

The Legalisation of Prostitution: A failed social experiment

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I shall suggest today that the social experiment of legalising brothel prostitution which took place in Australia in the 1980s and 1990s has failed in all of its objectives i.e. stopping the illegal industry and police corruption, reducing the harm to women, stopping street prostitution. In fact these harms have increased and significant new harms have joined them such as the traffic in women. Australian legalisation has been used as a model by those countries who have recently legalised, such as the Netherlands, and those who are considering it e.g. New Zealand. It is very important then, to look at how this experiment has failed lest any other countries hope to alleviate the harms of prostitution by going down the legalisation track.

Background:

Feminists worked for 50 years, mostly through the Trafficking in Persons committee of the League of Nations between the World Wars to stop the traffic in women into prostitution (Jeffreys, Sheila. *The Idea of Prostitution*. 1997). The result of their work was the 1949 Convention Against Trafficking in Persons and the Exploitation of the Prostitution of Others which is an anti-prostitution convention. It states that prostitution is against the dignity and worth of the human person. The convention requires states parties to penalise pimping and brothelkeeping. However, in the decades following the 'sexual revolution' of the 1960/70s a rather different understanding of prostitution was developed. Some prostitutes' rights organisations and sex industry entrepreneurs argued that prostitution should be seen as work, women's choice and agency. The pimps became respectable and the male buyers dropped out of the picture.

In this context brothel prostitution was legalised in Victoria in Australia in 1984, the Australian Capital Territory in 1992, and Queensland in 1999. New South Wales decriminalised brothel and street prostitution in 1995. Since then the Victorian and New South Wales examples in particular have been held up as good practice in national and international fora by proponents of legalisation. For instance the report proposing decriminalisation in New Zealand says that New South Wales is the model that it follows. Legalisation and decriminalisation are adopted and proposed as solutions to the problems attendant upon prostitution such as public health concerns, the safety of prostituted women, the containment of organised crime and the amenity issues created by brothels and street prostitution. Underlying this approach to prostitution is the belief that men's prostitution behaviour is inevitable. The Tasmanian Community Development Report explains 'the demand for commercial sex services is likely to continue into the future as it has in the past' (Parliament of Tasmania. Community Development Committee Report on The Need for Legislative Regulation and Reform of the Sex Industry in Tasmania. 1999 p17). This idea lay behind legalisation in the Netherlands too. Legalisation was said in the parliamentary discussions to be 'realistic' and recognising a 'fact' and the very different Swedish policy of penalising the buyer which is based upon the idea that the 'fact' of men's prostitution behaviour can be changed, was called 'unrealistic' and 'unworkable' (Outshoom, Joyce 2002: *Legalizing Prostitution as Sexual Service: The Case of the Netherlands*. www.essex.ac.uk/ecpr/jointsessions/Copenhagen/paper/ws12/). In the Netherlands debates parliamentarians discussed likely dilemmas that would emerge from legalisation such as whether 'women on social security would be required to take up prostitution as 'fitting' work' to retain their benefits and whether brothel entrepreneurs could get government loans to set up their businesses.

The idea that men's prostitution behaviour is inevitable suggests that prostitution should be understood as a harmful traditional practice. It fits UN criteria for harmful traditional/ cultural practices very well. It harms the health of women and girls, it creates stereotyped sex roles, it is for the benefit of men, arises from the oppression of women and is justified by tradition (Wynter, Thompson and Jeffreys 2002: *The UN Approach to Harmful Cultural Practices*. *International Feminist Journal of Politics*. April).

