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Introduction: Understanding Consent and Legal Consciousness in Sex Work

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Introduction

Just because you think what I do is wrong, doesn't make my safety and life worth less. And that's really what it comes down to: just because you don't agree with it, doesn't mean I shouldn't have a safe place to work, the same as anybody else.

(Abbey, USA, independent)

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We began this project with three primary goals: first, to understand how sex workers experience sexual violence in their work, by exploring a nuanced, victim-led definition of consent and harm; second, to examine the dynamics between different legal contexts (criminalised, legalised, and decriminalised systems) and victims' responses to sexual violence and unwanted sexual contact, focusing on how laws, awareness of legal rights, and law enforcement actions help or hinder in managing these experiences; and third, to explore the extent to which the legal context affects sex workers' actions, perceptions, understandings and experiences of sexual violence and unwanted contact.

To achieve these goals, we conducted a multi-country research project, involving surveys and interviews with sex workers.¹ This study spanned four different legal environments: Nevada in the USA (where legal brothels exist), the rest of the USA (where all sex work is criminalised), Aotearoa New Zealand (where sex work is decriminalised), and the UK² (where partial criminalisation exists).

We focus on sex workers' legal consciousness. Legal consciousness research aims to understand how people experience, perceive, understand, and act in relation to the law in their everyday lives (Chua & Engel, 2019; Cowan, 2004). This approach allows us to examine the law 'from below' (Engel, 1998), providing a bottom-up perspective on how legal systems impact sex workers.

Our findings reveal significant differences in sex workers' experiences across different legal contexts. In decriminalised settings like Aotearoa New Zealand (ANZ), sex workers often feel more empowered to handle violations. In contrast, in criminalised settings, fear of legal repercussions frequently prevents them from seeking help. These insights highlight

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¹ We also interviewed health and social service providers and professionals in the criminal-legal system at the same time as part of a larger project, but we do not include that data in this book.

² While we hoped to collect data to understand Northern Ireland's legal environment of criminalising clients, the numbers we collected there were too small, both to protect anonymity and to make meaningful conclusions. Consequently, we included our Northern Ireland data as part of the United Kingdom.

how the legal environment can either support or hinder sex workers in managing their safety.

While the legal context and formal regulations are significant, they are just one of many factors influencing sex workers' legal consciousness. Sex workers operate in various sectors and under diverse conditions, whether independently or in brothels, which influences their experiences. But also, both formal (state) laws and informal (non-state) rules and norms are essential to understanding our empirical findings (Hertogh, 2004). Informal norms and community support play a pivotal role in how individuals prevent, define, manage, and respond to unwanted sexual contact.

Additionally, we found that consent in sex work is dynamic, involving ongoing negotiations with clients and the ability of sex workers to set both clear and flexible boundaries as necessary. This complexity is often misunderstood or oversimplified by legal systems, leading to inadequate protections for sex workers.

Throughout the book, we explore sex workers' experiences of unwanted contact, ranging from bothersome to violent. Typically, sexual violence is associated with physical injury, but our findings reveal a broader range of incidents, including payment problems and 'stealthings'. These incidents are rarely covered by sexual violence laws. By examining these diverse experiences and how sex workers prevent and manage them, we highlight the need to acknowledge the full range of their encounters in their work.

These insights set the stage for a deeper exploration of sex workers' legal consciousness, providing a foundation for understanding how law, community support, and various legal contexts shape sex workers' perceptions and interactions with the legal system.

But before we introduce our findings in the coming chapters, we need to back up several steps. We will discuss the complexities in defining sexual violence and consent, lay out the concept of legal consciousness, discuss the differences between formal law and informal norms, and finally lay out the research project itself.

Defining Sexual Violence

What surprised us most during our research was how differently people define sexual violence, which made comparing the contexts difficult, but which is also a central theme in our findings.

Sexual violence can refer to any form of unwanted sexual activity or behaviour. We know, however, that this is not how it is defined in law. As we will see in Chapter 2, legal definitions of sexual violence vary widely across jurisdictions, but they generally encompass two components: (1) acts of a sexual nature; and (2) acts that are done without an individual's clear and voluntary consent. However, in real life, sexual violence can comprise a variety and wide range of acts. It can include what many people most clearly think of as violence, such as rape, sexual assault, abuse, and sexual actions that cause physical harm. It also includes, however, actions ranging from unwanted sexual comments, harassment (in person or online), and posting photos without consent, to stalking, 'stealthling' (removing a condom without consent), and unwanted touching.

