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“Brothels without Walls”: the Escort Sector as a Problem for the Legalization of Prostitution

Abstract

This article examines a developing trend in the prostitution industry in the western world, the boom in escort prostitution. Escort prostitution, operating through mobile phones and the Internet, is supplanting the brothel as the major form in which prostituted women are delivered to male buyers. Policy-makers who promote the legalization of the prostitution industry have argued that this policy will make prostituted women and girls safer and combat organized crime. These assumptions are based upon the idea that prostitution will take place in brothels which can institute health and safety codes, and enable easy identification of the illegal brothel industry which can be closed down. Escort prostitution provides particular challenges to the regulation of prostitution because there is no way in which it can be controlled or made “safe.” Alongside the other harms associated with prostitution which are exacerbated in legalized regimes, this development provides a significant reason why the policy of legalization is doomed to fail in achieving its objectives. The problems associated with the escort boom will be examined in relation to the state of Queensland in Australia, and the Netherlands, jurisdictions in which the prostitution industry has been legalized.

This article examines the way a boom in escort prostitution in the west creates problems for the policy of legalizing the industry. Legalization became an increasingly popular policy in the 1990s, heralded as a way to make prostituted women safer and to combat the organized crime that bedevils the industry. In the last decade, legalization has been introduced in a number of Australian states, in Germany, and in the Netherlands. Queensland in Australia, and the Netherlands, in which the systems of state regulation are similar, will be examined here. Legalization policies, founded on the idea that prostitution will usually take place in brothels, set up special regulatory systems by which brothels can acquire licenses and create conditions of operation, such as requirements that the pimps, now called “service providers,” who own the brothels, institute health, and safety plans for the buildings. They delegate control over prostitution to local councils which handle planning procedures and are expected to identify and close down illegal brothels. Changes in the industry, however, are increasingly making these policies obsolete. The new technologies of the Internet and the mobile phone are enabling many businesses to operate without shopfronts on the main street, and prostitution is one of these.

The three main forms of prostitution in the west are brothel prostitution, street prostitution, and escort prostitution, though prostitution also takes place in and through strip clubs and other venues such as Couples clubs and Sauna clubs (Daalder 2007). Escort prostitution is overtaking brothels as an industry sector, according to official reports in Queensland and the Netherlands (Crime and Misconduct Commission (CMC) 2006; Department of State 2008). There is little research literature on escort prostitution, and none that seeks to estimate the increased size of the sector and its relationship to brothel prostitution (Castle and Lee 2008). There is, however, a new and developing literature on the use of the Internet by the women and men in escort prostitution, which suggests that this sector of the industry is very extensive (Pruitt 2005). This literature uses the term “escorts” to cover prostituted women and men who work for agencies, and those who work independently. It covers those who work from their own homes (incall) as well as those who travel to sites chosen by themselves or the prostitutes (outcall), but not those who work in brothels or “massage parlors.”

There are a large number of websites that advertise escort prostitution. A 2008 study found that their Internet search for “escort” and “escort services” resulted in 20,000,000 hits (Castle and Lee 2008). These often include reviews of individual “escorts” alongside information about how to contact the “escort.” The most well

known in the UK is Punternet, which contains more than 88,000 “field reports” or reviews by prostitutes (Sharp and Earle 2002). Internet sites have also developed on which the women in escort prostitution can swap information about dangerous prostitutes and tips on how to keep safe from the physical violence, stalking, and verbal abuse they suffer (Davies and Evans 2004).

There is evidence to suggest that this boom in the escort sector is undermining attempts to regulate the industry in the locations that will be examined here. Escort prostitution defeats the delegation of control to local councils because it is organized beyond boundaries and across borders, and it makes no sense of safety requirements that can only be applied in permanent brothel locations. There is a fierce international controversy as to whether legalization is a progressive and effective policy, or whether the demand for prostitution should be targeted by penalizing the male buyers, as in Sweden (Ekberg 2004), in South Africa (Cape Argus 2007), and in Norway (Norway 2007). This article is directed toward providing evidence to support the argument that legalization is a failed social policy.

Terms such as “sex workers” and “clients,” though they have come into general usage in the academy, regard prostitution as a form of work like any other and a service industry. I use the term “prostituted women” here, rather than “sex workers,” to express my understanding that women in prostitution are the objects of a harmful practice and to draw the male buyers into the picture. I refer to the male buyers as “prostitutors,” a useful way of attributing responsibility to them for their participation in the practice.

The Feminist Debate on Prostitution

There is an increasingly sharp division among feminists as to the best approach to prostitution. Prior to the 1980s, there was considerable agreement in the international human rights community and among feminists that prostitution was harmful to women’s equality and there was no suggestion that the industry of prostitution should be legalized (Jeffreys 1997; Millett 1975). There was agreement too, however, that the individual women who are prostituted should be “decriminalized,” i.e., not subject to punitive laws. This consensus broke down in the 1980s and feminist positions on prostitution split into what I will call here the “sex work” position, which argued for the decriminalization of prostitution, and the abolitionist position, which argued for the suppression of the industry and the penalization of the male buyers. Feminists continued to share the understanding that decriminalization should apply to the women who are prostituted, but some newly formed organizations, such as

Cast Off Your Old Tired Ethics in the United States, started to promote the idea that prostitution should be seen as an ordinary work and that the industry, not just individual prostituted women, should be decriminalized because it was not significantly different from occupations like hairdressing (Jeness 1993).

