

# From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies

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## About the project

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Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves.

**DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

**DemandAT** takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking, as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies; both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

## Project Facts

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### Legal Notice

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## 1 Introduction

To compare prostitution policies is a challenging undertaking.<sup>1</sup> Besides the conceptual and methodological difficulties that all comparative policy studies face, there is the morally and politically charged nature of sex work. The more fundamental problem, however, is the lack of a coherent system of prostitution policy classification. When researchers do not share an understanding of which general policy models exist, or even what constitutes a particular model, any comparison of specific policies becomes fruitless.

This working paper seeks to amend this shortcoming. Based on an inductive methodological approach, it presents a typology of three general prostitution policy models (or regimes), which I term *repressive*, *restrictive* and *integrative*. The intention of such a tripartite typology is that it can serve as a tool for assessing, evaluating and comparing prostitution policies, even in cases where they seem to contain contradictory or incoherent elements. A prostitution policy, like any policy, can be said to have a declaration of intentions, a set of policy instruments, the actual implementation measures, and a desired and preferably evaluable impact. These four components - intentions, instruments, implementation, and impact (what I call 'the 4i's'), are therefore what we need to investigate when assessing a particular prostitution policy.

Besides using the prostitution policy typology for analytical purposes, it can also serve as a tool for developing context-sensitive measures against violence, exploitation and trafficking in human beings in the sex work sector (Östergren 2017a). I also propose that this typology can be applied not only to policies seeking to regulate the sex work sector, but also to other moral domains of regulation, such as drug and alcohol control, gambling, abortion or homosexuality.

I will open this paper with a critical evaluation of the currently used categories and classification systems for prostitution policies, and then describe my alternative typology. Here I will cover the method used and present the three ideal types in detail. In order to provide some guidance for the benefits of the typology, the final part of the paper provides a schematic outline of the 4i's and a qualitative assessment protocol. In the concluding discussion, I show how this typology could be used to elucidate other issues that fall under 'moral politics', such as drug policies. When discussing previous classifications, as well as when presenting my typology, I will use the examples of Sweden, Germany and New Zealand.<sup>2</sup>

## 2 Currently used categories

Researchers have used several different concepts when categorising, analysing and comparing prostitution policies. The most common terms include 'criminalisation', 'regulation', 'legalisation' and 'decriminalisation', as well as general approaches called 'prohibitionism'

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<sup>1</sup> The views expressed in this paper are solely those of the author. However, the author wishes to thank Isabelle Johansson, Dita Vogel and Norbert Cyrus for encouragement and inspiring discussions. A heartfelt thanks also to the Kirby Institute in Sydney, and to Professor Basil Donovan, who generously provided a place to write in February and March 2017.

<sup>2</sup> In the field of welfare research, these countries exemplify three distinct welfare regimes: Sweden as the social democratic, Germany as the Bismarckian/continental/conservative and New Zealand as liberal (Esping-Andersen 1990; Arts and Gelissen 2002). In a forthcoming work, the author will explore links between these larger political welfare projects and the prostitution policies. See also Mattson (2016), who in a study of The Netherlands, Germany, Sweden and Finland, argues that prostitution debates and politics in European states express a general cultural repertoire embedded in welfare state policies for protection of vulnerable groups.

and 'abolitionism'. Sometimes the prefix *neo-* is used, such as in 'neo-abolitionism', or qualifying descriptors such as '*de jure*-' or '*de facto* legalisation'. To use several categorical concepts is not problematic in itself, but a review of prostitution policy studies reveals that scholars define, combine and apply them in such diverse ways that it makes it difficult to employ them as analytical categories and classification devices.

## 2.1 Definitions of categories

A review of how current prostitution policy categories are used shows that there is no consensus on what exactly is meant by each term or on what basis it is used. Nor is there a common understanding as to what constitutes a particular category and how it differs from the others. This, I believe, has partly to do with shortcomings on a semantic level. For example, the word 'decriminalisation' denotes a policy where criminal law has been removed from the sex work sector and replaced with labour and commercial law (see for instance Wijers 1998; West 2000; Jeffrey 2004; Phoenix 2009; Able et al. 2010; Wagenaar et al. 2013). Here the concept denotes a legal *process* rather than an existing legal state of affairs. To decriminalise is a legal action taken by a state authority. From a policy perspective, the issue is what the next step would be within this process. When a particular practice is no longer regarded criminal, under which legal framework and regulatory practices is it then governed? If penal sanctions on sex work are removed, the issue becomes: how is the sex work sector regulated? It would thus be more logical to view decriminalisation as the foundation of a particular regulatory regime. Needless to say, decriminalisation can lead to various regulatory measures. The same caveat applies to the concept of 'legalisation'. Legalisation is a measure that is enacted. It refers to a previously criminalised activity that is made legal. But it is not a prostitution policy regime, it is only the foundation of it.

The fact that new regulatory mechanisms are introduced following the removal of criminal law from the sex work sector explains why Weitzer (2012) does not like to use the concepts 'regulation' and 'decriminalisation'. He points out that it is extremely rare that decriminalisation occurs without the sex work sector simultaneously being regulated. Instead he prefers terms like '*de jure*' and '*de facto*' legalisation.<sup>3</sup>

While they appear straightforward on first sight, 'criminalisation' and 'prohibitionism' also suffer from a similar vagueness. It is not uncommon to find studies stating that prostitution is illegal or prohibited, but without an explanation to *what* activities within the sector are illegal. Is it the act of selling sex, purchasing sex or acting as an intermediary? The latter, also referred to as 'third parties', are those who facilitate, organise and manage sex work services, in other words agents, business operators, safety personnel, drivers and providers of premises and advertising platforms. Selling and purchasing sex might also be illegal in certain areas, such as vicinity to schools, churches or centrally located streets, under what is referred to as 'zoning' laws. Or it might be forbidden to offer sexual services, or to request them, under so called 'soliciting' laws. Another example is that it might be illegal for certain citizens to sell sex, for instance women who are married. The content of the statement that 'prostitution' is 'prohibited' or 'criminalised' thus varies.

Another conceptual problematic is that while a term such as 'abolitionism' is used to describe a specific policy, it should actually be seen as an ideological approach, or an intention, that in turns underlies how the sex work sector ought to be governed. 'Abolitionism' was originally used for the 19th century movement that sought to abolish the discriminatory regulation of sex workers. At that time, 'abolitionism' signalled the idea that sex work between consenting

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<sup>3</sup> With *de jure*, Weitzer refers to situations in which sex work has been decriminalised but where some kind of regulation has been introduced. Under *de facto* legalisation, several aspects of prostitution are criminalised, but the laws are not enforced as long as the authorities assess that the activity does not disturb public order, violate 'other laws' and provided the participants abide by whatever rules are imposed on them (2012:76 ff.). He also uses '*de jure*', '*de facto*', 'full' or 'partial' decriminalisation.

adults was a private vice that state agencies should not interfere in. Today, the concept has reversed itself, and refers to the desire to totally eliminate sex work itself, whether the proponents are faith-based or feminist (Outshoorn 2004; Chuang 2006; Cyrus 2015).

Furthermore, in some instances, we can also find a conflation between what Brubaker and Cooper (2000) call 'categories of practice' vs. 'categories of analysis'. That is, instead of employing relative unambiguous and experience-distant categories that can be used as analytical concepts in order to understand patterns, social analysts may unintentionally use categories that have been developed and deployed by lay actors and political entrepreneurs, essentially elevating the categories to an analytical position that they do not merit. This 'elevation' has occurred in references to the 'Swedish' or the 'Nordic' model. The notion of a set policy model in these countries is developed and promoted primarily by anti-prostitution activists and politicians, and has no empirical foundation. As Skilbrei and Holmström (2013) have pointed out, there are several historic, legal and practical differences in how sex work is governed in the Nordic countries. Perhaps more importantly however, what is actually being referred to when using either of the terms 'Swedish' or 'Nordic' model, is in fact a reduction to a single law of the many laws that govern prostitution: a ban against purchasing sex. This ban was implemented in Sweden in 1999, and later adopted in modified form in Finland (2006) and in Iceland and Norway (2009), but has been rejected in Denmark, a country that has instead decriminalised parts of the sex work sector.

Terms currently used to describe the different policy approaches are thus imprecise in themselves. They do not meet basic scientific standards of conceptual precision of the central categories (Popper 1972). When we move to investigate how these categories are combined in order to make up classification systems, additional problems arise.

## 2.2 Classification systems

In the literature, we can find 'abolitionism' contrasted with 'prohibitionism', where abolitionism is usually limited to abolishing the purchase and facilitation of sexual services (but not the selling), while prohibitionism describes policy regimes where all aspects of the sex work sector are illegal (see for instance Kulick 2003; Outshoorn 2004; Able & Fitzgerald 2010). These terms can be further qualified, such that 'neo-abolitionism' would describe a policy that would specifically target 'demand' by means of criminalising the purchase of sex, paired with social initiatives to help sex workers leave the sector (Jakobsson & Kotsadam 2010). However, scholars have increasingly operated with a three-fold classification scheme, with the categories 'criminalisation', 'legalisation' (or 'regulation') and 'decriminalisation', sometimes further subdivided into 'criminalisation of the client' and 'criminalisation of the sex worker' (see for instance Bernstein 2007; Munro & Della Giusta 2008; Phoenix 2009; Dewey and Kelly 2011; Skilbrei & Holmström 2013).<sup>4</sup>

Somewhat less common is the usage of a four-folded typology, but this is what Matthews (2008) proposes, using the terms 'regulationism', 'decriminalisation', 'legalisation' and 'prohibitionism'. Halley et al. (2006) instead distinguishes between 'complete criminalization', 'abolitionist or partial decriminalization', 'complete decriminalization' and 'legalization'.<sup>5</sup> In a classification of European policies, Danna (2014) rather uses a five-folded scale, based on what she sees as the three 'classical' policy models: 'prohibitionism', 'regulationism', and 'abolitionism', adding the 'neo-prohibitionism' (client criminalisation), and 'neo-regulationism' (non-punitive towards sex workers).

<sup>4</sup> One terminological variation of a three-fold classification is: 'prohibitionism', 'licensing' and 'decriminalisation' (Harcourt et al. 2005), and another is: 'prohibition', 'legalisation' and 'decriminalisation' (West 2000).

<sup>5</sup> In an early four-fold classification, Wijers (1998) instead divides prostitution policies into 'prohibitionism', 'regulation', 'abolitionism' and 'decriminalisation'.

