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## TOWSON UNIVERSITY JOURNAL OF INTERNATIONAL AFFAIRS

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## TOWSON UNIVERSITY JOURNAL OF INTERNATIONAL AFFAIRS

## LETTER FROM THE EDITOR

#### Dear Readers,

We are happy to present to you the Spring 2020 edition of the Towson University Journal of International Affairs. This volume includes four noteworthy articles that provide insightful commentary on a variety of contemporary issues in world politics. Each author has brought their own unique disciplinary background to bear, offering novel perspectives on international law, cultural exchanges, electoral politics, and human migration. In this particular issue, we are proud to include the names of four scholars from the Towson University community, and it is our great pleasure to publish these exemplary contributions to the international relations literature.

In our first article, "The Rohingya Case in Aceh: Indonesia's Role as a Destination for Refugees," Towson University graduate Lindsay Robbins examines the constructive relationship between Rohingya refugees and the Acehnese people of Indonesia. By examining the social, cultural, and political factors that shaped the Achenese people's hospitable attitudes towards Rohingya migrants, Robbins derives meaningful lessons for future refugee resettlement efforts. Moreover, Robbins contextualizes her discussion of refugee migration within the increasingly relevant discourse on climate change. This article therefore serves as a timely reflection on international migratory practices with valuable policy implications.

Our second article, authored by Towson University Lecturer Dr. Stanley M. Max, posits a succinct, data-driven argument regarding the outcome of the 2019 European Parliamentary elections. Here, Dr. Max challenges dominant media narratives which suppose the election's radical departure from status quo European politics. The article demonstrates how the ostensibly ground-breaking results were, in fact, of marginal consequence to the ideological makeup of the body. Bolstered by an impressive display of data graphics, Dr. Max concludes that the ideological center of the European Parliament generally maintained its pre-election influence. This study undoubtedly provides ample ground for further study of European democratic institutions and political polarization in advanced democracies.

Third, in "Can Altering US Prostitution Law Decrease Sex Trafficking and Promote the Well-Being of Sex Workers?," Towson University undergraduate Alyssa Lennon investigates the linkages between American prostitution policy and human trafficking. The article discusses the ways in which various polities both within and outside of the US have addressed prostitution while engaging with the effects of American cultural perceptions of sex work. Lennon argues that the most effective federal response would be that of sex industry regulation wherein US law would license and regulate sex work while criminalizing those who attempt to elicit sexual services from unlicensed sex workers. The article thus offers a substantive contribution to the international relations literature with the aim of advancing a policy that balances the well-being of sex workers with the value of individual freedom.

Lastly, Towson University Professor Dr. Lea Ramsdell explores expressions of Latin American national identity through music in "Transnational Trajectories of Colombian Cumbia." In the article, Dr. Ramsdell maps Cumbia's cultural transmutations as it moved throughout the Western hemisphere from its origin in Colombia, framing the historical narrative of the genre's growth with its relationship to racial identity and class in Latin America. The article deftly illustrates how the music and dance of Colombian Cumbia differentiates the diverse peoples of the region through unique modes of cultural expression while creating a community that transcends national boundaries.

The diverse perspectives offered by these authors reflect the interdisciplinary nature of international relations, and it is our honor to contribute to this rich tradition by publishing such exemplary works of writing and scholarship. It is the duty of this journal to recognize those who demonstrate the capacity to educate both the student and the policymaker in these critical areas of the world. It is our hope that the novel theoretical insights and policy solutions contained in this volume will spark further academic interest in these relevant issues in world politics. We, the editors of the Towson University Journal of International Affairs, are pleased to present this Spring 2020 issue, and we hope that readers find these articles useful in their own scholarly endeavors.

Sincerely, Joseph Niehaus, Editor-in-Chief

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# The Rohingya Case in Aceh: Indonesia's Role as a Destination for Refugees

#### **Lindsay Robbins\***

Abstract: Across the globe, states are enacting increasingly anti-migrant policies in the face of growing refugee crises. Indonesia is a prominent example of a country that denies permanent settlement to refugees within its territory. Nonetheless, when Rohingya refugees who fled violence and religious persecution were stranded in the Adaman Sea, fishermen from Indonesia's Aceh province intervened to rescue the refugees when nearby governments, including Indonesia, refused to act. Local Acehnese villagers and NGOs then acted to provide critical emergency shelter and aid to the refugees. This analysis will examine the reasons that motivated the Acehnese to welcome the Rohingya despite the anti-refugee policies of the Indonesian government, and whether these motivations could have been extended in the long term. It will also analyze how Indonesia can use the example set by the Acehnese to expand its own refugee policies and become a more welcoming and open country for the long-term resettlement of refugees.

Key Words: Refugees, Asylum Seekers, Migration, Rohingya, Indonesia

#### Introduction

Indonesia is one of the world's most culturally diverse countries. It spans over 17,000 islands.<sup>1</sup> With a population of 267 million, it is the fourth largest country behind only China, India, and the United States.<sup>2</sup> Indonesia's cultural diversity is due in part to its location on a critical economic trade route, which has attracted merchants, traders, and explorers throughout the 16<sup>th</sup> century. A mixture of Arab and Chinese migrants arrived in the mid-1800s and 1900s, and were able to maintain their cultural heritage, which is visible throughout the country today.<sup>3</sup> Currently, ethnic Chinese make up 1.2 percent of Indonesia's population.<sup>4</sup> In Bali, the Hindu religion is prominent, with temples in every village and festivals occurring seemingly every day. While Aceh, Indonesia's western province, is a conservative Muslim region and the only province in the country that operates under Sharia law.<sup>5</sup>

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https://www.migrationpolicy.org/article/indonesiacountry-grappling-migrant-protection-home-and-abroad. <sup>2</sup> Central Intelligence Agency, "Indonesia" *The World Factbook.* February 28, 2020.

https://www.cia.gov/library/publications/the-world-factbook/geos/id.html

<sup>&</sup>lt;sup>1</sup> Missbach, Antje, & Wayne Palmer. "Indonesia: A Country Grappling with Migrant Protection at Home and Abroad."*Migration Policy Institute*. September 19<sup>th</sup>, 2018.

<sup>&</sup>lt;sup>3</sup> Antje & Palmer, "Indonesia"

<sup>&</sup>lt;sup>4</sup> Central Intelligence Agency, "Indonesia"

<sup>&</sup>lt;sup>5</sup> Varagur, Krithika. "More Rohingya Refugees Arrive in Indonesia's Aceh. *VOA News*. May 7, 2018. https://www.voanews.com/east-asia-pacific/more-rohingya-refugees-arriveindonesias-aceh

Despite this rich culture and history, Indonesia's government has historically been unwelcoming to refugees. It is currently not a signatory to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention), and has very limited legal frameworks for the protection of refugees.<sup>6</sup> Nonetheless, the Aceh province has been one of the only places in the world to openly welcome the Rohingya<sup>7</sup>, a stateless and extremely oppressed Muslim minority group from Myanmar. The welcoming sentiments have mostly originated from a custom of hospitality that exists among the Acehnese people. This analysis will examine the reasons and motivations behind why the Acehnese were more welcoming to the Rohingya refugees in contrast to Indonesia as a whole. As well as analyzing whether this welcome can be considered "acceptance", and whether the acceptance of the Rohingya is a sustainable model that can apply for future refugees that arrive in the region and in Indonesia. As climate change causes natural disasters of increased severity and further disrupts the economies of neighboring island states, millions of "climate migrants" will be forced to leave their home countries. Due to its location and large coastlines, Indonesia will likely be caught in the middle, as it has been during previous politically motivated migration crises.<sup>8</sup> The country will need to be prepared for increased migration coming from at-risk countries, especially from South Asia. Overall, this analysis finds that while the time that the Acehnese were exposed to the Rohingya was short-lived, the local people were indeed accepting of the refugees, extended genuine hospitality to the Rohingya based on their own cultural values and beliefs, and greatly overshot their capacity to provide shelter and emergency assistance to the Rohingya. This raises questions about Indonesia's ability - or willingness - to host refugees in the long-term. Based on the experience of the Rohingya in Aceh, Indonesia should improve its own refugee policy by being more open to the reception of refugees, providing better integration in the short-term and long term (e.g. employment opportunities) and developing policies that allow permanent settlement for refugees, rather than simply acting as a transit country.

#### **Background: Migration and Refugees in Indonesia**

For decades, Indonesia has been an emigrant-sending country, primarily for labor migration. However, Indonesia also has a history of receiving asylum seekers and refugees. Due to its central location and 34,000 miles of coastline, it has frequently been a transit country for refugees from South and Southeast Asia. Following the Vietnam war, nearly 43,000 Vietnamese and Cambodian asylum seekers remained in Indonesia.<sup>9</sup> This wave of migrants was influential in shaping Indonesia's approach toward refugee resettlement. The country considers itself a transit state for refugees that are awaiting voluntary return to their home countries or resettlement

<sup>&</sup>lt;sup>6</sup> Missbach, Antje. "Facets of Hospitality: Rohingya Refugees Temporary Stay in Aceh" *Cornell University Southeast Asia Program,* Indonesia, 104. (October 2017), 42

<sup>&</sup>lt;sup>7</sup> Varagur, Krithika "They Are Our Brothers: Rohingya Refugees Find Rare Welcome in Aceh." *The Guardian*. May 24, 2018. https://www.theguardian.com/world/2018/may/25/they-are-our-brothers-rohingya-refugees-find-rarewelcome-in-aceh

<sup>&</sup>lt;sup>8</sup> Sengupta, Somini and Nadja Popovich. "Global Warming in South Asia: 800 Million at Risk." *The New York Times.* June 28, 2018. https://www.nytimes.com/interactive/2018/06/28/climate/india-pakistan-warming-hotspots.html

<sup>9</sup> Missbach and Palmer, "Indonesia"

elsewhere.<sup>10</sup> From 1975 to 1979, the government resettled roughly 200,000 Indochinese refugees, with the assistance of the United States and the United Nations High Commissioner for Refugees (UNHCR)<sup>11</sup> Following the closing of Galang Refugee camps, which held the majority of Vietnamese and Cambodian migrants, 58,000 Afghan and Iranian refugees arrived in Indonesia in response to ongoing conflict in the Middle East between 1996 and 2013.<sup>12</sup> All of these refugees were sent on, by boat, to Australia.

Today, Indonesia maintains a similar mentality toward refugees. The Second Amendment of Indonesia's 1945 Constitution does guarantee the right to political asylum.<sup>13</sup> However, as previously mentioned, the country is not a signatory to the 1951 Refugee Convention and considers itself only a transit country. Indonesia does not provide any permanent protection for refugees and denies most social, cultural, and economic rights, such as the right to work.<sup>14</sup> Instead, the government gives most responsibility for migrants and refugees to third party organizations, including the UNHCR and the International Organization for Migration (IOM). The UNHCR has operated in Indonesia since 1979 and is the primary agent for refugee resettlement in third countries. The IOM also provides assistance to refugees, including accommodations and "assisted voluntary return" to their countries of origin.<sup>15</sup> The extent of Indonesia's tolerance of refugees is its involvement with the Bali Process, which it co-chairs along with Australia, as well as its commitment to non-refoulement. The Bali Process, however, primarily focuses on preventing transnational crime, rather than increasing protection for refugees.<sup>16</sup>

Despite Indonesia's efforts to avoid integration of refugees in its own territory, many forced migrants have found themselves stuck in Indonesia with very few options due to the Australian government's increasingly anti-migrant policies. Australia, which has been the primary resettlement location for migrants that pass through Indonesia, has refused to process refugees that registered with the UNHCR and were processed in Indonesia after July 1, 2014. It has intercepted and returned boats of refugees en route to Australia back to Indonesia.<sup>17</sup> Further, Australia houses these captured migrants in off-shore Australian-run centers on Manus Islands of Papua New Guinea and on Nauru, which have been called unlawful under international law according to prosecutors at the International Criminal Court due to their "cruel, unhuman, [and] degrading treatment" of migrants.<sup>18</sup> Currently, there are nearly 14,000 refugees in Indonesia,

<sup>&</sup>lt;sup>10</sup> McNevin, Anne and Antje Missbach, "Hospitality as a Horizon of Aspiration (or, What the International Refugee Regime Can Lean from Acehnese Fisherman)." *Journal of Refugee Studies 31*, no. 3 (2018): 295

<sup>&</sup>lt;sup>11</sup> Missbach and Palmer, "Indonesia"

<sup>&</sup>lt;sup>12</sup> Missbach and Palmer, "Indonesia"

<sup>&</sup>lt;sup>13</sup> Dewansyah, Bilal, Dramanda, Wicaksana, and Imam Mulyana. "Asylum Seekers in a Non-Immigrant State and the Absence of Regional Asylum Seekers Mechanism: A Case Study of Rohingya Asylum Seekers in Aceh-Indonesia and Asean Response." *Indonesia Law Review 3* (2017): 342.

<sup>&</sup>lt;sup>14</sup> Bilal, Wicaksana, & Mulyana. "Asylum Seekers in a Non-Immigrant State," 357.

<sup>&</sup>lt;sup>15</sup> McNevin and Missbach, "Hospitality as a Horizon," 296.

<sup>&</sup>lt;sup>16</sup> McNevin and Missbach, "Hospitality as a Horizon," 294.

<sup>&</sup>lt;sup>17</sup> McNevin & Missbach, "Hospitality as a Horizon," 295.

<sup>&</sup>lt;sup>18</sup> Doherty, Ben. "Australia's Offshore Detention is Unlawful, Says International Criminal Court Prosecutor." *The Guardian*. February 14, 2020. https://www.theguardian.com/australianews/2020/feb/15/australias-offshore-detention-is-unlawful-says-international-criminal-court-prosecutor

roughly half of which are from Afghanistan, mainly of the Hazara ethnic group.<sup>19</sup> Refugees among this group, as well as others, find themselves stranded in Indonesia, unwilling to risk or unable to afford the journey by boat to Australia only to be turned away or placed in refugee camps.<sup>20</sup> But with little opportunity to integrate into culture and society in Indonesia. UNHCR officials have warned refugees that their chances of resettlement are becoming increasingly unlikely.<sup>21</sup>

#### The Rohingya Crisis

Despite Indonesia's low tolerance toward refugees and migrants, Rohingya that have arrived in the country in recent years have had a better experience than most. The Rohingya are a minority Muslim group located primarily in Myanmar. The country has denied the Rohingya recognition as an official ethnic group since 1948, and in 1982, the Rohingya were stripped of their right to citizenship; the government instead refers to the group as illegal immigrants from Bangladesh. Beyond citizenship, the rights of the Rohingya are severely limited in Myanmar, and the group has little access to education, marriage, employment, and religious freedom.<sup>22</sup>

Violence against the group has occurred since 1978, with recent renewed attacks occurring in 2012, 2015, and 2017, which international human rights organizations have referred to as ethnic cleansing.<sup>23</sup> These attacks have forced hundreds of thousands of Rohingya to flee the country in mass waves of migration. The most significant incident of forced migration was in 2017; over 700,000 Rohingya have fled Myanmar since August of that year.<sup>24</sup> Though most Rohingya have fled to neighboring Bangladesh, others left by boat to Southeast Asian countries, including Malaysia, Thailand, and Indonesia.