Years of advocacy around women's and LGBTQ + rights have taught us that existing legal definitions of sexual violence are fraught. What an individual counts as a violation and what criminal legal institutions affirm can be two very different things. Definitions can vary widely across legal jurisdictions and from person to person. Questions arise: When does a consensual sex act become non-consensual? What actions indicate consent? Whose account matters more in cases of disputed sexual contact? And what is considered reasonable to endure? These issues challenge those who experience them first-hand, as well as the police, judges, and juries.

Once an individual defines an incident as a violation, what happens next? Fear of retaliation, exposure, disbelief, societal stigma, differing gender and sexual norms, lack of awareness about legal rights and resources, and emotional trauma all influence outcomes. Because of this, only about 40% of female rape survivors identify their experiences as rape (Wilson & Miller, 2016). The vast majority of those who experience unwanted sexual contact tell no one. And if they do, the legal

system determines justice. However, its standards for evidence, definitions of consent, and ideas of justice may not match the perspectives or desires of those involved.

The way the legal system defines and deals with sexual assault and rape cases has sparked intense debates in politics, policy, and academia. While the criminal justice system has made great strides in handling rape cases, few cases see a resolution. In 2019, the UK witnessed the lowest prosecution rates in a decade (Barr et al., 2019). Regarding conviction rates, meanwhile, there has been, since 2016—when the conviction rate was recorded at 57.7%—a steady increase, with some fluctuation (see, for e.g. End Violence Against Women, 2023); but there is more work to be done, and rape case attrition, where there is not any kind of resolution, continues to be a problem. Case attrition is even worse for victims from stigmatised and marginalised groups.

When it comes to sex work, these issues are even more complex. Generations of prejudice, fuelled by contentious policy, media, and advocacy group debates, drive questions rooted in stigma, such as “Can a sex worker be raped?”. Meanwhile, some radical feminist perspectives define sex work as inherently violent against women and girls (Barry, 1995), driving questions, such as “Does all sex work constitute rape?”. The key to understanding these questions lies in the concept of clear and voluntary consent. Yet, there is significant disagreement on what constitutes consent and how freely it can be given in the context of sex work.

Our work seeks to bring empirical data to this often abstract debate by highlighting the importance of context in sex work. For sex workers, consent is not a vague notion of ‘sex’. It involves negotiating a verbal contract, detailing specific acts and behaviours involved in the exchange. This job requires managing consent around various sexual pleasures and desires, ensuring that boundaries are respected. Many factors can lead to unwanted contact, making the structures that support a worker’s ability to negotiate and prevent such occurrences crucial.

International organisations have urged nations to address violence against sex workers as both a public health (Alexander, 1998; Kinnell, 2008; Platt et al., 2018) and human rights priority (Amnesty International 2016a; WHO et al., 2012;). Despite widespread assertions on

the relationship between prostitution and gendered violence, it remains a daunting challenge to systematically assess this in sex-worker populations (cf. Benoit et al., 2015). A 2014 meta-analysis of mostly qualitative or small sample studies indicates that sex workers face disproportionately high levels of violence, but data on the nature, range, and sources varies (Deering et al., 2014). Sex workers can be targeted due to their vulnerability, isolation, and marginalisation; some are easy targets because of their work location or conditions (Lowman, 2000; Sanders & Campbell, 2007), while others experience no violence at all.

The recent ‘#MeToo’ movement makes clear that we need better solutions for preventing and stopping sexual victimisation and for increasing access to justice for sex workers, as well as for non-sex workers (West & Horn, Eds., 2021). We need better ways to understand why violence is seldom reported amongst sex worker groups and why achieving justice is so hard.

As social scientists, we understand that social norms, institutions, and structural power dynamics—such as race, class, gender, sexuality, citizenship, and ability—shape the occurrence and recognition of any sexual violations in the general population and in sex work. The control of sexual pleasure and desire is deeply intertwined with classism, racism, ableism, heterosexism, ageism, xenophobia, cisnormativity, sizeism, systems of white supremacy, patriarchy, immigration policies, and the legacies of colonialism. While our project did not measure these variables quantitatively, as we discuss in our methodology chapter (Chapter 9), their influence on our findings is unmistakable.

