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## **Sex professionals in Latin America: Observing stakeholder participation through the form of legal/illegal/non-legal differentiation**

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### **Abstract**

We researched political and legal communications about the sex profession through the Inclusion/Exclusion Form. The theoretical content is based on Niklas Luhmann's theory of society as a social communication system and Luis Antônio Marcuschi's theory of language as a social work. In this research we explored dates of Argentina, Brazil and Uruguay. The corpora were made up of data catalogued on institutional websites, documents obtained from directors of associations and unions of sex workers, in addition to e-mail exchanges and online conversations with directors and sex professionals via virtual meetings. In the area of political communications, we observe inclusions and exclusions at the same time, as regulation has promoted several exclusions. The participation of workers in the discussions, when that had happened, was not reflected a posteriori either in public policies or in the implementation of regulations. As for legal communications, we observe that those who practice the profession experience inclusions and exclusions at the same time, since the profession is criminalized at the same time that it is recognized as a profession. The conclusion is that the inclusion/exclusion form broadens the spectrum of observation by allowing inclusion to be observed at the same time as exclusion.

### **Key words**

Prostitution; inclusion; exclusion; inequality; systems theory; Latin America

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## Resumen

En este trabajo enfocamos las comunicaciones políticas y jurídicas sobre la profesión sexual sobre la base de la forma inclusión/exclusión. El marco teórico de la investigación es la teoría de la sociedad como sistemas de comunicación, de Niklas Luhmann, y la teoría del lenguaje como trabajo social, de Luis Antônio Marcuschi. En esta investigación exploramos datos de Argentina, Brasil y Uruguay. Los corpora de la investigación fueron constituidos por datos catalogados en sitios web de instituciones, documentos obtenidos de directores de asociaciones y sindicatos de trabajadores sexuales, además de intercambios por medio de correo electrónico y conversaciones en línea con directores y profesionales del sexo a través de reuniones virtuales. En cuanto a las comunicaciones políticas, observamos inclusiones y exclusiones a la vez, pues la regulación promovió varias exclusiones. La participación de los trabajadores en las discusiones, cuando eso hubiera sucedido, no se reflejó a posteriori ni en las políticas públicas ni en la implementación de la normativa. En cuanto a las comunicaciones jurídicas, observamos que quienes ejercen la profesión experimentan tanto inclusiones como exclusiones, ya que la profesión es criminalizada al mismo tiempo que es reconocida como profesión. La conclusión es que la forma inclusión/exclusión amplía el espectro de la observación al permitir observar inclusión al mismo tiempo que exclusión.

## Palabras clave

Prostitución; inclusión; exclusión; desigualdad; teoría de sistemas; América Latina

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## 1. Introduction

There are approximately 42 million sex professionals in the world. Women between 13 and 25 years of age constitute 80% of these workers (Fondation Scelles 2021). One must confess that there is no way to see a true figure that mirrors sex workers in total numbers, let alone “visualize” the social reality through them. There is a need for research on the subject of people who earn a living from sex. Among the diverse social issues, in consideration of society’s inequalities and antagonisms (Ianni 1989, p. 145, Benites Oliveira 2016, p. 22, Bringel and Varella 2016, pp. 474–477), sex work inscribes itself as a social movement for being able to count on processes of mobilization and institutionalization of collective actions, also supported by networks of sociability that integrate interested parties, activists, clientele and other people in institutions, organizations, associations and unions (Scherer-Warren 2010, pp. 18–27, Mutzenberg 2011, pp. 130–133, Gohn 2018, pp. 13–18). It is in this context that the regulation of this profession has enlivened debates. Of the one hundred countries researched by ProCon.org, fifty-three have legalized prostitution, and another twelve have limited laws; in thirty-five countries, prostitution is illegal.<sup>1</sup> Data available in the 5<sup>th</sup> World Report of the Scelles Foundation, *Prostitutional System: New challenges, New Answers*, provides the latest overview of sexual exploitation at the regional and global level in about 35 countries (Fondation Scelles 2019).

Among the social issues encompassed by the sex profession, we research political and legal communication in the direction towards its regulation. As a starting point, we observe how these movements in communication promote the inclusion and exclusion of these professionals in the political and legal system, which has led us to observe influences in public policies and legal regulations in the daily practice of this profession.

Besides scientific research, there is an abundance of life story produced on the subject of “prostitution”. *Cristiane F* (1981) registers a life in prostitution initiated at thirteen years of age by an underprivileged young teen woman in Berlin. *Bruna Surfistinha* (2011) also provokes social comment in relation to life experiences in the sex profession, concerning an upper middle-class youth in São Paulo, Brazil. These two cases were cited as a warning about how much an economic reading is not enough to understand the social issues of this profession, but necessarily an interdisciplinary reading, so we turn to the sociology of law. However, in the sociology of law, this theme has been neglected.

The reflections of this article plan to strengthen scientific literature, and not the bibliography of life story. Accordingly, the article contributes to highlighting the importance of developing research not directed towards defending or rejecting prostitution, not even in terms of its regulation. We are not concerned with adhering to a certain current of thought, nor with defending a moralistic stance. We do not wish to rub out any perspective, much less the initiatives of activists or associations dedicated to protecting or taking people out of prostitution. Empirical data, insofar as they were collected and observed, took us away from any moralism, under penalty of not being scientifically analyzed. It was the empirical data that has led us on to reject whatsoever prejudice to deal regulation, because regulation does not necessarily promote inclusion, nor does it necessarily maintain these professionals in an excluded state. Before, we were

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<sup>1</sup> The list of the 100 countries can be found at ProCon 2018.

provoked into questioning if social exclusion in itself exists (Oliveira 1997, pp. 49–61, García Blanco 2012, pp. 43–71).

Thus, we set out from the proposition that the profession exists, will continue to exist, and that one cannot ignore the importance of activists and non-government organizations dedicated to taking people out of prostitution, and much less the figures that this segment of the workforce represents. There is low cost and luxury prostitution; voluntary prostitution and that which is imposed, be it by a person's own parents or legal guardians, be it by economic conditions. Prostitution has even had a role in the formation of legal practitioners, as in the cases of students who live off prostitution to pay their university courses to then become lawyers and judge. All this has led us to look for the theoretical support that makes unprejudiced research viable.

This research offers contributions for decisions on public policy, dedicated to observing questions referring to the regulation of the sex profession. To this end, we employ *communicativation*, a theoretical-methodological anti-fundamentalist perspective for transdisciplinary observation of human society (Stamford da Silva 2021). We propose that communicativeness allows us to observe human communications. Thus, the object of this research is neither a thing in itself nor an idea (mentalism), but the legal and political communications regarding the inclusion/exclusion of stakeholders dedicated to the defense of sex workers, as occurs with movements in defense of the regulation of this profession. We observed, hoping to clarify, the opportunities and irritations experienced in legal and political communications about this profession. Thus, we inform that the main basis of these reflections is the systems theory of Niklas Luhmann and the theory of language as social work by Luiz Antonio Marcuschi.

With *communicativation* we observed the issues of the sex profession without discarding the data from reality. The exclusions became even more evident during the year 2020, in the context of the COVID-19 pandemic. With social, preventive and mandatory isolation, sex workers were unable to offer their services, either on streets or in hotels. The lack of recognition and the lack of protection of sex workers has deepened further, giving rise to a housing, sanitary and even food crises (Mendive 2020, p. 1). But, on the other hand, we did observe that these professionals are included as well as excluded. After all, they are not excluded from the economy, from education, from art, from politics, nor from their rights. This research aims to observe precisely the inclusion/exclusion of activists and sex workers in debates related to the regulation of this profession. This is even more so because one side of the story shows regulation as a process of inclusion. However, the other side has brought problems that are not only bureaucratic, but such also as the obligation to constantly perform a variety of exams to remain legal in the profession. And additionally, problems of criminalizing practices that were previously legal become apparent (Jeffreys 2008, Weitzer 2013, pp. 713–722, 2017, pp. 61–84, Munro and Giusta 2016). Such problems lead one to question to what extent the *regulation* of the profession is important, necessary and beneficial, as recent debates have shown in Holland<sup>2</sup> and

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<sup>2</sup> Information on problems with regulation in Holland: Chagnon 2017, Cruz and Van Iterson 2021.

Germany,<sup>3</sup> to cite European examples,<sup>4</sup> and in Uruguay<sup>5</sup> (to make mention of a Latin American case).

As we delved into the literature on the sex profession, we continually observed a division between those who supported and opposed the profession. A large number of those who debate on feminism constitute a transnational current that defends that this activity is a profession equal to all others; and then there is the current of thought that longs for its abolition, which considers the service to lend itself to submission to the needs of socio-economic insertion (Sousa 2013, p. 1). Sabine Constabel, for example, and her “group that helps women leave the sex trade, considers any kind of sex work to be rape” (Business insider 2019). From the same perspective, “she pointed to the danger that liberalization would benefit only the sex industry” (Sisters 2018). This situation led us to look for alternatives in order not to follow on with the subject in the framework of a dichotomy, mainly because the data collected demanded our reflections without defense of, or opposition to, the profession or its regulation. This was even more important because in any country where the profession is regulated, there is always an abundance of movements to contest the way the regulations are applied, the harm done to the practice of the profession by the regulations, besides the criminalization of the profession (Soares 1992, Rodrigues 2009, pp. 68–76, Simões 2010, pp. 24–46, Mascareño 2014, Zveiter 2017, p. 49, Prange 2017, Caminhas 2020, pp. 1–35) and the regulation that is accused of protecting the prostitution industry, increasing the trafficking of women.

It should be noted that the term “prostitution”, a term that is absolutely impregnated with prejudice, will be replaced by “sex worker”. This follows the indication by the Uruguayan Organization of “Othered” (OTRAS) Sex Workers (*O.TRA.S Organización de las TRABajadoras Sexuales*),<sup>6</sup> in order to add impetus to the dignity of the term sex worker. This expression came into use at the end of the 80s by the professionals themselves. It represents the beginning of the promotion of recognition of the activity as a profession, besides the struggle to overcome the stigmas and negative judgments that often belie this type of paid activity.

The data were initially collected in the literature and on internet sites. These data allowed us to identify different stages regarding the regulation of the sex profession. Subsequently, during a second stage of the research, the decision was made to work solely with data from Argentina, Brazil and Uruguay. What made this interesting was that these three countries are at distinct stages regarding their respective regulatory measures of the sex profession. In Uruguay, the profession is regulated by Law N° 17.515/2002. In Argentina – even without regulation – diverse local laws have been

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<sup>3</sup> Information on problems with regulation of problems in Germany: cmb/rt 2019.

<sup>4</sup> For information about regulation in Europe: International Committee on the Rights of Sex Workers in Europe 2008.

<sup>5</sup> Information on problems with regulation in Uruguay: <https://mysu.org.uy/>

<sup>6</sup> Society as a system entails understanding through inference, language being its social task (Marcuschi 2007, p. 77, 2008, p. 229). The theory of civic discourse implies that discourse is trans-phrasal: situated beyond the phrase since it contains rules, is oriented in time and space, at the same time a way of action, interactive, contextualized, assumed and considered in the richness of an inter-discourse (Maingueneau 2015, p. 27). For our research the study of documents was one of the techniques used, besides a questionnaire sent to the e-mails of Argentine, Brazilian and Uruguayan associations. The use of the questionnaire guaranteed anonymity for those responding.

edited. In Brazil, after scarce debate, Bill N<sup>o</sup> 421/2012 became present. In this phase of the research, we contacted activist entities to find out about their participation in the debates for regulation; and about how they saw regulation and its consequences in the practice of the profession.

