationales explain why SWAWRFs argue for the full decriminalization of prostitution: partial decriminalization maintains state power over sex workers’ lives and does nothing to resolve the root causes of vulnerability—multifaceted systems of oppression. Many who support full decriminalization indicated that decriminalization and social services (in essence, a divest and reinvest model)³³⁸ were the way to curb state violence, interpersonal violence, and vulnerability factors that pushed people into the sex trades, harmed them while there, and made it difficult for them to leave.

Every cut in welfare, food stamps, housing [and] other benefits means an increase in prostitution and the numbers of sex workers, mainly women of color, going to prison. Communities of color, disproportionately targeted under the prostitution laws and other low-income communities need access to resources and services, not punishment for trying to survive.³³⁹

Additionally,

[D]ecriminalization of both the selling and buying of sex would be the only route to increasing the safety and health of sex workers. *I do not believe this because it would benefit me personally in any way, outside of my own safety and health concerns, but rather because I*

336. *Id.* at 313 (statement of US PROStitutes Collective); *see also id.* at 332 (statement of Tamika Spellman, a HIPS Advocacy Associate) (“[Policing sex workers] has never been an effective law and has in fact been harming people and destroying families over what really amounts to casual sex . . .”).

337. *Id.* at 2321 (statement of E.T., a transgender Latina sex worker).

338. *See id.* at 314 (statement of US PROStitutes Collective) (proposing that we “decriminalize sex work by redirecting those millions of dollars wasted on enforcement into services and resources to improve the health and welfare of the whole community, starting with opportunities for young people, women and others who want to leave the sex industry”); *id.* at 332–33 (statement of Tamika Spellman, an HIPS Advocacy Associate) (arguing that we must “take those funds used for policing Sex Workers and put that back into the community, adding missing services, missing resources and figuring out how to broaden access to existing services . . . solving the gap in services and resources that puts youth at risk of being trafficked since that is the number one root cause of trafficking”).

339. *Id.* at 314 (statement of US PROStitutes Collective).

see how criminalization harms us regularly We must stop the racist and colonialist policing, mass incarceration, enslavement and impoverishment of these communities. Criminalization does nothing to help [B]lack and brown trans sex workers, and only further pushes them and this industry into dark and dangerous corners.³⁴⁰

Sex workers often cite the risks of black market, underground, and illegal work. They state that if any part of the transaction is criminalized, only the most dangerous clients will visit them, they must still work alone and in secret,³⁴¹ they lose out on bargaining power, and continue to have a fractured relationship with the police.³⁴²

[T]he Nordic[] Model is nothing more than de-facto criminalization, or extrajudicial persecution of sex workers. For example, instead of arresting a sex worker for prostitution, law enforcement will notify her landlord and threaten them with pimping charges if they don't evict the sex worker from the premises, thus rendering her homeless and vulnerable [After] FOSTA [m]any of us became homeless as a result, many committed suicide, many experienced violence/death at the hands of 'ugly mug' clients, and many were forced to become street-based workers [M]y income suffered as I scrambled to find new places to advertise where clients could find me.³⁴³

While many sex workers were skeptical of forming positive relationships with the police, one argument for decriminalization is the potential for trust to build if the police do not have a way to harass or arrest sex workers.³⁴⁴

340. *Id.* at 2921–22 (statement of Anonymous, a white cisgender sex worker with disabilities) (emphasis added); *see also supra* Part IV.B.

341. *See id.* at 2945 (statement of Anonymous, a sex worker from Florida). This source explained that when pimping and brothel keeping is still criminalized, it encourages people to work in seclusion because of the need to protect roommates and family members from potential criminal penalties. But according to the source, working in “seclusion risks [their] own safety.” *Id.* Anyone they share a home with is at risk of being “arrested also for profiting from the proceeds of prostitution, trafficking, or pimping even without having prior knowledge of it.” *Id.*

342. *See id.* at 2891 (statement of C.F., a sex worker) (“[C]riminalizing our clients or others . . . is not the answer, as this will still in practice keep our profession in the black market with all the attendant risks.”).

343. *Id.* at 3038 (statement of Anonymous, a white cisgender sex worker).

