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In Defense of Sex Work Decriminalization
A Case Against the Nordic Model

by

Allison G. Escobar

Under the Direction of Christie Hartley, PhD

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of
Master of Arts
in the College of Arts and Sciences
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ABSTRACT

I argue that sex work should be fully decriminalized for both the seller and the buyer. To make my case, I summarize the Nordic Model of sex work and critically assess both the practical and theoretical problems the Nordic Model poses for sex workers (Section 2). In Section 3, I argue that full decriminalization is favorable in all cases—especially when we consider the most vulnerable workers—because it better promotes worker autonomy, financial stability, safety from clients and law enforcement, as well avoids undue harms such as jailtime, legal fees, and deportation in the case of undocumented or insecurely documented workers.

INDEX WORDS: Feminism, Sex Work, Prostitution, Police, Law Enforcement, Violence

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2021

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1 INTRODUCTION

A common concern regarding sex work is that it involves women being trafficked, coerced, exploited, and subjected to violence. It is certainly true that there are women who experience violence on the job or who have been coerced into sex work. The potential for sex workers to face violence is one reason feminists have long debated whether sex work should be criminalized and, if not, if it should be regulated. In this thesis, I will critically assess two leading approaches regarding whether sex work should be partially decriminalized or fully decriminalized. Both legal models have been advocated for by feminists on the grounds that they best protect and respect women and their interests. One approach is the Nordic model which is the view that the buying of sex should be criminalized, while the sale of sex should be decriminalized. The other approach is full decriminalization, and, as the name suggests, this is the view that both the buying and selling of sex—and all associated acts—should be fully decriminalized. I argue that decriminalization is superior to the Nordic model, especially when the interests of the most vulnerable women are considered.

In particular, I argue that decriminalization is superior because A) workers are better able to support themselves financially, B) workers would have more autonomy, which better promotes workers' well-being and allows them to create safer work environments for themselves, and C) it better protects women and girls from violence by law enforcement.

Historically, many women and other marginalized people have participated in sex work as a means to survival, and I show that decriminalization is favorable whether or not survival is the motivation for sex work. In my analysis, I focus on the condition of sex work in the United States, where sex work is criminalized, save for a few counties in Nevada where it is legal in licensed brothels. I find that the US's policies regarding sex work particularly salient. Again,

historically, sex work has been used by the most vulnerable and marginalized persons in society for survival. Thus, we have an interest in protecting these persons from facing fines and jailtime for engaging in consensual sex work to survive; given the US's history of racialized and violent policing practices which affect the marginalized groups in the sex industry, change is sorely needed. That said, I rely on statistics, anecdotes, and policies implemented in a variety of countries where sex work is legalized and regulated to build my argument.

Before I begin, I should make some remarks about the term “sex work” and “sex worker”. The term "sex work" is generally used as an umbrella term possibly referring to exotic dancing, phone sex operators, porn performers, or full-service sex work (FSSW). In this paper, the term "sex work" refers specifically to full-service sex work. The term “sex work(er)” is generally used by pro-sex work feminists and those within the industry to refer to themselves and other workers in the sex industry. However, the term is contested and not all participants in the sex industry identify as such nor do they all consider what they do as “work.” In this paper, I opt to use the term "sex work" and "sex worker" as many sex workers consider the term "prostitute" to be a slur. While individuals in the sex industry may choose to reject either of the terms, there has been growing consensus online in favor of the media, non-sex workers, and non-full-service sex workers, to use the term “sex worker” over the term “prostitute.”¹ I do, however, use the terms “prostitute,” “prostituted persons,” and “prostitution” when referring to another person’s work or a woman in the industry who rejects the term “sex worker”, legal definitions, or to emphasize how and when the term is used in a way that perpetuates “whorephobia”—the fear and/or hatred of sex workers.²

¹Dickson, EJ, “Should the AP Stylebook change ‘prostitute’ to ‘sex worker?’” Daily Dot, accessed April 8, 2021, <https://www.dailydot.com/irl/ap-style-guide-sex-worker/>

² Schaffauser, Thierry, “Whorephobia affects all women,” The Guardian, accessed April 8, 2021, <https://www.theguardian.com/commentisfree/2010/jun/23/sex-workers-whorephobia>

2 THE NORDIC MODEL AND ITS PROBLEMS

In this section, I critically analyze the Nordic Model. As I noted above, the Nordic Model fully decriminalizes the sale of sex while fully criminalizing its purchase. The basis for this model was developed by Catharine A. MacKinnon as the sex equality approach to sex work and has been recently defended by Lori Watson on the same grounds. On this view, decriminalizing the sale of sex, in addition to added social support, raises women's social status by eliminating the possibility of their arrest for engaging in sex work.³ The Nordic Model is an abolitionist model that aims to eliminate the demand for sex work by criminalizing the buyers and third-party profiteers by holding them responsible for contributing to sex-inequality.⁴ Overall, Watson argues that

The Nordic Model, specifically as implemented in Sweden, includes education campaigns targeting buyers and the broader public on the harms of prostitution. Sweden also provides counseling services for men who want to stop using women in prostitution. These services are provided on a voluntary basis as well. Thus, the Nordic Model is a holistic public policy approach to prostitution.⁵

2.1 Practical Problems with the Nordic Model

The Nordic model aims to help workers through government regulation and additional social services. However, the Nordic Model—despite its purported benefits for women—is problematic in theory and in practice. The Nordic Model limits how workers can operate their business, which is harmful to workers. Additionally, the social support that is currently available to workers in Sweden hasn't seemed to lower the number of workers in the sex industry nor has it diminished

³ Lori Watson and Jessica Flannigan, *Debating Sex Work* (New York: Oxford University Press, 2020), 35.

⁴ *Ibid.*

⁵ *Ibid.*, 130

the need for workers to have access to sex work in order for them to support themselves. I will return to my latter point momentarily.