As social scientists, we are entitled to create the classification systems we find most useful, and perhaps it is symptomatic of prostitution policy research as a young field that there are several competing classification systems, none of which has become hegemonic. Nevertheless, our research suffers when there is no consensus on what the classes imply, and when there seems to be no adherence to the rules of what Bailey (1994) calls the generic classification process.

When well conceived and testable, explains Bailey (1994), classifications can be useful descriptive and explanatory tools that allow the researcher to quickly place and compare types. Classifications and typologies can provide a firm foundation for both theoretical and empirical research. The aim of any classification process itself is to reduce complexity without losing nuance. Any classification system or typology should seek to order entities into groups, maximising 'within-group homogeneity' and 'between-group heterogeneity'. Here it is vital to be able to show the criteria on which the classification is based. There must be an exhaustive list of properties (also called attributes or dimensions) on which the types are based, stresses Bailey, as well as the relation between the type and its properties. It is this kind of listing of properties, or even a basic description of the methodology used to create a particular typology, that is nowhere to be found in the prostitution policy literature. As mentioned, one might explain these lacunae by stating that the field of prostitution policy studies is relatively new. And, as Wagenaar (2017) concludes in a review of prostitution policy studies, few scholars have actually analysed the 'mundane aspects of prostitution policy, such as the dynamics of agenda setting, the politics of policy implementation, the selection of policy instruments or the unintended consequences or regulatory measures'.<sup>6</sup> Moreover, those scholars who have studied prostitution policy have focused on discourse and governmentality analysis, and not on the process of creating sound typologies by which policies could be productively compared. Still, whatever reasons behind the lack of useful classification systems in the prostitution policy studies, the problem remains: if we do not know the elements underlying a particular category or typology, we cannot use it. At a minimum, we need to know its key dimensions, for how else can we otherwise place and compare cases?

A final problem within the existing categories in the prostitution policy literature is a lack of consistency or logic in how the currently existent categories are applied to the policies of actual countries. I will demonstrate this inconsistency and lack of applicability by using examples of the prostitution policies in Sweden, Germany and New Zealand. I will return to these examples in the final part of the paper to demonstrate how the proposed alternative typology can be applied.

### 2.3 Application of categories

Sweden is often categorised as having a policy of 'criminalisation' or 'prohibitionism', since both sex purchase and all third-party involvement is prohibited. Also, since the Swedish legislature's expressed aim with the sex purchase ban was to abolish prostitution but without having adverse effects on people who sell sex, some argue that this indicates an 'abolitionist' stance as well as a 'neo-abolitionist' one, in so far as client criminalisation was to be paired with social initiatives to help those selling sex. Moreover, in justifying the sex purchase ban, as well as previous anti-prostitution measures, it was maintained that commercial sex is an obstacle to gender equality. In other words, in current literature, Swedish policy is alternatively described in four different ways: 'criminalisation', 'prohibitionism', 'abolitionist' and 'neo-abolitionist'. However, the sex purchase ban is only

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<sup>6</sup> This lack of detailed policy studies is something the research community is seeking to amend. One outcome of the COST Action Comparing European Prostitution Policies: Understanding Scales and Cultures of Governance (ProstPol: [www.prostpol.eu](http://www.prostpol.eu)) taking place between 2013-2017, is the book *Assessing Prostitution Policies in Europe* (Jahnsen & Wagenaar 2017). This volume presents case studies of sex work in 21 European cities.

one element of the Swedish prostitution policy. There is an entire system of sex work-related laws, measures and regulations. Furthermore, research points to a number of negative implications that these have for sex workers. This includes a sense that the sex purchase ban is furthering the stigma already associated with sex work and that the ban, in combination with third party criminalisation, hampers safety procedures for sex workers. Sex workers also report fears of being subjected to police surveillance (since this is how police find their customers), a fear of losing child custody, as well as a general distrust of authorities (Östergren 2006; SoS 2007; Jakobsson 2008; Larsdotter et al., 2011; Jonsson & Svedin, 2012; Edlund & Jakobsson, 2014; Levy 2014; Scaramuzzino 2014). Social authorities and the civil society have in turn reported difficulties in implementing harm reduction measures directed at sex workers (primarily as a consequence of the dominant anti-prostitution discourse, rather than of the actual law), and complained that the promised social initiatives have not been fulfilled (Olsson 2007; Laanemets 2008; Levy 2014). In other words, the impact of the sex purchase ban (in conjunction with other elements of the Swedish prostitution policy) has had an adverse effect on those selling sex, effectively preventing us from describing it in terms of 'abolitionism' or 'neo-abolitionism'. To make matters even more complex, a closer look at the other laws and regulations that involve the sex work sector, and their impact, reveals, for example, that Sweden requires sex workers to pay income tax. Thanks to this, sex workers can also – at least in theory – use the social insurance system, and have access to sick leave and a pension.<sup>7</sup> The relationship between the state and those who earn money by selling sexual services could thus be defined as 'regulated'.

In 2002, Germany introduced the Prostitution Act, which aimed to move the sale of sex from the domain of 'immoral behaviour' to one of labour (The German Federal Government 2007). The Act made it possible to work independently as a sex worker or at a sex work premise, and it provided sex workers with the right to social insurance. However, the intention of the Act was not fine-tuned in the federalist system with changes in tax, housing and trade laws, so the power to make restrictions on the sector was left to state and local administration. Since not all local policymakers agreed with the Act's intentions, this has led to a spectrum of bylaws and practices, in effect making it difficult for the sex work sector to operate legally. For instance, there are states that do not recognize sex work as a profession, cities that create zoning laws prohibiting sex work in certain areas and there is room to interpret sex work advertisements as 'disorderly' and thus be subjected to fines (Pates 2012; Czarnecki et al. 2014; Hunecke 2017). These numerous differing regulations are the reason why German policy is commonly termed as a 'legalisation' or 'regulation' regime, but there are also those who would instead term it '*de jure* legalisation' (Weitzer 2012). Arguably, the country's policy could also be placed in the category 'decriminalisation', since upon its enactment, the Prostitution Act decriminalised the 'promotion' of prostitution, whereby operating sex work premises and advertising had been illegal. Furthermore, the arbitrary and repressive elements of the current policy, in combination with the new Prostitutes Protection Act, to be implemented in 2017, have led scholars to describe the policy as renewed 'criminalisation' of the sector. The argument is that the 2017 Act will increase the regulation of the sex sector and grant authorities extended control over sex workers, for instance via a strict licensing system for sex work premises, mandatory police registration, as well as obligatory health checks for sex workers and mandatory use of condoms. The unclear language will also enable cities to completely prohibit sex work premises (Hunecke 2017). Here we can see how the German policy simultaneously is termed in four different ways: 'regulation', 'legalisation', '*de jure* legalisation' and 'criminalisation', but also could be named 'decriminalisation'.

Turning to the third country, New Zealand, the passage of the Prostitution Reform Act in 2003 made it the first country in the world to have a policy that regards sex work as service

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<sup>7</sup> See Östergren (2017b) for a thorough discussion.



work, and that treats sex workers like any other occupational group.<sup>8</sup> Initiated by and developed in close collaboration with the key stakeholders, with the national sex workers organisation the New Zealand Prostitutes Collective (NZPC) as the primary, the explicit aim of the Act was to protect sex workers from exploitation and promote their welfare, occupational health and safety, as well as to promote public health. The stated overarching goal was to safeguard the human rights of sex workers. All laws that previously had made acts such as selling sex, operating sex work premises, advertising, living on the earnings of a sex worker or in other ways act as an intermediary were repealed. In place of the decriminalisation measures, an extensive set of regulations was enacted, some corresponding to those in other service sectors, for instance operators' certificates and health and safety requirements, others specific to the sex work sectors, such as restrictions on advertising of commercial sexual services. The Act also restates the right of sex workers to withdraw consent at any point during a transaction, and it ensures that those who no longer wish to do sex work can still be entitled to receive benefits without any 'quarantine' period (Abel et al. 2010). Because the sex work sector in New Zealand was fully decriminalised, it is most commonly referred to as a 'decriminalisation' regime, but since it is also became regulated and thus became legal, arguably we could also use those terms to describe it, and that is also why there are those who instead term it '*de jure* legalisation' (Weitzer 2012).

The above examples of how the respective prostitution policies in these three countries are commonly referred to, show a high degree of semantic overlap and indistinctness. The currently used categories are simply not applicable and comparable.

## 2.4 Previous critique

I am by no means the first to voice concerns with how prostitution policies are categorised. Wagenaar et al. (2013) and Skilbrei and Holmström (2013) have critiqued that at times it is the intentions, rather than the implications of a policy that are assessed, as is (and has been mentioned) the case with 'abolitionist' policies. But even if scholars such as Wagenaar et al. (2013) note that this policy field suffers from conceptual confusion and a lack of solid policy theory, the problems seem to be attributed to the nature of sex work per se rather than a need for more general clarification of what policies are, how they are formed and how they should be assessed. For instance, Wagenaar et al. (2013) argue that, for the sex work sector, it is not possible to speak about policy 'regimes' in the usual sense, since the ways countries deal with the sale and purchase of sex are not sufficiently coherent and consistent over time, and not coterminous with national borders (see Bernstein and Schaffner 2005 for a similar critique). This means that a country can have quite different, even contradictory laws and practices operating (as we have seen in the case of Sweden and Germany). In a similar vein, Scoular (2010) has noted that a state-centric approach to prostitution policy fails to account for local circumstances and outcomes that often do not comply with the formal law. Others, such as Skilbrei and Holmström (2013), argue that terms such as policy 'model' and '-regime' are misleading, since the way a country approaches sex work tends to be influenced by several different legal frameworks, as well as social policies and how knowledge has been produced. They also argue that the goals of prostitution policies are too multiple and contradictory to fit into a distinct class. Examples of regulations that do not directly address the sector, but have great effect on the actors, according to Della Giusta (2008), are penal code reforms, public health, social insurance and taxation regimes, as well as concerns about immigration, public order and safety (see Wagenaar et al. 2017 for a similar argument).

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<sup>8</sup> The policy was inspired by the prostitution policy in the Australian state of New South Wales, where street-based sex work was decriminalised in 1979 and sex work premises 1995 (Able et al. 2010). The changes in the law were introduced as a result of police corruption where sex workers and establishments were forced to pay protection money to police (Egger & Harcourt 1991). The Australian reform has proven to not be as thorough as in New Zealand, partly because of a lack of implementation directives by local government (B. Donovan 2017, personal communication, March 13).