Legalisation is a step back in time:

In the Australian states and territory and in the Netherlands, legalisation of brothel prostitution has taken similar forms. In each case brothels that want to operate legally must apply for licenses or

planning permission through local authority planning procedures. One problem common to these regimes of legalisation is the fact that local authorities cannot refuse planning permission to a brothel so long as certain conditions are met. This removes some of the scope for local democracy. Citizens are forced to have brothels in their streets even if every single one of them objects. In each case too, the prostituted women, but not the male customers are examined for sexual diseases on a regular basis. As the Dutch national Rapporteur on trafficking remarks, legalisation in the Netherlands harks back to the nineteenth century when 'public vice' was regulated to 'protect the safety and health of the man' (Dutch National Rapporteur 2002: *Trafficking in Human Beings*. The Hague: Bureau NRM). In 1911 brothels were banned in the Netherlands as a result of the activities of abolitionist campaigners many of whom were strongly feminist in sympathy. Wherever legalisation and regulation of brothel prostitution are introduced they represent a return to a time when it was considered reasonable for the state to take a role in providing disease free women for men's sexual purchase. It is a return to the time of the contagious diseases acts, as they were called in the British Empire, which feminists mounted a fierce and successful campaign against on the grounds that they abrogated the civil liberties of the women and gave state approval to the men's behaviour.

1/ Safeguarding public health.

When legalisation is embarked upon in the present the preservation of public health from sexually transmitted diseases is usually still given as the most important aim. In fact the object is to protect the health of the male buyers. In legalised prostitution the women are inspected, not the men. The practices of prostitution in legal brothels place women in the kind of danger to their health that would be inconceivable in other kinds of work. Women are at risk of unwanted pregnancy and sexually transmitted diseases because many men will not wear condoms. A study in Melbourne, Victoria, found that 40 percent of clients had used prostituted women without wearing condoms (Louie, R 1998: *Project Client Call*. Melbourne, Macfarlane Burnett Centre for Medical Research). Also men sometimes deliberately tear condoms or take them off when women are not watching. Occupational health and safety advice for prostituted women working in legal brothels in Australia advises women to get into sexual positions where they can check to see that the condom is in place without the man noticing (Sex Workers' Outreach Project 1995, in Mary Sullivan's PHD in progress (2003) 'Making Sex Work in Victoria', Department of Political Science, University of Melbourne).

2/ Controlling the size and shape of the industry and containing organised crime

The desire to contain organised crime was the most significant underlying reason for legalisation in Victoria. This is one area in which legalisation is spectacularly unsuccessful. Where legalisation is introduced there always seems to be an illegal sector which is considerably larger than the legal sector. In Victoria estimates from the police and the legal brothel industry put the number of illegal brothels at 400, four times more than the legal ones (Murphy, Padraic 2002: Licensed brothels call for blitz on illegal sex shops. *The Age* 3 June). Victoria, ACT and Queensland require police checks on prospective brothel owners to make sure that they do not have criminal offences on their records. But such checks are not necessarily effective. In Melbourne, for instance, one of the largest brothels was set up by the nephew of 'the notorious late Robert Trimbole' (Hoser 1999). In some cases, it seems, brothel owners may just be members of organized crime families who do not have offences to their names. In other cases men with convictions can effectively run legal brothels whilst not being the official owners through frontspeople or organisations.

3/ Eliminating corruption

In two states royal commissions have been held to investigate the problem of police corruption with particular reference to prostitution. These are the Fitzgerald Inquiry in Queensland (1989) and the Wood Commission in New South Wales (1997). The Bracks Labour government in Victoria promised on taking office for the first time that there would be such an inquiry but it has not taken place. Instead a woman police commissioner, Christine Nixon, has been installed. There is evidence for the corruption of police, the magistracy, the judiciary, lawyers and politicians in relation to prostitution in some published sources and in the Royal Commission reports (Hoser, Raymond, Victoria Police Corruption, 1999; Bottom, Bob, *The Godfather in Australia*, 1988). In Victoria and in New South Wales there is evidence to suggest that the practice of giving hotshots (heroin overdoses) has been used by police involved in the prostitution industry to eliminate troublesome women (Ibid and Evidence to Wood Commission 1997).

