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Abstract

The Social Consequences of Close Votes: The Narrow Decriminalization of Sex Work in New Zealand

Dana Hayward

2021

New Zealand became the first country in the world to fully decriminalize sex work at the national level when it passed the Prostitution Reform Act (PRA) by a single vote in 2003. In this dissertation, I suggest that a close vote is a prism that illuminates the relationship between law and social change, both theoretically and methodologically. In a series of three articles, I explore the social and political consequences of New Zealand's narrowly-passed sex work law, concentrating specifically on media representations of sex work, national repeal initiatives, and local bylaw-making processes.

In the first empirical chapter, I focus on how decriminalization influences media representations of sex work. Because regulatory regimes governing sex work reflect and shape normative beliefs about the acceptability of sex workers, full decriminalization is essential to the eventual elimination of sex work stigma. Furthermore, under decriminalization, media portrayals of sex work play an important role in shaping public opinion. In this chapter, I leverage the closeness of the decriminalization vote to investigate whether and how media representations are responsive to a change of law in the short term. I compare portrayals of sex workers in New Zealand's three largest newspapers in the six months before and six months after the passage of the Prostitution Reform Act. I find that decriminalization is associated with a decrease in labelling and certain forms of stereotyping, but no change in separation. Furthermore, while the passage of the national

decriminalization law prohibited overt discrimination, it also indirectly enabled discrimination at the local level through restrictive zoning.

In the second empirical chapter, I explore backlash to the Prostitution Reform Act, which culminated in an unsuccessful attempt to repeal it through a citizens' referendum in 2004. The closeness of the vote on the decriminalization law not only influenced opposition efforts to repeal it, but also shaped perceptions of the legitimacy of other laws passed around the same time, especially the Supreme Court Act (2003) and Civil Unions Act (2004). Ultimately, the relatively narrow passage of these laws spurred two opposition parties to include provisions for the expansion of direct democracy in their platforms for the 2005 general election. I analyze the backlash to the Prostitution Reform Act and Supreme Court Act in order to illustrate how closeness informed opposition messaging. I argue that the narrow vote margin enabled backlash by creating a liminal space in which opponents could challenge the legitimacy of the vote. Specifically, opposition discourse focused on portraying the passage of the Prostitution Reform and Supreme Court Acts as undemocratic.

In the third empirical chapter, I focus on local responses to the national sex work law. Following the passage of the Prostitution Reform Act, municipalities varied widely in their responses to decriminalization. Thirteen cities drafted new bylaws to control the location of brothels; New Zealand's capital, Wellington, chose to use an existing bylaw rather than draft a new one. Bylaws in Auckland and Christchurch faced legal challenges and were eventually struck down by the High Court of New Zealand on the grounds that they were incompatible with the PRA. In this chapter, I explore this variation in municipal ordinances. I focus primarily on the bylaw in Christchurch, which was not only one of the

most restrictive, but also faced a protracted legal battle. I use an innovative shadow case research design to suggest that the bylaw was largely a product of the interaction between local conditions and national laws, including those unrelated to sex work. By comparing Christchurch with Wellington, which did not draft or amend a bylaw after decriminalization, I found that the outcome in Christchurch reflects the interaction of three major factors: the relative prevalence of street-based sex work, the obligations placed on the city council by the Local Government Act of 2002, and *The Pressures* created by upcoming local elections and council restructuring.

In the conclusion, I highlight the ways in which this dissertation develops our conceptual understanding of how and why closeness matters in legislative or electoral contests. I suggest that responses to the Prostitution Reform Act illustrate the complex and often unanticipated interactions between law and politics, at multiple levels and occasionally across branches of government. I extend my analysis of close votes and democracy frames to the case of the 2020 US Presidential election, a case which further illustrates the ways in which closeness is constructed, and how, in the liminal space following a vote perceived as close, political actors deploy democracy frames to challenge the legitimacy of the outcome.

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New Zealand

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Chapter 1

Close Votes as Legal Events

Introduction

On November 8, 2000, the Florida College of Electors reported that presidential candidate George W. Bush had won the statewide popular vote, receiving 1,784 more votes than opponent Al Gore. The close result triggered an automatic machine recount; by the time it concluded on November 10, Bush's margin of victory had shrunk to just 327 votes (*St. Petersburg Times* 2000). On December 8, in a 4-3 decision, the Florida Supreme Court ordered a manual statewide recount. The next day, in a 5-4 decision, the US Supreme Court reversed that decision, ruling that no manual recount would be feasible in a reasonable time period, and deciding the election for Bush (Firestone 2000). Without a doubt, *Bush v. Gore* was a watershed moment for American democracy, and the implications of the case have been dissected by academics, policymakers, and jurists. But this case is also striking in that all of the crucial votes – the popular vote, the Florida Supreme Court ruling, and the US Supreme Court reversal – were decided by the narrowest of margins.

Close votes happen more often than we realize. They occur throughout history, around the world, and across branches of government. In 1800, Thomas Jefferson was famously elected President by one vote in the US House of Representatives after a tie in the Electoral College (Library of Congress 2018). In the United States, between 1902 and 2016, there were 159 state-level ballot measures that passed or failed by a margin of less than one percent of the popular vote; when the margin is expanded to three percent, that

number jumps to 1,045. These votes have been on issues as significant and diverse as women's suffrage, civil rights, and abortion access (NCSL 2016). Close direct democratic votes have also decided questions of national sovereignty. In 1995, 50.58% of citizens in Quebec rejected a referendum that would have seen them proclaim national sovereignty and declare independence from Canada (Seguin 1995). In 2016, 51.89% of British citizens voted to leave the European Union (Elliott and Coates 2016). Judicial decisions are often close. For instance, between 1900 and 1990, over 1,400 US Supreme Court cases were decided by a single vote (Riggs 1993). In addition to *Bush v. Gore* (2000), these narrow rulings included *Citizens United v. Federal Election Commission* (2010), which abolished electoral spending limits for corporations, as well as *United States v. Windsor* (2013) and *Obergefell v. Hodges* (2015), two landmark cases granting marriage rights to same-sex couples. In the legislative domain, in 2003, the Government of New Zealand fully decriminalized sex work at the national level when it passed the Prostitution Reform Act by just one vote (Tunnah 2003b).

There is no universally agreed-upon margin at which a vote is deemed close. For instance, in quantitative political science, scholars using a regression discontinuity design most often define a vote as close if the margin of victory is within half of one percent. The regression discontinuity design is a quasi-experimental approach to assessing the causal effects of an intervention by comparing subjects just above and below an arbitrary cut-off score. By comparing groups immediately to either side of this threshold, the RDD allows researchers to assume 'as-if random' assignment to treatment. Though the RDD was initially developed by Thistlethwaite and Campbell (1960) to assess the impact of merit scholarships on future academic achievement, in recent years, political scientists have

applied the approach to the study of close electoral races, using large datasets of close elections in the United States and abroad to estimate things like incumbency effects, party advantage, or political connections (see, for example: Lee 2001, 2008; Eggers et al. 2015). The 0.5 percent margin is the most common threshold at which an automatic recount is triggered; the possibility that the outcome is due to a tabulation error and could be invalidated approximately the “as-if random assignment to treatment” of quasi-experimental research design (Caughey and Sekhon 2011). However, this decision is entirely arbitrary – while 22 US states have laws on the books requiring an automatic recount if a vote falls within a specific margin, that margin varies from 0 to 1 percent; in four states, the recount isn’t tied to vote margin at all (Ballotpedia 2020a). In Canadian federal elections, an automatic recount is triggered if a candidate wins by less than .1 percent of all votes, but candidates and voters can also petition a judge for a recount, regardless of margin (Elections Canada 2019).

Quantitative approaches like the regression discontinuity design require an inflexible cut-off, and investigators have defaulted to numeric indicators of closeness. While it is not in principle impossible for such work to incorporate a sense of the cultural constructedness of the *perception* of closeness, in practice these perceptions are highly context-specific. Yet it is more important politically that a vote be *perceived* as close than for it to conform to an arbitrary and context-independent definition of closeness.¹ For example, in parliamentary systems, whether or not Members are required to vote with their parties will influence the margin at which a vote is deemed to be close. In a free vote,

¹ Thank you to Julia Adams for elevating the phrasing of this argument.

individual decisions can make or break a piece of legislation, while a whipped vote could turn on the decision of an entire party.

In this dissertation, I suggest that a close vote is a prism through which we can analyze the relationship between law and social change, both theoretically and methodologically. In a series of three articles, I use the narrow passage of the Prostitution Reform Act in New Zealand as a case study to illustrate the social and political consequences of law reform. In the first empirical chapter, I describe changes in media representations immediately following the passage of the law. In the second chapter, I illustrate how the closeness of the vote itself played a key role in shaping opposition attempts to repeal the law. In the final empirical chapter, I explore variation in efforts to regulate sex work at the local level following national decriminalization.

Close Votes as Legal Events

While the relationship between law and social change has long been central to law and society research, the last twenty years have witnessed a ‘cultural turn’ in sociolegal scholarship (Saguy and Stuart 2008). Researchers have increasingly drawn attention to the ways in which laws shape and are shaped by the social and cultural environments in which they develop (Friedman 1975, 1988; Hull 2003; Savelsberg and King 2005; Stoddard 1997). Culture is “defined in variable ways across research, including as beliefs, morals, categories, cognitive frames, deeply seated assumptions about how the world operates, or as a repertoire of responses to social situations” (Saguy and Stuart 2008:150). Nevertheless, Saguy and Stuart (2008) identify three dominant approaches to the study of the relationship between law and culture, reflecting distinct ways of operationalizing both culture and law.

The first treats culture as an independent variable, taking law and legal practices as the objects to be explained by cultural factors (for example, Savelsberg and King 2005). The second “positions law as an independent variable with culture as a dependent outcome” (Saguy and Stuart 2008:154). This type of work seeks to uncover the ways in which laws and legal processes shape collective understandings of the world (for example, Hull 2003). Both of these approaches reflect an instrumentalist assumption of law as a relatively bounded sphere. Furthermore, in adopting the analytical lens of variables – if only for theoretical or methodological reasons – both approaches promote a causal understanding of the relationship between law and culture.

However, this paradigm of cause and effect raises important conceptual and methodological difficulties. As Saguy and Stuart caution, “in trying to use the law to explain culture or vice versa, there is a risk of tautological reasoning, in which, for instance, one cites a specific national law as evidence of a corresponding cultural element while simultaneously citing that same cultural element to explain the given law” (2008:156). Cultural schemas are fundamentally entangled with legal institutions, making it difficult to determine the degree to which laws shape or are shaped by their social and cultural contexts. Increasingly, sociolegal scholars have proposed a third approach to the study of law and culture that sidesteps these methodological issues by dispensing with causal paradigms and instead treating law as culture (Ewick and Silbey 1998; Marshall and Barclay 2003; McCann 1994; Merry 1990). Scholarship in this vein reflects the constitutive perspective of law as fundamentally embedded within a social context. To date, the most significant and influential strand of law as culture research promotes an analysis of what Sarat and Kearns refer to as ‘the law in everyday life’. Rather than focusing on legal

doctrine, this approach foregrounds “events and practices that seem on the face of things removed from law, or at least not dominated by law from the outset” (Sarat and Kearns 2009:55). As Ewick and Silbey argue, “the law operates, perhaps most powerfully, in rendering the world unproblematic. Indeed, in organizing and giving meaning to the most routine every day events – such as buying groceries or driving down the street – the law may be most present in its conspicuous absence” (1998:27). The law as culture paradigm usefully dispenses with the conceptual rigidity and occasional tautological reasoning that characterizes much instrumentalist and variable-centered work. However, in dismantling the conceptual dichotomy of law/not law in favor of a holistic understanding of legality, the law as culture approach can also sacrifice precision and rigor.

The theoretical basis of this dissertation is essentially constitutive: I consider the law to be fundamentally and inextricably entangled with social practices, broadly defined. However, to correct for the analytical and conceptual fuzziness that can accompany law as culture and especially law in everyday life approaches, I draw on sociohistorical theories of events and eventful analysis (Abbott 2001; Abrams 1982; Sewell 1996, 2009; Wagner-Pacifici 2010, 2017). Abrams defines an event as “a portentous outcome; [a] transformation device between past and future. It has eventuated from the past and it signifies for the future” (1982:191). Sewell clarifies that events are not singular, but, rather, comprised of “sequences of occurrences that result in transformations of structures” (2009:227). Most theoretical and empirical writing on events is drawn from cases that fundamentally altered the course of history, like the storming of the Bastille (for example, Sewell 1996) or the September 11 terrorist attacks (for example, Wagner-Pacifici 2010). However, I suggest that eventful analysis can also be fruitfully applied to legal and legislative outcomes.

Although the legality of issues like sex work cannot be clearly delineated in time or space, a legislative vote on something like the Prostitution Reform Act is an event that heralds a new social and political reality. What was once illegal is made legal. Even before official ratification, implementation, or utilization of the new law, an approving vote calls into question new legal rights and statuses. In cases where legislation is defeated, putting the issue to the vote is still transformative; for example, the disappointment of a loss may spur social movements to greater action.

Although the passage of the Prostitution Reform Act may not have the historical significance of the taking of the Bastille, it is nevertheless well-suited to eventful analysis. As Wagner-Pacifici notes, “events are always a surprise” (2017:2). As I discuss in the next section, in New Zealand, the decriminalization of sex work ultimately turned on one Member of Parliament’s personal change of heart. The eventful approach I adopt here is complementary to the constitutive view of law as pervasive and deeply embedded in everyday life. Wagner-Pacifici emphasizes “the ongoingness of events, the ways they are restless and the ways they are subject to continuing oscillations between bounding and unbounding as they extend in time and space” (Wagner-Pacifici 2017:5). The event of the vote on the Prostitution Reform Act is a hinge element embedded within a longer sequence of occurrences that constitute the legality of sex work in New Zealand. This approach brings specificity to law as culture and constitutive scholarship, without the rigidity of causal approaches.

Sex Work Law Reform in New Zealand

New Zealand was the first country in the world to fully decriminalize sex work at the national level when it passed the Prostitution Reform Act in 2003. Prior to the passage of the PRA, the act of selling sex was not, in itself, illegal, though all related activities were criminalized through the invocation of particular clauses in three existing laws. First, the Crimes Act of 1961 made it illegal to keep or manage a brothel (Section 147), to live off the earnings of another's sexual labour (Section 148), or to procure or offer to procure sexual services on behalf of another person (Section 149). Second, recognizing that many brothel owners ran their businesses as massage parlours, the Massage Parlours Act of 1978 established a system of licensing for such establishments, prohibited the employment of persons under the age of 18, and prohibited the employment of individuals with criminal convictions for drug offenses or sex work. Third, the Summary Offences Act of 1981 criminalized solicitation in public places (Section 26). Many sex workers opposed these laws, arguing that the regulatory regime was unfair and jeopardized the health and safety of sex workers. In 1987, nine sex workers from Wellington established what would become the New Zealand Prostitutes Collective, a civil society organization dedicated to advocating for the rights of sex workers (Healy, Benachie, and Reed 2010).

In New Zealand, the eventual decriminalization of sex work was an unintended consequence of the government's attempts to combat HIV/AIDS. Recognizing that sex workers were particularly vulnerable to HIV and other sexually transmitted infections, the Department of Health approached the NZPC in the late eighties in order to set up HIV prevention programs for sex workers. In 1988, the government of New Zealand began offering funding to the group, which recruited sex workers to serve as peer sexual health

educators (Healy et al. 2010:44). The government relied on the NZPC to provide legitimacy for its public health programs and to reach vulnerable populations. However, the Collective claimed that their efforts to promote sexual health were being hampered by sex work laws. For example, although an important component of the HIV peer health educator program was the distribution of condoms and safer sex messaging to sex workers, police often used the presence of such materials as evidence to arrest and charge sex workers and massage parlour operators (Barnett et al. 2010). The NZPC threatened to refuse funding from the Department of Health unless an interdepartmental committee was established to investigate the effects of existing sex work legislation (Boniface 2003). Such a committee was established, and in 1994, the NZPC began working with lawyers, activists, and scholars to draft the Prostitution Reform Bill (PRB) (Healy et al. 2010). The bill, first introduced in Parliament on September 21, 2000, by Labour MP Tim Barnett, was intended to protect the rights and promote the health and safety of sex workers. It was designated a conscience vote, meaning MPs would not be bound by party affiliation in making the decision to support or reject the bill.

After a successful first reading in November of 2000, the bill was referred to the Justice and Electoral Committee, where it was examined and debated during a select committee stage that lasted nearly three years. The issue of municipal powers to regulate sex work was a central point of contention during the committee stage. When the Prostitution Reform Bill was first tabled, it did not include any clauses granting new rights and powers to cities. Territorial authorities were expected to manage the location and signage of commercial sex premises using existing legislation. Specifically, the Local Government Act (1974) provided powers to local councils to regulate commercial signage,

but did not explicitly contain provisions related to content. Additionally, the Resource Management Act (1991) stipulated that councils could consider social, economic, and cultural conditions in making planning decisions; the proponents of decriminalization felt that these provisions would be sufficient in governing the location of brothels (Barnett 2007).

However, many city councils and local residents feared that relying on existing legislation like the Local Government Act and Resource Management Act would allow brothels to spring up “where there are now corner dairies” (Christchurch City Council 2003:2). As Councillor Sue Wells put it in a letter to Parliament,

The Christchurch City Council has very real concerns about its ability to adequately control the effects of brothel-keeping and prostitution should the Bill become law. [...] The Council is particularly concerned that there is a belief that the Resource Management Act 1991 would control effects which arise from this activity. Our legal advice is that the Resource Management Act is quite clearly not able to deal with the social effects, and we are clear that the community we represent would expect us to be able to. The Council is deeply concerned that a brothel would be able to establish anywhere any other kind of retail activity can establish. We think it is unreasonable that there are no controls in this Bill which would limit the establishment of brothels near schools, churches, kindergartens, and other places of public gathering. [...] Unless you provide the powers to control the industry, you will open a Pandora's Box which you will not be able to close again. (Christchurch City Council 2003:1–2)

These views were shared by other city councils, who expressed their concerns to the Justice and Electoral Committee.

In November 2002, in a concession to municipalities, the Committee recommended an amendment allowing cities to regulate offensive signage, but cautioned that, given “the fact that businesses other than those offering commercial sexual services might include offensive content on their signs, [...] it was possibly out of step with the purpose of the [Prostitution Reform Bill] to target prostitution in this way” (Government of New Zealand

2002d:13). However, the Committee initially rejected council's requests to be given the right to regulate the location of brothels:

A Majority of us consider the RMA, along with the District Plan of a local or territorial authority, is sufficient to control undesirable prostitution activity and planning matters relating to the sex industry. [...] The bill will repeal the offense of soliciting and, under a decriminalized model, it would be inconsistent and risk creating to create new offenses relating to where this can take place. [...] By majority, we recommend there be no provisions in the bill that limit the conduct and location of prostitution. (Government of New Zealand 2002d:14–15)

The Committee did acknowledge that local powers to regulate the location of the sex industry would likely remain an issue; it included a discussion of potential regulatory schemes in its report to Parliament “so that a member [of the House] who wishes to propose an amendment enabling local authorities to have this power has the benefit of our consideration” (15). The Committee proved prescient on this issue. Shortly before the Bill's third and final reading, Phil Goff, then-Justice Minister, proposed an amendment delegating authority to city councils to regulate the location of brothels on the basis of neighbourhood character and the likelihood of causing offense.

Decriminalization was controversial, and the Government anticipated a close result. But MPs who had previously indicated their support of decriminalization were suddenly suggesting they would vote against the bill in the third and final reading (Venter 2003). Goff's amendment, which was approved, was intended to shore up flagging support in the run up to the final vote. Additionally, in a final attempt to ensure passage of the Bill, on June 24, 2003, just one day before the final vote, a clause was added to the effect that Parliament “does not endorse or morally sanction prostitution or its use”. These strategies paid off, and the Prostitution Reform Act was passed on June 25, 2003, in a vote of 60 for, 59 against, and one abstention. The outcome hinged on the decision of Ashraf Choudhury,

the country's first Muslim MP, who, despite voting 'No' on all previous readings of the bill, abstained, citing moral and religious readings (a tied vote would have resulted in the bill's defeat). The Prostitution Reform Act remains in force to this day.

Outline of the Dissertation

In this dissertation, I use the decriminalization of sex work in New Zealand as a case study through which to illustrate the complex social and political consequences of law reform. In Chapter 2, I explore the influence of decriminalization on media representations of sex work in the short term. I use the narrow passage of the Prostitution Reform Act to problematize assumptions about the pace of cultural change after law reform. I compare stigma in newspaper portrayals of sex work in the six months before and six months after the passage of the PRA. While most sex work scholars assume that it will take years to notice changes in cultural norms surrounding sex work after decriminalization, I find noticeable differences in the portrayals of sex workers in major newspapers just months after a major legal change. Specifically, there was a slight decrease in labelling and certain forms of stereotyping after the passage of the Act. However, my media analysis also suggests a sharp increase in discriminatory municipal bylaws after decriminalization. I explore these bylaws in greater detail in Chapter 3.

In Chapter 3, I focus on backlash to the Prostitution Reform Act, which culminated in an unsuccessful attempt to repeal it in 2004, as well as broader political efforts to prevent the passage of significant or controversial legislation by simple majority. I incorporate a second case, New Zealand's Supreme Court Act (2003), which passed in a close vote a few months after the sex work law, to suggest that the closeness of a vote can play a role in

backlash against legislation by creating conditions in which opponents can challenge the legitimacy of the vote. In New Zealand, opposition discourse focused on portraying the votes on both the Prostitution Reform Act and Supreme Court Act as fundamentally undemocratic. The backlash to these cases illustrates how the contingency of a close vote creates new opportunities for political action.

In Chapter 4, I return to the municipal responses to the national sex work law introduced in the second chapter. Although municipal powers played a significant role in the passage of the national law, city council responses to the Prostitution Reform Act varied widely. While some localities relied on existing legislation and ordinances to regulate brothels, others, especially Christchurch and Auckland, passed highly restrictive bylaws that were found to contravene the national law and invalidated by the High Court of New Zealand. How can we account for the variation in local responses to the national law? I compare Christchurch with Wellington, the only major city not to draft or amend a bylaw after decriminalization, to argue that harsh bylaws reflect the complex and often unanticipated interaction of local conditions and national laws, including those unrelated to sex work itself.