We will begin by presenting the research logic and inclusion/exclusion as a two-sided form. Subsequently we will present the sex profession's paradoxes.<sup>7</sup> The data will be first exposed by distinguishing data in relation to the law system, followed by the data that is relevant for what is happening politically. In this way we chose to differentiate the problem of regulation and criminalization of the profession from the problem of political participation in the debates on regulation.

## **2. The inclusion/exclusion Form**

The sex profession has peculiarities that require a perspective on social justice distinct from that based on the dispute between individualists and collectivists. Therefore, it is not sufficient to consider that entering the profession is a matter of free judgment, life's choices, or the consequence of culture. For this reason, we chose not to base our research on the logic of causes, adopting the circular reflexive logic found in the readings of Spencer Brown (1969), Foerster and Kauffman. In the case of the sociology of Law, Luhmann is the author who explores this logic and conceives the social medium as communication, resulting in the human society that is the system of all possible human communication. As communication, the human social medium is not composed of concrete, individualized, human beings. In the end, society is not characterized by a determined essence, nor by a determined moral substance, but by operations that produce and reproduce society itself, *communication* (Luhmann 1997/2007, p. 48). The communication on the sex profession researched herein is not about marks of intentionality or states of conscience. Under this perspective, communication is "genuinely social"; it is not a supernatural entity (external to the human being) nor is it a "common collective conscience": "communication does not lead to consensus in the full sense of truly complete agreement" (Luhmann 1997/2007, p. 58).

When communication is laid as the cell of the society, one is able to visualize it as the smallest particle of social matter. We uphold that meaning is a two-sided form and, as such, contains elements of the medium (linguistic context – place, language, ethos, linguistic gender, auditory aspects, intentions, and objectives) and of the Form (social structure, semantic memory, social system). To communicate, human beings speak, write, make gestures, design, etc. In this way one performs a "notification", "demarcation", "indication", a differentiation that marks the side in communication from the side momentarily distanced from communication. If we were not able to differentiate what we communicate from everything else that is not in communication, human communication would be impossible or unlikely to occur. It is through communication that social systems produce themselves and reproduce. In the case of law, the functional system of society dedicated to communication that has lawfulness as

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<sup>7</sup> "Paradoxes are not logical errors that have to be extirpated if one is to advance. What role they play today as a ubiquitous and central aspect of social dynamics becomes clear from the following extreme formulation: Paradoxes take the place of the transcendental subject; typical structures are historically Contingent phenomena" (Teubner 2005, pp. 41-64).

its unit of reference, the communicative unit of reference, is the legal/illegal Form (*Recht/Unrecht*), which composes its internal environment. The unmarked side, the external environment, is non-legal (*nicht Recht*) (Luhmann 1995/2005, pp. 39, 45, 55–57, 364–366).

Communication assumes the reflexive self-referencing of its own communication, for this reason

Communication always communicates that it communicates. It might correct itself in retrospect or deny that it had meant what it appeared to mean. It can be interpreted by means of communication on a scale from credible to incredible. But it is always accompanied by memory, even though it might be only short-term, which practically excludes any assertion that it has not taken place at all. Retrospectively, norms and excuses, tact requirements and counterfactual disregard arise, with which communication detoxifies itself in the event of the occasional malfunction. (Luhmann 1997/2012, pp. xiii–xiv)

However, when one speaks of communication one also refers to actors (for example, writer/reader, speaker/listener). However, these actors do not have the power to control communication. They can even control a conversation, however not the communication itself because it is communication that communicates. There is no way of controlling what speakers state, what they meant to say and what will be understood by what they said. This is because it is “difficult to generate a “non-sense”, since the force to generate it produces sense” (Luhmann 1997/2007, p. 33).

Meaning in the way of Forms requires analyses that look beyond ideals. Rational social integration would maintain equality for everybody as its point of departure. The Forms require a rationality that holds onto the reins of human communication’s self-reflection as the rationality of the social systems of meaning. Systemic rationality is not the work of one person’s totalitarian logic,<sup>8</sup> by a norm, a value or an idea, but by the confrontation of communication itself with social systems (Luhmann 1984/1998, p. 423). In this sense, just as there is a naturalization of exclusion in the scenario of racism (Costa 2012a, pp. 139–156, 2012b, pp. 235–259), this also exists in the sex profession (Roberts 1992, Guerra 2015, pp. 735–757). However, in the case of this profession, the regulation promotes paradoxes such as criminalization and recognition of the profession. To deal with these paradoxes, we resort to the paradox of meaning as a two-sided form, with which we can observe the exclusion side – where these professionals are denied recognition and dignity – and the inclusion side – where economic and legal conditions integrate the communications of these professionals into the systems social.

We observed in the communication of sex workers (mainly in political and legal decisions) that, when politics and regulation are built only with the participation of the actors (NGOs and activists in defense of these professionals), but without the participation of sex professionals, problems known only to those who live the day-to-day work of the profession are not addressed, which results in a policy and regulation that excludes more than it includes, the result of which is that the implementation of the policy or regulation will lack efficiency and effectiveness (Costa 1995, p. 63, Domingues

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<sup>8</sup> To speak of objective or subjective logic - substantive assumptions or procedural logic – will fail to provide the angles for understanding the picture here. It is the exposure to the reality of the system/environment distinction that reveals the inadequacy of testing by singular perspectives (Luhmann 1997/2012, p. 140).



1999, p, 27, Bora and Hausendorf 2006, pp. 478–488). A regulation running the risk of rejection could even miss the target and undergo resistance. There is nothing new about this affirmation. Durkheim had already treated solidarity as an element of human social integration, registering its moral character (Durkheim 1999, pp. 5, 13, 30–37).

The debates on the participation in decisions about regulation and public policy move away from the moralistic perspectives on democracy and are now about questions of managing public welfare as paradoxes of differentiations (Luhmann 1995/2013, p. 15, Stichweh 2013, pp. 22, 53, Mascareño and Carvajal 2015, pp. 133–134, García Blanco 2016, p. e029; Bora 2017, pp. 15–37). Our departure is thus set towards the horizon of greater participation and legitimacy, since this would heighten the probability of welcomed regulation or public policy. In the end, if the decision is restricted to an authority or determined group, it is more likely to require physical law enforcement. This leads us back to the problem of power and its differentiation from the use of force. Here, power is the means of generalized symbolic communication. It differentiates itself from the legitimation of violence (Luhmann 1995/2005, p. 56) and, further still, there is the differentiation of the binding quality connected to decision-making as opposed to coercive measures (Luhmann, in Torres Nafarrate 2009, pp. 129, 131–133, 143–145, Luhmann 2014, pp. 39–40). The assumption arises that participation is sound and unavoidable for public policy to have more chances of being efficient. This is because the “public arena assumes inclusion of people in functional systems and reciprocal recognition in the sphere of interaction” (Neves 2013, p. 129). In contrast, one cannot just assume that there is correct content or consensus, even believing in a means of selecting in favor of public well-being based on cognitive/ normative acumen in the face of the plurality of values and interests, for therein lies an opening for dissent (Neves 2013, p. 126).

We have already seen that inclusion is the principle that all of us are communicators, all of us have access to functional systems, all of us have the potential to be subjects of law with juridical capacity and legal protection, all can receive education from a school, earn and spend money, etc. Under this perspective, “against the backdrop of norms for inclusion, the actual inequality of possibilities becomes a problem because it is not supported in society’s schemes of differentiation, rather it reproduces itself in a non-functional way” (Luhmann 1993, p. 49). Exclusion, hence, is not an elimination of possibilities; rather it comes to integrate inclusion. For example, protest movements will always have a place in the life of society, since full inclusion of all people and all individual plans and desires of inclusion is not possible. Inclusion is not even the presupposition of recognition. What exists is the *dishonoring* of inclusion as a guarantee for unity, for “integration is the reciprocal limitation of degrees of liberty of structurally coupled systems” (Luhmann 1995/2013, p. 16).

Once one has recognized the referred to dishonoring, one recognizes that exclusion is distinct in diverse regions, for there are countries that have more inclusion and others where

great portions of the population are excluded in a very stable way from any participation in the communicative spectrum of any one of the functional systems and that, in the corresponding environment of inclusion, unforeseen forms of stabilization are found to take advantage, parasitically, of chances opened by the communicative

spectra of functional systems, constructing their own mechanisms of inclusion and exclusion for the maintenance of this network. (Luhmann 1995/2013, p. 28)

Applying the conception of inclusion/exclusion like a two-sided Form, we observe that regulation as the official juridical production does not imply the establishment of guarantees, does not imply the solution to a social problem. However, paradoxically, it makes the construction of juridical sense viable, helping social “struggles” by recognition. In the case of the sex profession, we question how much regulation produces greater stability and social cohesion, or increases prejudice. We remember that meaning has a “temporal dimension which impedes the petrification objectively undergoing reification of the social dimension” (Luhmann 1997/2007, p. 35) and communication “is the self-behaviour of a recursive operational system which is doubly closed in itself” (Foerster 2003, p. 322).

Accordingly, we have statements like the following:

Silvia Vorhauer considers compulsory registration to be an unnecessary measure. ‘Why can’t women simply go to the tax authorities and register there? Registration at the local government office leads to the stigmatization and criminalization of women’. This move is dangerous, she says, because prostitution may then be forced underground into illegality. (Prange 2017)

These are signs that the lack of participation of *stakeholders* promotes difficulties in the effectiveness and efficiency of regulation for the profession. Participation, the inclusion/exclusion of sex workers in debates during the procedure of construction of regulations and policies would integrate nuances and practical daily elements: viability for efficient implementation instead of widening the scope for more prejudice and criminalization.

With the inclusion/exclusion Form we could observe the participation of stakeholders in decision making about regulation and public policy for the sex profession in Latin America. The decisions were not regimented by differentiation as integrating unity, such as will occur in the case of ideas such as human nature, the perfection of the human being, the social contract, or consensus on moral foundations (Luhmann 1995/2013, p. 16). It is precisely the inclusion/exclusion Form that problematizes the “veritable unequalness of possibilities” (Luhmann 1993, p. 49), although it continues in its construction not only by the Europeans (Bohn 2008, pp. 1–15, Stichweh 2009, pp. 29–42, 2013, pp. 51–73, Bora 2019, pp. 3–29), but also by researchers who deal with social inequality, even exploring data and realities of countries that, like Brazil, are crippled by inequality (Neves 1994, pp. 253–276, 2006, pp. 248–256, 2018, p. 9, Möller and Hespanha 2002, pp. 56–79, Mathis 2007, pp. 217–240, Mascareño 2010, pp. 25–35, Bachur 2012, pp. 55–83, Torres Junior 2013, pp. 219–248, Mascareño and Carvajal 2015, pp. 131–146, 2016, pp. 77–109, Cadenas and Mascareño 2020, p. 79).

Our research progressed considering that beside acceptance, there is rejection; beside yes, there is no; beside the side of good, there is the side of bad; beside the just, there is the unjust. Beside, or at the side of, here, means that there is no way of coping with one without the other due to self-reference and reflexivity of communication (Luhmann 1997/2007, pp. 133–137). Social values, under this perspective, are the markings of communication and mirror thematized social dilemma. “Value conflicts – and it is only in cases of conflict that values become relevant – can only be resolved according to the situation, in an *ad hoc* way, within the partial systems of society, that is to say, only by

concrete people" (Luhmann 1997/2007, p. 314). We set out from the assumption that it is obvious that various kinds of persistent prejudices and social exclusions are present.