3/ Making women safer

Concern for the safety of the women in prostitution is often given as one of the reasons for legalising or decriminalising by governments. Women in prostitution experience two forms of violence, that which is not paid for and that which is. Unpaid for violence includes rapes, assaults and murder. The paid for or 'commercial' violence includes all the day to day prostitution activities that, research tells us, prostituted women routinely have to dissociate emotionally from in order to survive. Women do not escape the unpaid for violence in legal brothels. One example of unpaid for violence comes from the classiest brothel in Melbourne, The Daily Planet, which was launched on the Stock Exchange in February 2003. The Daily Planet has alarm buttons in the rooms that women can press to call the bouncer. Unfortunately women only press these once they have been hit. A bouncer at the brothel interviewed in the local paper explains that he runs up and breaks the door open when the bell rings (the locks are flimsy) (Everything But the Girls. *The Sunday Age* 31/05/98). But the damage has already been done. There is no way to prevent women being hit in the best run brothels and it is, according to the bouncer's account, not uncommon.

The forms of injury can be particularly severe for women working in sadomasochism. I have been told by a woman counselor from a rape crisis center that women from sadomasochist brothels are likely to come for help covered in bruises. In SM brothels most of the women employed are not dominatrices but submissives, sometimes called slaves. They receive violence. The violence can include cutting, piercing and branding and this is commercial violence and completely legal. The women have no recourse because it is what they are paid for.

Mary Sullivan's research on the Occupational Health and Safety Codes for brothels developed in Australia by state governments and prostitutes' rights organizations is very useful for demonstrating the violence of the industry (Sullivan, Mary. Making Sex Work in Victoria. PHD in progress 2003, Department of Political Science, University of Melbourne). The idea behind OHS for brothels is that prostitution can be treated like hairdressing or office work and the codes do cover such things as slipping on wet floors. However where the codes address the violence of prostitution they show the reality of the power relations involved in grim detail. There is a state supported programme on self-defence and conflict resolution for the sex industry, for instance, which shows that prostituted women can find themselves in situations similar to hostages. Women are trained in how to react to threatening situations (Quoted in Sullivan as above).

The Ugly Mugs programme which operates in all states that have legalised prostitution shows how fundamentally dangerous the 'work' of prostitution is. In the programme reports on violent buyers are distributed to police, social workers and prostituted women. This is not necessary in other forms of women's work. The OHS codes suggest that women exercise their 'intuition' to help work out whether the buyers are likely to be violent. Prostituted women can, however, find themselves fined by their employers if they refuse a client they consider to be dangerous.

The OHS codes recommend that sadomasochist practice is safer than conventional sex because it is less likely to communicate sexually transmitted infections. But they recommend training in the use of sadomasochist equipment such as branding irons, whips and canes, hot wax and piercing instruments because of the damage they cause. Body fluids such as blood, vomit, urine, faeces, saliva and semen, they point out, may contain infectious organisms. There is advice on how to do fistfucking of anus and vagina which can tear the colon and be life threatening (Ibid).

Legalisation makes men more demanding of practices which women do not like and makes women more powerless to resist them because of greater competition, and gives more power to the brothel owners. One result is that there is a greatly increased demand for anal sex. Prostituted women charge more for anal sex because it is always painful but charge extra if the penis is large because that causes particular pain (Barclay, Ingrid. Interactive Processes in Brothel Prostitution. Honours Thesis. University of Melbourne 2001).

4/ Eliminating street prostitution

Proponents of legalisation argued that street prostituted women would choose to work in legal brothels for safety reasons. This has not happened and the problems associated with street prostitution remain. These include severe violence against the women and children involved, drug addiction, and problems

for residents such as being solicited, used condoms, faeces and injecting equipment being deposited in streets and gardens, and sexual acts taking place in doorways and yards (Attorney-General's Street Prostitution Advisory Group, Interim Report, Victoria 2001). Research estimates that 80% of street prostituted women in Victoria are drug users and 85-90% are homeless (Prostitutes Collective of Victoria (1994) cited in Noske, H and Deacon, S. 1996, *Off Our Backs: A report into the Exit and Retraining Needs of Victorian Sex Workers*). The Victorian government report into this issue states that it is 'not concerned with moral arguments', however harmful this traditional practice is, and 'accepts that prostitution will continue' (Victoria 2001:13).