Despite extensive research on law and sexual violence in general, and vigorous debates on the most effective prostitution laws to combat sexual violations experienced by sex workers, little attention has been given to questions about defining sexual violence (Scoular, 2015). Although there is much attention given to preventing ‘violence’ in sex work, the concept itself often goes undefined and is not typically explored in a comparative fashion. If our goal is to stop acts that violate a person’s sexual autonomy and dignity, and to seek justice when they do occur, we need to understand all the dynamics involved in defining and dealing with unwanted sexual contact. This requires evidence of the kind that we will present in this book.

Defining Legal Consciousness

‘Legal consciousness’ is a useful framework by which to study how sex workers understand, interact with, and use the law in their daily lives and work in different legal contexts. Legal consciousness is a broad concept that encompasses ordinary people’s understanding of both official formal law and other legal norms that shape their world (Gill & Creutzfeldt, 2018, p. 372). For us, it is not just their knowledge and opinion of official formal laws, but it includes their broad experience of other less formal norms and rules, as well as their own constructions of what ‘law’ is.

Indeed, legal consciousness research does not just focus on people’s knowledge of statutory law. Scholar Marc Hertogh has suggested that people connect their perceptions of and attitudes towards formal law to what they experience in their own social worlds as comprising law. An approach that combines both the social significance of statutory law and takes seriously people’s own ideas of law and justice (2004, p. 480) is helpful in analysing sex workers’ actions and understandings around sexual violence and unwanted contact.

In this book, we focus on the individual legal consciousness of sex workers while also considering how relational and structural factors affect this consciousness. We align with Chua and Engel’s (2019, p. 335) conceptualisation that “legal consciousness research should be imagined on a continuum ranging from individual thought and action to interactive, co-constitutive relations with others”. Young (2014, p. 500) has found that legal consciousness also involves people’s perceptions of how others understand law: “a person’s belief about and attitude towards a particular law or set of laws is influenced not only by his [sic.] own experience but by his understanding of others’ experiences with and beliefs about the law”. This concept is useful for exploring factors beyond statutory law that impact sex workers’ understanding of consent, sexual assault, and their perceived chances of reporting and seeking justice.

Our investigation uses mixed-method research to study this legal meaning-making. We examine wider ideas of legality, as well as particular legal provisions. Given the marginalised and stigmatised position of our sex-worker research participants, we also explore the relevance

(and irrelevance) of formal laws to people's behaviours, drawing here on the concept of legal alienation and questions around legal mobilisation (Aidinlis, 2019).

Legal alienation is defined as a cognitive state of psychological disconnection from official state law and the justice system (Hertogh, 2018, p. 55). Research finds that sex workers often disregard, resist, or even show hostility towards formal law (Klambauer, 2019). The concept of legal alienation helps us to understand the gap between what state law dictates and what people actually do, recognise as law, and whether they are aware of and identify with state law (Hertogh, 2018). Aidinlis (2019, p. 509) has argued that attention to legal alienation urges us to identify forces other than formal law that shape social action (or inaction), and to find non-legal resources to address these problems.

Ewick and Silbey (1998, p. 192) have suggested that powerless individuals are more likely to display an 'against the law' dimension of legal consciousness. In this orientation, "legality is characterised as something to be avoided. Because it is a product of arbitrary power, legality is seen as capricious and thus dangerous to invoke, rather than conditionally appropriate or useful" (Ewick & Silbey, 1998, p. 192).

Legal alienation also aligns with important questions around legal mobilisation, such as, "To what extent, if at all, do people use or invoke the law?" (See Aidinlis, 2019, p. 509). Research on sexual violence finds that individuals must work through stages of legal consciousness by identifying a behaviour as harmful (*naming*), holding an individual responsible through some action (*blaming*), and seeking remedial action from the individual responsible or through another remedy, such as the criminal justice system (*claiming*) (Felstiner et al., 1980).

We recognise that sex workers' interactions with and experiences of the law are dynamic and evolving. Ewick and Silbey (1998) describe legal consciousness as a dynamic process, where individuals experience events, interpret them, and respond accordingly. For the reasons we have just been discussing, this framework is particularly useful for examining sex workers' experiences with the law.

Defining 'Law'

As noted above, both formal law and informal norms are essential for understanding our empirical findings. Grasping these differences is critical in comparing the effect of different legal systems on sex workers' experience of sexual violations.