In Chapter 5, the conclusion, I summarize the findings of each chapter, extend a central argument of the dissertation by briefly discussing the relevance of close votes and democracy frames to the 2020 US Presidential election, and outline the methodological and theoretical contributions of the work.

Chapter 2

Does Decriminalization Mean Destigmatization? The Influence of Law Reform on Media Portrayals of Sex Work

Introduction

In 2015, over 30 million individuals were estimated to work in the sex industry worldwide (Fondation Scelles 2016). Despite its prevalence, sex work is highly stigmatized, and, as Ronald Weitzer notes, this stigma “is manifested in public opinion polls, media representations, political discourse, face-to-face encounters, and the ways in which individuals internalize stereotypes, conceal their stigmatized identity, and lead double lives” (Weitzer 2018:717). While prostitution remains illegal in over one hundred countries, in recent years, a number of states have legalized or decriminalized sex work to varying degrees, and the effects of sex work legislation have become the focus of significant attention in both academic and policy circles. Although contrasting regulatory approaches may not effectively deter the purchase or sale of sex, sex work legislation plays an important role “in constructing the space, subjects, and systems of governance” (Scoular 2010:23). Full decriminalization, which entails the removal of all criminal laws pertaining to the buying or selling of sexual services, is essential for the eventual elimination of sex work stigma at the societal level (Weitzer 2018).

Media representations of sex work play an important role in shaping public discourse about the sex industry, especially where sex work is decriminalized. As Easterbrook-Smith argues, by removing the regulation of the sex industry from the judicial sphere, decriminalization empowers the media to define the limits of acceptable sex work

(2018:187). I ask: How does decriminalization influence media representations of sex work? I focus specifically on a comparison of stigma in portrayals of sex work before and after the passage of New Zealand's Prostitution Reform Act (PRA) in 2003. Following Link and Phelan (2001), I define stigma as a co-occurrence of four components – labelling, stereotyping, separation, and status loss and discrimination – and use these four components to frame my qualitative content analysis. On the basis of a comparative analysis of newspaper portrayals of sex work and sex workers in the six months preceding and six months following the passage of the law, I find that decriminalization in New Zealand was associated with a slight decrease in labelling and stereotyping. I also present preliminary findings that suggest a sharp increase in certain forms of discrimination following the passage of the Prostitution Reform Act.

In the first section, I review scholarship on sex work stigma and the power of law. In the second section, I provide an overview of my case selection, method, and data, and in the third section, I discuss my empirical results. I analyze the provisions of the PRA, suggesting that, although the law did not explicitly seek to reduce stigma, it sent important cultural messages about the dignity of sex workers and the legitimacy of sex work. I then present the results of my media analysis, focusing specifically on Link and Phelan's four components of stigma.

Sex Work Stigma and the Power of Law

In 1963, Goffman defined stigma as “an attribute that is deeply discrediting”, which reduces the bearer of the mark “from a whole and usual person to a tainted, discounted one” (1963:3). In recent years, scholars have built on Goffman's work to articulate

sophisticated theoretical models of stigma, emphasizing the social, cultural, and relational dimensions of the stigma complex (Pescosolido and Martin 2015). One influential approach is that proposed by Link and Phelan, in which stigma is defined in terms of relationships between four interrelated concepts: 1) labelling, in which people identify and label differences in others; 2) stereotyping, in which those labels are linked to negative characteristics; 3) separation, in which labelled and stereotyped individuals or groups are placed in distinct categories that emphasize the difference between ‘us’ and ‘them’; 4) status loss and discrimination, in which labelled persons are rejected and socially excluded (2001:367). Pescosolido et al. take a systems approach to emphasize that these components of stigma shape and are shaped by factors at all levels of social life (2008:433). In recent years, sex work scholarship has increasingly engaged with systems approaches. For instance, Benoit et al. (2018) apply the theoretical model developed by Pescosolido et al. (2008) to the case of sex work stigma, identifying four broad sources of stigma operating at different levels of society: laws, regulations and social policies; the media; health care and justice systems; and the public at large and sex workers themselves (Benoit et al. 2018:461). In another example, Ryan, Nambiar, and Ferguson articulate a three-tiered model of sex work stigma as operating experientially (through actions and reactions), symbolically (in communication), and structurally (through systems and institutions) (2019:85).

There is a rich empirical literature exploring the consequences of sex work stigma on the quality of life, health, and safety of sex workers (Armstrong 2018; Benoit et al. 2018; Bruckert and Hannem 2013; Ryan et al. 2019; Weitzer 2012). Scholars have also drawn attention to the important role of representations in promoting or combating sex

work stigma (Easterbrook-Smith 2018; Farvid and Glass 2014; Saewyc et al. 2013; Showden 2017). As Hallgrimsdottir and colleagues argue: “Media representations [are] important conduits of stigma against those working in the sex industry. This is because it is through the media that most of us, including academics and policy makers, acquire much of our knowledge of sex work” (2006:120). They further suggest that media portrayals can have real consequences on the lived experiences of sex workers: “The (mis)representations of sex workers found in mainstream media outlets thus have the potential to shape both the day-to-day interactions sex workers have with their clients as well as the legal and policy environments that shape their lives” (Hallgrimsdottir et al. 2006:120). Research has documented stigmatizing representations of sex work and sex workers in film (Blasdell 2015), television (Dunn 2012), and print media (Easterbrook-Smith 2018; Farvid and Glass 2014; Fitzgerald and Abel 2010; Hallgrimsdottir et al. 2006).

Increasingly, researchers have turned their attention to the ways in which sex work stigma can be managed, reduced, and eventually eliminated. Although early research on resistance to stigma emphasized the strategies used by individuals to manage psychological distress and social exclusion, scholars have begun to explore the larger question of how stigma can be combated at the societal level (Weitzer 2018:718). In a recent review article, Weitzer (Weitzer 2018) identifies a number of preconditions for the elimination of sex work stigma, including the use of neutral language, changes in media portrayals, industry reform, activism on the part of sex workers and academics, and decriminalization. In a response to Weitzer, Sanders (2018) emphasizes that decriminalization is crucial to destigmatization because the law plays a significant role in determining the boundaries of citizenship/non-citizenship. This echoes the argument made by Jane Scoular, who suggests

that the power of sex work law is less in its specific regulatory provisions and more in its potential to discursively produce subjects and determine their capacity for action in ways that align with broader social structures (2010:29).

There is a growing literature addressing the impact of decriminalization on stigma, especially in New Zealand (Abel and Fitzgerald 2010; Armstrong 2018). In addition, recognizing the symbolic power of the decriminalization model, some authors have looked specifically at the impact of decriminalization on media representations of sex work and sex workers (Easterbrook-Smith 2018; Farvid and Glass 2014; Fitzgerald and Abel 2010). As Easterbrook-Smith argues, media representations become even more powerful after decriminalization because, “in the absence of the ability to control socially problematized or ‘unacceptable’ forms of sex work through a legislative framework, the power to determine what is acceptable or tolerable [moves] from law enforcement to the media” (Easterbrook-Smith 2018:198). In a 2010 content analysis of newspaper reporting on sex work from 2003 to 2006, Fitzgerald and Abel (2010) report a high prevalence of moralizing media discourses; interviews with 58 sex workers suggest that workers perceived the media to be highly stigmatizing, even after decriminalization. Farvid and Glass (2014) conducted a critical discourse analysis of newspaper articles published between 2000 and 2013, and found that media representations after the passage of the Prostitution Reform Act continued to rely on stereotypical and gendered tropes, particularly where street-based workers were concerned. Finally, Easterbrook-Smith (2018) found significant racism and transmisogyny in media representations of sex work between 2010 and 2016.

It is useful to situate the work on sex work decriminalization and stigma within broader theoretical literatures on the relationship between law and social change. While

this relationship has long been central to law and society research, the last twenty years have witnessed a ‘cultural turn’ in sociolegal scholarship (Saguy and Stuart 2008). Researchers have increasingly drawn attention to the ways in which laws shape and are shaped by the cultural environments in which they develop (Friedman 1975, 1988; Hull 2003; Savelsberg and King 2005; Stoddard 1997). Much of this work reflects an instrumentalist assumption of law as a relatively bounded sphere – the law is either an object to be explained by cultural factors, or an “independent variable with culture as a dependent outcome” (Saguy and Stuart 2008:154). In adopting the analytical lens of variables, instrumentalist approaches promote a causal understanding of the relationship between law and culture.

However, this paradigm of cause and effect raises important conceptual and methodological difficulties. Cultural schemas are fundamentally entangled with legal institutions, making it difficult to determine the degree to which laws shape or are shaped by their cultural contexts. Increasingly, sociolegal scholars have proposed a third approach to the study of law and culture that sidesteps these methodological issues by dispensing with causal paradigms and instead treating law as culture (Ewick and Silbey 1998; Marshall and Barclay 2003; McCann 1994; Merry 1990). Scholarship in this vein reflects a constitutive perspective of law as fundamentally embedded within a social and cultural context.

The arguments advanced by Weitzer, Sanders, Scoular, and others about the destigmatizing potential of decriminalization are in keeping with this constitutive approach. These authors highlight the ways in which sex work laws shape and are shaped by a broader social and cultural landscape that includes social movement activism, industry

reform, media, and language. The law-as-culture paradigm is useful in that it dispenses with the conceptual rigidity that characterizes much instrumentalist and variable-centered work. However, in dismantling the conceptual dichotomy of law/not law in favour of a more holistic understanding of legality, the law as culture approach can also sacrifice specificity and rigor. This is largely true of existing work on the implications of decriminalization on media representations of sex work. For instance, Fitzgerald and Abel (2010) conduct a detailed content analysis of newspaper portrayals of sex work in the three years after decriminalization, but do not include a control measure of coverage from before the law was changed. Farvid and Glass (2014) do include media portrayals preceding decriminalization in their study of representations between 2000 and 2013, but significantly oversample coverage from after the law was changed. Easterbrook-Smith (2018) focuses exclusively on portrayals from between 2010 and 2016; the seven-year gap between the passage of the law and the beginning of the period of study raises questions about the impact of decriminalization on the author's findings.

Like Weitzer, Sanders, and Scoular, my theoretical orientation is essentially constitutive: I consider sex work legislation to be fundamentally and inextricably entangled with social and cultural practices. However, to address the analytical and conceptual fuzziness that can accompany the law-as-culture approach, I draw on sociohistorical theories of events and eventful analysis (Abbott 2001; Abrams 1982; Sewell 1996, 2009; Wagner-Pacifici 2010, 2017). Abrams defines an event as “a portentous outcome; [a] transformation device between past and future. It has eventuated from the past and it signifies for the future” (1982:191). Sewell clarifies that events are not singular, but, rather, comprised of “sequences of occurrences that result in transformations of structures”

(2009:227). Most theoretical and empirical writing on events is drawn from cases that fundamentally altered the course of history, like the Storming of the Bastille (Sewell 1996) or the September 11 terrorist attacks (Wagner-Pacifici 2010).

I suggest that eventful analysis can also be fruitfully applied to legal and legislative outcomes. Although the legality of sex work in New Zealand cannot be clearly delineated in time or space, I argue that the passage of the Prostitution Reform Act is an event that heralds a new social and political reality. What was once illegal is made legal; individuals in the sex industry are granted new rights and status and brought under the formal protection of the state. The decriminalization of sex work in New Zealand is well-suited to eventful analysis because it was so close – the PRA passed by only one vote. As Wagner-Pacifici notes, no one actor controls the course of events; “events are always a surprise” (2017:2). Close votes are inherently contingent; furthermore, as I discuss in the next section, the outcome of the vote ran contrary to earlier predictions. The eventful approach I adopt here is complementary to the constitutive view of law as pervasive and deeply embedded in everyday life. Wagner-Pacifici emphasizes “the ongoingness of events, the ways they are restless and the ways they are subject to continuing oscillations between bounding and unbounding as they extend in time and space” (2017:5). I argue that the event of the passage of the Prostitution Reform Act is a hinge element embedded within a longer sequence of occurrences that constitute the legality of sex work in New Zealand.

My paper seeks to contribute to and extend existing literatures on sex work stigma and decriminalization, both conceptually and methodologically. First, while I agree with Weitzer (2018) and others that decriminalization is essential to combating stigma, I see law reform as a source of destigmatization, rather than a precondition. As Bruckert and Hannem

point out, the minimal regulations surrounding sex work under decriminalization models “serve to significantly reduce structural stigma by relying less on assumptions of inherent risk” (2013:61). In keeping with the systems approach proposed by Ryan, Nambiar, and Ferguson (2019), by analyzing media representations of sex work immediately before and after a narrowly passed law, I explore whether destigmatization at the structural level is associated with a change in stigma at the symbolic level. Second, while the media analyses cited above provide nuanced accounts of sex work representations after decriminalization, I use a more abductive approach, applying Link and Phelan’s components of stigma as a primary coding scheme. By analyzing representations in terms of these disaggregated components, I allow for the possibility of variation not only in the degree of stigma observed in representations of sex work after decriminalization, but also in kind. Finally, existing work takes a long-term view of decriminalization and overlooks the significance of the event of the passage of the Act. My approach empirically explores the short-term transformative potential of legal events, rather than simply assuming the existence of cultural lag. I use comparative approach in which the period of study is kept deliberately short, and the duration of the pre- and post-implementation are the same. I explain these methodological choices in greater detail in the next section.

Case Selection, Data, and Method

Prostitution Law Reform in New Zealand

New Zealand was the first country to decriminalize sex work at the national level when it narrowly passed the Prostitution Reform Act in 2003. Prior to the passing of the PRA, the act of selling sex was not illegal, though all related activities were criminalized.

Decriminalization was the result of more than a decade of activism. In 1987, nine sex workers from Wellington established what would become the New Zealand Prostitutes Collective, a civil society organization dedicated to advocating for the rights of sex workers (Healy et al. 2010). Beginning in the late 1980s, the group worked closely with the New Zealand Department of Health to establish HIV prevention programs for sex workers. The government relied on the organization to provide legitimacy for its public health programs and to reach vulnerable populations, which gave the NZPC leverage to lobby for legal reform. In 1994, an interdepartmental government committee was established to investigate the effects of existing sex work legislation. Working closely with the NZPC, lawyers, and scholars, the committee began drafting what would eventually become the Prostitution Reform Act (Healy et al. 2010). The bill was introduced in Parliament by Labour MP Tim Barnett on September 21, 2000.

Although politicians on both the right and the left of the political spectrum supported the Act, it was highly controversial, and passed second reading by a narrow margin. In the weeks leading up to the final vote, MPs who had previously indicated their support for decriminalization began to waver. Several late amendments were added to the bill in an attempt to shore up support before the final vote (Tunnah 2003c). Most notably, municipalities were granted powers to restrict the location and signage of brothels, and a clause was added to the legislation to the effect that Parliament “does not endorse or morally sanction prostitution or its use”. Just hours before the final vote, the *Dominion Post* reported that the campaign was “teetering on the brink of failure as heavy lobbying takes its toll on supporters of the [bill]” (Venter 2003). Nevertheless, the amendment strategy proved successful, and the Prostitution Reform Act passed on June 25, 2003, in a

vote of 60 for, 59 against, and one abstention. The country's first Muslim MP, Ashraf Choudhury, unexpectedly abstained, citing moral and religious reasons. Choudhury had voted against the bill on all previous readings; his unexpected decision to abstain rather than cast a negative vote was integral to the approval of the PRA, as a tied vote would have resulted in the bill's defeat.

The uncertainty that surrounded decriminalization and the extremely close vote make the passage of the Prostitution Reform Act a critical juncture embedded within a much longer incremental process of sex work law reform. Not only does New Zealand have one of the most liberal approaches to sex work in the world, but legislative reform also occurred all at once rather than in a piecemeal fashion. In other words, the Prostitution Reform Act fundamentally and immediately transformed the social meaning of sex work, transforming it from deviant and criminal to legal and protected. In a sense, the passage of the PRA resembles a natural experiment – the social and legal landscape surrounding sex work in New Zealand changed suddenly and dramatically, hinging on Choudhury's unpredictable personal change of heart.

Data and Method

In order to analyze the influence of decriminalization on representations of sex work, I compared portrayals of sex work and sex workers in New Zealand's three largest newspapers in the six months preceding and the six months following the passage of the Prostitution Reform Act. I chose the three daily newspapers with the highest circulation numbers: The *New Zealand Herald*, based in Auckland, the *Dominion Post*, based in the capital city of Wellington, and *The Press*, based in Christchurch. By focusing on these papers, which serve New Zealand's largest cities on both the North and South Islands, I

was also able to capture some regional variation. Given the emergence of social and new media, a sole focus on print journalism would be indefensible today. However, because I am interested in representations of sex workers over a short period of time before the advent of social media, newspaper articles are an appropriate data source.

Given my theoretical interest in the event of the passage of the Act, I deliberately limit the period of study to one year in order to identify potential changes in representations at a crucial moment in time. Other scholars have assumed that changes in stigma are necessarily a long-term process. For instance, Weitzer writes, “we should expect cultural lag in the aftermath of legal reform: it can take considerable time for social norms to mesh with legal norms” (2018:722). To be sure, significant destigmatization at the societal level is a long-term, ongoing project; studies using alternate methodologies and measures of stigma have found that high levels of sex work stigma persist in New Zealand more than a decade after the passage of the Act (Armstrong 2018). In this study, however, I problematize the assumption of cultural lag by looking at a brief snapshot of representations on either side of the close vote.

This design is inspired by recent experimental and quasi-experimental work on the effect of legal rulings on public opinion and attitudes toward moral issues. For example, Tankard and Paluck conducted a longitudinal survey of public attitudes and norm perceptions of same-sex marriage in the four months surrounding the United States Supreme Court ruling in *Obergefell v. Hodges*. They found robust evidence that the verdict was associated with a significant change in respondents’ perceived social norms in support of gay marriage. One day after the event, the same participants reported higher current and future perceived support for same-sex marriage than they had five days prior (2017:1341).

Social psychological studies have consistently shown that norm perception – in other words, someone’s perception of what other people believe – is an important predictor of behaviour. Individuals behave in accordance with perceived norms to avoid social rejection, even when these norms do not align with their personal attitudes or beliefs (Cialdini and Goldstein 2004; Tankard and Paluck 2016, 2017). Tankard and Paluck point out that mass media plays a crucial role in changing “perceptions of what the group currently believes or will believe” (2017:1335). Given the role of both the media and the law in shaping perceived norms, it is important to explore how media portrayals of issues like sex work respond to legal events in the short term.

Using Nexis Uni, I conducted a search for all articles published in the three newspapers between December 25, 2002 and December 25, 2003 containing the words ‘sex work’, ‘sex worker(s)’, ‘prostitute(s)’, ‘prostitution’, ‘Prostitution Reform Bill, and ‘Prostitution Reform Act’. My initial search yielded 574 articles, with 262 published before decriminalization and 312 published after. I eliminated duplicate articles, articles published in the Arts or Entertainment sections, and everything under 300 words, which left me with a total sample of 355 articles. There were 163 articles published before the legal change, and 192 published after. Approximately 40 percent of articles in both the initial sample and subsample were opinion pieces.

Using the software program N-Vivo 11, I analyzed the data following the flexible coding approach proposed by Deterding and Waters (2018). Although this approach was developed primarily for use with interview transcripts, it is also well-suited to qualitative content analysis. Unlike traditional qualitative coding techniques derived from grounded theory, flexible coding proposes a two-stage process in which researchers first become

familiar with their data by applying broad codes reflecting the concepts motivating the study. These broad codes serve as a type of index, allowing the researcher to more easily apply focused codes to subsections of the data. I used Link and Phelan's components of stigma as the broad coding scheme, as this model is well-established in the stigma literature. After indexing the data according to these components, I used a more inductive approach to identify specific themes. For example, in the initial stage of data analysis, I tagged passages that exemplified stereotyping, the second component of stigma. In the second stage, I conducted a close reading of those passages to determine which stereotypes were most prevalent, and how they were being deployed discursively.

Findings

In this section, I analyze the Prostitution Reform Act to suggest that, while the law did not explicitly intend to reduce stigma, it communicated important messages about the legitimacy of sex work. I then present the results of my comparative media analysis, which suggest that while decriminalization was associated with a slight reduction in some forms of stigma, it inadvertently enabled a new form of discrimination at the local level.

The Prostitution Reform Act and Stigma

In Section 3 of the PRA, the Government of New Zealand stipulates four objectives of the Act: 1) to defend the human rights of sex workers and to protect them from abuse; 2) to promote the welfare, and occupational health and safety of sex workers; 3) to promote public health; 4) to prohibit the use of minors in prostitution or other sex work (Government of New Zealand 2003a:4). The legislation does not officially pertain to changing norms or attitudes about sex work; nevertheless, many stakeholders opposed to decriminalization

interpreted the bill as sending a dangerous message about the legitimacy of prostitution (Anon 2003c). Whether or not the PRA was designed to change social attitudes, the Act sends an important and complex message about the dignity of sex workers and the legitimacy of sex work as an occupation. It does this in two ways: first, by highlighting the agency and humanity of sex workers by explicitly acknowledging their human rights, and second, by portraying those involved in the sex industry as workers subject to the same protections and obligations as other employees.

However, the Act's messaging is ambiguous in a crucial respect. Section 3 of the PRA states, "The purpose of this Act is to decriminalize prostitution (*while not endorsing or morally sanctioning prostitution or its use*)", before enumerating the specific objectives of the legislation (Government of New Zealand 2003a:4, emphasis added). The addition of this clause undermines the Government's messaging about the legitimacy of sex work and the dignity of sex workers by inserting a value judgment about the morality of prostitution. Nevertheless, the inclusion of this normative language does not outweigh the PRA's broader destigmatizing message. The clause was added to the legislation just weeks before the final vote. As Sunstein notes, for the law to be legible to the broader public, it must be filtered through media sources or articulated through clarifying statements from politicians (1996:2050–51). For nearly three years, newspapers published articles about the bill as it worked its way through the legislative process. After the late amendment, the new language was reported by *The Press*, New Zealand's third-largest newspaper, in the context of a single article about the negotiating strategies used by those in favor of decriminalization (Espiner 2003). The amendment was not covered by either of the two largest papers. Thus, although the new language certainly complicated the destigmatizing implications of the

Prostitution Reform Act, I suggest that broader messaging about the legitimacy of sex work and the dignity of sex workers was significantly more dominant.