The solution to the perceived complexity of national prostitution policies leads scholars to suggest a corresponding particularity in how to approach them analytically, primarily by not analysing them as a policy comparable with other policies.<sup>9</sup> Attempts to categorise prostitution policies oversimplify them to the extent that they appear more static and more coherent than they really are argue Skilbrei and Holmström (2013), and they therefore propose to discontinue the usage of the terms policy 'models' and - 'regimes' and instead use the term 'legal regulatory framework'. Scoular would rather use the term 'regulatory approaches' and together with Sanders (Scoular and Sanders 2010) suggests employing a more complex policy understanding that moves beyond distinctive pairs such as legal/illegal or criminalisation/legalisation. All forms of regulation make up a kind of 'punitive regime', and as such, should be analysed within the broader framework of governmentality, they argue. Wagenaar et al. (2013) suggests focusing on policy 'approaches' when employing categories such as 'decriminalisation' and 'regulation', but in an impressive undertaking that presents 21 European cases of prostitution policies, Jahnsen and Wagenaar (2017) do not employ any policy categories at all. Della Giusta (2008), however, still believes that terms such as 'policy regime' are useful as long as they do not give the impression that these are coherent, alternative models from which policy makers can choose. And finally, Matthews (2008), troubled by the 'slippage' and overlap in how basic categories are used in the prostitution policies, suggests retaining four of the current classifications (as mentioned earlier), but to treat them as 'ideal types', that according to him will entail 'qualifications, overlaps and contradictions' (2008:97).

The apparent question to the latter proposals are: What can be gained from a classification system where the categories are either vague or overlap so much that the classification cannot be applied in practice? As demonstrated above, it is precisely the many different qualifications, overlaps, grey zones and contradictions that make the current prostitution policy categories unfit for comparative analysis. While prostitution policies are complex, this is clearly true of all policy domains, since any policy is the result of conflicting interests, historical traditions, political compromises and practical necessities. In this sense, the regulation of sex work is no different from policies about immigration, transport, welfare or healthcare. However, there are specific challenges facing the sex work sector that must be acknowledged (and which will be addressed later in the paper), but I propose that what is needed when creating a typology for prostitution policy is to identify particular *methods* that enable us to differentiate between distinct policy regimes in a coherent way. Only with such coherent distinctions can stakeholders and policy-makers assess and evaluate policies or scholars operationalise them in their research. The typology proposed below is an attempt to foreground these methods and distinctions.

### 3 Proposed typology

In trying to resolve the ambiguity and confusion in the way prostitution policies have been classified previously, one strategy would be to refine the already existing concepts. Another, more radical approach would be to propose an alternative set of concepts that could form the basis for a new classification. My conclusion, after attempting to use the existing concepts in a comparative prostitution policy study<sup>10</sup>, as well after a review of the literature, is that 'tweaking' the existing policy categories, with all their overlaps and ambiguities, would prove unproductive. Too many, not only researchers, but also stakeholders and decision-makers, have too much invested in them. Instead, I propose a reformulation of the prostitution policy

<sup>9</sup> Outshoorn (2004) has a somewhat different perspective, arguing that it is the great variation between different prostitution regimes that provokes the confusing terminology, but she also notes that the terms characterising policies do not distinguish which activities are criminalised, controlled or permitted.

<sup>10</sup> The comparative study is the DemandAT prostitution study, which, among other things, examined the impact of different prostitution policies on 'demand', especially in relation to trafficking in human beings for sexual purposes in Sweden, Germany and New Zealand ([www.demandat.eu](http://www.demandat.eu)).

terminological landscape: a new typology that is not only simpler for all parties, regardless of views on commercial sex and prostitution policy, but also more useful. Moreover, it is a typology that respects the basic rules of the generic classification process as described by Bailey (1994). Furthermore, I believe the starting point of this reformulated classification should take its point of departure in empirical studies of how sex work sectors are de facto governed by regulatory authorities.<sup>11</sup>

### 3.1 An empirical foundation

Setting out to create the typology, I employed an inductive method in which empirical data provided the basis for the formulation of concepts. This is a research method similar to that which Bailey (1994) terms as an inductively formed 'indicator level classification'; a kind of classification that begins with empirical clusters, which are then 'covered' by conceptual labels. Kluge (2000), who has explained the indicator level classification process, calls the end result of empirical analyses combined with theoretical knowledge 'empirically grounded types'. From this, I propose a typology that operates with three basic policy types that apply to sex work: repressive, restrictive and integrative.

The three types were developed with the help of data collected in the comparative prostitution policy study, my previous work on Swedish prostitution policy, ethnographically informed studies from several countries as well as available theoretical approaches in sex work and policy analysis generally, including the emerging field of 'anthropology of policy' (Shore & Wright 1997; Shore, Wright & Però 2011). The resulting proposed typology shares characteristics with the previously mentioned three-fold classification schemes. Nevertheless, they all had certain shortcomings in terms of conceptual clarity and/or application.

In trying to develop this tripartite typology, I searched for patterns, similarities and differences that could form specific types. Simultaneously, I elaborated the main properties of the types and the suitable type labels, checked to make sure there was sufficient internal homogeneity (that the cases within each type resembled each other) and sufficient external heterogeneity (that there was enough difference between the types), and that there was what Kluge (2000) refers to as Weber's 'meaningful relationships', that is, not only empirical correlations between the properties within a type, but a relationship between the different types that makes sense. According to Kluge, it is these relationships that form the basis of empirically grounded types, this is in order to not only describe, but to also understand and explain these relationships. In the last stage, I described the types extensively, just as Kluge recommends, by the means of the combination of attributes and meaningful relationships, and finally characterised the types as 'ideal types'. Most importantly, I tried to delimit potential grey zones and ambiguities and then refine the classifications without losing the nuance or characteristics of each specific policy type.

The three policy types are ideal types in the sense described by Weber (and as opposed to how Matthews (2008) defined them earlier). Some scholars have argued that the Weberian ideal type is one that does not exist in reality, but in 'utopia'. However, this has, according to Bailey (1994) to do with a misunderstanding. What Weber tried to describe was the 'ultimate criterion type', one that has all the relevant features or dimensions of a type, and where all the features have extreme clarity. But, as Bailey points out, there are no perfect examples of an ideal type in real life, as real-life conditions would corrupt or transform it. Hence, the ideal

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<sup>11</sup> This paper does not engage with the literature on general policy classifications, primarily emanating out of Lowi's (1972) typology of distributive, redistributive, regulatory and constituent policies (see for instance Steinberger 1980; Kellow 1988; Anderson 1997; Smith 2002). Lowi's project was to develop a state theory based upon 'the limited and contingent number of techniques of control available to any state'. As such, it aims to 'reduce the state to its essence while identifying what the state is and what it is not' (Lowi 2010). Lowi has thus sought to identify the political dynamic associated with each policy category (Lowi 1988). While his work is certainly valuable, a discussion of his typology is beyond the scope of this paper.

type is an empirical entity, but one that does not exist in its conceptual *purity*. When we attempt to assess a prostitution policy and apply this typology to it, we are aware that the policy will not be a 'perfect' fit.

### 3.2 The intentions: To repress, restrict or integrate

As mentioned earlier, the starting point for the typology is how the sex work sector is governed in real life, so the key question here is: What is the sum of what the policy is intending to accomplish? As will be demonstrated, in using this approach I found that there are those policies that attempt to either *eradicate* or *limit* the sector primarily through criminal law, sometimes complemented by strict regulations, selective enforcement, various social interventions and anti-prostitution awareness campaigns. Alternatively, other policies have tried to *integrate* the sector into society with the help of labour laws and other policy tools.<sup>12</sup>

Out of these observations, I propose that we can conceive of three distinctly different ways that the sex work sector is governed, here named *the repressive*, *the restrictive* and *the integrative* policy regime. At the very foundation of these three different policies lie two entirely different ways of understanding commercial sex, an understanding that subsequently informs the policy aims and instruments.

### 3.3 The foundation: diametrically opposed understandings

The two diametrically opposed understandings of commercial sex are that it is either a negative social phenomenon in itself that should therefore be eliminated or restricted, or that it is a multifaceted phenomenon *containing* negative elements, which are best dealt with by integrating the sex work sector into the societal framework.

When commercial sex is understood as a negative social phenomenon, or a social menace, the position is explained according to the notion that sex should occur only within the confines of a conjugal relationship, that selling sex is an 'anti-social' behaviour or because it might spread diseases. Historically, and in most Western countries, these are the notions that have informed the various direct and indirect measures taken towards commercial sex, from century old bans on all extra-marital sexual relations and various vagrancy acts, to the 19<sup>th</sup> century French regulation system and contagious disease acts. The measures taken have primarily been justified by religious and/or socio-medical ideologies as to what constitutes socially acceptable choices, behaviours and lifestyles.<sup>13</sup>

Another strand of ideas in support of this understanding is feminist oriented. It is based on the belief that commercial sex exists because of structural gender inequality and is inherently harmful to women. This ideology bears a resemblance to that of the 19<sup>th</sup> century social purity reformers, and the abolitionist resistance towards the regulation systems, and has found a more contemporary form within radical feminist thought (see for instance Walkowitz 1980; Outshoorn 2005; Chuang 2010; Cyrus 2015). Sometimes purchasing sex is defined as a form of violence committed by men against women. Weitzer (2009) calls this the 'oppression paradigm' and has concluded that the most prominent advocates of this position believe that women's submission and male dominance in the sex work sector, as well as exploitation and violence, are fundamental characteristics that transcend historical periods, national contexts and different forms of commercial sex. In this understanding, the act of purchasing sex, even

<sup>12</sup> In the prostitution policy literature, there is one example which indicated the possibility of a fourth intention, to do nothing at all. According to Weitzer (2012:77), adults (over 18) in Daulatdia, Bangladesh, may apply for permission to sell sex. Otherwise, the sector remains completely unregulated, leaving workers vulnerable to abuse and exploitation. However, Weitzer's source is a *National Geographic* documentary film, and judging from other sources, there seem to be quite a degree of organisation of the sector (Hosain & Chatterjee 2005; Hammond 2008).