The Sex Work Position

The “sex work” position was developed in significant feminist anthologies from the United States in the 1980s (Bell (ed) 1987; Delacoste and Alexander 1988) and most feminist researchers writing about domestic prostitution or the global prostitution industry now adopt a “sex work” position. The sex work literature is voluminous. Some of the better-known names in the field are Chapkis (1997), Kempadoo (1998), Doezema (2001), and Agustin (2007). Those who take a “sex work” approach cover a range of perspectives from those who seek to get prostitution respected as a form of legitimate work (Shaver 2005; Willman-Navarro 2006), to those who argue that prostitution should be recognized as a positive exercise in women’s agency (Agustin 2004, 2006; Doezema 1998). It is also common for feminist scholars to be critical of both “sex work” and “abolitionist” feminists. Those who refuse to take sides may not be explicit about the policy toward prostitution that they favor, beyond rejecting abolitionism but most favor decriminalization.

Feminist scholars have supported the decriminalization of prostitution on the grounds that it acknowledges the rights of a marginalized group of women to work and be free from police harassment, and to have protection from violence and harm to their health (Agustin 2007; Day and Ward 2004; Kapur 2002). Some feminists such as Strossen (2000) go so far as to support decriminalization from a “free speech” liberal individualist position. Strossen is a member of the board of Feminists for Free Expression (FFE) which combines civil liberties advocates and some women involved in the sex industry. The FFE argues that decriminalization is consonant with women’s right to free expression in prostitution (Vera n.d.). This approach excludes any consideration of male domination and women’s oppression and takes a free market, deregulationist approach. Some proponents of decriminalization argue that prostitution, as just a form of ordinary sexual exchange, should not prompt any particular moral concern on the part of policy-makers, and criticize legalization for being based on old-fashioned moralistic objections to prostitution (Crofts and Summerfield 2006). Proponents of decriminalization argue that legalization is not good for individual

prostituted women because it is biased toward the support of pimps and makes some ways in which women would like to illegally operate together (Ditmore 2007).

When decriminalization policies are adopted by states, they are promoted as being in the interests of women and therefore “pro-feminist.” Decriminalization policies treat the industry of prostitution like any other business, subject to the same planning rules for brothels as for hairdressing salons. A report for the New Zealand government on their partial decriminalization of prostitution defined it thus: “Decriminalisation is where there has been a repeal of all laws against prostitution, or the removal of provisions that criminalised all aspects of prostitution. . . . The key difference between legalization and decriminalization is that with the latter there are no prostitution-specific regulations imposed by the state. Rather, any regulation of the industry is predominantly through existing statutes and regulations” (Prostitution Law Review Committee 2008).

Both legalization and decriminalization are based on the idea that prostitution is an inevitable form of behavior, and this is frequently given by governments as a reason for accepting the liberalization or abolition of prostitution laws. The Queensland model acknowledges that, “There is an almost universal acceptance by the community that prostitution will always occur in one form or another” (PLA 2001, 11).

Only two jurisdictions which have changed their laws on prostitution in recent decades have favored decriminalization, the state of New South Wales in Australia and New Zealand. Their policies are therefore held up as models of decriminalization. In fact, true decriminalization does not exist. Legislation to “decriminalize” prostitution in New Zealand in 2003 was amended to introduce a licensing scheme in its passage through parliament on the grounds that prostitution does represent particular harms which need oversight. The New South Wales model was amended in 2007 by changes which allow local councils greater powers to enter and place constraints on brothels to rein in the crime groups operating under the guise of independent women operators working together (Brothel Laws 2007). The absence of models of pure decriminalization attests to the recognition of the special harms attendant upon prostitution. Though favored by “sex work” feminists, decriminalization is less popular with legislators who are more aware of the problems associated with the industry, such as organized crime, violence against women, the problems of situating the industry within the community, and seek to address them through state regulation in legalized regimes.

The Abolitionist Feminist Position

“Abolitionist” feminists reject decriminalization and legalization. They have retained and sharpened the traditional understanding of nineteenth- and twentieth-century feminists that prostitution harms women’s equality (Jeffreys 1997; Pateman 1988). Prostitution is seen not just as harmful to women through the violence and abuse of pimps, buyers, passers by, and the police, but as a form of violence in itself, which causes women physical and psychological trauma as they disassociate emotionally to survive (Barry 1995; Farley 2003; Jeffreys 1997). They argue that prostitution fits very well into United Nations understandings of “harmful cultural practices” that harm the health of women and girls, stem from women’s subordination, are for the benefit of men, and justified by tradition (Jeffreys 2004).

Abolitionist feminists have been prominent in researching the industrialization and globalization of the sex industry (Barry 1995; Poulin 2005). They argue that the focus in most research and literature on prostitution is on the welfare and experience of individual women, to the detriment of looking at the industry as a whole. This tendency has led to a focus on women’s “agency” rather than the structural components of the global industry, how it is organized, and how the poorest and most vulnerable women are targeted through “outsourcing women’s subordination” such as trafficking and prostitution tourism (Jeffreys 2009). Abolitionist research on the global industry has shown how neo-liberal economic policies have favored the toleration and expansion of these practices. It has also pointed out the ways in which free market approaches to the industry have supported the legalization of prostitution, and how this policy has benefited domestic and global economies and government revenues.

