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## **State Feminism and the Basque Women's Movement: Transforming Gender Relations in the Home**

Amy Leigh Crumly<sup>1</sup>

1) Hunter College. United States

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# **State Feminism and the Basque Women's Movement: Transforming Gender Relations in the Home**

Amy Leigh Crumly  
*Hunter College*

## **Abstract**

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This article explores the social and historical circumstances that contributed to the institutionalization of the Spanish Basque women's movement and in turn contributed to the development of a particular type of state feminism. In this context, state feminism is defined as the relationship between government political action directed at women through public institutions and the diffusion of the women's movement at the local level. State feminism is examined in relation to systems of gender relations and the division between the public and private domains. The day to day activities of the contemporary women's association, Mothers of Alava, illustrates the ways in which the women's movement interacts with the state.

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**Keywords:** state feminism, women's movements, Basque Country

# **El Feminismo de Estado y el Movimiento Vasco de Mujeres: La Transformación de las Relaciones de Género en el Hogar**

Amy Leigh Crumly  
*Hunter College*

## **Resumen**

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Este artículo explora las circunstancias sociales e históricas que han contribuido a la institucionalización del movimiento de mujeres vascas españolas y, a su vez han contribuido al desarrollo de un determinado tipo de feminismo estatal. En este contexto, el feminismo de estado se define como la relación entre la acción política gubernamental dirigida a las mujeres a través de las instituciones públicas y la difusión de los movimientos de mujeres a nivel local. El feminismo de Estado se examina en relación con los sistemas de relaciones de género y la división entre los ámbitos público y privado. El día a día las actividades de la asociación de mujeres contemporáneas, Madres de Álava, ilustra la forma en que el movimiento de mujeres interactúa con el Estado.

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**Palabras clave:** feminismo de estado, movimientos de mujeres, País Vasco

The death of Franco in 1975, unleashed a new era for Spanish citizens, and in particular women. However, the sociocultural changes that signaled the transition from Francoist Spain to the New Republic had slowly begun to evolve during the 1960's and 1970's as a result of an increasing consciousness of social and political oppression. The development of women's movements went hand and hand with these changes. Women's participation in the general process of political transformation, their capacity for mobilization, and the interest of the new government in the post-Franco elections advanced a democratic image before the people and the international community that contributed to significant changes in women's social roles (Solano, 2002).

What had been categorized as the private side of a woman was transformed into a collective public protest as expressed in the slogan "The personal is political" (del Valle, 1985). Women began to look toward women's movements in other countries when they began to create their own feminist theory and create plans of action to address gender-based inequalities. In the United States, the guiding force behind the women's movement found its form of expression in small groups of women, often grassroots in nature. The predominant feminist perspective at that time was that sexual politics were believed to encapsulate a system of interpersonal power by means of which individual men dominated individual women.<sup>1</sup> American feminists believed that they would only obtain equality in society by dismantling the patriarchal system.

This particular theoretical approach did not fit well with the demands of Spanish women. One reason why is that Spain is characterized by its strong regional distinctions with distinct ideological and political perspectives. Thus, there are significant differences within Spain in how "women's issues" have been addressed. Second, the larger Spanish women's movement remains rooted in motherhood and acknowledging that there are innate differences between men and women.<sup>2</sup> Rather than denying that these differences exist and that all people are inherently created equal, this perspective highlights the complementary role of gender within society. Thus, women began to demand legislative reform to support women's role as mothers and provide them with the social support in which to fulfill their biological role of reproducer.

By the late 1970's, the Spanish women's movement entered a period of dysfunction as these internal conflicts became difficult to conceal. Attempts were made to solidify the movement with the passing of the new Spanish Constitution in 1977 that underwrote that men and women were equal before the law; however, a series of tensions emerged between opposing conceptions of feminism activism. Some feminists supported institutional changes while others looked toward women's movements that functioned outside of governmental structures.

Many of the problems that plagued the advancement of a consolidated Spanish women's movement at the federal level were also apparent at the regional level. In the Basque Country, the women's movement remained disconnected and weak as women were not able to ameliorate the tensions that existed within the Basque women's movement. In order to initiate changes to promote gender equality within society, government initiatives were needed. While the new Spanish Constitution stated that all men and women were equal before the law, it suggested a formal equality and acknowledged that the conditions for real equality did not exist in reality. The Basque Country took a stronger stance in regards to acknowledging gender-based inequality. The Basque statutes gave the same rights and duties to all Basque citizens as those established by the Spanish Constitution. It also assumed the responsibility to promote conditions and remove obstacles to promote equality (Article 9.2) and it recognized that the feminine condition deserves special attention.

The second governmental initiative was to consolidate the Basque women's movement through its institutionalization in government departments such as Emakunde (Bullen, 2003).<sup>3</sup> This institute is allocated money from the Basque Government to design and implement equal rights policies, for overseeing the application of women's rights policies, and for consciousness raising activities through education projects and publications (Bullen, 2003).

Institutionalizing the women's movement was criticized by some as they saw it as a weakening of the movement, yet it has allowed the channeling of public funds into particular women's initiatives (Bullen, 2003). Feminists remaining on the margins of institutions were able to receive funds to create their own associations. These associations provided a space for women to find solidarity, reflection, and social services that were previously

inaccessible. It was through their incorporation into these associations that women developed a collective identity and greatly expanded their efforts in a plethora of mobilizing activities. Feminist theory has been important in the production of new associations and has served as the structural frame for many associations.

In short, the 1980's saw two new elements in the Basque women's movement: (1) the creation of 'feminism from above' through a rise in government political action directed at women through public institutions like Emakunde (2) the advancement of 'feminism from below' through the diffusion of the women's movement at the local level (Bullen, 2003; Hernes, 1987). These two social structural changes provided the framework for the construction of state feminism in the Spanish Basque Country.

In this article, I will examine the social and historical circumstances in the Spanish Basque Country that led to the institutionalization of the women's movement and in turn contributed to the development of a particular type of state feminism.<sup>4</sup> State feminism is explored in relation to cultural beliefs regarding gender relations and the division between the public and private domains. I will then provide an example of a woman's associations supported by the Basque government that illustrates the ways in which state feminism from 'above' and 'below' complement each other to promote gender equality (Hernes, 1987).

### **Historical and theoretical background**

Since the latter half of the nineteenth century, women's associations began to organize around the category of feminism. As these associations developed under a variety of larger organizations, associations and individuals began espousing different theories of feminism and agendas for change based on their individual ideologies. Some functioned under the title of Catholic feminists while others defined themselves as socialist feminists or familial feminists. These associations that maintained different ideological perspectives created their own individual programs to address issues affecting women.

While many feminists looked toward socialist feminism or individualist feminism in constructing their arguments, many European feminists proposed a gender-based but egalitarian vision of social organization, which

is often referred to as relational feminism or equality feminism (Offen, 1988). These feminists supported the primacy of a companionate, nonhierarchical male-female couple as the basic unit of society (Offen, 1988). This theoretical perspective maintained a critical attitude of society and a concept of social change by advocating egalitarian social structures. This particular feminist approach strived to modify the domain of the home environment by providing women with social support to fulfill their role as caretakers. Thus, the social activism of relational feminism tended to focus on the private domain which in their opinion, subordinates women.

This perspective was in contrast to individualist feminists who emphasized more abstract concepts of individual human rights and posited that the individual, irrespective of sex or gender, was the basic unit of society. Relational feminists emphasized women's rights as women (defined by their childbearing and nurturing capacities) in relation to men. They insisted upon women's distinctive contributions in these roles to the broader society. Thus, associations that supported these ideals developed programs to protect the sanctity of the home by providing health education and other social services to low income women with the desire to decrease infant mortality and improve hygiene amongst poor factory workers.