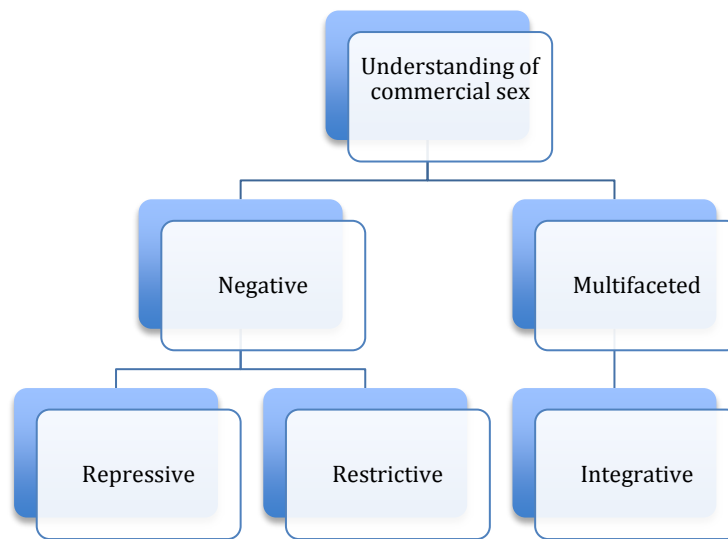
<sup>13</sup> For an overview of the prostitution policies in European nations, where histories and policies are described in detail, see Jahnsen & Wagenaar (2017).

between fully consenting adults, is, in itself a violation of the human rights of women. In Sweden, this particular feminist ideology has received increasing public and political traction over the last two decades. Despite the fact that the implementation of the Sex Purchase Ban in 1999 was, at the time, justified using a more general gender based analysis, the dominance of the previously mentioned feminist ideology (which figures sex purchasers as abusive men and sex sellers as victimised women) has since been used to justify the ban (Östergren 2017b). This made Sweden the first nation to use a feminist ideology to motivate a ban on the purchase of sexual services.

The second understanding of commercial sex is that it is a multifaceted phenomenon, consisting of a wide range of arrangements, relations and experiences, only some of which are directly harmful to women or socially unacceptable. This is what Weitzer (2009) refers to as the 'polymorphous' paradigm within the social sciences. The assumption here is that there exists a wide constellation of occupational arrangements, power relations and worker experiences within the sex work sector. There is exploitation to be sure, and violence, but there are so many variations that it is not possible to reduce sex work to either exploitation or simple sexual labour. Dimensions such as vulnerability, exploitation, agency, job satisfaction and self-esteem are therefore considered variables, according to Weitzer. In other words, sex work is understood, like any sort of work, as having aspects of potential exploitation and coercion, and aspects of individual agency and choice. Sex work is not necessarily slavery, nor is it necessarily violence. Policies within this paradigm therefore attempt to reduce the negative aspects of sex work, but do not attempt to eradicate it fully.

The defence of the multifaceted policy position is based on a human rights ideology, claiming that principles such as the right to a livelihood, security and health, as well as access to justice, should apply to all consenting, adult sex workers regardless of their gender and social position. The defence of this position can also be argued on feminist grounds, especially feminism that is inspired by 'sex radicalism', queer, 'international' and transnational feminism (see for instance Rubin 1992; Outshoorn 2004; Laurie 2010; Kempadoo 2012). Another cornerstone is the right to self-determination, meaning that the agency of sex workers must be respected and their right to articulate their own experiences ensured. Sex workers should also have the right to participate in decision making forums that affect them, where they can define the most appropriate solutions in order to ensure their own welfare and safety. Within this perspective, it is recognised that people often sell sex due to marginalisation and limited choices, which means that measures must be taken to ensure that no one is working in the sector against their will or is forced to rely on it as the only means of survival, and that those who wish to stop selling sex must be able to do so when they choose. Human rights violations within the sex work sector, such as coercion, exploitation and abuse, including sexual exploitation of children, is strongly condemned, and must be combatted using all legal instruments (see for instance Able et al 2010; WHO et al. 2013; HRW 2014; Amnesty International 2016). New Zealand employed a human rights ideology in motivating its' prostitution policy (Able et al. 2010), and the changes towards a more integrative policy in Germany, were partly driven by a feminist ideology (Dodillet 2009).

Outlined in a diagram, the two different understandings of commercial sex generate three distinct prostitution policy regimes, as shown below.

**Figure 1:** Different understandings generating different prostitution policy regimes.

### 3.3.1 Commonalities

There are some noteworthy commonalities between the different understandings of commercial sex. The multifaceted understanding and its accompanying human rights ideology views selling sex as an occupation, but the understanding of commercial sex as a negative social phenomenon can also treat it as an occupation; but it is an occupation that is not seen as morally acceptable. Only in the radical feminist position is selling sex *not* considered an income generating activity; for radical feminists, commercial sex is simply abuse disguised as an economic transaction. The person selling sex is equivalent to the slave or the work camp inmate in that they may carry out work and receive a sustenance, but it bears no relation to a job, occupation or waged work as it is not freely chosen.

Another similarity between the two understandings is the reference to trafficking in human beings into the sex work sector. The trafficking issue has played an important role in justifying various measures towards sex work the last two decades. However, in the anti-trafficking discourse, the two aforementioned understandings of commercial sex co-exist. At times sex work is portrayed as inherently harmful, where no one sells sex voluntarily. On other occasions sex work is understood as a multifaceted phenomenon that can be either forced or voluntary.<sup>14</sup> This means that the trafficking discourse cannot be used as a defining feature of a particular prostitution policy type. All prostitution policies are resolutely opposed to trafficking in human beings, the debate is about how to amend the problem.

### 3.3.2 Perceived threats and subjects of protection

In order to understand the logic between the understanding of commercial sex, the policy type and chosen policy instruments, we need to identify exactly how these two opposed understandings constitute the threat and which target group they are aiming to help.

<sup>14</sup> The Coalition Against Trafficking in Women (CATW), for instance, with an ideological base in radical feminism, argues in favour of repressive policy measures such as client criminalisation, while the Global Alliance Against Trafficking (GAATW) invokes a human rights ideology, advocating for the removal of penal sanctions against the sex work sector, to be replaced with labour rights for sex workers ([www.catw.org](http://www.catw.org), [www.gaatw.org](http://www.gaatw.org)). And, while the ban against sex purchase is a tenet of a feminist ideology in Sweden, the implementation of the same ban in Norway was primarily informed by a trafficking discourse (Skilbrei & Holmström 2013).

In the first position, where commercial sex is inherently negative, sex work itself is seen as the threat. It threatens marriage, the family, health of participants and the surrounding society, as well as the moral fabric of society, or the possibility of creating a gender equal society. In other words, it is the whole society that needs to be protected from sex work.

The multifaceted understanding is more nuanced. Here, certain elements relating to commercial sex, such as stigma, discriminatory practices and exploitation are what need to be dealt with. And the target group is not society but the sex workers, whose working conditions and well-being need to be protected, along the same lines as other vulnerable workers. In this multifaceted understanding, it is not society that needs protection from sex work, but sex workers that need to be protected from societal condemnation and violations of their labour rights.

The understanding of 'what commercial sex is', and the answer to whether it is a social menace or a multifaceted social phenomenon, therefore leads to very different policy measures. If sex work is perceived to be a 'threat to society' and inherently harmful to those who sell sex, then criminal law, possibly paired with social legislation, should be implemented. And from this social menace perspective, we derive two different political intentions: either to completely repress the sex work sector or to restrict it. If, on the other hand, commercial sex is primarily regarded as an income bringing activity, the policy approach becomes one of applying relevant labour laws, and the belief that participants in the sector, instead of being punished, should be integrated into society, with access to the same rights as other citizens, as well as complying with obligations, duties, laws and responsibilities, along with their clients, managers, agents and other intermediaries. At the level of policy and legislation, we are thus dealing with the political intention to integrate the sex work sector into the existing social and legal structure.

### 3.4 The properties

During the process of developing the typology, I elaborated six relevant properties, out of which I have already discussed two: the policy's *understanding of commercial sex* and its *ideological justification*. A third property, at the discursive level, has also been touched upon, namely the *stated aim of the policy*, understood as the policy's target group or practice and how the policy intervention is supposed to improve conditions for the group or affect the specific practice.

The fourth property deals with the *different policy instruments* that are directed towards the sex work sector, such as laws, bylaws, local ordinances and social initiatives, but also the dominant discourse.

The fifth property deals with the *impact* the policy has on the legal status of *sector* and on its *participants*. Like all policies, the impact of prostitution policies is dependent on how it is implemented by the authorities in charge, and given the often-contradictory legal framework and the strong stigma attached to sex work, the impact cannot be solely understood from a law-on-paper perspective. These impacts must therefore be assessed based on the actual consequences of the policy instruments.

The sixth and final property addresses the *mode of governance* that produced the policy.<sup>15</sup> As has been noted in policy studies, and analysed by Ansell and Gash (2007), what is called collaborative governance has increasingly come to replace the adversarial and managerial modes of policy-making and implementation. In the traditional, winner-takes-all adversarial model, public agencies and other parties in power make decisions and impose their will on non-state stakeholders. Here cooperation is ad hoc and no effort is made to transform existing conflicts into cooperation. In managerialism, public agencies may consider the views

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<sup>15</sup> I am in debt to Wagenaar (2017) for introducing this dimension.

of non-state stakeholders, and even consult them directly, but they are not included in the decision-making process. Instead, decisions are made unilaterally or through closed decision processes, relying primarily on agency experts. In collaborative governance, public agencies reach out and engage with stakeholders in formulating and implementing policy. This is a collective decision-making process that is formal, consensus-oriented and deliberative. Collaborative governance relies on all stakeholders having sufficient capacity, organisation, status and resources to participate (Ansell & Gash 2007; Wagenaar 2017).

Let us now describe the three policy types in more detail, using these properties, beginning with the repressive.

### **3.5 Repressive policy type**

The repressive policy type is based on the moral premise that the sale and purchase of sexual services harms society and individuals. The goal of a repressive prostitution policy is to eradicate the sex work sector altogether. The ideological justification can take its point of departure in religious precepts, in ideas about what is proper sexual morality, or in radical feminist theory, where commercial sex hurts both individual women and the very idea of gender equality. Here, the harmful effects on society from prostitution can be understood not just as harm to particular women who sell sex, but also to society as such and to all women. Sex work is viewed as a kind of social illness that if left unchecked, will spread and affect everyone in some way, either physically or in spirit. In addition, a repressive ideology may be expressed in more vague terms, such as immorality, a view of sex work as a threat to or a violation of family, public order, or public health, or as a combination of the above.

