No Safe Harbor:
Radical Feminism, the Fight Online Sex Trafficking
Act, and the Digression of Sex Work in the United States

by
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Abstract

In April of 2018, the U.S. Government passed a new internet law—Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA), which many have argued has contributed to a surge in online censorship around sex work and supposedly, sex trafficking. While FOSTA/SESTA has been celebrated as a win for anti-trafficking activists, sex workers are already experiencing a loss of community, income, and resources, as well as an increase in violence. Using a third-wave feminist lens, this paper follows the eight-year campaign leading to FOSTA/SESTA’s inception and argues that this law is the most recent example of the U.S. Government’s conflation of sex work and sex trafficking, as well as an appropriation of radical feminist rhetoric as a means of reducing sex workers’ visibility. This paper provides an analysis of FOSTA/SESTA and argues that it is a largely flawed, regressive ‘solution’ to sex-trafficking that will only serve to push the industry even further underground, and in doing so, increases risk for those working as sex workers.

Keywords: sex work; FOSTA/SESTA; human trafficking; sex trafficking; internet freedom; radical feminism
“Sex workers are everywhere. We are your neighbours. We brush past you on the street. Our kids go to the same school as yours. We’re behind you at the self-service checkout, with baby food and a bottle of Pinot Grigio. People who sell sex are in your cafeteria, your political party, your place of worship. Sex workers are incarcerated inside immigration centers, and sex workers are protesting outside them.”

—Juno Mac and Molly Smith, *Revolting Prostitutes* (2018;1)

For sex workers everywhere.
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Chapter 1.

Introduction

On April 23 of this year, Jacq the Stripper, a New York based artist, sex worker, activist, and social media personality, announced to her 150 thousand Instagram followers that she would be spending less time and energy on her account. This decision was inspired by changes to Instagram’s community guidelines and censorship practices. Changes that have resulted in the removal of hundreds of personal accounts belonging to sex workers, and an algorithm that favours “fucking açaí (fruit) bowls” as Jacq wrote. In her post, Jacq ended by saying “I don't know what's next for folx like us...I don't know where to go” (jacqthestripper, 2019).

![Jacq the Stripper](https://via.placeholder.com/150)

**The new Instagram sucks all I follow is sex workers but all I’m seeing as I scroll are fucking açaí bowls.**

Figure 1: Sex workers continue to face increased censorship on platforms like Instagram, which the above post from Jacq alludes to. Image Credit: @JacqTheStripper via Instagram

Instagram, like many other social media platforms and websites, has spent the last year tightening their screening processes, censoring ‘sexually explicit’ content and feminized bodies, all in attempt to eliminate the risk of sex trafficking taking place through their software application. In April of 2018, the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA), were passed into United States’ (US) law as the Allow States and Victims to Fight Online Sex Trafficking Act of 2017. This law makes online service providers liable for certain content that third-party users may post to their site, something that previously was protected under Section 230
of the 1996 Communications Decency Act; *The Safe Harbour Provision*. Website operators are now federally liable for publishing information designed to facilitate sex trafficking or otherwise facilitate sex trafficking and can be taken to court if content deemed inappropriate in the context of either FOSTA or SUSTA occurs. To protect themselves, website operators have been quick to shut down forums, sections, or whole sites, where sex trafficking could feasibly happen. Craigslist has removed their personals section. Backapges.com has been seized by the United States Federal Bureau of Investigation. The sites’ two owners are facing a federal investigation.

At the same time website owners were scrambling to re-shape their platforms, free speech advocates identified FOSTA/SESTA as a threat to the first amendment that “diminishes the voice of the individual online”¹ (Electronic Frontier Foundation, 2018a). Immediately following the announcement of FOSTA/SESTA, an online campaign called “Stop SESTA/FOSTA” was launched by the Electronic Frontier Foundation (EFF), calling on people to contact their local Senators and representatives. The EFF would later sue the United States Department of Justice to have FOSTA /SESTA declared unconstitutional. While the case was dismissed, their advocacy continues:

Online communities can thrive in large part thanks to a law known as Section 230. Section 230 protects online platforms from liability for some types of speech by their users. Without Section 230, social media would not exist in its current form, and neither would the plethora of nonprofit and community-based online groups that serve as crucial outlets for free expression and knowledge sharing. That’s why Section 230 is the most important law protecting speech online. (EFF, 2018b)

This initial conflict surrounding FOSTA/SESTA follows a routine format of the suppression of obscenity vs. a liberal push for free speech. However, what the EFF’s original campaign failed to focus on, or even acknowledge, is that FOSTA/SESTA as a law does not just target general free speech or the presence of the individual online, but rather, it predominately targets a specific community. A community whose very lives are now at stake. Discussion of FOSTA/SESTA that fails to include sex workers, I argue, is reflective of a longer history of feminist-lead anti-obscenity activism, and the dismissal of sex workers’ very rights to exist.

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¹ Said Nuala O’Connor, President and CEO of the Center for Democracy and Technology in a statement for the Electronic Frontier Foundation.
This paper argues that the internet has long offered a safe space for sex workers to facilitate their work and build community, and that FOSTA/SESTA poses a significant risk to these spaces. Rather than eliminating sex trafficking, FOSTA/SESTA is likely to push trafficking further underground and encourage more sex workers to engage in unsafe work. The goal of this paper is to demonstrate how FOSTA/SESTA is a recent example of Western policy which conflates trafficking with sex work, and that anti-trafficking polices have a long history of being inherently opposed to-sex work. The reasoning behind this conflation, or rather, the ‘excuses’ used to legitimize this conflation, I argue, are rooted in radical ideologies of sex and sex work which emerged during the second wave feminist anti-pornography movement. I find that policy makers and governments have successfully appropriated an out-dated feminist rhetoric as a means of maintaining power over the sexual practises, labour rights, and movement of feminized bodies.

In four parts, I will examine how FOSTA/SESTA, as Laura Chamberlin wrote, is an “imprecise means” to an “unfortunate ends” (2019; 2175). My second chapter provides an overview of radical feminist theories on sex and sex work of the late 1970s as well as the third-wave’s intersectional approach to sex work that emerged two decades later. This review allows me, in chapter three, to address the ways in which radical feminists’ ideas about sex and sex trafficking are inherently opposed to sex work and have been successful in lobbying for problematic policies that ignore the lived experience of sex workers. Next, I will re-introduce FOSTA/SESTA and discuss how it fits into this history of appropriation of feminist rhetoric, while also discussing its effects on the wellbeing and safety of sex workers.

While this paper does explore an internet law specific to the U.S., I encourage readers to consider the ways in which FOSTA/SESTA may prove harmful in other parts of the world. Though much of my discussion is concerned with laws enacted within U.S. borders, as a Canadian student, I too have seen changes within local sex worker communities. Due to America’s dominance of the online world, FOSTA/SESTA will indeed continue to impact sex workers on a global level. While alternatives to U.S.-operated websites are available, the options are limited. And so, the case of FOSTA/SESTA can be understood as another example of the dangers of American imperialism, in this case, enacted in relation to global information and communication technologies and telecommunication infrastructures.
Saying this, I also aim to highlight ways in which sex workers and advocacy groups are fighting back; how through the use of art, humour and sexuality, sex workers have been able to organize, re-organize, and find new ways to facilitate their work and maintain community within the very corners of the internet which continues to tell them they are not welcome online.

I will primarily be using the term ‘sex worker’ when referencing consenting, adult women and trans people within the sex work industry, though ‘prostitute’ and ‘prostitution’ will also be used based on context. While ‘sex worker’ is generally accepted as an umbrella term for many types of sex work, including pornography, stripping, etc., it will be used in this paper, typically, to describe full-service sex workers, otherwise referred to in media and legal debates as ‘escorts’ or ‘prostitutes.’ ‘Survivor’ will often be used to reference those who have experienced trafficking, as it recognizes the trauma they have lived through while still positioning them as persons of agency and strength, as opposed to casting them as simply ‘victims,’ as popular discourse tends to do. As well, I will refrain from using “female” as a gender indicator, as it marginalizes trans women and non-binary folks, a demographic that is too often left out of these conversations but remain some of the most vulnerable. ‘Women’ and ‘femme’ will primarily be used to identify sex work groups when relevant, however, ‘they’ will also be used as both a plural pronoun, and a singular pronoun when addressing non-binary or undisclosed individuals.

More so, this work will be rooted in the lived experiences and research of past and present survivors, sex workers, feminists and community activists. This work is the result of over a year of study of the FOSTA/SESTA case which included reading news articles, community newsletters and blog posts, and a year of listening to and learning from the online sex work community. My approach is not to prove that FOSTA/SESTA is harmful through numerical data, nor do I feel the need to prove that sex workers are deserving of safety. While numbers and scholarly theory will be useful in many parts of this work, I aim instead, similarly to Mac and Smith, to encourage empathetic thinking (2018).