Denouement is insufficient to investigate the social question of sex work. There are both negative and positive exclusions that the professionals feel, as we observe in the struggle by the movement itself dedicated to quashing victimocracy in order to construct self-worth, for we see the sex workers coming out and demanding their rights as protagonists (Simões 2010, p. 25, Sousa 2013, p. 5). "The assumption that the prostitute is a 'poor thing' who 'fell down in the world' for lack of choice and that she could (re)integrate with society after participating in a course of short duration which capacitates her in performing other activities" (Sousa 2013, p. 9) reveals a series of prejudices. Such assumptions range from the "incapacity" of sex workers to become accustomed to and exercise other activities, to the credence that the professional could possibly have chosen to offer sex services and, with this, one imposes upon the professional the need to review, reconsider and move on in her way of living in order to suit prevailing moral standards. In this way, one rejects the possibility of society's acceptance of the profession, denying its chances for dignity (Sousa 2013, p. 9, Abracinskas 2018).

Thus, logic of reflexive circularity makes it viable for us to move away from the hypothesis of meaning being a question of definition, identification, the act of attributing what identifies the meaning (ontological metaphysics). It leads us through the logic of differentiation as a Form with two sides. Reflexive circularity is the logic of observation that depends on circularity (re-entry of meaning on meaning) and, at the same time, counting on reflexivity (including new elements). "All communication can turn itself into, in turn, the theme of communication" (Luhmann 1997/2007, p. 704). This is because the Form of meaning develops in a medium of meaning (medium/Form variation). In this perspective, meaning is recursively constructed, not by repetition nor redundancy, but by the calculability of variation in meaning, as in eigenbehavior, in the "recognizability of regularities, of 'invariants' in the temporal course of the action" (Foerster 2003, p. 321).

The empirical research for the comparative analysis of three Latin American countries finds its data in the contexts of legislation, juridical decision, manifestations by politicians, sex workers speaking individually and in associations, collected on official sites, through social media (Facebook) and blogs. Some information that we reported to be essential for the research and that was not found in any of these sources was requested directly from the sex workers' associations through a simple contact by e-mail.

In the topics *Analyzing legal communication about sex work* and *Analyzing political communication about sex work*, which will be presented below, we analyze issues related to the communication of their respective social systems (Law system and Political system). As for the Law, we observe the institutional legal regime applied by each of the countries; the existence or not of national regulatory law; the existence of articles in criminal and misdemeanor codes that relate to the activity; and court decisions that relate to sex work, directly or indirectly. For the Political system, in order to reflect on the participation of individual and organized sex workers in the construction of their rights, we observe, in a comparative way, the existing associations, their forms of action and what they propose. Specifically in Brazil, we observe issues related to participation in the drafting of Bill N° 421/2012. In Argentina, we observe the issues related to the fight

for the derogation of provincial misdemeanor codes. In Uruguay, we observed the issues related to the battle of sex workers for the modification of certain articles of Law N<sup>o</sup> 17.515/2002.

The two-sided inclusion/exclusion Form implies observing that inclusion can only be possible with its shadow concept, exclusion. There is no inclusion without exclusion (Luhmann 1997/2007, p. 492). This perspective does not defend general social inclusion of everyone and everything (Bora 2019, p. 8), rather it ventures to suggest that “no-one is fully included nor fully excluded” (Mascareño 2014, p. 9) and that one can only speak of inclusion as a Form endowed with sense [*Sinnvoll*], for exclusion integrates the sense of inclusion (Luhmann 1995/2013, p. 19). This is due to the cognitive and epistemic elements of systems theory as social communication: reflexive circularity (recursiveness, re-entry); differentiation as a two-sided Form; paradox taken as controversy, theory and/or practice without exclusion of third parties (unlike logic, contradiction, or aporia). As far as exclusion is concerned (without being eliminated), it is the fleetingly unmarked side. Exclusion maintains itself as present in inclusion. It marks the other side of the Form, the non-referenced side of meaning. Inclusion is not taken as a supernatural, natural or naturalized entity. It is not something that hovers over society, over human sociability, over an individual. To take inclusion/exclusion as the Form of meaning is to admit that it is social human construction, a Form of human communication (Stamford da Silva 2021, pp. 93–95).

In that which concerns our lens on participation, inclusion means that everyone is, in principle, able to be a subject of law, with the capacity to receive and spend money, to take part in political choices and influence collective decisions. Those included can have sentimental relationships and possess the minimum chances of access to education and health. In the daily practice of social life, however, certain outcomes – resulting in “opportunities”, “chances” and “situations” – do not occur equally for all. Universal equality therefore becomes a moralistic or normative ideal to confront the social dimension. There are regions marked by greater equality and others marked by inequality. Insecurity about expectations and a continuum seeking orientation by other factors mark the prejudiced regions (Luhmann 1997/2007, p. 501). This situation does not eliminate the functional differentiation of communication, that is to say, it does not imply dedifferentiation to the point of there not being differentiation between economic, political and juridical communication, for example (Mascareño 2014, p. 13, Torres Junior 2014, pp. 556–559). This takes place for various reasons, such as the sub-integration and the over-integration that lead to the “persistence of privileges and exclusions that create obstacles for the construction of a universalistic public sphere as a space for equal citizens” (Neves 2006, p. 246). It is also due to the informal networks of social integration, which in turn act to produce, facilitate and sabotage social inclusion, since they function as much to benefit as to exclude participations in decision-making processes (Mascareño *et al.* 2016, pp. 683–718).

Inclusion is an open principle since it establishes that all individuals deserve attention in every social system (Luhmann 1993, p. 53), not to be confused with the defense that everyone is (or should be) necessarily integrated. There are diverse situations of interpellations, between inclusion and exclusion, such as auto-inclusion/ auto-exclusion, inclusion by risk/ exclusion by danger, compensatory inclusion, inclusion in the

exclusion and cases of sub-inclusion (Mascareño and Carvajal 2015, pp. 136–143). Certain exclusions are beneficial for a particular human being. For example, the atheist who opts for exclusion from a religious system, or to be included as a member, all the while being someone who does not have faith in the higher power decreed by religious organizations. The principle of inclusion implies admitting and recognizing that every human is a communicator. In the end, no human is excluded from his/her potential to communicate.

[Individuals] may be able to participate in all communication and, in this way, alternate their couplings with functional systems from one moment to the next. Society, consequently, no longer offers them social *status* through which one defines, simultaneously, what the individual 'is' according to their origin and their quality. This makes inclusion dependent on highly differentiated opportunities for communication that can no longer be coordinated among themselves and, inclusively, can no longer be coordinated in a lasting way. (Luhmann 1997/2007, p. 495)

This perspective on inclusion makes its mark on social evolution, with the differentiation of society functionally differentiated from the segmentary society, where the individual's prestige in the social order is fixed (marked by dwellings, family housing, in tribes, in villages, in clans) (Luhmann 1997/2007, pp. 502–507, 1995/2013, p. 21). Furthermore, there are the functionally differentiated markings of stratified society: individuality acquired through social status and lineage; and equal participation penetrated by privileges and the strong influence of those who occupy the upper strata of social wellbeing, as in feudalism, which reserves its differentiated *dignitas* for nobility. Coupled to the latter social scenario there are the common people (people *without dignitas*), the bourgeoisie who have their followers in the ambience of modernity within states formed by citizens and foreigners (Luhmann 1997/2007, pp. 538–560; 1995/2013, p. 21).

The functionally differentiated society carries the marks of the principle of inclusion in the sense that everyone communicates, not in the sense that all communication is equal, that all information exercises the same influence and participation in an example of communication. Functional differentiation occurs when there is a semantic distinction between Form meanings. Through communication one differentiates ways of communication to become symbolically distinguished as money (economy), truth (science), power (politics), lawfulness (law), cognitive formation (education), beauty (art), feelings (love). Each one of these means of communication allows for a grammar, representing functionally differentiated Forms of meaning inside social systems.

Idealizing the proposition of equality between human beings, that "all are equal before the law", is an empirical case of a doomed vision of "social integration as inclusion" (Bora 2019, p. 10). With the inclusion/exclusion Form "the integration of society can be described as a parallel and simultaneous operation of reciprocal closing and opening of subsystems" (Bora 2019, p. 10). Functional differentiation, moreover, "emphasizes the inequality of function systems" (Luhmann 1997/2007, p. 591). With the inclusion/exclusion Form, insofar as its semantics take the lead (the official memory of society), one observes opportunities and predispositions in communication, be it in participation or in observable expectations from communication. Inclusion refers to the "distribution of values and chances amongst individuals" (Luhmann 1995/2013, p. 25). Information may not produce irritation for being communication in its functioning as

interaction, organization or system. Not all information promotes consequences in social semantics to the point of provoking a social system's thus functioning as communication, since participation is possible within internally regulated conditions by each social subsystem (Luhmann 1995/2013, pp. 19, 27). "The concept of inclusion is, therefore, modal, designating a determined form of exclusion: not only 'who participates?' but, above all, 'in what way, who and participate where?'" (Bora 2019, p. 14).

With the supremacy of functional differentiation, functional systems reach an operational closing and form systems of communication (Form of meaning) guided by networks of their own operations, operating their language recursively. Furthermore, they establish, observe, select and distinguish what sense a piece of information will impact into their interior for their own social system. The individual as subject has a different sense in psychology, economy, politics, law, art, religion, love, etc. It is this way because systems observe (Foerster 2003, pp. 4–5). In this sense, it is not the human being who observes, but the communication system itself.

The inclusion/exclusion Form is not, in itself, a functionally differentiated system of meaning – it is not a unitary binary code – it is a *meta-differentiation*.<sup>9</sup> Each social subsystem has its own elements to manage inclusion/exclusion, similar to morality (Luhmann 1997/2007, p. 501). For this reason, inclusion in a determined system does not necessarily imply inclusion in another social system; as for exclusion, it is the same process. Marcelo Neves criticizes this perspective affirming that to take inclusion/exclusion as a meta-differentiation implies considering a competition between this differentiation and the system/ environment differentiation in contemporary world society (Neves 2006, pp. 252–256), since this competition would impede the rule of functional differentiation.

Our reading of this is that sub-integration and over-integration do not have as a condition the construction of a "universalist public sphere as a space of communication between equal citizens" (Neves 2006, p. 246). Before this can happen, exclusions and privileges are present as much in the cases of sub-integration as in those of over-integration, corresponding with what Marcelo Neves himself admits. Exclusions and privileges mark hierarchies in the integration of people within social systems. As in countries most clearly marked by inequality, developed countries also display plenty of cases of corruption and dubious favor systems (including those that belong to the G7). Luhmann shows this upon affirming that he had left his position in justice administration because "what discomfited me the most was not having only one boss but various bosses who continually visited my cabinet with their impossible petitions that I could not refuse" (Torres Nafarrate 1995, p. 23). If, in the countries marked by inequality, these situations are less frequently condemned (or not even administratively and juridically registered by the State), to permit the inclusion/ exclusion Form as a meta-differentiation does not change readings of reality and critiques with regard to the conditions of social integration in different regions. This warns us about different ways to include and exclude, therefore, in the participation of communication, which takes us back to the levels of observation: interactional, organizational and systemic.

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<sup>9</sup> A self-referential way of distinguishing.

The communication of a singular individual is inexistent. Communication demands the simultaneous performance of the operations of informing, sharing and understanding (*Information/Mitteilung/Verstehen*) for there is no communication if one of these operations does not occur, be it in interaction, in organizations or systemically.