#### Aceh and the Rohingya

The province of Aceh lies on the North Western corner of Indonesia's island of Sumatra, making it an ideal transition point between Myanmar and Australia, or Myanmar and Malaysia. Small groups of Rohingya refugees have been arriving in Aceh Province since 2009 when the first group landed in Sabang, a small island off of Aceh's northern coast, and Kuala Idi.<sup>25</sup> The largest group came in May of 2015, when 1,800 displaced Rohingya were rescued by Acehnese fisherman during the Andaman Sea Crisis, in which thousands of migrants stranded on boats

<sup>&</sup>lt;sup>19</sup> Susetyo, Heru. "Afghan Hazra Refugees in Indonesia: In "Transit" or in "Limbo? *Middle East Institute*. August 21, 2018. https://www.mei.edu/publications/afghan-hazara-refugeesindonesia-transit-or-limbo

<sup>&</sup>lt;sup>20</sup> Lamb, Kate. "Refugees in Indonesia Say Few Would Risk a Boat Ride to Australia." *The Guardian*. February 16, 2019. https://www.theguardian.com/australianews/2019/feb/17/refugees-in-indonesia-say-few-would-risk-a-boat-ride-to-australia

<sup>&</sup>lt;sup>21</sup> Cochrane, Joe. "Refugees in Indonesia Hoped for a Brief Stay. Many May be Stuck for Life. *The New York Times.* January 26, 2018. Accessed March 1, 2020.

https://www.nytimes.com/2018/01/26/world/asia/indonesia-refugees-united-nations.html

<sup>&</sup>lt;sup>22</sup> Albert, Eleanor Lindsay Maizland. "The Rohingya Crisis" *Council on Foreign Relations*. January 23, 2020. <u>https://www.cfr.org/backgrounder/rohingya-crisis</u>

<sup>&</sup>lt;sup>23</sup> Human Rights Watch. "Burma: End 'Ethnic Cleansing' of Rohingya Muslims." April 22, 2013.

https://www.hrw.org/news/2013/04/22/burma-end-ethnic-cleansing-rohingya-muslims#

<sup>&</sup>lt;sup>24</sup> Council on Foreign Relations. "Global Conflict Tracker." March 6, 2020.

https://www.cfr.org/interactive/global-conflict-tracker/conflict/rohingya-crisis-myanmar

<sup>&</sup>lt;sup>25</sup> Dewansayah, Dramanda, and Mulyana, "Asylum Seekers in a Non-Immigrant State", 354

traveling from Myanmar were refused permission to land in Malaysia, Thailand, and Indonesia.<sup>26</sup> Authorities from these countries provided the migrants with fuel, water, and food, only to return the vessels to sea. Between May 10<sup>th</sup> and May 20<sup>th</sup>, the Acehnese intervened to rescue the migrants, despite warnings from the government that by doing so they would be in violation of state law. After the rescues, attitudes toward this groups of migrants shifted, and Indonesia and Malaysia announced that they would allow the Rohingya to seek temporary protection for one year until they could be returned or resettled by the international community.<sup>27</sup> This rescue has not been an isolated incident; much smaller groups of Rohingya were also rescued by Acehnese fisherman in 2018.<sup>28</sup>

#### Why Aceh was more receptive to refugees

The reaction to the Rohingya was much different in Aceh than the overall sentiment toward refugees in Indonesia. The local community has a generally positive view of the population and, for the most part, expresses a sincere desire to help. Beyond the initial rescue by the Acehnese fisherman, local villages were receptive and welcoming of the refugees. Typically, refugees in Indonesia draw distrust and suspicion, which can sometimes lead to violence among Indonesians.<sup>29</sup> The Rohingya were given a much warmer embrace in Aceh and were the recipients of more donations and public support than any other refugee group in Indonesia. Upon their arrival, Acehnese villages provided the Rohingya with shelter, food, proper sanitation, and comfort. Further, volunteers from across Aceh collected donations of food, clothing, and toys throughout the streets of their villages and in mosques. While the villages lacked the capacity to provide for all of the needs of the Rohingya, they contributed as many resources as possible. Further, personal relationships developed among the refugees and local villagers, particularly the fisherman who rescued them at sea. Fishermen, as well as some other local Acehnese frequently visited the Rohingya in camps and developed friendships through the exchange of gifts.<sup>30</sup>

Not only were local villagers welcoming, but local governments and NGOs utilized resources to create shelters and acted quickly to provide emergency assistance to the Rohingya, despite the views of the national government. The refugees were originally housed in emergency shelters, but the local government quickly established four camps in the city of Langsa, East Aceh, and North Aceh.<sup>31</sup> Langsa's government also established a task force for dealing with assistance, assigning roles to social agencies to manage aid and build additional temporary shelters.

There are several theories as to why the Acehnese were more receptive to the Rohingya than the country as a whole is toward refugees. A common theory that is often cited in the media is that the sentiment came from a form of "Muslim solidarity." Nonetheless, the Muslim religion is not unique to Aceh, as Indonesia has the largest Muslim population in the world. Another theory, which is unique to Aceh, is that the local people felt a form of solidarity due to their own

<sup>&</sup>lt;sup>26</sup> McNevin and Missbach, "Hospitality," 295.

<sup>&</sup>lt;sup>27</sup> McNevin and Missbach, "Hospitality as a Horizon," 296.

<sup>&</sup>lt;sup>28</sup> Suryono, Mitra. "Indonesian Fishermen Rescue Rohingya." *The United Nations High Commissioner for Refugees*. May 30, 2018. https://www.unhcr.org/enus/news/latest/2018/5/5b0e962c4/indonesian-fishermen-rescue-rohingya.html

<sup>&</sup>lt;sup>29</sup> McNevin and Missbach, "Hospitality as a Horizon," 296.

<sup>&</sup>lt;sup>30</sup> Missbach, "Facets of Hospitality," 50.

<sup>&</sup>lt;sup>31</sup> Missbach, "Facets of Hospitality," 49.

history of seeking refuge during the Aceh Conflict from 1976 to 2004, and following the Boxing Day Tsunami of 2004.<sup>32</sup> This coincides with the idea of hospitality, which is central to Acehnese culture, and likely played a large role in the reaction to the Rohingya. Lastly, it has been suggested that political motive was behind the local government response, in part because of historic tensions between Aceh and the central government of Indonesia.<sup>33</sup> None of these theories was the sole reasoning for the response of the Acehnese; however, some had a stronger influence than the others.

#### Religion

The most widely discussed theory in the media of why the Acehnese were accepting of the Rohingya is religion and the moral responsibilities of Islam, which incited empathy among the Acehnese. In several news and research articles, Acehnese are quoted describing Rohingya refugees as their "Muslim brothers."<sup>34</sup> In some camps, locals would join the Rohingya to conduct prayers five times a day by singing the Muslim call to prayer and leading refugees in prayer.<sup>35</sup> Volunteers would also teach Rohingya how to read the Quran.<sup>36</sup> Nonetheless, this theory is inherently flawed, considering Indonesia is home to approximately 272 million Muslims; the largest population in the world.<sup>37</sup> Therefore, it is difficult to explain why there would be a strong sense of Muslim solidarity in Aceh, but not in the other provinces of Indonesia. It has been suggested that this idea was pushed by political candidates who were linked to the NGOs operating within Rohingya camps as a way to build support for their political agendas before upcoming local elections.<sup>38</sup> Further, the strict following of Sharia Law caused some tension between the locals and the Rohingya, which led to some marriages of Rohingya refugees in shelters, including some underage girls, because local Acehnese NGOs saw co-habilitation in shelters as sinful.<sup>39</sup>

Nonetheless, a common feature that the Acehnese share with the Rohingya is that both groups are Sunni Muslim, unlike other Muslim refugees in Indonesia from the Middle East, and share other cultural similarities with the Acehnese.<sup>40</sup> These aspects likely did have some factor of influence over how the Acehnese responded to their Rohingya visitors. If Muslim solidarity did play a role in the Acehnese acceptance of the Rohingya, the question that arises is therefore whether refugee identity matters. In other words, would the Acehnese be equally as accepting of refugees who are not Muslim? The answer to this question, and perhaps a stronger case for the reasoning behind Acehnese acceptance, is that the reaction to the Rohingya in Aceh was more likely due to the idea of hospitality that is engrained in Acehnese culture.

<sup>&</sup>lt;sup>32</sup> Missbach, "Facets of Hospitality," 49.

<sup>&</sup>lt;sup>33</sup> McNevin and Missbach, "Hospitality as a Horizon," 297.

<sup>&</sup>lt;sup>34</sup> Varagur, "They Are Our Brothers"

<sup>&</sup>lt;sup>35</sup> Varagur, "They Are Our Brothers"

<sup>&</sup>lt;sup>36</sup> Malahayati, Malahayati, Rasyid, Laila M., and Hadi Iskander. "Minimal Protection of Rohingya Refugees (A Moral Approach in Aceh)." *International Conference on Social Sciences, Humanities, Economics and Law.* 

doi 10.4108/eai.5-9-2018.2280979 (January 2019)

<sup>&</sup>lt;sup>37</sup> Central Intelligence Agency, "Indonesia"

<sup>&</sup>lt;sup>38</sup> McNevin and Missbach, "Hospitality as a Horizon," 297.

<sup>&</sup>lt;sup>39</sup> Missbach, "Facets of Hospitaliy," 51.

<sup>&</sup>lt;sup>40</sup> Missbach, "Facets of Hospitality," 58.

#### Hospitality and Acehnese culture

The theory that is most often cited in literature is that the Acehnese were accepting toward the Rohingya because of the local custom of *peumulia jamee*, which translates to "honoring one's guests" and has a broader meaning of welcoming strangers to Aceh.<sup>41</sup> Unlike Islam, this idea of hospitality is unique to Aceh, and they take great pride in this aspect of their culture. The central idea is that extending hospitality and following the code of *peumulia jamee* will bring good fortune, while failing to follow will bring misfortune. This sentiment can be seen clearly in the decision of the Acehnese fishermen to rescue the Rohingya stranded at sea. One fisherman, when describing his decision, stated, "They are human. We have to help other humans."<sup>42</sup> He then went on to explain that he expected to be rewarded by the gods with more fish for the money that he lost while completing the rescue. This idea of being rewarded for hospitality is central to *peumulia jamee*. Another fisherman told a journalist after the rescue that "we helped out of solidarity. If we find someone in the ocean, we have to help them no matter what . . . we could not avoid it."<sup>43</sup> This response incorporates the idea that helping those in need is seen as an obligation under *peumulia jamee*.

The culture of hospitality was also extended to the Rohingya at the village level. Villages across Aceh, not only villages where refugees first landed, contributed donations of food, toys, and clothing, while local mosques donated hijabs and sarongs. Acehnese youth also became involved with assisting the refugees. Youth volunteers were quoted saying they were helping "because it's [their] duty as Acehnese."<sup>44</sup> Similarly, a village head claimed that it was the right thing to do to offer help to the Rohingya, and that they "only look at the souls of those in need; their identities remained irrelevant."<sup>45</sup> Based on this mindset, the villages extended welcome to the Rohingya based on their humanity alone, regardless of status or whether they imposed a burden, and not based on the fact that they shared a religion.

#### Solidarity in Time of Need

It is also suggested that the sentiment of wanting to provide assistance to the Rohingya extends beyond culture; it is rooted in Aceh's history of conflict and disaster, in which the Acehnese also sought help from the international community. While this feeling of solidarity with those in need may be an extension of *peumulia jamee*, it also warrants analysis as its own theory due to Aceh's unique experience with loss. Aceh experienced a violent conflict between 1976 to 2003, when the security forces of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka – GAM) fought over GAM's desire to secede from Indonesia and create a sovereign and independent Acehnese state. Consequently, thousands of Acehnese were forcibly displaced by government forces and sought protections in countries such as Malaysia and the United States. The Aceh saw welcoming the Rohingya as a way to reciprocate the help that had been given to them in a time of need and to empathize with an oppressed group of people.<sup>46</sup>

<sup>&</sup>lt;sup>41</sup> McNevin and Missbach, "Hospitality as a Horizon," 298.

<sup>&</sup>lt;sup>42</sup> McNevin and Missbach, "Hospitality as a Horizon," 298.

<sup>&</sup>lt;sup>43</sup> McNevin and Missbach, "Hospitality as a Horizon," 298.

<sup>&</sup>lt;sup>44</sup> Varagur, "They Are Our Brothers"

<sup>&</sup>lt;sup>45</sup> McNevin and Missbach, "Hospitality as a Horizon," 298.

<sup>&</sup>lt;sup>46</sup> McNevin and Missbach, "Hospitality as a Horizon," 299.

Many Acehnese are also empathetic to the situation of the Rohingya, as they themselves have experienced severe disaster. The 2004 Indian Ocean Tsunami had the most devastating impact on Aceh; across the province, 170,000 residents were killed and 500,000 were left homeless.<sup>47</sup> It is difficult to find someone in the province who did not lose someone close to them, particularly in Banda Aceh, the capitol of the province, which was all but completely destroyed. Many feel the weight of living through a disaster and want to help others in need. One survivor of the tragedy stated, "I'm a survivor of the tsunami too, like many people in Aceh... We all know what it is like to live through a disaster."<sup>48</sup> Further, following the tsunami, Aceh received huge amounts of aid from the international community; providing assistance to the Rohingya was seen as a way to pay this back. While the culturally engrained aspect of hospitality likely played a larger role in the acceptance of the Rohingya, the feeling of tremendous loss cuts very deep for the Acehnese, which is evident from the thoughtfully designed Tsunami Museum in Banda Aceh, which serves as both a symbolic reminder of what was lost as well as an emergency shelter in case a similar tragedy every occurs. It is highly likely that the shared experience among the Acehnese made them more empathetic toward the Rohingya.

#### Political and Economic Motives

Lastly, while it is fair to claim that the local Acehnese welcome of the Rohingya came from a place of genuine compassion, it would be naïve to say without caveats that the motives of all stakeholders were the same. There was also at least somewhat of a political and economic motive behind the actions of the local government, NGOs, and local media. Firstly, there are still existing political sentiments within Aceh in favor of secession from Indonesia. Welcoming Rohingya refugees and crafting policies to accommodate them was seen by some as an act of disobedience against the central governance, which brings a level of pride to the Acehnese.<sup>49</sup>

Additionally, the local government received funding from NGOs such as the UNHCR and the IOM to support the Rohingya. While this funding was necessary for providing ongoing support to the Rohingya, portions were also used for spin-off projects and as unofficial income for government officials who may have been up for local elections. For local media, the image of "Acehnese goodness" was utilized as a way to garner a positive international image and cover up human rights abuses from the conservative religious government.<sup>50</sup> However, the motives of local government, NGOs, and local media should be separated from the response of the local villages. Considering the majority of villages throughout Aceh are poor, and Acehnese families provided assistance to the Rohingya despite their own limited access to resources, it is arguably more likely that locals were motivated by cultural sentiments of hospitality and genuine empathy and compassion than any political or economic factor.

#### **Defining "Acceptance" among Acehnese**

It is not one single theory that led the Acehnese to welcome the Rohingya, but a combination of a feeling of Muslim solidarity, culturally engrained hospitality, empathy toward a displaced and oppressed population, and in some cases, political motives. The most prominent

<sup>&</sup>lt;sup>47</sup> Pan, Esther. "Indonesia: The Aceh Peace Agreement." September 15, 2005.

https://www.cfr.org/backgrounder/indonesia-aceh-peace-agreement

<sup>&</sup>lt;sup>48</sup> Varagur, "They Are Our Brothers"

<sup>&</sup>lt;sup>49</sup> Missbach, "Facets of Hospitality," 59.