In France, French feminists in the nineteenth century emphasized sexual difference, a sexual division of labor, motherhood, education for motherhood, and state subsidies but they also argued for legal, educational, and economic rights for women as well as the right to vote (Offen, 1988). French women's associations argued for compulsory home economics and scientific care along with comprehensive maternity benefits (Offen, 1988). Conversely, they also argued for women's right to work and supported labor laws that protected women. Since the twentieth century, French feminists have argued for programs that celebrate the uniqueness of womanhood, especially women's role and rights as mothers. They also demanded radical sociopolitical reforms by the State that would transform the social institutions surrounding natality and therefore improve women's status.

Within the Spanish context, equality feminism gained popularity amongst both Catalan and Basque nationalists in the early twentieth century. Basque and Catalan women, often from the middle-class who congregated behind the guise of cultural nationalism, developed their own associations to look at issues which specifically affected women. Often the family was the focus of



their intervention (Nash, 1996). Feminist thought both in Catalonia and the Basque Country was based on the recognition of gender difference and motherhood as the defining role of women, but is also sought the promotion of women's rights. Women's education was believed to be integral for not only women's development but for the development of the family as women were the primary educators of the young. Within Basque culture, women were respected not only for their role as biological reproducers, but also for their role as educators of the Basque language. Therefore, women were believed to be crucial agents in the construction of the Basque nation.

During the 1930's in the years of the Second Republic, women's associations developed rapidly with many of them taking the responsibility of providing health related education to families. Cultural representations of women centered on discourse which glorified the most frequent image of women, that as "angels of the home" (Nash, 1999). Basque nationalistic women's associations embraced the role of motherhood that came to be an identifier of Basque cultural identity. The nationalistic discourse of that time clearly describes women's role as educating the next generation to resist fascism. Women were expected to embrace their maternal instincts and raise children within an antifascist environment.

With the outbreak of the Spanish Civil War in 1936, Republican women's associations turned to reactionary measures to support the sanctity of the home. Women's associations continued to provide health related services to soldiers and in many cases orphaned children. As is true for other countries experiencing civil war, family life was disrupted. Women were left alone to care for children and in many cases, their husbands never returned. Even though gender relations shifted during the Spanish Civil War, women remained the primary caretakers of children and most health education was directed toward women.

With Franco's victory over the Republicans in 1939, a new wave of conservatism swept across the Iberian continent. As part of the construction of the Francoist State, a new vision was adopted which functioned to reinstate traditional gender relations. Franco believed that the significant changes that occurred between the genders during the Spanish Civil War were a threat to conservative social sectors. In order to implement a new order, Franco developed highly conservative family policies. To repopulate Spain after the significant casualties from the Spanish Civil War, Franco

supported a pronatalistic policy. Women were expected to embrace their reproductive role and turn in their “uniforms of war” for aprons.

Franco attempted to naturalize gender differences by reinforcing the distinction between the “public” and “private” domains. In Franco’s opinion, women’s social role should be securely centered in the realm of the private domain as their most important role as citizens was to reproduce the next generation of Spanish citizens. Women were not allowed to work outside of the home nor travel without their husband’s permission. Thus, this analytic distinction was commonly utilized to justify women’s unequal position in society during this era.

### **Contemporary social context: the women’s movement and state feminism**

Since Franco’s death in 1975, Spain experienced a rapid growth in its economy. The standard of living improved dramatically as individuals began to experience a lifestyle more comparable to other Western European countries. A new constitution was created in order to modernize the country that allowed individual regions to create their own semi-autonomous governments. Spanish citizens wanted to undo the years of Franco by supporting a plural democratic political system similar to the governments that had previously been established in Western Europe following World War II. While the women’s movement had been slow to develop in Spain, with the improvement in the standard of living, women had greater freedom to explore identities outside their roles as mothers and wives. Thus, we have seen significant improvements in women’s access to educational and employment opportunities since the 1980’s, which has contributed to gender equality within society.

However, the one area that women have had the most difficulty obtaining equality is within the home. The distribution of family responsibilities is one of the most significant areas affecting women. Caretaking remains one of the most basic components in the social construction of gender and has important consequences for the identity and activities of women (Comas d’Argemir, 2000). Compared to other European countries, the boundary between public and private domains is much more rigid. Thus, the family remains the principal institution for the delivery of caretaking activities.

One of the most commonly utilized explanations for why the Spanish welfare system remains relatively undeveloped compared to other European countries is that when the new Constitution was being created in the 1980's, left wing associations and political parties favored a rigid separation between the State and the family. During the years of Franco's reign, there was virtual no separation between the State and the family as Franco enforced paternalistic family policy, in order to create a national Catholic family. As a backlash to this governmental policy, the political forces during the 1980's did not want the family as the object of intervention. Instead, feminist associations collaborated with the Institute of the Woman to focus their interventions on promoting equality between men and women rather than rethinking family welfare policies. However, one of the unfortunate consequences of "protecting" the family is that the work of women often remains invisible (Comas d'Argemir, 2000).

In contrast, Scandinavian countries took a very different perspective in promoting social and gender equality. These countries made the family the focus of their intervention. They adopted progressive social welfare policies, such as parental leave and extensive public care services for children and the elderly in order to equalize care taking responsibilities and thus supported women's right to participate in all forms of citizenship. As a result, the boundary between the public and private domains, became fluid and open to renegotiation.

Family organization remains a vital aspect of cultural identity (McDonald, 2000). Because of the desire to maintain a Basque identity, the family remains a conservative institution that has been slow to change. Society tends to resist radical changes in gender relations. However, increased gender equity within the family can be a gradual process that does not threaten the integrity of the family (McDonald, 2000).

In the past ten years, the Spanish Basque Country has created programs to help equalize caretaking responsibilities within the home as well as providing financial support to families upon the birth of a first child. While this practice is typical in other European countries, it is not practiced throughout Spain. However, childcare is an issue that has not been adequately addressed.<sup>5</sup>

### **Relational feminism as a means to promote gender equality in the home**

In this section, I will present a woman’s associations which is supported by the Basque Women’s Institute that provides a good example of the ways in which ‘feminism from above’ and ‘feminism from below’ complement each other to promote gender equity. This association was created in order to promote women’s position within society by directing its plan of action within the home. Relational feminism believes that women’s source of oppression is rooted in the social relationships that exist between men and women. Although these relationships are marked by biological differences, it is society that perpetuates these differences and as a result positions women in an inferior position. Thus, it is not merely the division between public and private domains that contributes to women’s inequalities. Rather, social relationships between men and women contribute to inequality.

Madres de Alava was created 1998 by a group of mothers who wanted to change the environment between men and women within the home in order to equalize care giving responsibilities. This association is one of several associations supported by the local Basque Government that provides courses to promote equality between men and women. Relational activities that are typically associated with the private domains, such as care taking and emotional support, are often ignored as economic generating activities are more highly valued. Thus, this association was established with the goal to educate men to take a more active role in the home and to make the invisible activities of women more visible. By creating a more gender equitable environment within the home, the association believes that women will have an improved position within the home, which in their opinion is the fundamental environment in which gender inequities are carried out.

My research techniques focused on acquiring archival data and participant observation of the association. My archival data focused on the historical development of women’s associations as a collective unit and their relationship to the advancement to both the Basque nationalist movement and Basque women’s movements. Through archival data, I was able to develop a timeline that visually depicts significant social structural changes that influenced the development of women’s associations. The archival data was indexed and coded. Archival data was organized chronologically into five eras: the nineteenth century, early twentieth century, the Second

Republic and the Spanish Civil War, the years of Franco, and contemporary society. Archival data enriches the participant observation data obtained as it contextualizes the data within macro social variables.

The majority of my time in the field focused on observing the actual activities of the association Mothers of Alava that occurred over two months beginning in November of 2004 and ending in January of 2005. The courses were taught at the Civic Center located in the center of Vitoria, the capital of the Basque Country. The classes I attended were taught exclusively in Spanish; however, at other locations, the classes were also taught in Basque.

