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**LEGAL AMBIGUITY AS A SITE OF POWER AND RESISTANCE:
SEX WORK AND THE POLICE IN CÓRDOBA-ARGENTINA***

This paper analyzes legal ambiguity as a site of power and resistance; in particular it looks at the experiences of organized sex workers in Córdoba-Argentina in their encounter with police discretion. This focus is currently relevant in light of the rapid expansion in the vague and ambiguous local norms being used to govern large populations. Legal ambiguity can be seen as a site of power. The existing literature on police discretion has tended to focus particularly on the amount of freedom police officers should have in deciding how and whether to enforce the law. This paper engages in the less proliferous, but essential, discussion on the role of law in creating new opportunities for arbitrariness and oppression. Moreover, legal ambiguity is also a site of resistance. Social actors are not passive recipients of top-down policies and that same ambiguity may, for some, become an opportunity to struggle for better conditions. In that sense, the experience of sex workers in Córdoba-Argentina reveals the kind of strategic tactics being used to deal with the abusive practices of the police. The last section of this paper will describe the series of events that prompted a new shift in relations between sex workers and the police as a consequence of a neo-abolitionist wave.

Key words: Resistance, Police, Sex Work, Law.

Sex workers in Córdoba-Argentina started organizing in the year 2000. A desire to gain protection from abuse, violence and discrimination was the common feeling behind their meetings and debates. The police force was at the core of their claims. Their experiences show that police abuse reached its highest level in the months following the creation of an organization called Ammar-Córdoba. This organization grew stronger and was able to redefine the legal position of sex work-

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* The full text of this article in Russian can be found at <http://jsps.hse.ru/archive.html>
Полный текст этой статьи на русском языке см. <http://jsps.hse.ru/archive.html>

ers both in law and in society; they were able to stop the constant detentions, corruption and abuses from police officers on the street. In the words of one of the members of the organization: "*Now you won't be just another whore killed in a ditch, another unsolved crime (...) being organized changes it all*" (Julia). However, this neo-abolitionist wave proved to be highly influential in the years that followed 2010. According to the neo-abolitionist standpoint, "prostitutes" should be seen as victims of trafficking that must be rescued. Organized sex workers were, and still are, facing the consequences of this shift. They claim that sex workers are again abused in their rights, now under the excuse of being rescued. The police force is again the key reference point for their claims.

This complex situation can be analyzed from numerous perspectives; it involves, among other things, global and local transformations, gender issues, collective action, rights mobilization, social and legal discrimination. In the following lines, I will focus on one specific question: what is the role of law in the dynamics of power and resistance? All of the serious changes in the relationship between sex workers and the police have happened without major corresponding adjustments in legal regulations. Bearing in mind that Argentina has a highly positivist legal system, the question that follows from this is basically one on the politics of legal ambiguity.

This focus is particularly relevant in light of recent developments in the rapid expansion of vague and ambiguous local norms governing large populations in Argentina. Codes of Conduct, Infringement Codes, Misdemeanor Codes, Minor Offences Regulations are increasingly being used as legal tools to govern population. The recent expansion of these regulations is the result of an aggressive approach to minor offenses promoted by zero tolerance policies (Beckett, Godoy 2010; De Giorgi 2005; Comack, Balfour 2004; Young 2003). These legal designs have been criticized for being extremely vague and employing unclear procedural methods. They have also been a legal tool used by the authorities to justify systematic everyday surveillance excluding certain parts of the population, particularly the most vulnerable (Fassi 2012; Beckett, Herbert 2008; Gowan 2002; Zaffaroni 1988). Moreover, Codes of Conduct make it possible to measure "police efficiency", not because it is efficient in crime prevention but rather as a way to justify the police's budget and show that "something is being done" (Sánchez 2014: 110).