First, consider that while the sale of sex is decriminalized, acts associated with sex work are criminalized. Hence, advertisement of services, renting an apartment or commercial space for work, and hiring a secretary or someone to take appointments are all criminalized under the Nordic Model.⁶ This, of course, results in problems for sex workers, as it makes it difficult for workers to find and screen potential clients. Under the Nordic Model, if a sex worker lives with a partner, then that person can be seen as the pimping and/or exploiting the sex worker if they have share living expenses which makes it difficult for workers to find secure housing.⁷

In regard to the Nordic model, many workers agree it's made their jobs increasingly difficult. One retired worker, Pye Jakobson, reports that, "Now women have to go to the customers' homes, which is one of the most dangerous ways to work: you don't know what you walk into."⁸ Similarly, Siliva, who is a street-based worker in Norway, "Before we did not go far with the customer: we would go to a car park nearby. But now the customer wants to go somewhere isolated because they are afraid. I don't like it. There is more risk that something bad happens."⁹

As previously mentioned, the Nordic Model is an abolitionist approach that aims to eventually eliminate sex work by criminalizing the customers in order to "attack the demand" for the services provided by sex workers. Further, the Nordic Model aims to improve equality between the sexes by eliminating sex work. Though this is the purported aim, there is reason to

⁶ Kulick, Don. "Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration." *Anthropological Theory* 3, no. 2 (2003): 201.

⁷ Ibid.

⁸ Fouche, Gwaldys, "View from the streets: New Nordic sex laws are making prostitutes feel less safe," accessed on April 8, 2021, <https://www.independent.co.uk/news/world/europe/view-from-the-streets-new-nordic-sex-laws-are-making-prostitutes-feel-less-safe-9294458.html>.

⁹ Ibid.

believe that this legal model, as it has been implemented, has failed to bring about the results its proponents hoped. For instance, it does not seem to have reduced the amount of people engaging in the sex industry, nor has it made workers safer, or that it has helped remove stigma from the seller to the buyer.¹⁰ As it stands, there's no reason to think that stigma would move from the seller to buyer as the seller still has to operate in a criminalized industry. Partial criminalization is still criminalization, and workers having to deal with criminalized clients means their work will still be considered taboo. Criminalizing clients isn't beneficial to workers; it doesn't necessarily disincentivize all clients, but it does disincentivize clients that have interest in remaining law-abiding citizens. So, workers have fewer clients to choose from overall, and the clients that are comfortable breaking the law to see them may not be the type of clients that workers want to attract.

Despite sex work being decriminalized for the seller, sex workers have been penalized in other ways. For example, women can still lose custody of their children in Sweden on the basis of their occupation as a sex worker.¹¹ Landlords can be culpable for promoting or facilitating sex work, which makes it harder for sex workers to find decent housing.¹² And, while sex workers are renting, they could be evicted if their work is discovered. Hence, if all of the aforementioned acts associated with sex work are criminalized, then it is still the case that the workers are being blamed, held responsible, and stigmatized for taking part in a criminalized industry.

¹⁰ May-Len Skilbrei and Charlotta Holmstroem, "The 'Nordic model' of prostitution law is a myth," accessed April 8, 2021, <https://theconversation.com/the-nordic-model-of-prostitution-law-is-a-myth-21351>

¹¹"The Real Impact of the Swedish Model on Sex Workers: Sex Work and the Arbitrary Interference with Families," Global Network of Sex Work Projects, accessed April 8, 2021,

<https://www.nswp.org/sites/nswp.org/files/7.%20Sex%20Work%20and%20Arbitrary%20Interference%20with%20Families%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20November%202015.pdf>

¹² Goldberg, Michelle, "Should Buying Sex Be Illegal?" The Nation, accessed April 8 2021, <https://www.thenation.com/article/archive/should-buying-sex-be-illegal/>

While some observers might applaud the Nordic model, especially if they share feminist concerns with reducing oppression against women, there is reason for caution. Politicians who created the policy might not have had women's interests in mind. The Swedish government implemented the criminalization of buyers on the grounds that:

The reason behind the introduction of legislation on the purchase of sexual services was – and is – the importance for society of fighting against prostitution. Prostitution is considered to cause serious harm both to individuals and to society as a whole. Large-scale crime, including human trafficking for sexual purposes, assault, procuring and drug-dealing, is also commonly associated with prostitution.¹³

Similarly, the European Parliament's Committee on Women's Rights and Gender Equality published a report on sexual exploitation and gender equality stating, "the most effective way of combating the trafficking of women and under-age females for sexual exploitation and improving gender equality is the model implemented in Sweden, Iceland and Norway (the so-called Nordic model)."¹⁴

In this view, not only is sex work itself a harm to women, but it is also viewed as a moral failing of society as a whole and as well as a major cause of other serious crimes. Given that the language used to discuss the Nordic model mostly focuses on issues affecting society at large, rather than those directly engaging in consensual FSSW, it doesn't seem to be the case that the primary justification of these laws is to help women in the sex industry. On the contrary, politicians seem to think that regulating FSSW through partial criminalization is a means to cure society of a host of practices some people regard as vices or wrongs, e.g. prostitution, drugs,

¹³ "Legislation on the Purchase of Sexual Services," Ministry of Justice, accessed on April 8 2021, <https://www.government.se/articles/2011/03/legislation-on-the-purchase-of-sexual-services/>

¹⁴ Sarah Kingston and Terry Thomas, "No model in practice: a 'Nordic model' to respond to prostitution?" *Crime, Law, and Social Change*, no. 71 (2019): 426.

violence, and exploitation. Moreover, regulating sex work through partial criminalization doesn't specifically address how this is supposed to support women in the industry itself. Of course, decriminalizing the sale of sex is purported to benefit workers, but if the ultimate goal is to make sex work obsolete by eliminating, or at least diminishing, customers, then the result is that workers will lose a portion, if not the entirety, of their income. In Watson's view of the Nordic model, she advocates for additional social support to offset the loss of income.¹⁵ I agree with Watson that workers should have social support available to them, but I think it is salient to note that the Nordic model, as it is currently implemented, does not have this added focus. The social support advocated by Watson has is already currently available in Sweden. Poverty is virtually non-existent, unemployment wages are about 80 percent of previous employment, medical care is subsidized or free, and parents receive monthly, tax-free stipends for each child they have.¹⁶ If it is already the case that social support has always been easily accessible to women in Sweden, but women still turn to the sex industry for work, then social support alone doesn't seem to diminish the need for women to have access to sex work.