[Communication] is a happening attached to a moment in time: as soon as it appears it disappears (dissipates). This applies for all components of communication, for information can only surprise us once; for the sharing which, like all action, is linked to a momentary point in time; and for comprehension, which cannot be repeated, but which can, in the best of hypotheses, be remembered. (Luhmann 1997/2007, p. 49)

In these circumstances, the inclusion/ exclusion Form does not only integrate each social system in a different way, but also on each level of observation: interactional, organizational and systemic. To observe participation on each of these levels displays peculiarities which are all worthy of treatment. In Luhmann's theory of systems, individuals themselves do not form the social dimension, for it is our interpretation that creates the social dimension. It is not that Luhmann diminishes the human being, one's individuality. On the contrary, the author exaggerates the importance of the human being, therein investing the fullness of human complexity. It is not communication that wears the human being out, for we are composed of physical, biological, psychological and social elements (Luhmann 1990/1996, p. 15, Souto and Souto 2003, pp. 175–176, Archer 2009, pp. 100–101, Souto 2019, p. 4). If one considers the social dimension – society as a system that embarks on all possible meanings – all human communication is possible (Luhmann 1997/2007, p. 55, Rodríguez and Opazo 2007, pp. 19–30, 293–298). This does not imply affirming that in a situation of speaking, writing, in an announcement of something, in giving information, we refer to no individual. Human being as speaker, announcer, and communicator merely implies considering that there is no speaking, writing, announcement or relay of information without referential meaning in terms of a speaker, announcer, communicator, with his/her observable intentions and conscience by way of speech, writing, announcement or information. If it were only impossible to observe what one communicates, it would imply that, sociologically, we would have no way of observing intentions, motivations, or conscience.

In view of this, when one observes interactions such as a conversation between a sex professional and a parliamentarian, to give an example, this leads us to consider social position, social capital, discursive *ethos* – finally, the accumulated influence of all of this – therefore the participation of each individual in the communication experienced. We have paid heed to communication among a range of organizations, between a sex worker and an association, between unions, between an NGO and a parliamentarian, between an NGO and an association, amongst others, all the while observing representation, pertinence and the sharing of recollections. On this level, a sex worker undergoes observation as a social movement, as representing an institution, the sex profession as one of society's organizations, independent from formally established associations, unions or other institutions. The same lens is applied to the parliamentarian when he is not looked upon as a concrete person, as an individual, but as a member of a parliament. At this level of observation, social position and leadership represent a path for deducing information that does not reside in the individual, but in his or her social representation (Rodríguez and Opazo 2007, p. 293, Bora 2009).

In the end, the observation of systems means observing the recursive network of meaning (Luhmann 1997/2007, pp. 38–39), observing the Forms of meaning and the possibility for social systems to experience the communication they live through. Here, the referential source identifies time and space, not conscience, mind, intentionality. The social dimension has no creator, nor does communication. The subject determines nothing, not even the origin of meaning, language, history, society, for “subjects are not in the origins of discourse” (Possenti 2009, p. 83). Before anything else, language is a social task (Marcuschi 2007, 2008). In the sphere of systemic observation, there is a speaker and there is discursive *ethos* given that phenomena – namely discourse, communication and society – are not created from a mind, from an individual. Opinion, desire, personal will do not have relevance to the Form of meaning as long as they are opinion, desire and personal will, but acquire relevance as long as they are able to irritate, that is to say, to put systems of meaning into operation. Opinion, desire and the will of the individual do not establish the Form of meaning here. However, upon provocation of the system’s operating, they influence in the construction of sense. Even a monologue, for it to be considered discourse, as communication, requires a listener. However, for the listener to understand the monologue, he will necessarily have to be embedded in the recursive network of meaning, without which, what is shared, expressed in monologue, does not stand up to comprehension. After all, discourse is a “non-countable noun” (Maingueneau 2015, p. 23), that is to say, there is not one discourse but discourse constituted by the following: a) the supposition of transphrastic organization (discourse as organization situated beyond the sentence as long as there are the living of rules of an organization, of a discursive community); b) it is orientated; c) it is a form of action; d) it is interactive; e) it is contextualized; f) it is assumed; g) it is regulated by rules or norms; h) it is considered in the base of an inter-discourse (Maingueneau 2015, pp. 21–25). Under this perspective, “society cannot be thought of without communication, and likewise, communication cannot be thought of without society” (Luhmann 1997/2007, p. 3).

To summarize our discussion of the inclusion/ exclusion Form, we consider the following aspects: a) inclusion does not refer to equality for this would be insufficient both theoretically and empirically (Luhmann 1993, p. 52, 1997/2007, p. 492, Bora 2019, p. 9); b) inclusion, as a two-sided Form, is only possible because of its symbolic counterpart, exclusion (Luhmann 1997/2007, p. 492, 1995/2013, pp. 19, 27); c) we researched communication (in the social dimension) and not personalities, concrete human beings (psychological) – however, all information is necessarily linked to a communicator (concrete human beings, people or organizations), a referent (author, announcer, communicator), not a conscience (psychological system); d) “exclusion integrates with much more strength than inclusion” (Luhmann 1997/2007, p. 500), exclusion in a social system gains strength in excluding other social systems. Integration is the degree of freedom to select. Not having formal education does not necessarily imply exclusion from the economic, political and juridical systems. On the other hand, it increases the probability of such exclusion.

In the case of the sex profession, we applied the inclusion/exclusion Form to analyze political and juridical communication removed from a normative reading on this profession. Here we go on to the juridical communication.



## 2. Legal communication about sex work

In consideration of the juridical construction of sex work, we question “how could it be possible for it to be illegal and go unpunished?” and “how could it be possible for it to be legal and be punished?” For this reason we catalogue the three bases of legal communication: legislations, doctrines and juridical decisions in the superior tribunals of each country we have investigated. With that we set up a table with the following variables: the institutional legal regime; the existence of a specific national law regulating the profession; the existence of articles in criminal and misdemeanors codes that criminalize the professional or connected activities; and the juridical decisions involving sex work.

TABLE 1

|   | Brazil  | Argentina   | Uruguay  |
|---|---|---|--|
| <b>National Law</b>                     | No  | No  | Yes - Law N° 17.515/2002                             |
| <b>Penal code and misdemeanor codes</b> | Articles 228, 229 and 230 of the Penal Code – connected activities                  | Articles 126 and 127 of the Penal Code - connected activities<br>17 misdemeanor codes | Article 274 of the Penal Code - connected activities |
| <b>Juridical decisions</b>              | 188 decisions - Supreme Justice Tribunal<br>95 decisions - Supreme Federal Tribunal | 74 decisions - Argentina’s Supreme Court  | 127 decisions - Uruguay's Supreme Court of Justice   |

Table 1. Law system and sex work.

(Source: authors.)

From the doctrinal point of view, there are four classifications for the way that sex work is regulated in a country:

1. Abolitionism: Sex work carried out by adult individuals is legal. However, the associated conducts are all criminalized, since the ultimate objective of this regime is the abolition of sex work.
2. Neo-abolitionism: The Law punishes clients and commercial networks, but not the sex workers.
3. Prohibitionism: Sex work is illegal; the law punishes all stakeholders in the sex market, including the sex workers.
4. Regulatory: Sex work legal and regulated. The presence of regulation encompasses the entire sex market, ranging from health and administrative issues, to criminal, labor and tax issues (Nucci 2014).

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It is important to highlight that mixed models exist, which aggregate characteristics of more than one institutional legal regime and more restrictive regulatory models, which cover only territorial regulation or labor regulation.

Each of these regimes was influenced by discourses on the part of social movements for their construction. Abolitionism and neo-abolitionism are directly related to radical feminist currents, who consider the sex market as a patriarchal institution that reinforces male domination and the inequality of power between genders (Giddens 1993). They consider prostitution to be violent not only for the woman who is a prostitute, but for all women (Farley 2004). The women who exercise the activity are considered victims because they would be exercising it in a coerced way, directly and indirectly, and this is why the government needs to act to reduce or eradicate the sex industry, without punishing prostitutes (Mossman 2007). Neo-abolitionism, in particular, arose with the aim of giving women the possibility of leaving prostitution, criminalizing only clients and the explicit offer of sexual services. But several studies already point out that this model, currently applied in France and in Nordic countries, has been even more detrimental to sex workers than the previous anti-soliciting measures (Le Bail *et al.* 2018), and resulted in the deterioration of sex workers' living and working conditions (Calderaro and Giametta 2019).

As for prohibitionism, we can see its intrinsic relationship with more reactionary political sectors and with ultra-puritan segments of feminist movements (Dank 1998), since they observe prostitution with moral indignation, constituting a crime worthy of eradication. As Badinter (2002) points out, this model, applied in a large part of the United States and China, has not reduced prostitution, but has only pushed those who exercise it into hiding.

Claiming as their goal the reduction of crimes associated with prostitution, such as organized crime, police corruption, child prostitution and trafficking of human beings for the purpose of the sex trade, some countries have started to adopt regulatory attitudes (Mossman 2007). Although in these cases prostitution is not recognized as a job, it is recognized as an activity with a social function, and because of that needs the control of the state as a way of guaranteeing order and public health (Graça and Gonçalves 2016).

Finally, the position that defends the decriminalization of sex work and the guarantee of the rights and duties of sex workers in their entirety is led mainly by the sex workers' associations and by the current of *putafeminism*, which is a movement with an aim to rethink the ideals of feminism with the inclusion of sex workers, differentiating what would be sex work, sexual exploitation and labor exploitation (Prada 2018).

Observing the data, we classify Brazil as a "mixed" country, since at the same time that prostitution is recognized as a profession through the Brazilian Classification of Occupations ("5198 – Sex professionals"; see Ministério do Trabalho e Emprego n.d.) in an administrative act elaborated by the Ministry of Work and Employment, the law punishes all those that favor, aid or obtain profits from this activity. Argentina places itself in the international arena as "abolitionist", since it does not criminalize prostitution and does not have specific regulations against it; however, the police punish (and often molest) sex workers, 18 of Argentina's provinces considering the practice a breach of conduct. This divergence between legislation that is national and local (of the provinces)

has given place to this communicative ambiguity in the system of law. Uruguay has specific legislation regulating the activity and for this reason is classified as a regulatory country.

As far as Brazil is concerned, the key-word search for juridical decisions using the word *prostitution* at the site of the Supreme Justice Tribunal ([www.stj.jus.br](http://www.stj.jus.br)) generates a view of 188 decisions and at the site of the Supreme Federal Tribunal ([www.stf.jus.br](http://www.stf.jus.br)), 95 decisions. Not one decision has accused a man or a woman for practicing sex work. We also observe the predominant use of legislative argumentation from articles 228, 229 and 230 of the Brazilian Penal Code<sup>10</sup> (Decree-Law N<sup>o</sup> 2.848, December 07, 1940, altered by Law N<sup>o</sup> 12.015, 2009).

Still in the sphere of juridical decision, we identified a paradigm in Habeas Corpus N<sup>o</sup> 211.888 – TO (2011/0152952-2). The Sixth Chamber of the Supreme Justice Tribunal, in 2016, recognizes sex work as a profession, as well as “arbitrary exercise with its own reasoning” when a sex worker has confiscated an object from a client as a form of payment for the service. Notably, the case was not judged as a crime involving theft, but as the licit act of a professional having taken a watch as a form of payment for a service that the client had not paid for by money. By way of legal decision, we have juridical recognition of the sex profession as legal contracting. This decision communicates that offering sex as a service is legitimate, even when there is no specific legislation.

Being an isolated decision about an isolated incident, it does not integrate, by itself, the Form of juridical sense that has been made of sex work. As far as this decision comes to function as an example, paradigm (Kuhn 1962, pp. 37, 45), or precedent, it means that it puts into operation the system of law and therefore integrates the Form of juridical sense. Worthy of note is that the decision is not made by an individual but by a Chamber of the Supreme Justice Tribunal, therefore submitted to careful procedures of reflection and always respecting the pertinence of the Supreme Justice Tribunal to the system of law. Tribunals are at the center, the institutions that organize the system of law. They have the power of control over the Form of meaning in law, in the weightings of the licit/ illicit opposition. In other words, it becomes a matter of the “prohibition of the denial of justice”, that is to say, universal competence and the capacity to decide (Luhmann 1995/2005, pp. 374–375).