<sup>&</sup>lt;sup>50</sup> McNevin and Missbach, "Hospitality as a Horizon," 298.

influence, based on reactions and responses from Acehnese citizens, is the custom of *peumulia jamee*, which requires honoring one's guests and welcoming strangers. Nonetheless, the shared religion was likely a contributing factor, at least after the initial rescue and response, as to why the Acehnese were friendly toward the Rohingya and tolerated their stay in the community. The shared experience of Islam gave the Acehnese and Rohingya a reason to connect beyond the rescuer-rescue relationship that may not exist for another refugee group. Nonetheless, the Acehnese were able to identify themselves in the Rohingya because they too had experience fleeing and recovering from disasters and persecution. While it is true political reasons were a motive for some, it is difficult to say this played a large role for all Acehnese based on the amount of resources and funds that were mobilized in comparison to the capacity of the local government and villagers.

Nonetheless, while the Acehnese were welcoming to the Rohingya because of these factors, this does not necessarily translate to acceptance, as the Rohingya were not given the opportunity to settle permanently in the province. By the end of 2015, only approximately 200 Rohingya remained in Aceh; the rest had either left, presumably via smugglers to Malaysia in search of work, or had been re-located. By December of 2016, the Indonesian government had relocated all remaining Rohingya to Medan.<sup>51</sup> Therefore, it is difficult to assess the level of Acehnese acceptance in the long-term. Nonetheless, in the short term, the capacity of the Acehnese people, most of whom are living in poverty, to help the Rohingya was vastly overshot; this did not deter locals and villagers from doing what they considered their responsibility under Acehnese culture. Further, the lack of integration opportunities for Rohingya was not the fault of the local people, but the federal government that refuses to provide long-term protection and resettlement opportunities for refugees, including employment opportunities. Local NGOs could have also done more to ensure greater opportunities for long-term residence for the Rohingya, such as improving shelters, which were labeled as inadequate by visitors from international NGOs.<sup>52</sup>

There were, however, instances of tension between the Rohingya and the local Acehnese. In September of 2015, a group of Rohingya stormed out of a refugee camp in response to allegations of rapes and beatings by locals.<sup>53</sup> Acehnese in some instances, mainly NGO staff and volunteers, referred to Rohingya as being "ungrateful" and deemed some as not complying with the rules of hospitality for selling items in care packages to earn extra cash.<sup>54</sup> Other than these few instances, the Acehnese were, for the most part, genuinely friendly toward the Rohingya and concerned with helping a population in need. Therefore, based on the brief period that the groups were exposed, the Acehnese do appear to be accepting of the Rohingya. It is highly likely that if the Rohingya had been given the opportunity to stay and fully assimilate into Acehnese culture and society, the acceptance would have been extended in the long term. In fact, some Acehnese claimed to be in favor of the possibility of long-term integration for the Rohingya if they could become part of the local society, and thus would no longer depend on aid from the government and local villages.<sup>55</sup> Thus, apart from tensions with some groups of Rohingya, the Acehnese

<sup>&</sup>lt;sup>51</sup> Dewansyah, Dramanda, and Mulyana, "Asylum Seekers in a Non-Immigrant State" 358.

<sup>&</sup>lt;sup>52</sup> Missbach, "Facets of Hospitality," 50.

<sup>&</sup>lt;sup>53</sup> Missbach, "Facets of Hospitality," 50.

<sup>&</sup>lt;sup>54</sup> Missbach, "Facets of Hospitality," 51.

<sup>&</sup>lt;sup>55</sup> Missbach, "Facets of Hospitality," 58.

should be considered as accepting to the Rohingya, especially in comparison to Indonesia as a whole.

The question remains as to whether Indonesia can build on the Acehnese model to improve its efforts to accommodate more refugees, as well as provide more permanent settlement to the asylum seekers that are already living within its borders. However, before analyzing whether Indonesia and the broader international community can learn from the case of the Acehnese, it is important to consider whether this same level of hospitality would have been extended to other migrant groups or could be similarly applied to refugees who are not Rohingya. Based on the theories of Acehnese acceptance, it is not a stretch to assume the Acehnese would response similarly to another migrant group, considering the custom of Acehnese hospitality requires welcoming strangers regardless of who they are.<sup>56</sup> Further, fleeing dangerous and violent situations is a universal characteristic of forced-migrant populations, and one that the Acehnese would be able to identify with beyond the Rohingya. This theory was tested in June of 2016, when a boat of 43 Sri Lankan asylum seekers neared the coast in Aceh. While Indonesian authorities first refused entry to the boat, local NGO pressure led the Indonesian government to allow the boat to land days later, and the IOM and UNHCR were able to work to shelter the Sri Lankans under similar circumstances as the Rohingya.<sup>57</sup> While Acehnese acceptance has yet to be tested on a large scale, they are a group of people that are culturally bound by hospitality, and who take great pride in being kind and welcoming. Whether or not the exact actions of the Rohingya can be replicated across the globe, the sentiments of acceptance, compassion, and empathy, can certainly be improved in many countries in regard to refugee crises.

#### Indonesia as a welcoming country

It is impossible to claim that the model in Aceh can be replicated on a larger scale to encompass the entire country of Indonesia considering that only 1,500 to 1,800 Rohingya temporarily resided in Aceh for a few months, and that this number shrunk to 200 by the end of 2015.<sup>58</sup> This was a relatively short test of the Acehnese ability to welcome refugees in the long term. Further Aceh is not without its own problems in the eyes of the international community and should not be regarded as the poster for the protection of human rights. The government is known to crack down on same-sex couples, and publicly cane citizens who are caught in extramarital relationships.<sup>59</sup> Outside of these human rights abuses by government officials, the people of Aceh are inherently empathetic and caring, and the cultural component of hospitality can and should be applied on a broader scale across the country. In some instances, the small actions of the Acehnese have already had an impact. While the governments of Indonesia and Malaysia initially refused entry to Rohingya boats, following the rescue by Acehnese fishermen, they quickly shifted their policies. Malaysia agreed to stop deterring boats and to provide shelter to 3,000 people. Following this announcement, both Indonesia and Malaysia announced that their governments would provide shelter for the Rohingya for one year until they could be resettled by

<sup>&</sup>lt;sup>56</sup> McNevin and Missbach, "Hospitality as a Horizon," 301.

<sup>&</sup>lt;sup>57</sup> McNevin and Missbach, "Hospitality as a Horizon," 297.

<sup>&</sup>lt;sup>58</sup> Dewansyah, Dramanda, and Mulyana, "Asylum Seekers in a Non-Immigrant State," 358.

<sup>&</sup>lt;sup>59</sup> Davies, Ed. "Indonesia's Aceh Resumes Public Caning Despite Pledge to Curb Access." *Reuters*. July 13, 2018. https://www.reuters.com/article/us-indonesia-aceh-caning/indonesias-acehresumes-public-caning-despite-pledge-to-curb-access-idUSKBN1K31N1.

the UNHCR.<sup>60</sup> While this was an unrealistic time frame, it showed a change in policy that was a direct result of hospitality extended by the Acehnese.

Though compassion and respect for human rights are crucial for crafting effective refugee policies, refugee resettlement goes beyond empathy. It also requires providing adequate funds and developing the appropriate systems for resource mobilization. In the case of Aceh, this was handled remarkably well considering and capacity of the local government and villages. Indonesia and the international community should look to the Acehnese example when searching for ways to provide for refugees using few resources. Poverty is extremely prevalent in Aceh; nonetheless, poor villages provided assistance to the Rohingya far beyond what their local economies could allow. One small village of 1,500 people coordinated to quickly provide food, hygiene, and clothes to 500 migrants until assistance could be provided by local authorities, despite challenges they already faced sustaining themselves.<sup>61</sup> Though this example is difficult to compare to a large-scale refugee crisis, such as that from Syria or the Rohingya fleeing to Bangladesh, the extreme generosity of the Rohingya does warrant the question as to whether Indonesia and other receiving countries are overstating their lack of resources available to take in refugees.

Indonesia will continue to see migrants from South and South East Asia arriving by sea, particularly in the coming decades as climate change exacerbates the situations of many already desperate populations, and climate migration becomes a more pressing global challenge. The world has already witnessed an increase in the number of climate migrants being forcibly displaced by extreme weather events. In 2017, approximately 24 million people were displaced by sudden weather events, such as flooding, forest fires brought on by drought, and intense storms.<sup>62</sup> The World Bank has estimated that by 2050, the living conditions for 800 million people in six South Asian countries could diminish severely, which will likely prompt increases in migration from these countries.<sup>63</sup> These include countries such as Pakistan, Afghanistan, Bangladesh, and Sri Lanka, all of which have already had waves of migrants arrive at some point in Indonesia. These trends will likely continue, and Indonesia must be prepared to provide more than temporary shelter and aid to these migrant populations. In addition to the likely increase in migrants in the coming decades, the world is facing increasingly anti-refugee and anti-migrant policies. The United States, which until President Trump took office was the top destination in the world for the resettlement of refugees, pledged to accept only 18,000 migrants in 2020, down from 110,000 that were allowed in 2016.<sup>64</sup> Further, as Australia increases its deterrence policies to prevent boats of people seeking asylum landing on its shores, Indonesia will have fewer options when it comes to re-locating refugees and asylum seekers.<sup>65</sup>

None of the above examples can be used as a direct comparison between Aceh and Indonesia or the international community as a whole. Though hospitality among the Acehnese

<sup>&</sup>lt;sup>60</sup> Missbach & McNevin, "Hospitality as a Horizon," 296

<sup>&</sup>lt;sup>61</sup> Missbach & McNevin, "Hospitality as a Horizon," 305.

<sup>&</sup>lt;sup>62</sup> Podesta, John."The Climate Crisis, Migration, and Refugees." *Brookings Institute*. July 25, 2019. https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/

<sup>&</sup>lt;sup>63</sup> Sengupta and Popovich, "Global Warming in South Asia."

<sup>&</sup>lt;sup>64</sup> Shear, Michael D. and Zolan Kanno-Youngs. "Trump Slashes Refugee Cap to 18,000, Curtailing U.S. Role as Haven." September 26, 2019. https://www.nytimes.com/2019/09/26/us/politics/trump-refugees.html

<sup>&</sup>lt;sup>65</sup> Isaacs, Mark. "Australia's Draconian Refugee Policy Comes Home to Roost." *Foreign Policy*. November 21, 2018. https://foreignpolicy.com/2018/11/21/australias-draconian-refugee-policycomes-home-to-roost-nauru-manus-island-offshore-detention-scott-morrison-asylum-seekers/

saved the lives of thousands of Rohingya when no surrounding governments would step in, hospitality cannot act as a substitute for laws that provide legal protection, status, and work opportunities for the Rohingya. While the Acehnese did their best so they could assist the refugees, operating without laws and an understanding of the rights of refugees can put their safety at risk. Recently, Indonesia has made improvements in its refugee policies; in 2016, President Jokowi Widodo issued Presidential Decree No. 125 on the Treatment of Refugees Overseas, which uses the term refugees as it is written in the 1951 Refugee Convention, lays out Indonesia's duty to rescue migrants at sea, and provides a unified response for all government agencies.<sup>66</sup> However, the decree confirms Indonesia's stance that asylum seekers are only allowed to remain in Indonesia temporarily, and must be relocated to third countries.

Indonesia must make improvements to better accommodate and protect the refugees that are currently living within its borders, and those that will arrive in the future. While the first step should be to become a signatory to the 1951 Refugee Convention, this alone will not be enough, considering that signatory states, including the U.S. and Australia, are increasingly pushing the limits of what can be allowed under the convention. Indonesia must also implement policies, such as resident permits, that can allow refugees to become permanent residents in Indonesia and have access to the same rights as Indonesian citizens, including employment opportunities, education, and healthcare. The main reason why Rohingya did not stay in Aceh long term is because of the lack of work opportunities. By providing access to services, Indonesia can create better opportunities for cultural integration among refugees, which will help prevent further human smuggling to countries like Malaysia where refugees are also not allowed formal employment, but many Rohingya have found work in the informal sector.<sup>67</sup> The case of the Rohingya in Aceh demonstrated what works and what does not in refugee integration, and in formulating refugee policies, Indonesia should use Aceh province as a model to craft more sustainable policies that will provide greater protections for refugees.

#### Conclusion

The case of how the Acehnese handled a sudden arrival of Rohingya refugees is an important example to consider when thinking about broader refugee policies. Despite its limited capacity, Aceh was able to not only rescue Rohingya stranded at sea when they had been abandoned by surrounding governments, but also to provide temporary shelter and assistance that came from both local villages as well as local authorities and NGOs. Of the reasoning for why the Acehnese were willing to go to great lengths to protect the Rohingya, the most compelling factors are that they felt solidarity with the refugees because of their own regional history, and because of their cultural value of hospitality which drove them to welcome strangers at all costs. Indonesia on a national level has historically been much less welcoming to refugees. Despite its reluctance to allow refugees to remain in the country long-term, Indonesia has frequently been a transit country, where many migrants have waited for transfer to Australia. Facing increasing pressure from climate change and a growing anti-refugee sentiment across the globe, Indonesia must act to improve its refugee policies and create opportunities for long-term residency and integration. By using its own Aceh province as an example, Indonesia can craft refugee policies that better accommodate the needs of refugees, and that provide the opportunity for long term

<sup>&</sup>lt;sup>66</sup> Missbach, "Facets of Hospitality," 43.

<sup>&</sup>lt;sup>67</sup> Dewansyah, Dramanda, and Mulyana, "Asylum Seekers in a Non-Immigrant State," 358.

integration. By becoming a safer destination for asylum seekers, Indonesia can set an example for other South East Asian countries and for the rest of the international community.

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## By the Numbers: The Minimal Impact of the 2019 Elections on the Political Orientation of the European Parliament

#### Dr. Stanley M. Max\*

**Abstract:** Prior to the May 2019 elections for the 2019–2024 session of the European Parliament (EP), some analysts and commentators speculated that the right wing or Eurosceptics would triumph and drastically shift the EP's political orientation. Relying upon the copious election data provided by the European Union's website, the article concludes that a minor polarization did occur, but nothing even approaching a politically seismic event.

*Keywords*: 2019 European Parliament election, European Parliament, European Union, Political groups of the European Parliament

#### **Introduction: Elections to the European Parliament**

Over a four-day period from May 23rd to May 26th 2019, citizens of the then 28-nation European Union voted for a new session of the European Parliament (EP). Methods of voting for a country's Members of the European Parliament (MEPs) vary from one country to another, but certain rules apply throughout the 28-member bloc (since Brexit, which occurred on 31 January 2020, the number of member countries is 27). Beginning in 1979, MEPs have been elected by direct universal suffrage for a five-year period. The current parliament will sit from 2019 until the next elections in 2024. At the time of the May 2019 elections, the EP had 751 MEPs, and following Brexit it has 704.

"Each country decides on the form its election will take," says the European Parliament website, "but must guarantee equality of the sexes and a secret ballot. EU elections are by proportional representation. Voting age is 18, aside from Austria, where it is 16." Moreover, "[s]eats are allocated on the basis of population of each Member State."<sup>1</sup> Prior to the 2019 EP elections, some analysts and commentators speculated that the right wing or Eurosceptics would triumph and drastically shift the EP's political orientation.<sup>2</sup> First, this study identifies the political groups within the European Parliament and categorizes them as belonging to the left, the center, or the right. Then, relying upon the copious election data provided by the European Union's website, the article examines the outcome of the 2019 elections and concludes that a

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<sup>&</sup>lt;sup>1</sup> European Parliament. "Members of the European Parliament," European Parliament. Accessed 11 February 2020. https://www.europarl.europa.eu/meps/en/home.

<sup>&</sup>lt;sup>2</sup> Stephanie Burnett. "EU Election Polls: Two Biggest Parliament Groups are Recovering — But Will Still Take Big Hits," Euronews February 5, 2019, https://www.euronews.com/2019/04/10/eu-election-polls-two-biggest-parliament-groups- are-recovering-but-will-still-take-big-hit.

political upheaval did not occur. A very minor polarization did take place, the analysis concludes, as the Left-wing and the Right-wing made slight electoral gains alongside a corresponding minor decrease in the performance of the center. Despite predictions to the contrary, nothing even approaching a political seismic event took place.