Lastly, because any writing on sex work should be based on realities of sex work, and because I hold enough privilege to feel safe to do so, I will premise the rest of this paper by saying that the labour of sex work is not just an area of research but an area of
experience. While personal experience is not the focus of my work, it nonetheless has shaped the ways in which I approach my writing. American journalists and former “cam girl,” Melissa Girl Grant, said it so well in her book, *Playing the Whore*, I feel compelled to end this section by copying her words here:

This is not a peep show. So I will not, for example, be telling my story, though the means by which I came to the story I am telling here is inseparable from my experience as a sex worker. My job here is to reveal through an exchange of ideas, not through the incitement of arousal-- while also not entirely putting aside that I have skin in this game (2014; 34).
Chapter 2.

Literature Review: Oppression vs. Profession

2.1. 2nd Wave Feminism, Liberalism, and the Sex Wars

“The concept of ‘civil liberties’ in this country has not ever, and does not now, embody principles and behaviors that respect the sexual rights of women. Therefore, when pornographers are challenged by women, police, district attorneys, and judges punish the women, all the while ritualistically claiming to be the legal guardians of “free speech.” In fact, they are the legal guardians of male profit, male property, and phallic power” (1979; 218).

— Andrea Dworkin, Pornography: The New Terrorism

Since the Victorian era, and arguably before, sex work has been discussed as a moral issue, a religious issue, and an obscenity issue. And starting in the 1970s, sex work, and more specifically, the abolition of sex work, was being promoted as a feminist issue. Starting in 1976, writers and activists such as Andrea Dworkin began organizing as “antipornography feminists,” responding to “a new campaign of terror and vilification” and “fascist propaganda celebrating sexual violence against women” (1978: 217).

Following a conference on violence against women in San Francisco, the antipornography movement gained ground with the founding of Women Against Violence in Pornography and Media (WAVPM) in 1977, and Women Against Pornography (WAP) in 1979. These anti-pornography feminists also referred to as “radical feminists" of second-wave feminism, would expand their agenda also to reject male-dominated heterosexual sex, condemn sadomasochism, sex work, promiscuous sex, and butch/femme relationships (Ann Ferguson, 1984; 107).

Prior to the “Sex Wars’ that would take place between radical feminists and pro-sex feminists of the early third wave, radical feminists of the 1970s saw the rise of sexually explicit media and the free speech movement to be a direct cause of harm against women. Susan Brownmiller, who became the first president of WAP in 1979, concluded in her work Against Our Will: Men, Women, and Rape (1975) that liberals were placing the rights of producers, purveyors, and purchasers of “ugly smut” above the rights of women (392):
The case against pornography and the case against prostitution are central to the fight against rape... and if it angers a large part of the liberal population to be so informed, then I would question in turn the political understanding of such liberals and their true concern for the rights of women (390).

Echoing Lorna Norman Bracewell’s work, Beyond Barnard: Liberalism, Antipornography Feminism, and the Sex Wars, I argue that radical feminist movements targeting sex work are an extension of anti-obscenity movements that challenge ‘liberal’ understandings of free speech and sex positivity, and that such theories on sex and sex work continue to influence policy.

Liberals who had been campaigning since the 1950s for the removal of obscenity laws and a more open, liberated media world believed that “sexually explicit expression, including pornography, was private, apolitical, and harmless” (Bracewell, 2016; 26). Early antipornography feminists, however, found that this push for media liberation was indeed creating a “media of misogyny” (Barry 1979, 175). They argued that the subordination of women presented in pornography was not contained in images and film and that these images fetishized, normalized, and escalated violence against women both behind the camera and in real life.

In 1984, Dworkin and McKinnon championed a municipal ordinance that would define pornography as the “graphic sexually explicit subordination of women” (Dworkin and MacKinnon 1988, 113) and give individuals who could prove they had been harmed by pornography the right to sue its producers and distributors for damages. Dworkin and MacKinnon’s definition of pornography epitomize radical feminists’ understandings of pornography and sexuality to be inherently violent and problematic. For Dworkin and McKinnon, pornography must include:

the sexually explicit subordination of women,” “women presented as sexual objects, things, or commodities”; “as sexual objects who enjoy pain or humiliation”; “as sexual objects who experience sexual pleasure in being raped”; “as sexual objects tied up or cut up or mutilated or bruised or physically hurt”; “in postures of sexual submission, servility, or display”; in such a way that they are “reduced to [their] body parts—including but not limited to vaginas, breasts, or buttocks”; “as whores by nature”; “as being penetrated by objects or animals”; or “in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual” (1988; 101).
The ordinance was adopted by Indianapolis and considered by several other major cities. But within the first year, a federal district court declared the ordinance unconstitutional, arguing that it violated the First Amendment free speech clause in that it censored protected expression. While short-lived, the Dworkin-MacKinnon ordinance proved to influence other scholars and activists such as Cass Sunstein and Elena Kagan in the legal battle against pornography (Bracewell, 2016; 37-39).

At this point, it is worth addressing that such early-era anti-pornography feminists did not acknowledge pornography as a form of sex work, nor were they particularly interested in the rights and wellbeing of women in porn (though they did at times mention concerns for ‘the prostitution of women’). Instead, they saw pornography as something that was “imposed onto women, rather than chosen by them” (Smith, 2011: 532), and more so, as a media form that was most harmful to women outside of the industry.

However, into the 1980s, radical feminists expand their writings to include specific theories about sex work as a broader institution. These scholars were united in their condemnation of sex work as a patriarchal system that must be abolished (Barry 1979; Dworkin, 1981; Patemen, 1988; MacKinnon, 1989; Overall, 1992; Hughes, 2000). Here too, radical feminists find sex work as not merely harmful, “but is harm to women: it is a violent and exploitative practice by individual men against individual women” (Smith, 2011: 533) [emphasis added].

“Prostitution epitomizes men’s dominance: it is a practice that is constructed by and reinforces male supremacy’ (Overall, 1992; 724). Sex work is identified as the cornerstone of all forms of sexual exploitation that reduces women to both sexual objects and to market commodities (Barry, 1995: 1,9)

In the same ways anti-pornography feminists spoke about porn as harmful to women as a whole, radical feminists too saw sex work as detrimental to those both inside the industry and outside. “It is in female sexual slavery that I have found conditions which affect all women,” wrote Barry (1979; 9). Radical feminists saw the abolition of the sex trade to be for the betterment of womenkind.

**Libertarian Feminism**

Following the rise of the radical feminist movement, libertarian feminists emerged as a counter narrative. These two groups, existing as polarities of one another, are often
discussed in context of the “Sex Wars” of the 1980s. Here, I will highlight distinguishing features of the libertarian ideology, and how it remains a main opponent of contemporary radical feminists.

In her article, *Sex War: The Debate between Radical and Libertarian Feminists*, author Ann Ferguson sites seven characteristics of libertarian feminism that emphasizes it’s contrast to radical ideologies, making it the “radical-feminist paradigm” (1984, 109):

1. Heterosexual, as well as other sexual practices, are characterized by repression. The norms of patriarchal bourgeois sexuality repress the sexual desires and pleasures of everyone by stigmatizing sexual minorities, thereby keeping the majority “pure” and under control.

2. Feminists should repudiate any theoretical analyses, legal restrictions, or moral judgments that stigmatize sexual minorities and thus restrict the freedom of all.

3. As feminists, we should reclaim control over female sexuality by demanding the right to practice whatever gives us pleasure and satisfaction.

4. The ideal sexual relationship is between fully consenting, equal partners who negotiate to maximize one another’s sexual pleasure and satisfaction by any means they choose. The general paradigms of sexuality, social power, and sexual freedom one can draw from this sexual ideology are:

5. Human sexuality is the exchange of physical erotic and genital sexual pleasures (the primacy of pleasure theory).

6. Theory of Social Power: Social institutions, interactions, and discourses distinguish the normal/legitimate/healthy from the abnormal/illegitimate/unhealthy and privilege certain sexual expressions over others, thereby institutionalizing sexual repression and creating a hierarchy of social power and sexual identities.

7. Sexual freedom requires oppositional practices, that is, transgressing socially respectable categories of sexuality and refusing to draw the line on what counts as politically correct sexuality (109).

Libertarian feminists of the 1970s were particularly interested in discussing sexuality and sex work as a site of pleasure. Less concerned with the legitimate labour involved, sex workers of this ideology were adamant about how the work empowers them as sexual beings, perhaps providing them with their own sexual pleasure, or fulfilling a desire to help others. Sara Berg expands on the danger of this rhetoric in that it can disrupt our understanding of sex work as work. “Reducing commercial sex as a
higher calling rather than a despised sexual practice makes workers even more vulnerable as workers even as it hopes to make them less vulnerable as sexual subjects” (2016; 696). To give sex work value beyond economic necessity adds the same self-satisfying, or even “cool factor,” that is often utilized by employers to underpay and overwork those in care roles or who are working in creative industries (Jarrett, 2016).

As well, Berg recounts some back page advertisements in which the sex workers have been marketed as the “horny housewife,” who cannot wait to satisfy her next client. What the author finds problematic in this is that when consumers believe they are doing sex workers a favour by alleviating the woman’s own sexual frustration, “they may be less moved by her entreaty for health benefits” (710). Because of their fixation on pleasure and satisfaction, rather than safety or economic stability, libertarian feminism, while contrary to radical feminists, are no more helpful in promoting sex workers’ rights as an issue that goes beyond sexual liberation.