The data collection for this association included unstructured interviews of all of the teachers of the courses that occurred at the Civic Center. The interviews of the instructors focused on acquiring basic demographic data such as age, birth place, marital status, and reasons for participating with the association. Participant observation data of the educational courses offered by the association was also collected. Data collection included responses from teachers and the students as well as educational worksheets which were included as part of the curriculum of the association. All of the data were collected in the form of narrative field notes that were analyzed and coded with an inductively constructed period (see coding scheme).

The purpose of this association was to equalize care-taking responsibilities between men and women. Thus, the association focused their activities on (1) providing women with breast pumps so that men could be involved in feeding infants (2) teaching infant development classes so that men can be more involved in parenting their children. As family life continues to be an important part in Basque culture, becoming a parent is viewed as an important status change in the life cycle. Despite the reorganization of family roles, the structure of power and the larger division of labor in the family remains highly gendered. Childcare, care for the sick or disabled people, and help for the elderly are some of the tasks which fall upon women. The ideology of the course focuses on helping them develop the skills that are typically relegated to women.

The course curriculum focused on ten areas (1) food (2) bathing, dressing, and diapering (3) sleep (4) infant health (5) infant safety (6) development (7) toys, playing, and educational styles (8) maternity leave (9) family assistance (10) education. The courses were focused on the developmental stage from 0 to 3. Designated members of the association

with particular expertise regarding child development instructed the courses. The curriculum for the 2004-2005 years also included five additional courses in addition to the courses that I attended that focused on childcare. These additional courses were: (1) care for the elderly which was also directed toward men (2) exchange of domestic work between men and women which provides courses for women only, men only, and mixed-gender groups (3) public speaking for women (3) self-defense, only for women (5) automobile maintenance, only for women.

Women were not restricted from attending the courses as they could accompany their partners and single mothers were not excluded either. Despite the fact that the association catered to the male student population, the classes were typically co-educational as men generally did not attend the classes without their wives.

The association maintains traditional beliefs in regards to the Basque family unit; meaning, the social role of mother is highly regarded. Further, this association shares some similarities with other traditionally organized Basque women's associations in that the association remains profamily and pronatalist. Women's role as matriarchs and reproducers of the next generation of Basque citizens is important. Although parenting functions are believed to be a responsibility of the wider kin group, the relationship of the child to his or her biological parents, and the mother in particular, is highly valued.

While this association strives to support the Basque family, it has modified some of the traditional understandings of gender relations that were typical of the Basque Country. In the Basque Country, family life centered around the *basseri*<sup>6</sup> that was a self-sustaining economy. Men and women maintained complementary but equal roles within the home. Thus, certain tasks were assigned to women within and outside of the home. As the Basque Country has evolved into an industrialized region, agriculture is no longer the primary industry. Although economic relations have changed within the Basque Country, traditional understandings regarding gender structures have been difficult to alter.

This understanding of gender relations has clearly structured the activities of the association and their plans of action. In order to support women in their role as mothers, men need to appreciate and accept female identified behaviors in order to support women's role within the home. This

association operates within the current structure of society and does not seek to dismantle the existing patriarchal structure.

Maintaining the integrity of the family remains an important goal within contemporary Basque culture; thus, this association receives support in its project. While this association has a limited focus and the number of men who attend these courses in relation to the total population of men in the Basque region is small, this association could serve as a model for other associations. This association is unique in the sense that men are involved in its functioning and are the subjects of change within their project. Typically women's associations do not include men within their association focus as gender is often placed upon women. Thus, this association is revolutionary in that it attempts to "gender" men. In many cases, government funded programs allocate funds for family welfare to programs which are directed toward women. However, this association believes that programs that are directed as promoting women's access to the public domain will not combat inequalities that exist within the home. Rather, a new system of gender relations must be initiated within the home environment. By attacking subjective understandings regarding gender relations within the home, women will be able to achieve greater equality in all areas of life.

From this relatively simple basis for social change, this association was established and began to offer courses with the financial assistance provided by Emakunde. The association has grown over the years to include other projects, such as the breast pump rentals and other public protests such as the initiative that city buses have stroller accessible ramps.

The main focus of the association however was their child development courses. Each week, the instructor provided a brief introduction to the material. The students would then be allowed to introduce themselves and share the reasons why they came to the association as well as expressing anxieties about becoming new parents. Although individual instructors maintained their own styles in instructing students, the courses tended to be didactic with small group activities so to reinforce their material. Props would often be used for educational purposes. The students could then model tasks performed and in some cases they were asked to perform tasks such as diapering the doll to gain practical knowledge.

All of the instructors tended to teach from a previously constructed outline of course material to present along with worksheets that focused on

particular topics. Every instructor would present material and then ask for the students to reply. The students would also congregate in small groups to answer the worksheets. The worksheets typically were composed of cartoon characters depicting different scenes. For example, in the case of the child safety course, cartoon characters were displayed engaging in activities, which were dangerous for children. The students were then expected to comment on what was wrong with the pictures. This tactic encouraged the participants to talk about their own experiences with childcare. In addition to the material presented by the teachers, the students would contribute to the class content. The subject of discussion would remain within the parameters of the topic for the course however the students were allowed to participate. Differences in opinion were also open to discussion as people had different perceptions about how to parent children. Clearly people’s own experiences, meaning the ways in which they were parented, were discussed as the older generation often had distinct ideas compared to the younger generation about how to care for children.

Other issues that were addressed in the courses included the difficulty of completing household work while simultaneously caring for small children. In traditional households, women were expected not only to care for children but also perform all of the cooking, cleaning, laundry, and shopping for the household. All of the women who attended the courses were employed outside of the home as well as the teachers. Thus, some emphasis was placed on the need for men to assist with household chores along with care-taking responsibilities.

The instructors attempted to encourage social interaction between the expectant parents so that they could develop a larger support network. However, in general, most of the participants in the course lived in very close proximity to their parents and other family members and would rely upon kinship networks for support more than acquaintances which is a pattern typical for the Basque region. Unlike the United States where it is common for people to live far from their parents or siblings, in the Basque Country and in Spain in general, people tend to reside close to their parents. This trend also is reflective of practical considerations as day care is very expensive. Thus, the family provides in an informal manner, some of the transfers and services that are provided by the welfare state in other European countries.



## Conclusions

In the European context, we have seen significant variations in how the issue of gender equality has been addressed at both a political and cultural level. While feminism and women's movements began to develop in the 1970's in Northern Europe, women's movements in Southern Europe were slow to emerge. As a result, welfare states and gender friendly policies vary significantly between European countries. Further "state feminism" has been difficult to define as it has been used to describe very different concepts. While some have defined it as the relationship between the feminist movement and the state, other countries define it as policies that promote women's social and economic independence.

In the case of Scandinavia, state feminism is often associated with 'feminism from above' as it is associated with gender equality and the development of social policies directed at women (Leira, 1993). It is considered progressive as it makes radical demands such as quota systems or rules for positive discrimination in hiring (Hernes, 1987). It accomplishes many of its objectives by renegotiating the boundaries between the public and private domains. Thus, it lessens men's power over women and thus promotes women's economic independence and life choices. This type of state feminism emphasizes women's political agency; including their ability to mobilize and self-representation (Hernes, 1987).

In the Spanish Basque Country, there has been an effort to develop structures to support both 'feminism from above' and 'feminism from below.' With the creation of Emakunde, the Basque Government provided public funding to design and implement gender friendly policies and support women's special interest groups. At the local level, individual groups of women were able to create their own associations utilizing feminist theory to support gender equality projects. Family welfare policy has not attempted to intervene in the home by transferring caretaking responsibilities into the public domain through the creation of state funded childcare programs. Instead, programs seek to support a universal caregiver model by making women's life patterns the norm for both men and women (Borchorst & Siim, 2008).