In the analysis of these data, we observe that in a country where sex work itself is licit, recognized as a profession by the Brazilian Classification of Occupations – but not regulated – all the associated conducts are criminalized by the penal code, and no judicial decision has ever condemned a man or a woman for practicing the activity. The legal system maintains a discourse on sex work, but with the influence of other systems in its communicativation, since it adopts contradictory attitudes, sometimes recognizing

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<sup>10</sup> Art. 228. Induce or attract someone to prostitution or another form of sexual exploitation, facilitate it, to impede or to make it difficult for someone to abandon it, carries a penalty of imprisonment of 2 (two) to 5 (five) years with a fine. Art. 229. Maintain, by one’s own means or by other agency, an establishment where sexual exploitation occurs, independent of the intention of financial gain, or by direct mediation with the landowner or management: Penalty – imprisonment for two to five years and a fine. Art. 230. To take advantage of the prostitution of others, participating directly from its gains or maintaining oneself, entirely or in part, from its practitioners: Penalty – imprisonment from one to four years and a fine.

sex work as a profession, sometimes seeing sex workers as victims of the capitalist and patriarchal system.

In Argentina sex work is not a crime. The Penal Code in Argentina, National Law 11.179/84, treats sexual exploitation of minors in article 125, pimping in article 126 and bullying in article 127. Economic exploitation of the exercise of prostitution is illegal, resulting in a sentence of 4 to 6 years. Additionally, there is Law 26.364 (Prevention and Sanction for sexual exploitation and Assistance to the victims) that gives support to the definition of sexual exploitation. The Law against contagious disease (ley de profilaxis antivenérea 12.331), sanctioned in 1936, penalizes the establishment of places for sexual activity. Emergency Act N° 936/ 2011, promulgated in 2011 by President Cristina Fernández de Kirchner, prohibited the publication of advertising that “promotes implicit or explicit offers of sex”.

However, seventeen provinces have qualified sex work in their codes of misdemeanors and infringements. By definition, any incitement or public offer to maintain sexual relations for money, or the promise of money, is prone to being a nuisance or scandalous behavior. The set punishments are fines and/or imprisonment.

Upon looking for the word “prostitution” on the site of Argentina’s Supreme Court (Corte Suprema de Justicia de la Nación Argentina ([www.csjn.gov.ar](http://www.csjn.gov.ar))) we obtained 74 decisions. We did not find one decision condemning a woman or a man for practicing or offering sexual services.

These data lead us to observe that juridical communication considers sex work licit in Argentina, since there is no national legislation actively criminalizing the activity. However, simultaneously, we see that some provincial codes place prostitution as a misdemeanor that results in permitting the police to oppress sex workers, consequently criminalizing prostitution and thereby communicating to us that prostitution is an illicit act. In a survey conducted by AMMAR (2016a) it was concluded that more than 81% of the complaints made by sex workers are due to police violence. In addition, according to another survey by the organization, 96% of the femicides of sex workers in Argentina go unpunished (AMMAR 2016b).

In Uruguay, sex work is regulated by Law N° 17.515, furnishing the requisites for its licit practice.

In the context of juridical decision, a search using the word “prostitution” on the site of the Supreme Court of Justice in Uruguay (<http://bjn.poderjudicial.gub.uy>) raised 127 decisions. Similar to Argentina and Brazil, decisions only refer to cases of brothels, “houses of prostitution”, of sexual exploitation of minors, favoring prostitution. No man or woman has ever carried a conviction for the practice of prostitution. There is still violence against sex workers.

The exercise of the profession beyond the terms of the legislation is illicit, as, for example, practicing in areas not established by the State, or advertising in newspapers with a large circulation. It is here, precisely, that there is a case for “negative inclusion”, being the case of inclusion that proved to result in wider exclusion. In the end it criminalized situations which had before been legal. This question is approached below in the topic politics and sex work.

### 3. Political communication about sex work

The government/opposition communicative unit is the code of the political system (Luhmann, in Torres Nafarrate 2009, p. 187). Related to this is our dedication to questions such as “How is it possible for public policy and pertinent laws in the area of sex work to be implemented without the participation of the *stakeholders* (professionals, associations, unions, NGOs, etc.)?”, or, “What are the chances of a regulatory norm exercising a desirable influence even with the participation of *stakeholders*?” To respond to the relevant inquiries we gathered professionals, activists and institutions entwined in the themes of sex work.

As we consider participation to be the effective possibility of communication that influences a social system, we chose to collect data related to this topic from sex workers and associations dedicated to this cause, and even politicians involved in the activity regulation processes, that is, on official websites and social networks, specifically on *Facebook*, as it is a network of predominantly written posts.

In Brazil, 1987 saw the creation of the Brazilian Network of Prostitutes composed of associations from all regions of the country (Andrade 2006, Caminhas 2020, pp. 3–4).

Currently, it performs together with two other national organizations, the National Headquarters for Sex Workers (Articulação Nacional de Profissionais do Sexo 2020) and the Sex Workers’ Union (Central Única de Trabalhadoras e Trabalhadores Sexuais 2016). All three movements fight for dignity and recognition for sex workers. What separates one association from the other relates to the way of guaranteeing these rights – if this should occur through the regulation of the activity or not. This is because a regulating law for the activity is able to bring, besides benefits, some limitations and negative obligations to the professionals, such as the need to become registered. And then there is the question of zoning (the creation of zones where the practice of sex work is permitted).

In Brazil, we can identify associations, collective networks and entities in some states. For the purposes of this research, we preferred to work with associations on the state level in Brazil, unlike the other two countries, where we worked with national Associations. In Brazil, the set of local Associations form national Associations, while in Argentina and in Uruguay, there is a powerful national association in each country, working through headquarters in the provinces. Nineteen associations were identified, of which eight have social networks (Associação Pernambucana das Profissionais do Sexo 2014, APROS 2014, Gempac 2015, Tulipas do Cerrado 2017, Amar 2018, As Amazonas 2018, Aprosba Bahia 2018, Coletivo Clã das Lobas 2018) and where six maintain their postings up to date, if one refers to the publications of 2021.

As for the objectives of the functioning of Brazilian associations, from the analysis of social media posts from Brazil’s state-based associations, we observe that the majority of them defend three main positions: the prevention of STDs/HIV/AIDS, reduction of stigma linked to sexual activity and support for personal and professional development of sex workers, giving incentive to the struggle for their rights. In Brazil, the associations are more focused on the area of health and education in order to bring new sensibilities about rights to society and professionals. In Argentina, we realized that the fight is organized in the sense of decriminalizing sexual activity within the provinces, with the

aim of reducing violence and police abuse. And in Uruguay, we saw a struggle for changes in the existing regulation.

Finally, on the question of the participation of state associations and sex workers in the construction of the Gabriela Leite Brazilian Law Project, a most important observation for us, we were unable to find enough data through social networking. Thus, to guarantee these answers, we entered into contact directly by e-mail with the Associations previously identified, asking about levels of participation, and non-participation, in the construction of the bill and their opinions and perceptions about the proposal. Of nineteen e-mails sent, nine were answered. Two Associations replied that they did not yet exist at the time of the production of the Law (The Amazonas and Clan of Wolves). Six responded that they were not invited to debate the new Law (Association of Women Sex Professionals of the State of Amapá; Association of Sex Professionals of Paraíba (APROSPB); Association of Sex Professionals of Pernambuco (APPS); Association of Sex Professionals of Rio Grande do Norte (ASPRORN); Association of Sex Workers of Sergipe (ASTRASSE). And only one stated that they had participated in the construction of this project (The Group of Women Prostitutes of the State of Pará – GEMPAC) (Caminhas 2020, pp. 3–4).

The representatives of a few associations contacted by us, such as the ASPRORN and APPS, were willing to respond to the research. When asked about their views on the bill, they highlighted that the legal text does not favor sex workers and that the majority of prostitutes have not heard of the Bill. However, it should not be enough to “not have heard about it”, for the non-participation of sex workers in legislative debates indicates that interested parties (*stakeholders*) do not even form a dignified opposition in the midst of political communication. It is that simple. If politics is the government/opposition Form – bearing in mind that *stakeholders* are not integrated, not heard, do not participate in debates – then they do not participate in communication and find themselves to be in an apolitical condition, not even arriving at the doorstep of being a people or an organization reeling from the defeat of their integration. Yet, even so, sex work turns into a theme, its Form of communication. What we need to reflect upon is the necessity and importance of involving *stakeholders* in debates, decisions on policy and in the regulation of sex work.

In Argentina, the Association of Women Sex Workers of Argentina (Asociación de Mujeres Meretrices de Argentina, AMMAR), which struggles for amplified rights and dignity for sex workers, has been associated with the Sex Workers’ Union of Argentina since 1995. Their association with the Network of Women Sex Workers from Latin America and the Caribbean (REDTRASEX) has endured since 1997. The same association has become the leader of unity and emancipation for the recognition of rights for sex workers in Argentina since 2016. Today the Association has branches in eight provinces of the country, besides the one in the country’s capital.

The *Study on the Incidence and Political Participation of Women Sex Workers in Latin America and the Caribbean*, done by AMMAR, calculates that the majority of sex workers – those in organizations and, equally, the independent ones – have knowledge on the norms and legislation that applies to them, differently to what happens in Brazil. This leads us to consider how, in Argentina, social movements of this kind have been capable of irritating the political system. This is how we come to understand presidential decree

936/2011 as a response to Argentina's feminist movement. As it so happens, a closer look at the reality behind the situation indicates that the irritations of such social movements do not affect the operative aspects of the political system.

This is so much so that discriminatory language with reference to the female plaintiffs continued its presence in the discourse of the same politicians who declare themselves as defenders of the cause, appearing in the final draft of the Presidential Decree. Subsequently, the derogatory language suffers alterations in this document due to interventions by activists. However, the decree upholds the prohibition of publicity for commercial services for sex, affecting the activities of sex workers who are unable to promote themselves, by way of advertising, in order to attract clients. We also observe the production of policies and legislations in Argentina without consulting the clientele of such services. We do not even know their opinions about how they would benefit, or be disadvantaged, by the establishment of pertinent policies and legislations.

In the hands of Senator Osvaldo López, in 2013 AMMAR presented a Bill to the National Congress to regulate autonomous sex work in Argentina. Nevertheless, it was shelved straight away (AMMAR 2013). In 2014, AMMAR presented proposals on legislation in the provinces of Buenos Aires, Neuquén and Mendoza in order to guarantee the possibility of sex workers offering their services in special localities, forming cooperatives and registering themselves as commercial ventures. Another plea entered to revoke the respective Codes of breaches of each one of the provinces. However, none of these proposals was forwarded by legislative means.

From these data, we observe that the pressure of Argentine prostitutes was not sufficient to irritate the political system. Until now, neither cognitive nor structural changes have occurred in the communication of the political system. In parallel, the same reflections occur as in the case for Brazil: sex workers remain in an apolitical condition, in the political system, neither included nor excluded. Associations, as organizations, have participation in political communication. In the systemic context, sex work is a theme and communication on sex work is present, as can be identified in statements by parliamentarians and the Argentine President.