2.2. Defining Sex Work as Work

"I will sell my pussy but I won't sell my soul"

“Should women endure the indignity of pornography?” Fritz asked in her 1979 essay, Pornography as Gynocidal Propaganda. “What minority group would stand for such demeaning portrayals of its sacred humanity?” (222). How easy it was for feminist writers such as Fritz, white and affluent, to forget or dismiss the many groups who could and did stand for pornography and sex work as a means of employment, housing, community and liberation. By the 1980s and especially the 1990s, third-wave feminists were demanding that sexuality and sex work be explored “beyond the binaries of choice and coercion” (Dewey, 2012: 114), recognizing “contemporary sexual practices involve both danger and pleasure” (Ferguson: 112).

The third wave found problem with the way sex work and patriarchy had been understood as “static and monolithic” (Smith, 2011; 537), with little to no acknowledgement that both institutions contain multiple social dimensions, and impact workers differently. Third wave feminists sought to complicate the sex work discourse by being honest about the work as both empowering and isolating, as fun and fearful. This
new generation had a very large task ahead of them; to dismantle assumptions of sex work that had been built up and normalized by the feminists before them. A majority of the existing literature, as well as campaigns lead by sex worker activists since the late 1970s have identified several common problems or ‘myths’ within the mainstream discourse which have come to define third wave understandings of sex work. These include that:

- Sex work cannot be defined as a single experience, and no one experience of sex work should have the power to inform laws or policies that impact sex workers as a whole.
- Sex work is not merely an issue of patriarchy or violence against women; it is an issue of labour, capitalism, racism, colonialism, nationalism.
- Sex work is a legitimate site of work and is no more shameful or more glamorous than any other form of labor under capitalism.
- Sex work is not limited to the sale of sex to heterosexual men by heterosexual women. Definitions of sex work should not be based on gender, nor should discussions of sex work exclude the trans and non-binary community.
- Sex work is not inherently harmful. The stigma associated with sex work, and the criminalization of sex work are the biggest barriers sex workers have to safety and well-being.

Radical, liberal, and socialist feminists of the second wave had been guilty of pinning sex workers “into a theorized totality of feminist space,” as Shannon Bell wrote. “There is no space for the prostitute herself as speaking subject, particularly if her speech might contradict the feminist construction of her body” (Bell, 1994; 73). The third wave however, recognized sex work to be a unique experience for each worker, that no version of feminism would ever define sex work for everybody, and that it is ok for feminism to sometimes “incorporate parts of the dominant discourse they critique” (Bell, 1994; 73). What did unite third wave feminists of this period was the need to address sex work as much more than a morality or feminist issue. Using Kimberle Williams Crenshaw’s (1989) intersectional approach, third wave feminists consider the ways in which patriarchy and misogyny, but also racism, classism, nationalism, capitalism, and colonialism, have shaped the current sex work industry as well as mainstream discourse, policy and laws.

A defining feature of the third wave movement was an attempt to remove the “saviour complex” so imbedded in radical theory. Similar to feminist standpoint theory
developed during this era, I argue that third wave positions on sex work are largely informed by what I will call sex work standpoint theory. It was not enough for women or allies to be speaking on behalf of sex workers. For activists and scholars of the third wave, it is essential that sex workers be given the opportunity to speak for themselves. One of the most foundational essays, and perhaps the most quoted writings on sex work is Carol Leigh’s (1997) Inventing Sex Work. In the 1970s, long before third wave feminism reached the mainstream, Leigh would attend feminist conferences wearing a paper bag over her head. “This Paper Bag Symbolizes The Anonymity Prostitutes Are Forced To Adopt” was one phrase she would write on the front of her homemade headpiece, a representation of the erasure of sex workers at events that were supposed to amplify the voices of all those impacted by patriarchy. Leigh, along with other sex workers, was part of the small, emerging group of feminists who worked tirelessly to prove to activists, scholars, and the media that sex workers had a voice and could speak for themselves on what sex workers wanted and needed from their allies.

Leigh as well, has been credited in coining the very term, “sex work.” This new term both acknowledged the site of sexual labour as work, while also disassociating sex work with legal definitions, or other colloquial language that had been used for centuries to stigmatize and prosecute workers. Throughout the third wave, several definitions of sex work have been formed and re-formed. Within frontline communities, sex work is used as an umbrella term to describe the exchange of intimacy, affection, emotional or physical labour, fetishistic or sexual acts for material goods, such as cash, food, drugs, or a safe space to stay (PACE Society, 2018). Sex work includes strippers, escorts, dominatrixes, camming, porn, subbing, girlfriend experience, phone sex… it’s all sex work. The “whorearchy” describes a social hierarchy among the sex trade in which “being a porn actress is better than being a prostitute,” wrote one respondent in Amarna Miller’s Guide to Responsible Reporting on Sex Work. “This only serves to encourage prejudice,” they continued (Miller, 2018). The use of sex work as a catchall term for the above subcategories aims to de-hierarchize different types of labour, while building solidarity among workers. And so, as this definition has informed my understanding of third wave theories of sex work, I will be using this non-hierarchal, labour centered definition throughout the remainder of this paper.
"This work can be oppression or freedom; just another assembly line job; an artistic act that also pays well; comic relief from street realities; healing social work from an alienated culture. What is at work within each woman that lets her accommodate this situation? Intense denial, infallible sense of humour, codependency, incredible strength, a liquid sense of self? The only safe thing to say is that we’re all in it for the money" (1997; 28).

—Vicky Funari, “Naked, Naughty, Nasty,” in Whores and Other Feminists.

Another prominent argument of third-wavers, championed by Elizabeth Bernstein (2007) following her years of field research, is that "[sex work] might sometimes constitute an attempted means of escape from even more violating social conditions" (3). The title of this section "I will sell my pussy but I won't sell my soul," is derived from an interview with a spunky San Francisco based sex worker named Drew, whom Bernstein met in 1995. With this comical yet impactful sentence, Drew added, "at least I can wash off my pussy." Drew would be just one example of the many sex workers who prefer the sex industry over other forms of wage labour, usually leaving low paying service jobs in favour of a sometimes highly lucrative and fulfilling role as dancer, sensual masseuse or private call girl. Dewey (2012) also cites that even for people who may struggle with their identity as sex workers, it is “preferable to the low wages and working conditions available to them in service-sector jobs” (120). In an effort to move away from the dichotomization of sex work as either liberation or victimization, scholars and activists sought to re-appropriate sex work as a legitimate site of labour.

Third wave scholars and sex work activists resisted the discussion of sex work as a ‘women’s issue.’ Sex work has never been an industry limited to heterosexual women and men. As a marginalized group, the trans and non-binary community are overrepresented in sex work but largely underserved. Third wave feminism has made efforts to remove gendered language within the sex work discourse, and to acknowledge queer experiences. With that being said, I will attempt to remove gendered language from this paper as much as possible, instead referring to sex workers simply as sex workers or workers. When gender is especially relevant, I will use “women” and/or “femmes” to describe feminized bodies both cisgender and transgender.

Lastly, and possibly what remains the most highly contested point of third wave thinking, is their call for the decriminalization and normalization of sex work. Sex work activists and community and global organizations, including the Global Network for Sex Work Projects, Survivors Against SESTA, the Urban Justice Centre, and Amnesty
International, advocate that the decriminalization of the sex trade is central to the fight for liberation. These groups find decriminalization “essential to addressing exploitation and trafficking in the sex trade” (Survivors Against SESTA, 2018). Often, traffickers exploit the vulnerability and isolation created through criminalization, including documentation status. After a two-year study, conducting first-hand research “into the lived experience of sex workers,” Amnesty International supported the “refocussing of laws to tackle acts of exploitation, abuse and trafficking – rather than catch-all offences that only criminalize and endanger sex workers” (Murphy, 2015). Decriminalization means that sex workers are able to work and live without the interference of State officials and police and feel safe to access services without the fear of prosecution or social stigma. The decriminalization of sex work will help remove barriers that workers face to housing, healthcare, safety, etc., as well as help to dissolve the stigma associated with such types of work. The third wave asks that governments remove policing efforts that negatively impact the wellbeing of both workers and their clients.

The third wave also understands that abolition of sex work will not abolish the need for safe, secure, and fair work and wages. Gira Grant, a former sex worker and journalist, wrote in 2014 that sex work is not merely driven by male desire, but also by sex worker’s desire “for housing, healthcare, education, a better life, a richer life, if we dare” (42). Grant argues that it is easier to solve the ‘problem’ of sex work than it is to address issues such as poverty or racial inequality:

It's a smaller and more convenient problem to want to solve: who men fuck and how. It's one that women who oppose sex work and sex worker's rights can pretend that they have no role in and they themselves do not benefit from (43).