In conclusion, this article illustrates the ways in state feminism is embedded within core social values. Thus, visions of state feminism have taken different forms in different social contexts. In the case of the Spanish Basque Country, supporting the primacy of the family as the basic unit of society as been the goal of gender equity programs. Feminists looked toward relational feminism in constructing their own interest groups and in turn, the Basque Government has supported equal rights policies and projects that provide women with social support to fulfill their role as caretakers.

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### Notes

<sup>1</sup> This type of feminism has been referred to as independent feminism that is associated with the United States and Great Britain.

<sup>2</sup> This feminism has been called relational or feminism of equality.

<sup>3</sup> Emakunde was created on the 5th of February 1988 with objective to eliminate gender inequality in society. Eight areas of analysis were addressed in order to obtain gender equality: legal, cultural, education, community relations, employment, social security, health, and social welfare.

<sup>4</sup> State feminism is a difficult term to operationalize as it has been utilized in different contexts, periods, and political strategies. In this context, state feminism is as defined as ‘feminism from above’ in the form of gender equality, social policies, and the feminization of the welfare state. Also, this is combined with ‘feminism from below’ through the mobilization of women in political and cultural activities (Hernes, 1987). It does not refer to a particular type of feminism, nor a commitment to feminism or women’s movements. Rather, it refers to the location, that is the state, of the official administration in which and from which a response to a feminist demands takes place (Threlfall, 1998).

<sup>5</sup> Within the European context, Spain dedicates a very small percentage of their state funds to family support. In addition, countries like Denmark, Holland, and Germany provide tax reductions for childcare expenses while this practice does not exist in Spain.

<sup>6</sup> The *basseri* system in the Pyrenees is a system in which all propertied families were recognized as household units comprising individuals with different roles and status, cohabiting in one house, all descending from the same family.

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**Amy Leigh Crumly** Silberman School of Social Work, Hunter College, United States.

**Contact Address:** Direct correspondence to the author at 2180 Third Avenue New York, New York 10035.

E-mail address: [alc9003@nyp.org](mailto:alc9003@nyp.org)



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## **(II)legal Subjects? Contested Identities of Canadian Indoor Sex Workers**

Menaka Raguparan<sup>1</sup>

1) Carleton University. Canada

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# **(Il)legal Subjects? Contested Identities of Canadian Indoor Sex Workers**

Menaka Raguparan  
*Carleton University*

## **Abstract**

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Women's participation in the sex trade industry has always been a subject of contention, with conflicting representations. In this paper, I present the finding of in-depth, face-to-face interviews with ten independent in-call and/or out-call sex workers in Canada. Through these interviews, I seek to understand the distinctive names and meanings attributed to the identities of sex workers. Drawing on divergent analytical concepts such as legal consciousness, respectability, self-creation and the intersection between gender, race, class and sexuality I chart participants' perceptions and interpretations of the classifications inscribed to them by legal, political, and the civil society. Moving beyond existing languages and discourses that are particularly used to define, name and characterize women's involvement in the sex industry, in this paper I highlight the fluidity and complexities of personal, social and political identities of the ten sex workers.

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**Keywords:** sex worker, women, law, gender inequality, resistance

# **El Feminismo de Estado y el Movimiento Vasco de Mujeres: La Transformación de las Relaciones de Género en el Hogar**

Menaka Raguparan  
*Carleton University*

## **Resumen**

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La participación de las mujeres en la industria de comercio sexual siempre ha sido un tema controvertido, con representaciones conflictivas. En este artículo presento los resultados alcanzados a través de entrevistas en profundidad a diez trabajadoras del sexo en Canadá que reciben a sus clientes en su lugar o van donde esté el cliente. A través de estas entrevistas, busco entender los nombres distintivos y significados atribuidos a las identidades de las personas trabajadoras del sexo. A través de conceptos analíticos divergentes tales como la conciencia jurídica, la respetabilidad, la auto-creación y la intersección entre el género, la raza, la clase y la sexualidad trazo las percepciones e interpretaciones de las personas participantes respecto a las clasificaciones inscritas sobre ellas por el marco jurídico, político, y de la sociedad civil. Yendo más allá de idiomas y discursos que son especialmente utilizados para definir, nombrar y caracterizar la participación de las mujeres en la industria del sexo, en este trabajo se destaca la fluidez y la complejidad de las identidades personales, sociales y políticas de las diez trabajadoras sexuales.

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**Palabras clave:** trabajador sexual, mujeres, derecho, desigualdad de género, resistencia

*So inside workers will always be generally underrepresented group, because they don't want to be seen ... [it's] very hard group to represent [laughing] it's, it's next to impossible to represent a group that says no, no, I'd rather you don't see me [laughing]. Yeah that's, that's you know marketing for the group that does not exists. ... it's like having a ghost rider ... they just really do not want to be seen, you know, there is, there is no average user basically, they, you can't get a feel for them, it's tough – Robin.*

**R**obin is a “thirty something” year-old career woman in the field of business development. She is also an independent out-call sex worker.

In this paper, I describe how ten women who are involved in the independent in-call and/or out-call service sector of sex trade form their personal, political and social identities against the backdrop of a criminal subculture. This process of identity formation includes rejecting certain normative characterizations of female sex worker in general and embracing a variety of identities that are fluid. I choose to focus on the indoor sector of the sex trade because very little about their lived experiences have been documented academically or otherwise. Such limitations and ignorance, I show, is partly due to the fact that participants of this particular sector (including clients) highly value individual anonymity and specific desires over collective public or political representations. The individual stories of the women presented here stress the fact that their day-to-day experiences and various encounters within and outside the sex trade are central to the development of their identities which are complex, continuous and conflicting.

Stychin (1995) argues that legal discourse is an important site for the constitution, consolidation and regulation of sexual identities/practices. Based on this argument I will first review the reciprocal process between social logics and legal initiatives that patterned, stabilized and institutionalized the idea of women's proper sexuality. Within this discussion I will also show how such legal initiatives intentionally and inadvertently create discursive spaces for theories of sexual hegemony and



objectification which are implicated in articulating the identity of the excluded ‘other’ in a field of legal and political contest. Given that identities never operate in isolation, the analysis of the interviews presented here recognizes that law is not an ‘all-powerful’ discourse. Stychin (1995) and other socio-legal scholars argue that despite its repressive and unequal regulatory practices both law and regulations has never been entirely successful in constituting and maintaining coherent categories. In fact, the gaps and inconsistencies between law on books and law in action and all the failed promises of equal treatment opens up spaces for resistance against the legal and cultural hegemony such that there is no one common perception of law (Stychin, 1995). The stories of ten sex workers presented in this paper highlights this pivotal point by outlining the strategies of resistance that allows them to engage or avoid the legal meanings altogether.

It is important to note that in this paper I not looking to establish the effectiveness or ineffectiveness of law as a tool. Instead, the aim is to illustrate that in order to sustain its institutional power and legal hegemony, specific laws are made to work better for particular groups, particular interests and according to mainstream social logics, local cultural categories, norms etc. As a result, despite the aspirations of due process and equality, legal actions and legislations continue to make contributions towards sustaining a common culture, historical institutions, and particular structures of power and inequality (Silbey, 2005). The important aspect of this exercise is to emphasize the fact that legal identities are based on a complex web of processes and practices between social logics, local cultural categories, legal provisions, legal actions and other informal and formal regulations. Even though law is a central and constant feature of these women’s lives, women’s everyday experience with law as they engage, avoid or resist illustrates that there is no one common view of law.