In the case for Uruguay, The Association of Professional Sex Workers in Uruguay (AMEPU) enters the scene in 1986. It organized its first large meetings in 1991 to plea for rights, including an original proposal for regulation by its own deliberations. In the hope for the creation of legislation on this same theme, the sex workers presented their project to a variety of political sectors. Legislator Daniel García Pintos took up the proposal, presenting it to the Commission of Human Rights of the legislative assembly. However, as Ileana Rocha (2013) highlights, various adjustments were made from the moment of AMEPU's original proposal until the final destination. It ended up there for perusal of members of the legislative assembly in a process of agreements, nevertheless leaving the sex workers themselves out of the picture. This new law, in the instant it was proposed, left behind many of the expectations of those workers that had participated in its discussion and elaboration, and for this reason, it is currently the target of so many critics by the professionals themselves and their associations.

According to research performed by the Uruguayan non-government organization in support of women's health, MYSU (Mujer y Salud en Uruguay), sex workers affirm that they are substantially worried about the involvement of minors in prostitution,

considering that the law, intended to protect children, has had adverse effects (Abracinkas *et al.* 2013). An increase in lack of safety and protection is due to the failure in offering contraceptives and information to the country's youth. Regular examination in order to accompany their state of health is scarce. Additionally, the research of MYSU has touched on a number of other points: "red light districts" have been designated without consulting the State's sex workers; foggy notions exist about the law on the part of health professionals, police and often the professionals themselves; there are disorganized (and precarious) support services; there is the fact that it is the Interior Ministry that promotes the national register for sex work; the role of the Honorary National Commission of Protection for Sex Work is questionable; and there is the ineffectiveness of mechanisms for reporting.

Currently, the O.TRA.S association is the one that fights for the modification of Law 17.515/2002 in Uruguay, pleading before the National Congress for the end of "red light districts". Other demands include the following: the capacitating of health professionals and police in relation to legislation; improvement of support services for prostitutes; change for the national registration of sex work promoted by the Ministry of the Interior; activation of the Honorary National Commission of Protection for Sex Work; and effectiveness of the mechanisms for reporting.

Consequently, it is evident that AMEPU has participated in the construction of Uruguay's legislation. The fact that AMEPU has made moves to modify the problematic points in the law ought to mean that the political system was irritated by the social movement. What has really occurred is that the Uruguayan State, upon creating legislation for regulating prostitution, has not taken into consideration the interests of the sex workers, but rather "social morals" and the safety/ health of clients. For this reason, even though they are organized for communal action and with expressions of resistance, the sex workers are not able to alter the articles of the law that hamper their professional practice.

In the area of governance, in the three countries we have taken note of policies directed towards health, education and juridical protection. The associations dedicated to the cause of prostitution, in all three countries, accuse their authorities of not involving them in decisions.

#### **4. Conclusion**

The inclusion/ exclusion Form has provided certain perspectives on the sex profession by way of removal of normativist, moralistic and causalistic pitfalls. This was an indispensable factor because, upon conceiving inclusion without exclusion (since there is no complete exclusion without complete inclusion), we have been able to observe situations of inclusion that promote more exclusion and situations of exclusion that have their way of being inclusive.

As for the Law, one has seen that sex work remains a part of juridical communication. Retirement is available under the same conditions, as long as the sex professional can contribute to determined economic requirements. Furthermore, for each situation, for each legal communication, there is a corresponding dynamic of semantics. Applying the theory, we are alerted to the fact that we cannot consider the right to retirement in the same way as in the analysis of other rights. An example of this would be to consider a



work contract as valid because of its formalized status. Nevertheless, the law has also recognized the legality of sex work as a type of work contract, even being bare of its regulation. The existence of sex work is communicated in a juridical form, in between social exclusion, prejudices and persistent inequalities.

In the political context, the performance of associations makes public policies viable, despite the minor scale of improvements and the scarcity of social insertion at the doors of politicians, since the demands of today's sex worker are much more visible than they were. Even considering the active role of organizations, we have observed that sex work is maintained as systemic exclusion by politics, maintaining the world of the sex worker as an invisible one (Vilhena Vieira 2007, p. 43) under the light of the political decisions that reach them from region to region. In Argentina's case, AMMAR has not been able to gain more influence in its attempts at communication with the national congress. In Brazil, the majority of sex workers have not yet formed an opinion on the regulation of sex work and do not know about the importance of a Bill that was under discussion. In Uruguay, even with formal regulation, those directly involved in the debate have not yet gained enough strength to effectively influence the necessary changes in policy with regard to the practice of sex work.

Finally, exclusion with regard to *participatory governance* does not register as *Unrecht* and *Opposition*, for the participation of activists did not demonstrate any potential for integration, not even with the apparent systems invented to simulate legitimacy. Laws and public policies were in effect clarified without recognizing the importance of the protagonism of *stakeholders*. For this reason, we have resorted to the *Unrecht/Nicht-recht* distinction to observe self-exclusion, internal exclusion of the system (*Unrecht*) delineating counter-position which goes on to integrate communication (inclusion); and hetero-exclusion, exclusion that is external to the system (*Nicht-recht*), which delineates social prejudices from persistent exclusions, as in the cases of themes that do not even have a voice in social communication, thereby demanding much more agitation in terms of protest movements in order to irritate social systems.

We observe that in sex work there are recognized laws (included – *Recht*), laws in the process of recognition (excluded – *Unrecht*) and laws that are denied (*Nicht-recht*). One category of the theory of systems that can aid in this debate is the center/periphery distinction, since the center is obliged to operate, placing the system, moved along by its organizations, into operation, the periphery under no obligation to add life to this operation. In the periphery, "all kinds of interests can be represented and applied within possible limits, without the distinction between legitimate and non-legitimate interests" (Luhmann 1995/2005, p. 383). This is the case because social systems have their strategies for selection, adaptation, rejection or even the so-called state of suspension (silence, non-reaction, momentary neutrality), since:

... it is as much the media as it is power and money that offer an excess of non-utilized opportunities. In both systems there is space for strategies and, amongst other things, it can be a question of selecting leadership, if and up to what point and in which direction preferences prevail, between one direction and the other. Last but not least, in the relationships of political and economic organizations, one should realize that the more rigid systems possess a greater capacity to impose themselves, resulting in the system that opens up to greater variety and adaptability, and that will at the same time be more volatile for being dominated by the other system. (Luhmann 2016, p. 66)

Finally, although it is not about hierarchy, but about heterarchy (*systemic linkage*), social systems, as much as they are differentiated, “can come to operate as if they were as one in special circumstances” (Loomis 1959, pp. 383–390 cited in Luhmann 1995/2013, p. 49), which seems to happen when inter-systemic integration does not carry any presupposition of equality. It is rather that the very limits of each system supply the conditions of differentiation in a way that inclusion in a system does not automatically guarantee inclusion in another system. It is truly a matter of the distribution of values and chances between individuals and not necessarily equality. One cannot ignore that there are cases where being excluded is more beneficial than being included.

## References

- Abracinskas, L., 2018. Trabajo sexual, prostitución y sistema prostituyente: contradicción fatal. *Diario El Pueblo* [no longer online] <http://www.diarioelpueblo.com.uy/m/category/generales/page/98> [Access 31 May 2018].
- Abracinskas, L., et al., 2013. *Ley 17.515: Trabajo sexual desde la experiencia de las personas Trans* [online]. Montevideo: MYSU. Available from: <http://www.mysu.org.uy/wp-content/uploads/2014/12/Descargue-aqu%C3%AD-informe-sobre-trabajo-sexual.pdf> [Access 28 May 2018].
- Amar- Associação de mulheres acreana revolucionaria, 2018. [Facebook profile]. *Amar- Associação de mulheres acreana revolucionaria* [online]. Available from: <https://www.facebook.com/Amar-Associa%C3%A7%C3%A3o-de-mulheres-acreana-revolucionaria-1777771802317475/> [Access 25 October 2021].
- Andrade, N., 2006. *Associação Pernambucana de profissionais do sexo: Uma experiência de organização política* [online]. Dissertação (Mestrado em Serviço Social). Recife: Centro de Ciências Sociais e aplicadas, Universidade Federal de Pernambuco. Available from: [https://repositorio.ufpe.br/bitstream/123456789/9799/1/arquivo8213\\_1.pdf](https://repositorio.ufpe.br/bitstream/123456789/9799/1/arquivo8213_1.pdf) [Access 25 October 2021].
- APROS - Associação das Prostitutas da Paraíba, 2014. [Facebook profile]. *APROSPB* [online]. Available from: <https://www.facebook.com/APROSPB/> [Access 25 October 2021].
- Aprosba Bahia, 2018. [Facebook profile]. *Aprosba Bahia* [online]. Available from: <https://www.facebook.com/Aprosba-Bahia-204825216935996/> [Access 25 October 2021].
- Archer, M., 2009. *Teoría social realista: El enfoque morfogenético*. Trans.: D. Chernilo. Santiago de Chile: Universidad Alberto Hurtado.
- Articulação Nacional de Profissionais do Sexo - ANPS, 2020. [Facebook profile]. *anpsbrasil* [online]. Available from: <https://www.facebook.com/anpsbrasil/> [Access 12 March 2021].
- As Amazonas- Associação de Profissionais do sexo do Amazonas, 2018. [Facebook profile]. *apamasamazonas, Non-Governmental Organization (NGO)* [online].

Available from: <https://www.facebook.com/apamasamazonas/> [Access 25 October 2021].

Asociación de Mujeres Meretrices de la Argentina (AMMAR), 2013. *Proyecto de Ley para regular el Trabajo Sexual Autónomo en Argentina* [online]. Buenos Aires: AMMAR. 3 July. Available from: <http://www.ammar.org.ar/Ley-de-Trabajo-Sexual-Autonomo.html> [Access 27 May 2018].

Asociación de Mujeres Meretrices de la Argentina (AMMAR), 2016a. *Aniversario Línea Roja: Informe resumen (Septiembre 2015–septiembre 2016)* [online]. Buenos Aires: AMMAR, 7 December. Available from: [http://www.ammar.org.ar/IMG/pdf/primer\\_informe\\_linea\\_roja.pdf](http://www.ammar.org.ar/IMG/pdf/primer_informe_linea_roja.pdf) [Access 25 February 2021].

Asociación de Mujeres Meretrices de la Argentina (AMMAR), 2016b. *El estigma también mata: Registro nacional de femicidios hacia trabajadoras sexuales en Argentina 1996-2016* [online]. Available from: [http://www.ammar.org.ar/IMG/pdf/registro\\_nacional\\_de\\_femicidios\\_de\\_trabajadoras\\_sexuales\\_en\\_argentina\\_1996-marzo\\_2016.pdf](http://www.ammar.org.ar/IMG/pdf/registro_nacional_de_femicidios_de_trabajadoras_sexuales_en_argentina_1996-marzo_2016.pdf) [Access 25 February 2021].

Asociación de Mujeres Meretrices de la Argentina (AMMAR), 2018. *Estudio sobre la incidencia y la participación política de las mujeres trabajadoras sexuales en América Latina y el Caribe* [online]. Report. Buenos Aires: AMMAR. Available from: <http://www.ammar.org.ar/IMG/pdf/armado-argentina.pdf> [Access 30 May 2018].

Associação Pernambucana das Profissionais do Sexo, 2014. [Facebook profile]. *appspe* [online]. Available from: <https://www.facebook.com/appspe/> [Access 25 October 2021].

Bachur, J.P., 2012. Inclusão e exclusão na teoria dos sistemas sociais: um balanço crítico. *BIB* [online], 73, 55-83. Available from: <https://anpocs.com/index.php/bib-pt/bib-73/8792-inclusao-e-exclusao-na-teoria-de-sistemas-sociais-um-balanco-critico/file> [Access 25 October 2021].