And so, for third wave feminists, decriminalization, as well as the eradication of patriarchy, classism, and racism, must happen together. Thus far, I have outlined three feminist standpoints of sex work; second wave radical theory, second wave liberal theory, or sex-positive theory, and the third wave’s intersectional approach to sex work. Using a third wave lens, my next chapter will provide a short history of U.S. trafficking policy and discuss the ways in which second wave theories, which I understand as problematic, have come to inform contemporary understandings of sex work and sex trafficking. I will also re-introduce FOSTA/SESTA as it relates to this history.
Chapter 3.

Prison Nation

3.1. Definitions of Trafficking and U.S. Law

While not a complete definition, many third wave feminist scholars will agree that sex trafficking can be defined as the trade and exploitation of sexual labour under conditions of coercion and force (Capous, 2007; 58). However, when we look at historical discourse, State laws and human rights policies, we see a more detailed definition of trafficking that is often the result of, as Capous continues, “imperialistic frameworks and ideologies that are imposed upon the rest of the world” (58). As well, legal definitions of sex trafficking often include sex work, migrant labour and any intersection of these two things. In many instances, concerns around sex trafficking, migration, and sex work, are understood as one single issue, with Western nations at the forefront of this conflation.

In her article, Unpacking the Trafficking Discourse (2012), Jyoti Sanghera argues that the dominant discourse on trafficking is based on assumptions. She finds that It is not important whether or not these assumptions are correct, but rather that they are not supported by rigorous research or a sound evidence base (4). Sanghera lists an extensive number of assumptions about human trafficking, but for the purposes of this paper and its later contents, I have included below just a sample:

- All entry of women into the sex industry is forced, and the notion of consent in prostitution is based on upon false consciousness.

- Based on the assumption that all prostitution is forced, workers will be happy to be “rescued” and reintegrated with their families or rehabilitated.

- The absence of stringent border surveillance and border control is the principal reason for facilitation of trans-border trafficking.

- Law enforcement is a neutral and unproblematic category, and all it needs is sensitivity training on issues of trafficking to intervene effectively and curb the problem (4-5).

Before I continue to address the above assumptions, I must first define human trafficking and sex trafficking, and their relation to sex work. Human trafficking, or
modern-day slavery as it is increasingly being called, involves the recruitment, transportation, and/or harbouring of a person, in addition to control, coercion or influence over the movements of a person in order to exploit their labour. Human trafficking takes form as forced labour or exploitative labour practises and can happen within national borders as well as internationally. Human trafficking includes, but is not limited to, sex trafficking, which includes sexual exploitation/violence and forced sexual labour. Human trafficking is also extremely prevalent within agriculture, the garment industry and care services.

Human trafficking is genderless and encompasses all types of labour. However, the general discourse, which I will continue to critique, has created a single trope of the trafficked body; a woman, and typically a woman of colour, who has been trafficked for her sexual labour. The idea of agency or choice does not exist within this discourse. As I outlined below in Figure 1, choice and coercion exist on a spectrum, with sex work and sex trafficking fall on opposite ends of that spectrum. But within anti-trafficking policy, this distinction is rarely ever made.

![Diagram]

**Figure 2:** Sex work and sex trafficking both exist within a spectrum of choice

The Page Act of 1875 became America’s first immigration law, seeing an end to open borders. The law specifically restricted Asian women from entering the country, based on fear of such women being cheap, and spreading immorality. In response to the growing fear of ‘white slavery,’ Congress passed the White Slave Traffic Act in 1910, also known as the Mann Act. This act prohibited unmarried women from crossing state lines for “immoral purposes,” and well as criminalizing interracial couples (Saunders & Soderlund, 2003). Within the United States, the 1920s also saw the introduction of additional racist immigration laws which included the Immigration Act of 1924 and the Temporary Quota Act of 1921. Both laws aimed to strengthen US borders and restricted migrants from Eastern and Southern Europe, and Asia (Saunders & Soderlund, 2003). It was not until 1949 when the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others replaced previous International agreements on ‘white slavery.’ However, the new policy continued to take the abolition of prostitution as its main objective (Kempadoo: xiii). As well, it would be over 50 years before the United Nations made major changes to this position.

Modern slavery, including human trafficking, and more so, sex trafficking, has been described as a growing epidemic, and is a major site of debate, policy reform, and humanitarian work. ‘Increasing’ statistics of human trafficking cases within the United States have generated a moral panic and a push for better law enforcement policies. However, scholars have found such a reaction to be based on unreliable sources (Sanghera, 2012; Capous, 2007; Van Der Meulen, 2019; Chapkis, 2003).

Within the United States, the Department of Homeland Security (DHS) opened 833 investigations in 2017 possibly involving human trafficking. As well, in the same year, the DHS convicted 499 traffickers, a majority of which involved predominantly sex trafficking. Other estimates find a total of over 100,000 survivors of sex trafficking in the United States at any given time. However overwhelming and disparaging these statics appear, it is important to recognize that government statistics on trafficking are often inflated or unreliable. Sanghera (2012) finds that trafficking is mistaken for “the actual site of work and a form of labour,” and that most statistics on trafficking are based on speculation and untested assumptions. Figures on the number of women being trafficked often also include women migrants, and consenting sex workers. In the same book, Sanghera argues as well that women and girls who have been listed as “missing persons” are often considered trafficked. This does not consider whether or not said
women are indeed missing, or have simply chosen to relocate (14). In 2006, the U.S. Government Accountability Office (GAO) as well found that estimates of the number of people trafficked, including sex trafficking, were questionable. The study claimed, “the accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies” (2). The issue with State statics on trafficking stem from a history of problematic laws and uninformed definitions of trafficking and sex work.

Modern definitions continue to conflate trafficking with sex work and the sexual slavery of women. This narrative has been supported by radical ideas that see women and femmes without any agency of their own, and that all sex work is the result of coercion or systematic oppression. When sex work is not recognized as a legitimate form of labour, all sex workers are viewed as victims. As well, according to many abolitionists, “sex work is the cause of trafficking,” making the best way to fight trafficking the abolition of all forms of prostitution (Outshoorn, 2005: 146). My next section will outline several instances in which radical feminism has worked to influence modern trafficking laws both through theory and action.

Radical Feminism and the Law

Radical feminism has remained prominent in not only academic circles but also in policy and legal debates on sex work and trafficking (Smith, 2011; 535). Similar to the anti-pornography movement of the 1970s, the fight against human trafficking has been adopted by activists as a women’s issue. The abolition approach to human trafficking, however, largely conflates trafficking with sex work. Human trafficking, sex trafficking, sexual exploitation, and sex work are phrases used interchangeably in documents, policy hearings, and court cases as if defining a single issue. Because of this conflation, anti-trafficking initiatives target sex work communities and migrants (Emily Van Der Meulen, 2019). Anti-trafficking lobbying, or what Laura Agustin has coined, “the rescue industry” (2003), continues to grow in size and influence.

In 2000, a Washington DC-based think tank, the Hudson Institute, “formed a coalition with powerful evangelicals” (Capous, 2007: 59) and pressed for legislation that would become the Trafficking Victims Protection Act (TVPA). Capous finds that while this law seeks to “protect” the victims and prosecute “an organized criminal network” it places the burden on the migrant to “prove her innocence” (67). Chapkis as well argues that the TVPA was adopted based on a “repressive moral panic about ‘sexual slavery’
created through slippery statistics and sliding definitions” (2003: 924). The National Organization for Women (NOW), one of the largest feminist organizations at the time, became heavily involved in the TVPA lobbying campaign. The group claimed that “sex trafficking, referred to by many of us as the modern form of slave to victimize 50,000 women and girls every year in the U.S. alone” (NOW, 2000). However, Chapkis finds the figure of 50,000 victims of sex slavery is inaccurately based on a CIA briefing in which an estimated 45,000 and 50,000 women and children are trafficked into “sweatshop labor, domestic servitude, agricultural work, and prostitution” (525). Misleading claims such as these, she continues, “is a rhetorical device in antitrafficking discourse” (926).

The TVPA was renewed in 2003, 2006, and 2008, and was eventually replaced by the Justice for Victims of Trafficking Act (JVTA) of 2013, which was renewed in 2015. This act applies to any persons convicted of “transportation for illegal sexual activity,” without any reference to coercion or force, and human smuggling in violation of the Immigration and Nationality Act (U.S. Congress of State, 2015; 229), thereby conflating migration and sex work with trafficking at a criminal level.

Smith, in her work The International Political Economy of Commercial Sex, finds that groups such as the Coalition Against Trafficking in Women (CATW) have been influential in lobbying for the UN (2011: 535). Sheila Jeffreys, founding member of the Australian branch of CATW, asks that policymakers acknowledge the ‘truth’ about the sale of sex- as in industry which depends “on the continual rape of girls and women who are numbed with shock and pain” and should be criminalized as such (2008:199). Throughout the 2000s Jefferies had been part of a campaign that supported the Australian government’s adoption of sex work laws similar to those in Sweden. The Swedish Model, referred to by decriminalization activists (those in support of the decriminalization of sex work or ‘decrim’), as the “Nordic Regime,” criminalizes the purchase of sex while decriminalizing its sale. This model has been adopted by many Western nations such as Canada, Norway, e.g., as a way to end demand while ‘reducing harm’ to sex workers. However, ‘end demand’ models are largely unsupported by third wave feminists (Boels, 2017; HIV/AIDS Legal Network, 2013) because they perpetuate stigma and leave sex workers more vulnerable to bad clients, as clients are less likely to share identifying information or meet in public spaces. In response to the recent laws adopted by certain Australian regions that decriminalized the purchase of sex, Jefferies
has been quoted saying, “laws that legalise [prostitution] set aside a section of women to be the appropriate objects for men's sexual use” (Leadership for Women, 2012).