#### Political Groups within the European Parliament

The EP website notes that "MEPs are grouped by political affinity, not nationality."<sup>3</sup> Thus, MEPs set up what are called political groups of politically like-minded members. So, for example, the Progressive Alliance of Socialists and Democrats (the S&D Group) has members from the British Labour Party (prior to Brexit), the German Sozialdemokratische Partei Deutschlands, and the Spanish Partido Socialista Obrero Español and Partido de los Socialistas de Cataluña, to name only three EU countries. Another EP political group, the Greens / European Free Alliance group, has members belonging to the Irish Green Party, the Dutch GroenLinks, and the Portuguese Pessoas–Animais–Natureza. And one final example of an EP political group is the European People's Party (Christian Democrats), where MEPs come from the Croatian Hrvatska demokratska zajednica, the Italian Forza Italia and the Südtiroler Volkspartei (Partito popolare sudtirolese), and the Polish Koalicja Europejska.

Current rules for establishing a political group require that it comprises at least 25 MEPs and that it be drawn from at least seven different EU member states. Not every MEP belongs to a political group, but the vast majority do, since adherence affords the opportunity of advancing one's political agenda by using the strength of numbers. Furthermore, the composition of the European Parliament contains such a wide variety of political leanings from left to right that a place exists for practically everyone. Those who are non-attached members, to use the Englishlanguage nomenclature, belong to the NI group, from the French-language non inscrit. In the newly elected (2019-2024) Parliament — prior to Brexit — out of the 751 members, 57 (that is, 7.6%) were non-attached and this was an unusually high percentage. In the eight preceding legislative periods beginning with the first EP of 1979-1984, non-attached members most often comprised about 1% to 4% of all MEPs. For the current ninth legislative period (2019-2024) this percentage changed, as a result of Brexit. The total number of seats in the European Parliament went down from 751 to 704, and the total number of non-attached members declined to 29, thus comprising a more typical proportion of 4.1%.<sup>4</sup> Why did the number of non-attached members decline so precipitously? Because many of the staunch Brexiteers sat in the non-attached group, so when the UK delegation left the European Parliament these non-attached MEPs left as well.

<sup>&</sup>lt;sup>3</sup> European Parliament. "Members of the European Parliament," February 11<sup>th</sup>, 2020. https://www.europarl.europa.eu/meps/en/home.

<sup>&</sup>lt;sup>4</sup> European Parliament. "Members of the European Parliament," February 11<sup>th</sup>, 2020. https://www.europarl.europa.eu/meps/en/home.

#### Usefulness of Political Groups for purposes of analysis

Since each political group espouses a more or less distinct viewpoint, they provide a useful analytical tool. In the first instance, let us categorize each political group as to whether it is left, center, or right. First, however, a word of caution. The terminology of European politics does not transfer to the United States. Of course, a Right-wing politician by European standards may well assume a virulently anti-immigrant or xenophobic position. For the most part, however, even the most Right-wing European leader favors government intervention in key economic areas, like the provision of healthcare, parental leave, and higher education.

Conversely, so-called liberals in the United States — who often oppose state intervention in such economic sectors — thereby adopt positions to the right of the most Right-wing Europeans. In this article, therefore, we use the terms left, center, and right in a European, not an American, context.

#### Listing of the EP political groups along with categorizing their political orientation

The following two tables (Table 1 and Table 2) list the political groups along with the data pertaining to them. This information is found on the European Parliament's website.<sup>5</sup>

Before proceeding, why have we categorized the non-attached members as Right-wing? In large measure, in the outgoing and the incoming EPs, a sizable proportion of non-attached members were Brexiteers and thus were Right-wing and Eurosceptic. Moreover, a certain amount of fluidity exists within the grouping of non-attached members, and thus clear categorization becomes difficult to achieve. And finally, since this paper argues that the right did not drastically gain in the 2019 EP elections, then categorizing the non-attached members as Right-wing and possibly inflating their numbers thus strengthens the opposite argument. To the extent that non-attached members were left or center means that the paper's thesis is all the more correct.

<sup>&</sup>lt;sup>5</sup> European Parliament. "Members of the European Parliament," February 11<sup>th</sup>, 2020. https://www.europarl.europa.eu/meps/en/home.

EUROPEAN PARLIAMENT (2014-2019)						
FULL NAME	ABBREVIATION	AUTHOR'S CATEGORIZATION OF POLITICAL ORIENTATION	NUMBER OF SEATS	PERCENTAGES FOR EACH GROUP	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS	
Confederal Group of the European United Left – Nordic Green Left	GUE / NGL	Left	52	6.9%	13.6%	
Group of the Greens / European Free Alliance	Greens / EFA	Left	50	6.7%		
Group of the Progressive Alliance of Socialists and Democrats	S & D	Center	191	25.4%		
Group of the Alliance of Liberals and Democrats for Europe	ALDE	Center	67	8.9%	63.7%	
Group of the European People's Party (Christian Democrats)	EPP	Center	221	29.4%		
European Conservatives and Reformists Group	ECR	Right	70	9.3%		
Europe of Freedom and Direct Democracy Group	EFDD	Right	48	6.4%	22.6%	
Non-attached Members	NI	Right	52	6.9%		

\* Due to rounding, columns do not sum to exactly 100%.

TABLE 2: INFORMATION PERTAINING TO THE POLITICAL GROUPS IN THE INCOMINGEUROPEAN PARLIAMENT (2019-2024, BUT PRIOR TO BREXIT)					
FULL NAME	ABBREVIATION	AUTHOR'S CATEGORIZATION OF POLITICAL ORIENTATION	NUMBER OF SEATS	PERCENTAGES FOR EACH GROUP	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS
Confederal Group of the European United Left – Nordic Green Left	GUE / NGL	Left	41	5.5%	15.4%
Group of the Greens / European Free Alliance	Greens / EFA	Left	74	9.9%	
Group of the Progressive Alliance of Socialists and Democrats	S & D	Center	154	20.5%	
Renew Europe Group	Renew Europe	Center	108	14.4%	59.1%
Group of the European People's Party (Christian Democrats)	EPP	Center	182	24.2%	
European Conservatives and Reformists Group	ECR	Right	62	8.3%	25.6%
Identity and Democracy	ID	Right	73	9.7%	25.6%
Non-attached Members	NI	Right	57	7.6%	
Totals		1 1000/	751	100.1% *	100.1% *

\* Due to rounding, columns do not sum to exactly 100%.

#### Summarizing the results — only very slight polarization

So now, let us look at the following graph, which is derived from the data provided in Tables 1 and 2.

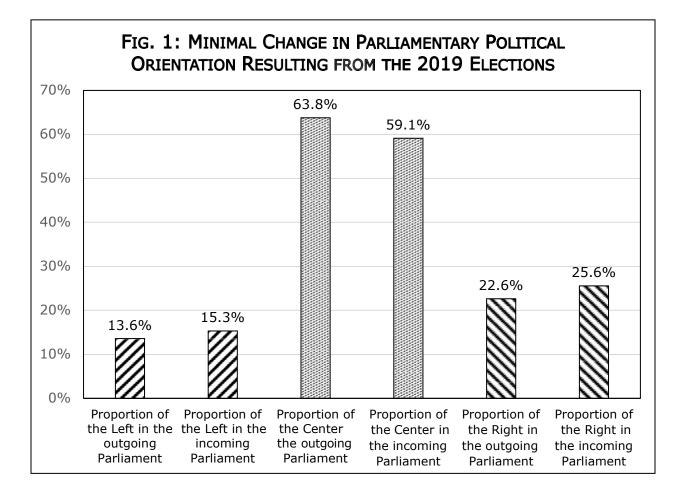


Figure 1 shows that the center's proportion did decrease, but not by much. The bottom did not fall out. Meanwhile, the left's and the right's respective proportions both increased. However, none of the changes were drastic. Yes, the incoming European Parliament became a bit more polarized, but the difference was certainly not like night and day.

#### Another angle — Pro-European Union versus Eurosceptic

Now let us consider how the 2019 elections affected the orientation of the European Parliament regarding its Pro-European versus its Eurosceptic orientation. To do this, we should first realize that these are not binary categories, where one is either Pro-European or else Eurosceptic. On the contrary, these two positions represent opposite ends of a continuum in between which exist numerous gradations, a phenomenon that the following graphic and table illustrate:

Pro-EU	Eurosceptic
Centralization	Individual states
"Ever closer union"	Intergovernmental relations of independent states
Federalism	Trading bloc
Supranationalism	Intergovernmentalism
Emphasis on a political entity, as well as on economic relations	Emphasis just on economic relations

The expression of these concepts comes from two historians of the European Union, John Pinder and Simon Usherwood, who wrote of "two main ways of explaining the phenomenon of" the European Union. "Adherents to one emphasize the role of the member states and their intergovernmental dealings; adherents to the other give greater weight to the European institution."<sup>6</sup> In the extreme, therefore, the pro-EU position is to advance politically towards one single United States of Europe, and in the other extreme, the Eurosceptic goal is to keep the European Union a bloc of independent trading countries.

The phrase "ever closer union" — an objective for the most pro-EU forces and anathema to Eurosceptics — comes from the "Solemn Declaration on European Union," promulgated by the European Council in 1983. This declaration is worth citing in greater detail. It calls for "further[ing] European integration," and it discusses continuing the work "to create a united Europe." It states, moreover, that the EU leadership, "on the basis of an awareness of a common destiny and the wish to affirm the European identity, confirm[s] their commitment to progress towards an ever closer union among the peoples and member states of the European Community."<sup>7</sup> This epitomizes the kind of message that so rankles Eurosceptics, such as Brexiteers and others on the European continent.

Keeping in mind that the categories of Pro-EU and Eurosceptic can be brought to the extreme, examining the 2019 EP elections against the backdrop of this categorization provides useful insight. We have done so in this paper using two different hypotheses — first, that the extreme left is Pro-EU and the other that the extreme left is Eurosceptic. And which political group in the European Parliament represents the extreme left? Indisputably, the Confederal Group of the European United Left – Nordic Green Left (GUE / NGL) does.

Why might the extreme left be considered Pro-EU? If we take the position that the unity of the working class requires peace between nations, then the European Union plays a progressive role. After all, this argument goes, proletarian unity cannot be achieved if the working classes of France and Germany, or of Slovenia and Italy, or of Rumania and Hungary —

<sup>&</sup>lt;sup>6</sup> John Pinder and Simon Usherwood, The European Union: A Very Short Introduction (Oxford: Oxford University Press, 2013), 6–8.

<sup>&</sup>lt;sup>7</sup> European Council, "Solemn Declaration on European Union," (Stuttgart, 19 June 1983), reproduced from the Bulletin of European Communities, No. 6/1983. Downloaded from the Archive of European Integration (AEI), accessed 13 February 2020, http://aei.pitt.edu/1788/.

to name only a few two-way combinations of historical rivalries — are slaughtering each other on European battlefields. Thus, having a vital European Union provides a necessary, but not sufficient, condition for working-class solidarity. And why might the extreme left be considered Eurosceptic? Some on the extreme left consider the EU to be a capitalist club, that does not lend enough support to the goal of working-class unity and in particular is too wedded to the economics of austerity. In this paper, we examine the issue both ways. First, consider the tabular data in Tables 3 and 4, and then the graphical display of that data in Fig 2 and Fig. 3.

## TABLE 3: PRO-EUROPEAN UNION VERSUS EUROSCEPTIC ORIENTATION OF THE OUTGOING AND THE Incoming European Parliament IF the Extreme Left is Counted as Pro-EU

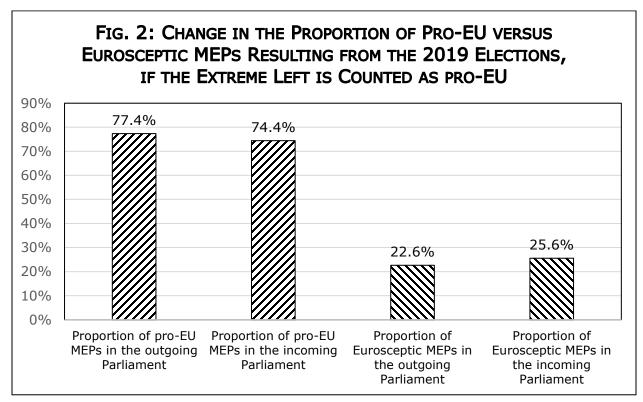
Incoming Euror EANT AREIAMENT IF THE LATREME LEFT IS COUNTED AS I RO LO					
ABBREVIATION	Author's Categorization as Pro-EU or Eurosceptic	Percentages for each Group in the outgoing Parliament	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS	Percentages for each Group in the incoming Parliament	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS
GUE / NGL	Pro-EU	6.9%		5.5%	
Greens / EFA	Pro-EU	6.7%		9.9%	
S & D	Pro-EU	25.4%	77.3%	20.5%	74.5%
ALDE, then RE	Pro-EU	8.9%		14.4%	
EPP	Pro-EU	29.4%		24.2%	
ECR	Eurosceptic	9.3%		8.3%	
EFDD, then ID	Eurosceptic	6.4%	22.6%	9.7%	25.6%
NI	Eurosceptic	6.9%		7.6%	
Totals		99.9% *	99.9% *	100.1% *	100.1% *

\* Due to rounding, columns do not sum to exactly 100%.

TABLE 4: PRO-EUROPEAN UNION VERSUS EUROSCEPTIC ORIENTATION OF THE OUTGOING AND THE					
INCOMING EUROPEAN PARLIAMENT IF THE EXTREME LEFT IS COUNTED AS EUROSCEPTIC					
ABBREVIATION	AUTHOR'S CATEGORIZATION AS PRO-EU OR EUROSCEPTIC	Percentages for each Group in the outgoing Parliament	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS	PERCENTAGES FOR EACH GROUP IN THE INCOMING PARLIAMENT	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS
Greens / EFA	Pro-EU	6.7%		9.9%	
S & D	Pro-EU	25.4%	70.4%	20.5%	69.0%
ALDE, then RE	Pro-EU	8.9%	/0.4/0	14.4%	07.070
EPP	Pro-EU	29.4%		24.2%	
GUE / NGL	Eurosceptic	6.9%		5.5%	
ECR	Eurosceptic	9.3%	29.5%	8.3%	31.1%
EFDD, then ID	Eurosceptic	6.4%	29.370	9.7%	51.170
NI	Eurosceptic	6.9%		7.6%	
Totals		99.9% *	99.9% *	100.1% *	100.1% *

\* Due to rounding, columns do not sum to exactly 100%.





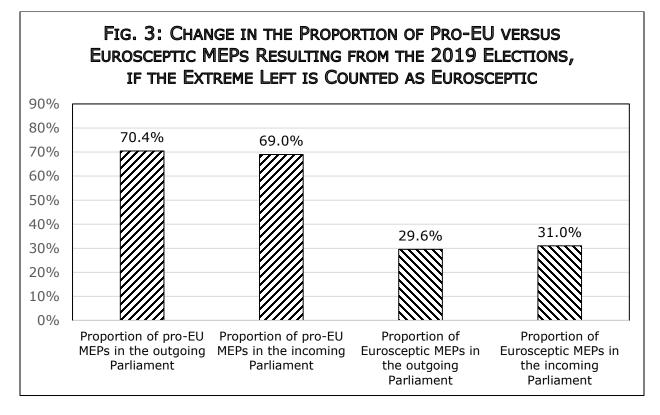


Fig. 3 graphically displays the data which is derived from Table 4.

