#OurExperiencesMatter:

How Race, Gender and Socio-Economic Identity Have Historically Influenced the Criminalization of the Black Female Sex Worker — A Look at Early-Twentieth Century New York and Present-Day San Juan, Puerto Rico

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I. INTRODUCTION

The Black female body has remained a subject of American political discourse for centuries. Beginning during the proliferation of slavery in the Western Hemisphere in the seventeenth century to present day, the conversation about the ways in which a Black woman presents herself and how her body is utilized — regardless of whether it is for public or private consumption — is one that is incessant. Just look at Lizzo. Although the pop artist has received much critical acclaim since the 2017 release of her third studio album, *Cuz I Love You*, arguably, media coverage has focused less on her music over the years and more on her physical stature and appearance. A self-described "big girl," much of the conversation around Lizzo's body has been centered around ideas that she is often too "scantily-clad" for someone her size or that she is unconsciously promoting a variety of serious health conditions like heart disease, diabetes, and cancer as an 'obese' musical artist with an expansive social and cultural platform.[1] Having been privy to the many debates surrounding her body, Lizzo has admittedly expressed having long felt excluded and, arguably, policed by the public

[1] Katelyn Esmonde, *What Celeb Trainer Jillian Michaels Got Wrong About Lizzo and Body Positivity*, Vox (Jan. 15, 2020), https://www.vox.com/culture/2020/1/15/21060692/lizzo-jillian-michaels-body-positivity-backlash.

because of "her Blackness, her size, and her sexuality."[2]

Consequently, the centuries-long political discussion around the Black female body has led to it being increasingly policed and hyper-surveilled. According to Anne Gray Fisher, author of, *The Streets Belong to Us: Sex, Race, and Police Power from Segregation to Gentrification,* myths rooted in race, gender, and sexuality have historically been used in the "justification and deployment of state power" against the Black body.[3] This idea is acutely apparent when considering the ways in which self-identifying Black female sex workers have been regulated by society, its laws, and the (Police) State.

According to *Decriminalize Sex Work*, a U.S.-based organization that is working to end the ban on consensual adult sex work in the United States, sex work is defined as, "[an act where] adults choose to offer sexual services in exchange for something of value, usually money."[4] It is imperative to underscore the phrase, "adults choose," in the aforementioned definition. Sex work in the United States is a form of economic labor into which adults — those individuals either at the legal age of 18 or older — voluntarily enter. Yet, sex work is often conflated — sometimes purposely — by legislators and policy-makers alike with sex trafficking.[5] With the expansion of social media and its various platforms throughout the twenty-first century, sex work has become more digitized, and more ubiquitous than ever before — an idea that is evidenced by the huge success of *OnlyFans*. An online-only platform, *OnlyFans* allows users to access adult content uploaded by creators of their choice. For a monthly subscription rate, users can access imagery and other "Not Safe for Work" (*NSFW*) content that has been deemed as too racy for rival social media platforms like Instagram, Twitter, and Facebook.[6] However, racial inequities — especially in the treatment of the

[2] Hannah Rose-Yee, *Lizzo Just Shared a Vital Lesson on the Three Steps to Self-Love*, Stylist (Aug. 15, 2019), https://www.stylist.co.uk/people/lizzo-cuz-i-love-you-self-love-body-confidence/264108.

[3] Anne Gray Fisher, T*he Streets Belong to Us: Sex, Race, and Police Power from Segregation to Gentrification* (2022).

[4] Decriminalize Sex Work, *Human Trafficking and Sex Work,* https://decriminalizesex.work/why-decriminalization/briefing-papers (last visited December 16, 2022).

[5] According to *Decriminalize Sex Work*, human (sex) trafficking occurs when an individual is coerced, forced, or frauded into partaking in various forms of labor, including commercial sexual labor, by another individual or by a group of persons.

[6] Jacob Bernstein, *How OnlyFans Changed Sex Work Forever*, The New York Times (Feb. 9, 2019),

platform's adult-content creators — have plagued the company. Black female sex workers who upload content to *OnlyFans* and other social media platforms have repeatedly found their media censored, banned or — even worse — their accounts deleted.[7] In 2020, Adam Mosseri, the Head of Instagram, reportedly apologized to a Black plus-sized female model, Nyome Nicholas-Williams, after Instagram had "remov[ed] a revealing photo from her account, but allow[ed] the same image to stay on a white friend's [account]."[8] Said-overt racial bias is particularly alarming, not just because it makes Black female sex workers more vulnerable to economic hardship, but because by banning, censoring, or deleting Black female sex workers' content, social media platforms are designating the various ways these specific workers utilize their bodies as bad…as prohibited…as disallowed. And yet, many of their white counterparts remain permitted to post as they please. This sort of stigmatization unconsciously co-signs this group's disparate treatment and criminalization by other entities in society, like the (Police) State. On paper, the sex work industry is touted as one that is pervasively white. Although the evolution of such industry has, undoubtedly, given rise to its diversification, this increase in diversity has coincided with an onslaught of marginalization, and criminalization experienced by its workers. With sex work, arguably, being the eldest profession in history, State-prohibition of such work has a longstanding existence. Yet, disparities exist when considering those who are continuously penalized at increasing rates for their involvement in the industry compared to those who are not. In distinct sex work markets such as New York City, and the metropolitan area of Puerto Rico, Black-presenting female sex workers have historically experienced higher rates of stigmatization, criminalization, and erasure compared to their white counterparts because of the intersectional nature of their racial,

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https://www.nytimes.com/2019/02/09/style/onlyfans-porn-stars.html.