Anti-trafficking activists are not all evil. While they sometimes have good intentions, they are almost always misinformed. Though their theories may be exclusionary, white-washed and classist, it is undeniable that radical feminists are passionate about the safety of (certain) women. But whether or not abolitionists see their work as part of the fight for gender equality and the dismantlement of patriarchy, I argue that policy makers, law enforcement, and “neoliberalism,” as Kristin Bumiller (2008, 7) wrote, have appropriated radical feminist ideas, giving rise to “a direct alliance between feminist activists and legislators, prosecutors, and other elected officials.” McKinnon herself has argued for brief jail time for sex workers as a means of escape from “pimps and the street” (2011; 306), and can offer women, when lacking shelter, a 'safe haven.'

Bernstein (2010) has offered a similar critique of the rise of “carceral paradigms” (47) of justice in the feminist anti-trafficking movement. Bernstein finds the movement’s adoption of “a politics of incarceration” is associated with “a rightward shift” (47) and “feminist-conservative alliances” formed between abolitionist feminists, evangelical Christians, and both conservative and liberal government (47). The demand for “more punitive action by the state” (Bumiller, 2008; 7) by anti-trafficking movements has resulted in the tightening of borders² and the policing of labour and sex, all under the guise of ‘saving women.’ Many laws that aim to reduce trafficking in effect harm sex workers (Boels, 2017; HIV/AIDS Legal Network, 2013), pushing the industry even further underground and increasing the chances for violence and exploitation. Contrary to the stereotypical image of a human trafficking survivor, sex workers indeed are already

² An aside: The problem with trafficking and migration laws:

The panic of contemporary abolitionist movements, focusing on “sex trafficking and modern slavery,” has coincided with a tightening of borders, and efforts to regulate the flow of people based on a need for security, peacekeeping, and the eradication of terrorism (Kempadoo, 2014: xv). The widespread growth of anti-trafficking legislation is among control mechanisms that serve as an effective means by which to “tighten borders against unwanted immigrants in the name of reducing trafficking” (Dewey, 2012: 127). Much like trafficking polices have historically confused sites of sex work as the result of coercion and force, migrant women as well (both sex workers and other types of workers) are harmed by anti-trafficking policies, and often deported under the guise of “rescue.” While the complex topic of trafficking and migrant work is beyond the scope of my current research, it is important to acknowledge this reality as we moved forward in discussing FOSTA/SESTA. In the future, it is necessary that further research take place to unpack the ways in which the most current trafficking laws have impacted migrant workers in the U.S.
among the most vulnerable to sex trafficking. And so, sex worker activists have found better resources and safer working conditions for sex workers to be the best approach to reducing cases of sex trafficking (Amnesty International, 2015; Global Network for Sex Work Projects, 2019; Urban Justice Centre, 2007). However, as I re-introduce FOSTA/SESTA later, it will become clear that policy makers continue to work outside of the suggestions provided by the sex worker community.
Chapter 4.

Sex Work and the Digital Shift

Before I can re-introduce FOSTA/SESTA and its limitations, I must first discuss the relevance of the internet in sex worker’s liberation. In this section, I aim to demonstrate how the internet has proved to be a safe(r) space for sex work.

In 1982, seven years prior to the invention of the world wide web, France’s national telephone company – France Télécom put phone books online. With funding from the French government, clunky computers valued at about $200 were sent to every French household with a phone number. France Télécom called it the Minitel. At first, the Minitels could only be used to look up phone numbers, addresses, the weather, stock prices, etcetera. Users were charged by the minute, and Télécom would split profits with the owners of these “pages.” Though Minitels were an increasingly popular source for information, it lacked something essential to today’s internet: the ability to interact with other users. Reportedly, not long after Minitel’s release, a teenager was able to hack the back-end of the system and added in a chat option. Chat rooms immediately became the most used and most profitable feature. The chat rooms with the most daily visitors were sex chatrooms, referred to as Minitel rose – French for “Pink Minitel” (Gimlet Media, 2015).

The Minitel animatrice— those who provided intimate chat time for a fee—became a somewhat-typical part-time job for students and artists. Digital “call centres” were popping up around major cities, with a dozen or more animictrices working together in a small office from 10 p.m. until dawn. Most of whom, were men, who did not necessarily identify as sex workers—to them, it was just a good paying job. “People told me things that they’d never told anyone, and other things that they never would’ve told a man. They trusted me with their secrets – their sexual fantasies, their fears, their life dramas,” said one former animatrice named Jean Marc Manach in an interview with the American podcast, Reply All (Gimlet Media, 2015). Whether or not Manach identifies as a sex worker, his story is just one example of how sex work was forever changed by the invention of the internet and virtual communication. It is clear that, since the very beginning of computer mediated communication, users have found a safe space on the
internet to talk about their desires and fantasies, and similarly a space for sex workers and big corporations to capitalize on this new market.

This next section will attempt to describe the rise of online-facilitated sex work and how it has come to be a valuable resource for both sex workers and clients. I aim to define the ways in which online spaces facilitate community building and access to resources and have helped increase safety for sex workers over the past 30 years. In doing so, I hope this chapter will help establish the level of harm presented by FOSTA/SESTA and uncover the law’s many oversights.

**The Rise of Adult Ads**

Following Minitel, the most accessible and wide-spread use of the internet was AOL, a chat room service sent to American users on a CD-ROM (Rothman, 2015). Here too, we see sex chatrooms gaining immense popularity. As well, with later versions of AOL, it became possible for users to not only share messages, but also upload and send photos and videos. However, similar to the Minitel Rose, the people behind the chats were usually not women, nor were they the same people who had been doing sex work before the internet. Because the pay associated with chat room jobs was significantly less than indoor sex work and even street-based sex work (not to mention it required workers to have access to a computer), in-person sessions remained preferable (Bernstein, 2007).

However, by 1995, the world wide web as we know it today was becoming more and more accessible. The first adult ad sites went online, and indoor sex workers welcomed “new forms of domination…but also new possibilities for creative entrepreneurship, intimacy and community” (Bernstein, 2007; 74). Indoor sex workers who had previously relied on the back pages of a few local newspapers could now reach a broader market more discreetly and for less money. At the same time that the client pool had widened, sex workers had the option of marketing themselves to a specific type of client, usually those who were educated, internet savvy and, preferably, wealthier. As well, for indoor sex workers who had been working in massage parlours and shared living spaces, the internet was an opportunity to go their own way and work independently. Starting up a business was as simple as posting an online ad.
And for those who lacked the skills or confidence to market themselves, small start-ups offering headshots and advertising space were there to help. For some sex workers, online sexual entrepreneurship offered a transition from dancing for tips or pulling tricks, to owning multi-million-dollar websites. In 2001, while researching for her book, *Intimately Yours*, Elizabeth Bernstein met with Sara, the founder of Citylove.com, of San Francisco’s first adult ad site (Bernstein, 2007; 70). Sara had previously worked as a stripper and also held advanced degrees in graphics design and photography. The website seemed like an obvious idea. Sara and her partner Greg had started the site four years earlier and had seen an average growth of 45 percent each year, despite an increase in competition. In 2001, the site created and hosted about 500 advertisements at any given time for local escorts, fetish specialists and erotic masseuses for $25 to $120 a month, and daily visits would reach more than 200,000. While Citylove.com may no longer be an active URL, sites like Pornhub, AdultWork and, until recently, Backpage, remain some of the top ranked websites for daily visitor traffic and profitability.

By the year 2005, It was estimated that approximately 85 percent of sex work in the United States was taking place online or in other indoor venues (Urban Justice Centre, 2005;19). A 2017 study by the Global Network of Sex Work Projects found a steady increase in online sex work from 2006 to 2014 (3), and by 2017, over 90 percent of American sex workers surveyed responded that they had access to information and communication technology (8).

**Safety and Community**

Perhaps most importantly, the digital environment of the internet offered a means of escape from some forms of violence and stigma associated with sex work, as well as a purism of online, sex worker-centered communities. Before I continue to address the many benefits of online sex work, I must first reiterate the point that that sex work, as a labour practice, is not inherently violent or harmful. Street-level sex work as well, is not inherently violent or harmful. Rather, sex workers experience violence due to the compounding effects of misogyny, racism, transphobia and homophobia, as well as stigmas associated with the work. All sex workers, including indoor and online sex workers, face a risk to violence, and street-level sex workers, because of their physicality and visibility, and because of added stigma perpetuated by the ‘whorerarchy’, experience some of the highest rates of violence. My argument is not that online spaces
are safe, but rather safer. The internet provides the opportunity for greater and more diverse resources, access to community and support networks, and a decreased threat of harm or interaction with law enforcement.