Media Portrayals of Sex Work Before and After Decriminalization

In defining stigma, Link and Phelan (2001) identify four interrelated components: labeling, stereotyping, separation, and status loss and discrimination. Newspapers are an important primary source of forms of stigma that rely on discursive framing – labeling, stereotyping, and separation – so media analysis is an effective methodology through which to account for them. However, newspaper articles are not a sufficient data source to make conclusive claims about discrimination. In the pages to follow, I present the results of my comparative media analysis, focusing primarily on labeling, stereotyping, and separation, and briefly sketch a new discriminatory trend that emerged from the newspaper data. In the sections that follow, I suggest that although the passage of the Prostitution Reform Act was associated with a decrease in labelling and stereotyping, the law inadvertently created opportunities for municipalities to discriminate against sex workers by passing restrictive zoning regulations.

Labelling and Stereotyping

Labeling is the first component of stigma, occurring when people distinguish and label oversimplified differences. Stereotyping occurs when these labels are associated with negative attributes or characteristics. Labels and stereotypes work in tandem as signifier and signified; the sign ‘sex worker’ or ‘prostitute’ is made meaningful through the relationship between the label and its associated stereotype.

The simplest way to account for labeling is to track the frequency of pejorative terms used in the media. There were many instances in which columnists used derogatory terms such as ‘whore’ to refer to sex work, sex workers, and brothels. These terms call to mind immorality, promiscuity, and debasement. In my sample, the terms ‘whore’ and ‘hooker’ were the most commonly used, but sex workers were also referred to as harlots, sinners, fallen women, vile wretches, streetwalkers, and, once, human spittoons. There was a slight decrease in the frequency of negative labels following decriminalization, though the magnitude of the effect depends on the unit of analysis. Slurs were used 21 times before the passage of the PRA, and 10 times after. However, only nine articles included one or more negative labels in the six months before decriminalization, compared to seven articles in the six months after.

These frequency counts reveal an interesting trend in the data, but don’t necessarily speak to the meaning of the terms themselves or the articles in which they appear, or the intent of the authors. In some cases, it seems clear that the columnist is using a slur to demean sex workers. For example, columnist Garth George writes, “Mr. Barnett wants to revolutionize whoredom, making it easier and more profitable for all concerned to participate in this, the second oldest industry in the world (the first was war and soldiering).” (George 2003a). George, a conservative Christian, uses the term ‘whoredom’ rather than ‘sex work’ or even ‘prostitution’ to emphasize that the law and its sponsor are unreasonable.

In other cases, columnists who support decriminalization use slurs to critique the outmoded views of their opponents. For instance, in an editorial supporting the passage of the PRA, Diana Witchel mocks the views of those opposed to decriminalization:

So why the uproar – often from unexpected quarters – about decriminalizing prostitution? One argument says that it's yet another liberal plot designed to bring down what is left of Western civilization. The debate drove Rosemary McLeod, in the Sunday Star Times, into Old Testament mode. She insists on calling a spade a spade and a prostitute a 'harlot' and/or 'whore'. Referring to MP Tim Barnett and the Prostitutes Collective's Catherine Healy, McLeod thunders, 'And so their supporters' position becomes that they don't want their own children to be whores, but they won't stand in the way of other people's children being so degraded'. In Britain, the normally fairly sisterhood-friendly Guardian columnist Julie Burchill put it more colourfully, 'Imagine your own son or daughter (or mother, as most of them are) making a living out of being a human spittoon'. My favourite Burchill quote on the matter reveals outrage almost as fierce as McLeod's, 'When the sex war is won prostitutes should be shot as collaborators for their terrible betrayal of all women'. Yikes. (Witchel 2003)

In this article, Witchel uses direct quotes rather than paraphrasing to signal that she does not share these stigmatizing views. Furthermore, the sarcastic reference to the Old Testament and the deadpan “yikes” contribute to the journalist’s caricature of her opponents as regressive and ridiculous. Despite this, Witchel’s stance on the legitimacy of sex work is complicated; in the same article she writes, “I don’t want any of my children to grow up to be, um, a ‘sex worker’.” (Witchel 2003). Here, the use of the filler word “um” – uncommon in written speech – and the quotation marks around the term ‘sex worker’ imply that Witchel believes sex work to be unsavoury. Paradoxically, in this article, pejorative epithets like ‘whore’ are used to indicate solidarity with sex workers and those sponsoring the decriminalization bill, while neutral terms like ‘sex worker’ are used to express disdain.

As these examples suggest, the meanings of labels are not fixed or innate. However, as some activists argue, regardless of intent, the use of slurs by those outside the targeted group is inherently stigmatizing, because these terms contribute to dehumanizing stereotypes that are harmful to marginalized groups (Muscat 2014). Furthermore, when newspapers print slurs, these labels have an even greater stigmatizing and oppressive effect by virtue of the authority and legitimacy afforded to mainstream media in liberal

democracies. With one exception², the sex workers quoted in the articles I reviewed don't use pejorative labels to refer to themselves, even ironically. Rather, they call themselves and each other 'sex workers', 'prostitutes', or 'girls'.

While certain activists also suggest that the term 'prostitute' is itself a slur, I generally do not consider it as such for the purposes of this analysis. The New Zealand Prostitutes Collective, the text of the Prostitution Reform Act, and sex workers themselves all refer to 'prostitution', making it difficult to systematically disaggregate cases in which the term is used descriptively from those in which it is used disparagingly. However, there are instances in which the label 'prostitute' contributes to the stigmatization of sex workers by associating them with negative stereotypes. On several occasions, a journalist mentions that an individual is or was a sex worker when there appears to be no journalistic reason to do so. I call these instances irrelevant associations. In each of these cases, the stories being reported pertained to illegal or immoral activities; there were no instances of positive associations in the data. For example, several articles published in *The Press* and the *Dominion Post* describe the case of Christopher Truscott, an intellectually disabled man who was charged and convicted for criminal nuisance in 1999 for failing to disclose his HIV status to sexual partners. Despite the fact that Truscott was not arrested or convicted for solicitation, every article about his case describes him as a "former male prostitute" (see, for example, Martin 2003). By labeling Truscott as a former sex worker in articles

² In a profile published after decriminalization, Catherine Healy, National Coordinator of the Prostitutes' Collective and a former sex worker, comments on the destruction of a sex worker registry maintained by the police before the passage of the PRA. She is quoted as saying, "Maybe they'll have a bonfire to burn the list, which must stretch from one end of Lambton Quay to the top of Mt. Vic by now. The list of all the fallen women, of all the naughty girls" (Boniface 2003). Healey's reference to 'fallen women' and 'naughty girls' is repeated in the headline of the article. In this case, Healy seems to be using the labels facetiously to scoff at the fact that the police force once felt the need to keep tabs on sex workers; her reference to a bonfire implies celebration, and underscores her relief that the lengthy and ridiculous list will be destroyed. I did not include Healy's use of labels in my frequency counts.

about risky behavior and unsafe sex, the articles contribute to the stigmatizing view that sex workers carry disease and willingly put clients and the general public at risk.

In another example, in August 2003, *The Press* reported that a missing woman might have been killed by a local gang. The newspaper wrote:

A Dunedin woman missing for more than eight months may have met her death in Christchurch's gang underworld, police fear. Tuitania Marama McIntosh, a former prostitute known to have drug addictions, left behind her former partner and their two young sons when she disappeared in November 2002. [...] Christchurch and Dunedin detectives trying to track down Ms. McIntosh say they have strong leads suggesting she had arrived in Christchurch at some point and linked with a local gang. Before her disappearance it appeared Ms. McIntosh had put her troubled past behind her and was forging a life with her partner and their sons. 'From all accounts she got off drugs and had given up prostitution. Whether or not the birth of her last child had an effect on her we can't discount', Dunedin Detective Sergeant Stephen McGregor said. (Booker 2003)

In this example, both the journalist and the police officer make reference to the victim's history of sex work despite there being no clear link to her disappearance. The officer quoted says as much by clarifying that McIntosh was no longer involved in the sex industry, and suggesting post-partum depression as an alternate explanation for her disappearance. Nevertheless, using the label 'former prostitute' in this story reinforces stereotypical beliefs that sex workers are irresponsible drug users, willing to abandon their families in order to join criminal organizations.

In a final example, the *Dominion Post* reported in September 2003 that the Court of Appeal was due to deliver in a verdict in the high-profile appeal of David Bain, who was convicted in 1995 of murdering his parents and three siblings. In a discussion of the prosecution's alternative account of the crime, the columnist noted that Bain's attorneys "have since produced many affidavits and other evidence that [Bain's father] may have killed his family because [his daughter] Laniet, a prostitute, was about to reveal that he had been committing incest with her" (McLoughlin 2003). Whether Laniet was or was not a

sex worker is irrelevant to her claim of abuse. Here, the inclusion of the label ‘prostitute’, coupled with the euphemistic description of alleged sexual abuse as ‘committing incest with her’, pollutes Laniet’s identity as a victim and casts doubt on the accuracy of any testimony she could otherwise have given. Although irrelevant associations occurred both before and after decriminalization, they occurred far more frequently before the passage of the PRA. In the pre-legislation period, there were 12 newspaper articles published which include at least one association of the label ‘prostitute’ with unrelated events, compared to only six articles in the post-legislation period.

Stereotyping occurs frequently in the articles I reviewed, and not only through the irrelevant application of the ‘prostitute’ label. The most frequent stereotypes that appear in the sample pertain to criminality and drug use. Nearly a third of the sampled articles contained references to drugs or criminal behaviour. Journalists and their sources often expressed the belief that brothels were run by organized crime or gangs, or that most sex workers abuse drugs. Other common stereotypes include the claim that sex work spreads disease and damages mental health, the belief that most sex workers were abused as children, and the view that sex work is equivalent to sex trafficking. These stereotypes are well documented in broader literatures about the stigma of sex work (see, for example, Abel and Fitzgerald 2010; Armstrong 2018; Ryan et al. 2019). Often, columnists or sources presented stereotypical views in a patronizing or paternalistic tone, reinforcing the image of sex workers as damaged and further diminishing their agency. For example, Member of Parliament Gordon Copeland portrayed his opposition to the PRA as a personal quest to protect helpless sex workers from the evils of an exploitative industry dominated by gangs: “At least I would have the satisfaction of doing what I can to try and mitigate the very, very

negative effects which would arise from decriminalizing prostitution, procuring and brothel-keeping because I believe those activities will largely be controlled by gangs and that the poor old prostitutes will work for them on pretty thin commissions and I think that's exploitation bordering on slavery" (Anon 2003b). Copeland's use of the term 'slavery' also evokes the racialized 'white slavery' anti-trafficking rhetoric of the late eighteenth and early nineteenth centuries (Dalley 2000), as well as 'modern day slavery' framings that persist in contemporary anti-trafficking movements (Beutin 2017).

Separation

Link and Phelan define separation as a cognitive and expressive process through which labels and stereotypes contribute to a sense of separation of 'us' from 'them'. In the sample, I noted several instances in which individuals associated with the sex industry were referred to as fundamentally different types of people than ordinary New Zealanders. For instance, in April 2003, MP Gordon Copeland argued during a vote on the PRA: "Parliament should proceed with great care on this issue. I think most New Zealanders are bright enough to figure out the kind of person who will be attracted to the business of pimping or brothel-keeping. Let's be frank – they are people who are prepared to exploit young women for sordid monetary gain" (Anon 2003b). Copeland conflates brothel owners with "pimps", and creates a strong discursive opposition between managers and 'ordinary people' who are able to recognize their "sordid" motivations. In another example, the *New Zealand Herald* reported on the challenges facing police in solving the murder of Sheryl Brown, a homeless woman whose body was found in an Auckland red light district: "[Detectives] said the investigation was difficult because the type of people who frequented the Karangahape Road area 'don't want to be identified for a number of reasons'" (Gower

2003). Here, the detective implies that there is something shameful about frequenting red-light districts, and that the “type of people” who do are so eager to avoid police or public notice that they would refuse to assist in a murder investigation without incentive.

As these examples illustrate, in some cases, the separation of ‘us’ and ‘them’ is achieved through direct discursive identification of “the kind of person” or “types of people” who become involved in the sex industry, solicit a sex worker, or frequent red-light districts (Anon 2003b). In other cases, separation occurred more subtly, through the juxtaposition of a polluted group – prostitutes and their clients – with reputable citizens (Gower 2003; Moore 2003). However, in my sample, the most common form of separation involved the discursive opposition between sex workers and a speaker or writer’s family, most often a daughter. Many Members of Parliament argued against the Prostitution Reform Act on the grounds that they and their constituents would not want their children to be sex workers. For example, in an interview with the Herald, MP Craig McNair said, “I just have to put myself in the shoes of a parent and I wouldn’t want my children to go into that industry” (Mold 2003). In a speech before Parliament, MP Larry Baldock declared, “I would be happy for my daughter to work as a barmaid; I would not be happy for my daughter to spread her legs and be a prostitute” (Watkins 2003). Member of Parliament Clayton Cosgrove said, “I have taken a lot of soundings from folk in the community on both sides of the argument and I have made my decision. I don’t want to be confronted by parents who say my son or daughter has decided to embark on a unique career opportunity thanks in part to you” (Watkins 2003). And MP Harry Duynhoven remarked, “Like many of us, I would be horrified if one of my children said, ‘Dad, this is what I want to do with my life’” (Anon 2003c).

By using phrases such as “like many of us”, the speakers position themselves as members of an “us” group of concerned citizens. In these examples, the parliamentarians reinforce a sense of separation between sex workers, a defiled group who “spread their legs” for paying customers, and members of their own families. Furthermore, although the speakers would undoubtedly reject sex work as a legitimate occupation for all of their family members, they focus exclusively on their children, and their daughters in particular. This emphasis on female children highlights the binary oppositions of innocence/corruption and virginity/promiscuity that underpin the stigma of sex work. There was no significant change in the frequency of discursive separation after decriminalization. I noted 25 instances of separation in 20 articles in the six months preceding the passage of the PRA, and 27 instances in 19 articles in the six months following.

Discrimination

Link and Phelan identify discrimination as the final component of stigma. The inclusion of discrimination is crucial to a sociological understanding of stigma; it extends the concept from the cognitive and interpersonal realms to the social, structural, and institutional spheres. Media analysis does not allow for an exhaustive assessment of discrimination, as countless instances of unequal treatment are unfortunately not deemed newsworthy. However, my newspaper data does clearly suggest that the passage of the Prostitution Reform Act enabled a new form of discrimination against sex workers through the development of harsh local bylaws. In this final empirical section, I suggest that the development of discriminatory bylaws was an unanticipated consequence of national law

reform (Merton 1936). I offer these preliminary findings as a promising avenue for future research.

Prior to decriminalization, the illicit nature of sex work put those involved in the sex industry at risk for discrimination. Sex workers feared that a conviction for solicitation could jeopardize their relationships with employers or landlords, many of whom require a background check as a precondition of employment or housing (Jordan 2003). The passage of the Prostitution Reform Act reduced discrimination associated with criminal convictions. Solicitation laws were repealed, so sex workers no longer feared that new criminal convictions would jeopardize their employment, housing, or financial prospects. New Zealand also pursued legislative reform to allow individuals who had been convicted of decriminalized offenses such as homosexuality or prostitution to have these convictions expunged from their records (Government of New Zealand 2004). However, while some provisions of the PRA directly reduced discrimination, others indirectly enabled new forms of discrimination at the local level. Specifically, Sections 12, 13, and 14 granted powers to local councils to regulate the location and signage of brothels. Some municipalities would use this new authority in ways that contravened the spirit and the letter of the new decriminalization law.

Even before the Act was ratified, local governing bodies began to explore ways to mitigate the effects of decriminalization on municipalities. Most city councils recognized that completely banning sex work would be impossible, so focused on drafting bylaws that restricted sex work to certain areas under Section 14 of the PRA (Orsman 2003b; Powley 2003). The majority of these bylaws stipulated that sex work could not take place within 250 meters of a school or place of worship; some also banned brothels entirely from

residential areas. The stated rationale for these types of regulations was to protect citizens from exposure to harmful or offensive activities (Orsman 2003a). Other common approaches to regulation banned sex work from historic areas and tourist attractions. Councillors argued that sex work pollutes a city's image; they tried to mitigate contamination by segregating sex workers from areas of symbolic importance. Two such bylaws, in Auckland and Christchurch, were found to contravene the PRA and were eventually struck down by the High Court of New Zealand (*Willowford Family Trust and Brown v. Christchurch City Council* 2005; *JB International Ltd v. Auckland City Council* 2006).

Media reports suggest that the development of discriminatory municipal bylaws occurred only after the passage of the Prostitution Reform Act. Prior to the approval of the Act, the location of brothels was subject to the Massage Parlours Act (MPA) of 1978. The MPA regulated the location and function of massage parlors, not brothels. However, “the introduction of the legal concept of massage parlors in the 1978 Massage Parlors Act enabled a state-endorsed sex industry to operate behind the facade of a superficially innocent massage activity” (Barnett 2007:1). In administering the MPA, local councils routinely disregarded issues like proximity to schools, neighbourhood character, and the like – issues that would become central to the regulation of brothels in the wake of the Prostitution Reform Act. In some cases, the same city councillors who had initially approved the location of brothels before decriminalization were responsible for drafting discriminatory bylaws following the passage of the PRA (Rudman 2003). The reduction of structural stigma at the national level through decriminalization seems to have created new

and surprising opportunities for stigmatization at the local level. This relationship between decriminalization and municipal bylaws merits further study.

Conclusion

The law is more than a system of rules backed by threats; it also exerts significant symbolic power to delineate the boundaries of citizenship. Regulatory regimes governing sex work reflect normative assumptions about the acceptability and respectability of sex workers. By removing all criminal laws pertaining to the sale or purchase of sexual services, full decriminalization is necessary for the reduction and eventual elimination of sex work stigma. In these environments, media representations of sex work play an integral role in shaping public discourse. Under decriminalization, media outlets define the terms of acceptable sex work, partially fulfilling a role previously played by the criminal justice system. Although the decriminalization model relies on the fewest stigmatizing assumptions about sex work, it is no guarantee of social acceptance. It can take years for public opinion and social norms to fully catch up to the law, and scholars have documented persistent sex work stigma in New Zealand nearly two decades after the passage of the Prostitution Reform Act. Nevertheless, recent work on the implications of same sex marriage law in the United States has shown that perceived norms are significantly and immediately responsive to legal changes. Are media representations similarly responsive?

In this paper, I asked: How does decriminalization influence media representations of sex work? I focused specifically on the impact of New Zealand's 2003 Prostitution Reform Act; the closeness of the vote and the scope of the reforms make the passage of this law a crucial hinge event embedded within a longer-term process of decriminalization

in New Zealand. Using Link and Phelan's four components of stigma as a conceptual frame, I undertook a comparative analysis of portrayals of sex work and sex workers in New Zealand's three largest newspapers in the six months preceding and six months following the passage of the vote. I found that decriminalization was associated with a decrease in labelling and stereotyping, but no change in separation. Furthermore, although my data did not permit a conclusive analysis of discrimination, I presented preliminary findings to suggest that the passage of the PRA resulted in a significant and immediate increase in discriminatory municipal regulations. Although the national decriminalization law precluded more overt forms of discrimination in housing or employment, it also indirectly enabled discriminatory zoning at the local level.

This study makes a number of conceptual and methodological contributions to literatures on sex work stigma and media representations. Conceptually, I adopted the systems approach to the study of stigma proposed by Ryan, Nambiar, and Ferguson (2019) to explore a potential relationship between structural destigmatization through law reform and symbolic stigma in media. I also used Link and Phelan's (2001) components of stigma to frame my qualitative content analysis. Clearly, this is not the only way to document stigma in representations. However, Link and Phelan's approach is well-established in the stigma literature, and this disaggregated approach allows for stigmatization representations to vary in degree as well as in kind. This proved important in my study, as I found labelling and stereotyping decreased, separation stayed constant, and certain forms of discrimination increased.

Methodologically, my study is innovative in several regards. First, to my knowledge, it is the first to apply the framework of eventful analysis to the study of sex

work decriminalization. In a significant departure from existing research on media representations on sex work, I treat the passage of the Prostitution Reform Act as a critical juncture, and measure stigmatizing representations before and after. My study differs from existing research on media representations of sex work in that it is directly comparative, holds the length of the pre- and post-implementation periods constant, analyzes representations immediately following the passage of the law, and significantly restricts the period of study. This research design does not allow me to speak to the long-term evolution of media representations over time. However, it complements existing work by problematizing the assumption of cultural lag and shedding light on the ways in which media representations of sex work changed at a crucial moment in New Zealand's history.

This paper raises several promising avenues for future research. First, although I observed changes in the nature and degree of stigma in media representations in the period immediately following decriminalization, it remains to be seen whether and how these changes persisted over time. My analysis could be repeated with a longer post-implementation period of study, or with multiple six-month snapshots over time. Second, although media representations of sex work are an essential component of the cultural landscape, public opinion and social norms also play an important role. Future studies could incorporate complementary data sources such as public opinion polls in order to investigate the relationship between media discourses and other indicators of public and cultural attitudes toward sex work. Finally, my preliminary findings suggest that decriminalization was correlated with a sharp increase in discriminatory bylaws. It seems that in New Zealand, a reduction in structural stigma at the national level inadvertently

enabled an increase in structural stigma at the local level. Additional research should investigate this unanticipated consequence.

Fully destigmatizing sex work is a complex task that will likely be the work of decades. Although the passage of the Prostitution Reform Act certainly did not eliminate stigma against sex workers, there were noticeable differences in media portrayals of sex work in major newspapers immediately following the passage of the law. These changing representations offer evidence of the symbolic power of legal events to delineate the bounds of citizenship.

Chapter 3

“Tyranny of a Slim Majority”: Democracy Frames and Backlash against Narrow Legislative Victories

Introduction

In August 2005, as part of its campaign platform, New Zealand’s centre-right opposition party United Future announced a policy whereby any parliamentary decision receiving less than a 60 percent majority would be subject to an automatic citizens’ referendum. In a press release, Party Leader John Dunne argued, “laws which significantly impact on the social and constitutional direction of our country are too easily foisted upon us by groups whose views simply do not accord with those held by the majority of New Zealanders. Changes are needed so that citizens can be confident that the views of the majority are reflected in the laws enacted by Parliament” (United Future 2005a). Dunne was particularly concerned about two laws – the Prostitution Reform Act (PRA), which passed by one vote in the House of Representatives in June 2003, and the Supreme Court Act (SCA), which passed by three votes in December of the same year. These laws, which pertained to significant moral and constitutional questions, were controversial and provoked a backlash, mainly from opposition parties and special interest groups. In both cases, opponents attempted to prevent the implementation of the legislation through popular referendum, though their efforts were ultimately unsuccessful. In addition to the substantive content of the laws, stakeholders objected strongly to the circumstances of their passage: the closeness of the votes was a major point of contention in both referendum campaigns.