[7] Allana Akhtar & Taiyler Simone Mitchell, *For Sex Workers of Color, OnlyFans Reversal Doesn't Go Far. How Censorship and Bias Puts Their Careers at Risk,* Insider (Sep. 9, 2021), https://www.insider.com/sex-workers-of-color-say-onlyfans-ban-threatens-their-livelihoods-2021-9.

[8] Akhtar & Mitchell, *supra* note 7.

gender, and socio-economic identities.

II. Historical Context Regarding the Black Female Body in Colonial (American) Society

American slavery: a brutal institutionalized system that is reported to have begun in 1619 — when the first ship containing 20 to 30 enslaved African persons arrived in the British colony of Virginia at Port Comfort — and have lasted until 1865.[9] Although slavery was a fully-functioning system in the United States until the middle of the nineteenth century, itslong-lasting effects remain and conceivably, influence sectors of society and mainstream culture in the present-day.

A system built on false and precarious beliefs about persons from the African continent, American slavery reduced African-descendent persons to nothing but their race, gender, and abilities to produce — whether it be physically, biologically, or both. According to academic titan, Dorothy Roberts, author of *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, it was "degrading mythology about Black [persons]... that [denied] Black humanity in order to rationalize white supremacy," and the cruel and inhumane treatment of Black bodies, as evidenced by the experiences of the enslaved Black woman.[10]

Since the initial arrival of enslaved African persons in the United States, "Black women have fallen outside of the American ideal of womanhood."[11] With America simply being an extension of its British forefather, British ideals influenced the social, political, and cultural makeup of the North American colonies during the seventeenth and eighteenth centuries — periods in time that coincided with Britain's Georgian and Victorian eras, respectively. The aforementioned eras are marked by the popularization of gender-based norms, and arguably, acted as catalysts for the

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[9] Nikole Hannah-Jones, et al., *1619: The Project,* The New York Times Magazine (Aug. 18, 2019), https://pulitzercenter.org/sites/default/files/full_issue_of_the_1619_project.pdf.
[10] Dorothy E. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (1997).
[11] *Id.* at 10.

nineteenth century's "Cult of Domesticity " — an ideology of feminine behavior where women were expected to be domestic, submissive, and pure.[12] Even though the Georgian and Victorian eras saw some of the world's first female rulers, including Queen Elizabeth I and Queen Anne, well-crafted and purposeful stereotypes regarding how women were to behave and portray themselves within society began to proliferate throughout the New (and Old) Worlds.[13] Women were to be soft, orthodox, and chaste — only having sexual relations with their husbands once married. Although women were "considered physically and intellectually inferior to men, [they were] morally superior to them…and suited to be in the home, where [they] served as mother and wife."[14] However, it can be said that such stereotypes applied only to the women they were modeled after — white women. On the other hand, "Black women were anomalies."[15]

It was this *inherently anomalous* nature of the Black woman that justified the vastly different treatment she endured compared to her white counterpart. For the enslaved Black woman, there was never the option to be "chaste," as her body was hardly considered as just her own. Instead, her body was for both private and public consumption and her consent to said-consumption was hardly sought after — an idea that is evident in (i) the trauma endured by the Black female body on the slave auction block and (ii) the routine nonconsensual sexual relations to which enslaved Black women were subjected.

During U.S. slavery, violence inflicted upon the Black body went beyond the senseless beatings, lynchings and other physical assaults enslaved persons found themselves subjected to by white slaveholders. Said-violence was also a vital part of auction-block culture.[16] The auctioning of enslaved persons was a crucial aspect of

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[12] America In Class, *The Cult of Domesticity,* https://americainclass.org/the-cult-of-domesticity/ (last visited December 10, 2022).
[13] Roberts, *supra* note 10 at 10.
[14] *Id.*
[15] *Id.*
[16] Anne C. Bailey, *They Sold Human Beings Here*, The New York Times Magazine (Feb. 12, 2020), https://www.nytimes.com/interactive/2020/02/12/magazine/1619-project-slave-auction-sites.html.

the nation's slavery-based economy during the colonial era, with auctions occurring as often as six times a week in certain geographical locations.[17] While slave auctions were likely grand and jubilean occasions for white slaveholders who stood to receive immense financial gain, for the enslaved person, the slave auction block easily equated to a fight for one's life. Here, Black families were frequently ruptured, with children being separated from parents, husbands being separated from wives.[18] Furthermore, similar to other commonplace violent happenings of the time like beatings and lynchings, slave auctioning was, undoubtedly, a spectacle of sorts. Here, nude Black bodies were propped up onto blocks made out of wood or stone for public viewings.[19] Arguably, by forcing enslaved persons to remain without clothing during auctions, white slaveholders were attempting to highlight said-persons "innately" primitive and inferior-nature, reducing them to nothing but their body figure. As auctions began, enslaved Black women found themselves continuously poked and prodded as white men offered up varying amounts of money to later have them in their possession; these women's consent to said-touching, again, being hardly an afterthought.[20] As stated by Katherine McKittrick, author of *Demonic Grounds: Black Women and the Cartographies of Struggle*, the "auction block [was] a site of racial-sexual domination," with Black women ultimately being sold for their labor skills, whether such skills be physical and/or sexual.[21]

The white slaveholder's plantation was also a site where sexual violence against the Black female body was perpetuated, as many enslaved women found themselves routinely raped by plantation owners. Political activist and intellect, Angela Davis, argues that, "slave owners encouraged the terroristic use of rape in order to put Black women in their place," — a place that was distinctly different from the moral pedestal

[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (2006).