Contrary to radical narratives that clients are the direct cause of violence and abuse, sex workers too experience violence at the hands of law enforcement officers. The sex work community in the United States has experienced a long and on-going history of police brutality, random and aggressive searching, rape and sexual violence, and threats of violence and/or incarceration resulting in sexual exploitation (Decker et al, 2013; Platt et al., 2018). In one qualitative study of violence against street level workers in Baltimore, MD, researchers found that “overwhelmingly, the primary form of police abuse was coercive sex whereby police exploited power dynamics inherent to their relationship with sex workers” (Decker et al, 2013: 7). The threat of arrest is often enough to coerce sex. Participants of this study described these scenarios as “exchanging sex for their freedom” (7). In other cases, Police officers would arrest workers even after engaging in sex that would allegedly “secure their freedom” (7). Within a legal system that finds sex workers as criminals, and police as saviours, these workers have little to no agency against their assailant. The policing of street level sex work has detrimental effects on workers in a number of other ways. The Canadian Public Health Bureau has found that due to policing, “encounters with clients may become rushed, take place in isolated areas, and often limits any control the sex worker may have over the situation” (2014: 5). In addition, police officers are less likely to assist sex workers who have experienced violence, robbery etc., or take their claims seriously.

For those who had transitioned from street-based sex-work or massage parlours to online facilitated, indoor sex work, the internet provided a protective barrier from the police. Hidden behind a pseudonym and online ads that showed only below the collarbone, sex workers maintained a higher degree of anonymity and were more easily able to separate their work life from their private life. Workers could go grocery shopping without fear of being recognized by the police and possibly booked. In her book, Playing The Whore, Gira Grant (2014) argues that U.S. sex workers are often characterized by

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3 Indoor sex workers are still vulnerable to police violence and arrests. “Stings,” in which sex workers are deceived into meeting with undercover police, are a common occurrence in the United States. However, indoor workers are able to create a larger physical space between themselves and police compared with street level workers.
their appearance and that women and trans folk on the street are regularly profiled by police as sex workers if they fit a particular stereotype (9). The consequences of this include that people are rarely charged for actually engaging in sex work, but instead are charged because they appear that they could (9). This distinction is critical in understanding the way in which U.S. law enforcement understands and punishes sex work. In 2001, sex workers in New York City were more commonly arrested for loitering than for prostitution charges (Urban Justice centre, 2005; 20). As well, Gira Grant makes an important point in stating that police profiling of sex workers disproportionately affects trans women, a demographic that is often excluded from conversations around safety but experiences the most violence (2016;9).

The incidence of physical violence, including homicide and rape, continues to be significantly higher among street-based sex workers compared with any other population of women globally (Strathdee & Shannon, 2012). According to research by American economists Scott Cunningham and Manisha Shah (2018), the homicide rate for women and femme sex workers is over 200 per 100,000 people, making it the most dangerous profession in the United States for women. The second most dangerous, the liquor store employee, has a homicide rate of four per 100,000. Cunningham and Shah (2018) have found that online advertising services have helped in lowering these statistics. By 2000, the popular community website, Craigslist U.S., had added an ‘erotic services’ section to its list of user-generated advertisements. During their research, Cunningham and Shah noticed a drop in homicides shortly after the first erotic services section was introduced. And since this feature was added at different times for different American cities, they were able to correlate the number of homicides in a city with the introduction of the erotic ads. They found on average, when Craigslist would open erotic services in a city, that cities’ female homicide rate went down 17 percent. It is important to note that this figure represents the overall female homicide rate and not just those committed against sex workers.

Many researchers and activists credit this critical improvement to not only advertising sites such as Craigslist, but also to online forums, blogs, and even social media sites that followed. Spaces such as Instagram allow for virtual communities of sex workers to interact. Here, sex workers can share tips, debrief with one another, and post blacklists (names and contact information of clients who are potentially dangerous, scammers or undercover cops) and whitelists (names of safe clients). The same sense
of community normalized in strip clubs and street corners, is now available to sex workers working from home who previously, may have not had a support network.
Chapter 5.

FOSTA/SESTA

“In just a few months, our American dream would be exchanged for a third-world nightmare, and would lead us to question everything.”

— Nacole S, mother of ‘J.S.’, speaking to a Senate subcommittee in 2017

In 2010, two teenage girls ran away from home; ‘J.S.’ in Seattle, and ‘M.A’ in Kansas City. Shortly after becoming runaways, the girls were coerced into exchanging sex for money. Within a year of their disappearance, law enforcement was able to successfully track the location of the girls through advertisements posted to Backpage.com. Their traffickers were detained, however their mothers felt justice had not yet been served. Inspired by such events, mothers, families, and anti-trafficking organizations across the United States subsequently took on an eight-year long legal battle against the classified website, Backpage.com. These groups quickly realized that Backpage, along with every other American-owned website, were protected under Section 230 of the Communications Decency Act (CDA) an internet freedom law that “provides a safe haven for website publishers to advertise underage girls for sex” (Mazzio, 2017). End Child Prostitution and Trafficking (ECPAT) USA, a leading anti-child trafficking organization, worked alongside these families to push for legislation to remove Section 230 from the CDA. While several organizations and individual families had filed separate lawsuits against Backpage over this eight-year span, they were united in their belief that Backpage was at fault for the trafficking of underage persons, and that the removal of Backpage was necessary in combatting sex trafficking as a whole. As well, they shared similar adherence to the argument that the wellbeing of women and children should be held in higher regard than internet freedoms and freedom of speech, a right enshrined in the US constitution. As I have outlined in earlier sections, anti-trafficking movements have been closely linked to the anti-pornography strategies of the 1970s. The campaign efforts which inspired FOSTA/SESTA are no exception. I will now examine the campaign strategies used to pass FOSTA/SESTA, and the ways in which both the campaign and resulting law have ignored the voices of sex workers, as well as the realities of sex trafficking in the United States.
5.1. Jane Doe vs. Backpage.com

“How is it possibly legal that a company makes millions of dollars every year helping pimps sell human sex trafficking victims, including children? Why would congress ever grant immunity to a company that engages in conduct like this?” (Mazzio, 2017)

— Erik Bauer, lawyer in I am Jane Doe

Backpage.com was founded in 2004 by Michael Lacey and Jim Larsen, owners of the New York newspaper, the Village Voice. Like Craigslist that came a few years before it, Backpage was an online classified platform where users could buy or sell used cars or toasters, hire handymen or offer dog walking services. Most of these ads were posted for free. However, the true ‘back pages’ of BackPage, the adult services section, charged a range of fees for posters. The adult ads would become Backpage’s most profitable and most frequented section on the site, and by 2010, the target of several lawsuits. Throughout an eight-year campaign, which included a celebrity PSA series, and the making of the documentary film, I am Jane Doe, advocates for the removal of Backpage worked through several strategies to have the website taken down, and for the website’s holding company, Village Voice Media, to face legal and financial responsibility for the physical and emotional trauma experienced by a group of teenage girls. Throughout several private lawsuits, and Government hearings, the campaigners remained consistent in their argument that:

- The internet is a major player in the facilitation of sex trafficking and sex work;
- Backpage’s adult advertisement section is used for illegal activity including sex work;
- Backpage knowingly permits, and profits from adult advertisements which involved minors, and thus adopts a ‘pimping’ role;
- Backpage and other websites are offered a safe haven protection under Section 230 of the CDA;
- The removal of Section 230 will help decrease sex trafficking;
- An increase in online censorship will help decrease sex trafficking;
- And if not, the ability to file lawsuits against website owners will bring about justice in cases of sex trafficking (United States Government Publishing Office, (2017).
Although I am opposed to the implementation of FOSTA/SESTA (discussed in more depth below), it is necessary to acknowledge that elements of the above arguments are correct. Backpage did indeed provide a platform for illegal activity, sometimes including the sex trafficking of minors. I do not excuse Backpage entirely or deny their negligence in enforcing better screening practices within their adult ad section. However, where I find fault in the anti-Backpage campaign is the lack of recognition that sex trafficking will survive, and even thrive, without such a space. As well, the ways in which the FOSTA campaigners spoke of ‘prostitution’ as a whole, as being illegal and dangerous, reiterates their position that sex work is inherently harmful and demoralizing, and that the abolishment of online sex work is beneficial to everyone.