Badinter, R., 2002. Tribune: Prostitution et pénalisation. *Le Monde*, 20 February.

Benites Oliveira, C., 2016. A polissemia sociológica da questão social e suas implicações para a análise de políticas públicas. *Alabastro*, 2(8), 19-31.

Bohn, C., 2008. Inclusion and exclusion: theories and findings from exclusion from the community to including exclusion. In: A. Gestrich, L. Raphael and H. Uerlings, eds., *Inclusion/Exclusion. Strangers and poor people from the classical antiquity to the present days*, 1-15.

Bora, A., 2009. *Systems Theory, discourse, positionality. Towards a better understanding of the interior architecture of functional differentiation in sociological Systems Theory* [online]. Systems theory seminar. Available from: <https://pdfs.semanticscholar.org/93d8/c582ac91bc1c6329a1e67f6d522a5bf27c.pdf> [Access 3 May 2009].

Bora, A., 2017. Semantics of ruling: reflective theories of regulation, governance and law. In: R. Paul et al., eds., *Society, Regulation and Governance New Modes of Shaping Social Change?*. Cheltenham: Edward Elgar, 15–37.

- Bora, A., and Hausendorf, H., 2006. Participatory science governance revisited: normative expectations versus empirical evidence. *Science and Public Policy*, 33(7), 478–488.
- Bora, Alfons, 2019. “Quem participa?” Reflexões sobre teoria da inclusão. *Revista brasileira de sociologia do direito* [online], 6(3), 3–29. Available from: <https://doi.org/10.21910/rbsd.v5n3.2019.339> [Access 25 October 2021].
- Bringel, B., and Varella, R., 2016. A pesquisa militante na América Latina hoje: reflexões sobre as desigualdades e as possibilidades de produção de conhecimentos. *Revista digital de direito administrativo* [online], 3(3), 474–489. Available from: <https://doi.org/10.11606/issn.2319-0558.v3i3p474-489> [Access 25 October 2021].
- Business insider, 2019. Prostitution is legal in countries across Europe, but it’s nothing like what you think. *Business insider* [online], 13 March. Available from: <https://www.businessinsider.com/prostitution-is-legal-in-countries-across-europe-photos-2019-3> [Access 25 October 2021].
- Cadenas, H., and Mascareño, A., 2020. Lineamientos para una sociología evolutiva de la diferenciación funcional en América Latina. *Sociología e antropología* [online], 10(01), 75–98. Available from: <https://doi.org/10.1590/2238-38752019v1012> [Access 25 October 2021].
- Calderaro, C., and Giametta, C., 2019. The Problem of Prostitution: Re-repressive policies in the name of migration control, public order, and women’s rights in France. *Anti-Trafficking Review* [online], 12, 155–171. Available from: <https://doi.org/10.14197/atr.2012191210> [Access 25 October 2021].
- Caminhas, L., 2020. A regulamentação da prostituição é uma demanda por justiça? *Revista brasileira de ciências sociais* [online], 35(103), 1–35. Available from: <https://doi.org/10.1590/3510310/2020> [Access 25 October 2021].
- Central Única de Trabalhadoras e Trabalhadores Sexuais – CUTS, 2016. [Facebook profile]. *CUTSBR* [online]. Available from: <https://www.facebook.com/CUTSBR/> [Access 12 March 2021].
- Chagnon, M., 2017. Prostitution in the Netherlands: what is really happening here. *Dutchreview* [online], 10 February. Available from: <https://dutchreview.com/featured/prostitution-in-the-netherlands-what-is-really-happening-here/> [Access 25 October 2021].
- cmb/rt (EPD, AFP), 2019. Germany: Prostitute protection laws proving impotent. *DW* [online], 18 February. Available from: <https://www.dw.com/en/germany-prostitute-protection-laws-proving-impotent/a-47560411> [Access 25 October 2021].
- Coletivo Clã das Lobas, 2018. [Facebook profile]. *cladaslobas* [online]. Available from: <https://www.facebook.com/cladaslobas/> [Access 25 October 2021].
- Costa, S., 1995. Democracia e dinâmica da esfera pública. *Lua Nova* [online], 36(95), 55–95. Available from: <https://doi.org/10.1590/S0102-64451995000200004> [Access 25 October 2021].

- Costa, S., 2012a. Freezing differences: politics, law, and the invention of cultural diversity in Latin America". In: A. Mascareño and K. Araújo, eds., *Legitimization in world society*. Farnham/Burlington: Ashgate, 139–156.
- Costa, S., 2012b. Regimes de coexistência interétnica no Brasil e na Alemanha: Contribuições a um debate inexistente. *Sociologia: Revista da Faculdade de Letras da Universidade do Porto* [online], no. 1, 235–259. Available from: <https://www.redalyc.org/pdf/4265/426539986011.pdf> [Access 25 October 2021].
- Cruz, J., and van Iterson, S., 2021. *The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red Light District* [online]. Amsterdam: Humanity in Action in the Netherlands. Available from: [https://www.humanityinaction.org/knowledge\\_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/](https://www.humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/) [Access 25 October 2021].
- Dank, B., 1998. Sex work, sex workers, and beyond. *Sexuality and Culture*, 2, 1–6.
- Domingues, J.M., 1999. Cidadania, direito e modernidade. *ANPOCS* [online], 23, 1–37. Available from: <https://www.anpocs.com/index.php/encontros/papers/23-encontro-anual-da-anpocs/gt-21/gt19-17/5014-jdomingues-cidadania/file> [Access 30 March 2015].
- Durkheim, E., 1999. *Divisão social do trabalho*. São Paulo: Martins Fontes.
- Farley, M., 2004. Bad for the body, bad for the heart: Prostitution harms women even if legalized or decriminalized. *Violence against Women*, 10(10), 1087–1125.
- Foerster, H. v., 2003. *Understanding Understanding: Essays on Cybernetics and Cognition*. New York: Springer.
- Fondation Scelles, 2019. *Sexual exploitation: New challenges, new answers. 5<sup>th</sup> Global Report* [online]. Paris: Fondation Scelles. <http://fondationscelles.org/pdf/RM5/OVERVIEW-Global-Report-2019-on-sexual-exploitation-FONDATION-SCELLES.pdf> [Access 25 October 2021].
- Fondation Scelles, 2021. *About us* [online]. Paris: Fondation Scelles. Available from: <https://www.fondationscelles.org/en/about-us> [Access 25 October 2021].
- García Blanco, J.M., 2012. La exclusión social en la teoría social de Niklas Luhmann. *Século XXI* [online], 2(1), 43–71. Available from: <https://doi.org/10.5902/223667256384> [Access 25 October 2021].
- García Blanco, J.M., 2016. Los problemas teóricos y metodológicos del concepto de exclusión social: Una visión neofuncionalista. *Revista Internacional de Sociología* [online], 74(2), e029. Available from: <https://doi.org/10.3989/ris.2016.74.2.029> [Access 25 October 2021].
- Gempac - Grupo de Mulheres Prostitutas do Estado do Pará, 2015. [Facebook profile]. *gempacpa* [online]. Available from: <https://www.facebook.com/gempacpa/> [Access 25 October 2021].
- Giddens, A., 1993. *Sociologia*. Lisboa: Fundação Calouste Gulbenkian.

- Gohn, M.G., 2018. Marcos referenciais teóricos que têm dado suporte às análises dos movimentos sociais e ações coletivas no Brasil–1970–2018. *Revista brasileira de sociologia* [online], 6(14), 5–33. Available from: <https://www.redalyc.org/journal/5957/595765442001/movil/> [Access 25 October 2021].
- Graça, M., and Gonçalves, M., 2016. Prostituição: que modelo jurídico-político para Portugal? *DADOS: Revista de Ciências Sociais* [online], 59(2), 449–480. Available from: <https://doi.org/10.1590/00115258201683> [Access 25 October 2021].
- Guerra, P., 2015. Tendencias sobre el delito del proxenetismo en el marco de las regulaciones sobre el trabajo sexual: Un análisis socio jurídico a partir del relato de mujeres en situación prostitucional del Uruguay. *Quaestio Iuris* [online], 8(2), 735–757. Available from: <https://doi.org/10.12957/rqi.2015.16924> [Access 25 October 2021].
- Ianni, O., 1989. A questão social. *Revista USP* [online], no. 3, 145–154. Available from: <https://doi.org/10.11606/issn.2316-9036.v0i3p145-154> [Access 25 October 2021].
- International Committee on the Rights of Sex Workers in Europe (ICRSE), 2008. *Prostitution Policies in the Netherlands* [online]. Available from: [https://www.sexworkeurope.org/sites/default/files/resource-pdfs/wijers\\_m\\_pros\\_policies\\_nl\\_2008.pdf](https://www.sexworkeurope.org/sites/default/files/resource-pdfs/wijers_m_pros_policies_nl_2008.pdf) [Access 25 October 2021].
- Jeffreys, S., 2008. *The Idea of Prostitution*. Melbourne: Spinifex Press.
- Kuhn, T., 1962. *The Structure of Scientific Revolutions*. University of Chicago Press.
- Le Bail, H., Giametta, C., and Rassouw, N., 2018. *Que pensent les travailleur.ses.s du sexe de la loi prostitution?* [online]. Report. April. Paris: Médecins du Monde. Available from: <https://www.medecinsdumonde.org/sites/default/files/Rapport-prostitution-BD.PDF> [Access 25 October 2021].
- Ley Nº 17515. Ley sobre el trabajo sexual. 04/07/2002. *Registro Nacional de Leyes y Decretos* [online], tomo 1, semestre 2, p. 32. Montevideo: Centro de Información Oficial. <https://www.impo.com.uy/bases/leyes/17515-2002> [Access 25 October 2021].
- Luhmann, N., 1993. *Teoría política en el Estado de bienestar*. Madrid: Alianza.
- Luhmann, N., 1996. *La ciencia de la sociedad*. Ciudad de México/Barcelona: Universidad Iberoamericana/Herder. (Originally published in 1990 as *Die wissenschaft der Gesellschaft*. Frankfurt am Main: Suhrkamp).
- Luhmann, N., 1998. *Sistemas sociales: Lineamientos para una teoría general*. Barcelona/Ciudad de México: Antrhorpos/Universidad Iberoamericana/Pontificia Universidad Javerina. (Originally published in 1984 as *Soziale Systeme: Grundrisse einer Allgemeinen Theorie*. Frankfurt am Main: Suhrkamp).
- Luhmann, N., 2012. *Theory of society (vol. 1)*. California: University of Stanford. (Originally published in 1997 as *Die Gesellschaft der Gesellschaft*. Frankfurt am Main: Suhrkamp).