344. *See id.* at 2405 (statement of L.M., a transgender Latinx former sex worker (arguing that “[d]ecriminalizing sex work [will] build[] trust between the police and sex workers, which allows them to report violence or instances of trafficking,” and that resources can be spent on “the real problem, which is trafficking and violence against sex workers”).

As evidence of the dangers of pushing the sex trade further underground, many pointed to the aftermath of FOSTA/SESTA and the closure of Backpage.com:

Before FOSTA/SESTA [a] girl could post up a[n] ad on [B]ackpage and be able to be lucrative. They were able to better screen their clients. As a result of that passage, you have more workers engaging in street based sex work which is more risky and you cannot screen your clients. The dates are less willing to pay rates that you would have been able to make before FOSTA. In our 2018 Storytelling Project Report, the [common refrain] from sex workers surveyed was that of [losing] 65% of their income, some even more.³⁴⁵

One key piece that SWAWRFs and PARFS can agree on is the need for investments in social services.³⁴⁶ As one sex worker stated, “[u]nfortunately [u]s [t]rans [w]omen [a]s [h]umans [h]ave [t]o [sell our bodies and risk our lives] [j]ust [t]o [m]ake [s]ure [w]e [c]an [e]at [t]he [n]ext [d]ay The [g]overnment [d]oesn’t [i]nvest [i]n Black [w]omen, [t]rans [a]nd [g]ender [n]onconforming [humans].”³⁴⁷ A member of a multiracial movement for justice in D.C. said that “skyrocketing rents, housing discrimination, police and interpersonal violence, and racism make [survival] very difficult for those of us who are on the margins *We need resources, not arrest.*”³⁴⁸

Thus, the testimonies above demonstrate the complexity of engaging in sex work and the role of interpersonal and state violence. Moreover, those testimonies also highlight each portion of a cycle of epistemic oppression. Firstly, sex workers face an individualized epistemic harm because they are not recognized as knowers. Sex workers are systemically devalued because their adoption of the title “sex worker,” implies that they perceive commercial sexual exchange to be a legitimate way to earn money. Criminalization communicates how societally disfavored sex work is, and that disfavor is reflected in society in the way they are treated by violent customers, police, and PARFs. The way sex workers are pathologized (as too

345. *Id.* at 2321 (statement of E.T., a transgender Latina sex worker).

346. *See id.* at 297 (statement of Phylicia Henry, Director of Operations at Courtney’s House) (arguing that the best way to address trafficking is through “sustainable investments in social services,” including “vacating all prostitution records, investing in resources and exit services”). Of course, where the testimony deviates is a commitment to continued policing, as Ms. Henry also argued for the “[continued] penalties for sex buyers.” *Id.*

347. *Id.* at 3043 (statement of P., a Black trans sex worker) (expressing the need for housing, jobs, healthcare, affordable transportation, and safety).

348. *Id.* at 2952 (statement of N.L., a family member and friend to many sex workers) (emphasis added).

traumatized to know better) or demonized (as part of the pimp lobby) deprives them of their capacity as knowledge bearers. It also communicates that, even if they are seen as knowers, they are not to be perceived as credible.

Secondly, sex workers' communication attempts (at legislative hearings, for example) fail because of their stigmatized status. The way the PARF narrative currently controls policymaking (that is, that sex work is inherently violence against women and sex workers don't know better or are malicious) means that policymakers and the public fail to accept what is being communicated. These rationales are grounded in prejudice, which make them insufficient reasons for discarding sex workers as sources of knowledge.

Finally, the law suffers a great detriment as a result. Sex workers' contributions—the contributions of people who see the world from multiple points of marginalization—are rejected due to prejudice. Even though hermeneutical resources exist to improve our dominant legal hermeneutical resources, the law embodies an epistemological gap. As a consequence, sex work and sex trafficking policy continue to reproduce harm against those it claims to help. Thus, both individual and systemic epistemic oppressions have been committed, contrary to the purported goals of feminism.