upon which white women were situated.[22] Unlike her "chaste" white counterpart, the enslaved Black woman was a deviant sexual being who was not just physically and intellectually inferior to the white slaveholders who *owned* her, but she was morally inferior, as well. Not only was this belief utilized to justify the constant physical assaults inflicted upon Black women's bodies, but said-belief was simply reinforced by then-popular stereotypes including the *jezebel* — a Black, feminine and hypersexual creature whose uncontrollable erotic desires tempted, and eventually, lured in copious amounts of men, regardless of their racial and/or ethnic backgrounds.[23]

This unrelenting commitment to the societal degradation of the enslaved Black female body was only furthered by the laws implemented within various parts of the antebellum South (and North) as slavery progressed. In Louisiana, the state's laws on rape and sexual assault were only applicable to white women and often included statutory provisions the called for imprisonment.[24] However, Louisiana state-law rape and attempted-rape charges was elevated to capital punishment where the conduct was allegedly carried out by an enslaved person.[25] Furthermore, according to a study cited by the American Bar Association, "accused African-American defendants whose [alleged rape] victims were white were sentenced to death about 18 times more frequently than defendants in any other racial combination of defendant and victim."[26] The aforementioned laws underscore the idea that it was almost impractical to penalize (white) men for sexually assaulting Black women, seeing as state-laws in various regions did not apply to the Black female demographic. Arguably, said-laws did not apply to Black women as there appears to have been widespread sentiment that it was *impossible* to rape these women — their innately *jezebelian-qualities* implying that Black women

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[22] Tiye A. Gordon, *The Fancy Trade and the Commodification of Rape in the Sexual Economy of 19th Century U.S. Slavery* (2015) (Unpublished Ph.d Dissertation, University of South Carolina) (on file with author).
[23] Roberts, *supra* note 10 at 10.
[24] Chelsea Hale & Meghan Matt, *The Intersection of Race and Rape Viewed through the Prism of a Modern-Day Emmett Till*, American Bar Association (July 16, 2019), (last visited on December 13, 2022).https://www.americanbar.org/2019/intersection-of-race-and-rape/.
[25] *Id.*
[26] Hale & Matt, *supra* note 24.

were always eager and willing to engage in sexual relations. Whereas antebellum-era laws worked to criminalize Black men, they sought to neglect Black women, leaving them with little agency over their bodies, and defenseless against continuous sexual exploitation that was almost always nonconsensual.

Slavery was not just an inherently oppressive system that once permeated society in what is known today as the continental United States. In reality, the aforementioned-system's influence extended beyond the region's four corners, as evidenced by the happenings in various Caribbean territories such as the Dominican Republic and Puerto Rico during the eighteenth and nineteenth centuries.[27] In the case of (colonial) Puerto Rico — a territory originally colonized by the Spanish — even though social constructs like race and gender manifested differently, the discourse surrounding racial (and gender) identity on the island still centered around an individual's proximity to blackness (**negrura**) and whiteness (**blancura**), as a result of a pervasive racial caste system.[28] In the colonial Caribbean, the closer an individual was to whiteness, the more societal privilege that person enjoyed.[29] Thus, it is not inconceivable that enslaved Black women living in Caribbean colonies, like Puerto Rico, also found themselves subjected to sexual violence and other sorts of callous treatment that was similar to what was experienced by their American counterparts as a result of their racial and gender identities.

A. The Inception of Urban Sex Economies Allowed Black Female Sex Workers to Become Conscious Actors in the Proliferation of Sex Work

In the early-twentieth century, amidst great progressive reform and business expansion, sex districts began to appear in various locations across the United States. More popularly known as *red light districts*, these were designated areas in growing U.S. cities that doubled as (i) affordable sex outlets for the American man and (ii) places of "promising" economic opportunity for working, lower-class American

[27] Ginetta E. B. Calendario, *Black Behind the Ear: Dominican Racial Identity from Museums to Beauty Shops* (2007).
[28] *Id.* at 50.
[29] *Id.*

women who served as workers in these districts.[30] This century saw the increased popularitzation of Twenty-Second Street Levee and Lower Manhattan— red light districts in the American metropolises of Chicago and New York City, respectively.[31] Soon enough, these areas became well-known for their multitude of store-front businesses where sex was both sold and bought.[32]

Although much of the discourse around sex work "situates white women at the center of urban sex economies," it is imperative to highlight that, during the late-nineteenth into the early-twentieth century, Black female sex workers were more accounted for in the sex work industry compared to their white counterparts in certain cities, including Chicago.[33] Even amidst discriminatory practices carried out by government entities — practices that included Chicago's municipal government subtly condoning the city's red light district, yet simultaneously forcibly displacing Black female sex workers — many Black women were still adamant about partaking in urban sex economies in order to obtain financial subsistence for themselves, and for their families.[34]

In the case of New York City, it can be said that Black women played a significant part in the proliferation of the region's sex work industry during the early 1900s. Amidst the 1910s, 1920s and 1930s, the oppressive Jim Crow regime that was widespread throughout the American South acted as a catalyst for the mass movement of individuals to states in the American North and Midwest.[35] Known as the Great Migration, the aforementioned mass movement saw millions of Black Americans escape state-sanctioned racial violence in hopes of finding more social prosperity and economic gain in other parts of the country.[36] However, for many, those hopes were

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[30] Cynthia M. Blair, *I've Got to Make My Livin': Black Women's Sex Work in Turn-of-the-Century Chicago* (2010).
[31] *Id.*
[32] *Id.* at 10.
[33] *Id.* at 53.
[34] Blair, *supra* note 29.
[35] LaShawn Harris, *Sex Workers, Psychics and Numbers Runners: Black Women in New York City's Underground Economy* (2016).
[36] *Id.* at 123.

short-lived. For a significant number of Black Americans who relocated to New York City, struggle was still ubiquitous as they went about life in a new region. Although the Northern metropolis was, arguably, less tainted by racial strife in comparison to Southern cities, economic opportunities in New York City were still limited, and only became more hard to come by amidst crucial historical events such as World War I, and the Great Depression.[37] And yet, even with the economic instability, individuals still "had to live," — a sentiment expressed by Carol Smith, a former New York City sex worker profiled in author LaShawn Harris's novel, *Sex Workers, Psychics, and Numbers Runners*.[38] Carol Smith was not alone; her story is a common one. For many Black women who had chosen to migrate North, participating in New York's urban sex economy was not a far-fetched idea; commercial prostitution often promised a brief respite from thinking about the familial traumas or the extreme poverty one may have been enduring at home.