In a repressive policy regime, criminal law is used to discourage or prohibit third-party involvement as well as to ban the sale and/or purchase of sexual services. However, some bans against procurement can also include partners and other family members who subsist off of the income of sex workers. A repressive policy regime typically includes campaigns aimed at deterring the sale and/or purchase of sex, whereby sex work is not just condemned as morally bad, but may lead to criminal prosecution. Sex workers can be encouraged to exit the sector or be offered rehabilitation programmes; rehabilitation can also be offered for those purchasing sex as well. The dominant discourse would be wholesale condemnation of sex work.

In the repressive policy, the stated intention of a particular law may be to criminalise the client alone, or it may also involve punishment for both client and sex worker. However, a one-sided criminalisation is enough to make the financial transaction impossible to carry out legally, since one party's actions are dependent on the others'. The same goes for the criminalisation of intermediaries. In effect, when all third party activity is illegal, it means that the sex work sector always operates illegally.

In the repressive regime, sex workers do not have access to the same labour rights as other citizens who earn their income by selling personal services. Since the sale of sex is not considered legitimate work, sex workers cannot form or join unions. Income from sex work, being illegal, is not easily subjected to taxation laws; therefore, sex workers would not be able to deduct business expenses, use their income to contribute to a social security or health insurance fund, and could not benefit from social or health insurance. It is also difficult, if not impossible, for sex workers to seek social and medical assistance on their own terms since the help is conditioned. Only those who wish to leave the sector can expect to be helped to do so; they cannot expect that social or medical services will help them improve their situation as active sex workers. Hence, social services can offer therapy or alternative vocational training. Since the main mission of the law enforcement authorities is to repress the sector, and not to protect its parties or ensure that contracts between them are legally binding, it is also difficult or impossible for the actors to collaborate with police in order to prevent crime, or turn to them in the event of a committed crime against them.



Since the policy is guided by an ideal of 'zero tolerance' there is no call for pragmatism about the sex work sector. Instead emphasis is placed on symbolic measures, and many of the specific details of implementation are left open. One hears of laws intended to 'send a signal' rather than to accomplish a feasible, measurable goal. One feature of the repressive policy regime, therefore, is that harm prevention measures do not exist, or can be difficult to implement. Due to the pervasive criminalisation and anti-prostitution discourse, distributing safety kits to people who sell sex or distributing condoms to sellers and buyers can be perceived as encouraging sex work and/or inciting crime. The resulting negative impact on sex workers' health and working conditions might be acknowledged by the policymakers, but is not necessarily regarded as an unwelcome or unintended consequence. On the contrary, the negative impact could be seen as a desirable outcome.

The form of governance in the repressive policy type is adversarial. Even though those who sell sex might be perceived to be the object of protection, policymakers might solely view them as victims who therefore only need to be rescued from the sector, rather than as equal parties with their own interests who ought to be consulted. The policy process is also characterised by a disinterest in evidence-based policy. Policymakers tend not to be swayed by facts regarding impact.

Due to the illegal nature of sex work, police surveillance and/or apprehension, as well as the risk of stigma, the participants within the sector need to remain anonymous. This makes it difficult or impossible for them to cooperate, for instance in order to develop and employ safety measures, codes of conduct and ethical standards when running a business. Under a repressive regime, it is clearly risky, if not impossible, for sex workers to organise politically, both because the illegal situation makes peer-contact difficult and because sex workers need to avoid attention by the authorities. Sex workers would thus be unable to register as a formal interest group or organisation.

When the repressive regime is based on the gender-oppressive paradigm known from radical feminism, there would, ideally, not be any special prostitution laws. This is because in the radical feminist view, buying and selling sex are considered to be a form of men's violence against women. Instead of anti-prostitution laws such as client criminalisation, prostitution would be considered a case of battery. Those who buy sexual services would then either be prosecuted for rape or assault, and any 'enabling' parties (i.e. intermediaries) for complicity in these crimes. Those who sell sex would, accordingly, be treated as plaintiffs in these crimes and could be awarded punitive damages by their erstwhile clients. Social resources should be invested in the therapy, rehabilitation and exit programmes for sex workers.

### **3.6 Restrictive policy type**

Under the restrictive policy type, the aim is to restrict the sex work sector in order to protect society and/or those selling sex from harm. Commercial sex is understood as a negative social phenomenon that should be limited with the help of different policy instruments, such as criminal and administrative legislation, special regulations for the sector and/or awareness/naming and shaming campaigns. However, the restrictive approach exhibits a certain tolerance of sex work. This tolerance can be motivated in pragmatic terms; that it is a profession or a phenomenon that will continue to exist regardless of legislation, and that it is therefore better to regulate the sector in some way. In this way, sex work is controlled with the justification that the harmful effects, to both society and to those who sell sexual services, can be limited.

Just as in the repressive approach, the ideology in the restrictive approach can be religiously motivated or justified on the basis of sexual morality. Alternatively, it may be expressed in more vague terms, such as a threat to or a violation of public order or public health. A

restrictive approach may not take its point of departure in the gender-oppression paradigm. If commercial sex is understood to be a form of male violence against women, there cannot be laws that seek to regulate how and where this abuse/sale and purchase of sex can take place.

Under the restrictive approach, criminal legislation is aimed primarily at third parties such as mediators, owners of sex work premises, advertising spaces, rental brokers and others with whom sex workers collaborate or are in contact. However, there are also criminal and/or administrative laws controlling how those selling and purchasing sex can operate. It may therefore also be prohibited to offer or request sexual services (soliciting) or to drive slowly in street environments where sex workers are moving (kerb crawling). People convicted of the latter offences can also be forced into community service or participation in behavioural rehabilitation programmes (so-called 're-programming' or 'John schools'). In addition, there are laws and regulations that govern where and how sex work can take place (zoning laws). This may mean that the sale of sex outdoors may take place only in certain designated areas, such as far away from the city centre or only at certain clubs or bars, or that sex work premises cannot be located too close to, say, churches or schools. In addition, there may be a licensing system in which only a certain number of people are permitted to sell sex in a city or a region, or rules stipulating who is permitted to sell sex, or only under certain conditions, such as subjection to health testing.

There can also be arbitrary taxation systems for people who sell sex in a street environment. Furthermore, sex workers may be forced to register and undergo mandatory health checks, and immigration laws can result in a situation wherein people from other countries cannot sell sex under the same conditions as nationals. Special exit programmes for sex workers may be established. Under the restrictive approach, there is space for harm reduction measures and some cooperation between sex workers and authorities can occur.

Here the form of governance is either adversarial or managerial. Sex workers can be consulted during the decision-making process, but they are not treated as equal parties.

The result under the restrictive regime is that the sex work sector can operate legally, or quasi-legally, but only under conditions more restrictive than those of other service sectors. Furthermore, sex workers will have only partial access to labour rights and benefits. It is also possible, but it might be difficult for sex workers to seek social and medical assistance on their own terms, and to self-organise. Sex workers, clients and intermediaries can collaborate with each other and/or authorities in order to prevent and report crimes, but this might be challenging due to their "grey zone" status. And whilst possible, it might be difficult to develop and implement self-regulation, such as codes of conduct and ethical standards for the sector.

### **3.7 Integrative policy type**

The integrative type is based on a multifaceted understanding of commercial sex. The overarching goal is to integrate the sex work sector into societal, legal and institutional framework in order to protect those selling sex from harm. There is a recognition that sex workers are subjected to vulnerability and exploitation, but there is also an acknowledgment that there are those who can control their job situations and have a degree of job satisfaction in terms of the content of the work, the working hours, clients and income. This is not to say that commercial sex is understood as morally 'good'. It is only a belief that all citizens, including sex workers, should receive protection by the state. Therefore, under the integrative approach, selling sex is viewed as a service occupation, provided it takes place between consenting adults. Non-consensual sex acts in commercial sexual contexts (or sex with a minor) are prosecuted under ordinary criminal law.

In the integrative approach, labour, administrative and commercial law is applied to sex work as it would to any other service sector, but with specific legislation designed to protect sex workers as an occupational category. This includes, for instance, ensuring that there are contracts that regulate agreements between parties, but also legislation ensuring the interests of the surrounding community, such as some restrictions on advertisement. In addition, the legislation should not be discriminatory; the same rules that apply for other commercial sectors should apply for the sex work sector, for example regarding foreign workers, work permits and social insurance. In other words, the sex work sector is regulated by law, making contracts between the parties legally valid and binding in order to ensure that sex workers' employment rights and obligations correspond with other occupational sectors.

Due to stigma, and the often private nature of the work, sex workers may be in vulnerable situations. Therefore, the integrative approach ideally has specific legislation that protects sex workers from exploitation, such as the sex workers' right to refuse and withdraw consent at any point and laws that make it a criminal offence to compel or induce another individual to provide sexual services. Also, since sex work has traditionally been viewed negatively, and sex workers are subjected to social stigma and exploitation, or even abuse by clients and authorities, the integrated approach contains campaigns and education initiatives to combat this stigmatisation. Codes of conduct are also set up for relevant authorities and special liaisons between the police and sex workers are created. Hence, besides labour legislation, there is a clear framework for authorities on local levels that has been designed in conjunction with the sector. Health-focused and harm-preventive work is also well developed and based explicitly on the needs of the occupational group.

In contrast to the other two policy types, under the integrative regime it is possible and encouraged that sex workers, clients and intermediaries collaborate with each other and authorities in order to prevent and report crimes. Here it is also possible to develop and integrate self-regulation, such as codes of conduct and ethical standards, and there would be powerful sex workers rights organisations.