The expansion of vague, ambiguous and obscure regulations demands that a deeper understanding of the politics of legal ambiguity is provided. Legal ambiguity is a site of power. The literature on police discretion has, in the main, tended to focus on the amount of freedom police officers should have in deciding how and whether to enforce the law. This paper engages in the less proliferous, but essential, discussion on the role of law in creating new opportunities for arbitrariness and oppression. Moreover, legal ambiguity is also a site of resistance. Social actors are not passive recipients of top-down policies and that same ambiguity may become an opportunity to struggle for better conditions. In that sense, the experience of sex workers in

Córdoba-Argentina reveals the kind of strategic tactics being used to deal with the abusive practices of the police. The last section of this paper will describe the series of events that prompted a new shift in the relations of sex workers and the police as a consequence of the neo-abolitionist wave. This paper is the outcome of a broader qualitative research project; the data was gathered from 2009 to the current day though sources such as face-to-face in-depth interviews, participant observation and secondary sources such as legal documents, videos and newspapers.

Sex Work and the Police in its Legal Context

In order to explore the politics of legal ambiguity it is important to contextualize the legal system and the position that actors (in this case sex workers and the police) occupy within that legal framework. According to the Argentinean system, the federal authorities are exclusively in charge of enforcing criminal regulations. However, each Region (Province) has the authority to regulate minor offences. In the Argentinean criminal system, the exchange of sexual services for economic compensation is not a crime¹. However, most regional Codes of Conduct have rules that explicitly mention "prostitution" in diverse manners. This includes prohibitions on the following: "scandalous prostitution," "solicitation of sexual services in public places," "obscene prostitution," "women of ill-repute encouraging men to enter their residence with dishonest purposes," and "dangerous prostitution". All of these are forbidden under the penalty of arrest and some of them also under penalty of compulsory medical treatment. In the province of Córdoba, the Code of Conduct sanctions in its article 45 "scandalous or disturbing prostitution":

(...) those, who engage in prostitution, making offers in public or inciting unrest or causing scandal, shall be punished with detention of up to twenty (20) days. This case also involves those offers made from inside a building but in view of the public or neighbors. In all cases the medical examination and detection of venereal STDs shall be compulsory and, where appropriate, also curative treatment (Law n° 9444).

At first glance, it may seem that it is not "prostitution" that is being penalized but the "scandal" or "disturbing" that is caused. However, the Code of Conduct has another rule that punishes public scandal (art. 52). The Code of Conduct of Córdoba is vague enough to consider a range of everyday conducts within its prescriptions (i.e.: "public scandal", "roaming", among others). There is a great deal of leeway for police officers in deciding what is and what is not included in these norms. Obscure procedures reinforce this legal ambiguity. When it comes to minor offen-

¹ These criminal actions are sexual corruption, promotion, facilitation or exploitation of prostitution, and human trafficking for prostitution. All these actions are considered a crime when the victims are children or at any age if they are done with coercion or intimidation (art. 125 to 127 of the Argentinean Criminal Code).

ces, the police force operates as judge, jury and executioner. It carries out the preliminary proceeding and also the judgment on offenses in cases when sanctions are up to 20 days arrest (art. 114.1). Judicial intervention is not compulsory and has to be formally required by the offender within 48 hrs. Moreover, the whole process can be done without any legal assistance (art 15). Guiñazú explains that this unreasonable deadline is shorter than any other administrative proceeding and that in the everyday practice, "lawyers hardly ever participate in this process since the alleged offenders do not know about this possibility, or they do not have the possibility to call one, or even if they ask for one, the police does not offer one" (Guiñazú 2010: 10). The main characteristic of this abusive use of the public force is that the police force is in charge of collecting and evaluating the evidence, it accuses and judges the offence; all which can be done outside of the basic constitutional warrants (Oliveira, Tiscornia 1997: 69).

Legal Ambiguity and the Debates on Police Discretion

Police discretion is an almost unavoidable topic one must face when analyzing the police force. It has been understood as the informal decision-making process police use with regulations that are not clear (Aydin 1997: 141). It has also been described as: "the use of individual judgment by officers in making decisions as to which of several behavioural responses is appropriate in specific situations" (Cox 1996: 46). After all, "the rank-and-file officer is the primary determinant of policing where it really counts: on the street" (Reiner 2010: 86). As Michael Lipsky shows, policy-making is not exclusive of police officers but also of all public servants who work at street-level for they have a relatively high degree of discretion and relative autonomy from organizational authority; the complex tasks and urgency involved in these jobs implies that rules, guidelines or instructions cannot circumscribe all possible alternatives (Lipsky 2010: 14–15).