Matters are often worse for the most vulnerable women. In Sweden, migrants' nationality and immigration status does not affect their ability to qualify for welfare benefits.¹⁷ However, the type of work migrants engage in can put them at risk for deportation; undocumented or insecurely documented workers are immediately deported if caught with a client.¹⁸ Even in the case that migrant women are there legally, under the Aliens Act a migrant woman can be

¹⁵ Watson and Flanigan, *Debating Sex Work*, 26.

¹⁶ "The "Swedish Model": Welfare for Everyone," Constitutional Rights Foundation, accessed April 8, 2021, <https://www.crf-usa.org/bill-of-rights-in-action/bria-14-3-c-the-swedish-model-welfare-for-everyone>

¹⁷Ibid., Migrants' access social protection Sweden 424 "Rights are based on either residence or work in Sweden. The residence-based access to social protection entails that any individual who resides and can be expected to reside in the country for at least 1 year is considered a resident, regardless of his/her nationality and type of residence permit."

¹⁸ Kulick, Don, "Sex in the New Europe," 205.

deported if she is suspected of not supporting herself “by honest means” which includes sex work.¹⁹ Under a partially decriminalized system such as the Nordic Model, migrant women do not have the means to keep themselves safe by working with each other out of a shared apartment for fear of being considered an unlicensed brothel nor do they have the option of calling police in the case of a client interaction turning violent for fear of being deported. In practice, undocumented and documented migrants alike have no legal protections under the Swedish law.

Another problem with the Nordic Model as implemented in Sweden is that criminalizing the purchase of sex has led to an increase in police harassment and a decrease in worker autonomy and safety. Police can now require sex workers to appear in court and testify against clients; if workers are suspected of being with a client an officer can search them and confiscate anything that could be considered evidence, such as condoms.²⁰ In turn, this has deterred the use of condom use with clients as it can be used as evidence against them.²¹ One of the outcomes of this law is that it is more difficult to prosecute in trafficking cases due to clients’ unwillingness to testify in court for fear of legal repercussions.²²

The decrease in overall clients has increased different types of clients’ sex workers have to accept out of desperation. Because the Nordic Model prohibits advertising services, there are fewer options for obtaining clients meaning workers must choose potentially more dangerous clients to make up for not being able to advertise online.²³ Criminalizing buyers effectively

¹⁹ “Aliens Act,” Government Offices of Sweden, accessed April 21, 2021, https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf.

²⁰ Kulick, “Sex in the New Europe,” 205.

²¹ Ibid.

²² Ibid.

²³ Ibid.

decreases worker autonomy, increases the number of hours they have to work, and decreases their negotiating power with their clients.²⁴

While the law has made it more difficult for sex workers to find clients, this does not necessarily indicate there has been an overall decrease in the amount people engaging in sex work. The claim that the number of sex workers in Sweden has decreased since criminalizing the purchase of sex in 1999 only accounts for street-based workers. This accounting depends on reports from organizations (such as social workers and police) counting and reporting their interactions with street-based workers. Such reports might only indicate that sex work has become less visible, not that there are fewer people engaging in buying or selling sex.²⁵

The Nordic Model purports to be a sex-equality approach by elevating the social status of workers through decriminalizing their work while criminalizing it for the buyers, or “the demand.”²⁶ This approach to sex work is based on the idea that women in the industry are victims of prostitution in need of protection from the harms of sex industry. However, in practice, the Nordic Model has not served to protect women, rather it has harmed them by reducing their income, work autonomy, and safety. As sex worker and author Juno Mac notes, “‘business’ and ‘safety’ cannot be separated for marginalized people: *being poorer makes people less safe.*”²⁷

In this section, I have shown that the Nordic Model, as it is currently implemented, fails to protect women in the sex industry and puts them at greater risk for violence as well as reducing their income and control of their labor. I will next argue that the Nordic Model,

²⁴ Watson and Flannigan, *Debating Sex Work*, Flannigan makes a similar argument, 230.

²⁵ Skilbrei and Holmstroem, “The Nordic Model.”

²⁶ Watson and Flannigan, *Debating Sex Work*, 22.

²⁷ Mac and Smith, *Revolting Prostitutes*, 150.

regardless of how it is implemented, will inevitably fail to protect women in the industry due to its underlying theoretical issues.

2.2 Theoretical Problems with this Approach

Of course, it could be argued that, despite its drawbacks, the Nordic Model is the best model for protecting women; it only needs to be better implemented. I grant that it could be better implemented; however, it still avoidably fails to best serve the people it is meant to protect. I next argue that the Nordic Model will always be problematic because 1) it assumes that sex work subordinates women, 2) it promotes inequality between the sexes, and 3) it ignores that sex workers face violence from law enforcement and not just clients, managers, or pimps.

2.2.1 *Sex Work Subordinates Women*

Proponents of the Nordic model, such as Watson and MacKinnon, could argue that it is the case sex work itself contributes to the inequality women face as whole. According to MacKinnon and Watson, we live in a society in which women are subordinated to men. This patriarchy adversely affects women's daily lives. Sexuality is a prime example. Consider their view of gender and sexuality. They claim the prevailing ideology in our society relies on a patriarchal, heteronormative view of gender which gives us the binary of view of gender as male/female although they think sex and gender terms can be used interchangeably in our social context. As Watson claims, the prevailing ideology results in how women and men fall into different social categories. Men are expected and encouraged to have "masculine" traits such as being dominant and aggressive, while women are expected to exhibit "feminine" traits of passivity and submissiveness.²⁸ Watson and MacKinnon claim that sexuality is the central to the construction of masculinity/male dominance and femininity/female submissiveness. Male

²⁸ Watson and Flannigan, *Debating Sex Work*, 27.

dominance is sexualized and is considered the norm for most people's sexual experiences, for pornography, and for the mass media we consume. If male dominance is reflected and perpetuated through sexuality, then we can see why they claim sex work is problematic. Given that sexual experiences are generally expected to revolve around men's pleasure and power, the practice of sex work maintains and perpetuates this.