Outlined in a table, the ideal types would look like this:

**Table 1.** Repressive, Restrictive and Integrative policy: Ideal types

	<b>Repressive</b>	<b>Restrictive</b>	<b>Integrative</b>
<b><i>Understanding of commercial sex</i></b>	Negative social phenomenon.	Negative social phenomenon.	Multifaceted social phenomenon containing negative elements.
<b><i>Stated intention</i></b>	Eradicate sex work in order to protect society and/or those selling sex from harm.	Restrict the sex work sector in order to protect society and/or those selling sex from harm.	Integrate the sex work sector into societal, legal and institutional framework in order to protect those selling sex from harm.
<b><i>Ideology</i></b>	Religious, moral harm or radical feminist.	Religious or moral harm.	Rights-based.
<b><i>Policy instruments</i></b>	Criminal law prohibiting selling and/or purchasing sex and third-party facilitation. Campaigns aimed at deterring the sale and/or purchase of sex. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex. Dominant discourse condemning sex work. Symbolic rather than pragmatic.	Criminal and administrative law, and/or local ordinances regulating under which <i>conditions</i> sex sales can take place, i.e. laws against soliciting, zoning laws or licensing systems. Might prohibit third-party involvement. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex. Multiple discourses on sex work.	Labour, commercial and administrative law regulating sex workers' employment rights and obligations, and specific legislation protecting them from exploitation. Detailed implementation directives, and codes of conduct for authorities, social agencies and operators. Campaigns and initiatives aiming to combat stigma, violence and promote collaboration between sector and authorities. Dominant discourse nuanced.
<b><i>Impact on sector</i></b>	Always operates illegally. Not possible to self regulate, i.e. develop codes of conduct and ethical standards in sector.	Can operate legally, but under conditions more restrictive than those of other service sectors. Possible, but might be difficult to self regulate.	Can operate legally under conditions similar to other service sectors. Encouraged and/or mandatory to self regulate.
<b><i>Impact on legal situation of participants</i></b>	Sex workers have no access to labour rights, and are not able or have difficulties to access social security systems, seek social and medical assistance on own terms, self-organise, collaborate with each other and/or with NGO's, social agencies and authorities. Not possible or difficult for sex workers, clients and intermediaries to collaborate with each other and/or authorities in order to prevent and report crimes.	Sex workers have partial or no access to labour rights, might have difficulty accessing the social security system, to seek social and medical assistance on own terms, self-organise, collaborate with each other and/or with authorities. Possible, but might be difficult for sex workers, clients and intermediaries to collaborate with each other and/or social agencies and authorities in order to prevent and report crimes.	Sex workers have full access to labour rights, can seek social and medical assistance on own terms, self-organise, collaborate with each other and authorities and can influence self-regulation in sector. Sex workers, clients and intermediaries can collaborate with each other and/or authorities in order to prevent and report crimes. Possible to develop and integrate codes of conduct and ethical standards for authorities and agencies dealing with sex workers.
<b><i>Mode of governance</i></b>	Adversarial	Adversarial/managerial	Collaborative

### 3.8 Why the terminology?

To use terms such as ‘repressive’, ‘restrictive’ and ‘integrative’ could be perceived as value laden or provocative, which is hardly useful in an already charged and polarised political arena such as commercial sex. However, I have carefully chosen these terms in an attempt to reflect how the sector is approached and governed, and to outline the kinds of policy options that are pursued in various countries, regions and cities. Westerstrand (2011), who has performed a detailed analysis of the models used to organise international prostitution discourse has drawn a similar conclusion. The key question, she argues, is to ask is whether a particular discourse views prostitution as something that should be accepted and normalised, or whether it should be discouraged and thus ‘not be allowed to seep in as a normalised part of the society’ (2011:127, translation author’s own). In her model, Westerstrand discusses discourses and not policies, names the two positions differently (‘normalised’ vs. ‘abolitionist’) and also adds subcategories to them, but the underlying first step of the classification logic is the same: a division based on how to understand and deal with the sex work sector, either to try and eliminate it or to integrate it as part of society.

The terms might instructively also be compared to how other policy arenas are classified, such as language policies. These policies are used to preference or deter the use of a particular language (a dominant one or a set of minority languages) and are understood as being linked to more overarching governance of ethnic minority groups.

In a discussion about language policy, Wiley (2015) expands on a taxonomy where we can note the similarity to the definition of ‘restrictive’ and ‘repressive’ language policies.<sup>16</sup> Restriction oriented policies are those that constrain or even penalize the use of minority languages and make various social, political and economic rights and benefits contingent on knowing and using the dominant language. Policies that involve the overt attempt to eliminate minority languages, and are linked to deculturation or linguistic genocide, would be classified as repressive. In other words, we can use the example to show that the terminological revision that I propose can be understood as descriptive and not value-laden. Finally, we need to remember what classifications and concepts are: scientific tools that help us organise data and how we think about the world. As Marradi (1990) puts it, concepts may be judged more or less appropriately, but as tools, they are not scientific or unscientific in themselves.

## 4 Assessing prostitution policies

Up to now, I have focused on the theoretical foundations of how to classify prostitution policies. In this final part of the paper, I show how the proposed typology can be used as a classification device that can situate policies and frame evaluations and comparisons. I will do this by introducing a qualitative assessment protocol, which I call ‘the 4i’s’. As an illustration, I will focus on the Swedish, German and New Zealand policies. First, however, we need to attend to the sector-specific challenges to sex work and how to overcome them when assessing prostitution policies.

### 4.1 Sector-specific challenges

All public policies are complex. Policies are ‘combinations of goals and means put together and implemented by a variety of authoritative policy actors operating within an environment of multiple interacting actors and organizations operating over both time and space’ (Howlett & Cashore 2014:20). But while acknowledging that all policies have to confront ‘domain-specific obstacles, impediments, demands and restrictions that shape and constrain the possibilities of concerted action’, Wagenaar (2017) argues that prostitution policies face additional challenges, producing unexpected outcomes and unintended consequences.

<sup>16</sup> The full list of classes are: ‘promotion-oriented’, ‘expediency-oriented’, ‘tolerance-oriented’, ‘restriction-oriented’, ‘repression-oriented’, ‘policies of erasure’, and ‘null policies’.

Some of these sector-specific challenges have already been described, for example, the fact that the many regulations affecting the sector may be contradictory (Sweden). We have also seen that there are administrative regions, cities or authorities within the same country (Germany) that govern the sector differently. Beyond these, there are several other sector-specific challenges.

According to Wagenaar and others, what makes prostitution policies particularly challenging is that they enact 'morality politics'. This means that the measures taken tend to be more symbolic than pragmatic. In other words, prostitution policies are formulated in such a moral background that they become difficult, if not impossible, to actually implement. In this way, prostitution policies function more as moral declarations than actual policy solutions to collective problems. Closely related to morality politics is the pervasive social stigma that is attached to sex work, which undermines the development of effective, equitable policy and leads to the social marginalisation of the key target group, i.e., the sex workers. Another key obstacle is the absence of reliable statistical data, itself a result of the difficulties accessing the sector and poorly defined key terms, such as 'trafficking'. There is also the challenge of the traditional close affiliation of sex work and migration, which combined with the ideology that is generally present in policy formulation, leads to a conflation between sex work and trafficking. These factors, stress the authors, not only pose a challenge to creating and implementing policies, but also to conducting research in the field (Wagenaar & Altink 2012; Wagenaar et al. 2013; Wagenaar et al. 2017; Wagenaar 2017).

Through my own comparative study, as well as reviewing the literature on prostitution policies, I found additional aspects that can be challenging when assessing policies. One regards the official justifications behind particular prostitution policies, as these often lack coherence, operate with unclear or contradictory justifications, or consist of emotional and ideological postulates, often changing according to ideological trends, political priorities and the sensationalisation of police operations (i.e. the media reaction to the discovery of trafficking networks). Furthermore, there is oftentimes a complete lack of official documentation containing all of the constituents of the policy.

This lack of in-depth information in the policy formulations is also paralleled in prostitution policy research. Accounts of policies from around the world often provide only partial descriptions of the laws and regulations, and often little or no usable documentation of how a policy impacts the sector and all of its participants. Terminological and translation issues and country-specific legal discourses can also make it difficult to understand what the described prostitution policy is and how it operates. For instance, a 'ban on soliciting' might refer to the act of offering sexual services or the act of requesting services, whereas a ban on third party involvement is sometimes called 'procurement' and sometimes 'pandering', and can comprise of agents, sex work premises, online advertising and family members. Terminological problems such as these, partly the result of a lack of full documentation, lead to difficulties in grasping the totality of a specific policy, which makes it impossible to actually compare policies.

These knowledge gaps in prostitution policy studies may also be understood in light of 'moral politics' and stigma. Just as participants in the sex work sector can be unwilling to participate in research, scholars can be equally reluctant to engage in a stigmatised and polarised field. The 'whore stigma' is contagious, as Pheterson (1996) has noted, and scholars have documented the oftentimes vicious reactions towards findings that were not in line with dominant understandings of, and approaches to, commercial sex and its policy (see for instance Vance 1992; Hammond & Kingston 2014; Ward & Wylie 2014; Wagenaar 2015). An equally important explanation for the lack of comprehensive scholarly work is a general political disinterest in 'evidence-based' prostitution research, especially when such research might produce the 'bad news' that a much-touted policy has had no impact or does not work. Since unpleasant conclusions might challenge prevailing ideologies and policies, further

funding might not be allocated or attempts might be made to halt politically undesirable research.<sup>17</sup>

Some of these challenges can certainly apply to other fields of research, especially those that also concern morally and politically charged issues, such as those dealing with drugs, gambling or sexuality. But if, for the sake of clarity, we were to summarise the challenges facing research in the sex work sector, and especially prostitution policies, we could structure it as follows:

The highly morally and politically charged nature of sex work leads to challenges in the domain of *policy regulations*, such as:

- Many different and sometimes contradictory regulations that directly and indirectly influence the sector;
- Varied and/or arbitrary implementation of the regulation, i.e. wide difference between intent and actual effect;
- Contradictory ('unintended') effects of the regulations on various target groups or practices;
- Rapid changes in regulations.

Furthermore, the charged nature of sex work leads to challenges in the domain of *policy rationale*, such as:

- Incoherent and/or absence of rationale;
- Emotional and ideological overtones;
- Rapid changes in the justifications of policy.

And finally, the charged nature of sex work also has consequences for *knowledge production*, such as:

- Unwillingness of participants in sector to take part in research;
- Unwillingness or resistance of researchers to conduct research, or to defend critical or unpopular conclusions;
- Unwillingness of policymakers to support potentially critical research.

Resulting in:

- Absence of reliable data of sector (statistics, organisation and nature of experiences);
- Absence of in-depth qualitative data of policy formulation, implementation and impact.

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<sup>17</sup> One recent example is Swedish MEP Malin Björk, from the Left party, who publicly voiced critique against the EU research project DemandAT (of which this paper is a product), claiming that the participants had the wrong 'initial value' [ingångsvärde] and that DemandAT were working against the Swedish sex purchase ban and the 'Nordic model'. According to Björk, this was not what the European Parliament 'wanted to see', and taxpayers money, she said, had been wasted. Björk also warned: 'And be that as it may with this project, but we will of course make sure that it is not repeated. [Och det må så vara med det här forskningsprojektet, men vi vill ju se till att det inte upprepas.] Sveriges Radio 2015-05-15.