- Luhmann, N., 2013. Inclusão e exclusão. In: R. Dutra and J.P. Bachur, *Dossiê Niklas Luhmann*. Belo Horizonte: EdUFMG, pp. 15–49. (Originally published in 1995 as *Inklusion und Exklusion. Soziologische Aufklärung*, Verl. 6. Opladen: Westdt, pp. 237–264).
- Luhmann, N., 2005. *El derecho de la sociedad*. México: Herder. (Originally published in 1995 as *Recht der Gesellschaft*. Frankfurt am Main: Suhrkamp).
- Luhmann, N., 2007. *La sociedad de la sociedad*. México: Herder. (Originally published in 1997 as *Die Gesellschaft der Gesellschaft*. Frankfurt am Main: Suhrkamp).
- Luhmann, N., 2014. *Sociologia política*. Trans.: I. Ortega Rodríguez. Madrid: Trotta.
- Luhmann, N., 2016. *Distinciones directrices*. Trans.: P. Piedras Monroy. Madrid: Centro de Investigaciones Sociológicas.
- Maingueneau, D., 2015. *Discurso e análise de discurso*. São Paulo: Parábola.
- Marcuschi, L.A., 2007. *Fenômenos da linguagem: Reflexões semânticas e discursivas*. Rio de Janeiro: Lucerna.
- Marcuschi, L.A., 2008. *Processo de compreensão: Produção textual, análise de gêneros e compreensão*. São Paulo: Parábola.
- Mascareño, A., 2010. *Diferenciación y contingencia en América Latina*. Santiago de Chile: Universidad Alberto Hurtado.
- Mascareño, A., 2014. Diferenciación, inclusión/exclusión y cohesión en la sociedad moderna. *Revista Cis* [online], 17(2), 9–25. Available from: <https://dialnet.unirioja.es/descarga/articulo/6310259.pdf> [Access 25 October 2021].
- Mascareño, A., and Carvajal, F., 2015. Los distintos rostros de la inclusión y la exclusión. *Revista CEPAL* [online], 116, 131–146. Available from: <https://doi.org/10.18356/087628b4-es> [Access 25 October 2021].
- Mascareño, A., et al., 2016. Redes informales e instituciones democráticas em América Latina. *DADOS: Revista de ciências sociais* [online], 59(3), 683–718. Available from: <https://doi.org/10.1590/00115258201689> [Access 25 October 2021].
- Mathis, A., 2007. Inclusão, exclusão e cidadania como desafio para apolítica em regiões de modernidade periférica. *Novos cadernos NAEA* [online], 10(1), 217–240. Available from: <https://doi.org/10.5801/ncn.v10i1.78> [Access 25 October 2021].
- Mendive, J., 2020. *Putxs datos: Trabajo sexual y pandemia en Argentina. Perfil sociodemográfico de trabajadorxs sexuales alcanzadxs por AMMAR* [online]. Buenos Aires: AMMAR. Available from: [https://www.ammar.org.ar/IMG/pdf/informe\\_putxs\\_datos\\_trabajo\\_sexual\\_y\\_pandemia\\_en\\_arg-2.pdf](https://www.ammar.org.ar/IMG/pdf/informe_putxs_datos_trabajo_sexual_y_pandemia_en_arg-2.pdf) [Access 25 February 2021].
- Ministério do Trabalho e Emprego (MTE), no date. *Classificação Brasileira de Ocupação, CBO 5198* [online]. Available from: <https://www.ocupacoes.com.br/cbo-mte/5198-profissionais-do-sexo> [Access 27 May 2018].
- Møller, I.H., and Hespanha, P., 2002. Padrões de exclusão e estratégias pessoais. *Revista crítica de ciências sociais* [online], 64, 56–79. Available from: <https://doi.org/10.4000/rccs.1232> [Access 25 October 2021].
-

- Mossman, E., 2007. *International Approaches to Decriminalising or Legalising Prostitution* [online]. Prepared for the Ministry of Justice of New Zealand. October. Wellington: Ministry of Justice. Available from: <https://prostitution.procon.org/wp-content/uploads/sites/50/newzealandreport.pdf> [Access 25 October 2021].
- Munro, V.E., and Giusta, M. dela, 2016. *Demanding Sex: Critical Reflections on the Regulation of Prostitution*. London/New York: Routledge.
- Mutzenberg, R., 2011. Movimentos sociais: entre aderências, conflitos e antagonismos. *Sinais* [online], 9(1), 127–143. Available from: <https://doi.org/10.25067/s.v1i09.2782> [Access 25 October 2021].
- Neves, M., 1994. Entre subintegração e sobreintegração: A cidadania inexistente. *DADOS: Revista de ciências sociais* [online], 37(2), 253–276. Available from: [https://www.academia.edu/29822345/Entre\\_subintegracao\\_e\\_sobreintegracao\\_a\\_cidadania\\_inexistente](https://www.academia.edu/29822345/Entre_subintegracao_e_sobreintegracao_a_cidadania_inexistente) [Access 25 October 2021].
- Neves, M., 2006. *Entre Têmis e Leviatã: Uma relação difícil*. São Paulo: Martins Fontes.
- Neves, M., 2013. A constituição e a esfera pública. In: R. Dutra e J.P. Bachur, *Dossiê Niklas Luhmann*. Belo Horizonte: EdUFMG, 105–147.
- Neves, M., 2018. *Constituição e direito na modernidade periférica: Uma abordagem teórica e uma interpretação do caso brasileiro*. São Paulo: Martins Fontes.
- Nucci, G.S., 2014. *Prostituição, lenocínio e tráfico de pessoas: Aspectos constitucionais e penais*. São Paulo: Revista dos Tribunais.
- Oliveira, L., 1997. Os excluídos “existem”? Notas sobre a elaboração de um novo conceito. *Revista brasileira de ciências sociais* [online], 12(33), 49–61. Available from: [http://www.anpocs.org.br/portal/publicacoes/rbcs\\_00\\_33/rbcs33\\_04.htm](http://www.anpocs.org.br/portal/publicacoes/rbcs_00_33/rbcs33_04.htm) [Access 25 October 2021].
- Possenti, S., 2009. *Questões para analistas do discurso*. São Paulo: Parábola.
- Prada, M., 2018. *Putafeminista*. São Paulo: Veneta.
- Prange, A., 2017. Germany introduces unpopular prostitution law. *DW* [online], 2 July. Available from: <https://p.dw.com/p/2fmoT> [Access 9 October 2019].
- ProCon.org, 2018. *Countries and Their Prostitution Policies* [online]. Last updated 23 April. Available from: <https://prostitution.procon.org/countries-and-their-prostitution-policies/> [Access 25 October 2021].
- Roberts, N., 1992. *As prostitutas na história*. Trans.: M. Lopes. Rio de Janeiro: Record: Rosa dos tempos.
- Rocha, I., 2013. Como seres humanos: Una mirada al proceso de legislación de la prostitución como trabajo sexual en el Uruguay. *Encuentros latinoamericanos* [online], 7(2), 239–272. Available from: <http://valijapedagogica.mercosursocialsolidario.org/archivos/hc/1-aportes-teoricos/2.marcos-teoricos/1.articulos/IleanaRocha.ComoSeresHumanosUnaMiradaAlProcesoDeLeg>



- [islacionDeLaProstitucioncomoTrabajoSexuaEnElUruguay.pdf](#) [Access 25 October 2021].
- Rodrigues, M.T., 2009. A prostituição no Brasil contemporâneo: Um trabalho como outro qualquer? *Katálysis* [online], 12(1), 68–76. Available from: <https://doi.org/10.1590/S1414-49802009000100009> [Access 25 October 2021].
- Rodríguez, D., and Opazo, M.P., 2007. *Comunicaciones de la organización*. Santiago de Chile: PUC-Chile.
- Scherer-Warren, I., 2010. Movimentos sociais e opôs-colonialismo na América Latina. *Ciências sociais Unisinos* [online], 46(1), 18–27. Available from: <https://doi.org/10.4013/csu.2010.46.1.03> [Access 25 October 2021].
- Simões, S.S., 2010. Identidade e política: a prostituição e o reconhecimento de um métier no Brasil. *RAU: Revista de Antropologia Social da UFSCar* [online], 2(1), 24–46. Available from: <https://doi.org/10.52426/rau.v2i1.20> [Access 25 October 2021].
- Sisters, 2018. *Barbara-Künkelin-award for Sabine Constabel: laudation and speech of thanks* [online]. Stuttgart: Sisters, 2 May. Available from: <https://sisters-ev.de/en/2018/05/02/barbara-kuenkelin-award-for-sabine-constabel-laudation-speech-of-thanks/> [Access 25 October 2021].
- Soares, L.C., 1992. *Rameiras, ilhoas, polacas: A prostituição no Rio de Janeiro do século XIX*. São Paulo: Ática.
- Sousa, F.R. de, 2013. *Participação popular e engajamento de prostitutas na luta por direitos* [online]. Paper presented at Goiânia-GO: 36ª Reunião Nacional da ANPED. 29 de setembro a 02 de outubro. Available from: [http://www.anped.org.br/sites/default/files/gt06\\_2722\\_texto.pdf](http://www.anped.org.br/sites/default/files/gt06_2722_texto.pdf) [Access 13 September 2017].
- Souto, C., 2019. For a general theoretical unified axiomatic reduction of the natural spaces. *Revista brasileira de sociologia do direito* [online], 6(2), 3–12. Available from: <https://doi.org/10.21910/rbsd.v5n2.2019.327> [Access 25 October 2021].
- Souto, C., and Souto, S., 2003. *Sociologia do direito: Uma visão substantiva*. Porto Alegre: SAFE.
- Spencer Brown, G., 1969. *Laws of Form*. London: George Allen and Unwin.
- Stamford da Silva, A., 2021. *Decisão jurídica na comunicativação*. São Paulo: Almedina.
- Stichweh, R., 2009. Leitgesichtspunkte einer Soziologie der inklusion und exklusion. In: R. Stichweh and P. Windolf, eds., *Inklusion und Exklusion: Analysen zur Sozialstruktur und sozialen Ungleichheit*. Wiesbaden: VS Verlag für Sozialwissenschaften, 29–42.
- Stichweh, R., 2013. Inclusão/exclusão, diferenciação funcional e a teoria da sociedade mundial. In: R. Dutra e J.P. Bachur, *Dossiê Niklas Luhmann*. Belo Horizonte: EdUFMG, 51–73.
- Teubner, G., 2005. Dealing with Paradoxes of Law: Derrida, Luhmann, Wiethölter. In: O. Perez and G. Teubner, eds., *Paradoxes and Inconsistencies in the Law*. Oxford: Hart, 49–65.

- 
- Torres Junior, R.D., 2013. O primado da diferenciação funcional e a contingência das estruturas de desigualdade social. In: R. Dutra and J.P. Bachur, *Dossiê Niklas Luhmann*. Belo Horizonte: EdUFMG, 219–248.
- Torres Junior, R.D., 2014. O problema da desigualdade social na teoria da sociedade de Niklas Luhmann. *Caderno CRH* [online], 27(72), 547–561. Available from: <https://doi.org/10.1590/S0103-49792014000300007> [Access 25 October 2021].
- Torres Nafarrate, J., 1995. Notas biográficas sobre Luhmann. *Niklas Luhmann: La política como sistema. Lecciones publicadas por Javier Torres Nafarrate*. Ciudad de México: Universidad Iberoamericana.
- Torres Nafarrate, J., 2009. *Niklas Luhmann: La política como sistema. Lecciones publicadas por Javier Torres Nafarrate*. Ciudad de México: Herder.
- Tulipas do Cerrado, 2017. [Facebook profile]. *TulipasC* [online]. Available from: <https://www.facebook.com/TulipasC/> [Access 25 October 2021].
- Vilhena Vieira, O., 2007. A desigualdade e a subversão do Estado de Direito. *Sur, revista internacional de direitos humanos* [online], 4(6), 28–51. Available from: <https://doi.org/10.1590/S1806-64452007000100003> [Access 25 October 2021].
- Weitzer, R., 2013. Researching sex work in the twenty-first century. *Contemporary Sociology: A Journal of Reviews*, 42(5), 713–722.
- Weitzer, R., 2017. The moment to criminalize sex work in the United States. *Journal of Law and Society*, 37(1), 61–84.
- Zveiter, A., 2017. *A regulamentação profissional da prostituição* [online]. Dissertação de Mestrado em Ciências do Trabalho e Relações Laborais. ISCTE — Instituto Universitário de Lisboa. Available from: <https://repositorio.iscte-iul.pt/handle/10071/16087> [Access 25 October 2021].
-