In this paper, I analyze the backlash to the Prostitution Reform Act and Supreme Court Act in order to illustrate how closeness informed opposition messaging. I analyze parliamentary transcripts, press releases, and newspaper coverage of both laws and their respective referendum campaigns to suggest that vote margin played an important role in backlash against the legislation by creating conditions in which opponents could challenge the legitimacy of the vote. In New Zealand, opposition discourse centred on portraying the votes on the PRA and SCA as fundamentally undemocratic. In particular, stakeholders emphasized themes of public participation and support, as well as politics and ideology in challenging the legitimacy of these narrow legal victories.

In the first section, I identify major gaps in existing literatures on law and social change and backlash. Next, I introduce my case studies, data, and method. In the third section, I present findings from my analysis of transcripts, press releases and newspapers. I conclude by reviewing the argument and offering some avenues for future research.

Theorizing Backlash

For decades, activists, policymakers, and public interest lawyers have appealed to the law to bring about widescale social transformation. From the passage of women's suffrage, to the enactment of civil rights and anti-discrimination legislation, to landmark legal victories in cases such as *Brown v. Board of Education*, history is rife with examples of successful legal mobilization. However, while the relationship between law and social change is a central sociolegal question, scholars disagree as to whether the law is an effective means of social transformation, at both structural and attitudinal levels.

Some scholars draw on examples like the US Civil Rights Act to contend that the law can act as both a rule-shifter and a culture-shifter (Stoddard 1997). Scholars of legal mobilization point out that the judiciary can provide a voice for marginalized groups who may lack representation in the political system (Kessler 1990; Scheingold 2004; Zemans 1983). McCann (1994, 1996) notes that even in the absence of formal legal victories, the law can indirectly further social movement aims. For instance, drawing on his research into the American movement for pay equity reform, he argues that although unions played a crucial role in securing reform, “unions themselves are to a large extent legal constructs, and legal battles have been crucial to union development and vitality” (1996:470). Not only do legal struggles play an important consciousness-raising function for social movements, but legal norms and concepts like equality and rights also form the basis of their collective action frames (McCann 1996; Snow and Benford 1992). Finally, political scientists have explored the effects of legal victories on public opinion. For instance, Tankard and Paluck (2017) conducted a survey experiment of perceived norms and personal attitudes toward marriage equality immediately after the Supreme Court legalized same-sex marriage in *Obergefell v. Hodges* (2015). They found “strong evidence that an institutional decision can change people’s social norm perceptions – perceptions of what the public believes and what the public will believe in the future” (2017:1342). This is significant given that how an individual perceives the norms and beliefs of others strongly predicts their own behaviour.

Others are more skeptical of the law’s transformative potential. As Matt Coles, Director of the ACLU’s Lesbian and Gay Rights Project, explained to the *New York Times*, “[W]e’re unprepared for the consequences of winning. Winning in court too soon could

mean losing in the court of public opinion, in Congress, and under the United States Constitution” (qtd. Penn 2009:36). This intuition is well substantiated in the literature, where scholars have documented a so-called backlash effect of legal reform. Price and Keck neatly summarize the backlash hypothesis: “social movements should avoid reliance on judicial politics because such strategies will be ineffective at best and counterproductive at worst; in other words, they will often spark political countermobilization that will set the movement further back than when it started (2014:5).

There is an extensive empirical literature documenting the backlash effect of laws pertaining to civil rights (Rosenberg 2008; Stoddard 1997), reproductive rights (Greenhouse and Siegel 2011; Post and Siegel 2007; Ziegler 2014), gay marriage (Bishin et al. 2016), eminent domain (Somin 2009), and the death penalty (Mandery 2013; Somin 2009), among other issues. For example, in his pathbreaking book, *The Hollow Hope*, Gerald Rosenberg (2008) traces the direct and indirect effects of landmark American Supreme Court decisions in *Brown v. Board of Education* and *Roe v. Wade*, concluding that significant social transformation through litigation is nearly impossible. In another example that illustrates the far-reaching unanticipated consequences of law reform, Stoddard (1997) explains how one favourable ruling on marriage equality by the State Supreme Court of Hawaii ultimately set back the national movement for gay rights. After the Court ruled in *Baehr v. Lewin* that the equal protection clause of the state’s constitution would compel the state to issue marriage licenses to same-sex couples, conservative legislators in other states quickly passed legislation that would bar the recognition of out-of-state same-sex marriage licenses, even though no such license had yet to be issued. Hawaii’s ruling gained national attention, and ultimately contributed to the passage of the

federal Defense of Marriage Act, which legally defined marriage as a union between one man and one woman, effectively barring same-sex couples from accessing federal benefits. As this example illustrates, legal rulings often provoke significant backlash at the political and institutional levels. Furthermore, political scientists have explored the potential for public opinion backlash (Haider-Markel and Meier 2003). Although evidence of an attitudinal backlash to law reform is mixed, scholars have found that the mere assumption that the passage of a law will provoke an outcry from constituents can jeopardize progressive politics (Bishin et al. 2016).

Clearly, the question of whether the law is an effective means of social transformation is unsettled, and evidence in support of the backlash hypothesis is mixed. However, regardless of the specific conclusions drawn by the authors cited above, there exist major empirical and conceptual gaps in the literatures on law and social change, and on backlash more specifically. First, the empirical focus of this scholarship is predominantly American. To a certain extent, this is unsurprising given its intellectual origins in the Law and Society Movement, a tradition of sociolegal scholarship founded in American universities in the mid-1960s and initially funded by the US-based Russell Sage Foundation (Silbey 2002:861). However, the focus on American state and federal cases also informs the broader theoretical arguments advanced about the nature and scope of social transformation. The United States is a unique political system with a singular political culture. Several features of the American case – the interplay between levels and branches of government, an active judiciary in a common law system, a robust system of direct democracy, and a stable two-party system – shape the path of legal mobilization and

the social consequences of law reform³. In short, though the backlash literature purports to speak to the broad relationship between law and society, in fact, it speaks mainly to the specific relationship between *American* law and *American* society. Additional empirical research is needed to explore the dynamics of legal mobilization and backlash in other countries.

The second major gap in the law and social change and backlash literatures is the disproportionate focus on judicial rulings. Scholars hypothesize that legislative decisions will have different social effects than judicial verdicts; they are expected to provoke less backlash due to the perceived legitimacy of the legislative as compared to the judicial branch (Flores and Barclay 2016:46; Stoddard 1997). This thesis rests on the issue of representation: because the legislature claims to speak for constituents, these constituents are likely to perceive its decisions as more legitimate than those emanating from an appointed judiciary. Nevertheless, few studies systematically explore the social consequences of legislation. This likely partially reflects the predominance of American empirical cases, since the active role of the judiciary means that legal mobilization efforts

³ First, the federal system means that the states enjoy a great deal of autonomy, and can and do pass laws that undermine or challenge federal legislation (Mandery 2013; Somin 2009). On the other hand, as in the case of same-sex marriage, action at the state level can also provoke a federal response. These dynamics are by no means common to all nation-states, or even to all federations. Second, because the United States employs a common law system largely based on precedent, judges play a significant role in determining legal outcomes through their interpretation of case law. This is not the case in codified civil law systems. Furthermore, the American judicial branch is very active, even among common law countries, with an extensive network of appellate, circuit, and district courts issuing thousands of rulings each year (IAALS 2020). In comparison, prior to the passage of the Supreme Court Act in 2003, New Zealand had no domestic superior court, relying instead on appeals to the British Privy Council. In the decade prior to the creation of the Supreme Court, the Privy Council issued only 21 decisions regarding New Zealand (Advisory Group on the Privy Council 2002). Third, the United States has a robust system of direct democracy at the federal, state, and municipal levels. The initiative process offers an important avenue for social change, as voters must not depend solely on the legislative or judicial branches for reform, and the initiative is often used to address deep social or moral issues. Finally, America's entrenched two-party system means that the relationship between the parties is adversarial and generally inflexible – by definition, one party is always in opposition. In parliamentary systems with more political parties, there is a greater possibility of coalition building, and political alliances can be unpredictable and subject to change (Giannetti and Benoit 2009).

will almost always end up in court. Those studies that do include a focus on the legislative branch typically look at legislation as part of a broader story about the evolution of a particular social movement, a story that almost always includes court victories and/or ballot measures (see, for example: Hillyard and Dombrink 2001; McCann 1994)

Third, studies of backlash that adopt a macrohistorical approach can suffer from conceptual imprecision – what exactly *is* backlash? For the most part, studies of public opinion backlash tend to explicitly define their terms for the purposes of operationalizing their variables. This level of definitional precision is common in the public opinion literature because the object of analysis – opinion as measured with surveys – is granular and the temporal focus is relatively short. On the other hand, studies that take a more macrohistorical approach to the evolution of various sociolegal issues – McCann’s study of the movement for equal pay, for instance, or Stoddard’s account of the origins of the Defense of Marriage Act – tend to leave the definition of backlash largely implicit. Because these studies offer historical accounts of social movement struggles over many years or even decades, they prioritize major events to reconstruct a narrative of social change. They emphasize passed legislation, or major protests, or initiatives that successfully qualify for the ballot. They may not include cases dismissed by the court, ballot measures that fail to collect the requisite number of signatures, or legislation that does not move beyond the committee stage. In short, they focus on what *does* happen, not what doesn’t. This tendency to focus on major or “successful” events is compounded by the fact that this scholarship is dependent on archival materials and the recollection of interviewees, data sources which may inadvertently prioritize only the most memorable campaigns or events. Whatever the cause, the implication is that backlash requires a certain threshold of opposition, which

obscures movements that fail to secure this critical mass. However, I argue that peripheral opposition movements, failed repeal efforts, or unsuccessful political initiatives can reveal a great deal about the social consequences of law. Broadening the focus to include failed as well as successful opposition movements reconceptualizes backlash as a dynamic process, rather than a sequence of major outcomes.

If backlash is conceived of as a process rather than a teleological sequence of outcomes, we can study it using analytical concepts from scholarship on social movements, especially frames. As Goffman (1986) notes, frames are schemas that individuals use to identify and interpret events in their lives and in their broader society. By making events meaningful, frames guide individual and collective action. Benford and Snow extend Goffman's work on framing by developing the concept of collective action frames, which render social events meaningful for the purpose of mobilizing supporters and demobilizing opponents. Collective action frames are "action-oriented sets of beliefs and meanings that inspire and legitimate the activities and campaigns of a social movement organization" (Benford and Snow 2000:614). Some collective action frames are broad enough to inform the activities of multiple movements; these master frames often rely on powerful appeals to fundamental values. Examples of master frames include rights (Hull 2001), choice (Davies 1999), injustice (Gamson et al. 1992), and a return to democracy (Noonan 1995). Social movement scholars have applied frame analysis to backlash, but generally only in cases in which opposition is so significant that it becomes a distinct counter-movement. For example, the pro-life movement is analyzed as a social movement unto itself, rather than as a backlash to the expansion of reproductive rights (Rohlinger 2002). I suggest that

frame analysis can be productively applied to all cases of backlash, even those that fail to reach critical mass or converge into counter-movements.

Finally, beyond distinguishing between legislative and judicial decisions, the backlash literature overlooks the circumstances of a law's passage as a potential source of opposition. To my knowledge, no studies in sociology, legal studies, or political science have identified vote margin as a potentially salient factor in explaining backlash to legislative decisions. This would be a natural extension of existing work that theorizes the conditions under which a law is likely to be an effective means of behavioural or social change, as it hinges on the issue of perceived legitimacy (Weber 1964). For example, Tom Tyler and Yuen Huo (2002) argue that people are more likely to respect legal authorities and comply with their orders when they believe that these authority figures have acted fairly. This perceived fairness grants legitimacy to legal actors, which fosters compliance with the law and trust in the legal system (Tyler 1990). For his part, Stoddard (1997) centres legitimacy in explaining divergent legislative and judicial outcomes at the societal rather than individual level. He explains that if the law is to be an effective tool of social transformation, it must shift not only the formal rules regulating behaviour, but also a society's underlying norms and values. For a law to be a "culture-shifter", it must be seen as valid – even if citizens do not agree with a law's substantive content, they must believe that the law itself is legitimate. For Stoddard, legitimacy is derived from the source of the law, which explains why, at best, judicial verdicts often fail to significantly transform social norms, and, at worst, provoke a significant backlash (see also Rosenberg 2008). Because judges are appointed rather than elected, judicial decisions are often perceived as "illegitimate, high handed and undemocratic – [acts] of arrogance by the [...] philosopher-

kings sitting on the Court” (Stoddard 1997:997). On the other hand, Stoddard claims that laws that emanate from an elected legislative branch are more likely to be seen as the will of the people, which grants them greater legitimacy (985). Close votes also raise the issue of legitimacy. These votes seem particularly contingent: because they pass or fail by narrow margins, there is a sense that, but for this or that factor, things could have gone the other way. Close votes are precarious and suspenseful, as evidenced by the metaphors we use to describe them – a cliffhanger, the razor’s edge, hanging in the balance. This precarity troubles the outcome of the vote; the question may have been formally decided, but the narrow margin opens a liminal space in which opponents can challenge the legitimacy of the decision. The automatic recount, in which margins are so narrow the results cannot be finalized until each vote is counted again, illustrates this dynamic. The recount is an institutional mechanism, triggered at a set margin, that is designed to reassure voters of the legitimacy of the results and preclude opposition challenges. Although the set margins at which an automatic recount is triggered give the impression that there is some objective standard of closeness, I contend that closeness is always constructed.

In this paper, I analyze backlash to the Prostitution Reform Act (2003) and the Supreme Court Act (2003), which passed narrowly in New Zealand’s 47th Parliament. I define backlash broadly as shared negative reactions to changes in the status quo (Lipset and Raab 1970; Sanbonmatsu 2008). This definition assumes that backlash is not an individual phenomenon, but deliberately does not specify the scope, significance, or duration of negative reactions. My empirical focus extends the backlash literature in several ways: my cases are non-American, the laws emanated from the legislative branch and were not challenged in the courts, and the repeal efforts, which were largely concentrated to

elites and never reached critical mass in the broader public, ultimately failed. These cases bring to the fore the ways in which backlash is shaped by social and political forces. Political dynamics are especially important in unsuccessful legislative backlash movements; because they fail to gain traction with the broader public, these movements are largely confined to the political sphere. I argue that vote margin played an important role in the backlash against the Prostitution Reform and Supreme Court Acts by creating conditions in which opponents could question the legitimacy of the votes. Political elites and special interest groups strategically used the closeness of the votes to frame both process and outcome as fundamentally undemocratic.

Case Studies, Data, and Method

Before turning to the specifics of my case studies, some background on New Zealand's system of government and the 47th Parliament is needed. New Zealand uses a Mixed Member Proportional (MMP) voting system, in which each citizen gets two votes – a party vote, and an electoral vote. The party vote decides the number of seats in Parliament held by each party; for example, a party receiving 30 percent of the party vote will hold roughly 30 percent of seats in the House of Representatives. The electoral vote decides who will become an electorate Member of Parliament (MP). The House of Representatives has 120 seats, the majority of which are held by electorate MPs. The remaining seats are filled by list MPs, drawn from ranked lists of candidates compiled by each party. Under MMP, it is extremely rare for one party to win enough of the party vote to form a majority government; the winning party must enter into coalition or confidence-and-supply agreements with other parties to form a government or pass legislation

(Institute for Government 2017). MMP replaced the First Past the Post (FPP) system⁴ in 1993 following a Royal Commission and binding popular referendum.⁵

In New Zealand, referenda may be citizen-initiated or government-mandated, and the results are almost always non-binding. Under the 1993 Citizens' Initiated Referenda Act, a non-binding referendum can be held on any question that receives the signed support of 10 percent of registered voters. As of 2020, only five of 48 petitions collected sufficient signatures to appear on the ballot (Roberts 2020). The 1993 Electoral Act stipulates that referenda must be conducted for issues of electoral procedure, including the voting age and method of voting, unless legislation passes by a 75 percent majority in the House of Representatives (Government of New Zealand 1993:268). However, the same Royal Commission that led to the adoption of MMP also recommended that binding referenda be used in cases of major constitutional reform or significant conscience issues (Mapp 1995:446), though this recommendation has not been consistently applied.

During the 47th Parliament (2002-2005), Prime Minister Helen Clark led the centre-left Labour Party in a coalition government with the leftist Progressive Party. The coalition was backed by a confidence-and-supply agreement⁶ with centre-right United Future. The

⁴ In a First Past the Post system, each citizen votes directly for the candidate they want to represent their geographic constituency; the candidate with the most votes becomes the MP for that electorate, even if they failed to win an absolute majority of votes cast.

⁵ First Past the Post tends to strongly disadvantage small parties, and can result in situations in which a party wins an election despite failing to receive a plurality of the popular vote. Since the 1930s, New Zealand politics were dominated by strong majority Labour and National governments, with criticism of FPP intensifying in the late 1970s and early 1980s. After Labour failed to secure the seats necessary to form a government despite winning the popular vote in 1978 and 1981, the party promised to establish a Royal Commission to explore electoral reform. A Labour victory in 1984 saw the establishment of the Royal Commission on the Electoral System, which recommended the adoption of MMP in 1986. In a 1992 referendum, voters were asked if they supported electoral reform, and to select an alternative voting system. In 1993, in a second referendum, 54 percent of citizens voted to replace FPP with MMP (Mapp 1995).

⁶ In a confidence-and-supply agreement, a party promises to support the governing party or coalition in motions critical to the survival of the government – specifically those of confidence, appropriation, or budget.

centre-right National Party formed the official opposition. Other parties included New Zealand First (nationalist populist), ACT New Zealand (right-wing libertarian), Green Party (leftist), and Maori Party (centre-left, established July 2004) (Library of Parliament 2002).

Backlash against the Prostitution Reform Act and the Supreme Court Act

The Prostitution Reform Act (PRA) fully decriminalized sex work at the national level. Prior to the passage of the Act, selling sex was not, in itself, illegal, though all related activities were criminalized. The bill, drafted in consultation with the New Zealand Prostitutes' Collective, was based on a harm minimization approach that aimed to protect the rights and promote the health and safety of sex workers (Abel et al. 2010). The bill was designated a conscience vote, meaning that Members of Parliament would not be bound by party affiliation in supporting or rejecting the bill. The PRA passed on June 25, 2003, in a vote of 60 for, 59 against, and one abstention. The country's first Muslim MP, Ashraf Choudhury, abstained, citing moral and religious concerns; his decision was integral to the approval of the Act as a tied vote would have resulted in the bill's defeat.

In 2004, the United Future party launched a campaign to repeal the Prostitution Reform Act through citizen's-initiated referendum. With the support of Christian think tank The Maxim Group, one of the strongest and most vocal opponents of decriminalization, United Future organized a Repeal Week in Auckland timed to correspond to the one-year anniversary of the bill (Anon 2004b). The goal was to collect 310,000 signatures on a petition that would place the question, "Do you believe the

However, cooperating parties to confidence-and-supply agreements are free to vote against government motions on conscience or legislative votes (Paun and Hibben 2017).

Prostitution Reform Act should be repealed?” on the ballot for the 2005 general election. Ultimately, the repeal campaign was unable to collect the requisite number of signatures for a citizens’ referendum, and the Prostitution Reform Act remains in Force.

The Supreme Court Act (SCA) abolished the right of appeal to the Judicial Committee of the Privy Council of the United Kingdom⁷ and established a national Supreme Court of New Zealand. The Supreme Court Bill’s primary objective was to expand access to justice. The Judicial Committee heard an average of only 11 appeals from New Zealand each year; the proposed national Supreme Court would hear an expected 50 cases annually, and would drastically reduce the costs associated with filing an appeal (Government of New Zealand 2002b). A secondary objective of the legislation was to symbolically assert national sovereignty by severing an important link to New Zealand’s colonial past. Unlike the Prostitution Reform Act, which was designated a conscience vote, the Supreme Court Act was a whipped, or party, vote. In other words, MPs were expected to vote *en bloc* in accordance with the wishes of party leadership⁸. The Government maintained that the Supreme Court Act was largely a procedural matter and should therefore be decided by a normal parliamentary vote. Opponents disagreed, claiming that the proposal amounted to a significant constitutional change, and should thus be subject to a popular referendum.

⁷ The Judicial Committee was originally the highest court of appeal for the British Empire, and today fulfills that role for UK overseas territories and dependencies, as well as some Commonwealth countries (Judicial Committee of the Privy Council 2020). New Zealand was the last of the former Dominions to retain the right of appeal.

⁸ While party members can technically break ranks on a whipped vote, this is extremely rare, as it signals a major break with party leadership. Members who cross the floor typically face serious consequences, including losing a portfolio or Cabinet position, or being ejected from caucus.

Unlike in the case of the Prostitution Reform Act, where opponents used a citizens' referendum to put pressure on Parliament to repeal the Act only after it was adopted, opponents to the Supreme Court Act attempted to use a referendum before the legislation was passed to prevent its eventual implementation. While the Bill was before the select committee, ACT Member of Parliament Stephen Franks proposed an amendment that stipulated that the legislation could not come into force until it had been approved by a bare majority of voters in a binding referendum (ACT New Zealand 2003a). This amendment was rejected by a majority of Justice and Electoral Select Committee members. Following this loss, in July 2003, ACT sponsored an attempt by Auckland lawyer Dennis Gates to collect sufficient signatures to qualify a citizens' initiative on the question, "Should all rights of appeal to the Privy Council be abolished?" (ACT New Zealand 2003b). Although the results of this referendum would be non-binding, opponents to the SCA hoped that a successful initiative would send a strong rebuke to the Government and push them to reconsider the legislation. However, Gates was unable to collect sufficient signatures to qualify for the ballot, and the campaign for referendum was dropped. Ultimately, the Labour-Progressive coalition, with the support of the Green Party, passed the Supreme Court Act on October 14, 2003, in a vote of 63 for and 53 against.⁹

When referendum campaigns against both the Prostitution Reform Act and the Supreme Court Act proved unsuccessful, opposition parties crafted policies to check the power of Parliament and mitigate the effects of future close votes. Both United Future and New Zealand First made the expansion of direct democracy an integral part of their platforms heading into the 2005 election. United First promised that, should they be

⁹ Four members were absent and did not vote.

elected, any parliamentary vote that passed with less than a 60 percent majority would automatically trigger a referendum. Any referendum that passed with at least a 60 percent majority and at least 60 percent voter turnout would be binding; otherwise, the results would be indicative, and the government would be required to conduct an official inquiry into the issue. United Future also proposed lowering the threshold for qualifying an initiative from 10 to 5 percent of registered voters; any referendum that passed but didn't meet the 10 percent threshold would be indicative rather than binding, and Parliament would be required to conduct an inquiry. United Future also promised that, if elected, it would hold another binding referendum on the MMP electoral system (United Future 2005a). In its platform, New Zealand First promised that all successful citizens' initiatives would be binding, and could only be vetoed by a 75 percent majority House vote within a month of passage (New Zealand First 2005). Voters were not persuaded; both United Future and New Zealand First lost seats in the 2005 election, though both parties supported the Labour-Progressive coalition through confidence-and-supply agreements in the 48th Parliament.