In this book, 'formal law' refers to rules, regulations, and procedures codified by federal, regional, or local governments and their administrative agencies. This includes laws passed by legislatures, case rulings from judicial institutions, and executive orders guiding agency enforcement. We examine formal laws that govern two distinct realms: laws regulating sex work, which can criminalise or decriminalise it in various ways, and laws addressing unwanted sexual contact.

When people think of laws related to both prostitution and sexual violence they often think about criminal law. Criminal law involves prosecuting and punishing individuals who engage in criminal activities, holding offenders accountable to the public, and requiring proof beyond a reasonable doubt. But civil law also operates in these areas, addressing disputes and remedies between individuals and/or organisations. Civil law holds defendants accountable to victims, not the public. In civil cases, the standard of evidence is less, and compensation is usually monetary. In different legal contexts, both criminal and civil law can matter for sex workers.

However, rules also exist outside governmental institutions. Workplaces have their own rules to maintain order and to manage and sanction employees and customers. These organisations can enforce rules in a variety of ways, from firing employees to withholding pay to blocking customers. The level of codification of rules varies. Sex workers usually work for smaller, more informal organisations or contract with larger companies. In both cases, the rules can be relatively informal.

Informal norms and rules relate to or are informed by formal law, but generally operate outside of it. These can be unwritten or verbal, involving shared expectations. They govern organisational culture, communicated as unofficial advice from management or between workers. Informal norms include the 'rules of the game', shared among sex workers or clients, or learned patterns for dealing with clients.

Informal norms can, therefore, also influence informal methods of resolution (discussed further in Chapter 5).

Table 1.1, below, summarises the range of ‘law’ we will be talking about in this book.

We adopt a broad view of law, encompassing formal law and informal norms. Our research explores how these dimensions interact, to understand sex workers’ responses to sexual violence and unwanted contact.

We also consider the relation between law and the practice of that law based on Baier et al., 2019:

- Formal legal norms (‘law in books’: laws as formal order, e.g. legal theory, case rulings, and legal codes);
- Legal practices (‘law in action’: law’s effect, e.g. what police, lawyers, and judges actually do);
- Social norms (socially constructed norms, e.g. informal norms of the brothel, the ‘rules of the game’ (how to negotiate consent)); and
- Social practice (‘living law’: laws of everyday life, e.g. social norms realised in practice).

Table 1.1 Definitions of formal and informal ‘law’ used in this book

Category	Description
1. Formal law	Rules, regulations, and procedures codified by federal, regional, or local governments and their administrative agencies
a. Criminal law	Aims to punish guilty parties, holding them accountable to the public. Requires proof beyond a reasonable doubt, with incarceration or fines as punishment
b. Civil law	Holds defendants accountable to victims, requiring evidence that is more likely than not correct. Compensation is usually monetary
2. Workplace rules	Regulations codified formally or informally by employers to manage and sanction employees and customers, and maintain order. Enforcement takes place in the workplace
3. Informal norms	Unwritten or verbal rules, often informed by formal law or broader notions of legality, that govern acceptable behaviour. These can range from management decisions, including an individual manager’s ways of handling violations, to the workplace culture or norms established among sex workers themselves for independent or collective work

The Research

To examine the legal consciousness of sex workers, we conducted interviews and surveys as part of a comprehensive research project that took place between 2022 and 2023 and that encompassed four distinct legal environments: Nevada (USA), with its legal brothels; the rest of the USA, where all sex work is illegal; Aotearoa New Zealand, where sex work is decriminalised, and the UK, with partial criminalisation. Our aim was to explore how legal consciousness (sex workers' perceptions and understandings of the law, their boundaries of consent, and decisions on reporting), legal norms (legal theory, case rulings, legal codes), and legal practices (the actions of police, lawyers, and judges) interact to affect sexual violence against sex workers, varying by demographics, sex market, and legal regime.

We employed an innovative methodology involving sex-worker peers as 'expert advisors', as advocated by Deering et al. (2014). Collaborations between academic researchers and 'experts by experience' are recognised as best practice when researching marginalised populations such as sex workers (Connelly & Sanders, 2020; Huysamen & Sanders, 2021). This approach ensures that research benefits the communities involved and strengthens the scientific project, leading to more robust knowledge and positive change (Keighley et al., 2023; Lewis & Maticka-Tyndale, 2000; O'Neill, 1996).