**How FOSTA/SESTA Fails to Recognize the Realities of Sex Trafficking**

As described in chapter two, scholars and community activists of the third-wave have long acknowledged that providing sex workers with access to resources is the best method for reducing cases of sex trafficking. In fact, these two groups are more closely connected than the mainstream narrative suggests. Sex workers, and particularly street-level sex workers are among the most vulnerable to trafficking. In the case of child sex trafficking, homeless youth, similar to the girls involved in the suits against Backpage, are the most vulnerable to trafficking due to a lack of shelter and other essential resources, as well as the need for a feeling of safety, security and emotional connection. The families and organizations involved in the removal of Backpage emphasized this vulnerability, but blamed Backpage for capitalizing on the situation, rather than the Government, the school system, or the parents themselves, for creating the vulnerability in the first place. Similar to the ways that abolition and anti-pornography feminists have long called for the abolishment of the sex trade as a means to end demand, those campaigning for the removal of Backpage, are unable to acknowledge the systemic forces in which child-trafficking thrives. Writers such as Mira Grant, have referred to the case against Backpage as a “scapegoat” for a much larger problem:

> It feels like what’s going on here has Backpage being scapegoated for why it is that young people run away from home. Backpage is getting scapegoated for the actions of people who exploit those young people and those are much harder things to talk about and to face honestly. We were in a Senate subcommittee hearing about child abuse and neglect. We were in a Senate subcommittee hearing about how few resources there are for homeless youth… we are here to talk about this website (Gimlet Media, 2018).
The removal of Backpage is a largely flawed, retroactive ‘solution’ to child sex-trafficking. A solution that many argue (Grant, 2018; Survivors Against SESTA, 2018; Chamberlin, 2018) government officials can easily endorse, as it involves far less effort, money, and responsibility on their part than addressing the root causes which contribute to youth vulnerability to enter the sex trade.

**Free Speech**

Another important oversight of the Jane Doe vs. Backpage debate is that the campaigns are’ fixated on “free speech rights” as their target opponent. Throughout the eight-year campaign, numerous law suits were filed against Backpage. They were all dismissed due to the site’s protection under Section 230 of the CDA. The Safe Harbor Provision protects website owners from legal liability of third-party content. This ‘freedom’ as many have argued, has “helped establish the internet we recognize today” (Lura Chamberlain, 2019; 2183). And so, the campaign to remove Backpage evolved to a campaign for the removal of Section 230. Rather than fighting one corporation, they would take on “free speech” as their main opposition. Ironically, Backpage was seized by the FBI prior to the adoption of FOSTA/SESTA (Department of Justice, April 9, 2018). The site was shut down on April 6, 2018⁴, under the Travel Act for the facilitation of prostitution (Chamberlin, 2019). However, legislative process for FOSTA/SESTA continued.

FOSTA/SESTA does have the potential to diminish internet freedoms for all users, but currently, it is arguable those suffering the most are sex workers. I find that the FOSTA campaign, as well as counter-campaigns presented by free speech advocates failed to acknowledge the ways this new law would impact a very specific community—sex workers who work online.

In a media interview published one month after FOSTA/SESTA’s adoption, Carol Smolenski, the executive director of ECPAT USA, advocated sympathy for sex workers but remained unmoved that their safety “outweighs the need to protect our kids from being bought and sold on the sex trade” (Gimlet Media, 2018). When asked why the FOSTA/ SESTA targeted not just trafficking but also targeted sex work, Smolenski said

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⁴ According to the Department of Justice, the official seizure of Backpage.com took place on April 9, 2018. However, the FBI seizure notice visible on the website’s homepage, is dated for April 6, 2018.
she didn’t know. And when asked if she’d talked to any sex workers who opposed the law, she said she hadn’t (Gimlet Media, 2018).

When we look at FOSTA/SESTA as a written law, we can see how the United States government was able to leverage this campaign to adopt ‘trafficking’ policy that would in effect, remove sex work from the internet. In the next section, I provide an analysis of the specifics of FOSTA/SESTA and its conflation of sex trafficking and sex work.

**What FOSTA/SESTA Says About Sex Work**

In 2017, the documentary *I am Jane Doe* was screened at a private event in Washington DC with members of Congress. Soon after, Shared Hope, a Christian anti-sex trafficking organization, and ECPAT USA hosted a congressional briefing. Representative Ann Wagner (R-Missouri) promised she would introduce legislation to amend Section 230 and in April of 2017, Rep. Wagner filed a bipartisan bill in the House of Representatives (called FOSTA). A Senate bill, co-sponsored by Senators Portman, Blumenthal, McCaskill, McCain, Heitkamp and others entitled “The Stop Enabling Sex Traffickers Act of 2017” (or SESTA) was introduced in August of 2017. FOSTA/SESTA passed the House of Representatives and the Senate with a vote of 97-2. On April 11, 2018, President Trump signed FOSTA/SESTA into law, making it so that:

2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking:

(a) IN GENERAL.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

(b) AGGRAVATED VIOLATION.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person and—

(1) promotes or facilitates the prostitution of 5 or more persons; or
(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a), shall be fined under this title, imprisoned for not more than 25 years, or both.

When policy makers operate within a society that mistakes sex trafficking for the actual site of work and a form of labour, we are left with poorly written laws that find online facilitation of sex work to be punishable by ten to twenty-five years in prison. Prior to the law’s enactment, a House Judiciary Committee report called sex work and sex trafficking “inextricably linked” and stated that “where prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery” (REPT. 115–572, 2018). It is true that advertisements facilitating “sex work” are sometimes, in reality, are instances of trafficking and coercion. However, this is not always the case. The language within FOSTA/SESTA fails to make this distinction. The use of the word “prostitution” in section 2421A exemplifies the conflation of sex work and trafficking. In this case, the use of “or” that separates section B(1) and B(2), makes it so both examples are equally punishable as isolated actions. Internet providers will not only be found liable if their content promotes the facilitation of “prostitution” that is also indeed, the site of sex trafficking, but instead, solely if their content promotes the facilitation of prostitution.

And this, it has been argued, is the reason as to why FOSTA/SESTA is so harmful to sex workers. The written law not only strips 230 immunity from content involving sex trafficking, but also criminalizes the hosting of content involving ‘prostitution.’ While lawmakers appear to recognize a difference between ‘prostitution” and ‘sex trafficking’ by naming both concepts, no precise distinction is written into the law. The text as well fails to define ‘promotion’ or ‘facilitation.’ In February 2018, the Department of Justice requested that the House Judiciary Committee change the language of the bill to target solely traffickers, and not cases where "there is minimal federal interest," (Feb.27, 2018; 2) like consensual sex work between adults. The letter also expressed concerns that the new law would “alter the landscape of the industry involved in advertising prostitution” (2). However to-date, there have been no changes in the use or definition of “prostitution” within the law.

FOSTA/SESTA will indeed reduce the online presence of sex trafficking (though not necessarily the actual existence of trafficking), but it will also heavily decrease the
online visibility of sex workers. Laura Chamberlin, of the Fordham University School of Law, has found that the broad language of FOSTA/SESTA may force websites to “over moderate user speech” (2019; 2197). In her writing, FOSTA: A Hostile Law with a Human Cost, she defines three likely strategies American websites will quickly adopt:

1. check each piece of user content with human eyes prior to posting, which requires significant resources;

2. enlist technological efforts to moderate content, like “machine-learning algorithms to filter and block anything that relates to sex, including activities that have nothing to do with sex trafficking”;

3. o steer clear of all such topics entirely (2109; 2197).

Now that I have outlined the ways FOSTA/SESTA may fail to reduce sex trafficking and instead remove sex workers from the internet, my next section outlines the ways that it can increase risks of sex trafficking as well as violence against sex workers. To do so, I aim to demonstrate how the internet has proved to be a safe(r) space for sex work.
One Year Since FOSTA/SESTA:

What Communities are Saying, Feeling & Living

Rather than being an issue of free-speech, sex workers have found access to spaces like Backpage as a necessity for safety and community. In this section, I will argue that lawmakers have been successful in using broad policy to remove sex workers from the internet.

A Return to Street Level Sex Work

In the spring of 2019, the sex worker community acknowledged the one year anniversary since the inception of FOSTA/SESTA. What have been the results thus far? With the removal of prominent adult ad sites and even resource websites, sex workers and advocacy groups have seen an increase in street-level sex work, violence and sexual violence committed against sex workers, an increase of social media censorship, and ironically, but not surprisingly, an increase in vulnerability to pimping and trafficking (Gimlet Media, 2018; COYOTE RI, 2019; Survivors Against SESTA, 2018). Without their online community, they have lost their ability to screen clients, and sex workers are accepting jobs that are potentially more dangerous. Traffickers, feeding off of this new vulnerability, are reaching out to independent sex workers, with claims that they can offer new clients, and safety (McCombs, 2018).