Data and Method

Data for this project is drawn from three sources: 1) Hansard verbatim transcripts of parliamentary debates, speeches, and questions pertaining to the Prostitution Reform Act and the Supreme Court Act; 2) all newspaper articles about both pieces of legislation published in the *New Zealand Herald*, the country's highest circulating major daily (N=213), from the introduction of legislation in the House to the end of the referendum campaigns; 3) press releases referring to each law from the time the bill was introduced in the House to the time the repeal campaign were abandoned (N=59). My goal in data

collection was not to craft a representative sample of all public discourse about sex work or judicial reform; rather, I use newspaper articles and press releases to capture the perspectives of the political elites and special interest groups on both sides of the referendum issue¹⁰. I focus on the construction and promotion of democracy frames, not their reception, and make no claims as to the dominance or prevalence of these frames as compared to others. Although my case studies vary in terms of the type of vote and the timing of opposition efforts, my objective is not to directly compare discourses about the two laws. Instead, I use these case studies together to illustrate a pattern of invoking the closeness of the vote to justify repeal efforts on democratic grounds.

Using the software program NVivo 11, I analyzed the data following the flexible coding approach proposed by Deterding and Waters (2018). Although this approach was developed primarily for interview transcripts, it is also well-suited to qualitative content analysis. Unlike traditional qualitative coding techniques derived from grounded theory, flexible coding proposes a two-stage process in which researchers first become familiar with their data by applying broad codes reflecting the concepts motivating the study. These broad codes serve as a type of index, allowing the researcher to more easily apply focused codes to subsections of the data. In the initial stage of data analysis, I applied the code ‘Close’ to all passages that mentioned the vote margin, narrowness, or contentiousness of the legislation. After indexing the data in this way, I used an inductive approach to identify more specific themes. The broad theme of democracy emerged from the data at this stage,

¹⁰ In the case of the Supreme Court Act, the *Herald* editorial board itself was an important opponent of the legislation, and played an active role in the referendum campaign.

as did two specific subthemes: 1) public consultation and popular support, and 2) politics and ideology.

Findings

Opponents of both the Prostitution Reform Act and the Supreme Court Act invoked closeness as evidence of uncertainty or precarity to justify amending or repealing the law. For instance, in an update on progress toward collecting signatures to qualify a referendum on the Prostitution Reform Act, MPs Larry Baldock and Gordon Copeland argued, “People will recall that the [Act] became the law of the land [...] on a vote of 60 for, 59 against, and one abstention – the closest possible result! We believe that all New Zealanders should, in the light of that effective dead heat, be given an opportunity to have their say” (United Future 2004). Here, the MPs refer to the closeness of the vote to imply that the outcome was unclear; the phrase “effective dead heat” suggests that the vote was essentially tied, with citizens called upon to break the tie and clarify the result through referendum. Although the Prostitution Reform Act passed by a narrower margin than the Supreme Court Act, in both cases, opponents of the legislation invoked closeness as evidence of uncertainty or precarity to justify amending or repealing the law. Furthermore, these justifications were based on a discourse in which close votes were portrayed as fundamentally undemocratic.

Opponents of both Acts frequently described the legislation as a betrayal of democracy (Library of Parliament 2003b). This rhetoric was used to describe both the conscience vote that passed the Prostitution Reform Act and the whipped vote that passed the Supreme Court Act (New Zealand First 2003b, 2005). This suggests that the specific

parliamentary procedures through which legislative decisions were taken were not enough to form the basis of the charge that the votes were undemocratic. Rather, the prevalence of democracy frames across vote type shows how the use of this rhetoric was a political move to undermine the legislation. It was not the fact that the vote was free (or whipped) that made it anti-democratic, but that it was free (or whipped) *and* close. In both of these cases, the closeness of the vote was at the core of debates about the legitimacy of the outcome, while the specific parliamentary procedures were strategically marshaled as supporting evidence. These debates centred on two specific themes: public consultation and popular support, and politics and ideology.

Public Consultation and Popular Support

A common argument made by opponents to the Prostitution Reform and Supreme Court Acts was that these decisions did not reflect the will of the people. First, many argued that the legislation was passed without public consultation. For example, in a press release laying out the direct democracy policy, the New Zealand First Party characterized the sex work and Supreme Court laws as political whims: “New Zealand has witnessed a period of the most dramatic changes to our social and constitutional fabric. And all of this without any real public consultation. [...] Do you remember being asked about [legalized prostitution and the abolition of the privy council]? Well your memory is not at fault – you were never asked. In fact these major changes were made on the whim of MP consciences”. The statement framed a lack of consultation as a threat to democracy: “Our democracy is too precious to be trifled with – you must be allowed to have your say on major issues” (New Zealand First 2005). Often, particularly in debates about the Supreme Court Act, the speed at which the reforms took place was cited as evidence for a lack of public

consultation. Stakeholders described the laws as being “foisted upon” citizens, and “rammed through” Parliament (Federated Farmers 2003). For instance, in a critical editorial, the *New Zealand Herald* characterized privy council reform as a “legal steamroller”, and claimed that the government coalition “intends to pass the Supreme Court Bill quickly [...]. It will not slow passage of the bill [...] despite opposition from Maori and business interests, and the concern of at least one of its MPs” (Tunnah and Berry 2003).

In a response published in the *Herald* the next day, Prime Minister Helen Clark took issue with the paper’s implication that the Supreme Court legislation was taking place hastily and without public consultation, arguing that “there has been nothing rushed about moves to provide for New Zealand’s final court of appeal to be located in this country. On the contrary, it has been a long and considered process, with ample opportunity for all interested parties to have their say”. She rejected the editorial board’s depiction of the process as dictatorial, describing it instead as a “democratic decision-making process pursued openly and in good faith with the electorate” (Clark 2003). In her editorial, the Prime Minister lays out in detail the scope and duration of public consultations, noting that the issue of abolishing the right of appeal to the Privy Council had been on the political agenda for 20 years, and that the Labour government had “revived public debate” on the issue in 1999 (Clark 2003). The editorial includes a lengthy summary of the legislative process, in which the Prime Minister repeatedly foregrounds public consultation and support at every stage:

The government underwent a *major consultative exercise* in 2001 and last year to canvas opinion on changes to the court’s structure. We *met extensively* with Maori in 2001 to discuss proposals, and a ministerial advisory group was set up to examine the issues. Labour’s policy to bring the top level of appeal in the court system back to New Zealand was *in our election manifesto last year, so that voters could take it into account*. When the [bill] was introduced to Parliament last December, it was *the culmination of two years of formal consultation and development, which included receiving 70 submissions from the*

public. In June this year, the Government *again consulted Maori* about the courts' structure at a national hui at Taupo. Once the [bill] came before the House, *nearly 300 individuals made submissions* to the parliamentary select committee considering it. *Nine months after its introduction*, the bill was reported back to Parliament, where it has clear majority support. (Clark 2003, emphasis added)

In this passage, the Prime Minister repeatedly highlights the nature, scope, and duration of public consultations, before concluding with a claim of the bill's strong support in Parliament. This framing portrays parliamentary support as a direct reflection and consequence of public consultation and approval. Unlike opponents who characterize the quick passage and close vote as evidence of a lack of public deliberation and support, the Prime Minister refers to a "clear majority" despite the three-vote margin. The implication is that, based on extensive consultation, there is clear support for the bill, which is reflected in its majority support in Parliament. Furthermore, by deliberately invoking national sovereignty in describing the legislation's intent (bringing "the top level of appeal [...] back to New Zealand"), Prime Minister Clark alludes to themes of representation and participation to imply that the national court itself would actually be *more* democratic than the current alternative.

Second, opponents of the Prostitution Reform and Supreme Court Acts claimed that the government's decisions did not reflect public opinion, which they claimed was firmly against both laws. A common strategy was to cite statistics on public opinion drawn from public submissions to Parliament or to local councils, or from polls. For instance, in the case of the Prostitution Reform Act, opponents focused on consultations that took place in the course of the development of brothel bylaws and suggested they were evidence of broader social opposition. Stakeholders noted the volume of submissions to Auckland and Christchurch City Councils, and the proportion of those submissions that were in favour of tighter regulations on the sex industry than would be allowed under the PRA. For example,

a newspaper article about the development of Auckland’s brothel bylaw reported that 50 percent of the 974 public submissions to council supported the strictest possible controls on the sex industry, including a complete ban on soliciting in residential areas (Orsman 2003b).

In the case of the Supreme Court Act, where opposition focused on amending the law before it passed, opponents highlighted the nature and volume of submissions to the parliamentary select committee. For example, in a press release, the lobby group Campaign for the Privy Council argued:

The major users of the Privy Council are all strongly opposed to the new Supreme Court. The public is not noticeably in favour of a new court, and there are far more people actively opposed to the Bill than publicly supporting it. [...] The [Justice and Electoral Select Committee] received 312 written submissions on the Supreme Court Bill this year. These were split 60/40 in favour of appeals to the Judicial Committee of the Privy Council continuing. Oral submissions were 75% in favour of retaining appeals. (Campaign for the Privy Council 2003b)

This passage shows how the Campaign introduces the theme of public support (“the public is not noticeably in favour...”, “there are more people actively opposed than publicly supporting...”) while presenting statistics referring to submissions made by special interest groups (“the major uses of the Privy Council”). The Campaign deliberately portrays the legislation as widely unpopular (and thus undemocratic) rather than opposed only by special interests.

Stakeholders both for and against the Supreme Court Act strategically used polling data to support their positions. In particular, opponents of the bill cited a poll conducted by the *New Zealand Herald* that found a lack of popular support for the legislation, as well as high levels of support for a referendum. In an editorial, the editorial board of the *Herald* used the polling data to challenge the legitimacy of the government’s actions: “A new *Herald* poll [...] finds that support has shrunk to 36.1 percent – and 47.9 percent now want

the Privy Council retained. If the Government can still muster a wafer-thin majority in Parliament to pass the Supreme Court Bill, it can no longer claim anything approaching a popular mandate” (Anon 2003a). Here, the editorial contrasts the “wafer-thin majority in Parliament” with a “popular mandate”; it implies that support for the legislation reflects effortful political manoeuvring (“can still muster...”) rather than the general will. Later in the editorial, the board goes a step further, claiming that the coalition government lacks a mandate even within Parliament. The closeness of the vote is fundamental to these claims; not only does the vote margin not reflect the popular will (because, if it did, we would not see such a mismatch between the margin and the polling figures), but the fact that the government was unable to secure broad support in the House suggests a lack of authority to pass the law. In response, Prime Minister Clark challenged the validity of the poll, claiming that design issues limited its accuracy. She accused the *Herald* of deliberately fielding a methodologically flawed “attack poll” in order to score political points (Tunnah 2003a).

In the absence of polling data, opponents marshalled other kinds of evidence in support of their claims, including the actions of local governments and the number of signatures on referendum petitions. For example, several months after the Prostitution Reform Act was passed, and as city councils were drafting new brothel bylaws, MP Gordon Copeland posed the following question to Acting Minister of Justice Lianne Dalziel during Question Period in the House of Representatives: “Does the Minister now agree that the decriminalization of prostitution was not supported by the people of New Zealand, when we see the local authorities who represent those people bringing in restrictions on brothel-

keeping in their areas, thus reflecting the true sentiments of their citizens?” (Library of Parliament 2003a). Acting Minister Dalziel flatly rejected Copeland’s interpretation.

Opponents of the PRA also strategically used the number of signatures collected on the referendum petition to imply that the legislation was unpopular. In a press release, a spokesperson for Stop the Abuse, an anti-trafficking organization, pointed out: “140,000 people have already signed the petition indicating that the public want a say on this controversial law. New Zealanders want a chance to be heard on this issue because it was the most contentious conscience issue in several year and was passed by just one vote” (Stop the Abuse 2004). In referring to the vote margin, the organization draws a sharp contrast between the one deciding parliamentary vote and the 140,000 people opposed to the law. By January 2005, the campaign to collect the signatures of 10 percent of registered voters had failed, but opponents still invoked the number of signatures as evidence of a lack of popular support for decriminalization. Sponsoring MPs Larry Baldock and Gordon Copeland said, “Although we have come up short [...], clearly thousands of New Zealanders believe that Parliament got it wrong in 2003 and calls for repeal will continue” (United Future 2005b).

A final argument made by opponents of the Supreme Court Act held that the Government’s refusal to amend the law to authorize a referendum was evidence of a lack of popular support. This argument was not made with regard to the Prostitution Reform Act, because that referendum campaign sought to repeal the law after it was passed. In the case of the Supreme Court Act, however, many stakeholders claimed that the government had no mandate to pursue such sweeping reforms without a referendum. While the Government argued that changes to court structure were procedural matters that could be

decided by simple majority in the House of Representatives, opponents characterized the measure as a significant constitutional change that should be subject to popular referendum, as recommended by the Royal Commission on the Electoral System. Alasdair Thompson, chief executive of the Employers and Manufacturers Association, argued in a press release: “The Supreme Court Bill represents major constitutional change which is being undertaken without full public participation [...] We believe the [bill] should only proceed if 75 percent of the votes in Parliament support it, or if 51 percent of all eligible voters support it in a referendum” (Employers and Manufacturers Association 2003). Here, Thompson implies that close legislative votes are illegitimate, but close direct democratic votes are not. Not all stakeholders agreed with Thompson; in its party platform, United Future stipulated that only referenda that passed with 60 percent support would be binding (United Future 2005a).

Many special interest groups opposed to the Supreme Court Act accused the government of strategically rejecting the amendment calling for a mandatory referendum because it was afraid it would lose. New Zealand First MP Pita Paraone invoked the Prostitution Reform Act in accusing the government of attempting to force judicial reform in the absence of popular support:

Given the narrow margin by which this bill was scraped through [at second reading], should not a halt be called until such time as adequate debate and consultation have been undertaken? The lack of support surely indicates that this issue needs further policy analysis – or is the Government afraid of what the New Zealand First, ACT, and National petition [...] likely to produce? This Government passed the Prostitution Reform Act by one vote. A similar situation is about to happen here. (Library of Parliament 2003b)

Here, Paraone associates the close vote at second reading with precarity and uncertainty by suggesting that the issue “surely” requires further consideration. He foregrounds the Government as subject, both implicitly (“the bill was scraped through...”) and explicitly

(“this Government passed...”) to imply calculation and strategy. Paraone invokes the Prostitution Reform Act as a cautionary tale – a case of sweeping legislation that was passed by a government intent on pushing an agenda with no popular mandate.

Politics and Ideology

Arguments about the Government’s deliberate refusal to amend the Supreme Court Bill to allow for greater public involvement are closely related to a second theme invoked by opponents of the legislation: that of political manoeuvring and ideology. Both the Prostitution Reform Act and the Supreme Court Act were characterized by opposition parties, and especially those on the far right, as evidence of Labour’s ideological agenda being foisted on the people. For example, in a speech against the Crimes Amendment Bill in March of 2004, United Future MP Marc Alexander brought up the Prostitution Reform Act, calling it “ideological rubbish that this Government is trying to shove down the throats of New Zealanders” (Library of Parliament 2004). In a press release supporting the direct democracy policy, New Zealand First MP Winston Peters accused the Prime Minister of “consulting the mirror on her bathroom wall” rather than seeking popular support for Government policies. Peters argued, “the idea of giving the people a say on major issues fills the Prime Minister and her political coven¹¹ with dismay because they know most people oppose Labour’s agenda to transform New Zealand into a politically correct, gender bent, lawless, Third World republic” (New Zealand First 2003a). Both the PRA and the SCA were cited as prominent examples of the “Labour agenda”. Referring to the Supreme Court Act, the Maxim Group, a prominent Christian think tank, argued:

¹¹ The criticism of Prime Minister Clark and other female members of Cabinet was deeply misogynistic, particularly from right-wing parties. The reference to the evil queen from Snow White (“consulting the mirror...”) and the allusion to witchcraft (“her political coven...”) are just two examples of this dynamic.

Proceeding to sever *[sic]* this important link [to the Privy Council] with just 52% support of Parliament amounts to tyranny by a slim majority. It is an abuse of power that shows how easily our liberty can be threatened. [...] The Labour administration supported by the Greens has no public mandate for this move. Instead it is fulfillment of an ideological agenda. (Maxim Institute 2003)

These examples illustrate how opponents characterized the close votes on sex work and judicial reform as part of an ideology or agenda, even going so far as to link them with tyranny and a threat to liberty. These framings are in contrast to the idea of mandate that was frequently invoked in discussions of popular support for the proposed legislation. Essentially, tyrants rule by whim or fiat and are accountable only to themselves; democratic leaders rule in accordance with a mandate granted to them by the people.

Critics portrayed both the conscience vote on the Prostitution Reform Act and the whipped party vote on the Supreme Court Act as underhanded political moves. For example, in laying out the party platform, New Zealand First Party Leader Winston Peters argued that, “‘people power’, by means of referenda, should, where possible and practicable, replace MPs conscience votes. The process needs to be fair, practical, transparent, and transcend party politics” (New Zealand First 2005). Here, in juxtaposing the two sentences, Peters implied that conscience votes are unfair, impractical, opaque, and partisan. In the same statement, Peters further characterized conscience votes as superseding the will of the people and “trifling with democracy” (New Zealand First 2005).

In another example, when MP Pita Paraone warned in a speech that the Supreme Court Act would pass under the same narrow circumstances as the Prostitution Reform Act, he was heckled by another Member, who objected to the false equivalence (“Stop telling porkies!”). In response, Paraone continued his criticism of the PRA by sarcastically describing Choudhury’s abstention: “Well, whatever the difference was, it was very close, even if we did have one Member from the Government side of the House give new meaning

to objection by abstaining. What does that tell us about this Government? It tells us that it has its own agenda” (Library of Parliament 2003b). The implication seems to be that Choudhury was too cowardly to object to the Government agenda by casting a no vote, even though the conscience vote was ostensibly free. Unlike other members of his party who strategically portrayed conscience votes as inherently undemocratic, Paraone’s criticism is that, in the case of the PRA, the Government’s agenda effectively prevented one from truly taking place. A similar charge was made by United Future MP Marc Alexander, who brought up the Prostitution Reform Act in a speech against criminal justice reform in early 2004. Alexander described the Government as “putting through” the Prostitution Reform Act; Labour MP David Cunliffe interjected to remind Alexander that the PRA “was a member’s bill!”. Alexander dismissed Cunliffe’s heckle: “But we all know that the Government squeezed the arm of every Labour member to vote in favour of it. It passed, after great consideration, by one abstention” (Library of Parliament 2004). Here, Cunliffe points out that, as a member’s bill, the PRA is not officially part of the Government’s policy agenda; Alexander’s response suggests that the Labour Government used the private member’s bill – which was introduced by a Labour MP – to further its own aims, and improperly pressured its legislators to support the party line despite public assurances of a free vote. In these exchanges, opponents of the Prostitution Reform Act use the narrow vote margin and Choudhury’s abstention strategically to suggest underhanded dealings by the Labour Party.

Even as opponents criticized the conscience vote that passed the Prostitution Reform Act, they simultaneously objected to the Supreme Court Act on the grounds that the whipped vote was undemocratic. In particular, the inability of the Government to secure

the support of opposition parties was cited as evidence that the legislation was not representative of a broad mandate. New Zealand First derided the Supreme Court Bill as “a backroom deal done with two minor parties” (New Zealand First 2003b). Furthermore, in a press conference in Wellington, Party Leader Winston Peters implied that the whipped vote forced many MPs, particularly those in the labour caucus, to vote against their constituents’ interests: “Given a free vote, many in the Labour Caucus would not support this change. And given the nature of their support base, neither they should. In particular those MPs representing the Maori electorates cannot, in any conscience, vote for the Supreme Court Bill” (New Zealand First 2003c). The (perhaps unintentional) use of the word ‘conscience’ here is ironic, given that Peters would later claim that conscience votes are illegitimate and suggest they be replaced by popular referenda whenever possible.

The close votes on the Prostitution Reform Act and Supreme Court Act sparked broader questions on the legitimacy of the MMP electoral system. Mixed-member proportional voting systems are designed to promote coalitions; however, because New Zealand does not require a supermajority to pass legislation, small parties often play an outsize role in lawmaking and relatively close votes are to be expected. Between 2002 and 2005, the second-term Labour government – perhaps emboldened by the crushing electoral defeat of its political rival, the National Party – pursued sweeping social reform. The 47th Parliament was unique in that it saw relatively contentious victories in quick succession on a number of significant moral or constitutional issues, including sex work, judicial reform, civil unions, and indigenous land rights. Opponents to the Prostitution Reform Act and the Supreme Court Act claimed that Labour was acting in bad faith by taking advantage of MMP to push an ideological agenda. For example, in a meeting with supporters, New

Zealand First Party Leader Winston Peters complained that “only seven years after the first MMP election, New Zealanders were again suffering from an illusion of democracy, with their two ticks on ballot papers actually setting up three years of political tyranny.” Peters argued, “MMP has been perverted back into a form of FPP in which a Labour minority government rules unchecked through backroom deals done with two minor parties” (New Zealand First 2003b).