### **The Reciprocal Process: Law as a System Enacting Norms and Rules**

The relationship between law and sexuality is complex and dynamic (Stychin, 1995). Currently, in Canada, the sex trade industry and the exchange of sex for money between two consenting adults has never been illegal. However, four sections of the *Criminal Code*, namely sections 210 to 213, prohibits the exchange of sex for money in almost every conceivable

public place, making it difficult to engage in sex trade without breaking any law. Sections 210 and 211 respectively make it illegal for a person to keep a “bawdy-house” or to transport a person to such a place. Section 212 makes it illegal to encourage or force people to participate in the sex trade (also known as “procuring”) or to live on the money earned from sex work by someone else (also known as “living on the avails of prostitution”). Section 213 makes the communication between sex workers and customers in public illegal, this includes enclosed places open to the public, such as bars, adult entertainment clubs, massage parlors, saunas, and automobiles are all considered public places. In sum, even though it is not illegal to be a sex worker, these *Criminal Code* provisions makes it very difficult to engage in sex for money without transgressing criminal boundaries.

Interpreting and enacting these *Criminal Code* provisions especially to the indoor sex trade magnifies another level of complexity. Even though legal provisions define the makeup of public places and where sex trade related activities cannot take place, there are no explicit indications as to what constitutes a private space or where sex trade related activities can take place. I believe that it is safe to say that the vagueness of Canadian jurisprudence begins here – at the point where it fails to set out a legal space for licit sex work. This vagueness has implications for women in the practice of independent in-calls. Women who choose to work from their homes risk being charged under the s.210 - bawdy house laws - even though individual’s homes are not a public space. Yet, massage parlours are legal in certain localities throughout North America under the ordinance of municipalities. In Canada, massage parlours are regulated through by-laws pertaining to the body-rub industry in several municipalities (Lewis, Maticka-Tyndale, Shaver & Schramm, 2005; Bruckert & Parent, 2006). Moreover, escort agencies, which are in the business of providing out-call services, are often scrutinized with the risk of criminalization for third party involvement in advertising and profit sharing. On the other hand, the practice of independent out-call whereby self-employed women choose to work in locations such as clients hotel rooms or homes are most likely to avoid the risk of criminal prosecution under the sex trade related laws. In addition to the difficult interpretations, enforcement of *Criminal Code* sections pertaining to the sex trade varies widely as well. The quasi-criminal nature of the sex trade industry in general and the discrete nature of

independent in-call and out-call business establishments, makes this sector of the sex trade industry difficult to detect, apprehend and convict. In a sense, this socially deviant and marginally legitimate industry challenges the boundaries of law by spinning off a unique service industry and occupational speciality.

### **Law's Disciplinary Power and Legal Meanings of Character**

Smart (1989) argues that the law, combined with specific ideologies, normalized assumption of proper female sexuality and its arbitrary, unreliable and unusually repressive ways of enacting these ideas and assumption embodies disciplinary power. In fact, Smart (1989) notes that as soon as we look beyond a narrow stereotype of law as a system of rules backed up by sanctions it becomes evident that one of law's functions is precisely to distribute its subjects with disciplinary precision around a mean or norm. Policing policies that often adheres to the criminal subculture explanatory model is a good example of how law uses its disciplinary functions to create a normalizing effect. All the women in this study were unanimous in suggesting that policing policies often adhere to the position that, for some women, involvement in the sex trade is either inherent or inevitable. These women claim that such imaginations and assumptions leads to discriminatory and pervasive enforcement practices.

....they [law enforcement] would perceive me as just like trash, that's like the general public – big time – they would want to know who I worked for – but I am independent – I would feel like just like trash and treated like nothing. – Amethyst

We are major, we are consented, so it's kind of weird, because I have always felt like my work was rewarding and the society and the laws would make me feel like a criminal... –Freedra

The women in this study also believe that discriminatory, arbitrary, pervasive policies and enforcement practices that are centred on gendered and culturally coherent norms tend to systematically reproduce structured inequalities in order to maintain the legal and cultural hegemony. These women basically point out that law enforcement typically tends to target certain groups of sex workers more. With street level sex workers perceived

as social and economical outcasts, combined with being deemed a public nuisance and annoyance, these women are often targets of arbitrary law enforcement. Two of the women I spoke to were infuriated by this:

... the law becomes true to the most visible, they are the ones who get the blunt of law and I think [the law] leave escorts to their business as long as they are not, like if I was sticking out in hotel lobbies as it were, you know or on a street or whatever, so the fact is if you know, if you were out in communities, so if you are out visible, you know it's ok to happen as long as nobody knows about it [my emphasis]. You know, maybe that's the reason they have all these side laws, because then we have to be on the down low all the time ... – Samy

And people don't want it. They don't want it in their back yards. People who, they just don't want to see it...because they are classist, that's why... – Maxi

Here, I feel that some background about Samy and Maxi may be useful to understand their views. Samy, claims that in her personal life she is not monogamous – she has a boyfriend and a (separate sexual) partner. Similarly, Maxi indicates that “I am a big queer, I am fem, a feminine queer woman and ... I tend to date polyamorously, people along all sexes and genders...” In a sense, based on generalized identities and normative assumptions these two women would qualify to be classified as “beyond normal” in their personal relations and their labour relations. Most importantly these two women appear to constantly renegotiate their sexual citizenship and their right to public and political identities.

Overall, all the women I interviewed for this study believe that the law treated independent workers differently. They all claim that the law enforcement did not look to arrest indoor workers in general. They unanimously believe that the law did not care about them, or was concerned for them. These women also suggest that the law particularly looks for the street level workers because they are visible and because they are seen as annoying and a nuisance to society. The following accounts by Freeda and Maxi exemplifies how women involved in the indoor sex usually interpret the gaps and inconsistencies of the law and its action.

...escort agency is still criminalized, but it's the easiest way to work, so why would laws allow me work as an escort, go to hotels and not as someone working on the street. You know. Because I have clients who are judges, I have clients who are lawyers and they don't, they don't want to quit our relationships you know...—  
Freedra

It is very, well it is the same type of work but it is very different, different risks and different perceptions. Like what I do is considered escorting and somebody who does a very same thing on the street is considered a prostitute. I am not considered a prostitute, even though I do a very similar, similar thing right... In a cops brain it is not even considered the same thing...— Maxi

Importantly all participants appear to be confident that as long as independent workers stayed out of public's sight and kept a low profile the law would not bother them. The following accounts illustrate how these women interpret the arbitrary regulatory practices that look to consolidate a "normal" through an excluded "other."

[...the police have a much more different reaction to] street based sex workers [than] to strippers. There is a hierarchy out there like a social hierarchy ... even in the sex trade. The escorts are not treated the same way than a [street worker] ...according the way we see, like who is worse or not. Maybe it's like a moral thing about the sexual, just. It is easier to attack someone who does not have the money and the contacts to defend themselves. The more vulnerable you are the more people hit on you – Ruby

More or less yes, yeah, the police don't, they don't really bother us, as long as, you know we do what we do, and as long as we are not disturbing the peace in anyways we are cool. I feel good. I just feel better that way that they are not going to come after me, they are not coming after me. Maybe because I am not really, to me I am not breaking the law right. –Alex

Here Ruby and Alex emphasize the role of law in inscribing the identities of the excluded "other." Ruby and Alex point out how these legal provisions

are also implicated in demanding a modality of sexual citizenship by granting some legal subjects fewer rights than the others. Bell and Bonnie (2000) argue that such arbitrary rights claims grants sexual rights only on the understanding that these claims to right will be kept private, such that they are mere tactic to enable the claim to privacy and to secure a private space. This is opposite to what the women I interviewed are looking for – the right to public and political sexual citizenship and identity.