Caty, an American sex worker and founder of Tits and Sass, a site by and for sex workers, noticed within a month of the law that, thirteen people in her community had gone missing, two more were found dead, two had been sexually assaulted at gunpoint, and one woman took her own life (Gimlet Media, 2018). Chamberlain, as well, in her research, has linked the rape, assault, and homelessness of sex workers to FOSTA/SESTA’s enactment (2009; 2174). A frontline organization in San Francisco reported a 400 percent increase in street-level sex work in their community within weeks of FOSTA/SESTA (Jackson and Heineman, 2018: 74). As well, a Rhode Island collective of sex workers and sex trafficking survivors found in an impact survey that sixty percent of those surveyed stated that “without online screening capabilities, they now see potentially dangerous clients” (COYOTE RI, 2019).
**Digital Spaces, Reporting, and Arrests**

As presented as part of a Senate Subcommittee hearing in 2017, the National Center for Missing and Exploited Children (NCMEC) reported an 846 percent increase in reports of suspected child sex trafficking from 2010 to 2015, an increase the organization “found to be directly correlated to the increased use of the Internet to sell children for sex” (United States Government Publishing Office, 2017; 2). However, it has been suggested that this is a fallacy, because an increase in reporting does not always correlate with an increase in crime. Yet this continues to influence policy and law enforcement practices. Following FOSTA/SESTA’s initial enactment, reports of sex trafficking did decrease, however this was not necessarily because the actual acts are becoming fewer, but rather because police forces, investigators, and data specialists are struggling to uncover cases of sex trafficking in a new, off-line world. According to Chamberlin, “law enforcement professionals have complained that their investigations into sex trafficking cases have been ‘blinded’” (2018, 2173), indicating that Backpage played an essential role in the arrest of legitimate traffickers. Other experts anticipate the return of online traffickers; however, they will be using foreign hosting platforms, making it even more difficult for U.S. trafficking investigative services to become involved (Tarinelli, 2018).

**Shadow-banning**

Chamberlin’s predication of how website operators would react to FFOSTA/SESTA, which I have outlined above, couldn’t have been more accurate. Just over one year following the law’s enactment, the visibility of sex workers on the internet has significantly diminished. Not only have advertising platforms and sex-work specific websites been removed, but mainstream social media sites have tightened screening processes to censor or remove accounts belonging to sex workers. Tumblr, for example, an accessible and supposedly “progressive” space for sex workers to share their work, shut down all sexually explicit content in 2018. Most recently, starting in the spring of 2019, sex workers on Twitter and Instagram, noticed a decline in their account’s follower and “like” count. They also experienced difficulty engaging with other sex workers, which

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5 Margie Quin, an assistant professor at Cumberland University in Tennessee and former assistant special agent at the Tennessee Bureau of Investigation, anticipates new adult ad sites popping up overseas, of which the US Government will have far less data.
they attributed to having their accounts shadow-banned (Tierney, 2018; Fitzgerald and Sage, 2019). (Shadow-banning is a relatively new censorship practice in which the account holder does not lose access to their account, however, they are virtually invisible to other users. This is especially devastating to users as they continue to post content without realizing no one will be able to see it). Similar to how advertising sites or whitelists have been used, social media has been appropriated by sex workers as a space for marketing and money-making, but also for community building and activism work. As well, the social acceptability of these platforms helps to normalize and humanize sex workers as well as reduce stigma around sex work, and educate those outside of the industry. In an interview with Tits and Sass, one sex worker named Lynn wrote:

“Whether it is to market their services, for political use, providing a place to use and amplify voices or not, simply being on Twitter is a way for individuals to connect to a support and safety network of peers & allies…Even without the financial hardships of bans hitting many people who are already doing survival work, there are real life & death issues when people cannot maintain connections with those in their safety networks” (Fitzgerald and Sage, 2019)
Figure 3: Instagram has been criticized for over-censoring "sexually explicit" content
Image Credit: @Exotic.Cancer via Instagram

While I do not have the space or time here to fully explore the complexities of these new censorship practises, there is evidence to suggest that apps such as Twitter have been in collaboration with anti-trafficking initiatives to remove sexual content from their site. In May of 2019, an article was posted to Engadget that claimed some of Silicon Valley's biggest companies have partnered with the non-profit, "Thorn: Digital Defenders of Children" in an effort to rid their sites of sex trafficking, and sex work. Thorn has created a content moderation tool "Safer," for sites like Facebook, Twitter, and Snapchat. Law enforcement as well are able to use a separate data-mining and user-profiling tool "Spotlight." Both use data sources and AI to automate policing of sexual content. Thorn also partners with over thirty non-profit organizations, such as the National Centre for Missing and Exploited Children, which advocate for the abolishment of consensual sex work as a means of reducing of sex trafficking. Such organizations have been able to benefit from this new fear that has set in amongst website operators.
And website owners (in some cases) are happy to jump on the anti-trafficking bandwagon. Lastly, I argue that the US government is fine to let NGOs and private companies ‘step-up’, essentially doing their groundwork in ‘preventing’ sex trafficking, while also helping to strip the internet of sex work snuff.
Chapter 6.

Conclusion

6.1. I am Not Jane Doe: Sex Workers Fight Back

“We are increasingly visible as workers in political spaces, and here too our presence provokes disquiet. Many people want to stop us from selling sex, or fix the world so we don’t need to, or just ensure that they don’t have to look at us. But we are notoriously hard to get rid of.”

—Juno Mac and Molly Smith, Revolting Prostitutes (2018;2)

Figure 4: Leading to FOSTA/SESTA’s inception, activists campaigned for the bill’s dismissal
Image Credit: @RamonaSlick via Instagram

Despite centuries of stigma and prosecution, the sex worker has persisted through it all. Whether that perseverance is based on need or pride, it is evident that sex workers have always been able to fight their own battles. And they are quite good at it, too. Even prior to the 1970s, sex workers and their allies have been leading mass
movements, pushing for law reform and a cultural shift, that have changed (some) ideas about selling sex.

The new anxiety among the sex worker community inspired by FOSTA/SESTA, has also been met with resistance: the same online spaces that are increasingly trying to shut out sex workers are being used as platforms for online campaigns and community organizing. The art that I have included in chapters 4 and 5, are examples of this. One month after FOSTA/SESTA’s enactment, sex workers and allies held a march called "Funeral for the Death of Sex Work" in Chicago. As well in early June 2018, advocates for “Survivors Against SESTA” organized the first-ever National Sex Worker Lobby Day, with events and workshops in Washington, DC, New York, and Seattle (VICE, 2008).

The initial media buzz that followed FOSTA/SESTA’s enactment in 2018, has served as a catalyst for several Sex Worker organizations throughout the United States. Sex workers were given a space to discuss the bill through mainstream media channels such as VICE and the Washington Post. Slixa, a New York-based NGO was able to fund a FOSTA/SESTA essay contest, in which $10,000 was awarded to three different sex workers and their affiliated not-for-profit. While the long-term effects of this bill are yet to be seen, it is clear that resistance against FOSTA/SESTA is ongoing. It is hopeful to think that this movement will inspire a larger debate around sex work laws both in the United States and globally.

6.2. Sex Workers for Decriminalization

Sex trafficking is a horrific crime, and its eradication requires ongoing effort and an increase in appropriate resources. However, the celebration of FOSTA/SESTA reveals an oversight in the ways we understand sex work and address trafficking. The girls featured in I am Jane Doe are not the only people who will be most impacted by this new law. It is the voices of sex workers that we also need to be listening to.

Despite an ongoing history of resistance by sex workers and allies, there remains a need for innovation in not just cultural ideologies about sex work, but in policy that will

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6 Already, there has been a significant drop in reporting related to the bill. It is necessary that media organizations continue to cover the implications of FOSTA/SESTA.
reflect these new ideas. To address these concerns, I recommend that FOSTA/SESTA could be repealed and replaced with more narrow legislation that focuses on the capture of traffickers themselves, while leaving the internet otherwise as is. Such a policy should be done in collaboration with sex work organizations as well as anti-trafficking organizations which demonstrate strong allyship to the sex work community.

Based on reports, research, and personal testimonies, front-line workers have found the decriminalization of sex work, more open borders and better working conditions for sex workers as preferred solutions for the long-term. Addressing root causes of trafficking, including affordable housing, living wages and the removal barriers to documentation for foreign nationals is a sustainable and destigmatizing alternative to policing sex workers. Other suggestions for combating legitimate cases of trafficking include better services for survivors of trafficking which are trauma-informed and not contingent of law enforcement-involvement, and the removal of criminal records, which bar people from accessing housing, living wage jobs and services (Survivors Against SESTA, 2018).

Going forward, it is critical that the decriminalization and regulation of sex work is rooted in protecting the safety and wellbeing of workers, that law-makers recognize sex work as a valuable form of labour beyond a dichotomy of liberation and oppression and work in collaboration with other worker movements to improve labour conditions as a whole. These policies should not conflate sex work and human trafficking as one matter, conflate migration with trafficking, nor should they attempt to define migration as one single experience. Saying this, any new policy must include the needs and priorities of migrant women, women of colour, street-based workers, trans women and any intersections of these identities. Lastly, and quite arguably the most important, it is essential that any policy be drafted in direct collaboration with sex workers, migrants, domestic and care workers, and NGOs that represent their needs.

As Mac and Smith write in their book (2018), Revolting Prostitutes, "Sex workers are everywhere" (2). Sex workers are organizing marches and starting petitions, penning blog posts and photocopying zines. Sex workers are conducting research and interviews, calling up politicians and attending policy hearings. It is sex workers who have been doing the real work of making life better and safer for workers, and continue
to do the real work every day. And I have no doubt, that if there are any changes to FOSTA/SESTA in the coming years, it will be because sex works make it so.
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