Hence, following MacKinnon, Watson argues that sex work is a practice of sexual subordination:

1. The overwhelming majority of people selling sex are women and the majority of buyers are men.
2. This is due to the social and economic inequality that women face. (e.g. In 2017, women still earned 93 cents for every dollar earned by men. The pay gap is greater for other groups of women, including Hispanics/Latinas, Blacks, and American Indians or Alaska Natives.²⁹)
3. Discrimination against women often manifests as women's bodies always being available to men for men's sexual pleasure's on men's terms,
4. Thus, social conditions that result in women being stuck in sex work are a part of systemic gender-based inequality,
5. This inequality puts women in a "position of powerlessness" in respect to pimps, johns, and brothel owners" which allows for coercive practices in the industry and these

²⁹ "Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions Are Needed" U.S. Government Accountability Office, accessed April 8, 2021, <https://www.gao.gov/products/gao-21-67#:~:text=The%20gender%20pay%20gap%20in,every%20dollar%20earned%20by%20men.>

coercive practices are a violation of women's basic human rights of equality, bodily integrity, and security,

6. Laws permitting, supporting, and normalizing sex work allow these dynamics to continue.³⁰

In Watson's view, sex work sexually subordinates women. Importantly, according to MacKinnon, sexuality is a construct in which hierarchy is sexualized; male dominance and female submissiveness is eroticized.³¹ Therefore, sex work is a site in which women's sexual subordination occurs and is perpetuated because of the power imbalance between the buyer and seller and that the sexual transaction is focused solely on the buyer's sexual pleasure. However, this view largely ignores that women have agency and can construct their own sexualities through sex work as well. On my view, it is a misconception, or at least an oversimplification, that sexual services offered are completely on men's terms. Watson's account of sexual encounters between the buyer and seller view these encounters as something that happens *to* the worker, rather than a mutual encounter between two people. Workers still have to consent to the sexual services they offer. That's why brothels usually have "menus" for clients to choose from. For example, Sheri's Ranch in Nevada has a "sex menu" on their website for the general services they offer.³² They also note that not every worker offers the same types of experiences and that each worker determines her own price.³³

As previously mentioned, Watson claims that because sex workers need their jobs in order to provide for themselves, they are in a position of "powerlessness" in respect to their managers and

³⁰ Debating sex work 21-22

³¹ MacKinnon, "Sexuality," in *Toward a Feminist Theory of State*, (Cambridge: Harvard University Press, 1989), 127-128.

³² "FAQ – Sheri's Ranch and Brothel Operations," Sheri's Ranch, accessed April 1, 2021, <http://www.sherisranch.com/faq.aspx>

³³ "What is a Sex Menu?," Sheri's Ranch, accessed April 1, 2021, <http://www.sherisranch.com/sex-menu/>

clients. However, I disagree that needing to keep a job results in powerlessness. Generally, there is always a power imbalance between an employer and an employee—this is isn't exclusive to sex work. Further, there is a power imbalance between a buyer and seller insofar as the seller needs to offer services a customer wants to buy; this is especially true if the seller is a working-class person, which most sex workers are, but this could also be said for common customer service jobs such as bartending, waitressing, small business owners, etc. Overall, the power imbalance between seller and buyer remains—as could be said for most working-class people selling services—but workers still create the experiences they want to have with their clients by deciding what experiences they're comfortable offering.

Further, if we conduct research based on the idea that sex work always subordinates' women, then we can only ever conclude that sex work is harmful for women. That's not to say that sex workers never face violence or abuse from their clients or employers, but to use only instances of sex worker abuse in their workplace as representation of sex work as a whole is inaccurate and unjust to other sex workers' whose experience is not violent or abusive. Whether a sex worker's experience is positive or negative, no one experience should be considered as a universal representation of the industry. Any one account of a worker's experience is not reflective of the whole industry and should not be construed as a universal (or even the typical) experience. Anti-sex work feminists can cherry-pick sex workers' experiences and reduce it to concerns of sexual abuse, rather than as an issue of labor rights. Many times, anti-sex work feminists are writing from their perspectives as a middle-class, white, cisgender perspective. Sexual issues for middle-class women aren't necessarily going to apply to the working class or working poor; even more so when the average sex worker is likely marginalized in other ways.³⁴

³⁴ Nussbaum also notes that moral issues around sex aren't necessarily relevant to those with fewer options of work

2.2.2 *Sex Work Promotes Inequality Between the Sexes*

Some observers maintain that, across the board, women are not social equals to men in virtually any society. Even in Western democracies where women have gained more legal rights that have raised their status closer to that of men formally, there is still a substantial amount of inequality between men and women with respect to income and leadership roles in the workplace. This inequality between the sexes becomes increasingly apparent when other factors like race and disability are included.³⁵ Although there is a small percentage of men working in the sex industry, the overwhelming majority of workers are women, and the majority of those purchasing sex are men. Because women are much more likely to enter into the sex work industry due to economic and social inequality, they are also less likely to be able to leave the industry. Thus, Watson promotes the view, as developed by MacKinnon, that workers are in a “position of powerlessness...in respect to pimps, clients, and brothel owners makes prostitution dangerous, violent, abusive, manipulative and difficult to leave.”³⁶ Moreover, laws that normalize or protect prostitution promote the sex inequality and violence that is perpetuated by prostitution.³⁷

I agree that women are unequal to men in regard to social and economic equality and that economic need does push women into the sex industry. However, financial gain is a motivation for needing any job, and I don't think it is necessarily the case that sex work causes or perpetuates social or economic inequality. The fact that many women turn to the sex industry for work is a *result* of the discrimination and inequality they face in other occupations and other

³⁵ Lori Watson and Jessica Flanigan, *Debating Sex Work* (New York: Oxford University Press, 2020), 34.

³⁶ *Ibid.*, 20-21.

³⁷ *Ibid.*, 21.

areas of society. That is to say, it is a symptom of a larger issue. However, it doesn't follow that eliminating a symptom of an issue cures the underlying problem.

Economic hardship or homelessness is often cited as a reason for entering the industry, but it would be unfair to assume that all (or even most) workers do it for this reason. Even still, I do not think those reasons in themselves reflect negatively on sex work; to assume that sex work is harmful on the basis of accessibility to low-income or homeless workers presupposes that there is a problem with jobs being accessible to at-risk groups or that the job is necessarily exploitive because it is accessible to those groups. The fact that homeless and low-income women are able to enter into the sex industry doesn't reveal anything about the nature of sex work itself, it only reveals that those women live in a society that cannot protect them from becoming homeless or impoverished in the first place.