While police discretion has been considered as inevitable, it has also been viewed as "a normal, desirable, and unavoidable part of policing that exists at all levels within the police department" (Cox 1996: 46). It is worth asking what makes it "inevitable". Some scholars have pointed towards the characteristics of the job itself. Ahmet Aydin argues that the police core mandate implies a balance between law enforcement and the recognition of local custom, due to the reality of daily police work (Aydin 1997: 141). Other scholars point at the vagueness of legal provisions (Newburn, Reiner 2012); "discretion not to enforce the law" is the product of the vagueness of the law itself (Lustgarten 1986: 15).

Police discretion has risks and problems; which include its "inconsistency, unpredictability and lack of accountability" (Cox 1996: 50). In this sense, Aydin states that even though discretion is one of the most valuable assets for any police officer "it must be used with great care, and needs control or structuring to avoid its abuse or partial practice", as otherwise it can lead to violations of due process and open up the possibility of greater arbitrariness and lack of impartiality (Aydin

1997: 146–149). Saín considers it unacceptable for the police to choose among different alternatives; he maintains that the room of maneuverer for police officers should be limited to determining the concrete circumstances operating in a certain situation and not in other (Saín 2008: 108).

In this paper, I propose to expand the discussion to include the role of law in creating opportunities for increased arbitrariness and oppression. The relation between the law and the police force can be addressed from different perspectives. Before 1960s there was a traditional understanding that the police's main task is to enforce law (Anitua 2009; Waddington 1999). It was typical for police work to be equated to the imaginary world of "law and order" (Neocleous 2000). Accordingly, police officers were seen to be just following lawful orders from their superiors. Such notions have been strongly challenged from the 1960s onwards. Within a context of social, political and ideological ferment, particularly in USA and Western Europe, new understandings on the relationship between the law and the police were offered. Revisionist studies have challenged the common view that the police enforce the law and fight against criminality (Anitua 2009; Waddington 1999) mirroring civil groups allegations of police abuse and repression. However, studies on the relationship between the law and the police are influenced by its context. In comparing police forces in Turkey, Wales and England, Aydin states that the relationships between the organisations and its environment "are determined in the process of exchange, conflict, cooperation or bargaining, all of which are affected by sociological, cultural and power factors" (Aydin 1997: 16).

An important part of police studies in Latin America focuses on these specific factors. In this sense, some authors argue that violence and abuse is a constitutive and inherent part of everyday police practice. It is not possible to define the police as the guardians of rights and liberties in as far as violence and abuse of power is a constitutive element of Latin American police forces (Tiscornia 2000). The police force in Argentina, as any other part of the world, has been developed to try to maintain public order by (legally or illegally) using coercion (Ganon 1999). Augusto Montero has systematized the circulating discourses on the police force in Argentina and Latin America, revealing the important influence of Weberian notions of the police as, ultimately, the primary state institution used in the monopoly of violence (Montero 2007: 72–82). Marcelo Saín has argued that references to morality, good behavior and public order have provided police work with the ground for discretion (Saín 2002: 51).

In this paper, this relation between the law and the police is analyzed from a socio-legal perspective. Studying police practices from a socio-legal perspective entails analyzing the law and the police "at the level of their *mutual* relations, as well as considering the implications at the legal, political and economic levels; it means looking at police practices and at the law while at the same time asking where power is located and who takes part in the actual control mechanisms" (Fabini 2013: 12). From a socio-legal perspective legal ambiguity is a site upon which police power is located and reinforced in its mutual relation with the law.