D. A Note on Cooptation Concerns

There is much to be said on the issue of cooptation that will be addressed in a later article. But there are some important points to note here. What may be at the heart of PARF concerns around including sex workers in policymaking is likely the issue of “cooptation,” or the appropriation of a feminist effort to fight against the persistent societal inequality faced by women. While referring to an individual as part of a pimp lobby can seem merely mean-spirited, it is likely grounded in fear.

PARFs and sex trafficking leaders have alluded to the harm that could befall potential future victims of sex trafficking. In pivoting away from an essentialist perspective that argues that no one would ever engage in sex work, one op-ed by D.C.-based PARF leaders indicated that there would never be enough willing participants in the sex trades to meet the demand for sexual services: “[T]he sex industry will never have as many willing participants as an unchecked demand requires, [so] traffickers will target the most vulnerable women and youths in our community to meet that

demand.”³⁴⁹ The authors alluded to the ways that some people view decriminalization as synonymous with a lack of accountability: “I first learned about this bill from my pimp; he was excited about it,’ one survivor shared at a recent listening session”³⁵⁰ Some PARFs have leaned into this narrative even though that is counter to what transformative justice commands. Transformative justice demands accountability—just not in the form of a carceral response. An anonymous survivor submitted written testimony suggesting that decriminalization would be for the benefit of customers, management, and brothel owners:

Ask yourself what is the motivation for making buying and selling another human being for profit legal? Because legalizing pimping, brothel ownership, and buying people in a brothel or on a street corner or off the internet, is doing just that ... making the sale of human beings for profit legal [P]aying a third party in order to have sex with someone is never a consensual act And if God forbid, the brothel owner, the pimp, or the buyer is even threatened with the possibility of being charged with a crime, here we are with all kinds of legislation being proposed to protect their rights and make their actions legal.³⁵¹

Sometimes PARFs point to a problematic figure head to make their point. For example, Gil Cuervo, a former Vice President of the Global Network of Sex Work Projects, was convicted of sex trafficking.³⁵² Some PARFs point to her leadership as proof that all SWAWRFs are pimps.³⁵³ Such a claim raises an interesting question to be explored in a future work about the fox in the henhouse problem. If a demonstrated sex trafficker in a sex worker rights movement could undermine an entire movement, could a sex trafficker in the antitrafficking movement undermine the legitimacy of the anti-sex

349. Frundt & Vafa, *supra* note 21.

350. *Id.*

351. *Public Hearing on B23-0318*, *supra* note 262, at 2966 (statement of Anonymous, a sex trafficking survivor).

352. Two sources tell competing narratives about whether this charge was just or not. *See, e.g., Alejandra Gil*, GLOB. NETWORK OF SEX WORK PROJECTS (2015), <https://www.nswp.org/featured/alejandra-gil> [<https://perma.cc/N9E9-PYZ3>] (pointing to the conflation of sex work and trafficking under Mexican law as part of what impacted the charges); Kat Banyard, *Why Is a Pimp Helping to Shape Amnesty's Sex Trade Policy?*, THE GUARDIAN (Oct. 22, 2015, 1:05 PM), <https://www.theguardian.com/commentisfree/2015/oct/22/pimp-amnesty-prostitution-policy-sex-trade-decriminalise-brothel-keepers> [<https://perma.cc/AYK2-G67B>].

353. *See* Jody Raphael, *Decriminalization of Prostitution: The Soros Effect*, 3 DIGNITY: J. ANALYSIS EXPLOITATION & VIOLENCE 1, 13 (2018) (claiming that a George Soros funded project, Open Society Foundations, is responsible for harmful decriminalization efforts worldwide).

trafficking movement as well?³⁵⁴ There are also claims that anti-trafficking groups, as part of the “nonprofit industrial complex,”³⁵⁵ profit off of their support of carceral solutions and the labor of trafficking survivors.³⁵⁶ Some people with STE also claim that the ways nonprofits use or convince clients to tell their stories in search of funding for the entity is a form of pimping. Would these claims undercut the efforts of the entire anti-trafficking movement?