And yet, despite the fact that some Black women, undoubtedly, felt conflicted as they considered entering into sex work — thoughts about how the Church and society at large felt about fornication likely plaguing their consciousness — many still felt empowered to make these hard, yet rational decisions on their own.[39] And even though the city's precarious economic situation was a significant reason why many Black women entered the New York urban sex economy, these same women likely remained as sex workers for prolonged periods time for other reasons. Arguably, said-economy gave the Black women involved the ability to "active[ly] [and freely] pursue sexual desire and pleasure," — an opportunity that their ancestors, many of whom were formerly enslaved, did not have.[40] The sex work industry was a carefully and well-crafted societal space where women were able to utilize their bodies as they pleased, and choose with whom they wanted to have sexual relations, while still bringing in money that would

[37] *Id.*
[38] *Id.*
[39] Harris, *supra* note 33 at 125.
[40] *Id.*

support themselves, and their families. For many, the urban sex work industry restored a sense of sexual agency and liberation that Black women had historically been denied.

Although the sex-work-industry-narrative was dominated by the experiences of the white female sex worker in the early 1900s, a close look at the industry would reveal the ways in which Black female sex workers were also solidifying gainful economic opportunities for themselves, whilst caring for each other and exercising a newfound sexual liberation. As Harris describes Carol Smith's introduction to the New York sex work industry in *Sex Workers, Psychics, and Numbers Runners*, the writer reveals that it was a Black woman who gave Smith her first job.

> Smith was introduced to the urban sex trade by a middle-aged Black woman who seemed genuinely concerned for her well-being. As Smith recalled, 'I met her as [I] was leaving a moving picture house and [she] invited [me] to her house for dinner and told [me I] was a nice-looking girl and that [I] did not have to worry about money, food, or a home, as she would show [me] how to obtain this without any difficulty. [She] showed [me] how to have sexual intercourse with men and gave [me] instruction on how to use contraceptives. [I] was in [her] apartment in about one week working as a commercial prostitute and had at least three men each day.'[41]

Smith's interactions with the unnamed middle-aged Black woman were intimate, with the latter offering to house Smith and sharing with her tips and tricks on how to safely navigate house-calls as a newcomer to the sex work industry. But, it is important to get ahead of the possible notion that the middle-aged Black woman was Smith's Madam[42] and only sought to work with Smith for economic reasons. Even if she stood to receive economic gain from her agreement with Smith, there was still a level of comfort, security, and sisterhood in their relationship that is often not apparent in relationships between female sex workers and their procurers where such-relationships exists. A sense of sisterhood is particularly emphasized where the Black woman encourages Smith not to "worry about money, food or a home." She seems set on ensuring that Smith, a fellow Black woman and worker in the urban sex economy, is adequately cared

[41] Harris, *supra* note 33 at 123.
[42] *Madam:* a woman who who teaches young women how to become professional prostitutes.

for at a time when widespread economic stability is likely impacting many Black persons and their households. Furthermore, a sense of security is denoted where the woman gives Smith explicit instructions on how to properly use contraception. By doing this, the woman is subtly revealing a downside to the sex work industry — that venereal disease transmission is possible — while ensuring that Smith knows how to maintain proper sexual health, protect her body, and protect her job. This sort of care and nurture that was both given and received by many Black female sex workers in the sex work industry was, admittedly, a drastic departure from the absolute neglect enslaved Black women often endured at the hands of white slaveholders.

Furthermore, in her book, *Sex Workers, Psychics, and Numbers Runners*, LaShawn Harris works to dymistify pervasive beliefs that the early-twentieth century Black female sex worker was solely a " streetwalker," — a "low-level" sex worker who only took to the street to find her clientele.[43] According to Harris, "...within larger [sex work] discourse… little attention [is paid] to [Black women's] varied occupations and experiences within the urban sex trade."[44] Although streetwalkers deserve to have their labor and experiences both seen and legitimized, it is also important to recognize the full range of opportunities sex work presented to Black women. While some Black women may have been streetwalkers, others in the industry were able to take on roles such as: (i) sex entrepreneurs, (ii) owners of brothels and/or call-flats, and (iii) madam-prostitutes — as evidenced by the very experiences of Carol Smith and the middle-aged Black woman who introduced her to sex work.[45] The aforementioned roles indicate that sex work was a way for some Black women to, not only make a day's worth of income, but to also climb the economic ladder and obtain long term economic security for themselves. For the Black female sex worker demographic, the early-twentieth century's urban sex economy introduced a sense of newfound agency, giving these women

[43] Harris, *supra* note 33 at 124.
[44] *Id.*
[45] *Id.*

the power to willfully and intentionally take their economic status, sexual pleasure, sexual health, and roles as active participants in the urban sex trade into their own control.