Furthermore, opponents used the distinction between list and electoral Members of Parliament to challenge the legitimacy of the Supreme Court Act, and, by extension, MMP. The bill was sponsored by Attorney General Margaret Wilson, a list MP, who failed to secure an electoral victory in her riding. The Campaign for the Privy Council strongly implied that Wilson’s appointment undermined the legitimacy of the law: “The Government’s determination to force the Bill through Parliament displays a breath-taking arrogance. Margaret Wilson has alleged that opposition is purely political, thereby implying that it can be safely ignored. That is perhaps an unwise conclusion for the Labour Party’s unelectable MP to arrive at” (Campaign for the Privy Council 2003c). *New Zealand Herald* columnist Garth George agreed: “It doesn’t help that Margaret Wilson is a politician who is so popular with the people that she scored a mere 6,783 votes out of 32,726 cast in Tauranga last year, and who owes her position in Parliament to nothing more than being a member of the Labour Party’s academic old girls’ network” (George 2003b). The Prostitution Reform and Supreme Court Acts were arguably an acid test for MMP: they were the first major pieces of social and constitutional legislation to pass narrowly under the new electoral system. For opposition parties, the PRA and the SCA raised doubts about the desirability of MMP; the controversy surrounding the passage of these laws

created fertile conditions for elites to question the legitimacy of the entire electoral system. United Future made a new referendum on MMP part of its 2005 platform, and New Zealand First proposed an extensive direct democracy policy to check the power of Parliament, though both were rejected by voters.

Conclusion

Efforts to transform society through legal means often result in backlash, though such opposition is not always successful in overturning or circumventing legislation. In this paper, I explored elite opposition to two narrowly-passed laws in New Zealand's 47th Parliament: the Prostitution Reform Act, which passed by one vote in June of 2003, and the Supreme Court Act, which passed by three votes in December of the same year. From an analysis of parliamentary transcripts, newspaper articles, and press releases, I found that the vote margin played a major role in shaping opposition messaging. Elites, and especially political leaders from the United Future and New Zealand First parties, strategically used the closeness of the vote to frame the legislation as fundamentally undemocratic. In particular, opponents highlighted two major themes: public consultation and popular support, and politics and ideology.

Reactions to the Prostitution Reform and Supreme Court Acts extend the backlash literature in a number of ways. Unlike the majority of extant empirical work, these laws are legislative rather than judicial, and opposition efforts ultimately failed, both in terms of direct opposition to the PRA and SCA, and in terms of broader efforts to expand direct democracy. These cases illustrate the importance of politics in understanding backlash, particularly to legislation. I argued for a more processual understanding of backlash, one

that is well-suited to the analytical tools of social movement literatures, especially frames. In legislative cases, and especially in cases that fail to reach critical mass in the broader public, the leaders of these movements are often political actors. Thus, political dynamics are crucial to understanding cases of failed legislative backlash, because opposition stays relatively contained within the political sphere. In New Zealand, political spaces like the House of Representatives and its select committees were important sites of contention. Public rallies and events, like the Repeal Week timed to coincide with the anniversary of the passage of the sex work law, were promoted by political parties. Even the *New Zealand Herald*, the country's most widely read newspaper, took on an explicitly partisan role, both in the stance and activism of its editorial board, and its funding and strategic use of polling.

Furthermore, in the cases I studied, opponents drew on specific features of the political system to craft arguments about the legitimacy of the two laws. This suggests that the nature and scope of backlash is heavily dependent on the broader social and political context in which these movements are embedded. The majority of the law and social change literature focuses on the United States, but does not pay adequate attention to the ways in which the unique sociopolitical context of the American case influences backlash movements. In New Zealand, opposition campaigns were shaped by factors including party and government structure, parliamentary voting procedures, the electoral system and recent adoption of MMP, the limited scope of direct democracy, and the country's relationship with the Crown. Opposition groups made explicit reference to these issues in an attempt to secure broad public support for change. Scholarship on law and social change and backlash would benefit from a more systematic investigation of the ways in which backlash movements are shaped by their empirical contexts.

These cases suggest that the circumstances under which a vote passes, and especially the vote margin, are an important and understudied contributor to backlash. Close votes entail a sense of precarity or uncertainty; they give the impression that the outcome could easily have been different. This creates a liminal space in which electoral or legislative outcomes are seen as vulnerable and actors can seek to challenge or invalidate them. In New Zealand, opponents did this by invoking the closeness of the votes to imply that the results were non-participatory, autocratic, and ideological. To be clear, closeness was not the only issue raised by opposition leaders, and, in the case of a wider margin, stakeholders would have undoubtedly raised different arguments to justify their opposition to the law. In short, the vote margin did not *cause* the backlash. Rather, closeness created particular conditions under which backlash occurred; these conditions were strategically invoked by stakeholders in order to persuade voters of the illegitimacy of the laws and justify political actions to repeal or undermine them. For instance, opponents used closeness to criticize parliamentary voting procedures; they railed against both whipped and conscience votes in light of the narrow margin. The speed at which decisions were taken also became a significant point of contention in efforts to repeal the sex work and judicial reform laws. In this case, the closeness of the vote was an important contextual factor that shaped the meaning of the speed of reform. It seems unlikely that claims about legislation being “rammed through” Parliament or “foisted upon” citizens would resonate in the same way if the legislation had passed by a wider margin. In these close votes, speed signified underhanded political dealings; in a landslide, it could have meant consensus.

Finally, there are numerous other cases of backlash to close legislative and electoral victories. For instance, both United Future and New Zealand First used the Civil Unions

Act, which passed by five votes in December 2004, to further justify their direct democracy policies. In an American example, when 51 percent of Oregon voters passed a ballot measure legalizing physician-assisted death for terminally ill patients in 1994, the law was immediately suspended by the courts. When, in 1997, the Ninth Circuit Court of Appeals overturned the injunction against assisted death in *Lee v. Oregon*, officially implementing the Death with Dignity Act, opponents to the legislation attempted to use another citizens' initiative to repeal it. Efforts to overturn the law were largely abandoned when 60 percent of voters officially rejected the repeal initiative. How did the closeness of the vote on the 1994 Death with Dignity Act (and the *lack* of closeness of the 1997 vote that would have repealed it) shape opposition efforts to undermine the law? Future research should examine whether democracy frames are present in the backlash to other close votes, and, if so, the specific themes or images invoked in service of these frames. Furthermore, closeness is not the only reason an electoral or legislative outcome may be seen as unsettled or precarious. Factors including corruption, election irregularities, or even the length of time it takes to announce a result may all generate space for contestation. The democracy frames I observed in New Zealand may be but two instances of the mobilization of a master frame, 'democracy in crisis', that could become increasingly salient as political polarization deepens.

Chapter 4

Not in My Backyard? Municipal Responses to the Decriminalization of Sex Work in New Zealand

Introduction

New Zealand became the first country in the world to fully decriminalize sex work at the national level when it narrowly passed the Prostitution Reform Act (PRA) in June 2003. This legislation, based on the principle of harm minimization, sought to guarantee the health, safety, and rights of sex workers by eliminating their criminal status and granting them full protection under the law. Although sex work was fully decriminalized, the legislation delegated authority to municipalities to regulate the location and signage of brothels. Municipal responses to the legislation were varied. Some councils initially passed symbolic legislation completely banning brothels in their areas, despite being advised that such bans were illegal under the new law and could not be implemented (Orsman 2003b; Powley 2003). Most councils recognized that completely banning sex work would be impossible under the PRA, so focused instead on drafting bylaws to restrict brothels to certain areas, and to control signage and advertising. The most restrictive bylaws, most notably those in Christchurch and Auckland, made no distinction between commercial and home-based operators, and were ultimately invalidated by the High Court of New Zealand.

The hostile response of many territorial authorities to the Prostitution Reform Act was largely unanticipated. After all, councils were already responsible for determining the location of brothels – euphemistically referred to as massage parlours – under the Massage Parlours Act of 1978 (Barnett 2007:1). Just a few weeks before the passage of the Act, MP

Tim Barnett, who had sponsored the bill in the House, suggested that “local authorities were unlikely to be overly affected by the decriminalization of prostitution. ‘For local authorities it will be virtually business as usual’” (Watson 2003). Barnett, referring to his constituency in Christchurch, predicted that determining the location of brothels was unlikely to prove problematic: “There haven’t been any major planning rows in Christchurch about brothels because they seem to be in semi-commercial areas. [...] Anyone new who wants to set up is likely to want to be where the other ones are” (Watson 2003). Christchurch City Councillor Sue Wells, who would eventually chair the local committee responsible for drafting the city’s bylaw, echoed Barnett’s prediction of business as usual: “We do land use, not social engineering” (qtd. in Watson 2003). In fact, Christchurch City Council would embark on what critics called a "moral crusade" against sex work, ultimately spending a quarter of a million dollars to draft and defend the bylaw, often against the advice of its own subcommittee and lawyers (Houlahan 2005a).

How can we account for the variation in local responses to the Prostitution Reform Act? Specifically, why did Christchurch pass such a restrictive bylaw, and go to such lengths to defend it in court? Drawing on a qualitative comparison of Christchurch and Wellington, the only major city not to draft or amend a bylaw after decriminalization, I suggest that the outcome in Christchurch reflects the interaction of three factors: 1) the relative prevalence and visibility of street-based sex work; 2) the obligations placed on the city council by the Local Government Act of 2002; and 3) the pressures created by local elections and council restructuring.

In the first section, I review literatures from urban studies, sociology, law, and political science on the regulation of urban space, legal compliance, and local political

activism. In the second section, I outline the provisions pertaining to bylaws in the national law, and introduce my case studies, method, and data. In the third section, I explain the three factors after addressing a potential alternative explanation. In the final section, I conclude by reviewing the argument and discussing the contributions of the paper.

The Legal Regulation of Urban Space

The governance and regulation of urban space is a central sociolegal question. Existing scholarship on brothel bylaws in New Zealand is primarily descriptive; it focuses on comparing and contrasting different regulatory approaches (Jackson 2004). However, since the 1960s, scholars and activists like Jane Jacobs (1961) have drawn attention to the ways in which local bureaucratic governance structures exacerbate inequalities through zoning and land-use. The field of Critical Urban Studies (CUS) invokes the work of leftist urban scholars like Henri Lefebvre, David Harvey, Manuel Castells, and Peter Marcuse to draw attention to the ways in which cities are essential to the “capitalist imperative of profit-making and spatial enclosure (Brenner, Marcuse, and Mayer 2012:2). Scholars working in this tradition emphasize that local legal and regulatory structures promote a neoliberal agenda focused on “making urban centres attractive to both footloose capital and to the footloose middle classes” (Mitchell 1997:305; see also Brenner et al. 2012; Valverde 2012) . This requires a “purification of public space” (Collins and Blomley 2003) in which those activities – and, necessarily, people – deemed ‘undesirable’ are “regulated out of existence” (Laurenson and Collins 2007:649). There exists a significant empirical literature within CUS that examines bylaws and ordinances pertaining to homelessness and sex work (Amster 2003; DeVerteuil 2006; Hermer and Mosher 2002; Jackson 2004; Laurenson and

Collins 2007; Mitchell 1997; Valverde 2012). Unlike mainstream urban sociology, which tends to “render law invisible” (Valverde 2012:8), Critical Urban Studies clearly identifies the ways in which commodification relies on legal and regulatory structures that deepen inequality and marginalization. However, as Valverde points out, CUS tends to “share Marxism’s narrow view of law as a mere ‘superstructure’ that does not need to be closely analyzed because it is a reflection of and explained by class interests” (2012:8). Furthermore, although Critical Urban Studies shows how local regulations reflect *transnational* neoliberal ideology, this scholarship largely overlooks the ways in which municipal actions are shaped by *national* laws and policies.

Within the field of law and society, however, scholars have explored compliance with and implementation of national laws (Albiston 2005; Edelman 2015; Edelman and Talesh 2011; Fuller, Edelman, and Matusik 2000; Suchman and Edelman 1996). Law and society scholars have focused particular attention on the ways in which organizations interpret their obligations under American anti-discrimination and civil rights law. Scholars like Lauren Edelman (2015) and Catherine Albiston (2005) adopt a constructivist (Ewick and Silbey 1998; Sarat and Kearns 2009) and neoinstitutionalist (Powell and DiMaggio 1991; Suchman and Edelman 1996) approach to suggest that organizations, rather than being sanctioned by exogenous legal forces, actively “interpret, mediate, construct, and ultimately shape the meaning of civil rights law” (Edelman 2005:338). For example, while Title VII of the 1964 US Civil Rights Act prohibits discrimination in employment, “it is silent as to the question of what actions an employer might take to rebut an employee’s claim of discrimination” (Edelman, Uggen, and Erlanger 1999:406). Nevertheless, most organizations have instituted formal grievance procedures of some sort,

which serve as both a symbol of non-discrimination and a means to protect employers from legal liability. The scope and content of specific procedures may vary widely across organizations, but, over time, actors in both organizational and legal fields “come to equate grievance procedures with compliance” (Edelman et al. 1999:408).

An important contribution of this work on legal compliance is to highlight the ways in which organizations, in developing policies to meet their obligations under anti-discrimination law, “ironically help to recreate the very inequalities” that these laws seek to address (Albiston 2010:xii). On the surface, there are parallels between these dynamics and the development of brothel bylaws in New Zealand’s cities. In delegating the regulation of brothels to municipalities, the national decriminalization law left significant room for interpretation. In drafting their bylaws and defending them in court, cities actively constructed the meaning of compliance; in Christchurch and Auckland, local interpretations of compliance increased the marginalization of sex workers and were deemed incompatible with the national law. However, because this strand of law and society scholarship focuses on *private* organizations, and especially firms, it cannot fully account for the dynamics that influence the interpretation of legal compliance within *public* organizations. For example, consultations with constituents played an important role in the bylaw development process in Christchurch and Auckland; constituents are not employees. For the most part, legal compliance within a private organization reflects factors internal to organizations themselves, including corporate culture, management structures, and employee relationships. In a public organization, external factors and political pressures play a more salient role.

In recent years, a growing literature in law and political science has explored discrepancies between law and policy at the national and local levels. In the United States, there are numerous examples of local governments acting to oppose or even circumvent national laws. For example, in 2004, Gavin Newsom, then-Mayor of San Francisco, issued an executive order that allowed same-sex couples to legally marry, in open defiance of national laws prohibiting gay marriage (Riverstone-Newell 2012:402). Riverstone-Newell identifies dozens of cases of “local activism”, local political behaviours that are “official, positive acts of defiance that can reasonably be understood as deliberate attempts to spotlight unfavourable laws” and, ultimately, to compel higher governments to change their policy positions, either voluntarily or through judicial challenges (2012:402). Local activism often – but not always – promotes liberal policy positions (Jokiaho 2020; Myrberg 2017; Riverstone-Newell 2012). For example, in 2016, the Swedish government passed legislation that increased the state’s capacity to receive refugees, and “created a more equal distribution of refugees across municipalities in order to better facilitate their integration” into society (Jokiaho 2020:1). In response, the municipality of Ostersund urged the national government not to set a maximum on the number of migrants each locality could receive, and explored possibilities of coordinating with other cities in order to receive more refugees than the national law allowed. In contrast, the municipality of Solvesborg challenged the law on the grounds that the town’s right to self-government encompassed the right to refuse migrants (Jokiaho 2020:23).

Legal scholars Jessica Bulman-Pozen and Heather Gerken (2009) have coined the term “uncooperative federalism” to theorize local resistance to national policies; this concept is a valuable addition to current scholarship on federalism and local government

law. They note that this scholarship typically characterizes subnational governments in federal systems in one of two ways. On the one hand, when states and cities are autonomous policymakers, they become rivals and challengers to the federal system. On the other, when subnational government are not autonomous, they serve as “supportive insiders who help implement federal policy” – this is cooperative federalism. However, there are numerous cases in which a “state’s status as servant, insider, and ally [...] enables it to be a sometime dissenter, rival, and challenger” (Bulman-Pozen and Gerken 2009:1258). Bulman-Pozen and Gerken refer to these cases as uncooperative federalism. If federalism can be conceived of as a dialogue (Shapiro 1995), with national and subnational governments engaged in conversation about national law and policy, that dialogue may be more or less contentious. At one end of the spectrum are “the polite conversations and collaborative discussions that cooperative federalism champions”. The authors suggest that “uncooperative federalism occupies the remainder of this spectrum – from restrained disagreement to fighting words” (Bulman-Pozen and Gerken 2009:1271).

The concept of uncooperative federalism is useful in that it explains how gaps in federal policies can enable local activism. This “interstitial dissent”, which occurs in the gaps left open – deliberately or accidentally – by federal policymakers, can take many forms. It may be licensed: national governments may assume “that states will deviate from federal norms in implementing federal policy, but states take that invitation in a direction the federal government may not anticipate” (Bulman-Pozen and Gerken 2009:1271–72). Other instances of interstitial dissent occur “in a regulatory gap, when the federal government does not contemplate state variation but states have sufficient discretion that they find ways to contest federal policy” (1271–72). Although Bulman-Pozen and Gerken

are writing explicitly about federal systems, especially the United States, I suggest that some dynamics of uncooperative federalism, and especially the logic of interstitial dissent, are relevant to decentralized governance structures in unitary states like New Zealand. A late amendment to the Prostitution Reform Act empowered city councils to determine the location and signage of brothels. However, cities already held powers to zone under the Resource Management Act of 1991, which they used to regulate massage parlours prior to decriminalization; Parliament did not anticipate that municipalities would draft dedicated brothel bylaws (Barnett 2007; Government of New Zealand 2002d), or that these bylaws would contravene the national law.

In New Zealand, this regulatory gap created by the amendment to the national sex work law was exacerbated by unanticipated interaction effects between the Prostitution Reform Act and other national laws, specifically the Local Government Act (2002c) and the Local Elections Act (2001). Existing scholarship on interactions between laws has typically focused on tensions or conflicts across jurisdictions. For example, in Europe, national environmental regulations often come into conflict with supranational EU policies (Eberlein and Grande 2005; Knill and Lenschow 1998). However, this literature typically focuses on laws that pertain to the same issues; in this way, the interplay between supranational and national laws resembles the uncooperative federalism described by Bulman-Pozen and Gerken (2009). The case of brothel bylaws in New Zealand is unique in that the local implementation of the national decriminalization law was shaped by provisions of other national laws that had no substantive relationship to sex work.

In this paper, I extend these literatures through a case study of the development of brothel bylaws in Christchurch and Wellington. I suggest that, in Christchurch, provisions

of the Local Government Act (2002) and the Local Elections Act (2001) put pressure on the city council to consult with constituents and respond to their demands; these constituents were hostile to sex work because of the relative prevalence of street-based sex work in Christchurch as compared to other cities.

Case Studies, Method, and Data

I conduct a qualitative comparative analysis of municipal responses to the decriminalization of sex work in New Zealand. The primary case study is the Christchurch City Brothels Bylaw of 2004, one of the harshest bylaws developed, and the first one to face a legal challenge. Although Christchurch did periodically develop and approve new bylaws after the 2004 Brothels Bylaw was invalidated by the High Court, I focus on the period between June 2003 and March 2006, which encompasses the Council's initial consideration of its rights and obligations under the new law, as well as its decision to drop its appeal of the verdict in *Willowford Family Trust and Brown v. Christchurch City Council*. The secondary case study is the Wellington Consolidated Bylaw 2001 Part 17A: Commercial Sex Places. Wellington was the only major city that didn't draft or amend a bylaw after decriminalization. I use Wellington's pre-decriminalization bylaw as a shadow case to highlight salient factors in the primary case study (Gerring and Cojocararu 2016).

The Prostitution Reform Act and Local Bylaws

Clauses 12 and 14 of the Prostitution Reform Act delegate authority to local councils to manage the location and signage of brothels:

12. Bylaws controlling signage advertising commercial sexual services

1. A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
2. Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that:
 - a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area;
 - b) is incompatible with the existing character or use of that area
3. Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.

14. Bylaws regulating location of brothels

Without limiting section 145 of the Local Government Act 2002, a territorial authority may make bylaws for its district under section 146 of that Act for the purpose of regulating the location of brothels. (Government of New Zealand 2003a:8)

These clauses left a great deal of room for cities to interpret their rights and obligations under the law, and as a result, there was significant variation in how local councils exercised the powers granted to them by the PRA. According to a 2007 national government evaluation report on the decriminalization law, 43 of 73 territorial authorities in New Zealand reported formally considering their obligations under the new law in council. Of the 43 that considered their options, 12 chose to do nothing, and 15 chose to use their existing District Plan, meaning that they would treat brothels just like any other building in determining zoning. For the most part, these were territorial authorities that did not have a significant sex industry, or where the sex industry was felt to be sufficiently discreet so as to negate the need for additional regulation. One city, Wellington, had an existing commercial sex premises bylaw in place, and chose not to revisit the issue. Fifteen councils, however, chose to write a new bylaw or amend an existing one. All 15 bylaws controlled signage, and 13 also controlled the location of brothels (Government of New Zealand 2008:137).

These new or amended bylaws included provisions to regulate the size, type, location, and content of brothel signage. In addition, most of the new bylaws restricted the location of brothels by specifying that they couldn't be within 250 meters of a school, place of worship, or public transportation hub; many also included provisions that prevented commercial sex premises from operating at ground level or within 75 metres of one another, and some banned brothels entirely from residential areas. The most significant difference between these bylaws concerns their treatment of home-based operators. The Prostitution Reform Act distinguishes between commercial brothels and small owner-operated brothels (SOOBs), which are brothels of no more than four people working out of someone's home. The more lenient local bylaws maintained that distinction, meaning home operators would not be subjected to the same location restrictions as commercial brothels. The harsher bylaws, on the other hand, applied to all brothels regardless of size. Proposed bylaws in Christchurch, Auckland, and Hamilton City faced legal challenges from brothel owners who claimed that they were too restrictive. Cities' approach to home operators would prove central to determining the legality of bylaws. The regulation in Hamilton City, which maintained a distinction between commercial and home operators, was upheld by the High Court (*Conley v. Hamilton City Council, 2006*). The Christchurch and Auckland bylaws, on the other hand, were found to place undue restrictions on home operators and contravene the spirit of the Prostitution Reform Act, and were struck down by the Court (*Willowford Family Trust and Brown v. Christchurch City Council, 2005; JB International Ltd v. Auckland City Council, 2006*).