Transformative justice and penal abolitionist feminists have faced similar charges when they present a narrative counter to mainstream carceral logic that is meant to further our common liberation. “Those of us who maintain that reform [within the criminal punishment system] is actually impossible within the current context are positioned as unreasonable and naive.”³⁵⁷ Their challenges to “dominant ideological formations about ‘justice’ are met with anger, ridicule, or are simply ignored.”³⁵⁸ Opponents of prison-industrial complex abolitionists portray abolitionists as “politically inactive academics who spout impossible ideas.”³⁵⁹ That dismissal serves

354. See Tom Winter & Corky Siemaszko, *Jeffrey Epstein Introduced Me to Trump at 14, Ghislaine Maxwell Accuser Says*, NBC NEWS (Dec. 1, 2021, 5:15 PM), <https://www.nbcnews.com/news/us-news/jeffrey-epstein-introduced-trump-14-ghislaine-maxwell-accuser-says-rcna7253> [<https://perma.cc/BM49-CUD4>].

355. *Beyond the Non-Profit Industrial Complex*, INCITE!, <https://incite-national.org/beyond-the-non-profit-industrial-complex> [<https://perma.cc/72PY-RGNQ>] (describing the ways that the government forms relationships with nongovernmental organizations and funders to exert control over individuals and political movements).

356. See *Public Hearing on B23-0318*, *supra* note 262, at 2805 (statement of G.M., sex worker and undocumented immigrant) (describing how nonprofits train and work with law enforcement). “We don’t want ‘social enterprises’ or ‘economic empowerment’ that coerce or force sex workers, or those with drug use/addiction into labor for a ‘nonprofit company.’ . . . [N]on profits’ who have privatized social welfare to claim they are ‘victim centered’ while treating us like we’re ‘crazy’ and ‘irrational’ for our mistrust.” *Id.* A similar question is raised by other carceral system-involved people interacting with the “left hand” of the state (social services), even if those services are delivered by nonprofits. “Class participants often verbalized that they felt that their purpose as clients in the agency was to provide others with jobs.” Deirdre Caputo-Levine, *Deconstructing the Hustle: Investigating the Meanings of Hustling Within the Carceral State*, 30 CRITICAL CRIMINOLOGY 267, 279 (2022).

357. KABA, *supra* note 149, at 13.

358. *Id.*

359. *Id.* at 20 (“None of this could be further from the truth. Abolitionists come from all backgrounds, and most are politically active. From bail reform to strategic electoral interventions and mutual aid, prison abolitionists are steadily at work in our communities, employing tactics of harm reduction, lobbying for and against legislation, defending the rights of prisoners in solidarity with those organizing for themselves on the inside, and working to forward a vision of social transformation.”).

“those who benefit from the current system and works to enforce white supremacy and anti-Blackness.”³⁶⁰

People who work to complicate the victim narrative are subjected to the same silencing. The victim narrative perpetuates the idea of a “perfect victim” that is too narrow for many victims of sexual violence.³⁶¹ When the idea of a “perfect victim” is perpetuated, it also sustains the idea that there is not a spectrum of experiences and opinions following sexual violence. There are ranging opinions on how sexual violence should be addressed. But it is hard to have complex conversations about sexual violence “because then you are accused of rape apologia, or you are accused of coddling rapists. That is very, very limiting. It means that we are not going to be able to uproot and really solve the problem ultimately.”³⁶²

Many movements struggle with cooptation and damage to their public perception from problematic figureheads and membership. Consider, for example, where racial justice and domestic and sexual violence issues collide. There is a long history of criticizing the Civil Rights Movement for failing to tackle issues of sexism, homophobia, and transphobia.³⁶³ The women’s rights movement has long been criticized for failing those at the intersections of race, sexual orientation, and trans or gender-nonconforming folks.³⁶⁴ The gay rights movement has also been criticized for failing racial minorities and trans and gender-nonconforming folks.³⁶⁵

On a more micro level, progressive organizations can often struggle with abuse from leadership. In 2016, a Black Lives Matter activist was arrested for prostitution and human trafficking when he allegedly attempted to pimp a minor.³⁶⁶ Public defender offices, domestic violence organizations,

360. *Id.* at 13.

361. *See* Thusi, *supra* note 156, at 2452–54.