Abolitionist feminists support a range of policies that can reduce the demand for prostitution and aid the abolition of the practice. These include the penalizing of male buyers, the decriminalization of prostituted women combined with exit programs, and the institution of campaigns of public education against the practice. Abolitionist feminists in Sweden campaigned for the “Swedish model,” now increasingly being taken up by other states, which recognizes prostitution as a form of male violence. Since 1999 male buyers in Sweden have been penalized and prostituted women decriminalized (Ekberg 2004).

The Effects of Legalization

The effects of legalization have been little studied, perhaps because this policy has only been adopted widely in the last decade,

but a critical literature is beginning to develop. Sullivan has written about the failure of legalization in Australian states of Victoria and New South Wales (Sullivan 2007). Farley has written about the negative effects of legalization in the only American state to have gone down this path, Nevada (Farley 2007). These studies show that legalization not only fails to alleviate harms of prostitution, but also serves to exacerbate them. I do not intend to rehearse the findings of such studies here, but to examine escort prostitution as one more problem which is serving to undermine the effectiveness of legalization.

I will argue that the escort boom makes legalization obsolete, its purposes unachievable. Legalization is based on the notion that prostitution should take place in legal brothels which will have to obey some state regulation to ensure the safety of the prostituted women from health risks and violence, and the male buyers from sexually transmitted diseases (STDs). The escort industry is beyond regulation. It operates through mobile phones and delivers women to private houses, hotel rooms, and even cars by the roadside or in carparks, worksites which cannot be made “safe.” It cannot be monitored since it does not involve buildings which could be entered by police or regulators. Some states legalize escort services at the same time as they legalize brothels, as in Victoria in 1994. Some only legalize brothels and continue to outlaw the escort industry, despite the pressures of the legal brothel owners association which would like to add escort prostitution to their businesses.

In this article, I shall mainly use materials accessible on the websites of the regulatory and health agencies involved with prostitution in the Australasian states that have legalized, and an evaluation of the effects of legalization in the Netherlands (Daalder 2007). There is good information on the workings of the law in Queensland and in the Netherlands because those states embarked on legalization with the intention to keep the industry firmly controlled and have issued reports about the extent to which this has been achieved. In the Netherlands, brothel and escort agency operators must satisfy certain conditions and obtain a license from the local authorities. The local authorities can set rules over the operation of brothels covering issues such as safety, hygiene, and working conditions, and may refuse certain forms of prostitution business such as window soliciting (Prostitution Law Review Committee 2008). Individual prostituted women are classified as freelance workers with the same rights and obligations as other business people. In Queensland, prostitution is regulated by local councils and the Prostitution Licensing Authority (PLA). Brothel operators must have a license from the PLA and escort agencies are not legalized. Though local authorities

are responsible for assessing the planning applications of brothels, they have to apply a common set of rules about location and size of brothels and do not have the same degree of leeway or responsibility as in Germany. Reports from the Netherlands and from Queensland describe similar problems of the escort industry becoming a dominant sector, being difficult to monitor or control and undermining the policy of regulation, though in the Netherlands it is legal and in Queensland it remains illegal.

The issue of escort prostitution has been analyzed in particular detail in Queensland. A public inquiry was instituted in 2005/2006 by the CMC to see whether legal brothel owners should be allowed to run legal escort agencies from their premises (CMC 2006). Although it decided that this should not be allowed, evidence to the inquiry and its report illustrate the relationship between legalization and the escort industry. Though reports from these two states commissioned by governments might contain a favorable bias toward the existing government policy, they are in fact quite frank about the problems. Two other government reports on legalization and decriminalization have been published recently in Germany and New Zealand. The German report does not cover the issue of escort prostitution, but looks at whether the 2002 Prostitution Act achieved its aims. It concludes that the Act “has only to a limited degree achieved the goals intended by the legislator” (CMC 2006, 79). While material about Australian jurisdictions, the Netherlands, and Germany has not shown a positive picture, the New Zealand report argues that the prostitution policy in that state is effective (Prostitution Law Review Committee Report 2008). Thus, proponents of the liberalization of prostitution laws tend to cite the report on partial decriminalization in New Zealand in support of this approach.

The aims of legalization are similar in all the jurisdictions that have taken this approach. The Netherlands and all Australian states that have legalized prostitution have included the key aims of reducing organized crime and increasing the safety of prostituted women. This is the case in Queensland, for instance, where the “guiding principles” of the legislation are to: ensure quality of life for local communities; safeguard against corruption and organized crime; address social factors which contribute to involvement in the sex industry; ensure a healthy society; promote safety (CMC 2004). Whereas in the Netherlands the background to the legislation was increasing concern about the scale of the trafficking of women, in Queensland it was the problem of organized crime and police corruption (CMC 2004, v).