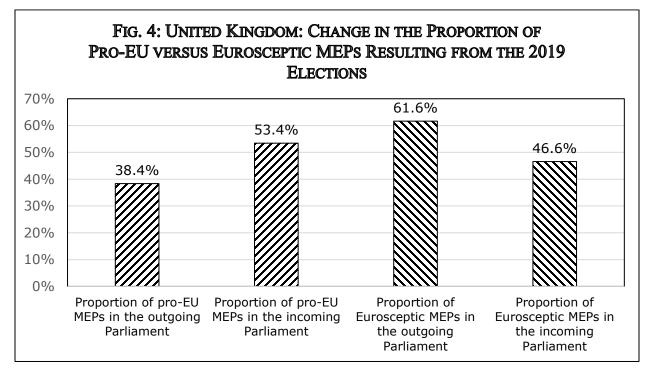
So, what conclusion should be drawn? If the extreme left is counted as pro-European Union, then comparing the outgoing parliament to the incoming parliament, the proportion of pro-EU MEPs to Eurosceptic MEPs somewhat decreased. And if the extreme left is counted as Eurosceptic, then comparing the outgoing parliament to the incoming parliament, the proportion of pro-EU MEPs to Eurosceptic MEPs slightly decreased. Bottom line — in neither case did the 2019 elections greatly affected the Pro-EU versus Eurosceptic orientation of the European Parliament.

#### A Surprising result: The 2019 EP elections led to a more pro-EU UK contingent

This paper has not sought to discuss Brexit. Still, the topic could not be utterly disregarded, nor should it because the departure of the United Kingdom led to a significant reduction in the number of MEPs. Given the Brexit atmosphere seemingly sweeping a sizable segment of the UK population, one might have thought that the incoming UK contingent to the European Parliament would be as Eurosceptic as the outgoing UK contingent, and perhaps even more so. Remarkably, however, the incoming UK MEPs were significantly more Pro-EU than the outgoing ones. Thus, while a consistent theme of this paper has been that the 2019 elections did not greatly change the overall composition of the parliament, for the United Kingdom in particular, the elections did change things. Fig. 4, taken from the data in Table 5, illustrates this surprising result — the UK contingent of the incoming European Parliament was decidedly more pro-European Union than was the UK contingent of the outgoing European Parliament. The proportion of Pro-EU UK MEPs increased from 38% to 53%.

TABLE 5: UNITED KINGDOM: CHANGE IN THE PROPORTION OF PRO-EUROPEAN UNION						
VERSUS EUROSCEPTIC MEPS RESULTING FROM THE 2019 ELECTIONS						
ABBREVIATION	AUTHOR'S CATEGORIZATION AS PRO-EU OR EUROSCEPTIC	SEATS AND PERCENTAGES FOR EACH GROUP IN THE OUTGOING PARLIAMENT	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS	SEATS AND PERCENTAGES FOR EACH GROUP IN THE INCOMING PARLIAMENT	PERCENTAGES FOR EACH OF THE AUTHOR'S CATEGORIZATIONS	
GUE / NGL	Pro-EU	(1 seat) 1.4%		(1 seat) 1.4%		
Greens / EFA	Pro-EU	(6 seats) 8.3%		(11 seats) 15.1%		
S & D	Pro-EU	(20 seats) 27.4%	38.5%	(10 seats) 13.7%	53.5%	
ALDE, then RE	Pro-EU	(1 seat) 1.4%		(17 seat) 23.3%		
EPP	Pro-EU	(0 seats)		(0 seats)		
ECR	Eurosceptic	(20 seats) 27.4%		(4 seats) 5.5%-		
EFDD, then ID	Eurosceptic	(24 seats) 32.9%	61.7%	(0 seats)	46.6%	
NI	Eurosceptic	(1 seat) 1.4%		(30 seats) 41.1%		
Totals		(73 seats) 100.2% *	100.2% *	(73 seats) 100.1% *	100.1% *	

\* Due to rounding, columns do not sum to exactly 100%.



#### Conclusion: The Continued stability of the European Union in the face of Euroscepticism

Although the UK contingent of the outgoing and incoming European Parliaments was large — 73 out of the 751 seats — it was after all only one delegation. Yes, that delegation surprisingly shifted towards the Pro-EU position as a result of the 2019 elections. Overall, however, for the parliament as a whole, we have demonstrated that the Eurosceptic position made only slight gains, and how those gains should be quantified depends upon whether the Extreme Left should be considered Pro-EU or Eurosceptic. All in all, however, not much changed. This is the same looking at the situation as left, center, or right. The center declined a bit while the left and the right made minor gains. The watchword was stability. Eurosceptics hoping for widespread disruption had cause for disappointment.

Due to Brexit, the size of the European Parliament has decreased from 751 to 704 seats. Not all the UK's 73 seats vanished, which of course would have brought the EPs size down to 678 seats. Instead, 26 seats formerly held by the UK were distributed to the remaining 27 EU member countries. The remaining 47 seats are being held in reserve for possible new members eager to join the European Union, most of which lie in the Western Balkans. The next two members — if their accession is approved — would be Montenegro and Northern Macedonia. The other Western Balkans counties would be Albania, Bosnia Herzegovina, Kosovo, and Serbia. If they eventually do join the European Union, their populations will be represented in a strong and stable European Parliament.

APPENDIX: POLITICAL GROUPS OF THE 9 <sup>th</sup> European Parliament (2019 – 2024)				
FULL NAME	ABBREVIATION	IDEOLOGY		
Group of the European United Left – Nordic Green Left	GUE / NGL	Pro-EU or Eurosceptic		
		(debatable)		
		Extreme leftwing		
Group of the Greens / European Free Alliance	Greens / EFA	Pro-EU		
		Green politics		
		Leftwing		
Group of the Progressive Alliance of Socialists and	S & D	Pro-EU		
Democrats in the European Parliament		Leftwing		
Renew Europe [successor to the Alliance of Liberals and	RE [successor to ALDE]	Pro-EU		
Democrats for Europe]		Centrist		
Group of the European People's Party (Christian Democrats)	EPP	Pro-EU		
		Centrist		
European Conservative and Reformists Group	ECR	Eurosceptic		
		Rightwing		
Identity and Democracy Group [successor to Europe of	ID [successor to EFDD]	Eurosceptic		
Freedom and Direct Democracy]		Rightwing		
Non-Attached Members	NI	Eurosceptic (usually)		
		Rightwing (usually)		

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# Can Altering US Prostitution Law Decrease Sex Trafficking and Promote the Well-Being of Sex Workers?

# Alyssa Lennon\*

**Abstract:** Despite hundreds of thousands of individuals currently living in modern slavery within the United States, there are relatively few active human trafficking cases in the United States, and efforts to combat trafficking tend to overemphasize the trafficking of foreign nationals and focus too intensely on prosecution, and not prevention, efforts. In order to more effectively reduce sex trafficking within the United States, states should move away from the criminalization of sex work, which prevents victims from seeking assistance from or offering information to authorities. Rather than full decriminalization, which could lead to an inflation of demand for trafficking along with all commercial sex in general, states should instead explore regulatory policies regulatory policies which would protect the rights of sex workers and reduce the stigma surrounding sex work, while also actively working against an increase in the incidence of trafficking. However, in order for this to be a viable policy option for decisionmakers, there needs to be a shift in the American public away from examining prostitution as a "morality policy," either through an acknowledgment that commercial sex is not an inherently immoral act or that personal moral bounds should not dictate law. Overall, this paper seeks to demonstrate the failure of the United States' current actions against sex trafficking and highlight how prostitution policy can be altered to combat this issue.

Keywords: sex trafficking, sex workers, prostitution, morality policy, human rights

# Introduction

According to the Slavery Index, in 2016, there were over 400,000 people enslaved within the United States, including conditions of forced labor and forced commercial sex. However, there were only 700 active criminal cases for human trafficking in the United States in 2017 reported by the Human Trafficking Institute, with nearly all of them involving sex trafficking.<sup>1</sup> These alarming statistics thus raise crucial questions when examining sex trafficking within the United States: what conditions in the United States allow for the prevalence of human trafficking? Why are there less than a thousand criminal cases against human traffickers, if there are several hundred thousand people living in modern slavery? What institutions within the United States' government could lead to such inconceivable failures, and how is there such little public attention or criticism?

Human trafficking is a crisis within the United States, yet current laws and policies are failing to adapt to our changing understandings of human trafficking and the sex work industry. Traditionally, the United States has focused efforts towards trafficking reduction on enacting stricter penalties for offenders through clear and specific legal definitions and minimum

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<sup>&</sup>lt;sup>1</sup>Global Slavery Index, "United States," n.d., <u>https://www.globalslaveryindex.org/2018/findings/country-studies/united-states/</u>.

sentencing requirements. Therefore, the United States' primary tactic in combatting human trafficking is prosecuting individual offenders. However, an emphasis on prosecution alone is insufficient when combatting such a complex and elusive industry. Thus, the United States needs to rethink and amend current anti-trafficking strategies to develop more comprehensive and effective policies that can lead to the emancipation of modern slaves within the United States.

With the exception of Nevada, the United States fully criminalizes prostitution, with both customers and sex workers subject to arrest. However, criminalization is counterproductive to efforts to reduce trafficking as it forces sex workers to operate under secretive and poor working conditions and weakens relationships between law enforcement and sex workers, making them less likely to report their own or others' trafficking and other forms of violence. In order to successfully reduce the presence of sex trafficking, law enforcement must promote a line of communication between themselves and those involved in the sex industry who have advanced knowledge of its members and practices. The most practical way to foster this cooperation would be through the decriminalization of sex work, as sex workers would no longer fear arrest when reporting concerns to law enforcement.

Thus, in order to more effectively combat sex trafficking, the United States should adopt a policy of sex industry regulation, also known as the "Dutch model." Under this system, the United States would license and govern sex work, only criminalizing customers who purchase sex from unlicensed sex workers, thus decreasing the demand for trafficked persons. Adopting this policy would destignatize sex workers, while promoting institutional barriers that safeguard against an increased demand for sex trafficking victims as a result of an increased demand to the sex industry as a whole through decriminalization.

In order to properly demonstrate the failures of the current legal system and policies in combatting sex trafficking, one must first describe and define the legal framework. Thus, in the first section, I will examine the federal laws prohibiting sex trafficking and state laws regarding prostitution. For the purpose of this study, I will describe and compare Maryland and Nevada statutes in order to establish both the standard US prostitution law in addition to the atypical decriminalization within Nevada. Following this, the paper will outline three policy alternatives to the present full criminalization model: full decriminalization, the Swedish model (which penalizes only consumers of commercial sex), and the Dutch model. There will then be a brief discussion of prostitution as a morality policy and how this contributes to the stigmatization of sex work, even in Nevada's regulated commercial sex industry. This section will also address how prostitution's status as a morality policy poses a substantial obstacle for proponents of decriminalization and what alterations to the general mindset of Americans must occur in order for this to be a viable policy option. The next section will detail the debate surrounding the substitution and scale effects on demand for sex trafficking with relation to legalization. Finally, I will show that full criminalization, full decriminalization, and the Swedish model are inadequate in deterring sex trafficking within the United States and, thus, why the United States should adopt the Dutch model.

# **Current Legal Frameworks**

# **Trafficking Victims Protection Act (2000)**

In 2000, Congress passed The Trafficking Victims Protection Act (TVPA 2000). This law enacted a three-fold plan with the goal of eradicating human trafficking in the US, often called the three P's: protection, prosecution, and prevention. In order to protect victims of sex

trafficking, the federal government created T-Visas, which could be given to potential victims of trafficking to prevent them from facing deportation.<sup>2</sup> However, only 5,000 T-Visas may be issued each year, with an average of only 1,500 issued per year.<sup>3</sup> In addition to the T-Visas, the TVPA 2000 mandates federal agencies dealing with human trafficking to offer benefits and services to all trafficking victims, regardless of their immigration status.<sup>4</sup> Thus, the TVPA 2000 focused primarily on protecting foreign-born victims of sex trafficking, not victims who are also US citizens. While undocumented immigrants are a particularly vulnerable group for trafficking, this intense focus on foreign nationals fails to assist victims who are United States citizens and perpetuates misconceptions that a majority of sex trafficking victims are international.

The TVPA 2000 also narrowed the legal framework, creating "new provisions prohibiting forced labor, trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, and sex trafficking of children or by force, fraud, or coercion." The law required that convicted traffickers pay restitution to their victims and expanded the minimum sentences for those convicted of human trafficking.<sup>5</sup> Thus, the TVPA 2000 expanded the legal definitions of what trafficking was and enacted harsher punishments for traffickers in the hopes of reconciling previous legal inadequacies. This demonstrated an insistence on updating the legal system to be compliant with the developing scholarship on sex trafficking.

Finally, the TVPA 2000 created multiple new offices to research and prevent human trafficking. The Office to Monitor and Combat Trafficking in Persons within the State Department publishes the annual Trafficking in Persons (TIP) report each year with the goal of engaging states in discussions of human trafficking and related issues. The Interagency Task Force to Monitor and Combat Trafficking (PITF) also arose out of the TVPA 2000 with a similar goal of evaluating the ability of the US and other states to address the "three P's." This organization consists of "cabinet-level officers chaired by the Secretary of State."<sup>6</sup> Through these organizations, the United States is able to reflect on its own progress and the progress of other states in eradicating human trafficking and channel this research into constructive conversations regarding effective policies.

While the TVPA claimed to work towards prevention, prosecution, and protection, prosecution was by far the most emphasized pillar of the TVPA. Although new offices were created to research human trafficking and visa laws were altered to reduce the threat of deportation, the TVPA perpetuated beliefs that human trafficking is something that does not happen in the United States and that American-born victims are an insignificant demographic by primarily targeting foreign victims and focusing research on trafficking outside of the United States.

# The William Wilberforce Trafficking Victims Protection Reauthorization Act (2008)

The TVPA has undergone many amendments since its passage. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) focused primarily

<sup>&</sup>lt;sup>2</sup> The United States Department of Justice, "Key Legislation," January 6, 2017, <u>https://www.justice.gov/humantrafficking/key-legislation</u>.

<sup>&</sup>lt;sup>3</sup> Department of Homeland Security, "Number of Form- I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status 2008-2017",

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20 Data/Victims/I914t\_visastatistics\_fy2017\_qtr4.pdf.

<sup>&</sup>lt;sup>4</sup> The United States Department of Justice, "Key Legislation."

<sup>&</sup>lt;sup>5</sup> The United States Department of Justice, "Key Legislation."

<sup>&</sup>lt;sup>6</sup> The United States Department of Justice, "Key Legislation."

on strengthening the prevention and prosecution of human trafficking. This act offered a variety of important changes that narrowed the legal framework, including removing the justification by the defendant of ignorance of the victim's age when the defendant had a "reasonable opportunity to observe the victim;" penalizing all-knowing beneficiaries of human trafficking, even if their involvement was indirect; and requiring that all unaccompanied undocumented children be flagged as at high-risk of potential trafficking and screened.<sup>7</sup> These conditions promoted increased protection of minor sex trafficking victims and established the precedent that financial beneficiaries of sex trafficking are also subject to legal consequences. These changes have greatly expanded the government's ability to prosecute traffickers and their affiliates, but it still contains some of the major short-comings of the original TVPA law in that it primarily focuses on trafficking entering the United States from other countries).