Watson claims that this economic need results in women being "powerless" in their position as prostitutes, however, this power dynamic isn't specific only to sex work. If economic need makes a person powerless in respect to their employer, then this could be said of any socioeconomically disadvantaged person looking to be hired in any industry. Even more generally, this could be said about any person looking for a job in a capitalist society. There is virtually always a power imbalance between an employer and his employee. To say that this is only an issue in the sex industry is inaccurate and ignores the reality of how almost all job hierarchies function under capitalism. Moreover, when it is the case in other industries that an employer is abusive or exploits his employees, most often people do not argue that the job itself is inherently exploitative or that the industry should be abolished. Rather, we argue that workers with abusive employers should have more labor rights to prevent further abuse.

If it is the case that women face widespread discrimination and inequality in the workplace as well as in the home, then it seems problematic to say that sex work should be abolished. If sex work is a means for women to access resources and financial stability that they are unable to find in other industries then, other things being equal, abolishing sex work in the near-term risks being harmful to women's wellbeing. Furthermore, it does not follow that women will face discrimination and inequality any less in other occupations by virtue of abolishing sex work. It could still be the case that, even if we remove sex work from the equation, many socioeconomically disadvantaged women would still not have access to resources, still face discrimination within the work sector, or not be able to find a job at all. Again, all of these issues only increase in severity when other variables such as race, class, and disabilities are factored into the equation. In Watson's view, the idea is that buyers of sex now have even more power over the sellers of sex because, as a customer, the point of the interaction is that he is purchasing sexual services that cater to his personal desires. The buyer and seller interaction thereby make the desires of the woman even more irrelevant than say, if the interaction was a personal interaction, rather than a transactional one. Further, the sex worker has less economic power in this situation as she needs to make sales in order to support herself.

Overall, this view argues that the sex work industry itself is a reflection of the sex inequality in our society, but it is also a site in which sex inequality is exacerbated and perpetuated because of the reasons I have just given. This is why Nordic Model proponents, such as Watson, argue that abolishing sex work is in the best interest of promoting woman's equality; it is eliminating one of the sites in which women's inequality is perpetuated and manifested.

My response is twofold: If I grant that participating in the buying and selling of sexual services is a way in which women's inequality is manifested and perpetuated, then I argue that

this can also be a site of resistance against the prevailing ideology. Ideally, it could be the case that workers are able to offer sexual services in a way that challenges societal norms, but realistically, this often isn't the case. However, I don't think this necessarily leads us back to the conclusion that sex work is anti-feminist or needs to be abolished. I next elaborate on these points.

First, consider the possibility that sex work might be a platform for challenging sexist patriarchy. Online sex work is one example. As some observers have noted, online forums can “empower” sex workers and offer examples of what some might call the stereotype of the “happy hooker.” For instance, one black dominatrix makes her white, male clients read black feminist literature and refers to her clients’ payments as “reparations”.³⁸ Another popular example is financial domination (findom), which involves financial dominatrices (findommes) having control over their clients’ spending habits. Their clients are sometimes called “paypigs” or “slaves.” They relinquish control and become submissive to someone else’s power.³⁹ Another challenge might be found in women who are party to “sugar baby” and “sugar daddy” relationships. These usually entail a younger woman dating a significantly older man who helps support her either monetarily or with gifts, vacations, or other lavish experiences. These types of arrangements can avoid some of the heavier stigmas of sex work as the dynamic is meant to be an ongoing companionship which can blur the lines between a work relationship and a more typical, romantic one; especially if the companionship is platonic. The media often focused on the stories of sugar relationships in which the sugar baby makes “thousands without ever having

³⁸ Gore, Sydney, “Black Dominatrix Who Gets Reparations From Her Clients,” Paper Magazine, accessed on April 1, 2021, <https://www.papermag.com/black-chicago-dominatrix-reparations-2539895143.html>

³⁹ Stokes, Rose, “This Is How Much Money Paypigs Really Spend on Findom,” Vice, accessed on April 1, 2021, <https://www.vice.com/en/article/qj4wv5/how-much-money-paypigs-spend-findom>

sex”.⁴⁰ Though it is contested whether a case like this would qualify as sex work, I think it is important to include here as sugar relationships generally do include sex. These feel-good stories of women doing it “the right way” (i.e. no sex) is used as a means to separate these women from the women that do engage in sexual relations with their clients.

It is important that these types of stories about sex workers available to the public as it gives a wider variety of perspectives of sex workers’ experiences. Even still, most stories about sex workers feature one extreme or the other—violence and degradation or painting sex work in a light so as to sanitize it of the very thing people hate about sex work—the sex. Sex workers are only seen as “good” feminists if they are 1. Making a lot of money, 2. The work itself doesn’t involve any kind of sexual penetration, and/or 3. The roles of dominance and submission are reversed. However, subverting norms in sex work need not be a goal of sex workers. If we only applaud women for doing sex work the “right way,” then workers who do engage in sexual relations with their clients are still subject to whorephobic sentiments and discrimination because of their work.

To the previous examples, not only can findommes and dominatrixes avoid being penetrated, they make the male client submit to their power, and they get to do it all on their own terms. In other words, *they get to act like a man*. In these cases, an anti-sex work feminist may consider these positive interactions insofar as they break gender norms of male dominance and female submission, but is simply reversing gender roles sufficient for defining work as “empowering”? Yes, it may be the case that men feel empowered when they are dominating a woman into submission. But, that alone doesn’t inform us as to whether we should use that as the standard for measuring how “empowering” a situation may or may not be.

⁴⁰ “This sugar baby makes thousands without ever having sex,” New York Post, accessed on April 1, 2021, <https://nypost.com/2017/04/28/this-sugar-baby-makes-thousands-without-ever-having-sex/>

Moreover, the fact that certain sex workers can offer services for such a narrow niche in the market, set high prices, and almost entirely avoid physical contact with their clients already assumes the worker is operating from a fairly high standard of privilege and has a lot of control of their labor; this isn't the case for many workers. Even in legal forms of sex work, such as brothels, the workers may be considered employees, which offers standard legal protections for employees, but weakens the workers control of their labor. Alternatively, sex workers are often hired as independent contractors. Being hired as an independent contractor generally gives workers more autonomy of their labor, but this isn't always the case as workers may not be able to negotiate their schedule or contracts with the club or brothel.