This notion of legal ambiguity draws upon a nuanced conception that differs from the idea of law as a limit of power and from the idea of law as inherently ambiguous (a property of language). This means that the law is not considered to be a clear boundary that sometimes police officers need to flexibilize to resolve certain unexpected situations. Equally, the law is not seen as inherently vague or ambiguous. The law uses language to inform its provisions; as language itself it is open to interpretation. The legal ambiguity I am referring to here implies a specific use of language that relocates power from legal provisions to police practices. This relocation is done through extremely vague legal provisions that possess such an open texture that can capture an almost unlimited number of situations. In her book "Conviction", Doreen McBarnet explains how the law provides a flexible and permissive structure within which police can operate legitimizing contradictory decision (McBarnet 1981). In this sense, this paper suggests that not only police structures but also certain legal frameworks allow the police an arbitrary and abusive exercise of power. The police do not only enforce the law, but the law still plays a paramount role in permitting the emergence of arbitrariness. Vague and obscure legal designs allow a wide range of choices that are appropriate to the legal provisions; those choices are made by police officers in each situation. The use and interpretation of a particular norm by a police officer on the street does not need to be justified by any rational parameters; it is enough to justify the decision as if it were simply an enforcement of that norm. Ambiguous legal designs make it possible to legalize a wide range of even contradictory interpretation. Legal ambiguity is a site of power, but, as will be shown in this paper, it can also be a site of resistance.

Legal Ambiguity as a Site of Power

Sex workers experiences can illuminate the systematic practices of oppression inside and outside of jail, such as repeated incarceration, unclear procedures, denigrating conditions of detention, corruption and so forth:

they used to release me from jail at noon, I went to work, and by 3 in the afternoon I was already back in the police station... it was hard for everyone to be in jail so many times because you were in there longer than you were at home. (Claudia)

It is not suggested here that those conditions have disappeared or that they are exclusive of sex workers. Conditions inside jail were reported as inhuman, with situations of abuse, violence, denial of basic rights such as phone calls, breastfeeding, and even police officers stealing informants' personal belongings. Sex workers explain that a way to avoid detentions was through corruption. Their experiences showed them that the consequences of not paying bribe could be even worse than the conditions of their detention; according to their recollections, a sex worker could be killed after saying no

to a sexual "deal" or one's children could be taken away, while she was detained for not paying the necessary bribe:

my friend was working when a cop offered to trade her freedom for sex. When she said no, she was detained. The pig asked her "so who are your children with right now, babe?" ... the cop made a call to the courts on the spot, and they took her children away. (Julia)

As explained previously, the Code of Conduct's procedures are obscure; notwithstanding, the practice of police officers can make it even more obscure. For sex workers, this obscurity represented a gap of uncertainty about how to behave, what to expect, or even how to defend oneself. The only certainty seemed to be that detention was inevitable and that its procedure was based, if we follow the saying of the legal realists, upon what police officers "had for breakfast":

once I was just standing by the door when two men came in, they headed for the kitchen and I told them they couldn't go in there; one of them turned, pulled out a gun and said "shut up and get in there" (...) it turned out they were cops and it was a search. (Norma)

Those experiences have deterred respondents from viewing legal institutions as a source of protection of one's rights or security. This lack of trust in the police prevented them from making formal claims when they were victims of crime (violence, abuse or theft). Some interviewees said that after so many years working on the streets they knew police officers by their names, and that they recognized the difference between offenders and victims. These encounters with the police were mainly individual and strongly depended on the capacity of each sex worker to negotiate, accommodate or contest her or his situation. The following section develops further how those capacities changed after sex workers became organized. It also explores how legal ambiguity can become a site of contestation.

Legal Ambiguity as a Site of Resistance

People are not passive recipients of top down policies, discourses and practices. The dynamics of power and contestation shape the relationship of sex workers to legal and social institutions. In this sense, the way police oppression is contested must be acknowledged to fully understand the dynamics of power and resistance mediated by the ambiguity of the legal world. It is that same ambiguity we have been exploring up to now what makes law also a site not just for oppression but also for contesting this injustice.

Before sex workers became organized, most attempts to contest their oppression was individual and short-lived. This resistance was in fact a reaction, functioning as a tactic of survival. The data shows that these practices were mainly the result of being continuously detained under denigrating conditions. Resistance as

tactics of survival had different forms, mainly reactions such as fleeing or hiding, or even individual confrontation with the officials. That resistance was framed in the interviews as tactic to preserve a margin of freedom, to be able to stay on the street as much as possible, but not as strategies based on a reflective awareness of their oppression:

For your freedom you have to resist many times. For example, I resisted in many ways, when a patrol car came I ran away, or I had lots of quarrels with the cops because I wouldn't get into the car. I was so tired, so tired of being thrown in jail so much. I got to the point of slapping, pushing a cop (...) the jitters, I was blind (...) because it comes to the point when you are so fed up with it, you are fed up with the cell, with cops discriminating against you. You become fed up with it, fed up. (Claudia)