Christchurch

Christchurch City Council was one of the most vocal proponents for delegating authority to city councils to regulate the location and signage of brothels (Christchurch City Council 2003), and it began to consider its regulatory options under the PRA as early as July of 2003. The City Council created the Prostitution Reform Subcommittee, a group of five Councillors that would be responsible for determining the most appropriate strategy for the regulation of sex work, conducting public consultations, and ultimately drafting the proposed bylaw. Initially, the Prostitution Reform Act Subcommittee drafted a bylaw that would restrict brothels to the Central Business District, but maintained a distinction between commercial and home-based operators. In an annotated draft circulated at the end of June 2004, the Subcommittee defines “brothel” as “any premises kept or habitually used for the purposes of prostitution but does not include [...] b) premises i) situated in a Living Zone as defined in the District Plan; and ii) at which not more than two sex workers works; and iii) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel” (Christchurch City Council 2004:1). In this draft, the Subcommittee offers a stricter definition of small owner-operated brothels than the Prostitution Reform Act itself, which defines a SOOB as employing no more than four sex workers, but still maintains a distinction between commercial and residential sex premises. The draft bylaw also contained a provision to exempt existing commercial brothels from the location restrictions. In a media statement, Subcommittee Chairperson Sue Wells explained that the draft bylaw tried to balance the practical reality of a newly decriminalized sex industry with local concerns (Scanlon 2004a). As *The Press* reported, “The subcommittee had been told there were only about 10 SOOBs operating across the

city, Wells said. [...] Evidence to the subcommittee showed smaller brothels operating in the suburbs did not want to attract attention to themselves" (Scanlon 2004b).

However, in a controversial and much criticized decision, on July 1, 2004, the Christchurch City Council rejected its Subcommittee's recommendations by a vote of 14 to 9, opting instead to restrict all brothels – including home operators – to the Central Business District. It also decided that while eight commercial brothels fell outside the proposed area, exemptions would be granted to just three (Scanlon 2004a). A few months later, Terry Brown, a local businessman and brothel- and strip club-owner, filed suit against the Council in the High Court of New Zealand. As reported in *The Press*, "lawyers acting for Brown argue the council overstepped its legal authority when it ring-fenced an inner-city red-light zone in July. The move was 'an unlawful ethical discrimination' and 'an unreasonable or unlawful interference with the right to work', according to court documents" (Conway 2004). Although the claim was initially filed to contest the Council's zoning restrictions on commercial brothels, the bylaw was eventually invalidated because of the ordinance's failure to distinguish between home-operators and commercial establishments. In the decision in *Willowford Family Trust and Brown v. Christchurch City Council*, the judge explained that, although the city council did have a right to place zoning restrictions on brothels, the effect of these restrictions on small owner-operated brothels was essentially to prohibit sex workers from "plying their trade at all in a substantial and important part of the city no question of any apprehended nuisance being raised" (*Willowford* 2005:para 94). In effect, the Christchurch brothels bylaw was found to be in violation of the spirit of the Prostitution Reform Act, and invalidated in its entirety (Knight 2010:145). The City Council was reluctant to accept the Court's decision, announcing –

against the advice of legal counsel – that it intended to appeal. It also filed a motion petitioning for a stay of execution so that the bylaw could remain in force pending the outcome of the appeals process. The petition was denied, and in March of 2006, following a High Court ruling against a similar brothel bylaw in Auckland (*JB International v. Auckland City Council* 2006), Christchurch City Council voted to drop the appeal. Ultimately, the unsuccessful legal defence of the brothel bylaw cost Christchurch ratepayers Nz\$227,000 in court costs and legal fees (Scanlon 2006). The verdicts in *Willowford* and *JB International* largely deterred other city councils from targeting SOOBs in their bylaws.

Wellington

Wellington is the only municipality that chose to use an existing bylaw to regulate sex work after decriminalization. The bylaw was initially developed in 2001 in response to a proposal by a strip club and massage parlour, the Mermaid Bar, to open in Courtenay Place, Wellington's theatre and entertainment district. Although the Mermaid's developers followed all necessary steps and had secured approvals and resource consents under Wellington's District Plan, then-Mayor Mark Blumsky proposed an emergency bylaw banning the sex industry in Courtenay Place. The Mayor was concerned that opening a strip club and massage parlour in the area would quickly attract the sex industry, undermining neighbourhood character and jeopardizing recent efforts to revitalize the district (Rendle 2001a). Mermaid developers B&M Entertainment objected to the proposed bylaw, stating that it was unfair and illegal for Wellington City Council to seek to impose restrictions on an activity that was fully legal under existing legislation. As the developers' lawyers told the *Evening Post*: “[Our] position, fundamentally, is that [the] activity

complies with the law in terms of the Resource Management Act and the District Plan. We consider it constitutionally perverse that the city council is going to pass a bylaw to negate rights under the Resource Management Act” (Rendle 2001c). The developers declared their intention to challenge any bylaw preventing them from opening in Courtenay Place in court, and the Council’s lawyers warned that a bylaw was unlikely to stand up to legal scrutiny.

Mayor Blumsky’s proposed bylaw enjoyed widespread support in the community, though, unlike in Christchurch, public participation in the bylaw process came largely from business owners and industry groups. Businesses shared Mayor Blumsky’s fears that the Mermaid Bar would open the door to the establishment of other sex industry businesses in the neighbourhood, to the detriment of Courtenay Place’s hard-won reputation as a local entertainment hotspot. However, in May of 2001, Wellington City Council ultimately decided to abandon the emergency bylaw. Under the Local Government Act of 1974, before a bylaw could be passed, it must be advertised, and the public must be given 21 days in which to comment, meaning that the Council would not be able to pass any ordinance before the Mermaid was scheduled to open. Additionally, though the Council consulted a second law firm, it was again cautioned that a bylaw was unlikely to withstand a court challenge (Rendle 2001d). Although the City Council was unable to prevent the Mermaid from opening in Courtenay Place, in July 2001 it passed a bylaw preventing any additional commercial sex premises from opening up in the district; in September 2001 it passed another bylaw imposing tight controls on signage and advertising for such businesses throughout the city (Johnson 2001; Rendle 2001f).

After the passage of the Prostitution Reform Act, Wellington City Council discussed its rights and obligations under the new law at a meeting in September 2003. As reported in the *Dominion Post*, many councillors seemed to make light of the problem of sex work in the city:

The tone of the meeting, called to discuss possible fallout from new prostitution laws, was set early on in the piece by Chairwoman Stephanie Cook. Her opening remarks about fishnets, stilettos, and whipping through the agenda were like the proverbial red flag. Councillor Christ Parkin was the first to take up her offer. The sex industry, he boomed, was like housing - when supply outstripped demand, prices dropped. What the city needed was less regulation and more brothels. 'The facts are sex is a business and always has been. I'm not at all concerned about the quantity. It seems like that's the way to improve the quality. And the competition would drive prices down. As far as I'm concerned the more the better'. (Jacobson 2003)

Although some councillors were more concerned about the potential consequences of decriminalization for Wellington and were offended by the tone set by Chairwoman Cook and Councillor Parkin, ultimately, the Council decided that the existing brothel bylaw was sufficient and further controls were unnecessary.

Data and Method

Data for this project include newspaper articles (N=364), official Hansard transcripts of Parliamentary debates pertaining to the decriminalization of sex work, national government evaluations and reports on the PRA, and Wellington City Council and Christchurch City Council reports and meeting minutes. Newspaper data includes articles published between 2001 and 2006 from major Christchurch daily *The Press*, Wellington newspapers *The Dominion*, the *Evening Post*, and, eventually, the consolidated *Dominion Post*, and the Auckland-based *New Zealand Herald*.

In the first phase of data collection, I gathered articles about the brothel bylaws (N=220) from the Wellington and Christchurch dailies using the keywords [“brothel” or

“sex work” or “sex premises”) and “bylaw”]. Using the software program NVivo 11, I applied a flexible coding approach to the data (Deterding and Waters 2018). This approach advocates a two-stage process in which the researcher first becomes familiar with the data by applying index codes derived from the concepts motivating the study. In this stage of analysis, I applied two codes: “decision” and “motive”. “Decision” was applied to anything describing a decision taken by the city council, national government, or High Court, which helped me construct a timeline of the development of bylaws in both cities. I applied the “motive” code to any passage that could be construed as explaining or justifying a decision, whether the speaker was an elected official, a party to a court challenge, or a journalist. Next, I carried out focused inductive coding of passages in the “motive” node in order to identify key themes. This secondary thematic coding generated the three factors discussed in the results section: the visibility of street-based sex work, the requirements for consultation under the Local Government Act (2002), and the timing of local elections and council restructuring. This led to a second phase of data collection and analysis, which focused on gathering additional newspaper data (N=144) about local government and electoral reform.

Findings

Why did Christchurch pass such a harsh bylaw, and go to such lengths to defend it in court? I suggest that local government and electoral reform put pressure on Christchurch City Council to appease constituents who were hostile to sex work; this hostility reflects the prevalence and visibility of street-based work in the city. Before proceeding, however, it is worth considering a parsimonious alternative explanation: that Christchurch, and, by

extension, Christchurch City Council, is more conservative than Wellington, and the bylaw simply reflected a stronger moral opposition to sex work.

Because most candidates for local office in New Zealand do not have a strong party affiliation, local electoral outcomes are a poor indicator of general political leanings. However, a comparison of the voting record of Christchurch and Wellington electorates in the 2002 national election suggests that there was no significant difference in regional support for conservative candidates – if anything, Wellington region elected more socially conservative candidates. Greater Christchurch elected two candidates from the centre-left Labour party by significant margins – including Tim Barnett, the sponsor of the national decriminalization bill – one candidate from the fiscally conservative centrist National party, and one candidate from the leftist Progressive party. Wellington region elected five Labour candidates and one candidate from the United Future party, a party described as centrist but founded on Christian values and with a socially conservative platform (Government of New Zealand 2002a).

However, there is some evidence that Christchurch does have a unique political culture – though whether it is best characterized as socially conservative is unclear. Local historian Katie Pickles suggests that “underneath the apparently conservative surface of the city there exists an ever-smouldering hotbed of radicalism” (2016:25). From 1988 to 2007, the city was led by two progressive mayors, one of whom, Garry Moore, presided over the brothel bylaw debates following the decriminalization of sex work.¹² In 1988, Auckland businessman Douglas Myers coined the nickname “The People’s Republic of

¹² Although Moore was personally opposed to sex work and referred to brothels as “an abomination”, he voted in favour of the subcommittee’s recommendation to exclude SOOBs from the proposed bylaw, and against appealing the decision in *Willowford* (Houlahan 2005b).

Christchurch” to reflect his perception of local government as anti-business and overly centralized. Although Myers initially intended the nickname to be an insult, it was quickly appropriated by residents to proudly refer to their city’s spirit of “municipal socialism” (Pickles 2016:26). In 2007, local politics moved toward the right when Mayor Bob Parker “took office [...] championing the conservative spirit” that also characterizes Christchurch politics, though Pickles’ analysis suggests that it was less prevalent in the early 2000s during the development of the brothel bylaw than it is today. Conservative political sentiment was counterbalanced by strong progressive mayors and a commitment to the principles of municipal socialism within the City Council. While the principles of municipal socialism are compatible with the brothel bylaw’s tight controls on commercial sex premises, it is more difficult to square them with the harsh restrictions placed on home-based operators. While *constituent* hostility toward sex work may be evidence of social conservatism, I suggest that provisions of the Local Government Act (2002) and Local Elections Act (2001) created conditions under which local councillors felt pressure to appease their more conservative constituents.

The Relative Prevalence and Visibility of Street-Based Sex Work

When sex work was decriminalized in 2003, Parliament also mandated that a Prostitution Law Review Committee be established to evaluate the new law. In 2008, the Review Committee issue its report to the House, and included a dedicated chapter on the response of territorial authorities to the PRA. The Committee documented significant variation in the way local councils responded to the Prostitution Reform Act, and noted: “Where there has been a lot of TA activity, such as in [...] Christchurch, it is often a response to a wide range of social problems that do not necessarily relate to prostitution”

(Government of New Zealand 2008:138). Specifically, the Committee's report largely attributes the reaction of the Christchurch City Council to the decriminalization bill to the relative prevalence of street-based sex work in the city (2008:138). According to a study by the Christchurch School of Medicine, in 2006, 253, or 11 percent, of all New Zealand sex workers were street-based, and street-based sex work was exclusively concentrated in Auckland, Wellington, and Christchurch. In Wellington, the prevalence of street-based sex work was comparable to the national average, at 13 percent. In Christchurch, however, the prevalence of street work was more than double the national average, at 26 percent. Although these prevalence estimates were made more than two years after Christchurch began work on its bylaw, the Christchurch School of Medicine study notes that "the numbers of street based sex workers have remained stable since the enactment of the PRA, with comparable numbers on the streets to estimates done prior to decriminalization" (Abel, Fitzgerald, and Brunton 2007 qtd. in Government of New Zealand 2008:119). Additionally, street workers in Christchurch tended to be younger than those in other urban centres, which may have led residents to equate sex work with the sexual exploitation of minors (Government of New Zealand 2008:119).

Furthermore, the report notes that street-based sex work in Wellington was relatively unproblematic. It was well contained within small geographic areas, and local residents rarely complained. In Christchurch, on the other hand, pressure from bars and commercial brothels pushed street-based sex workers out of entertainment districts and into neighbouring residential areas. Although some Christchurch residents reported moral opposition to the presence of street-based sex workers in their neighbourhoods, the Review Committee notes that often, homeowners were more critical of nuisance caused by

workers, clients, and members of the public. For example, residents reported late night conflicts between bar patrons and street-based workers, drunk and disorderly behaviour, and offensive litter like syringes or used condoms left in the street or on private property. However, Christchurch police suggested that the problems with litter and nuisance were largely due to local liquor licensing laws and alcohol consumption, rather than to street-based sex work itself (Government of New Zealand 2008:124).

Finally, Christchurch residents' concerns about sex work were exacerbated by high profile media reports in 2004 of a so-called child sex ring which alleged that girls as young as twelve were involved in street prostitution (Scanlon and Claridge 2004). The reports scandalized the community, and prompted responses from the police, the City Council, the New Zealand Prostitutes Collective, Child, Youth, and Family New Zealand, and local Members of Parliament. Although the Christchurch Police Department challenged the veracity of the claims published in *The Press*, the report stoked the fears of community members and strengthened their opposition to prostitution. In addition, in 2005, two Christchurch street-based sex workers were murdered by their clients; the crimes received extensive media coverage and were specifically mentioned in the evaluation report of the Prostitution Law Review Committee to contextualize community opposition to sex work in the city (Government of New Zealand 2008:122). I suggest that residents' demands for a harsh brothel bylaw in Christchurch is better understood as a response to the relative prevalence and visibility of street-based sex work, as well as to the association of this type of work with criminality and exploitation, rather than an expression of an inherent moral opposition to sex work as a whole.

Local Governance Reform

The second crucial factor in explaining the Christchurch bylaw pertains to the influence of the Local Government Act, a national law passed in 2002 that sought to increase the autonomy, accountability, and transparency of territorial authorities. Local government reform was a central campaign issue in the 2002 national election, with both Labour and National candidates pledging to reform the existing Local Government Act of 1974. The existing law, which had been significantly amended since its passing, was over 800 pages long, and often vague, confusing, or contradictory. Local government reform sought to address two major problems. First, the Local Government Act 1974 mandated significant central government oversight of local councils, resulting in serious inefficiencies, especially for major cities like Auckland. The LGA 1974 was written in such a way that city councils were unable to make autonomous decisions unless the law explicitly granted them the specific powers to do so, adding a layer of red tape to decisions about matters as seemingly mundane as traffic or waste removal. For example, in 1999, Manukau City Council “asked the High Court [...] to confirm whether wastewater can be applied to waste-management provisions in the Local Government Act, which at present include only hard-wasted rubbish” (Kara 1999). In other words, the Court was asked to consider such matters as whether compost put through a kitchen sink garbage disposal was qualitatively different than compost discarded in a trash bag. The Local Government Act 2002 granted general competence power to cities, meaning that councils were free to legislate any matter not explicitly denied by the legislation.

Second, prior to the passage of the Local Government Act 2002, local politics in New Zealand suffered from a lack of transparency and accountability. Local government

reforms in 1989 had amalgamated 850 local bodies into 86 territorial authorities comprised of both regional and territorial levels of government, resulting in a “distancing of elected members from the people they represent” (Anon 2001). The late 1990s and early 2000 witnessed a number of local government scandals. For instance, in 2000, the central government conducted an evaluation of Rodney District Council; the Council was found to be dysfunctional and incapable of resolving conflicts in a rational manner. The report recommended that the Council be disbanded and replaced by an appointed commissioner until the next election (Beston 2000). In another case, in Waipa District, a group of ratepayers sent a 25-page briefing paper to Local Government Minister Sandra Lee detailing discrepancies in the construction of a new conference centre. The group claimed that the District Council was undemocratic, and had mismanaged more than Nz\$2 million in profits from endowment lands (Aronson 2000). The new Local Government Act 2002 redefined the purpose of local government as “[enabling] “local decision-making by and on behalf of citizens in their local communities to promote their social, economic, cultural, and environmental well-being” (LGA 2002 qtd. in James 2001). It also established extensive requirements and procedures for public consultation and reporting. Both city councillors and media commentators viewed the Local Government Act 2002 as representing a “new philosophy of government”, that of consultative and participatory democracy (James 2003).¹³

The passage of the Local Government Act 2002 contributed to the development of Christchurch’s brothel bylaw in two ways. First, the LGA 2002’s emphasis on local

¹³ Although new consultation requirements were welcomed by local residents, they were largely criticized by businesses who saw them as adding additional red tape to the approvals process.

government autonomy granted legitimacy to the Council's decision to draft a bylaw, even one that challenged the spirit of the national decriminalization law. Second, and more importantly, new requirements for consultation created an opportunity for constituents to express sharply critical views, while the LGA 2002's new philosophy of participatory democracy implied that Christchurch City Council was to take those views seriously in crafting new ordinances.

Christchurch consulted the public extensively on whether a bylaw was necessary, as well as on the content of the proposed regulations. In October of 2003, the City Council first invited public feedback on the necessity and scope of a bylaw through a questionnaire posted on its website and in local newspapers; according to a report in *The Press*, in the first ten days of the consultation period, the Council received more than 500 written responses:

A report to the Council's Regulatory and Consents Committee [...] said a random sample of 73 submissions showed 65 percent of people favoured restricting brothels to the central business district. Only four percent said brothels should be anywhere. About 30 percent of people raised specific concerns about the exposure of children to explicit advertising and signage, especially in residential areas or near schools. Signage advertising for suburban brothels was objected to by 71 percent. (Scanlon 2003)

The Council eventually received 1,500 written submissions from constituents, and heard 52 oral submissions to the Council in December of 2003 (Boyd 2010:20). Residents expressed concerns about brothels being set up near schools and churches, the potential for nuisance and criminality in their neighbourhoods, and the effect suburban brothels could have on their property values. In Council meetings and reports, councillors often made specific reference to their obligations under the Local Government Act 2002 when discussing the consultations.

In comparison, in Wellington, where the brothel bylaw was passed *before* local government reform, public consultation and participation was relatively minimal. For instance, although Wellington City Council was required by law to allow 21 days for public submissions, it did not extensively advertise the draft bylaw. In fact, the most significant advertising was done by a group of Courtenay Place business owners and residents, who took out a full-page advertisement in the *Evening Post* rallying support ahead of a crucial City Council meeting. The advertisement, “We Don’t Need Another Red Light District”, even included a clip-out section readers could fill out and send to their councillors (Rendle 2001e).

Furthermore, reports in local newspapers suggest that the bylaw making process in Wellington was characterized by a lack of transparency, with most of the debate and decision-making happening behind closed doors. As journalist Steve Rendle reported, the City Council voted to exclude the public from deliberations, with Councillor Bryan Pepperell, usually a champion for open government, arguing that the move was necessary to “prevent posturing” and allow councillors to “deal with a serious and sensitive matter with much of the political heat and hype taken out of it”. Councillor Andy Foster said, “It’s not about the Council trying to hide, it’s about us doing our job” (Rendle 2001b). The Council even voted to exclude the public from the portion of the meeting where they were to explain the rationale for excluding the public from the main proceedings. Stakeholders in the potential bylaw were critical of the decisions, Rendle reports. “Keith Jefferies, counsel for the Mermaid’s operators, left the meeting shaking his head. ‘We either live in a democracy or we don’t’, he said. ‘There is no practical reason to exclude the public and

all that does is suggest the council is not confident that they are going to be acting within the law”” (Rendle 2001b).

I suggest that in Christchurch, the Local Government Act 2002 empowered the City Council to challenge the central government’s national policy agenda by taking an active role in the regulation of brothels, while simultaneously restricting its ability to enact policies that ran counter to the views of constituents. My data cannot speak definitively to the intent of Christchurch City Council in interpreting their obligations under the Local Government Act. One possibility is that councillors were inherently hostile to decriminalization and used the Local Government Act to justify their implicit bias against sex workers. On the other hand, Council may have wanted to create a bylaw that was compatible with the letter and spirit of the Prostitution Reform Act, but found their hands tied by the need to consult and report to citizens. Regardless of the council’s motivation, my data strongly suggests that local government reform played a key role in explaining the outcome in Christchurch.

Local Elections and Council Restructuring

Finally, local elections and City Council restructuring played an important role in the development of the Christchurch brothel bylaw. New Zealand has a fixed local election cycle, with elections occurring every three years. 2001 and 2004 were both election years, so the pressure of re-election was a factor for councillors in both Wellington and Christchurch. However, the 2004 local election coincided with council restructuring in Christchurch, in which the number of city councillors would be reduced by half. Restructuring was the outcome of a process of electoral review mandated by the passage

of the Local Elections Act of 2001 – legislation that, with the Local Government Act of 2002, was central to the national government’s commitment to local governance reform. The Local Government Act stipulated that territorial authorities would be responsible for initiating electoral review in order to determine the size, and method of election, and scope of responsibilities of local bodies in either 2003 or 2006, and then regularly every six years (Government of New Zealand 2002c:Part 1A Section 19H). The Act also strengthened the mandate of the Local Government Commission, giving the organization the power to conduct electoral review and make sweeping recommendations for council restructuring (Local Government Commission 2021). Christchurch City Council launched its electoral review in 2003; both City Manager Lesley McTurk and the Local Government Commission described Christchurch as significantly over-governed (Warren 2003). Prior to restructuring, Christchurch City Council was the largest territorial authority in New Zealand, with 25 councillors (including the Mayor) – five more than Auckland, a city of nearly 60,000 more people. Council restructuring was significant, reducing the number of wards from 12 to eight and the number of city councillors from 25 to 13 (Warren 2003).