# Maryland Prostitution Laws

In order to demonstrate typical US state prostitution law, I have selected Maryland to use as an example of specific state laws against sex work. Like the majority of states within the United States, prostitution is fully criminalized within Maryland, meaning that all parties engaging in the sale of sex are subject to prosecution. According to Maryland Criminal Law §11–303, "a person may not knowingly: (1) engage in prostitution or assignation by any means; or (2) occupy a building, structure, or conveyance for prostitution or assignation." <sup>8</sup> In Maryland, prostitution is defined as "the performance of a sexual act, sexual intercourse, or vaginal intercourse for hire." Assignation is defined as "the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement."<sup>9</sup> These are considered misdemeanor offenses and any party convicted of prostitution or assignation may face imprisonment, a fine of no more than \$500, or both.<sup>10</sup> This is reflective of the majority of the United States, where the sale of sex is a misdemeanor offense punishable with a fine or a brief prison sentence.

# Nevada Prostitution Laws

Unlike Maryland, there are areas of Nevada in which sex work is regulated, not criminalized, representing the only state within the US where sex work is not a crime. In Nevada, "prostitution" is defined as "engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value." A prostitute is defined as someone who "for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person." Unlike in other areas of the United States, including Maryland, sex workers can lawfully engage in sex work if they work in "a licensed house of prostitution." In order to obtain a license, the building must be in a county with a population of less than 700,000 and must undergo an investigation by the county's licensee board.<sup>11</sup> There are currently 20 businesses licensed for prostitution in Nye, Storey, Mineral,

http://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcr&section=11-301&enactments=false. <sup>10</sup> The Maryland General Assembly, "Statutes Text: §11–303."

<sup>&</sup>lt;sup>7</sup> The United States Department of Justice, "Key Legislation."

<sup>&</sup>lt;sup>8</sup> The Maryland General Assembly, "Statutes Text: Article- Criminal Law §11–303"

http://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gcr&section=3-1103&enactments=false. <sup>9</sup> The Maryland General Assembly, "Statutes Text: Article- Criminal Law §11–301,"

<sup>&</sup>lt;sup>11</sup> Legislative Council Bureau, "Chapter 201 – Crimes Against Public Decency and Good Morals," https://www.leg.state.nv.us/NRS/NRS-201.html#NRS201Sec354.

White Pine, Lander, and Elko counties.<sup>12</sup> Thus, the presence of legal prostitution in Nevada is highly limited, and the majority of the state reflects the full criminalization of the rest of the US.

# **Models of Prostitution Law**

## Full Decriminalization

The full decriminalization of sex work is supported by several renowned international human rights-based organizations, including Human Rights Watch and Amnesty International. For proponents of full decriminalization, the legalization of sex work is a rights-based issue and they are primarily concerned with preserving the well-being and agency of sex workers. According to Human Rights Watch, the criminalization of sex work is a violation of the rights to privacy and personal autonomy, arguing that governments should not interfere with the sexual choices of consenting adults.<sup>13</sup> The basic assumptions of this perspective also contends include the argument that poverty and limited economic means do not undermine a sex worker's agency, suggesting that women in poverty can actively consent to engaging in sex work as long as there is no coercion.<sup>14</sup>

Supporters of full decriminalization also view criminalization of prostitution as more harmful to sex workers than beneficial, citing health and safety concerns. Sex workers are at greater risk of STDs, including HIV/AIDS, which has been exacerbated by policies allowing condoms to be used as evidence against sex workers.<sup>15</sup> Proponents of decriminalization also argue that criminalization of prostitution marginalizes sex workers, forcing them to operate "in clandestine and dangerous environments with little recourse to safety or state protection." By forcing sex workers at greater risk of abusive situations. Worse still, this marginalization often prevents sex workers from seeking assistance when they are victims of violence or abuse due to fears of discrimination or even arrest on the basis of their sex worker status.<sup>16</sup> Overall, the perspective in support of full decriminalization asserts that criminalizing prostitution is more problematic and dangerous than prostitution itself.

# The Swedish Model

The Swedish Model of prostitution was adopted in Sweden in the late 1990s and consists of criminalized prostitution on the demand-side only and social welfare programs for both buyers and sellers of sex work. Since 2010, purchasers of commercial sex face a possible fine or up to one year in prison (an increase of 6 months from the original law), while sex workers face no

https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF.

<sup>&</sup>lt;sup>12</sup> David Montero, "Must Reads: Nevada's Monopoly on Vice May Be Easing with Push to Eliminate Nearly Half the State's Brothels," *Los Angeles Times*, May 6, 2018, <u>https://www.latimes.com/nation/la-na-nevada-brothels-illegal-20180506-story.html</u>.

<sup>&</sup>lt;sup>13</sup> Human Rights Watch, "Why Sex Work Should Be Decriminalized: Questions and Answers," August 7, 2019, https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized.

<sup>&</sup>lt;sup>14</sup> Amnesty International, "Amnesty International Policy on State Obligations to Respect Protect and Fulfil the Human Rights of Sex Workers," May 26, 2019,

<sup>&</sup>lt;sup>15</sup> Human Rights Watch, "Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities," July 19, 2012, <u>https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities</u>.

<sup>&</sup>lt;sup>16</sup> Amnesty International, "State Obligations."

such punishment.<sup>17</sup> This model developed out of the Swedish feminist movement of the 1970s, in which it was determined that "prostitution was incompatible with the values of Swedish society, such as individual freedom and gender equality."<sup>18</sup> Thus, the Swedish Model assumes that prostitution inherently demonstrates an irreparable power imbalance between buyers and sellers that demonstrates an intersectionality of class and gender. This model views prostitution as a social rather than criminal problem, thus encouraging rehabilitation programs for sex workers and their customers. Due to these gender-based foundational assumptions, the Swedish model attempts to reduce gender inequalities produced through prostitution by penalizing only the male-dominated demand-side, as all sex-workers, coerced or not, are victims of their gender-and class-discriminating society. Within this context, prostitution is seen as "an inherently violent form of patriarchal oppression that, irrespective of the circumstances in which it takes place, is harmful to women both inside and outside the sex industry."<sup>19</sup> Thus, the ultimate goal of the Swedish model is to eradicate prostitution, a societal ill, by removing demand while at the same time mitigating harm towards the "victims" of the transactions (the sex workers).

# The Dutch Model

Within the Dutch Model of prostitution policy, sex work is fully decriminalized, with the exception of prostitution of minors and coerced prostitution (human trafficking), and the industry is subject to government regulation. This government regulation makes this approach differ from full decriminalization, as it demonstrates prostitution existing outside of "legitimate labor," thus justifying government interference.<sup>20</sup> There can be several motivations for a state or municipality to institute the regulation of prostitution. On the one hand, regulation suggests that prostitution is morally reprehensible, but unavoidable. Therefore, since it is impossible for the government to dispose of prostitution in its entirety, the government should regulate the industry in order to protect society from as much of its harm as possible.<sup>21</sup> However, it can also be argued that regulation from prostitution may arise not out of moral implications of the validity of sex work, but due to concerns in regard to the nature of sex work. Under this assumption, prostitution is not a social ill, but is nonetheless a danger to those participating in the transaction as well as the greater public.<sup>22</sup> Ultimately, the Dutch Model only attempts to monitor sex work and make it safe for consumers and sex workers, not reduce the demand and eliminate the industry. For these reasons, the Dutch model acknowledges the validity of sex work as a personal choice while also maintaining the safety of those involved.

# **Moral Implications of Prostitution Law**

Despite this wide array of policy alternatives, the United States has failed to seriously consider deviating from a rigid stance of prohibition. One of the primary difficulties in moving

 <sup>&</sup>lt;sup>17</sup> Laura McMenzie, Ian R. Cook, & Mary Laing, "Criminological Policy Mobilities and Sex Work: Understanding the Movement of the 'Swedish Model' to Northern Ireland," *British Journal of Criminology* 59, no. 5 (2019): 1204.
 <sup>18</sup> Åsa Yttergren & Jenny Westerstrand, "The Swedish Legal Approach to Prostitution: Trends and Tendencies in the Prostitution Debate," *Nordic Journal of Feminist and Gender Research*, 24, no. 1 (2016): 46.

<sup>&</sup>lt;sup>19</sup> MacKenzie, Cook, & Laing, "Criminological Policy Mobilities," 1204.

<sup>&</sup>lt;sup>20</sup> Che Post, Jan G. Brouwer, & Michael Vols, "Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?," *European Journal on Criminal Policy and Research* 25 (2019): 103.

<sup>&</sup>lt;sup>21</sup> Post, Brouwer, & Vols, "Regulation of Prostitution," 114.

<sup>&</sup>lt;sup>22</sup> Post, Brouwer, & Vols, "Regulation of Prostitution," 114.

the United States away from full criminalization of sex work is the status of prostitution as a "morality policy." According to Hubbard, Sanders, and Scoular, the term morality policy "typically describes any policy field where emotion and ideology rules over rationality and reason."<sup>23</sup> Thus, research and clear evidence is not enough to sway public opinion and policy-makers in favor of sex work legalization, as its criminalization is underpinned by strong moral convictions that paid sex is wrong, unethical, and sinful. Additionally, in order to be characterized as a morality policy, there must be a significant and vocal opposition to the morals imposed within the law, thus distinguishing the prohibition of murder (in which most people acknowledge its immorality) from the prohibition of prostitution, abortion, drugs, and other morality policies.<sup>24</sup> This undercurrent of ethical questioning is apparent in the above models as much as in the argument for criminalization. The argument for full legalization rests largely on contextualizing human rights into the commercial sex industry. The Swedish model views paid sex as degrading for women and thus an unethical practice. Due to this morality policy status, little government research has been conducted into sex work as evidence is not the primary motivation for policy change.

Even in Nevada, where sex work is regulated, there are still strong moral convictions surrounding the policy, which also contributes to the stigma surrounding prostitution. Perhaps the clearest demonstration of the moral implications intertwined within Nevada's prostitution law is that it falls under the section of Nevada criminal law dealing with "Crimes against Public Decency and Good Morals."<sup>25</sup> Thus, even in the state with the most progressive of prostitution law, the idea that prostitution is immoral and harmful to the greater public is blatant. These moral implications continue to marginalize sex workers even in regulatory systems, thus failing to alleviate the problems that arise out of stigma, including law enforcement harassment and avoidance, lack of equal health care access, and instances of violence.

Leading up to the 2018 election, there was a significant movement within Nevada to hold a referendum that would severely limit the presence of legalized prostitution within the state. Jason Guinasso, a leader within this movement, argues that prostitution encourages men to view women as merely a commodity to be bought and sold and "skews the male perspective, leading to more domestic violence and rape."<sup>26</sup> The moral underpinnings of the movement away from regulatory commercial sex are apparent; Guinasso relies not on statistics or research to support his claims, but on an ethical argument regarding the status of women and the possible implications of sex work on society. While policy debate does have room for discussions of morality and immorality, resting the entire argument on subjective moral grounds ignores the realities of sex work and could place both voluntary sex workers and sex trafficking victims in greater danger.

#### Scale v. Substitution Debate

In 2013, researchers Seo-Young Cho, Axel Dreher, and Eric Neumayer published an economic study analyzing the effect of prostitution legalization on the degree of human trafficking. This study has become crucial to the policy debate surrounding sex work as it

<sup>&</sup>lt;sup>23</sup> Phil Hubbard, Teela Sanders, & Jane Scoular, "Prostitution Policy, Morality, and the Precautionary Principle," *Drugs and Alcohol Today* 16, no. 3 (2016): 194.

<sup>&</sup>lt;sup>24</sup> Christopher Z. Mooney, "The Decline of Federalism and the Rise of Morality-Policy Conflict in the United States," *Publius: The Journal of Federalism* 30, no. 1 (Winter/Spring 2000): 174.

 <sup>&</sup>lt;sup>25</sup> Legislative Council Bureau, "Chapter 201 – Crimes Against Public Decency and Gooled Morals."
 <sup>26</sup> Montero, "Must Reads."

introduced one of the cornerstone dilemmas regarding the decriminalization of prostitution: the scale versus substitution debate. The scale effect assumes that legalizing prostitution will lead to greater demand for the entire sex work industry, thus increasing the scale of human trafficking as traffickers coerce more victims in order to meet this demand. Thus, the scale effect implies that decriminalization should not be implemented as it would only exacerbate the problem of sex trafficking. On the other hand, the substitution effect implies that legalizing prostitution would decrease the degree of human trafficking, as consumers would prefer to purchase sex from voluntary sex workers rather than victims of trafficking. The substitution effect regards legalization as an ideal solution to at least lessen the extent of trafficking. The study concluded that, in legalized contexts, the scale effect "dominates" the substitution effect.<sup>27</sup> However, it should be noted that the study's dependent variable (degree of human trafficking) is not calculated in absolute terms, so the magnitude and extent of the effects are not certain.<sup>28</sup>

This study has broad implications for policy research regarding prostitution law, as it implies that full legalization, despite its attempts to protect sex workers, could inadvertently increase the degree of involuntary and coerced sex work in a state or municipality. Therefore, the presence of the scale effect warrants serious consideration by lawmakers proposing legalization and should be actively counteracted in policy. For these reasons, the scale v. substitution debate introduces economic dimensions to the ethical debate. Proponents of full decriminalization cannot rest their argument solely on rights protections but must also demonstrate the ability of their policy to account for and counteract demand for trafficked persons.

It must be considered, however, that the scale versus substitution debate requires more research in order to be fully understood. For example, Simon Hedlin argues that Cho, Dreher, and Neumayer's study is inadequate as it sticks to a binary classification of states as either legalizing or criminalizing prostitution. This ignores the nuances and potential differentiation between the four primary models of prostitution law.<sup>29</sup> In order to truly understand the influence of legalization of sex work on the demand for prostitution, further research should attempt to quantify this relationship and should account for the full spectrum of policies.

## **Policy Proposal**

In order to protect sex workers and their human rights while also actively attempting to curb and combat human trafficking, I propose that Maryland and the rest of the United States should adopt a more regulatory policy regarding prostitution. Sex workers should be licensed and provided social welfare benefits and consumers should only be arrested should they choose to purchase sex from an unlicensed sex worker. In order to demonstrate why I feel that this is the most effective policy option, I will first outline my reasoning for discarding the other policy options.

#### **Criminalization**

Criminalization is an inadequate policy to combat human trafficking as it furthers the stigmatization and marginalization of sex workers, thus limiting the resources available to

<sup>&</sup>lt;sup>27</sup> Cho, Dreher, & Neumayer, "Legalized Prostitution," 25.

<sup>&</sup>lt;sup>28</sup> Seo-Young Cho, Axel Dreher, & Eric Neumayer, "Does Legalized Prostitution Increase Human Trafficking?," *World Development* 41, no.1 (2013): 10.

<sup>&</sup>lt;sup>29</sup> Simon Hedlin, "Can Prostitution Law Reform Curb Sex Trafficking? Theory and Evidence on Scale, Substitution, and Replacement Effects," *University of Michigan Journal of Law Reform* 50, no.2 (2017): 355.

potential victims or those who may have information helpful to law enforcement. As stated by Tamara O'Doherty, "the enforcement of the criminal laws results in sex workers being forced to adopt oppositional roles in relation to the police and therefore being unable or unwilling to turn to police for protection."<sup>30</sup> Sex workers who may have knowledge that could assist sex trafficking investigations are reluctant to pass this information on to law enforcement officials due to fears of their own arrest or implication. A lack of open dialogue between sex workers and law enforcement cultivates feelings of mistrust between the two parties, thereby also feeding into the cycle of marginalization. Thus, criminalization is counterproductive to efforts to reduce human trafficking, despite any potential decrease in demand as a result of the criminal risk.