## 4.2 Overcoming sector-specific challenges

In general, in overcoming these sector-specific challenges when assessing prostitution policies, I suggest employing a method that resembles the method used when creating the typology: evaluating how the policy is expressed through the various policy components and focus on its overall impact on the sector. Or, in the words of Rabo (1997), we need to analyse policy as simultaneously working through symbols and social actions, since policy both 'says' and 'does' things in ways that defy simple evaluation. More concretely, it means that instead of an instrumentalist evaluation of policy, where we investigate whether the policy instruments create the desired policy results, we will attempt to employ the anthropological method of 'studying through' (Reinhold 1994 in Shore & Wright 1997). According to Shore and Wright (1997), the task is to trace policy connections between different organisational and 'everyday worlds'. Here the key is to 'grasp the interactions (and disjunctions) between different sites or levels in policy processes' (1997:11).

'Studying through' entails pinpointing the ambivalences, contradictions and differences within a given national policy and its components, and clarifying how the policy is implemented in different parts of the country or by various authorities.

It is in this spirit that I also suggest that what, from the outside and at first sight, could be interpreted as 'unintended' consequences (i.e. sex workers being prevented from employing their safety strategies, being subjected to mandatory licencing and health checks, and being under police surveillance, despite policymakers' stated aim of 'protecting' them) ought to be considered as part of the policy's 'social life', rather than a deviation from it, at least when these consequences are ignored, or not forcefully addressed, condemned and amended by policy makers. In other words, we should interpret the lack of action (amending the policy so that sex workers have de facto access to safe work environments, and that the main mission of police authorities is to protect them, not survey them) as *a part* of the policy. A policy with inherently negative consequences sends a powerful message to the sex work sector and sex workers: that their needs are subsidiary to the larger goal of a prostitution-free society.

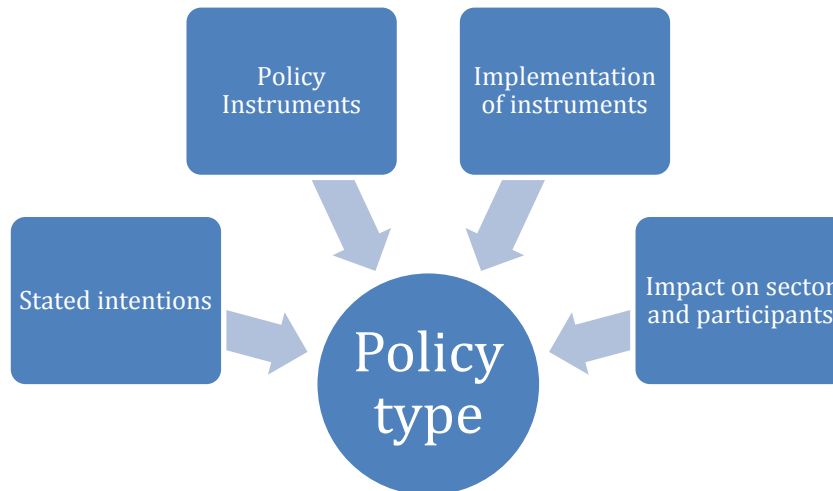
### 4.2.1 Assessment protocol - the 4i's

The methodological approach of 'studying through' still leaves us with the challenge of mapping out and understanding the total impact of the different policy components, regardless of whether we consult official documents or existing social science research, or conduct new empirical research. I therefor propose a qualitative assessment protocol, where we list the policy's stated *intentions*, its specific *instruments*, how these are *implemented* and its cumulative *impact* (the 4i's). Once we have listed the 4i's, we can then, and only then, determine whether the policy is repressive, restrictive or integrative. This is not a linear process, but rather one that is gradual. An illustration is shown below.<sup>18</sup>

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<sup>18</sup> This 4i's assessment protocol is not to be conflated with the six properties of the ideal types. The six properties comprise the criteria on which my typology is based. They are the relevant dimensions that make up the ideal types. The 4i's protocol is a classification device for assessing and describing an actual policy in terms of the ideal types.



**Figure 2.** The 4i's assessment protocol

To identify the stated intentions of a particular policy is usually a rather straightforward process. We access different written sources, such as legal- and policy documents, but also public statements by key policymakers, authorities and state agencies. As we have learnt, however, a description of policy intentions alone is not sufficient for a policy assessment. Nor can we treat the policy solely as law-on-paper, identifying all laws, by-laws and local ordinances, since there are cases where the regulation points to a repressive regime, but none of the regulatory measures are in fact implemented. The reverse can also be the case, that there are no criminal laws specifically targeting the sex work sector, but authorities use other regulations (i.e. loitering or migration control) and means in order to close down the commerce and punish the participants.

As mentioned, when discussing the sector-specific challenges, we also need to overcome translation issues and country-specific legal discourses, that make it difficult to understand what constitutes a ban against 'soliciting' or 'procuring'. Instead, we need a comprehensive way to describe *what* about the sector is illegal or legal, and the actual consequences of the policy instrument.

One way to structure and illustrate what about the sector is illegal and the actual consequences of policy instruments, is to construct a table, here one inspired by Jahnsen and Wagenaar (2017).

**Table 2.** Policy instruments, implementations and impact: Charting impact on sector.

Instrument	Implementation	Area of regulation	Impact on sex workers	Impact on clients	Impact on third party
<i>The name of the law, ordinance, social initiative, discourse, etc.</i>	<i>If, how and where the instrument is implemented.</i>	<i>What the policy instrument targets.</i>	<i>The impact on the possibility to sell sex and on sex workers.</i>	<i>The impact on the possibility to purchase sex and on clients.</i>	<i>The impact on the possibility to assist in the sex work sector and on intermediaries.</i>

This table makes it possible to describe each of the policy instruments, stating how they are implemented, what they regulate and what impact occurs on all the relevant actors.<sup>19</sup> See appendix for an example where the components that make up the Swedish policy are applied.

To describe each policy instrument requires that we can access in-depth knowledge from the field, so we must acknowledge that at times it is not sufficient to consult official documents or pre-existing research. Nor will a brief field trip to a country be enough, especially if we do not speak the local language. Hence, we need to have local informants with long and thorough experience who can explain the various tools of governance, and what they actually do to the sector and its participants. These informants would be sex workers, clients, intermediaries and authorities and agencies working closely with them, for instance those providing health services. Policymakers and law enforcement actors such as police and attorneys can also provide insights, but we must be aware that in highly politicised contexts and in repressive regimes, this data needs to be cross-checked with a representative sample of stakeholders.

Furthermore, we need to have access to these different informants during our assessment of the policy to ascertain that we have understood the instruments and impact correctly. This method also means that we need to move away from any pre-conceived understandings of what constitutes effective policy ‘instruments’ and instead observe how various tools of governance are formulated, implemented and how they impact the sector over the short and long term. For instance, in Sweden, an anti-prostitution discourse is so influential that it shapes the way authorities interpret social welfare legislation, as is the case with stopping harm reduction measures towards sex workers, whereas in other countries, discourses might be totally irrelevant to the governing of the sector. It is also vital to observe the policy over a longer period of time, especially when the policy is undergoing change. For instance, the German example shows that after decriminalisation, laws against ‘moral principles’ [Sittenwidrigkeit] that had not been in use were now used to restrict the sector.

When a set of laws and regulations operate contrary to one other, and with strict enforcement of one law but lax enforcement of another, the best we can do is to identify the dominant approach and mention the competing or secondary discourses or areas in which

<sup>19</sup> In an effort to relate the insights of policy theory to prostitution policy, Wagenaar et al. (2017) demonstrate, amongst other things, how to identify, organise and analyse prostitution policy instruments. They expand on the policy instrument taxonomy developed by Howlett (2011), using the categories ‘organisational’, ‘authoritative’, ‘financial’ and ‘information-based’ instruments, adding a fifth: ‘networking’ instruments. Thus, the prostitution policy instruments identified via the proposed method of ‘studying through’ can be subsequently systemised according to this taxonomy.

this approach is contested. We can also categorise and assess a given country's policy regime at any particular time, given the changes that many policies undergo. Finally, we must view policy regimes as being dynamic, sometimes focusing on the perceived trends and currents – toward more repression or more integration – in cycles that are unidirectional or zigzagging, slower or faster.

At times, it may prove that existing regulations are not being complied with, which implies a situation in which transactions take place completely without official sanction. Hence, a policy that could be termed repressive or restrictive at the national or discursive level could be 'tolerated' or 'laissez faire' at local levels. This means that in assessing prostitution policies, we need to recognise that the three ideal policy types are not always sufficient to describe what is occurring in real life; they could be repressive in intent, but restrictive in practice or impact, for example. At least in theory, there could also be what in language policy is referred to as 'null' policy, that is, the significant absence of governing.

### 4.3 Country assessment

Using the examples Sweden, Germany and New Zealand, we could describe their policies as follows.

Swedish policy is of the repressive type. All aspects of the sex work sector, except for the sale, are criminalised and the laws are policed in the major cities. The stated aim of the policy is to eradicate the sex work sector, and is predominantly justified with a feminist theory of commercial as violence against women. Upon developing the policy, no input has been sought from stakeholders such as sex workers or clients, meaning the form of governance is adversarial, which is another feature of the repressive policy. Some minor contradictions exist. Even if it is not possible to legally engage in sex work in Sweden, all income deriving from sex sales must be taxed, and those who do so are entitled social insurance benefits. Also, even if those selling sex are generally understood to be victims, since sex purchase is primarily treated as an offence against public order, sex workers are summoned to court as witnesses, rather than plaintiffs.

German policy is predominantly restrictive, with integrative aspects. Upon removing third party criminalisation in 2002, the stated aim with the reform was to give sex workers labour rights. Also, legislation introduced in 2017 was justified as a means to protect sex workers. However, this integrative approach is primarily on the level of stated intentions. The actual regulations, drafted and implemented on local levels, lead to a de facto restrictive policy in many regions. To sell, purchase and act as an intermediary is legal only under specific conditions that differ from other commercial activities. Also, since the most recent legislation mandates authorities with increased control over sex workers, the country can be said to be moving towards an even more restrictive and less integrative policy. In the process leading up to changes in legislation, sex workers and their organisations were consulted, but not included in the final decision-making process, which means the form of governance is managerial, typical of a restrictive regime.

In New Zealand, the policy is clearly integrative, with only a few, minor contradictions. Labour, commercial and administrative law regulates the sex work sector, with specific inclusions ensuring sex workers have access to occupational health and safety benefits.<sup>20</sup> The policy is implemented and followed up on national and local levels, and harm reduction measures, codes of conduct for relevant authorities and campaigns are enacted in order to combat stigmatisation, violence and exploitation. The policy was developed in collaboration with the national sex workers' organisation, with the stated intention to safeguard sex workers' human rights, pointing to a collaborative form of governance. However, the 2003 Prostitution Reform

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<sup>20</sup> See the non-enforceable health and safety guidelines, developed by the Department of Labour (OSH 2004).