The Illegal Industry and Escort Prostitution

In Queensland and the Netherlands, the aim of reducing the illegal sector of the industry has proved unachievable. In both jurisdictions, the illegal sector is larger than the legal sector. Escort prostitution is the industry sector which creates most difficulties for the ambition to combat illegal prostitution or to control the size and growth of the industry. Policies of legalization are not effective in controlling any form of illegal prostitution. In the state of Victoria, there are an estimated 100 legal brothels and 400 illegal ones (Sullivan 2007). The growth of the illegal industry has outstripped the legal industry. Individual criminals, small-scale criminals as well as larger organized crime groups run the illegal industry and they are involved in the legal industry, too, which offers them considerable advantages. In Victoria, police checks on brothel owners in the legal sector take place but crime figures own brothels through front organizations (Moor 2007). A similar pattern of organized crime involvement and corruption is clear in Nevada too, and in other jurisdictions which have become legalized (Farley 2007). In the Netherlands, a new legislation was introduced in 2006 in response to the concern about organized crime involvement in the legal industry, which introduced probity checks. In response, one-third of windows prostitution was closed down (Daalder 2007, 19).

The Queensland PLA annual reports in Queensland are quite frank about the fact that legalization has failed to discourage illegal prostitution in that state, mainly because of the development of the escort sector. The 2002 Annual Report of the PLA states categorically, “Does the Prostitution Act provide an effective antidote which will encourage legality and discourage illegality? The answer to this is no” (PLA 2002, 20). There was an expectation that the illegal industry would be tempted to become legal under the new Act. The Chair of the PLA, W.J. Carter QC, stated his disappointment in 2003, “The licensed or legalised industry ... occupies only a minuscule portion of the wider industry. My hope and expectation at the beginning was that the Prostitution Act would be seen by the sex industry in Queensland as a desirable initiative and would entice those operating illegally to apply for a brothel licence. ... But that has not happened” (PLA 2003, 4). In 2007, there were twenty-four licensed brothels (PLA 2007). The vast majority of the industry operates outside these brothels, comprising legal sole operators, illegal brothels, illegal escort services, and street prostitution. The CMC report on the operation of the new legislation estimates that 75 percent of prostitution in Queensland is composed of “outcall or escort services” of which some is legally provided by sole operators

but much operates illegally with workers exposed to “increased risk of abuse and poorer sexual health compared with their legal counterparts” (CMC 2004, xiii).

The Prostitution Enforcement Task Force (PETF), the police unit dedicated to countering the illegal industry, has been extremely industrious but it is very difficult to achieve lasting success due to the way that illegal prostitution now operates (PLA 2002). The previous prostitution legislation had allowed “sole operators” to work legally but the illegal industry was able to exploit this. The new form of organization made the old style brothel an “anachronism” and the “brothel without walls” developed in which a considerable well-organized matrix operated through mobile phones under the guise of “sole operation.” This new “escort” prostitution utilized various locations including roadsides and cars as well as hotels and residences (PLA 2002), making law enforcement difficult and expensive.

Operation of the illegal escort industry through mobile phones and transportation of women to a variety of locations is not specific to Queensland, but bedevils the legalized prostitution industry of the Netherlands too. The official report on the Netherlands notes that, as in all legalized systems, control over the industry is delegated to local municipalities that can use planning laws to control brothel placement and are expected to monitor and eliminate illegal brothels. Escort prostitution, however, is not local. Municipalities are not in a position to control it, and it needs a “national minimum level of enforcement” (Daalder 2007, 18). Escort activity in the Netherlands started to increase in anticipation of the law change in 2000, and it is “at the centre of attention now” (Daalder 2007, 58).

Escort prostitution has changed in nature. Where once it “used to have a somewhat chic aura” (Daalder 2007, 29), and was described as “call girl” prostitution, it has “been extended with a broad bottom layer” and “many of the prostitutes are illegal foreign nationals ... and tax is rarely paid” (Daalder 2007, 30). In the Netherlands, women in the escort sector are not only more likely to be trafficked women, but more likely to be eighteen or nineteen and to have started under that age. More than half were younger than twenty when they started and more than 10 percent were younger than eighteen (Daalder 2007, 14). Thus, escort prostitution now contains some of the most vulnerable women and girls. It is this form of escort prostitution that is challenging the profits and survival of more traditional brothels with walls and making them obsolete.

In Western Australia and in the prostitution district of the Reeperbahn in Hamburg, major and historic brothels closed in early 2008 as a result of competition from escort prostitution. The oldest brothel on the Reeperbahn, Luxor, has closed after a “sharp fall in

business” (Palmer 2008). The owner blames Internet pornography and the behavior of some of the “new young prostitutes,” many considered to be victims of trafficking. The Independent newspaper said that “Controlled and legal prostitution . . . is dying” in the Reeperbahn. A famous brothel in Kalgoorlie, an outback mining town in Western Australia, was for sale, according to the owner, because, “prostitution was being taken over by Asians, who were under-cutting her prices” (Spagnolo 2008). She explains that “There used to be 30 per cent private operators in WA and 80 per cent of the girls worked in the houses. . . . Now, 40 per cent work as private operators and about 60 per cent work in houses. They are coming from Korea, Thailand and China” (Spagnolo 2008). The Netherlands report identifies competition from escort prostitution as one factor in declining demand for the more traditional brothel form of prostitution (Daalder 2007).

Legalization does not discourage crime groups from involvement in prostitution because of the considerable profits they can make from this industry. Crime groups are involved in the trafficking of women in particular and this aspect of the prostitution industry is causing the governments of the Netherlands and Germany to rethink their prostitution policies as these problems become more acute. The United Nations Organization on Drugs and Crime (UNODC) database in 2006 showed that the Netherlands and Germany are in the top ten countries that score very highly as destination countries, which are, in alphabetical order: Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, Turkey, and the United States. The majority of women trafficked to the Netherlands are from central and Eastern Europe, but also from Nigeria, China, and Sierra Leone (Department of State 2008). The percentage of number of women from China is rising. This is the case in Australia too, where until recently the overwhelming majority of trafficked women came from Thailand, but are now being replaced by Chinese and Korean women (Fergus 2005).