Additionally, criminalization makes sex workers more vulnerable to physical violence and abuse. The threat of arrest forces sex workers into discrete locations and situations where they are vulnerable to violence in an attempt to avoid police detection. Tragically, when a sex worker is a victim of assault, rape, or another act of violence, they are unlikely to report the incident to police.<sup>31</sup> This reluctance to report violent crimes often stems from fear of having charges pressed against them as well as for engaging in sex work and of police harassment. Even if the victims report the crime against them, their complaint and case is less likely to be viewed as credible simply due to their sex workers status.<sup>32</sup> Thus, not only does criminalization harm the well-being of sex workers themselves, it also becomes a public safety issue when violent offenders are not being reported or charged.

The clandestine nature of the prostitution industry also prevents sex workers from labor rights provided within other industries, including the ability to organize, receive fair wages and safe working conditions, and against discriminatory financial practices, such as increasing rent for sex workers.<sup>33</sup> Thus, they are vulnerable to financial manipulation and abuse, which further marginalizes them. The fines attached to prostitution convictions pose another financial dilemma for those convicted of prostitution (\$500 in Maryland), as it could force them further into poverty. An inability to find alternative employment due to a history of prostitution arrests and convictions also forces sex workers to remain in the industry or in poverty.

## Legalization

The primary drawback of full legalization of sex work is the potential for the unchecked expansion of the human trafficking industry. While legalization would better protect voluntary sex workers from the marginalization and exploitation perpetuated and exacerbated by the criminalization and policing of sex work, it would open the opportunity for an increase of demand within the human sex trade. Thus, until further research can demonstrate *quantitatively* the dominance of the substitution effect, it is necessary to implement a policy with the same goals and motivations as legalization, but that accounts for and actively works against an increase in human trafficking.

## Criminalization of Purchase

The criminalization of the purchase of sex still marginalizes sex workers and perpetuates the clandestine nature of current prostitution. Because sex work remains partially illegal, stigma

<sup>&</sup>lt;sup>30</sup> Tamara O'Doherty, "Criminalization and Off-Street Sex Work in Canada," *Canadian Journal of Criminology and Criminal Justice* 53, no. 2 (2011): 219.

<sup>&</sup>lt;sup>31</sup> Human Rights Watch, "Why Sex Work Should Be Decriminalized."

<sup>&</sup>lt;sup>32</sup> O'Doherty, "Off-Street Sex Work," 233.

<sup>&</sup>lt;sup>33</sup> O'Doherty, "Off-Street Sex Work," 230.

would still surround the idea of prostitution, still complicating relationships between law enforcement and sex workers, even if the threat of arrest is no longer an immediate concern. In addition, the customers would still be under the threat of arrest, so the policy fails to challenge the working conditions and dangerous situations faced by the sex workers. Finally, the goal of this model, which is ultimately to reduce the presence of prostitution by removing the demand and, thus, reducing the size of the industry as a whole, places sex workers in financial constraints and could further impoverish vulnerable people.<sup>34</sup> Criminalization of prostitution in any form, whether partial or full, is damaging to the sex worker's safety and contributes to the stigma surrounding sex work, preventing the realization of sex workers' rights.

Additionally, partial criminalization fails to recognize the agency of the sex workers. The idea that sex work is in all forms gender violence undermines the personal autonomy of women who voluntarily chose to enter the industry. The imposition of the exploitation narrative (all women engaged in sex work are victims of gender exploitation and prostitution is an expression of gender discrimination and violence) within the Swedish model makes it incompatible with the rights-based perspective on sex work. Viewing all sex workers as victims of a patriarchal society implies that the women could not make the choice for themselves to engage in sex work and that the option was forced upon them. This assumption that women who choose to engage in sex work are making that decision only due to maligned gender dynamics undermines female agency and the ability to make personal decisions regarding health and employment. Ultimately, all humans have the right to determine with whom they would like to engage in sexual activity as long as all participants are fully consenting adults.

# Regulation

It is necessary to implement a policy that regulates sex work in order to distinguish between trafficking victims and voluntary sex workers. Within my proposed policy framework, the substitution effect could strongly counteract the scale effect, as men would face legal repercussions only if they were to purchase sex from unregistered sex workers. Thus, the demand for sex would be moved away from potential victims of human trafficking without endangering the financial prospects of voluntary sex workers. Thus, regulation could potentially curb sex trafficking, but maintain the agency and employment of voluntary workers who register.

Additionally, as criminalization would only occur in the context of sex trafficking/potential sex trafficking, a decrease in stigmatization and discrimination against sex workers could appear over time. Decriminalization may also lead to more positive relationships between law enforcement and sex workers as well, leading to greater accountability in cases victimizing sex workers and more cooperation against sex trafficking between the two. Sex workers would also no longer be forced to operate in clandestine situations, thus promoting their general well-being and health. Overall, regulation best protects the rights of sex workers without compromising the safety of trafficking victims.

However, there are some drawbacks to this policy that need to be addressed. First, in a practical sense, instituting regulatory policies would require expensive and burdensome bureaucratic alterations. While there remains contradicting evidence on whether regulation assists female sex workers financially or hinders their income, enforcing the licensing of all current sex workers would be a daunting task, especially considering the stigma that currently

<sup>&</sup>lt;sup>34</sup> Susann Huschke & Ellis Ward, "Stopping the Traffick? The Problem of Evidence and Legislating for the 'Swedish Model' in Northern Ireland," *Anti-Trafficking Review*, no. 8 (2017): 6.

surrounds sex work. In addition to the issue of stigma, many female sex workers may be reluctant to give up their untaxed income.<sup>35</sup> In order to resolve these practical issues, I would suggest offering registered sex workers social benefits or other incentives.

Overall, the biggest difficulty in instituting this policy would be to convince Americans that sex work is not an inherently immoral act that deserves legal punishment or that they should not impose arbitrary legal restrictions on others based solely on their bounds of morality. Thus, it is important to encourage general acknowledgement and understanding of the role that stigmatization and marginalization play in silencing at-risk groups, and laws should better reflect the agency and rights of all vulnerable groups, including sex workers. According to Burnes, Rojas, Delgado, and Watkins, "agency can be understood as the ways that sex workers negotiate power in a highly stigmatized career and/or occupation" and "negating such agency often results in increased rates of both stigma and marginalization of individuals working in the sex industry."<sup>36</sup> In this way, marginalization and a loss of agency work in a cyclical manner for sex workers, as they face limited autonomy due to stigmatization, which then further marginalizes them. Instituting this policy, although necessary, would require a restructuring of the American understanding of sex workers and the sex industry.

However, creating a legal framework wherein women can freely choose to engage in sex work without fear of legal consequences is necessary to promote the human rights of sex workers. In particular, the legalization of sex work protects women's right to health and personal autonomy. The health of sex workers is directly related to the stigma surrounding sex work, as many sex workers claim to avoid disclosing their sex worker status, even when it could impact diagnosis, due to concerns of "having insensitive or abusive language used towards them, being treated disrespectfully or humiliated in public health care spaces, experiencing physical marginalization within the health care setting, denial of care, and breaches of confidentiality."<sup>37</sup> In addition to leading to incorrect or uninformed diagnoses, fear of stigmatization from health care providers can also eventually cause sex workers to avoid medical professionals entirely, harming their long-term health.<sup>38</sup> The decriminalization of sex work can contribute to breaking down these health care barriers and ensure that sex workers receive accurate and adequate health care.

Stigmatization of sex work, which is compounded through its criminalization, also erodes sex workers' legal rights. As previously discussed, many sex workers face discrimination from law enforcement due to the criminal nature of their industry, making them more prone to violent encounters and forcing them into dangerous situations. Decriminalized sex work would additionally protect sex workers' right from "verbal harassment, public humiliation, excessive force, invasive searches, and unwarranted arrests."<sup>39</sup> Often, the legal rights of sex workers protecting them from abuses by the justice and law enforcement systems are disregarded because of their criminal status or activity. This is a rights violation that harms not only sex workers, but potentially also sex trafficking victims of whom sex workers may have knowledge. Only

<sup>&</sup>lt;sup>35</sup> Huschke & Ward, "Stopping the Traffick?," 7.

<sup>&</sup>lt;sup>36</sup> Theodore R. Burnes, Elizabeth M. Rojas, Irena Delgado, & Tianna E. Watkins, "'Wear Some Thick Socks If You Walk in My Shoes'': Agency, Resilience, and Well-Being in Communities of North American Sex Workers," *Archives of Sexual Behavior* 47, no. 5 (July 2018): 1542.

<sup>&</sup>lt;sup>37</sup> Cecilia Benoit, S. Mikael Jansson, Michaela Smith, and Jackson Flagg, "Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers," *Journal of Sex Research* 55, no. 4/5 (May/June 2018): 462.

<sup>&</sup>lt;sup>38</sup> Benoit, Jansson, Smith, and Flagg, "Prostitution Stigma," 463.

<sup>&</sup>lt;sup>39</sup> Benoit, Jansson, Smith, and Flagg, "Prostitution Stigma," 462.

decriminalization and demarginalization can lessen the power abuses between officers and sex workers, which would allow law enforcement officials to better combat human trafficking through more accurate information while also promoting the well-being and safety of sex workers.

Ultimately, the only reason that I endorse regulation as opposed to full decriminalization is concern of increased trafficking due to a larger market scale. While this effect requires more research to fully understand, the only viable option to counteract this effect would be the implementation of a barrier to the sex trafficking industry to make purchase less desirable. Thus, imposing harsh punishments for purchasers of sex from unlicensed sex workers would act as a check on the market by increasing the risk for purchasers of sex trafficking victims. Although more research into the relationship between the scale of the demand for sex and regulation is necessary, there is promising early research that suggests that this may be a successful tactic. For example, studies out of Australia, in which some states regulate prostitution, suggest that scale of demand does not increase under regulatory policies.<sup>40</sup> However, it is crucial that more studies from various regulatory systems explore this relationship and effectively demonstrate that the scale of the sex industry remains consistent. While regulation could still contribute to stigma by suggesting that sex work is different from other industries, it is necessary to establish some form of regulation to maintain greater control over the industry to reduce sex trafficking.

# Conclusion

The traditional means of reducing sex trafficking has involved increasing the punishment for convicted traffickers and preventing individuals from entering the sex industry or situations that could leave them vulnerable to trafficking. However, in order to more effectively combat human trafficking, American society must rethink how our culture and laws allow trafficking to permeate society. Rather than view it as something that comes from outside of the United States and outside of American society, sex trafficking is thriving within the United States because of the cultural attitude of dismissal towards sex workers and the belief that sex work is not something to be discussed within proper society. Sex traffickers thrive on the American avoidance of this issue and the belief that it is a non-issue in the United States. Thus, the promotion of greater dialogue surrounding the sex industry and the alteration of societal attitudes towards sex work are necessary to improve the quality of life of sex workers and to reduce sex trafficking.

The comparison of American prostitution law to international alternative models additionally addresses one of the challenges to traditionalist American legal thinking, which includes a rejection of foreign legal interpretations as being unrepresentative of the American situation. However, prostitution is a cross-cultural phenomenon, which thus makes the comparative analysis of international policy relevant to the United States' domestic policy. The use of foreign law analysis or reference in the creation of US policy "does not mean directly borrowing or applying such law," but it instead demonstrates "an open exchange of ideas aimed at preserving and enriching the corpus of the law."<sup>41</sup> Thus, in order to create laws that respect the rights of all Americans and promote the public good, American policymakers must investigate foreign alternative policy models and devote quantitative research into the consequences of these policies.

<sup>&</sup>lt;sup>40</sup> Hubbard, Sanders, & Scoular, "Prostitution Policy," 198.

<sup>&</sup>lt;sup>41</sup> Peter Roudik, "Comparative Summary" in *The Impact of Foreign Law on Domestic Judges* (Washington, DC: The Law Library of Congress, Global Research Center, 2010): 3.

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# **Transnational Trajectories of Colombian Cumbia**

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**Abstract:** During 19<sup>th</sup> and 20<sup>th</sup> century Latin America, mestizaje, or cultural mixing, prevailed as the source of national identity. Through language, dance, and music, indigenous populations and ethnic groups distinguished themselves from European colonizers. Columbian cumbia, a Latin American folk genre of music and dance, was one such form of cultural expression. Finding its roots in Afro-descendant communities in the 19<sup>th</sup> century, cumbia's use of indigenous instruments and catchy rhythm set it apart from other genres. Each village added their own spin to the genre, leaving a wake of individualized ballads, untouched by the music industry. However, cumbia's influence isn't isolated to South America. It eventually sauntered into Mexico, crossed the Rio Grande, and soon became a staple in dance halls across the United States. Today, mobile cumbia DJ's, known as sonideros, broadcast over the internet and radio. By playing cumbia from across the region and sending well-wishes into the microphone, sonideros act as bridges between immigrants and their native communities. Colombian cumbia thus connected and defined a diverse array of national identities as it traveled across the Western hemisphere.

Keywords: Latin America, dance, folk, music, cultural exchange, Colombia

What interests me as a Latin Americanist are the grassroots modes of expression in marginalized communities that have been simultaneously disdained and embraced by dominant sectors in their quest for a unique national identity. In Latin America, this tension has played out time and again throughout history, beginning with the newly independent republics in the 19<sup>th</sup> century that sought to carve a national identity for themselves that would set them apart – though not too far apart – from the European colonizers. In the early 20<sup>th</sup> century, in much of Latin America the process known as *mestizaje*, or racial and cultural mixing, underpinned official renditions of national identity. Whether it was the Brazilian anthropologist Gilberto Freyre's contention that Brazil was a racial democracy, the Mexican educator José Vasconcelo's conceptualization of mestizos as *la raza cósmica* (the cosmic race), or the Cuban anthropologist Fernando Ortiz's theory of transculturation, the undercurrent of these narratives of nationhood was the glorification of a *mestizaje* that asserted that Indigenous, European, and African heritages comingled harmoniously not only within society, but also within the individual citizens of that society, creating cultures uniquely particular to the region.

This version of the mixing process held sway in the national imaginations of much of Latin America for the better part of the twentieth century, though cracks emerged periodically through grassroots acts of resistance. With the approach of the 1992 quincentennial of Columbus' arrival to the Americas, narratives enshrining racial harmony were openly and actively challenged. The violence lurking below the processes of biological and cultural mixing was exposed, as was the fallacy that *mestizaje* breeds equity. The echo of its thinly veiled message reverberated in the commonly heard adage *Para mejorar la raza*, "in order to improve the race," to invoke the reality that mixtures embodying more whiteness were considered

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superior to those with less. Furthermore, scholars and activists noted that holding up the *mestizo* as the model citizen effectively relegated Indigenous, Afrodescendant, and other ethnic communities to the sidelines, rendering them invisible in the national imagination. This critical stance of racial and cultural mixing informs my study of the potential for popular music to act as a vehicle of resistance or collaboration for those marginalized from power in Latin America. Several scholars, including Néstor García Canclini, Peter Wade, and Michael Quintero Birenbaum offer theoretical frameworks for exploring the role of cultural production in reinforcing or upending romanticized versions of mixing. But the researcher who has been most influential in guiding my own approach is Deborah Pacini Hernández, who unravels the use of *mestizaje* as a political strategy without ignoring its positive presence in the lived practice of Latin Americans and Latinos/Latinas in the US.