Act does not apply to immigrants, meaning that it is illegal for people who need a visa to enter New Zealand to seek work or actually work in the sex work sector. This exclusion of immigrants was a result of political concern about human trafficking, and has been challenged by stakeholders (C. Healy & C. Bennachie 2017, personal communication, 13 March).

## 5 Concluding discussion

Existing categories and classifications of prostitution policies have suffered from ambiguity and overlap of categories. In this paper, I have argued that a more precise terminology is needed in order to formulate a useful typology. Moreover, I have suggested that viewing policies in terms of the actual governing of the sex work sector, its practise, provides the kind of perspective with which we can assess prostitution policies as being unambiguously repressive, restrictive or integrative, and then compare them systematically.

With this typology, we can observe that there are policy discourses that depart from the fundamental assumption that commercial sex is negative, a social menace, and should therefore be repressed or restricted, primarily by using criminal law and social interventions. There are other policy discourses, however, which instead operate on the premise that not everything about the sex work sector is wholly negative in itself. These discourses promote the view that exploitative elements and situations exist, and that these particular issues are best approached by integrating the sector and its participants into the existing legal framework and social structure.

Assessing an existing prostitution policy thus involves discovering the intention of the overall policies around the sector and their impact. This effort should take precedence over focusing on specific legal texts or on how policy makers justify the policy or the most recently introduced laws. The technique that I have proposed here, an assessment protocol focusing on what I have called the 4i's of policies (intention, instruments, implementation and impact), provides a fruitful means for discovering and classifying policies while retaining their dynamism and potential contradictions. My assessment protocol acknowledges the importance of policy intentions, but also foregrounds the obvious differences between law-on-paper and law in reality. Assessment thus requires empirical studies at all policy levels: of policy makers' stated aims and prevailing ideologies, of the various direct policy instruments (laws, regulations, campaigns), of the implementation of these policy instruments, as well the actual legal impact the policy have on the sector and its participants. Furthermore, we should bear in mind that the analytical unit might not be national, but federal (state) or local, meaning that one country might be operating with two or three different policy regimes at the same time. This is in fact the case in Germany.

The main intention with the proposed typology is to provide a tool for comparative prostitution policy research. In doing so, we can better determine which policies to compare (the most similar or most dissimilar cases), and evaluate the effects of different policies and policy instruments as they pertain to the extent and organisation of the sex work sector, levels of work satisfaction, and actors' ability to control their lives and work situations. Another purpose of the typology is to help clarify the kinds of measures that would be most effective in alleviating the problems facing the sector, such as stigma, violence and exploitation (Östergren 2017a).

The typology and the method to assess a particular policy could also be applied to other regulatory domains that would fall under the realm of 'moral politics', such as drug and alcohol, gambling, abortion or homosexuality.

All policies have moral, or moralising elements that emerge in various stages of the policy formulation and implementation process. Drawing from existing literature, however, Wagenaar et al. (2013) define 'moral politics' as issues 'that are explicitly ideological, a proxy for a larger cause, almost exclusively owned by the general public, impervious to facts, discussed in emotionally highly charged language, concerned more with the symbolism of strong measures than the details of implementation, and prone to sudden policy reversals' (2013:58).

In the case of narcotics, most countries want and try to eliminate the harmful effects of these drugs with the aid of criminal law. Therefore, drug policies have been introduced where many, if not all, aspects of drug production, distribution and personal use are criminalised, and where awareness campaigns warn the public against the dangers of drugs. However, several countries, in parallel to this, also have various 'harm reduction' programmes such as needle exchange and injection rooms. The use of illegal drugs can therefore be tolerated, while drug manufacture, smuggling and dealing continue to be targeted. What these kinds of policies are called varies among different researchers. There are those who use the term 'repressive' when the stated aim of the policy is 'zero tolerance' and where virtually all aspects of drug use are illegal, including individual possession of and residues of drugs in the blood. In these countries, there is no significant national focus on harm reduction measures (see for instance Boiteux 2015; Mravcik 2015; Chatwin 2017). Other researchers would instead use the term 'restrictive' or 'prohibition' for similar policy regimes (see for instance Tham 2005; Collins 2016). Other common terms found in the drug policy literature include 'legalisation', 'regulation', 'liberal' and 'decriminalisation'. In other words, there seems to be a similar lack of terminological consensus, as well as an ambiguous and overlapping usage of categorisation in the domain of drug policy literature, as in the prostitution policy literature.<sup>21</sup>

Applying the proposed typology to the drug policy context, the concept of 'restrictive' could instead be used to describe policies with a more pragmatic approach, in which personal use and possession is not as severely punished, and where there are visible efforts of harm reduction. However, there are no policies that seek to integrate the use of all kinds of narcotics into the society that would parallel an integrative prostitution policy. As this example shows, there are certain limitations on explicitly comparing drug policies and prostitution policies, since each domain has its specific history, dynamics and place in society. But since the use, sale and purchase of certain 'lighter' recreational drugs, notably cannabis, is increasingly decriminalised and regulated, in such instances, the legalisation of cannabis could be termed an 'integrative' policy (for this particular drug).

'Morality politics', according to Wagenaar et al. (2013), subordinates the solving of collective problem to a struggle over symbolic positions and irreconcilable conflicts over what is morally right or virtuous. That is, under 'moral politics', effective collective problem solving is not on the political agenda, and the issues are not governed in routine, 'ordinary' ways. In the case of sex work, for example, it is not governed in the same manner as other kinds of work in the personal service sector.

I propose that when an issue is governed through what I have described as repressive and restrictive means, it is an indication that this particular issue, in this particular context, and at this particular time, belongs to the political category of 'morality politics'. A shift from a political issue requiring repression or restriction towards a more integrative approach (be it sex work, homosexuality or cannabis) thus indicates that it ceases to be perceived as a threat from which society needs to be protected. Zero-tolerance or symbolic measures recede and are replaced by more ordinary (less dramatic) policy instruments. The focus and rhetoric change as well. Instead of 'zero tolerance', we hear phrases like 'most effective',

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<sup>21</sup> See Warner et al. (1990) and Ritter & McDonald (2008) for different attempts to classify drug policies.

'evidence-based' solutions or 'improving human rights'. Such policies are not judged as to their moral absolutism, but instead evaluated in terms of how 'efficient' they are.

The point here is to view moral politics as historically contingent: moral politics and repressive measures can give way to ordinary policy, and reverse back again. This understanding of the relationship between 'morality politics' and my proposed typology also allows us to ask which cultural, historical and socio-political elements lead some societies to downgrade the 'moral threats' of, for instance, sex work, and instead view it as just another social policy issue to be integrated and dealt with through policy measures; while other societies upgrade the social threat and instigate a more repressive approach.

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## 7 Appendix

Application of *Policy instruments, implementations and impact: Charting impact on sector on Sweden 2015-16.*

Policy instrument	Implementation	Area of regulation	Impact on sex workers	Impact on clients	Impact on third party
<b>Ban Against Procurement (Penal Law)</b>	Primarily in the larger cities of Stockholm, Gothenburg and Malmö.	Prohibits the promotion or improper financial exploitation of casual sexual relations for payment of another person. Also applies to living off of the earnings of a sex worker.	Sex workers cannot collaborate with each other, work in premises, employ safety personnel or advertise. If family members can be seen as living off of the earnings of prostitution they can be charged with procuring.	Not possible to legally purchase sex in premises.	Not possible to set up a premise, provide advertisement platforms or act as a manager or safety personnel. Not possible to set up and implement codes of conduct.
<b>Ban Against Sex Purchase (Penal Law)</b>	Primarily in the larger cities of Stockholm, Gothenburg and Malmö.	Prohibits the purchase of sexual services	Sex workers fear police surveillance, experience difficulties assessing clients, and increased stigma.	Not possible to purchase sex legally. Clients hesitate to report suspected crimes against sex workers out of fear of being prosecuted.	
<b>Land Code, Tenant Ownership Act (Penal law)</b>	Primarily in the larger cities of Stockholm, Gothenburg and Malmö.	Grants the rights of landlords and housing co-operative boards to repeal contracts of tenants on grounds of sex sales	Sale of sex cannot take place indoors, for instance in a hotel or a privately owned flat. Sex workers who sell sex in their own flat will have their contract repealed.		

<b>Aliens Act (Indirect Law)</b>	Yes	Mandates authorities to refuse non-citizens (apart from citizens of EEA member states) entry into Sweden if it can be assumed that they will not support themselves by "honest means".	Non EEA member sex workers will be denied entry or evicted if suspected to, or found to, sell sexual services.
<b>Tax law (Indirect Law)</b>	Arbitrarily implemented	Makes no exception for revenue from prostitution, but not possible to register sex work as a business.	Sex workers can be arbitrarily taxed. Sex workers can in theory access pension and social benefits. Not possible to deduct expenses related to sex work.
<b>Anti-prostitution discourse</b>		Harm reduction measures are stopped. Sex workers have a sense of being stigmatised and fear losing custody of children.	Harm reduction measures are stopped. Clients have a sense of being stigmatised.
<b>Campaigns against sex purchase</b>			Difficulties determining what is forced/trafficking and what is voluntarily sex work.

**About the author**

**Petra Östergren** is a Swedish Ph.D. candidate in Social Anthropology at Lund University, researching Swedish prostitution policy, and in particular, its ban on the purchase of sexual services. She is also the author of a book that analyses paradoxes in Swedish approaches to commercial sex (transl. *Porn, Whores and Feminists*, 2006), and is project leader for the Swedish part of the multidisciplinary EU research project *Addressing demand in anti-trafficking efforts and policies* (DemandAT).



**Addressing demand in anti-trafficking efforts and policies (DemandAT)**

COORDINATOR: International Centre for Migration Policy Development  
Vienna, Austria,

CONSORTIUM:

University of Bremen – Arbeitsbereich Interkulturelle Bildung  
Bremen, Germany

University of Edinburgh – School of Social and Political Science  
Edinburgh, United Kingdom

La Strada International  
Amsterdam, The Netherlands

Lund University – Department of Social Anthropology  
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European University Institute – Robert Schuman Centre for Advanced Studies  
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FUNDING SCHEME: FP7 Programme for research, technological development and demonstration – Collaborative projects

DURATION: 1 January 2014 – 30 June 2017 (42 months).

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