III. BLACK FEMALE SEX WORKERS' LIBERATION ACTED AS A CATALYST FOR INCREASED VIGILANCE AND CRIMINALIZATION BY STATE ACTORS

Although this newfound agency, and sexual liberation may have provided Black female sex workers with the ability to carve out distinct, and at times, promising lanes for themselves as women of color in an industry that was still predominantly white, arguably, said-agency and liberation also left these same women with a clear target on their backs. Being a sex worker did not come with ease; sexual assault, sexually transmitted diseases, and fluctuations in the sex market were all common realities. However, such work conceivably becomes even more difficult as the industry becomes increasingly politicized with time. This is especially true for Black female sex workers who partook in the urban sex economies in New York in the early 1900s, and those who are working in present-day metropolitan San Juan, Puerto Rico, with the aforementioned target having been created by State Actors that include the New York City Police Department ("NYPD") and the Puerto Rico Police Department ("PRPD"), respectively.

A. In the Early-Twentieth Century, Specific Tactics Were Employed by New York City's Vice Squads in order to Target Black Female Sex Workers

A deeper look into the development of New York City's sex work industry reveals that, during the early 1900s, social reform investigative organizations known as 'vice squads' were key municipal players, with the *Committee of Fourteen* ("COF") becoming the premiere vice squad in the metropolis as the century progressed.[46] The COF was established in New York City by members of the New York Anti-Saloon League in

[46] Harris, *supra* note 33 at 126.

1905. [47] Its purpose: to oversee and investigate *vice-like* conditions in various city neighborhoods.[48]

Conditions and/or happenings that were designated by the squad as vices inherent to the city included: (i) "urban criminality,"(ii) prostitution, (iii) "interracial leisure establishments," (iv) any space and/or social environment that promoted "cross racial sociability," — just to name a few.[49] In addition to investigating *vice-like* conditions, the COF and other vice squads of its kind leveraged their political standing to successfully lobby for city-wide legislation that would "[generally] regulate illegal and unrespectable urban environments," — environments they believed were contributing to the (moral) destruction of New York City.[50]

While the sex work industry was pervasive throughout the municipality at the time, it had not been legalized by city government or by New York's State government for distinct reasons rooted in ideas of morality. According to various politicians and other influential city figures, commercialized prostitution not only worked to perpetuate sexual immorality, but it was also one of the "root causes" of crime in New York City.[51] By promoting the idea that sex work was inextricably linked to an increase in crime, vice squads were subtly (or overtly) insinuating that the industry's workers were themselves complicit in criminality, and needed to be stopped immediately. As the self-appointed " social reform agents" of New York City, these squads —primarily composed of Black and white male members — would conduct undercover investigations in various neighborhoods throughout the city in an attempt to uncover "disorderliness and immorality."[52] Any sort of uncovering or information collected during these investigations was crucial, seeing as many vice squads worked in tandem with the NYPD, and provided the department with "first-hand accounts" of the alleged

[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Harris, *supra* note 33 at 126.
[52] *Id.*

vices occurring within the metropolitan area.[53]

As Harris explains in *Sex Workers, Psychics, and Numbers Runners* ("*Numbers Runners*"),

> [The COF's] surveillance of undesignated vice districts and their inhabitants prompted [New York City] police, without questioning the validity of anti-vice agents' investigative methods, to orchestrate raids and entrap assumed underground laborers and to monitor and criminalize New Yorkers' ordinary daily behavior. [54]

In many cases, the department only conducted raids and entrapments after being provided supposed *briefings* on vice-conditions "endemic" to an area by the COF or other squads of its kind. This idea is crucial, as it underscores the extent to which the NYPD relied on the information collected by said-squads — information that was, at times, undeniably questionable, and even hinted at racial and gender-based bias.

The "first-hand accounts" put forth by the city's vice squads were in the form of reports, which included, prostitution reports.[55] Said-reports were often drafted by squad agents who had gone undercover at different locations that included hotel lobbies, massage parlors, and dancehalls.[56] A deeper look into prostitution reports compiled by vice squads would reveal that they included information on (i) the prices sex workers charged clientele, (ii) the locations of various sex houses in New York City, and (iii) conversations between undercover agents and sex workers.[57] But even moreso, these reports included the usage of *dog whistle-like* language to refer to the alleged sex workers that undercover agents had investigated — many of whom were Black women. This idea was not difficult to deduce; said-reports consistently referenced women who appeared to be sex workers, and who appeared to be wearing bobbed-hairstyles.[58] Coincidentally, during that time, "Black prostitutes were often [seen] and described as…having 'kinky' or 'bobbed' hair. [59] This concept of the "bobbed hair style" is an important one to

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[53] Harris, *supra* note 33 at 126.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.* at 127
[59] *Id.*

highlight. Throughout the early-twentieth century, this particular style was associated with gendered tropes like the rebellious and improper woman, with hairstyles that were moreso of a medium-to-long length being associated with the feminine and kept woman.[60] More specifically,

> Short hairstyles [the included the bobbed-cut] were associated with masculinity, late night carousing at bars, dancing and smoking, scanty attire, premarital sex, unconventional labor, and urban decay.[61]

Arguably, the continuous reference to said hairstyle within prostitution reports was a dangerous tactic undertaken by the vice squad agents who published the alleged "first-hand accounts." This sort of subtle, yet politicized writing worked to reinforce societal perceptions that women with short hairstyles — like the bob — were immoral and unrespectable persons. But even moreso, since the bobbed hairstyle was one that was often associated with the Black female sex worker, such-writing also worked to propel this very demographic into a negative light — one where the Black female sex worker was depicted as being responsible for all of the dancing and smoking occurring in the city's unrespectable "urban establishments"…. for all the scanty attire being worn on city streets… and ultimately, for all of the urban decay occurring across New York City. And yet, although vice squad reports were often not verified, were known to include misinformation, and were tainted with the aforementioned racial (and class) prejudice, the New York City Police Department continued to utilize them in efforts to uncover and extinguish supposed city-wide delinquency.[62]