I suggest that, in Christchurch, the brothel bylaw was seen as an election issue¹⁴, and the added job insecurity associated with the council restructuring put pressure on council members to respond to citizen concerns by drafting a harsh bylaw. This dynamic seems particularly relevant to the Council’s decision to reject the proposal by the Prostitution Reform Act Subcommittee to exclude home operators from the bylaw, and to ignore legal advice in order to pursue a costly appeal of the ruling in *Willowford*. In an

¹⁴ Councillor Sue Wells explicitly told *The Press* that the bylaw was not a big election issue for candidates, which suggests that it almost certainly was (Anon 2004a).

editorial in *The Press*, columnist Peter Luke attributes the Council's decisions to political opportunism, writing:

That a majority of councillors rejected the sub-committee's recommendation may have had something to do with the fact that the 2004 local body election was imminent. For the record, of the current crop of councillors [who had won re-election after the restructuring], eight were part of the majority that tossed out the sub-committee's recommendation on SOOBs. (Luke 2005).

Luke goes on to point out that all of the same councillors later voted to appeal the ruling on the brothel bylaw.

Conclusion

The issue of municipal powers was central to the passage of the Prostitution Reform Act in 2003. Though intended as largely symbolic, the amendment empowering councils to determine the location and signage of brothels signalled the government's willingness to compromise and reassured those whose support was wavering in the run-up to the final vote. After the passage of the PRA, however, cities differed widely in their interpretations of their rights and obligations under the national decriminalization law. Some, largely unaffected by sex work, didn't even consider drafting new ordinances. Others, like Wellington, considered the issue but deemed existing municipal bylaws sufficient to regulate the industry. Still others, chief among them Auckland and Christchurch, drafted harsh bylaws, which faced legal challenges and were eventually struck down by the High Court on the grounds that they were incompatible with the national decriminalization law.

In this paper, I asked: What explains the variation in local responses to the Prostitution Reform Act? Specifically, why did Christchurch pass such a restrictive bylaw, and go to such lengths to defend it in court? Drawing on a comparative analysis of Christchurch and Wellington, I suggested, first, that the relative prevalence of street-based

sex work in Christchurch fostered hostility among residents. Second, the emphasis on accountability and participation in the Local Government Act (2002) created new requirements for the city council to engage with the public and to promote legislation that reflected their concerns. Finally, local elections and impending council restructuring increased the pressure on city councillors to respond to constituent demands. In Christchurch, the city's obligation to promote the national government's policy agenda on decriminalization was in competition with its perceived responsibility to constituents.

This study makes methodological and theoretical contributions to literatures on the regulation of urban spaces and local responses to national law. Methodologically, while other studies of brothel bylaws do occasionally use a comparative approach, the use of a shadow case is novel, as is the comparison of bylaws from before and after decriminalization. My research design essentially uses Wellington as a counterfactual to highlight salient factors in Christchurch, particularly those related to local government and electoral reform. In the absence of the Local Government Act, Wellington was able to pass its bylaw with minimal consultation, and without the pressures imposed by council restructuring. Without this counterfactual, it would be easy to overlook the salience of local governance and electoral reform to the development of the brothel bylaw in Christchurch, as these factors are not directly related to sex work itself.

Theoretically, this chapter showed how local ordinances that seek to purify public space are not a simple function of social conservatism or neoliberal ideology. Rather, the development and legal defense of Christchurch's harsh and ultimately illegal bylaw reflects the complex and often unanticipated interaction of local conditions and national law, including those unrelated to sex work itself. The influence of the Local Government Act

and Local Elections Act on the administration of the national sex work law was largely unanticipated; these laws constrained some pathways for local action while opening others. Future research should explore the ways in which Christchurch's failed bylaw-making process shaped sex work policy in the years that followed. After its legal defeat in *Willowford*, Christchurch City Council did not abandon the idea of a sex work bylaw. Council went back to the drawing board, eventually drafting a compliant bylaw that came into force in 2013, and was reviewed in 2018. Today, the location and signage of brothels in Christchurch is subject to the Brothels (Location and Commercial Sexual Services) Bylaw 2018. Small owner-operated brothels are notably exempt from this ordinance. While local culture may not have been a significant determining factor in the development of the 2004 bylaw, the city's actions in *Willowford* almost certainly contributed to the perception of Christchurch as a city hostile to sex work. The legacy of the development and legal battle over the initial ordinance is a promising avenue for future research.

Chapter 5

The Unanticipated Consequences of Close Votes: Liminality and States of Exception

Introduction

A close vote is a prism that illuminates the relationship between law and social change. In this dissertation, I explored the social and political consequences of the narrow decriminalization of sex work in New Zealand. In a series of three stand-alone articles, I focused on the short-term impacts of the passage of the Prostitution Reform Act in June of 2003 on media representations of sex work, national repeal initiatives, and local bylaw-making processes. Chapters were organized temporally, from shortest to longest period of study; in each case, the closeness of the vote came into play in important and sometimes surprising ways, whether methodologically or theoretically. In this concluding chapter, I briefly summarize and extend the arguments of the empirical chapters and discuss the contributions of the work.

Chapter Summaries

In Chapter 2, I focused on how the decriminalization of sex work influences media representations of sex work. Because regulatory regimes governing sex work reflect and shape normative beliefs about the acceptability of sex workers, full decriminalization is essential to the eventual elimination of sex work stigma. Furthermore, under decriminalization, media portrayals of sex work play an important role in shaping public opinion; media outlets inadvertently step into the role previously played by the criminal

justice system in defining the terms of acceptable sex work. Sex work scholars have assumed that it will take many years for public opinion and social norms to catch up to the law in decriminalized environments, and persistent stigma against sex workers remains in New Zealand nearly twenty years after the passage of the Prostitution Reform Act. However, recent survey experiments on the case of same sex marriage in the United States suggest that perceived norms are significantly and immediately responsive to a change in law. In this chapter, I leveraged the closeness of the decriminalization vote to investigate whether media representations might be similarly responsive.

Drawing inspiration from quasi-experimental research design, I compared portrayals of sex workers in New Zealand's three largest newspapers in the six months before and six months after the passage of the Prostitution Reform Act. Through this design, I problematized the assumption of cultural lag by taking a brief snapshot of representations before and after a narrow legal victory. Using Link and Phelan's influential definition of stigma as a conceptual frame, I focused on documenting instances of labelling, stereotyping, separation, and discrimination in a sample of 355 newspaper articles. I found that decriminalization was associated with a decrease in labelling and certain forms of stereotyping, but no change in separation. Furthermore, while the passage of the national decriminalization law prohibited overt discrimination in housing or employment, it also indirectly enabled discrimination at the local level through restrictive zoning.

In Chapter 3, I explored backlash to the Prostitution Reform Act, which culminated in an unsuccessful attempt to repeal it through a citizens' referendum in 2004. The closeness of the vote on the decriminalization law not only influenced opposition efforts to repeal it, but also shaped perceptions of the legitimacy of other laws passed around the

same time, especially the Supreme Court Act (2003) and Civil Unions Act (2004). Ultimately, the relatively narrow passage of these laws spurred two opposition parties to include provisions for the expansion of direct democracy in their platforms for the 2005 general election.

I analyzed the backlash to the Prostitution Reform Act and Supreme Court Act in order to illustrate how closeness informed opposition messaging. On the basis of an analysis of parliamentary transcripts, press releases, and newspaper coverage of both laws and their referendum campaigns, I found that the narrow vote margin enabled backlash by creating a liminal space in which opponents could challenge the legitimacy of the vote. Specifically, opposition discourse focused on portraying the passage of the Prostitution Reform and Supreme Court Acts as fundamentally undemocratic. I described this discourse as a democracy frame, which emphasized two major themes: public participation and support, and politics and ideology. Throughout, opponents drew on specific features of New Zealand's political system to craft arguments about the legitimacy of the two laws. In particular, party and government structure, parliamentary voting procedures, recent adoption of the Mixed Member Proportional voting system, and the country's status as a former British colony played an important role in shaping opposition discourse. Though efforts to repeal the sex work and Supreme Court laws ultimately proved unsuccessful, I used these cases to show how the circumstances under which a vote passes, and especially the vote margin, are important contributors to backlash. The backlash to these laws shows how the contingency of a close vote creates new opportunities for political action.

In Chapter 4, I returned to the municipal bylaws introduced in Chapter 2. The decision to amend the Prostitution Reform Act to empower municipalities to regulate the

location and signage of brothels was largely a function of the anticipated close vote. This amendment bolstered flagging support for the bill in the run up to the final vote. The concession was largely symbolic; cities already held the power to zone under the Resource Management Act (1991) and their respective District Plans. Following the passage of the Prostitution Reform Act, municipalities varied widely in their responses to decriminalization. Thirteen cities drafted new bylaws to control the location of brothels; New Zealand's capital, Wellington, chose to use an existing bylaw rather than draft a new one. Bylaws in Auckland and Christchurch faced legal challenges and were eventually struck down by the High Court of New Zealand on the grounds that they contravened the national sex work law.

In this chapter, I explored this variation in local responses to the Prostitution Reform Act. I focused primarily on the bylaw in Christchurch, which was not only one of the most restrictive, but also faced a protracted legal battle. I argued that, while Christchurch may have a conservative political culture relative to other cities, this does not fully account for the severity of the bylaw, or the Council's determination to fight a losing legal battle against the advice of its lawyers. I used an innovative shadow case research design to suggest that the bylaw was largely a product of the interaction between local conditions and national laws, including those unrelated to sex work. By comparing Christchurch with Wellington, which did not draft or amend a bylaw after decriminalization, I found that the outcome in Christchurch reflected the interaction of three major factors: the relative prevalence of street-based sex work, the obligations to consult constituents placed on the city council by the Local Government Act of 2002, and *The Pressures* created by upcoming local elections and council restructuring.

Extensions

Throughout this dissertation, but especially in Chapter 3, I've argued that there is value in studying cases outside the United States. Law and Society was and remains a predominantly American subfield; much of our scholarly understanding of the relationship between law and culture is drawn from empirical studies of the United States. Yet the US is unique in many ways, from its federal structure to the outsize role of judicial appeals in processes of legal mobilization. A focus on non-American cases can deepen our understanding of law and social change by highlighting the ways empirical realities in these cases are out of step with scholarly expectations implicitly based on American experiences. However, the social implications of close votes in New Zealand can also yield insights into contemporary American cases, especially the 2020 US Presidential election. In particular, this election and its aftermath illustrate the ways in which closeness is constructed, and how, in the liminal space following a vote perceived as close, political actors deploy democracy frames to challenge the legitimacy of the outcome.

Was the 2020 Presidential election close? When I first floated this idea to the members of my writing group, the political scientists in the room replied with an immediate and resounding 'No'. Look at the numbers, they said. Not only did Joe Biden decisively win the Electoral College, he also took the popular vote by over 7 million votes (Ballotpedia 2020b). This is true, but it also misses the point somewhat. Closeness is always constructed, and political and media stakeholders frequently invoked the language of closeness to describe the 2020 Presidential race, especially in the tense days following November 3rd. On November 5th, the headline of the *New York Times* International Edition read, "An American Cliffhanger"; the front page was dedicated to election coverage that

highlighted themes of contention and uncertainty. This coverage included an editorial by Ross Douthat with the headline “Will 2020 Be Decisive?”. The day before, on November 4th, the column ran in the Late Edition of the *Times* under the headline, “2020 Will Not Be Decisive” (Douthat 2020a, 2020b). On November 7th, the day the election was called for Biden, an article in the *New York Times* puzzled over the perceived uncertainty of the election with a pull quote reading, “A Cliffhanger of an Election, With One Candidate Leading by Millions” (Astor 2020). The article quoted a Stanford professor who attributed the seemingly close result to the Electoral College: “When you split the 150 million votes into 50 buckets, there’s going to be close results in a certain number of the states. [...] This spawns disputes, and then it spawns lawyers running into court over hairsplitting issues, trying to win the White House for their candidate even though their candidate hasn’t won the support of people across the country” (Astor 2020:2–3). The professor aptly illustrates the ways in which closeness is constructed: political actors capitalize on the ways in which the electoral system creates narrow victories at the subnational level. In 2020, political opportunism surrounding close state- and county-level votes was also exacerbated by Republican effort to cast doubt about the validity and fairness of legitimate electoral processes like mail-in ballots in the months leading up to Election Day.

In his November 4th column, Ross Douthat speaks directly to the ways in which close votes engender uncertainty and doubt, which then enable political action:

An election is supposed to be a reality check. It promises the finality of decision, in which the back-and-forth of political argument gives way to the undeniability of a particular outcome on a particular day. [...] But that finality is still socially and politically constructed. And democracies can fail – a scenario on many people’s minds these days – when that constructedness dissolves, when it becomes possible to deny the finality of election results outright, to continue the contest outside the system or to substitute a different form of decision for the verdict of the ballot box. (Douthat 2020a:1)

Douthat refers to a “liminal place, where a combination of factors has made our election results much less decisive than in the country’s past” (Douthat 2020a:1). He sees close elections largely as an outcome of this liminal place; I emphasize the ways in which closeness itself creates and reinforces liminality. Furthermore, when political actors capitalize on the indeterminacy of close elections in order to invalidate or overturn results, they often do so by invoking democracy frames.

Opponents of the Prostitution Reform Act and Supreme Court Act framed their actions in terms of democratic legitimacy, highlighting themes of participation and ideology. Republican lawmakers attempting to invalidate the 2020 election, for their part, stress the importance of procedural regularity and responsiveness to constituents. For example, in early November, the Trump campaign filed suit claiming that thousands of voters in Maricopa County, Arizona, “were disenfranchised because poll workers directed them to override a ballot rejection by pressing a green button on the voting machine that actually disqualified their votes” (Van Voris, Niquette, and Hurtado 2020). By framing their objections in terms of disenfranchisement, the campaign is invoking a democracy frame to cast doubt on the legitimacy of the electoral outcome. In April 2021, when the Republican-controlled Arizona State Senate ordered an audit of more than two million ballots cast in Maricopa County, they strongly invoked democratic norms. Senate President Karen Fann portrayed the audit as a necessary response to constituent concerns: “When almost half of the voters say they lack confidence and have questions about the integrity of our system, it’s time for someone to step up and give them answers” (Corse 2021). While Democrats claim that the results of the audit will be used to justify repressive voting laws, Republicans counter that the final report will be used to protect the “sanctity” of future

elections. As reported by NPR, “according to documents outlining the contract [with the data analysis firm hired to oversee the audit], the final report will also include recommendations to prevent ‘detected weaknesses from being a problem in future elections’”. Senate President Fann claimed that “information provided by the contractors will provide the senate with ‘the tools to be able to either tweak existing legislation, or create new legislation to make sure that the sanctity [of elections] is always there’” (Giles 2021).

To be clear, in New Zealand, efforts to repeal the Prostitution Reform Act and amend the Supreme Court Act were legitimate and constitutionally-sanctioned responses to controversial legislation; when the attempts proved unsuccessful, stakeholders accepted the results and moved on. The same cannot be said of Republican efforts to invalidate the results of the 2020 US Presidential election. At time of writing, the Arizona audit is ongoing, and Senate President Karen Fann is reportedly “considering options that could expand the scope of review further” (Giles 2021). Given the efforts of the Trump administration to cast doubt on the validity and legitimacy of the results even before Election Day, Republicans would undoubtedly have pursued legal challenges no matter the margin. However, portrayals of the vote as close in the days after November 3rd, including frequent media reports of a “cliffhanger”, likely contributed to a sense of uncertainty or precarity surrounding the results. Close votes create a liminal space which generates opportunities for political action. In the wake of the 2020 Presidential election, this has meant, among other things, the mobilization of democracy frames to invalidate democratic results.

Contributions

In this dissertation, I make both methodological and theoretical contributions. Methodologically, the dissertation is innovative in its use of counterfactuals. In Chapter 2, I applied the logic of quasi-experimental design to a qualitative study. My exploration of changes in media representation was inspired by the regression discontinuity design, which compares outcomes on either side of an arbitrary cut-off. My short-term comparison of sex work representations immediately before and after a legal change took seriously the possibility of cultural change after law reform. In this chapter, the six-month snapshot of newspaper coverage immediately before the passage of the Prostitution Reform Act served as a counterfactual to coverage from the six-month period following decriminalization. Rather than assuming cultural lag, I investigated cultural change (operationalized as changes in media portrayals) empirically. Although my results were modest, I found real differences in newspaper coverage of sex work immediately after the passage of the Act. This suggests that short-term comparative studies – and especially those that use a counterfactual design – are valuable complements to existing research on law and social change, both related to sex work and more broadly.

The shadow case design I used in Chapter 4 also relies on counterfactual logic. This chapter compared the development of brothel bylaws in Christchurch, which drafted a harsh and illegal ordinance after decriminalization, and Wellington, which drafted a moderate bylaw two years before the passage of the Prostitution Reform Act. These bylaws were developed in very different legislative environments, and not only in terms of laws pertaining directly to sex work. By focusing on Wellington's 2001 bylaw, rather than the city's lack of response to the PRA, I showed how the provisions of the Local Elections Act

(2001) and Local Government Act (2002) played a significant role in shaping the outcome in Christchurch in 2004. These laws, which were ratified *after* Wellington had passed its bylaw, interacted with local conditions and politics to constrain the possible actions of Christchurch councillors in 2004, resulting in an illegal bylaw.

One of the major theoretical contributions of this dissertation is its application of the sociology of events to the legal arena. The passage of the Prostitution Reform Act was a hinge event in the longer sequence of occurrences that constituted the legality of sex work in New Zealand. The narrow and unexpected passage of the Act itself heralded a new social and political reality, and its effects were not limited to those working in the sex industry. Chapter 2 directly incorporated this eventful perspective in the research design, and, while I can't speak to the motivations of journalists or editors in covering sex work after decriminalization, there was a noticeable change in the media landscape after the passage of the PRA. In Chapter 3, I showed how the sex work law, and especially the circumstances of its narrow passage, prompted a backlash against decriminalization. In addition, the close vote on the Prostitution Reform Act shaped the perception of the legitimacy of votes on the Supreme Court Act and the Civil Unions Act by virtue of their temporal proximity. Finally, as I illustrated in Chapter 4, while cities had been quietly regulating the location of massage parlours for years, the full decriminalization of prostitution made many residents nervous. In Christchurch especially, city councillors felt political pressure to respond to their constituents by passing a bylaw they knew would not stand up to a legal challenge. While the dissertation focused primarily on one legal event, the passage of the Prostitution Reform Act, Chapter 4 suggests that other laws might also be considered legal

events. Specifically, the Local Elections Act and Local Government Act were important occurrences in the broader process of local government reform in New Zealand.

This dissertation also tells a story about the complex and often unanticipated interactions between law and politics, at multiple levels and occasionally across branches of government. The demands of local governments played an important role in the passage of the Prostitution Reform Act. Representatives of city councils lobbied the national government throughout the select committee phase, and, in amending the draft law to empower cities to regulate the location of brothels, Parliament used municipal interests strategically in order to secure national political support for decriminalization. The implementation of the Prostitution Reform Act required cities to navigate the bounds of their authority not only in the context of the sex work law itself, but also within the scope of other national laws pertaining to local government. Ultimately, in pursuing a regulatory *process* in keeping with the provisions of the Local Government Act, the *outcome* in Christchurch was at odds with the stipulations of the Prostitution Reform Act. While sex work decriminalization in New Zealand was largely achieved in the legislative branch, the courts intervened to strike down harsh local bylaws, protecting the integrity of the national law. Unlike in the United States, where the national government often sues subnational governments in order to enforce a federal policy agenda (see, for example, *United States v. Texas* 1892, 1971, 1981, 2016...), New Zealand's legal battles over brothel bylaws were initiated by private citizens.

Furthermore, reactions to the Prostitution Reform Act and especially the Supreme Court Act were shaped by New Zealand's history as a former British Dominion and settler colonial state. In New Zealand, as in other countries, indigenous people are

disproportionately represented in the sex industry, and especially in street-based work (Abel et al. 2007; Amnesty International 2004). Sex work stigma reflects not only sexist assumptions, but racist ones as well; these tropes undoubtedly contributed to residents' hostility toward sex work, especially in Christchurch, where street work was both more prevalent and more visible. In the case of the Supreme Court Act, both supporters and opponents to legislation invoked New Zealand's colonial past to justify passing or rejecting the legislation. Supporters of the proposed Supreme Court claimed that local knowledge of indigenous rights under the Treaty of Waitangi was indispensable to the administration of justice in New Zealand, and questioned whether the British Privy Council was able to fairly adjudicate cases pertaining to Maori interests (ACT New Zealand 2003c). On the other hand, some opponents questioned whether there were enough "qualified" New Zealanders to sit on the Court, and preferred to rely on the expertise and prestige of the Crown (Campaign for the Privy Council 2003a). This argument was particularly surprising given there were only six seats on the proposed Supreme Court. Finally, monarchists in New Zealand worried that the creation of a national Supreme Court was a slippery slope that would lead to the dissolution of ties with the Crown and the eventual creation of a republic (Monarchist League of New Zealand 2003). These debates illustrate the legacy of colonial power relations; New Zealand's colonial past and contested continued relationship with Britain interacted with national legislative processes in complex and unexpected ways.

Finally, this dissertation develops our conceptual understanding of how and why closeness matters in legislative or electoral contests. Political scientists have written extensively about close elections, but tend to use these contentious votes as analytical tools to study other things, like incumbency effects, or the role of political connections, or party

advantage. This scholarship tends to apply quantitative methods to large datasets; close votes are defined according to an arbitrary numeric cut-off. However, as I argue throughout the dissertation, closeness is always constructed. The perception of closeness is more important to the social and political consequences of a vote than the margin itself, and the factors that contribute to this perception are highly context-specific. For example, the Supreme Court Act, which passed in December 2003 with 63 votes for and 53 against, was deemed close largely due to its temporal proximity to the one-vote passage of the Prostitution Reform Act a few months earlier. By 2005, the Civil Unions Act, which passed with an even wider margin than the Supreme Court Act, was being cited by opposition politicians as part of a pattern of narrow (and, by extension, illegitimate) legislative victories pushed through by the ruling Labour Party – a pattern that also included the Prostitution Reform and Supreme Court Acts. I argued that close votes are unique in that they create a liminal space in which new forms of political action can occur. As a result, politicians have a vested interest in successfully portraying a vote as close. Despite their prevalence, close votes seem exceptional, and in states of exception, the rules don't always apply.

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