Nevertheless, they knew those tactics were not going to change their situation in the future, and may not even have had any impact in the very period in which they performed them. Moreover, the conditions of their imminent detention may even be worsened and therefore, for some of them resisting was not an option:

I frequently even had the cell key with me in there. Yeah, it was almost as if I lived there, I have never thought of escaping the police station, because I thought, why am I going to break out, if tomorrow I may be in again and they are going to beat the crap out of me? No, I wouldn't do it. (Gladis)

Sex workers' resistance started changing once they built an organization of and for sex workers. The process of organization was long, full of obstacles and, as we will see, the police have played a major and sometimes paradoxical role in this process. It all started back in 2000, when the juvenile protection unit of the police force contacted a nun's congregation to help them organize a meeting with sex workers to gather information on juvenile prostitution in Córdoba. During the meeting the main complaints revolved around constant detentions, violence, humiliations, and abuse from the police. The officers answered that they were not responsible for that; still, the complaints were so persistent that the meeting could not achieve its original goal. What did emerge, however, was a clear intention among the sex workers from the meeting to protest about their situation. They continued gathering and, with the help of organized sex workers of other province, they started their own organization. In response, police oppression increased. They were constantly threatened with detentions of 20 days or more if they went to the meetings. That caused participation to decrease due to the fear of imprisonment:

at the time we were organizing, repression was at its highest point (...) a cop told me one day when he was arresting me: "so, the whore union" (...) he said "now we will make sure these bitches get what they deserve for joining the union"... he said "we'll see if you want to keep on being a member." (Claudia)

A few sex workers continued meeting to look over the Code of Conduct, to make copies and give them to other sex workers, to make agreements with hospitals

to supply condoms and have guaranteed medical care, and also to start learning and listening to other "discourses" in relation to sex work and political issues in general:

it allowed us to establish AMMAR, and to begin acting as an organization. The fact we were part of labour federation among other unions, other syndicates, other organizations and above all, our leading motto was "be alone no more" (...) we started listening to other discourses, other debates, other issues, and saw we were part of an exploited class. It wasn't just against sex workers, there were other organizations suffering either evictions or repression, and if they spoke up, they risked prison as well. (Eugenia)

By 2001, they raised funds to make an HIV prevention program; they started to be known, to go to solicitation spaces to supply condoms. They talked about their rights and about the organization and constantly invited other sex workers to the assemblies. Throughout the years many other sex workers would join in. A few years after sex workers organized *AMMAR-CTA Córdoba*¹, the repression and impunity of abuses reached its highest point. To contest these abuses and the impunity of police, sex workers organized demonstrations, burnt tires, and protested both in Córdoba and in other provinces with the support of the union delegations. Carrying signs that read: "Our Life Also Has Value", organized sex workers encountered their biggest struggle so far to have their voice heard and respected. These events and efforts to resist received media coverage and also opened up channels of dialogue with the government in different levels: *"I think I became stronger with all this: learning about our rights, speaking about everything we lost, or about the things they made us believe"* (Ana).

The resistance of sex workers has been supported, among other things, by legal discourse. Law can be used as a tool for material changes and even a symbolic area where sex workers struggle to modify social stigmas. They claim legal victories that have an impact on the redefinition of the perception of society and on material relations; their struggle has been changing, growing and becoming more complex. The organization has had several meetings with the Human Rights Secretariat, and other governmental bodies. They organized demonstrations, obtained the support of CTA, went to the media, and produced different strategies to make the situation visible. They have also used legal strategies such as requests for official data, in order to have information about how many sex workers have been detained, how many of them were pregnant, etc. They have made legal claims to the courts for each sex worker who has been detained.

This struggle, as has most of their resistance, revealed a paradox of interchanging support and repression. In the case of the detentions, they finally started regular meetings with the Chief of the Police Department, and reached an agreement guaranteeing that sex workers affiliated with *AMMAR* will not be detained by the

¹ AMMAR – La Asociación de Mujeres Meretrices de la Argentina (Association of Women Sexual Workers of Argentina) and CTA – Central de Trabajadores de la Argentina (Union of Argentinian Workers).

police for their work; moreover, in the case of detention they would retain an open channel of communication with the police department to release them. Henceforth, when stopped by the police, AMMAR members could show their affiliation card and police officers would know that there was an unwritten institutional directive not to detain them: "*cops stop them and don't pick them up if they show the AMMAR ID, that's a triumph we long fought and hard for*" (Eugenia).