B. The Tactics Employed by Vice Squads Undeniably Influenced How the New York City Police Department Perceived and Behaved Towards Black Female Sex Workers and Those with Whom They Were Associated

Given the aforementioned racial, gender, and class-based bias omnipresent in vice

[60] *Id.*
[61] *Id.*
[62] Harris, *supra* note 33 at 126.

squads' prostitution reports, it comes as no surprise that said-squads were lambasted by prominent early-century Black civil rights activists, including W.E.B. DuBois, for preying on Black-owned and white-owned establishments that catered to racially mixed clientele.[63] Arguably, many Black leaders were not ignorant to the racially-charged smear campaigns undertaken by the city's vice squads against Black sex[63] workers, and businesses that were believed to promote "cross racial sociability." Racial mixing, like prostitution, was also believed to be a source of crime.[64] That said, it is important to underscore the idea that not all businesses were being investigated by vice squads. It was the businesses — those that catered to Black and/or interracial patronage — that were often targeted, as if any sort of social environment where there were Black people and/or white individuals associating with Black people was bound to be a place where havoc was unleashed.

Considering that vice squads often worked hand-in-hand with the New York City Police Department, it is likely that the aforementioned-stigmatization carried out by these squads consequently influenced how the NYPD perceived and interacted with city-businesses that catered to Black and/or interracial patronage, and the people who frequented said-establishments — which include Black female sex workers. As she describes the complex relationship between police officers and Black city inhabitants in *Numbers Runners,* LaShawn Harris points out how prejudiced beliefs, and discriminatory practices had also spilled over into the city's police department.

> NYPD Commissioner Williams McAdoo's characterization of Black New Yorkers, particularly those of a certain class background, was negative and indeed problematic. McAdoo referred to some 'Tenderloin Negro[es]' as 'trouble-some and dangerous characters [that] never work, or earn a living from a life of shame.' Additionally, the Commissioner depicted Black women as 'vicious and drunken' [and another cop on the force]... further suggested that Black [people] were more 'lewd than any other race,' [and that] Black women 'were naturally indolent [and] emotional, [which] tends to make the colored woman a free and easy one in her habits.'[65]

[63] *Id.* at 128.
[64] *Id.*
[65] *Id.* at 132.

Said-overt racial bias and prejudice were certainly reflected in the Department's prostitution arrest statistics which were complied throughout the early twentieth-century. Evidence shows that Black female sex workers were disproportionately represented in police arrests as well as city and State reformatories — locations where juvenile offenders were sent to serve time.[66] More specifically,

> [Although Black New Yorkers made up only 2% of New York's population by the 1920s,] in 1925, the COF and New York City's Magistrate Court reported that Black women represented 36% of all prostitutes arrested. [Additionally], Political Scientist, Willoughby Cyrus Waterman's study on New York vice [suggested] that between 1931 and 1935, three-quarters of all Black female [sex workers in Harlem] were arrested for vagrancy and prostitution… with Black women making up 46% of [city-wide] prostitution arrests.[67]

Thus, it can be said that prejudiced beliefs adopted by many NYPD officers often "fueled…arrests of Black [people, especially] Black women in New York" in the early 1900s.[68] While sex work had not be legalized at the time, it was as if said-industry was thought to be even more lewd, obscene, salacious and illegal because of the Black women who were involved.

Although the early-twentieth century New York City-based Black female sex worker's experience is vastly different than that of the enslaved Black woman, similarities arise when considering the ways in which both were perceived and treated as members of their respective societies. The erotic, hypersexual, and insatiable Black woman troupe has survived generations.

During U.S. slavery, enslaved Black women were demonized by white members of society for being too sexual, too anomalous, too Black, and consequently, had any sort of agency over their bodies (and their lives) revoked. During the early 1900s, Black female sex workers in New York City were criminalized by (white) police officers for parallel reasons. Arrests of Black female sex workers were justified by dangerous falsehoods that included Black sex workers being a "root cause" of the city's crime,

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66 Harris, *supra* note 33 at 131.

67 *Id.*

68 *Id.*

despite Black individuals only making up 2 percent of the city's population. This blatant discrimination coupled with the drastic punitive efforts untaken by New York's Police Force officers against Black female sex workers only emphasizes how they, too, worked to diminish the agency the Black women exercised over their bodies.

However, the aforementioned parallels in the marginalization of Black women are not surprising; the unfortunate, and systemic remnants of slavery have only continued to pervade society with time. In considering the unraveling of the sex work debate in the early-twentieth century, even if the white female sex worker experience was placed at the center of industry-discourse, it was evidently the Black female sex worker experience that dominated the conversation when said-discourse shifted to include matters regarding criminalization.