Although systemic social stratifications are inherent part of policing policies and practices, the women I interviewed believe that the harsh and arbitrary policing practices have a particular effect on the women who are involved in the street-sex trade. All ten women appear to believe that policing practices are committed to dominant ideas of morality and their efforts to reinforce powerful social practices are an attempt to regulate the apparent proper sexuality for women. In this sense, these participants are convinced that policing policies are not generally concerned with the indoor sex trade. Such intricate perceptions highlight the complex web of iteration between social logics, cultural categories, legal actions and other informal regulatory practices. More importantly, these perceptions not only challenge normative notions of logic, order, rationality, but also the idea of a centralized source of power and knowledge. Foucault (1980) calls such relations of power, the “matrices of transformation” – that is the possibility for individuals or groups to act through power relations in order to support or resist dominant ideology.

### **The Common Place Definition of Law**

Laws arbitrary disciplinary powers, in addition to sustaining a systematic social stratification practice, also spans across wide frames of time, space and variable performances. Yet, Ewick and Silbey (1998) note that the commonplace experience and images of law vary. For most people the law generally sits on a distant horizon, remote and often irrelevant to the matters before them, and for others it is a constant feature of their lives, seriously impacting the ways in which their lives are organized and lived (Ewick & Silbey, 1998). Sex workers, as a group fall within the latter group. Thus, establishing the varying interpretations of law and images of law constituted by each participant will highlight how these women interpret the legal definitions, names and characterizations that are attributed to them. Overall, based on their views and opinions, it appears that each participant’s

interpretation of law and its disciplinary functions partly originate from the tensions between the quasi-criminal nature of the sex industry and their criminal legal position as independent service providers. Ultimately, these women's definitions of law and the images of law that they generate depends heavily on their individual legal position and their position within the two tiers of the sex trade – the indoor and the outdoor trade. This position appears to be in a gray zone. This is Samy's view:

...the law is kind of hypocritical ... so basically, well you can do it, but you know we don't really want you to do it, so we are going to be a jerk and make a couple of these side laws, which makes it illegal to work no matter how you work it, you just are breaking the law somehow.... – Samy

The following is Ruby's interpretation of the legal gray zone.

First I was an out-call escort. I tried in-call like twice in my life and it wasn't for me. So, I guess I am in the grey zone, where everything I do was legal. I wasn't under criminal pressure for that part personally in my work. I know it is pretty much the only way to work in Canada not being criminal... So, but being here at this sex workers organization, I see a different reality. So, there are lots of problems made by the law to the girls. If I think about just the escort, who does in-call, I mean this law is ridiculous. I mean, working inside with either by yourself in a place you know, you control or working with friends together in a brothel is what, is the safest way to do this job. If you are going to do this job then like, and, and this bawdy house law makes it unsafe. And those who do it anyway because it is safer, they live with the fear of being busted – Ruby

Ruby's views are noteworthy, because she not only has been working as an out-call service provider since she was about 20 years old, but she also at one time operated an out-call service agency for about five years and now she also works for a sex worker's rights organization. Furthermore, both Samy and Ruby's interpretations are pivotal as they provide valuable insight to understanding the ways in which these women engage with the law and its actions.

### **Engaging with the Law**

Not all the women in this study have had firsthand experience with the law. However the experiences of those who have had direct encounters with law vary considerably from individual to individual. This difference in experiences lays the ground work to understand the way these women perceive law and engage with the law despite its promise of equal treatment. Among the five women who had direct encounters with the law, Roxan is the only one who was arrested under the bawdy house charges. Her arrest in the 90's has had a very negative and devastating impact on her life. Roxan was exposed by a co-worker from her "regular profession," which also resulted in losing her straight professional job and she says: "I just buried my head in the sand you know...." Roxan, not only disagrees with the arrest, but she also believes that the legal procedure that criminalized her business practice is unjustifiable. Discussing the matter, she notes:

...for me that was a witch hunt, because I wasn't bothering anybody, I don't see young kids, I don't do drugs, in fact there were people in my [straight] profession who were doing drugs regularly at parties and that's illegal you know, so if you are going to start pointing fingers at people and start throwing stones, go after that... –Roxan

Three other women, Ruby, Alex and Robin, also had direct contact with the police. However, these three women's stories considerably vary from Freeda and Roxan's experience. In fact, Ruby, Alex and Robin's encounter with law and its enforcement policies/practices symbolizes a non-discriminatory aspect. More importantly, these three women's stories first highlight the arbitrary nature of law and legal actions. Second, their stories stress the fact that even within common experiences individuals constitute considerably varying images of law. To exemplify this varying construction of law's image, I will begin with Ruby's story. I met Ruby in Montreal, where she has been working as an independent service provider for about fifteen years. Ruby also wears a second hat: in her experience as a sex worker activist, she has had the privilege to learn about several other sex workers experiences with law. In this sense, I think the way Ruby constructs the image of law, informs a particular element of this study. According to



Ruby, she once had to accompany her friend, an out-call escort to the police to report a client who was stalking her and making death threats. According to Ruby, her friend “got treated like a queen.” She went on to say:

She is like me, we come from the same city – like a small town girls, ...and I come from just middle class, but I can pass, same as her, high class pretty much anywhere we want to ... So, surprisingly the police, ... they are not mean at all with us. They actually try to fight with each other to have the privilege to work with the two girls.—Ruby

On the other hand Ruby also suggests that not all independent service providers are treated this way. Some women are not comfortable reaching out to law enforcement, especially if they are engaged in providing in-call services. According to Ruby, these women fear the legal ramification of revealing their sex worker identity. Ruby stated:

...the escort, who does in-call... they live with the fear of being busted and they feel that... if they got a bad client and [if] they [release the information of this client] for the bad trick list [published by sex workers organization], they don't want the police, having police attention to their brothel, so they don't pursue cases –Ruby

Ruby further emphasizes Jiwani's (2002) point that classism is inherent in elite institutions, such that policing certain groups of people and types of crimes reflect the social stratification system. More important, Ruby's experience highlights two important elements: first, the fact that “...identities come to be formed in part through the exercise of power (including law) in oppressive ways” (Stychin, 1995: 7). Second, Ruby highlights two claims by Razack (1998). First Ruby's account stresses Razack's point that (1998) relations of domination and subordination are stubbornly regulated within policing policies. Second, Ruby's comments also underscore Razack's (1998) claim that “we are each implicated in systems of oppression that profoundly structures our understanding of one another” (p10). That is, the way Ruby has come to know the law and her encounters with the law influences the ways in which she engages with law. Her performance, in

many ways reproduces social hierarchies and hierarchies within the sex trade, unintentionally.

Furthermore, Alex's business is primarily based in Halifax. I met with Alex in Ottawa while she was on a business tour. Like Ruby, Alex also seems to have encountered law through a stalking incident. This experience also appears to have influenced the way Alex constructs law's image and actions. More importantly, Alex's experience suggests that law's disciplinary power and the insidious discriminatory practices may considerably vary from region to region.

That depends on where you are. Let's see, because, like where I am from, my home base, I know the police there right. They have come to see me, I remember the time they came to see me and I was like oh! I must be in trouble [laughing] but they were there to protect me. Yes, because I had a stalker and that's why they came over and they said now we are here to let you know that we are onto this. I think it just really depends on where you're in, what part of Canada you're in, how they view you. The guys from my home base were great, they helped me...–Alex

Finally, Robin's encounter with the Toronto Police Services also coincides with the other two women's positive experiences. In general, Robin views the sex crime unit of the Toronto police services as an advocate for indoor sex workers.

Actually I am a big fan of the Toronto police... which is shocking. Most people are surprised by that, but the sex crimes unit group here really focuses on reaching out to the Toronto inside workers, so they meet with, they will meet with the girls, if they can. They make themselves accessible. They don't prosecute girls which is shocking [laughing] which is very shocking. You know they actually will, they take out ads to help the girls. They advertise in different languages to do outreach on, you know date safety and things like that... They do, they take everything very seriously... – Robin.