Local councils and state governments have undertaken new legislation and initiatives to try to deal with a problem that is increasing. In New South Wales, where street prostitution is decriminalised but restricted to certain areas, a local council has set up 'safe-houses' to which women who pick up men in the tolerance zones in South Sydney can take the male buyers. Women regularly solicit outside the zones and still cause amenity problems for residents. The safe-houses have been identified by the police as being implicated, like many of the other brothels, in drug distribution (ABC Radio National. The Law Report 2002). In St Kilda, Victoria, where an estimated 350 women are in street prostitution (Victoria 2001), a plan to create 'sex-worker centres' and tolerance zones along similar lines was abandoned just before a state election after residents and traders expressed their strong opposition. Safe-houses and sex-worker centers under the control of local government might be better understood as state brothels. One difficulty with the creation of tolerance zones is that what is being tolerated is men's aggressive prostitution behaviour as they solicit and abuse women. Thus such zones remove the rights of women citizens who are not prostituted to walk in certain areas of cities and turn those areas over to the exercise of men's violence.

5/ Eliminating the traffic in women

Legalisation and decriminalisation lead to the growth of the industry of prostitution. The traffic in women to supply the legal and illegal brothels is an inevitable result. Sex entrepreneurs find it hard to source women locally to supply an expanding industry and trafficked women are more vulnerable and more profitable. Trafficked women are placed in both illegal and legal brothels in Victoria. They can work legally in legal brothels with work permits if the traffickers apply on their behalf for refugee status. The traffickers sell the women to legal and illegal brothels in Victoria for \$15,000 each. The women are debt bonded so the profits of their enslavement do not go to them. There are ongoing investigations of several inner-suburban brothels suspected of using women brought from South-East Asia on tourist visas. Police suspect they are forced to have sex with 800 men to pay of debts to the traffickers before they receive any money. They appear, a police spokesman, said 'to be flown here to order' (Murphy, Padraic 2002: Licensed brothels call for blitz on illegal sex shops. *The Age* 3 June). It is estimated that \$1 million is earned from trafficked women weekly.

The 2000 Protocol on Trafficking in Persons of the UN Convention on Organised Crime recognises the connection between trafficking in women and prostitution and calls upon states' parties to put in place strategies to reduce the demand for prostitution. The legalisation of brothel prostitution, I suggest, specifically creates the demand. As the prostitution industry grows so brothel owners require trafficked women to meet the demand. This has happened in those European cities where brothel prostitution has been tolerated in recent times. In Amsterdam, where brothel prostitution was formally legalised in 2000, owners are only allowed to employ women with EU residency and who are registered to work as prostitutes. Brothel owners are complaining loudly that they have lost the majority of their workers and cannot begin to meet the demand (Rapporteur's Report on Trafficking into the Netherlands 2002). Moreover eligible women are being frightened off by requirements that prostituted women be identified and that the tax authorities need to be informed. Thus there are pressures to create 'legal and controlled access to the Dutch market' for those currently classified as 'illegals' and lift the temporary the ban on 'illegals'. The idea that there should be 'legal' trafficking in response to an increased demand is in complete contradiction to the requirements of the 2000 Optional Protocol.

A culture of prostitution

The legalisation of prostitution not only fails to alleviate the harms of prostitution. It creates new and serious harms. It creates a culture of prostitution. When brothel prostitution is legalised men's prostitution behaviour is normalised. Prostitution takes an ordinary and everyday place in the culture

and girls and boys, women and men are educated that the behaviour of the buyers, in Melbourne in 1998 60,000 men per week, is acceptable.

The culture that legalised prostitution creates has damaging effects on the status and day to day lives of all women in that culture. In Melbourne there are brothels on many streets, including a sadomasochist brothel and an ordinary brothel on the street where I live. Children walk past brothels on their way to school and buy their summer swimsuits in a shop opposite a brothel. Brothel owners are in the Rotary Club and are profiled as role models in respectable newspapers. Brothels are listed on the Stock Exchange.

A failed social experiment

In legalising brothel prostitution policymakers are engaging in a risky experiment with the lives of women. Legalisation has failed to solve the harms of prostitution in Australia. It is likely to be just as much a failure in the Netherlands. Men's prostitution behaviour is no more inevitable than any other kind of violence. Legislation and education can be used to reduce men's demand and gradually bring their prostitution behaviour to an end.