362. KABA, *supra* note 149, at 47.

363. *See, e.g.*, Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 *BUFF. L. REV.* 1, 57–58 (1999); Crenshaw, *supra* note 158, at 1252–61.

364. *See, e.g.*, Cristan Williams, *Women’s Movement, Trans Inclusion In/Exclusion From*, in *THE SAGE ENCYCLOPEDIA OF TRANS STUDIES* 910, 911–13 (Abbie E. Goldberg & Genny Beemyn eds., 2021); Crenshaw, *supra* note 158, at 1252–61 (discussing the ways in which the women’s movement has centered white women and the Civil Rights Movement has centered Black men).

365. *See* Genny Beemyn, *LGBTQ Movement, Trans Inclusion In/Exclusion From*, in *THE SAGE ENCYCLOPEDIA OF TRANS STUDIES*, *supra* note 364, at 491, 491–96.

366. *See* Annetta Konstantinides, *Prominent Ferguson Activist Who Has Assisted Black Lives Matter Movement Is Charged With Prostitution of 17-Year-Old Girl After Sex Sting Operation*, *DAILY MAIL* (May 29, 2016, 9:50 AM), <https://www.dailymail.co.uk/news/>

and other progressive groups can and do suffer from both explicit and implicit racism, sexism, homophobia, transphobia, and other biases.³⁶⁷ One can always point to a problematic figurehead, but without more, the genuine support from folks with firsthand experiences should not be subject to epistemic oppression.

One type of falsehood that commonly arises in the government context is the creation of a false appearance of public approval for a particular government action.³⁶⁸ This is known as “astroturfing,” which is the process of creating fake grassroots support for an issue.³⁶⁹ Astroturfing can also appear in the form of false support for a specific organization, not just a cause.³⁷⁰

For example, in the District of Columbia, the local grassroots Sex Worker Advocacy Coalition (SWAC) released a statement in 2020 detailing concerns that the national group Decriminalize Sex Work (DSW) was engaging in astroturfing, which SWAC described as “when wealthier, whiter organizations come to communities, whitewash their movements, and

article-3614751/Ferguson-activist-Charles-Wade-charged-prostitution-17-year-old-girl.html. [https://perma.cc/PRV9-Y5B9]

367. See, e.g., @2020LawGrad, X (TWITTER) (Dec 27, 2021, 1:47 PM), <https://x.com/2020LawGrad/status/1475584247067025410?s=20> [https://perma.cc/ZM5Z-5W9B]. In describing leaving her public defender office due to racism, the author posted, “I am one of a *very* small handful of POC in my office[](let alone the whole state system). The daily microaggressions and overt racism constantly left me feeling isolated and alone.” @2020LawGrad, X (TWITTER) (Dec 27, 2021, 1:47 PM), <https://x.com/2020lawgrad/status/1475584247067025410?s=46> [https://perma.cc/NK7L-3WXP]. The author continues, “I worked my ass off and I’m proud of the work I did. But I can’t keep giving everything I have to an organization that can’t do the same for me. So I’ve decided to move on.” @2020LawGrad, X (TWITTER) (Dec 27, 2021, 1:47 PM), <https://x.com/2020LawGrad/status/1475584247067025410?s=20> [https://perma.cc/ZM5Z-5W9B].
368. See Yitzchak Besser, *Web of Lies: Hate Speech, Pseudonyms, the Internet, Impersonator Trolls, and Fake Jews in the Era of Fake News*, 17 OHIO ST. TECH. L.J. 233, 236–37 (2021).
369. *Id.* (citations omitted) (“Impersonator-trolling is one form of a broader phenomenon of digital deception called ‘sockpuppeting.’ Broadly defined, a ‘sockpuppet’ is just ‘a user account that is controlled by an individual (or puppetmaster) who controls at least one other user account,’ but the term is typically used to refer to ‘a false online identity that is used for the purposes of deceiving others.’ . . . Sockpuppeting can also serve political or social purposes, either through the creation of fake grassroots supporters—a practice known as ‘astroturfing.’”).
370. See Fenit Nirappil & Samantha Schmidt, *An Effort to Decriminalize Prostitution in D.C. Faces Unlikely Opposition: Local Sex Worker Advocates*, WASH. POST (Feb. 14, 2020, 12:09 PM), https://www.washingtonpost.com/local/dc-politics/activist-accused-of-sexual-misconduct-wants-to-decriminalize-sex-work---and-buy-it/2020/02/14/8de97374-4cd6-11ea-b721-9f4cdc90bc1c_story.html [https://perma.cc/9QNE-F3US] (describing advocates who made it clear that they do not wish to be associated with the organization Decriminalize Sex Work and do not wish to work with Decriminalize Sex Work, due to the problematic behavior of the organization’s political director, Rob Kampia).