A study done in New Zealand shows that, while having the status of "independent contractor" can be beneficial insofar as independent contractors are supposed to be able to have more control over their labor, within the brothel system this can often be overshadowed by management.⁴¹ A key difference between sex workers being hired as independent contractors and other types of independent contractors, such as plumbers, is that other independent contractors frequently conduct their work at a variety of locations of their choosing. For sex workers, it is more often the case that workers are operating within a brothel where they are expected to return on a regular basis. In practice, managers have greater control of workers' labor conditions while at the same time are less accountable for workers.⁴²

Overall, working under a criminalized or heavily regulated legal model reduces worker autonomy. Thus, if we want to increase worker autonomy, then reducing regulations around sex work through decriminalization is the most efficient way to do this. With fewer legal restrictions

⁴¹ Abel, Gillian, and Melissa Ludeke, "Brothels as Sites of Third-Party Exploitation? Decriminalisation and Sex Workers' Employment Rights," *Social Sciences* 10, no. 3 (December 2020): 5.

⁴² *Ibid.*

and potential repercussions, workers are less likely to need to rely on brothels or escorting agencies as they would be able to work independently or form informal groups with other workers for safety.

I maintain that it is unnecessary for us to encourage workers to utilize their workspaces as a site for resisting gender norms in order to make a pro-feminist, pro-sex work argument. Because some feminists, such as Watson and MacKinnon, view sex work as a main site in which women's subordination is perpetuated, then it could also be argued that sex workers' spaces can be used as site to challenge these norms. However, I think encouraging sex workers to use their spaces as a site of resistance could potentially be an undue burden placed on individual sex workers. Sex workers are, qua their sex work, a marginalized group; further, other marginalized groups are overrepresented in sex work such as LGBTQ, people with physical and mental health issues, immigrants, as well as racial and ethnic minorities, etc. Given that sex workers are already likely facing systemic inequality on different levels, I am hesitant to promote the idea that workers should feel the need to take it upon themselves to fight gender inequality in their day-to-day lives. Especially if we consider the most vulnerable sex workers: low-income, street-based, undocumented, insecurely documented, racial minorities, etc. There is no motivation for sex workers to promote a feminist agenda in their workspaces when feminists have historically excluded sex workers' voices from the feminist movement in the first place.

Moreover, I can see it being the case that there are plenty of workers that share the same concerns of gender inequality but find it irrelevant to how they should operate at work. Men do generally fill the dominant role in a client/provider interaction, but that isn't necessarily reflective of the personal lives of the client or the provider. Outside of her work, the provider

could very well be much more fluid with power dynamics in her personal sex life, but doesn't find it necessary to instill these dynamics into her working life—*because it's just work*.

As previously stated, male dominance and female subordination are the dominant sexuality in our society; this also tells us what dynamic a client will most likely be looking for when deciding to purchase services from a provider. If the majority of clients are looking to engage in this dynamic, then it makes the most sense, financially, for providers to offer this type of dynamic in the services she provides. If a provider is not in a position to be particularly selective about her clients, then we can see how not offering this standard power play would result in an immediate pay cut. Though renegotiating power dynamics in sex workers' spaces would be for a good cause, it is not realistic outlet for political resistance for most workers.

In this section, I have shown that regardless of how the Nordic Model is implemented, it will not succeed in protecting women in the sex industry because it is founded on the idea that sex work subordinates women and promotes inequality between the sexes. Moreover, this theoretical approach to sex work can place an undue burden on sex workers to challenge gender norms in their workspaces. In this next section, I will argue that the Nordic Model also fails to account for protecting women against violence at the hands of law enforcement as it assumes that law enforcement can and will protect them.

2.3 *Police Violence*

When thinking of how to best protect sex workers on the job, we might suggest encouraging a greater amount of police presence near brothels or sites where sex work is suspected. A legalized or partially decriminalized approach to sex work must necessarily rely on criminalization. That is to say, if there are only certain avenues sex workers have to engage in sex work legally—whether it's paying and registering for a license, working within a brothel, or

not being able to rent commercial spaces for work—then there will always be a way in which sex work is done illegally, sometimes known as “backdoor criminalization.”⁴³ In theory, this benefits the worker if she is operating under the correct legal standards or, if under a Nordic model system, selling her services is decriminalized. In practice, sex workers overwhelmingly disagree with the notion that law enforcement can and will protect them from harm⁴⁴.

In Mac’s work, she explains that feminists that welcome police power are defined as “carceral feminists” and why we should be skeptical of relying on police: “Black feminists such as Angela Davis have long criticized feminist reliance on the police, and note that the police appear as the most benevolent protectors in the minds of those who encounter them the *least*....police are not a symbol of protection but a *real* manifestation of punishment and control.”⁴⁵

A legalized or partially legalized model necessarily increases the chances that workers will have to interact with police. Even in cases where the purported aim of policing is to arrest clients or traffickers, all police interactions incur a risk of violence and arrest. For immigrant workers, being deported is an additional risk. In many states it is still legal for an officer to pose as a client and engage in sex acts with a sex worker in order to arrest her for prostitution;⁴⁶ and it has been reported by workers that officers routinely harass street-based workers even when no crime is being committed as well as neglecting to protect street-based workers from domestic

⁴³ Juno Mac, “How Does Stigma Compromise the Safety of Sex Workers?” interview by Guy Raz, *TED Radio Hour*, NPR, Feb. 23, 2018, audio 17:00. <https://www.npr.org/transcripts/587937751>

⁴⁴ Susan G. Sherman, et al., “What makes you think you have special privileges because you are a police officer?” A qualitative exploration of police’s role in the risk environment of female sex workers,” *AIDS Care* 27, no. 4 (2015):474-475.

⁴⁵ Mac and Smith, *Revolting Prostitutes*, 16.