Since Germany embarked upon legalization, concern about trafficking in that country has become more acute. The large majority of the estimated 300,000–400,000 prostituted women come from outside Germany (Day and Ward (eds) 2004). According to the International Organization for Migration, Russian women are the third largest group of victims of trafficking into Germany, after Lithuanian and Ukrainian women (Hughes 2002). One-third of the German police interviewed considered that the legalization of pimping in the 2002 Prostitution Act had made it harder for the police to monitor brothels and inspect them to deter trafficking, under age prostitution, and other forms of prostitution-related crime (Federal Ministry of Family Affairs 2007).

In respect of trafficking, prostitution can never resemble other legal industries. The profits to be gained from the industry and ease with which vulnerable groups of women can be exploited, make trafficking an integral part of the supply chain in a way which is not the case with other occupations. The ease of using trafficked women may act as a deterrent to pimps from going legal. The fact that many of those involved in running the industry see no advantage, but rather a loss of revenue, is another insurmountable problem for legalizing regimes. In the Netherlands, “compliance” is a problem precisely because of the costs involved in joining the legal brothel sector (Daalder 2007). In Queensland, the PLA and the Crime Commission are faced with an acute dilemma. Precisely, the provisions in the legislation designed to keep organized crime and corruption out of the industry deter pimps and procurers from wishing to enter the legal industry. The reasons suggested are several. One is that the probity checks are too intrusive, which is problematic since any alleviation of their thoroughness would negate the aims of the legislation. Another is the expense. The license application process can cost up to 20,000\$ and licensees are then likely to have to pay fees to renew licenses each year, and to pay tax and for other compliance expenses which the illegal industry does not face.

Rivalry Between Sex Industrialists and Independent Operators

Legalization creates rivalry between the new breed of respectable pimps, or legal brothel and escort agency owners, and prostituted women who want to work independently, particularly as escorts. Owners of legal brothels set up associations to defend their interests and have the resources to bring pressure to bear on governments. They seek to limit competition by getting states to act against the illegal sector, seen as escaping the constraints and expenses that legal brothels are subject too, and by drawing independent operators into the brothels where they can make a profit for the sex industrialists. The escort sector can be seen as unfair competition if it does not take place out of legal brothels or agencies. In decriminalized systems, this rivalry exists too because big business prostitution still has an influence that independent operators cannot aspire to. On legalization, states become responsible for the protection and support of the legal business owners. One Queensland PLA report calls this protecting the “integrity of the licence” (PLA 2002). The PLA has the role of recommending changes to the legislation which the brothel owners say will make their businesses more profitable and protect them from competition, such as allowing escort services to be conducted out of legal brothels or for independent escort

agencies to be set up (CMC 2006). An inquiry into this recommendation by the CMC, however, concluded that escort prostitution was unsafe, linked to organized crime, and allowed the possibility of child prostitution and trafficking (CMC 2006).

Legal escort prostitution in Queensland is carried out by sole operators who made a submission to the CMC inquiry into escort prostitution in 2006 through the sex work advocacy group Sexual Service Providers Advocacy Network (SSPAN) of Queensland. The submission is sharply critical of legalization for discriminating against and making conditions extremely difficult for sole operators (SSPAN 2006). It says that the attack of the legal brothel owners on the illegal industry is a thinly disguised attack on their sole operator competitors. It says that Queensland Adult Business Association (QABA)—the business association of legal brothel owners—is a “well-equipped lobby group with money and expertise. They have a ‘place at the table’ and a relationship with the PLA” (SSPAN 2006, 2). SSPAN explains that “Brothel work is simply not an attractive option for the silent majority of sex workers” because “Brothels are oppressive working environments.” They impose conditions such as hours to be worked, what can be worn and prices that can be charged, and workers cannot always reject clients without being sanctioned such as being allocated quiet shifts or having shifts taken away. SSPAN says “Brothels are arguably pimps in the classical sense: they find business for prostitutes in order to live off the earnings of prostitution” (SSPAN 2006, 3). It would not be safe for escorts to work out of brothels, SSPAN argues, unless they used drivers/security guards and that would be too expensive because the women would be required to pay for these. In the Netherlands, prostituted women gave similar reasons for not wanting to work in the legal brothels, emphasizing the need to pay tax, and the loss of anonymity (Daalder 2007).

Health and Safety for Prostituted Women: The Escort Dimension

Legalizing governments commonly state that the health and safety of prostituted women is an aim of their policy, and this can attract support from feminists who care about what is done to prostituted women. The vaunted safety advantages of legalization, however, can only apply to brothel prostitution since there is no way of monitoring or preventing risks in the escort or street prostitution sectors. As the German report on the effectiveness of legalization admits, “One can thus only reasonably expect the Prostitution Act to have any impact on working conditions in the area of legal prostitution in

brothels” (Federal Ministry of Family Affairs 2007, 63). There are “hardly any means of improving working conditions,” it states, for sectors of the industry outside brothels, such as street and escort prostitution (Federal Ministry of Family Affairs 2007). Even in relation to brothel prostitution, legalization seems only able to offer a small amelioration of the harms of the practice for women. Occupational Health and Safety (OHS) advice is offered to prostituted women by legalizing states in Australia, usually in concert with state-funded “sex work” organizations, as a way to fulfill their responsibility to make prostitution safer, but the advice shows little acknowledgement of the physical or psychological harms involved, is unable to offer realistic solutions, and is often misdirected (Sullivan 2007). Thus, the OHS guide on the website of Australian sex work organization, Scarlet Alliance, has as its first point, the need to make sure that beds are in proper repair (Edler n.d., 1).