repackage the whitewashed version to make it appear like [it] has the support of grassroots organizers and their broader communities.”³⁷¹ DSW was not necessarily creating the false appearance of public approval for sex work decriminalization, but attempting to appear on the same page with the local organizers who were already pushing for sex work decriminalization.

In 2019, organizations “working toward the decriminalization of the sex trades and commercial sex industry” in the United States signed a joint “Solidarity Statement” calling for activist Rob Kambia to resign from DSW.³⁷² Kambia was a longtime advocate involved in marijuana decriminalization efforts.³⁷³ The Solidarity Statement detailed his alleged sexual harassment and assault of someone in the sex worker community and another person, an employee of his.³⁷⁴ The Solidarity Statement explains how the signatories asked Kambia to be held accountable for his past behavior and how he refused, his refusal causing more harm. “As predicted, opponents of decriminalizing the sex trades (aka End Demand) would seize on Kambia’s public reputation to discredit the rest of the movement for the rights and safety of people who trade sex.”³⁷⁵ Additionally, SWAC’s 2020 statement indicated their refusal to work with DSW.³⁷⁶ This refusal was grounded in several factors, including Kambia’s lack of accountability for his harmful behaviors and for astroturfing.

The concern from advocates is that people like Kambia undermine the movement because their concern is not anti-oppression, but “freedom of the mind and freedom of the body.”³⁷⁷ Essentially, he does not appear to care about abolishing multifaceted sites of oppression; he is interested in a more libertarian “rights” framework that would not tackle the root causes of vulnerability. Both statements referred to Kambia’s lack of focus on survivors of violence,³⁷⁸ failing to advocate for strategies that would improve

371. Public Statement by DecrimNow D.C. & Sex Workers Advocates Coalition regarding working with the Decriminalize Sex Work organization (Feb. 13, 2020), https://docs.google.com/document/d/1UmyI-is2Vcx-jS7fFPlxG2N-_wvzJhl7cM3uOYLt-X8/edit [<https://perma.cc/TJW7-EHZB>].

372. *Solidarity Statement: Sex Workers All Over the Country Call for Rob Kambia to Resign*, GOOGLE DOCS (Mar. 4, 2019), <https://docs.google.com/document/d/e/2PACX-1vSxQx1crYsOjySdQ1evb9P1OeFLcqXicdrb2NRhpSGZy4y-P3dTZPyh0RgnxGixxiKgLnLhLSkUptUU5/pub> [<https://perma.cc/TK9W-LHLX>].

373. *See id.*

374. *See id.*

375. *Id.*

376. *See Sex Workers Advocates Coalition, supra* note 371.

377. Nirappil & Schmidt, *supra* note 370.

378. *See Solidarity Statement, supra* note 372; Sex Workers Advocates Coalition, *supra* note 371.

the lives of Black and Brown people harmed by criminalization,³⁷⁹ and working with funders who promote “anti-trans, anti-labor rights, and anti-reproductive rights”³⁸⁰ messaging.

While PARFs may be concerned about sex workers undermining the feminist movement, they are not alone in their cooptation concerns. As described above, SWAWRFs actively resist efforts of movement cooptation by those (like Kampia) who are perceived as being opposed to core movement goals—such as an embrace of intersectional anti-oppressive frameworks—by exhibiting anti-Black, anti-trans, and other prejudiced sentiments. It seems that the concerns held by PARFs go too far, labeling nonessentialized narratives as cooptation.