In addition to Robin's general perception of law and legal actions which are based on the services provided by Toronto's sex crimes unit, her direct

encounter with this unit further magnifies her image of law enforcement. In Robin's case, she was once videotaped by one of her clients without her consent and she approached the Toronto police sex crimes unit to report this particular incident. She describes the incident:

... I've even had a client that videotaped me and, we took the camera, took it down to them [the police]. They took the camera, took his info and gave us all the information back, wiped it, here we go thank you very much. Didn't take my info at all, but took his and said we appreciate you letting us know about this, you know, this GENTLEMAN [her emphasis] [laughing] -the term used loosely and they didn't ask me for my information. They said ... we appreciate that you would let us know and that it is high time to do this. And you know that's the way they approach things. They said [the police said]..., if they required all of our [sex worker's] information, we [sex workers] wouldn't be willing to go down [to the police for help]... So they said, ... what they wanted to know first and foremost is who is out there, you know doing this and uploading illegal videos on line and things like that. They said they wanted to know who is committing sex crime, so that's what they do. Yeah and they are very sex positive in a way. –Robin.

Based on this encounter, it is clear that Robin is satisfied with policing practices of Toronto Police Services. In addition, based on her experience Robin seems to think that the disciplinary powers of Toronto police unit is only aimed at “sex crimes” and not at sex workers. Here again, implicit within this discussion is that the way Robin constructs her image of law provides her with the possibility of acting through power relations in order to support or resist dominant ideologies.

Although these three women experienced a positive aspect of law in action, the way they interpret and define the law and its disciplinary power, considerably varies depending on the leading circumstances. More important, these testimonies emphasize the discretionary powers of police officers in enforcing the laws that criminalizes several aspects of the sex trade. In this sense when region, class, race or any other potential variables are coupled with flexibility in policing practices it is almost guaranteed to result in inconsistent actions and unequal treatment of social constituents. Thus, whether police officers opt to criminalize women or not, the result is

that sex workers, as a group, are further alienated from any form of predicable legal protections and have to depend on the goodwill or sympathy of police officers.

### **The Common Place Use of Law**

For sex workers, the legal rules pertaining to the sex trade is a constant feature of their lives. Given that each woman's encounter with law varies considerably from the other, in the following discussion I map the ways in which these women use the gaps and inconsistencies in law and its legal actions to shape their views of the same. The images of law formed by the women in this study, I believe, provides a basis for understanding their reasons for engaging, avoiding or resisting the legal meanings and characters that are attributed to them.

Bruckert and Parent (2006), argue that the sex trade presents a unique configuration of challenges, problems and difficulties for law. With social, moral, and criminal regulation, Bruckert and Parent (2006) note that independent in-call and/or out-call workers' precarious labour market situation subjects them to a paradoxical position which excludes them from social security protection, non-statutory benefits and statutory legal recourse traditionally associated with other marginalized employment in the service industry. The vagueness, inconsistent enforcement practices combined with the paradoxical labour relations inadvertently leads to a two-tier sex trade – the indoor and the street-based service sector. As a result, the street-based sex workers try to completely avoid the law by conducting their business discretely, in darker and in remote areas away from the public's eye and the attention of police. Likewise, since the law does not clearly define what constitutes a private space, and where sex trade can take place, many sex workers in Canada have developed creative methods to discretely conduct their business indoors. I think the strategies sex workers use to avoid the law is integral to their strategies of resisting the legal meaning attributed to them. All the women who participated in this study were fully aware of the fact that if they work from their homes, they risk being charged under the bawdy house laws. However, some of these women continue to see customers in their own homes, and some maintained business apartments or houses. Samy, shares her strategy for resistance.

I don't think of that kind of stuff at all, I am like, yeah, whomever I talk to, "I am an escort." I shouldn't be doing that, because if I tell it to the wrong person, they could be like yeah I am reporting to the police, you know, like I know you work out of your apartment and that's illegal you know and I know your boyfriend lives with you and that's illegal for him too, that's technically living off of your money, so you know, I would be arrested for that. What's so illegal about it, like what's the big deal, I am not hurting anyone else, I am a mature adult, you know. It's a job just like anything else and should be treated like that. I deserve the same labour rights as any other women working, so, this is me, the law is hypocritical – *Samy*

*Samy*, in the above passage, highlights resistance in two ways. First, she stresses the importance of extending the same legal legitimacy that is given to others working in any other service sector employment, despite the predictability in social marginalization. Second she rejects the legitimacy of law by recognizing the hypocrisy of law by its classist, patriarchal and discriminatory actions.

*Bruckert, Parent and Robitaille (2003)* note that, despite the restricted legal parameters, several sex workers choose to work in the indoor sector of the trade to ensure their anonymity, while a few get involved in this particular sector with the initial impression that all aspects of the indoor sex trade is legal. The ten women in this study concur with the anonymity aspect of their business. Regardless of their initial beliefs all participants appear to fully understand the legal ramifications of engaging in the indoor sex trade. As such, they were certain that they are not engaging in any illegal enterprise or doing anything to violate the laws pertaining to the sex trade.

I really haven't, and to be honest it doesn't even concern me, really... I mean the way that the laws are defined, I really don't worry about it, partially because as an inside worker, you know it's the solicitation itself doesn't actually concern me and then with the inside a private residence, inside a, it's just not a, it's not a big issue for, I think lot of the girls. Depending on how you work, yeah. – *Robin*

The confidence in these women's voices, I argue, stands for resistance - resisting the institutionalized meanings attributed to the women involved in sex trade activities. Respondents of this study mostly appeared less concerned about the legitimacy of legal procedures than about their effectiveness for achieving their desires. This image of law allows the women to resist the process of ideology and hegemony. Robin notes that:

Yeah. I mean, they wouldn't have grounds for a case against me. They don't have grounds to arrest me so yeah. I am not concerned about that, no. From a moral, ethical standpoint... do I think somebody would discriminate against me? Some will, some won't, you know, that's just the nature of people you know... I don't concern myself with people's ethical dilemma, that's their own [problem] [laughing]. That's their own ethics, yeah and if they are going to judge me based on what I do then they need to worry about that, I don't really need to, they don't have a case against me so what I do is within the, within the confines of the law and if, if it is within the confines of the law that's all I need to concern myself with [laughing] that's all I am concerning myself with really though [laughing] – Robin

Robin's view highlights how identities can be articulated and consolidated through acts of resistance. More important, Robin points out, that effective articulation of coherent and oppositional legal identities are not, and should not, look within monolithic notions of ethics or morality. The following passage by Amethyst, I believe compliments, Robin's claim.

... [I am not worried about the law at all] like the way I work requires me to be very discrete. Actually where I am [concerned is] for a different purpose... recently I have gotten a straight job, waitressing, just to sort of deal with the whole tax – like I haven't paid taxes in a while because nothing I have been making has been claimed... it's more of that aspect that I am stressed out about, well I don't fully understand the way the tax system works on a business like this, so that's the only [concern]... if we could pay taxes and like get benefits and not have to be worried, like, I have money saved but it is not under my name because I don't want a huge chunk of cash under my name and so, if I like, wanted to buy

a property or something I wouldn't be able to and that's what's difficult for me.... I would not have to worry about like, plan for taxes, having security. Having benefits... having unemployment [insurance] like any other job. If I break my leg obviously I can't work. – Amethyst

In this particular account, Amethyst, who relies on her independent out-call sex work to pay for her university education and to achieve a better standard of living, ensures that she is less concerned about the legitimacy of legal procedures. Moreover, she also emphasizes the importance of effectively achieving her desires by using her waitress job to address some of the dilemmas of her work as an independent sex worker.