Prostitution presents severe problems for women’s reproductive and sexual health because it entails the use of women’s reproductive tracts, anuses, mouths, and other body parts by penises, hands, and objects. Thus, a fundamental concern should be the abrasion of areas of internal mucous membrane, but this problem is, in fact, not mentioned in the OHS advice at all. The advice directs itself, alongside the potential to fall on slippery floors, to problems of STDs, including HIV/AIDs, and pregnancy, that have profound implications for women’s lives. OHS codes transfer responsibility onto prostituted women for safeguarding themselves from these harms while they ignore the problems of power imbalance that construct the practice of prostitution. For example, an OHS code on the website of the Scarlet Alliance advises prostituted women to examine the male buyers’ penises to see if they show signs of disease, “After visually inspecting the client gently squeeze along the shaft of the client’s penis to see if a discharge occurs” (Edler n.d., 41). It is quite possible that buyers would object to such a practice and a woman might be in danger of violence or of losing a booking. OHS codes advise the use of condoms, but condom usage is by no means guaranteed in legalized environments since women will sometimes accept more money for sex without condoms, or simply accept a man who refuses to wear one because they have had no customer all evening (Sullivan 2007). Even when they are worn they may break or slip, or the man might remove them. One Australian OHS code suggests that in this situation women should squat and use their muscles to squeeze out the semen, then scoop out excess with fingers being careful not to scratch the mucosa with fingernails, then scour or flush with a douche or use spermicides (Sullivan 2007, 276). Both douching and spermicide use are harmful to the vagina’s

natural environment. Douching can push sperm up toward the cervix causing pelvic inflammatory disease and ectopic pregnancy. Spermicides can cause irritation, ulcers, and yeast infection

According to the Queensland legislation, brothel owners and managers are responsible for the health of those working in their brothels. The PLA provides a “Guide to developing brothel operational plans policies and procedures” which details the responsibilities such as the mandatory use of condoms, the requirement that workers have regular three monthly health checks, and the requirement that OHS plans should be drawn up by each brothel and reported on each year to the PLA (PLA 1999). The legal industry is not necessarily good at adhering to the safety requirements of the legislation, however. Thus, in 2005, Paris Satine, owner of the Scarlet Harem, was charged with illegally operating her business without a legal supervisor and with issuing a fraudulent sexual health certificate. The certificate was obtained from an officer of Self Help for Queensland Workers in the Sex Industry (SQWISI), the sex work organization which quickly became an arm of the state once legalization took place (Brothel Madam 2005). Satine had been a nominee for the business excellence awards which annually showcase successful small businesses (Green 2005).

Brothel managers are not in a position to supervise how the male buyers behave and what takes place in a booking. SQWISI provides a set of fact sheets on safety and health issues on its website. The fact sheets show that responsibility for protection from STDs falls upon the women who are not in a powerful position in relation to their clients. They are advised to thoroughly check clients for STDs under good light including checking their balls, between their legs, and their anus (SQWISI 2007a). This might be difficult with what are described in another Fact Sheet as “annoying clients.” Pregnant prostituted women are advised “not to see any clients who tend to be rough” or to allow clients to “blow into or near your vagina as this may cause an air embolism” (SQWISI 2007b). Prostituted women cannot ensure that condoms are used. One fact sheet advises that, “sometimes men feel it is their right to break or take off the condoms” so women need to keep checking and if in “doggy or missionary positions.” They should “feel around behind their balls as this can help them cum faster” (SQWISI 2007c). So as not to make the client feel “defensive,” it is advised that this should be done in “an erotic way.” The CMC report of 2004 gives some information on the limitations of condom use for ensuring the health of prostituted women. It quotes the submission of a former prostituted woman who explains that three to four condoms out of a box of twenty-four break, leaving the woman vulnerable to pregnancy and

STDs (CMC 2004, 59). The report comments that since no statistics are kept of STDs in relation to prostitution it is not possible to say if legalization has helped in this respect. Any attempts to affect the behavior of male buyers is likely to be much more difficult in escort prostitution where women are alone in houses, cars, or hotel rooms with buyers, than in brothels where a manager is often present.

Similar concerns extend to physical and sexual violence as to sexual health. Prostituted women suffer two forms of physical violence, unpaid violence, which includes rape, beatings, and murder from male buyers, pimps, traffickers, and passers by that is not remunerated, as well as the ordinary everyday violence of unwanted and often painful penetration that is paid for. There is a great deal of evidence of the severe unpaid harms that women suffer in the form of psychological distress, broken bones, head injuries, sexual violence, and imprisonment (Farley 2004). Though these harms are usually understood to be particularly severe in street prostitution, studies show that escort prostitution involves similar risks (Farley 2004). Any advantage that legalization can offer in reducing the threat of this violence would only be available to a small minority of women in the industry, since most women in Australia, in Nevada, in the Netherlands, and Germany are prostituted in illegal sectors from the brothel to escort, strip club, and street prostitution (Wallman 2001). These harms may be alleviated to some extent in brothel systems, whether or not these are legalized, simply because the male buyers cannot be so anonymous and may be more circumspect about the violence they inflict. They are not eliminated. Thus, some legalized brothels install panic buttons for women to press when in fear of being assaulted, though women may not be able to reach the buttons, or at least not before the assault takes place. At the large, legalized, Daily Planet brothel in Melbourne, for instance, a bouncer has described how, if the button is pressed, he will rush up to the room and break down the locked door behind which a naked woman is likely to be being attacked (Everything But the Girls 1998).