With this approach in mind, let's begin with the origins of cumbia on the Caribbean coast of Colombia. Though the genre probably emerged in Afrodescendant communities during the colonial period before 1810, the use of the term "cumbia" can only be traced back as far as the late 19th century.<sup>1</sup> The music relied heavily on African drums as well as an indigenous wind instrument known as a gaita and the maracas, another indigenous instrument that lends cumbia its distinctive and contagious "chu chucu chu" rhythm. The dance that accompanies the music is the reenactment of a courtship dance, with the man circling the woman who plays hard to get. Early references to the dance indicate that it not only expressed the courtship between individuals but also the reenactment of *mestizaje*, as the dance was traditionally construed as the representation of a black man seeking sexual union with an indigenous woman. What is interesting about this manifestation of *mestizaje* is that it left out the European element and, for that reason, was deeply troubling to the authorities. Peter Wade comments: "The historiography of cumbia, debating the relative weight of Amerindian, African, and European heritage, sees its own reflection in the dance itself, as a dramatic replaying of an original – and in this case subversive – act of mixture."<sup>2</sup> Cumbia's so-called "scandalous" origin will later be obliterated from national narratives as more affluent actors usurp the genre.

Through the first half of the 20<sup>th</sup> century, cumbia remained a staple of coastal Colombian culture. Influenced by the big band craze of the 1930s and 40s in the US, bands experimented with the genre by eliminating the traditional wind instruments to foreground the clarinet. This variety of cumbia was perceived as more modern sounding and was a hit with coastal elites. With the advent of new recording technologies and the growth of urban elites in the cosmopolitan centers of Bogotá and Medellín, cumbia began its initial foray into the country's interior in the 1940s. The Caribbean coast of the country had long been considered an isolated backwater of primitive and inferior culture, in spite of its extensive contact with Caribbean nations to the north. The polyrhythmic cumbia in its original form did not meet the "refined" standards of the middle and upper classes in the interior. Record companies in Medellín, seeking to render the genre commercially viable, employed mostly mestizo performers who further "whitened" the cumbia, most notably by downplaying the role of percussion and regularizing the rhythm so it was easier to dance to. The resulting "cumbia orquesta," was barely recognizable to the costeños, who turned their attention, instead, to developing other coastal genres such as

<sup>&</sup>lt;sup>1</sup> Peter Wade, "Music, Race, and Nation: Música Tropical in Colombia," (Chicago: University of Chicago Press, 2000), 30.

<sup>&</sup>lt;sup>2</sup> Wade, *Music, Race, and Nation*, 61.

vallenato. Nonetheless, the cumbias recorded in the interior were exported both north and south where they were marketed as "música tropical," tropical music.

As big band cumbia migrated south through Ecuador, Perú to Chile, it also traversed the continent through Bolivia to Buenos Aires, morphing along the way as it became imbued with new layers of identity politics. On its voyage north, the cumbia gained little of a foothold in the Caribbean but became a smashing success in Mexico, the borderlands, and later in El Salvador. We are going to make a few stops along these musical trajectories for a taste of several, but not nearly all, cumbia variants as well as a snapshot of the audiences who took to the genre and made it their own.

In Peru, cumbia took hold throughout the country in the 1960s. Like Colombia, Perú was stratified by region as the capital of Lima, located on the coast, was considered the cosmopolitan hub while the Andean and Amazonian regions were considered backward hinterlands. However, in contrast to Colombia, urban elites in Peru did not embrace mestizaje as the basis of national identity. The minority population of criollos, as the inhabitants of European descent were known, begrudgingly tolerated the mestizo and indigenous Andean majority in the hopes of one day seeing them assimilate into modern society.<sup>3</sup> During the 1970s and 1980s, in many parts of Latin America, large cities swelled with a phenomenal influx of migrants from the countryside in search of economic opportunity and a glimpse of the promise held out by modernity. In Lima, the population of merely 150,000 in 1940 reached a staggering four and a half million in 1981.<sup>4</sup> Thousands of indigenous migrants hailing from the highlands squatted around the city's perimeter in slums that came to be known as *pueblos jóvenes*, or young villages. These newcomers brought cumbia andina with them, a fusion of cumbia with the strong musical tradition known as the *huavno*, comprised of musical compositions played on indigenous flutes and drums as well as the Andean adaptation of the Spanish guitar, known as the charango, made from an armadillo shell. The voices accompanying this music would sing in plaintive tones about loss, longing, and the beauty of the mountains. Contrary to *criollo* expectations, migrants did not abandon their music and other cultural artifacts when settling in the capital, as Joshua Tucker observes:

"Violating the tenets of criollo teleology, according to which a Westernized minority would inevitably overcome and absorb a lamentable Andean majority, migrants did not usually seek to blend seamlessly into the social order that they found in Lima. Instead, . . . they recreated Andean social patterns and cultural practices within the capital, inundating the city with *huayno* music, patron saint fiestas, radio programs, and Andean cuisine."<sup>5</sup>

In the *pueblos jóvenes*, Andean musical fusions incorporated the *cumbia costeña* to engender something known as *chicha*, a homegrown variety of cumbia that at once expressed the migrant connection to the mountain homeland and the desire to integrate into the modernity of the urban space and thereby reap its benefits. *Chicha* melded the melancholic lyric sensibilities of *huayno* 

<sup>&</sup>lt;sup>3</sup> Joshua Tucker, From The World of the Poor to the Beaches of Eisha: Chicha, Cumbia, and the search for a Popular Subject in Peru" in Cumbia! Scenes of a Migrant Latin American Musical Genre, eds. Héctor Fernández L'Hoeste and Pablo Vila (Duke University Press, 2013), 144.

<sup>&</sup>lt;sup>4</sup> Héctor Fernández L'Hoeste, *All Cumbias, The Cumbia. The Latin Americanization of a Tropical Genre*, (Durham: Duke University Press, 2007), 32.

<sup>&</sup>lt;sup>5</sup> Tucker, "From The World of the Poor to the Beaches of Eisha," 144.

to the upbeat cumbia rhythm, with an overlay of tinny, electric guitar and keyboard that have led some to refer to the genre as "psychedelic cumbia." Though it was wildly popular, the music was considered distasteful by urban elites as it confronted official notions of national identity with the reverberations of a decidedly electric yet indigenous soundscape that could not be easily ignored. Los Shapis were perhaps the most commercially successful of the *chicha* groups, and even made a film in 1985 that exemplifies the distance that the cumbia had travelled from its origins in the Colombian coastal region.

From the Andes, the cumbia winded its way to Buenos Aires, the cosmopolitan capital of Argentina. Unlike much of Latin America, Argentinian elites gazed outward toward Europe for a sense of national identity and distanced themselves from the notion of a *mestizo* nation. In fact, in the 19<sup>th</sup> century, the nation building project in Argentina explicitly espoused a European identity with military campaigns into the interior to exterminate indigenous populations and immigration policies that actively promoted an influx of Europeans to provide the labor force needed for the rapidly developing agricultural and meat processing plants. By the end of the twentieth century, however, *mestizo* and indigenous migrants from the Andean highlands as far away as Ecuador began to flood Buenos Aires in search of jobs and opportunity, many of them settling in the *villas miseria*, the slums ringing the Buenos Aires metropolitan area.

The Andean migrants transported the rhythms of *chicha*, which melded with Argentinian versions of cumbia and together incubated in the margins of this city modeled on Paris. By the end of the 1990s, *cumbia villera*, or slum cumbia, emerged much to the chagrin of the middle and upper classes. It was coarse, off-key, distasteful, lewd and hugely appealing to an underclass of urban youth struggling to get ahead in the face of high unemployment rates. The instrument of choice for the slum dwellers who created and performed this cumbia variant was the keytar, a relatively cheap and portable alternative to the clarinet or electric guitar as the lead melody maker. *Damas Gratis* was perhaps the most visible of the *cumbia villera* groups as its leader, Pablo Lescano, gained notoriety through scandalous performances and irreverent interviews. He was featured on the cover of popular magazines as a trend setter.

The mainstream reaction to this incarnation of *cumbia* was not unlike the reaction met by gangsta rap in the US. Dominant sectors condemned *cumbia villera* as a "social illness" and insisted on censoring the genre, which it equated with juvenile delinquency, and the government complied. Still, in the aftermath of the 2002 economic collapse when the number of people living in extreme poverty peaked at 60%, middle class youth were drawn to the music as an avenue of expression for their sudden lack of economic security. *Cumbia villera*, with its cohort of *mestizo*, migrant, and middle class youth, challenged the national narrative of an Argentina that mirrored the progress and development of its European models.

Let us now turn to cumbia's northward migration where big band cumbia landed with a splash in Mexico in the 1940s. In the twentieth century, the official narrative of *mexicanidad*, or Mexican-ness, embraced the *mestizo* identity of the country in the wake of the Mexican Revolution of 1910-1920. While the urban elites in the capital were the first to take to the genre, soon the cumbia made its way north to infiltrate the accordion infused *norteña* music that was a mainstay of the soundscape of the borderlands. The accordion arrived to the border region with German immigrants in the 1840s when the US southwest was still part of Mexico. It became a staple of popular musical expression in genres such as the *corrido* and *norteña* music, often thought of as Mexican polka. Soon working classes, especially in the industrial center of

Monterrey in northern Mexico, began grinding out "chu chucu chu" rhythms on the accordion at get-togethers and local celebrations.

The genre permeated the borderlands on both sides of the Río Bravo, otherwise known as the Río Grande, as *Tejanos*, Texans of Mexican descent, incorporated it into their repertoire of dance music. Selena Quintanilla's claim to fame as one of the first women to crack the male dominance of the Tejano music industry was tied directly to her string of cumbia hits. Her popularity congealed the genre as a marker of *mexicanidad* in the literal and figurative borderlands that stretched from southern Mexico, to the US Southwest, Northwest, Midwest, Southern, and Eastern seaboard through migration corridors both old and new.

While Mexican cumbia was popularized among long-standing working-class communities on both sides of the border, since the 1990s Mexican immigrants to the US have given it a new twist. Migrations northward surged following the enactment of NAFTA in 1994. Mexican farmers who could not compete with the cheap agricultural products being imported from the US left the country in droves searching for economic opportunity. Between 1990-2000, the Mexican-born population in the US spiked by almost 53%, increasing from 13.5 million to 20.6 million.<sup>6</sup> With the wave of immigration sparked by NAFTA, the association of cumbia with mexicanidad took on a new dimension. Sonideros, DJs with mobile sound systems, first emerged in the 1970s in Mexico City where they made entertainment accessible to the urban poor. They later spread into central Mexico and by the 1990s, the sonidero and the cumbia were woven into the cultural security blanket of thousands of Mexicans displaced by NAFTA. Unlike the many Mexicans and Mexican Americans in communities throughout the US that can trace their history in this country back a century or more, the more recent newcomers often contend with an insecure immigration status that compromises their ability to return to their homeland, even for a visit. With the advent of new technologies and social media in the 2000s, Mexican immigrant communities have forged channels of communication and economic support with their family and friends back in Mexico with homegrown cumbias that evade the music industry all together. The sonidero has emerged as the star of this rendition of the cumbia as he is responsible not only for the sound system and creating a playlist that will entice participants to dance and reminisce, but also for voicing over the music with saludos, salutations and dedications destined for listeners on the "other side." The musical get-togethers, often held in VFW and church halls, are filmed and posted to YouTube channels where they can be viewed from both sides of the border.

In Cathy Ragland's study of *sonidero* dances in New York, New Jersey, and Puebla, she found that the dance attendees on both sides of the border "... enable a flow of expressive culture and capital while circumventing the mainstream political economy of music and global markets in order to allow for individual and community-based creativity in accordance with their own sensibilities, desires, and experiences."<sup>7</sup> Ragland further observes that, in addition to serving as a conduit for preserving a link to the homeland, these happenings afford the younger generations of Mexican-Americans who were born in the US the opportunity to connect with their Mexican

<sup>&</sup>lt;sup>6</sup> Deborah Pacini Hernández, *¡Oye como va! Hybridity and Identity in Latino Popular Music*, (Philadelphia: Temple University Press, 2010), 122.

<sup>&</sup>lt;sup>7</sup> Cathy Ragland, *Communicating the Collective Imagination: The Sociospatial World of the Mexican Sonidero Cumbia in Puebla, New York, and New Jersey in Cumbia! Scenes of a Migrant Latin American Musical Genre,* eds. Héctor Fernández L'Hoeste and Pablo Vila (Duke University Press, 2013), 135.

roots.<sup>8</sup> Mestizaje takes on a new layer for Latinos in the US who live a hyphenated identity somewhere in an undefined, in-between space of "Ni de aquí ni de allá" = "Neither from here nor there." Ragland claims that for those who identify as Mexican but were born in the US, the *sonidero* dance is Mexico, a space where they can take pride in their multivalent heritage and move freely along the hyphen.

Sonidero inflected cumbia inspired Celso Piña, a virtuoso accordion player from Monterrey with several cumbia hits, to venture out of his comfort zone in the new millennium. He teamed up with hip-hop artists to create a fusion of sounds embedded in the *sonidero* format. Piña's song "Cumbia del río" is a shout-out to the *sonidero* and his role in invoking the cumbia as a marker of *mexicanidad*. The song appears on his 2002 album, *Barrio Bravo*, which was nominated for a Latin Grammy in the tropical music category. Piña's fusion appealed to both urban youth and working class *mexicanos* in the greater borderlands. The importance of the cumbia to Mexican immigrants generally cannot be overstated, as Pacini Hernández explains: "As the stream of Mexicans to the United States has intensified, cumbia's role in Mexicans' musical imaginary has expanded beyond being simply a common feature of their popular culture, attaining its current valence as a powerful sonic symbol of the Mexican migration experience."<sup>9</sup>

The last stop on our cumbia trek is closer to home. Salvadorans in the US have also nurtured their link to the homeland through the cumbia. The genre made its journey to El Salvador in the 1940s but became especially important during the Salvadoran Civil War in the 1980s. The cumbia, with its bright rhythm and light heartedness, provided a modicum of relief to a population traumatized by violence as the US-backed military government endeavored to eliminate the guerrilla forces of the FMLN insurgency. As Salvadorans fled their war-torn country and headed north, they packed the cumbia with them and pulled it out when re-uniting with fellow Salvadorans in the US. One of their primary migration corridors was between the region of San Miguel, the center of horrific atrocities during the war, and the metropolitan Washington, DC area. As the children of these immigrants come of age, their fascination with the more trendy genres of *reggaetón* and *bachata* is tempered with the strains of the cumbia that their parents and grandparents played in their households. Reyna Zavala, LaSalvadoReina, a representative of the hyphenated Salvadoran youth who hails from Washington, DC, combines cumbia with hip hop. The music video of her song "Cumbia capital" features the singer in iconic landmarks of the nation's capital and of the Salvadoran community inside the beltway. She explains that she was inspired to create her music because of the lack of visibility of Salvadorans in US mainstream culture.<sup>10</sup>

"Cumbia is the musical passport to Latin America," according to the major labor producer Cameron Randle.<sup>11</sup> If we listen carefully to its rhythms and permutations, the various layers of the fascinating complexity of racial and cultural mixing that undergird national identities and that also resist them are revealed. What is more, the cumbia appeals to our humanity, to our collective need for sound to uplift us in the face of adversity.

<sup>&</sup>lt;sup>8</sup> Ragland, Communicating the Collective Imagination, 129.

<sup>&</sup>lt;sup>9</sup> Pacini Hernández, ¡Oye como va!, 126.

 <sup>&</sup>lt;sup>10</sup> Raquell Reichar "Meet LaSalvadoReina, the Salvadoran Queen of Hip Hop," *Fierce*, December 28, 2017.
 https://fierce.wearemitu.com/fierce-boss-ladies/meet-la-salvadoreina-the-salvadoran-queen-of-cumbia-hip-hop/
 <sup>11</sup> Manuel Peña, *Música Tejana: The Cultural Economy of Artistic Transformation*, (College Station: Texas A & M

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