Nevertheless, this change was due to many contextual factors. In many solicitation spaces, detentions were already decreasing by the time they made the agreement, as the party elected to government had shown better attitudes towards sex workers. The women have not forgotten that this agreement is contextual and things may quickly change. Therefore, they have been battling to change the legal precepts in the Code of Conduct, claiming for its modification in the Provincial Parliament:

our goal is that we want no more women behind bars. But not only words, we want regulations abolished. Every provision condemning us, condemning a comrade only for being a free sex worker, one that chooses to be so, must not endure. (Ana)

Nevertheless, this contextual agreement and consequent change of practices have had an impact on their everyday conditions of work. Not only have detentions decreased but also the way the police treat and refer to them has changed. Interviewees expressed that now police do not treat them "as bad as before": "*they don't pick us up as much as they used to. Of course if we are messing around they will take us in and that's fine with me*" (Beatriz).

New Dynamisms, New Challenges

Until the end of 2010, organized sex workers have made significant progress avoiding constant arbitrary detentions, and on stopping violence, corruption and abuses from legal and social institutions. However, the end of 2010 prompted a new wave of abolitionism in the region bringing about major consequences for sex workers, in particular for those who were more vulnerable (because of their age, or socio-economic condition). The International Conference on Gender Violence in Buenos Aires in June 2010 was a significant event that prompted the neo-abolitionist wave in the country. One of the main speakers at the Conference was US radical feminist Catherine MacKinnon; whose position is that the elimination of "prostitution" is central for women's emancipation from patriarchal social relations for "prostitution" is not a free activity in any of its forms (MacKinnon 2005: 158). This position has turned out to be highly influential in re-defining sex work and trafficking discourses and policies, with her ideas appearing in the most important newspapers and a judge of the Supreme Court publicly showing her support for the scholar, and law reforms were being suggested within few weeks.

In the months after the Conference, abolitionist discourses proliferated, as did the responses of sex workers?. On July, 2011 a Congress on sex trafficking was organized under the abolitionist banner. On May, 2011 a bill on the criminalization of clients was debated in parliament and sex workers were excluded. On June, 2012 Córdoba started enforcing the Venereal Prophylaxis Act 50 years after it was introduced. On July, 2012 Córdoba Province adopted the banning of "brothels". Organized women sex workers in Córdoba claim that secrecy, exploitation and repression have increased and that police corruption and abuse have intensified after the abolitionist wave. They have reported that in-dependent sex workers are being "rescued" as victims to feed the "rescue industry" while there has been no prosecution of trafficking criminal networks and cases of exploitation; which continue to operate with impunity. As a result, organized sex workers have organized demonstrations against these abuses prompted by policies and the odious effects these reforms brought about. They have proposed their own grassroots legislation in order to protect sex workers from abuses and corruption; this, they claim, is the only way to fight and not to feed trafficking and slavery.

Sex workers in Córdoba have gathered in assemblies to discuss the law they want; as a result they developed a grassroots draft law. The police force was an important part of their discussion. In this respect the Bill states that the major focus has to be on preventing police abuse, corruption and violence. For instance, card control will only be done by the Ministry of Labour and Social Security, and police officers can only search sex workers or their places of work in exceptional cases and only if they have been granted a judicial search warrant, always providing human and dignified treatment to sex workers. Thus, sex workers will no longer be detained merely for doing their work. Sex workers draft legislation promotes grassroots legislation as a way to complement the fight against slavery, to prevent violence, corruption and exploitation by addressing the contextual needs and historical patterns of discrimination. Their potential remains latent in most cases, for they need to contest settled hierarchies of power that relegate their voices to the unheard.

Legal ambiguity is a site of power and resistance. However, these new dynamisms and challenges suggest that negotiation within that ambiguity may also have limited potential and groups may struggle for sharper legal recognition and protection.

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