C. Although Race as a Concept Manifests Differently in the Puerto Rican Context, Black-Presenting Female Sex Workers on the Island Face Similar Marginalization in the Modern Day

In order to understand how social constructs like race have influenced the experiences of sex workers in Puerto Rico, it is imperative to underscore the nuances in how this social construct has been construed in a Caribbean context in comparison to a wholly-American context. Although the island has been designated as a U.S. territory, given Puerto's Rico longstanding colonial history with Spain, the influence of the colonial racial caste system — a product of Spanish colonization — is still widespread. First introduced during Spanish colonization in the Global South during the seventeenth century, the racial caste system acted as a social hierarchical system that categorized people based on their apportionment of Spanish and/or non-Spanish blood.[69]

What made Spanish colonizers' racial caste system distinct from that of the North American colonies was the system's emphasis on racial mixed-ness — or in Spanish, *la*

[69] Ginetta E.B. Calendario, *Black Behind the Ear: Dominican Racial Identity from Museums to Beauty Shops* (2007).

mestizaje.[70] On the other hand, in the more North American Colonies, the "one-drop" rule — a racialized construct that stressed that one is racially Black, first and foremost, if they have even the slightest bit of Black ancestry in their lineage — was adopted and upheld.[71] The celebration of *mestizaje* in colonial Latin America referred to an individual's racial make-up at the time. For example, *mestizo* was used to identify persons of both Indigenous and European ancestry, whereas *mulatto* was used to identify persons of both African and European ancestry.[72] Other terms included: *zambo* (a person of African and Indigenous ancestry), and *cholo* (a person of Indigenous and Mestizo ancestry).[73] However, the apparent reverence of mixed-racial ancestry in the colonial racial caste system did not translate to the eradication of the time-honored white racial ideal. Instead, it gave rise to a racial limbo in society, where one's proximity to whiteness was still acknowledged, honored, and indicative of how much privilege that person held.[74] Said-racial limbo is still culturally engrained in many Caribbean regions previously colonized by the Spanish, including Puerto Rico, and thus, impacts the ways in which sex workers on the island(s) maneuver through society today.

Martinez-Echazabal, *supra* note 67 at 21.Puerto Ricans have traditionally identified their culture (and the island's population) as one that is a blend of Taino, African, and European roots, but in reality, "Blackness is silenced in the historical narrative and political, educational, and cultural policies," in the present-day.[75] Historian Ileana Rodriguez-Silva's research, as noted in her 2012 work, *Silencing Race: Disentangling Blackness, Colonialism, and National Identities in Puerto Rico*, highlights that, whereas current-day Puerto Rican narratives "continue to privilege mestizaje or racial mixed-ness… in

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[70] Lourdes Martinez-Echazabal, *Mestizaje and the Discourse of National-Cultural Identity in Latin America, 1845-1959*, 25 Latin Am. Perspectives 21 (1998).
[71] Calendario, *supra* note 66 at 51.
[72] *Id.*
[73] *Id.* at 55.
[74] Martinez-Echazabal, *supra* note 67 at 21.
[75] Amalia L. Cabezas & Ana Alcazar Campos, *Trafficking Discourses of Dominican Women in Puerto Rico*, 65 Social and Econ. Studies 33, 37 (2016).

the dominant construction of the nation, Puerto Rico is 'white.'"[76]

However the discussion of Blackness in Puerto Rico, although subdued, does reappear when engaging with sex work and the sex work industry on the island. In 2020, the American liberal biweekly magazine known as *The Nation* published an article entitled, *Puerto Rico's Sex Workers Are Struggling to Survive*.[77] Gabriella N. Báez ("Báez"), a Puerto Rican queer freelance photojournalist, detailed some of the difficulties that laborers in Puerto Rico's sex economy had endured since the start of the 2020 COVID-19 pandemic in *The Nation*.[78] These difficulties included: (i) working in an unstable industry, (ii) lack of access to government benefits, and (iii) deciding whether to transition to online platforms, such as *OnlyFans* and Instagram.[79] In a 2022 interview with Báez — an interview that was originally conducted to understand how race influences the construction of Puerto Rico's sex work industry —, she encouraged looking at said-industry from a gendered and/or queer-lens instead of a racialized one.[80] When asked how the persons she interviewed for her article in *The Nation* racially-identified, Báez stated that she did not believe any of them identified as Black.[81] One interviewee actually alluded to their Black identity in the article.[82]

Although the lack of clear racial acknowledgement in an article about Puerto Rico's sex workers could be a result of cultural inclinations designed to dismiss distinguishable racial phenotypes altogether and perpetuate a mixed-and-harmonious racial ideal on the island, said-behavior has its limitations. The lack of racial acknowledgement only adds to the erasure of the experiences of female sex workers in Puerto Rico whose Black race and gender-identities intersect to influence how they navigate the island's sex work industry daily — as evidenced by the experiences of the island's Dominican female sex workers.

Like Puerto Rico, the Dominican Republic's Spanish colonizers established a

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[76] Ileana Rodriguez-Silva, S*ilencing Race: Disentangling Blackness, Colonialism, and National Identities in Puerto Rico* (2012).
[77] Gabriella N. Báez, *Puerto Rico's Sex Workers Are Struggling to Survive,* The Nation (May 18, 2020), https://www.thenation.com/article/economy/puerto-rico-sex-work/
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *See supra* n. 79.

pervasive racial caste system. However, because of its geographical location — the country shares a border with the first Black Republic, Haiti — and its racial and ethnic mixing patterns, the Dominican Republic has largely and historically been considered as an African-descent.[83] Thus, clear differences in racial phenotype as well as clear cultural differences make Dominicans explicit outsiders on the island of Puerto Rico. Yet, Puerto Rico maintains an important place for Dominicans who wish to emigrate from their country of origin, with "Puerto Rico receiv[ing] the largest group of Dominican migrants, next to New York."[84] That said, although many Dominican migrants arrive in Puerto Rico in hopes of finding more economic gain, they often struggle to assimilate due to their intersecting identities.