⁴⁶ Schwartzbach, Micah, “How do Police Uncover Prostitution Rings?,” *Criminal Defense Lawyer*, accessed on April 15, 2021, <https://www.criminaldefenselawyer.com/resources/how-do-police-uncover-prostitution-rings.htm>. Although courts have consistently allowed sexual contact in this context, there are limits to what is accessible depending on the state.

violence in cases where the worker was addicted to drugs.⁴⁷ In France, where buyers became criminalized in 2016, it has been reported that police officers still regularly intimidate sex workers in order to arrest workers' clients and sometimes arrest them if they don't have residence papers.⁴⁸

The possibility of encountering police officers is more likely for street-based workers since street work is more easily visible. However, indoor workers are still subjected to “anti-trafficking” police raids under the guise of “rescuing” workers by arresting them and deporting migrant workers.⁴⁹ In 2012, Alaska redefined prostitution laws in such a way that allows almost all instances of prostitution to be considered “sex trafficking”. During the first two years of the laws implementation, the only two people charged were two sex workers—one worker was charged with trafficking *herself* and the other worker was charged with multiple counts of felony sex trafficking for sharing a work space with other workers when she booked a client.⁵⁰ In practice, law enforcement officers have routinely been found to abuse their positions of power to harass and assault sex workers. If we have an interest in protecting sex workers from violence, then we must have an interest in protecting sex workers from violence at the hands of the state.

A proponent of the Nordic Model could reply that the policing practices in this regard have simply been implemented incorrectly. Perhaps police could be retrained and new policies on how police can conduct investigations would remedy these issues. Again, reforming policing

⁴⁷ Susan G. Sherman, et al., “What makes you think you have special privileges because you are a police officer?": 475.

⁴⁸ H el ene Le Bail, Calogero Giametta, No emie Rassouw, “What Do Sex Workers Think of the French Prostitution Act?” *M edecins du Monde* (2019): 32.

⁴⁹ Smith, Molly, “Soho police raids show why sex workers live in fear of being ‘rescued,’” *The Guardian*, accessed on April 15, 2021, <https://www.theguardian.com/commentisfree/2013/dec/11/soho-police-raids-sex-workers-fear-trafficking>.

⁵⁰ Mac and Smith, *Revolting Prostitutes*, 78-79.

practices would only be putting a band-aid over the problem when the underlying issue is a much larger, systemic issue of racist and classist policing practices.

If we consider a legalized model, where indoor FSSW is permitted, that still means street-based FSSW is criminalized and often inaccessible to low-income and undocumented workers. Thus, many workers will still bear the burdens on criminalization and may be subjected to harassment because of their occupation or their perceived occupation as well as racial minorities being subjected to racialized policing practices. Now, consider the Nordic model or even a fully criminalized model where the buyers are criminalized in order to deter the sale of sex. What if police officers are themselves the buyers?

In Oakland, California, one officer started a relationship with a 17-year-old girl who was doing street-based work at the time. Additionally, the officer's colleagues had sex with her in exchange for information about other criminal suspects.⁵¹ Oakland officers were also involved in paying a police dispatcher's underage daughter for sex, but only three out of six of the men involved were charged, one of whom is still employed by the Oakland Police Department (OPD).⁵² Prior to the court case, the OPD temporarily sent the victim to a rehab facility in order to prevent her from pursuing the case.⁵³ Similarly, a NY police office paid an underage girl for

⁵¹ Sidner, Sarah, "Sex, Suicide, and Failure to Report: How Oakland Police Scandal Unfolded," accessed on April 15, 2021, <https://www.cnn.com/2016/06/24/us/oakland-police-scandals/index.html>.

⁵² Brown, Elizabeth Nolan, "Cases Dropped Against California Cops Accused of Statutory Rape, Prostitution With Police Dispatcher's Daughter," Reason, Accessed on April 16, 2021, <https://reason.com/2017/10/13/cases-dropped-oakland-cops-dropped/>.

⁵³ Ibid.

sex and recorded numerous encounters with her.⁵⁴ He was later acquitted for sexual abuse charges and only convicted of tampering with a witness.⁵⁵

The aforementioned case is an illustration of how police authority can be abused under a fully criminalized model of sex work. The victim was coerced by police into engaging in sex acts with them and had no legal recourse for action because she was coerced into criminal actions by the very people that are purportedly meant to protect her. Sex workers and trafficking victims already do not have the option to report crimes committed against out of fear of arrest. And, as I have just shown, when workers and trafficking victims' cases do make it to court, they often do not get the justice they are seeking. The Nordic model doesn't account for protection against law enforcement because it assumes that the goal of law enforcement is to protect the community. This view also assumes that police won't abuse their positions of power which is always greater than that of the community members they are purported to serve.

3 THE CASE FOR DECRIMINALIZATION

Thus far, I have given an account of the Nordic model and why it fails to best serve sex workers. Here, I argue that decriminalization is favorable in all cases. Full decriminalization best serves workers in that A) workers are better able to support themselves financially, B) workers would have more autonomy and that means workers can create safer work environments for themselves, C) it better protects women and girls from violence by law enforcement.

⁵⁴ Pastor, Kate, "Bronx Officer With Troubled 42nd Precinct Indicted for Sex With Teenager," DNA Info, accessed on April 16, 2021, <https://www.dnainfo.com/new-york/20171011/concourse/42nd-nypd-precinct-officer-arrested-for-child-sex/>.

⁵⁵ Tracy, Thomas, "Cop accused of sleeping with 15-year-old prostitute acquitted of sex abuse charges; convicted of tampering with a witness," <https://www.nydailynews.com/new-york/nyc-crime/ny-cop-acquitted-of-sex-with-teenage-girl-20191002-7cwx4o2s4jfv3p3cuc7b5azf2i-story.html>.

3.1 Financial Freedom

Full decriminalization gives women more economic freedom than the Nordic model; the Nordic model, as it is currently practiced, generally requires women to work in brothels, rather than working independently or working together with other sex workers. Working in brothels comes with obstacles that could pose a barrier to women that do not have financial stability. Generally, brothels do not hire workers as employees, but rather as independent contractors. Hiring workers as independent contractors allows brothels to charge a flat fee or take a percentage of their income on each of their shifts.⁵⁶ Being an independent contractor can be beneficial for workers insofar as it allows them to have more control over their schedules, but, unlike most independent contractors, sex workers do not usually get to negotiate their contract, rates, fees, etc.⁵⁷ Moreover, heavy regulations on brothels mostly place financial burdens on the worker, rather than the brothels. In Nevada, for example, workers only keep half of their earnings while the house keeps the other half, workers are required to pay out-of-pocket for rent, food, transportation, weekly STD testing, as well as a quarterly fee of 150 plus an additionally yearly fee of 150.⁵⁸ These types of regulations found under a legalized model would possibly, if not definitely, exclude socioeconomically disadvantaged women. Even if we aimed to make the fees minimal in order to be less of a burden on the worker, it could still be unattainable for survival sex workers. These types of regulations serve as an undue barrier to entry that hit hardest on those with the fewest resources. Economic burdens aside, a legalized model means that sex work is legal when done only in a certain way and therefore it is still criminalized for

⁵⁶ Watson and Flannigan, *Debating Sex Work*, 104.