There is no evidence that legalized brothels provide alleviation of the harms that are involved in the ordinary everyday acts of penetration that the male buyers pay for, however, or the psychological humiliation and distress that prostituted women experience. Prostitutors use verbal violence such as saying to a woman, “On your knees, bitch,” language which is run of the mill in the pornography from which they learn the practice of prostituting women (Barclay 2001; Farley 2006). They grab women’s bodies in degrading and painful ways during bookings, such as twisting nipples, and thrusting fingers into the woman’s anus to show they want anal sex (Sullivan 2007). Women are subjected to the constant showing of

pornography on the ceilings of the rooms in which they are prostituted in legal brothels. The psychological harms that result from the continual disassociation of mind and body needed to survive prostitution, and the routine dehumanization integral to the practice, commonly bear all the characteristics of post-traumatic stress disorder (Farley 2003, 2004). The Netherlands report states that legalization has not improved the situation of prostituted women. Rather their well being has “declined between 2001 and 2006 with regard to all measured aspects . . . the extent of distress has become higher, and the use of sedatives has increased” (Daalder 2007, 71). The greater distress may be related to a “decline in autonomy of prostitutes, mainly in clubs and escort agencies” and a decline in their income (Daalder 2007). The government report on the effectiveness of the Prostitution Act in Germany similarly concluded that the welfare of prostituted women was not improved, “As regards prostitutes’ working conditions, hardly any measurable, positive impact has been observed in practice” (Federal Ministry for Family Affairs 2007, 79).

In Queensland, the PLA annual report for 2007 states, “The safety of sex workers in legal brothels has been successful” (PLA 2007, 4). Unfortunately, legal brothels comprise such a small minority of prostituted women in the state that even if it were true this would not mean that prostituted women in general were safer. The organization representing sole operators in Queensland, SSPAN disputes the safety of the legal brothels, “Given that a number of OHS issues remain in brothels and no studies have been undertaken on the risk of assault in brothels, it would be dangerous to expand their operations” (SSPAN 2006, 10). SSPAN wants the 1999 Act amended to remove the prohibition on two women working together. They see this as vital to the safety of sole operators who could then look after each other. However, the CMC and the PLA are resistant to such a change because the illegal industry is already pretending that the women it controls are “sole operators” and it would be likely to profit further if small two person operations were permitted.

The SQWISI fact sheets give an indication of the pain and abuse that women face in the ordinary activities of legal brothels and other forms of prostitution in Queensland. The fact sheet entitled “Negotiating the booking” advises “Be aware that some clients may be rough. If you are experiencing any discomfort, don’t be afraid to stop and change positions or apply more lubricant if necessary” (SQWISI 2007d). Another, entitled “Dealing with difficult clients,” advises on “redirecting clients,” i.e., getting buyers to stop an activity that is causing distress (SQWISI 2007c). The advice makes it clear how difficult it is for prostituted women to set boundaries and

avoid violation. It says that the buyer can be “redirected” without causing the man to “feel offended” or “ruin” the “erotic mood” through, “Suggesting something else. . . . For example, if a client puts his hand on your crutch from the moment you hit the bed but you are sore from the last few clients, you could tell them you really enjoy your breasts being played with” (SQWISI 2007c). Advice is given on how to escape from drunken clients as well as how to behave with “Rough or annoying clients” since what is “acceptable for some may be painful or uncomfortable for others” and women might wish to “set limits” on activities such as “biting, kissing, hickies, or other marks being left upon your body.” Women are advised to “get out safely” if they are in danger “regardless of any refund you may have to give” because “An assault leaving bruising can force you into having time off work in turn losing more money than one client’s booking fees” (SQWISI 2007c). Sexual harassment and behavior which causes physical pain and emotional pain are clearly hazards common enough to require detailed advice.

In relation to violence, the CMC reported that a survey of prostituted women showed “about half the respondents had experienced some form of physical assault either before (55%) or since (45%) the implementation of the . . . Act” (CMC 2004, 68). Most of these assaults were against sole operators. The CMC noted, however, that “The measures in place in the brothels may not entirely eliminate violence from the working lives of sex workers” because they were made vulnerable by the location of brothels in industrial areas (CMC 2004, 71). Women could be attacked or stalked when they went outside the brothels to smoke or wait for taxis.

If OHS advice is less than adequate in relation to brothel prostitution, it is clearly inappropriate to address the harms peculiar to escort prostitution. In escort prostitution where women visit the private homes or hotel rooms of prostitutes, no checks are possible for safety, hygiene, or any other workplace health and safety risks. A UK website, Escort Watch, on which women involved in escort prostitution share information on dangerous prostitutes and how to escape violence, provides a grim record of the harms that women experience (Davies and Evans 2004). A study of the website explains that many of the harms the women experience are specifically carried out through the new technologies of the Internet and email. Thus, prostitutes stalk the women via email and seek information about them and write negative reports on the Internet.