These expert advisors were involved at all stages of our project— from designing research tools and analysing data from various perspectives, to delivering and sharing project results. We will continue to prioritise the voices and experiences of sex workers, using our findings to influence policy and practice. The expertise of sex workers has been crucial in shaping the research and will be pivotal in creating strategies to combat sexual violence and unwanted contact. For a detailed overview of our methodological process and learning experiences, please see Chapter 9.

Survey

We developed our survey to gather empirical data on sex workers' and ex-sex workers' experiences of unwanted sexual contact, as well as their interactions with health services, advocacy, and the criminal justice system, across each of our study sites.

Our recruitment process for the survey and interviews, detailed in Chapter 9, targeted participants who had experienced unwanted contact. Although this is not a representative sample of all sex workers, as we lack the data on the total sex-worker population necessary to construct such a sample, we followed researcher Ron Weitzer's guidance:

... the best that we can hope for are studies that do an exceptional job of sampling people in different geographical locations in different types of prostitution and doing both the sampling and the interviewing in a rigorous and impartial manner. (2005, p. 942)

This book, then, analyses data from 483 sex-worker survey respondents who reported experiencing unwanted contact. We analysed the survey data using SPSS, with text-based responses entered into Nvivo. By exploring the quantitative and qualitative data together, we identified trends and mapped emerging patterns.

Interviews

We also interviewed 40 sex workers from each of our study sites. We developed a semi-structured interviewing approach based on an interview schedule created by the peer experts. The schedule included open-ended questions to encourage participants to provide detailed accounts of their experiences. With participants' permission, all interviews were audio-recorded and then transcribed in anonymised form. Transcripts were coded according to key themes aligned with the research questions (e.g. investigations, legal consciousness, witness support, stigma, trauma).

This approach allowed us to develop theory while generating data and conducting analysis in a dialectical process that established connections between emergent themes (Attride-Stirling, 2001). The themes were collaboratively checked and rated by the team.

Chapter Outlines

Chapter Two reviews the different laws in each of the sites in our project that are relevant to sex workers' experiences. The chapter covers the formal laws and court cases governing sex work, sexual violence and consent, and relevant workplace laws in each country. (Detailed information on these formal laws is included in Appendix 1: Prostitution; Sexual Violence and Workers Rights Laws Across Sites.)

Chapter Three explores how sex workers set boundaries and negotiate their conditions of consent. The chapter examines how they establish their own working routines to prevent violations, which involves negotiating with clients to set and maintain boundaries. The chapter also discusses the role of formal and informal norms, including how sex workers learn to negotiate or improve their negotiation skills from others in the industry.

Chapter Four explores how sex workers define and interpret incidents of unwanted sexual contact within their work. Using the data from both the survey and the qualitative interviews, we explore the types of unwanted contact that sex workers encounter and how the law influences their understanding, interpretation, and definition of these incidents. It highlights the varied interpretations of consent and harm among sex workers, emphasising the influence of legal and social contexts on these definitions.

Chapter Five explores what sex workers do after incidents of unwanted contact. It covers a wide range of actions, including no action, informal actions, and formal legal actions. It illustrates how legal consciousness and the immediate workplace environment, shape these responses, with a focus on the practical barriers and strategies used by sex workers.

Chapter Six examines how sex workers interact with the criminal legal system. It focuses on the challenges they face in reporting violations

and seeking justice. We look at data on reporting, police interactions during investigations, and, for the few that had progressed to criminal proceedings, the court processes involved. The chapter emphasises how important the legal context is in shaping sex workers' alienation from and mistrust of law enforcement.

Chapter Seven introduces recommendations generated from the research by the expert peer researchers. These recommendations are based on the analysis of interviews with sex workers, suggestions provided by sex workers themselves, and the personal experiences of the peer researchers who have worked in the field as sex workers or practitioners. The key recommendations focus on improving healthcare, criminal justice, and support organisations, to address the rights and equity of sex workers and enhance the quality of services they receive.

Chapter Eight concludes by underscoring the profound effect of different legal frameworks on how sex workers feel they can and cannot interact with the law. We summarise the findings of the book, focusing on the disparity between sex workers' real-life experiences and formal legal regulations. We discuss interactions between formal legal norms and informal practices, and how these shape sex workers' understandings of sexual violence. The chapter calls for adaptable and supportive legal frameworks that recognise the dynamic nature of consent and the diverse circumstances of sex workers' lives.

Chapter Nine details the research methods used in this project. We discuss the values and ethics that have guided the research and outline the demographics of research participants.

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