⁵⁷ Abel, Gillian, and Melissa Ludeke, "Brothels as Sites of Third-Party Exploitation? Decriminalisation and Sex Workers' Employment Rights," 6.

⁵⁸Michelle Rindels, "The Indy Explains How Legal Prostitution Works in Nevada," accessed April 15, 2021, <https://thenevadaindependent.com/article/the-indy-explains-how-legal-prostitution-works-in-nevada>

woman that can't obtain a permit or license if they are an undocumented or insecurely documented worker.

Under full decriminalization, women could minimize the costs of their work by opting to work independently or work with other sex workers. Under a system where sex work is legalized and regulated, this may pose a risk to workers where it is necessary to work in a licensed brothel. If it is already the case that brothels fees create a financial barrier to workers, then having to risk working outside of the brothel system and potentially face arrest or fines creates an additional financial barrier. In Nevada, fines for engaging in prostitution can range from \$400 to \$1300 as well as jail time from six months to one year.⁵⁹ Jailtime and legal fees are compounding harms for those that are already socioeconomically disadvantaged, especially in the case that it results in debt from legal fees incurred or not being able to continue paying bills while under arrest.

In this section, I have shown that regulations on sex work are undue barriers to entry into sex work. Regardless of whether regulations are made to be low-cost or loosely regulated, these regulations can still be problematic for those with the fewest resources and will always be problematic to undocumented or insecurely documented workers. Next I argue that decriminalization best promotes safety from clients as well as law enforcement.

3.2 Worker Autonomy and Safety

3.2.1 *Safety from clients*

Relying on brothels to screen clients can result in an exploitative relationship if workers do not feel they have any control or input over which clients they can accept or decline. As Watson notes, if workers want to decline a client, the proof of burden is often on them to justify

⁵⁹ "Crimes Against Public Decency and Good Morals," accessed on April 16, 2021, <https://www.leg.state.nv.us/NRS/NRS-201.html#NRS201Sec354>.

why they should be allowed to decline a client; whether or not they are allowed to decline someone depends on if the management finds their reason “acceptable”.⁶⁰ For this reason, decriminalization is favorable to the worker because they would be able to choose their clients. Sex workers could instead choose to be self-employed thereby increasing their autonomy and minimizing potential risk. Full decriminalization in conjunction with working independently would allow sex workers to personally choose which clients to accept. Full decriminalization makes sex work legally risk-free for both parties, whereas the Nordic model decriminalizes the selling of sexual services but criminalizes buying sexual services. Criminalizing the act of buying sexual services is not ideal for the sex worker, because it makes screening clients more difficult. If a potential client is worried he could be arrested for buying a worker's services, it may not deter him from purchasing services entirely, rather he could refuse to supply identification information or supply false information. Removing legal risks increases the likelihood a potential client would provide accurate identification information. Sex workers could then run background checks to see if there is any history of arrests for violence or other information they would find relevant. Additionally, having a record of the clients' ID would allow the safety net of reporting the client to the police if need be.

Another avenue to promoting worker welfare is through the creation of informal networks. In addition to requiring ID, sex workers may also require potential clients to provide multiple references from other sex workers from whom they have previously purchased services. Sex workers could then inform each other of all of the relevant information at their own discretion. This option would greatly reduce the chances that workers would have to interact with problematic clients because workers could create their own standards rather than obliging to

⁶⁰ Watson and Flanigan, *Debating Sex Work*, 106.

whatever rules brothels could impose on them. Successfully promoting a safe work experience can also look like: creating an online profile where they could discuss rules and expectations with customers before agreeing to meet with them, sharing locations with other workers or friends on electronic devices, having the ability to choose the location where the services take place, having someone remain at a nearby location for the duration of services, having separate devices for communicating with clients (e.g. an additional cell phone, separate emails), as well as acquiring self-defense weapons and learning how to use them safely. All of these options can be utilized to reduce harm, but I maintain that the most crucial factor in promoting safety is that the individual worker can choose their clients which is most accessible under a fully decriminalized model of sex work.

3.2.2. Safety from Law Enforcement

As I have previously shown, it is generally not safe for workers to contact police for help under a regulated or criminalized model. This risk is heightened for non-white and migrant workers. Non-white workers are overrepresented in arrests for prostitution even with law enforcement claiming to focus on targeting the buyers.⁶¹ In the case of migrant workers, criminalizing buyers puts migrant workers at risk for deportation by exposing them to police interference.⁶² Even in New Zealand, which is often mischaracterized as having full decriminalization, migrants with work visas are prohibited from engaging in sex work and can be deported and street-based workers can still be arrested as well.⁶³ Under a fully decriminalized model, workers are better able to operate without fear of being targeted by police for doing their

⁶¹ Christie Thomson, “Escorted to Jail,” *Chicago Reporter*, accessed on April 16, 2021, <http://chicagoreporter.com/escorted-jail>

⁶² Watson and Flannigan, *Debating Sex Work*, 290.

⁶³ Nada Zenith DeCat, “The Racism of Decriminalization,” accessed April 16, 2021, <http://titsandsass.com/the-racism-of-decriminalization/>

work. Thus, workers are less at-risk for violent police interactions and would also allow for workers to work together outside of brothels without risking a fine for being an unlicensed brothel.

That said, full decriminalization would give for workers the option for legal recourse against clients and police should they choose. While many workers might not trust police, and with good reason, it is still necessary that we give workers the same legal options available to everyone else. Additionally, informal safety networks as I have described above are not always available to workers and there currently are no alternate systems available for the public to rely on if they find that they need to call a third party to help ensure their safety.

4 CONCLUSION

In this thesis, I have shown that in both theory and practice the Nordic Model of sex work is not in the best interest of protecting sex workers. Overall, restrictions on sex work limits workers' abilities to protect and support themselves. Fully decriminalizing the buying and selling of sex is favorable in all cases as it better protects marginalized groups from jailtime as well as police and customer violence while engaging in consensual sex work. Decriminalization best promotes overall worker autonomy, safety, and well-being.

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