There are “safety tips” specifically directed at the legalized escort industry on a state community health website in Victoria which clearly demonstrate the severe dangers that “escorts” face (RhED n.d.). Escort workers are advised, for instance, to reconnoiter the

premises on arrival to see if there are too many cars or too many lights on, which may indicate the possibility of gang rape. Women are advised to park their cars so that only the back can be seen and to leave the radio on so that the prostitute can deduce that they are not alone. They are advised to ask for a tour of the property when the door is opened so that they can check the exits in case of trouble. Other safety tips include advice to use pens, screech whistles, and breath sprays as weapons, and to have belongings in a pile at the door so that they can be easily grabbed. The latter instruction is aimed at ensuring that when a woman has to run from danger she will not have to be naked, and without her car keys or purse. This advice sheet includes an instruction that “escort workers” should be careful when using local anesthetic in the vagina since that can make it more difficult to ascertain when serious injury has occurred. Such a warning acknowledges the pain involved in ordinary penetration in prostitution. Women who are often drug addicted, perhaps trafficked and unable to speak English, and who have to get naked behind locked doors with unknown males are not in a good position to implement all these “tips.” When legalizing states offer health and safety advice as their panacea for these serious harms, they can be seen to be washing their hands of women’s safety rather than ensuring it.

Advertising Prostitution

The Queensland legalization legislation was expressly aimed at minimizing the effect of prostitution on the “community.” The advertising of prostitution makes this hard to achieve. When states legalize their prostitution industries, they must make provision for advertising since the business cannot otherwise sell its wares. This is likely to have the effect of normalizing men’s prostitution behavior and the way that women are treated in prostitution. Moreover, citizens may not wish to be confronted with prostitution advertising in their neighborhoods or in their local newspapers. For this reason, restrictions are usually put in place on how advertising is to be conducted. In Victoria, for instance, brothels may not advertise the nature of their business on the front of their premises, but large billboards advertising their wares may be placed on highways. Thus, one Melbourne legal brothel advertises itself as “Sex Chocolates and Flowers NOT required” (Gale 2008). Newspaper advertising in Victoria is not supposed to specify the ethnicity of the women being offered, although the websites of the legal brothels do offer women using racially specific terms. Advertising is particularly vital in relation to escort prostitution since there is no brothel at which men

can call to buy women on their way home from work. The effect of prostitution advertising on women's equality is not well recognized but it can be seen to have an effect on public space that is harmful. Advertising for prostitution whether in print media or in the streetscape may, like other sexist advertising, affect the way in which women experience their relationship with the world and the way that women's status is understood (Rosewarne 2007).

The Queensland Act addresses advertising for prostitution which the legislators considered could cause public offence. To this end, the PLA has to vet advertisements and they must be of an approved size and not include forbidden language. The advice on advertising policy contains four pages of approved words and phrases for use. The words include: Asian, Greek, Slave, Submissive, Spanish, Your bust size, and Donkey. Approved phrases include, eighteen year old, busty, brunette', "Mysterious Oriental temptress," "Asian, pretty, friendly," "All Australian babe," "Asian delight," "Charcoal black chicky babe," "sexy Japanese, friendly and attractive." In Queensland, the sex work advocacy group SSPAN defends retention of such language by saying that it is vital for working, since the male buyers want to buy bodies of a particular skin color and may even be violent if they do not get what they want. They explain that, "The fetishisation of race and ethnicity are an integral part of the sex industry." Clients want to be able to locate a "type" without ringing dozens of advertisements' and problems may occur "if sole operators can't inform potential clients of their skin color they will potentially be exposed to violent situations" (SSPAN 2006, 5). The requirement that provision is made for women to be advertised not just by sex but by race does challenge the euphemisms that are used to refer to prostitution by legalizing states such as the naming of brothel owners "service providers" in Victoria (Sullivan 2007). "Services" can be provided by persons of either sex and irrespective of racial origin but prostitution cannot, because it is the body of the woman rather than any services performed by her that is for sold for use. Escort prostitution, even more than brothel prostitution makes it difficult for legalizing states to protect their citizenry from the business, and reduce impact on the community. Legalization not only fails to reduce street prostitution, which is the aspect of the practice that causes most concern to residents, but requires that the public should be exposed to the sale of sexed and racialized bodies.

Conclusion

Policy-makers and participants in discussions as to the most effective way to regulate prostitution need to consider how the industry

is changing. Brothels with walls, which can be subjected to monitoring and the creation of OHS plans and panic buttons in rooms, are becoming a minority form of prostitution. In legalized regimes, this is because sex industrialists do not want the expense or the restrictions involved in becoming legal. Also, escort prostitution can easily be organized with new electronic technologies such as mobile phones and the Internet, and it can be staffed by the pimps with trafficked women without attracting the attention that might result from placing these women in brothels. Escort prostitution manifestly challenges the expressed aims of legalizing regimes, especially those which speak of reducing violence against women and organized crime. To the extent that legalization is based upon a historic notion of prostitution, it is already out of date as a strategy for dealing with the social harms that prostitution presents and provides another reason for re-evaluating this policy.

NOTES

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