Furthermore, Ewick and Silbey (1998) note that within the image of law as game, individuals and groups accept formal legal constructions and procedures only for specified objectives and limited situations. This was implied by the participants of this study in many instances. Although, the legal ramifications of many aspects of their work are still repressive, the independent in-call and out-call sector uniquely embodies elements of resistance. In order for in-call workers to avoid section 213 – the bawdy house charges - they become more and more invisible to the public's eye and police attention by conducting their business discretely. Studies show that law enforcement officials admit that the discrete nature and invisibility of these businesses makes it difficult and problematic for detection, apprehension and convictions (Lewis et. al., 2005). For sex workers, conducting their business discretely also facilitates the anonymity of their business practice. Furthermore, although the laws pertaining to the sex trade do not clearly define “private space,” there is legal precedence to establish the meaning of “private” in many circumstances. For instance, the Canadian Supreme Court has ruled that a land-based telephone is a private communication, such that when an individual places a phone call, they have a reasonable expectation of privacy (Bakan & Elliot, 2003). The Supreme Court also ruled that the same should extend to cellular phone communication (Bakan & Elliot, 2003). As such, an independent out-call worker has the right to discuss specific acts of sex for money in private using a land-based telephone or cell phones. In addition, advertising in public print is protected as a right of free speech which has been upheld by the Canadian Supreme Court as well (Baken & Elliot, 2003).

Women in this study did not exclusively identify as independent in-call or independent out-call service providers. Drawing from their conversation however, there seems to be a higher degree of convergence in the type of services that they provide. Thus women engaging in in-call services simply adopt the independent out-call business practice and approaches. Almost everyone with whom I spoke claimed that they use private communication methods such as telephone, e-mail, and the internet to advertise and make initial contacts and the women who had regular customers, rarely advertised at all. Maxi describes her practices:

...well I work indoors and I am not who the law goes after. And I also don't break the law in any way; nothing I do in my work is illegal... yeah. The only, the charges are around solicitation and living off the avails and bawdy house and I don't, I don't, I live where I work, so it's my home, so I have sexual partners enter my home. I don't solicit [in public], I solicit myself very carefully, so I don't break the law, and I could never be charged for it and also, I don't have anyone living with me so nobody can get charged. There is no way I can possibly get charged in anyway for what I do because I don't fall into that. Like, it's usually women that who are working in the public eye are at risk for criminalization.... —Maxi

The experiences of these participants also display law as a game image. According to Ewick and Silbey (1998) the image of law as a game image involves an arena of competitive tactical maneuvers whereby in the pursuit of self-interest, skillful and resourceful individuals are expected to make strategic gains. Using modern technologies makes it easy for independent in-call and out-call sex workers to conduct their business discreetly, away from the public's eye, making them more and more invisible. In addition, this also describes these women's world of competitive struggles, such that they seem less concerned about law's power than about the power of self or others to successfully deploy and engage with law.

Among the respondents of this study, some women constructed legality in the second form of legal consciousness, which described law as a formally ordered, rational and hierarchical system of known rules and procedures. This image of law, Ewick and Silbey (1998: 47) note "tell the law's story of its own awesome grandeur, something that transcends by its history and



processes the person and conflicts of the moment.” Often in these situations people express loyalty and acceptance of legal constructions; they believe in the appropriateness and justness provided through formal legal procedures, although the outcomes are not always fair (Ewick & Silbey, 1998). Almost all the women I interviewed have gone through great lengths to avoid and resist the laws that govern the sex trade related activities. Several of them not only endorsed the enforcement practices that targeted the street-based workers, but they also felt that the specific laws that restrict the exchange of sex for money in public place and the related provisions are completely justifiable. Greenly capture the general impressions.

...and the things [aspects of the sex trade] that are illegal ... they are abusive. When you look at street work, its abusive, there is someone controlling somewhere, there are drugs involved and I mean they are, I don't believe that it should be legalized on that perspective. Things should be done, interventions should be put in place to be able to not arrest these women and fine them, what I mean is I am not for the legalization of street solicitation, and I am not for the legalization of brothels either and of pimping either and I actually think there should be more things done to arrest the pimp. Stop arresting the women that are in this... – Greenly

Within this particular vision of legality, in my view, the respondents of this study evaluate their legal experience in terms of the processes and forms of interaction rather than outcomes of those interactions. Greenly's opinion, in the above paragraph, overlaps with hegemonic culture, customs, opinions and ways of thinking and doing things that expresses acceptance of legal constructions, while believing in the appropriateness and justness provided through formal legal procedures.

Finally, Ewick and Silbey (1998) claim that, some people, for whom law is a constant feature of their life, may feel a sense of being caught within the law, or being up against the law. Some may also feel that law's schemas and resources override their own capacity either to maintain its distance from their everyday lives or to play by its rules (Ewick & Silbey, 1998). People who find themselves up against the law typically resist law to seek diverse goals (Ewick & Silbey, 1998). Some women in this study felt that the specific laws that govern sex trade related activities were in many ways

redundant and only served to reproduce structural inequality and as such must be avoided at all cost. Amethyst explains the redundant aspects of law.

Well there are already laws against violence against women to get them out of trouble. That's great. There are laws against theft. If you steal someone's money, it's illegal and like kidnapping and coercion things like that. I don't know exactly all the laws about that. So the pimping laws are not necessary because everything they are trying to prevent is already covered and, like I used to work in escort agency and the women answering the phone and sending me on appointments would be my pimp and *she is just like a business women. And if she did not exist I wouldn't be able to make my money* [my emphasis]. Because I got contacts through her and because I kind of have my own ... I don't know ... no... I think the pimping laws should not exist because it just makes it more difficult. And people have this image of the pimp on the street ... they are beating and that does happen and those women should be protected against in the violence against women laws that are currently available. –Amethyst

For others, the law and its disciplinary attempts to maintain the denigrated status of the women involved in the sex trade through assumed criminal legal identity leads to social practices and relations that continue to stigmatize and marginalize their position in society. Therefore, in order to retain a sense of dignity and honour, they feel the need to resist the laws. Greenly explains:

I would say the law does not affect me more than the stigma affects me. Because, it's not something I am open about, where as everyone in my life, my friends, very, very good friends know about it. Some of them still don't know about it because, my fear is that, I don't want my parents to know about it, I don't want my family to know what I do. Because there is this really bad stigma about it and good girls don't you know [laughing] and it would just break their heart, because of the stigma. Because, really that... that is stronger, a stronger fear for me than the law, because *I am not doing anything illegal, apart from not declaring all my money, but then who does* [my emphasis]. – Greenly

Participants also note that the complex intersection between their socially stigmatized, marginalized, and sometimes criminalized position within society leaves them with a tremendous amount of stress that they have to handle on a regular basis. As a result, many of them live a double life- they keep the sex work part of their life hidden from family and friends. Subsequently they are sometimes forced to live an isolated life.

### **Conclusion**

Although the laws pertaining to the sex trade are oppressive in many ways, the stories I retell in this chapter clearly indicates that legal actions and regulatory practices have never been entirely successful in deterring women from engaging in the sex trade. Participants varying interpretations of law and the strategies of counter-hegemonic resistance that they have developed demonstrate that law is not an “all-powerful” discourse. Rather, ordinary people even from the margins can and do articulate coherent and oppositional legal identities that represent their complex and diverse individual lives and experiences. The strategies of resistance identified by the participants in this chapter include engaging with the law effectively to achieve their desires and conversely avoid the legal meanings all together. The stories presented in this chapter highlights the fact that sex workers do not necessarily represent a homogenous group, as such current laws pertaining to the sex trade cannot be used to regulate all participants of the sex trade equally. On the contrary, the current laws inadvertently promote inequality within the sex industry and among all participants of this trade.

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**Menaka Raguparan** Department of Law and Legal Studies, Carleton University, Canada.

**Contact Address:** Direct correspondence to the author at C 473 Loeb Building, 1125 Colonel By Drive, Ottawa, Canada.

E-mail address: [menaka@raguparans.net](mailto:menaka@raguparans.net)



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