While not describing cooptation done by a malicious entity, some critics are particularly skeptical of the law’s ability to advance social goals. As a result, a type of cooptation follows. The arguments are that the law:

[E]ntices groups to choose legal strategies to advance their social goals but ultimately proves to be a detrimental path. The negative effect is generally understood as ‘legal cooptation’—a process by which the focus on legal reform narrows the causes, deradicalizes the agenda, legitimizes ongoing injustices, and diverts energies away from more effective and *transformative* alternatives.³⁸¹

The argument is that this narrowing, deradicalization, and divergence occurs because “a legal avenue requires social movements to present a united front, which flattens internal debates, fragments and marginalizes segments of the broader vision, and obscures the complexity of interests, needs, and stakes that exist within the social field.”³⁸² In other words, groups are forced to define goals that all members can get on board with and present a coherent “viewpoint in a reality of multiple experiences and voices, which inevitably leads to intragroup exclusion.”³⁸³ In doing so, the richness, complexity, and multiplicity of narratives is lost in furtherance of a solution through the legal or political process.

379. See *Solidarity Statement*, *supra* note 372 (“Kampia’s history of legalization in the marijuana movement . . . left [B]lack and [B]rown communities locked up while big businesses lobbied and enjoyed profits from legalization.”).

380. *Id.*

381. Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 939 (2007) (categorizing different strains of cooptation).

382. *Id.* at 951.

383. *Id.*

A similar rationale may exist to explain the policed narrative of the transgender experience. Attempts to raise awareness or funding for an issue causes activists to locate language and analogies that will be intelligible and resonate with their audience. The rhetoric that is adopted “is over-simplified and undermines the wide variability of lived trans experience.”³⁸⁴

This is what appears to be happening in the movement to end violence against people with STE. In order to raise awareness for an issue, PARFs may resort to extreme language to garner support (such as: no one would choose this; sex work terminology is pimp propaganda; and trafficking is sexual slavery and we are modern day abolitionists). PARFs fear cooptation, and in their attempts to evade it, commit an epistemic oppression when they flatten (essentialize) the narrative of people with STE. The essentialized narrative is then used to control what is perceived as knowledge and who are seen as knowers. PARFs then use that essentialized narrative to push for policies that favor carceral interventions.

CONCLUSION

Insisting that someone adopt a particular label for their experience undermines the richness of feminist method. Feminism developed from a place of challenging the idea that there is a universal (read: male) experience. Feminism grew richer with anti-oppressive frameworks to challenge the idea that there is a universal (white, middle class, heterosexual, cisgender) experience. Demonizing SWAWRFs because they do not adopt an essentialized victim label on their experience reproduces the same type of harm that feminism was meant to rectify. Thus, this demonization should be understood as epistemic oppression and incompatible with feminist goals.

While partial decriminalization (or the end demand, Swedish, or Nordic model) is often viewed as equitable, that equity is called into question when the myriad epistemic injustices are highlighted. An essentialized narrative of life in the sex trades is not only inaccurate, but it also ignores and pathologizes the experiences of others in the sex trades. The result is individualized epistemic harm and collective epistemic harm to dominant hermeneutical resources. Our dominant legal hermeneutical resources then lack the true range of experiences and desires of those in the sex trades and the law continues to harm them in the ways subjugated groups have already explained.

384. Coyle, *supra* note 98, at 44.

SWAWRFs are also at risk of committing individualized epistemic injustices.³⁸⁵ But given the way current laws impacting people with STE reflects the PARF theoretical framework and the way that sex workers are dismissed as knowers due to a history of stigmatization, silencing the invaluable knowledge of sex workers only serves to deprive us of a complete and accurate knowledge base to make sense of the world and address root causes of vulnerability.

385. See *Public Hearing on B23-0318*, *supra* note 262, at 294–95 (statement of Tina Frundt, founder and Executive Director of Courtney’s House). Ms. Frundt reported that when the bill was being drafted, she and other survivors and survivor leaders were left out of the conversation. She acknowledged that this was because there would be disagreement between PARFs and SWAWRFs about how the bill should read, but indicated that this exclusion broke trust and undermined confidence that the voices of key players would be invited to the table at necessary times later on.