As a result of a fluctuating financial market, and shrinking economic opportunities on the island, coupled with employment discrimination, many Black Dominican women serve as *cantineras* (barmaids) at *cantinas* (bars) in Puerto Rico. In fact, it is "one of the most predominant forms of labor for recent arrivals from the Dominican Republic," especially women.[85] The *cantinera* occupation is an interesting one; bar work, across the Caribbean, has become recognized as a form of sexual entertainment often associated with an island's sex tourism industry.[86] In Puerto Rico, "the work of *cantineras* remains stigmatized and morally suspect," seeing as the position is often believed to teeter on the sex work boundary.[87] Although the primary job of a *cantinera* is to facilitate the everyday operations of a bar and/or lounge, the position "may involve the occasional sex-for-money transaction."[88] A Dominican migrant woman's trajectory to becoming a *cantinera* in Puerto Rico is similar to that of the Black American migrant woman becoming a sex worker in early-twentieth century New York. Both are not just migrants, but they are Black-identifying women who find themselves in new spaces, enduring new societal norms, and

[83] Amalia L. Cabezas & Ana Alcazar Campos, *Trafficking Discourses of Dominican Women in Puerto Rico*, 65 Social and Econ. Studies 33, 36 (2016).
[84] *Id.*
[85] *Id.* at 37.
[86] *Id.*
[87] *Id.*
[88] *Id.* at 40.

subjected to certain treatment because of their identities.

Similar to her Black American female counterpart, "the history of racialized gender…where Black women's bodies have been constructed as lascivious and hypersexual… determines how Puerto Ricans perceive [a] *dominicana*."[89] It also determines how she navigates through Puerto Rican society.[90] Moreover, these Dominican women have been pigeonholed into the *catinera*-role by Puerto Rican society as a whole into engaging in this work. According to researchers, Amalia L. Cabezas and Ana Alcazar Campos, "[W]ithin the Puerto Rican context, darker skin signals both African heritage — Dominicanness — and hyperserxualization…" leaving Dominican women on the island particularly vulnerable to eroticization, discrimination, and arguably, criminalization.[91]

Researching sex work in Puerto Rico has certainly been no easy task. When asked how Puerto Ricans view sex work on the island during our November 2022 interview, she explained, "Puerto Rico is a conservative place. Everything that does not fit the American ideal of what Puerto Rico should be is made invisible," — like the state-sanctioned violence on laborers in the island's sex work industry.[92] However, the tie between sex work and criminalization in Puerto Rico is incredibly blatant. Historically, leisure establishments including strip clubs and *cantinas* in the island's metropolitan area of San Juan have been targeted and raided by members of the local police department.[93] Officers in the Puerto Rico Police Department believed that the use of force, police intimidation, harassment, and other punitive measures would "squash [the] explicit sexuality" that was thought to be pervasive in these sorts of spaces — spaces that have historically employed poor, Black, and marginalized women on the island like many Dominican female migrants.[94] And yet, Dominican women are not the only Black-identifying persons targeted by Puerto Rican police for their involvement in the island's sex work industry;

[89] Cabezas & Alcazar Campos, *supra* note 78 at 37.
[90] *Id.*
[91] *Id.* at 38.
[92] Sampson & Baez, *supra* note 76.
[93] Marisol LeBron, *Policing Life and Death: Race, Violence, and Resistance in Puerto Rico* (2019).
[94] *Id.* at 99.

Afro-Puerto Rican women have also been made to be subjects of police-sanctioned violence.

In 2020, Alexa Negron Luciano, an Afro-Puerto Rican homeless transgender woman who was believed to have ties to the sex work industry in San Juan's metropolitan area, was found murdered in the city of Toa Baja.[95] While her death remains unsolved, the last known photos of Luciano are of her "being approached [by Puerto Rico Police Department officers] in a fast-food restaurant" in the days leading up to her death.[96] When asked about their experience with sex work in Puerto Rico, Karo — a sex worker profiled in *The Nation's* 2020 article — stated,

> I used to stand on the streets of Santurce [in San Juan], and now I don't know how I'm going to do that because I am scared for my life… What difference is there between Alexa and me? None, because like her, I am a poor transgender Black woman. They hate us in this country.[97]

A "mixed-and-harmonious" racial ideal aside, Black female sex workers in Puerto Rico continue to experience marginalization, criminalization, and erasure for being both (distinctly) Black, and women in a society that promotes, celebrates, and rewards individuals' proximity to *mestizaje*, and even more so, to whiteness.

V. CONCLUSION

Sex work — a prevalent yet hidden form of economic labor is one of the most profitable and sought-after occupations. As in many other aspects of society, Black women have contributed immensely to the proliferation of sex work industries in the United States and beyond. This occurred despite Black women being shamed for being overly sexual beings and, more broadly, within a context of total denial of bodily and sexual autonomy. And yet, while the act of partaking in sex work elucidates a newfound

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[95] Harmeet Kaur & Rafy Rivera, *A Transgender Woman's Brutal Murder Has Shocked Puerto Rico and Renewed a Conversation About Transphobia*, CNN (Feb. 29, 2020) https://edition.cnn.com/2020/02/29/us/alexa-puerto-rico-transgender-killing/index.html

[96] Gabriella N. Báez, *Puerto Rico's Sex Workers Are Struggling to Survive,* THE NATION (May 18, 2020), https://www.thenation.com/article/economy/puerto-rico-sex-work/.

[97] Baez, *supra* note 74.

sexual liberation achieved by the Black woman, her racial, gender, and socio-economic identity continue to impact how she and fellow Black female sex workers have navigated the sex work labor force. More specifically, a deep dive into occurrences in early-twentieth New York City, and modern-day San Juan, Puerto Rico reveals that Black female sex workers have been disproportionately criminalized by the (Police) State in the respective environments because of their Blackness, their womanhood, their economic status, and their sexuality — making these women some of the most vulnerable in society. To advance the well-being of Black female sex workers and ensure equality and equity in the sex work sector, the (Police) State must drastically change the ways in which it treats Black female sex workers.