REFRAMING PROSTITUTION

From Discourse to Description, from Moralisation to Normalisation?

Nina Peršak
Gert Vermeulen (Eds.)

MAKLU

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TABLE OF CONTENTS

INTRODUCTION

Chapter 1. Faces and spaces of prostitution
Nina Peršak & Gert Vermeulen

1. Faces **13**
2. Spaces **15**
3. Structure of the book **17**
4. References **23**

PART I: PROSTITUTION IN ACTION: PAST AND PRESENT

Chapter 2. Prostitution in world cities (1600s-2000s)
Magaly Rodríguez García

1. Introduction **25**
2. Defining prostitution and prostitutes **26**
3. Societal reaction and legal situation **28**
4. Working spaces and conditions **34**
5. Demographic data and causes of prostitution **41**
6. Conclusion **46**
7. References **47**

Chapter 3. Europe's legal red-light districts:
Comparing different models and distilling best practices
Ronald Weitzer

1. Introduction **53**
2. Red-light districts **54**
3. Study sites and methods **55**
4. Differences between three European cities **56**
4.1. Amsterdam 56
4.2. Brussels 58
4.2.1. Workers and managers *59*
4.2.2. Assessment *61*
4.3. Antwerp 61
4.3.1. Reforms *61*
4.3.2. Antwerp's red-light district today *63*
4.3.3. Assessment *65*
5. Conclusion **65**
6. References **68**

Chapter 4. Prostitution and its relations with informal economies
Dominique Boels

1. Introduction ... 71
2. Prostitution and informal economy: An intricate relation ... 72
3. Belgian policy on prostitution ... 74
3.1. Federal: Abolitionist approach with criminalisation of third parties ... 74
3.2. Local: De facto legalisation ... 76
4. Methods ... 78
5. Prostitution in Ghent ... 79
5.1. Prostitution types ... 79
5.1.1. Street sex work ... 79
5.1.2. Window prostitution ... 79
5.1.3. Bar prostitution ... 81
5.1.4. Private prostitution ... 81
5.1.5. Escort prostitution ... 81
5.2. Informal economic activities ... 82
5.2.1. Undeclared labour and income ... 82
5.2.2. Pimping ... 84
5.2.3. Ancillary activities and its participants ... 86
6. Conclusion and discussion ... 88
7. References ... 92

Chapter 5. Economic factors of prostitution: Money, nature, crisis
Nina Peršak

1. Introduction ... 101
2. The economy of prostitution ... 101
3. Global financial crisis and its effects on prostitution ... 103
4. Economy as nature: Sex for benefits within biological market theory ... 106
5. Economy as structure (within which the prostitute displays its agency) ... 109
5.1. Structure and agency ... 109
5.2. Societal reactions (to economy and prostitution) ... 111
6. Tentative projections: two-tiered increasing of vulnerability ... 113
7. References ... 115

PART II: CONSTRUCTION OF PROSTITUTION AS A SOCIAL PROBLEM

Chapter 6. Talking about prostitution and the representation of a (problematic) group: Identifying frames in Flemish news coverage on prostitution
Katrien Symons & Kristien Gillis

1. Introduction 121
2. On frames and policy 122
2.1. The social/moral order frame 123
2.2. The oppression/sexual domination frame 124
2.3. The pro rights/sex work frame 125
2.4. General problems 126
2.5. Relevance in current policy debates, illustrations 128
3. Framing prostitution in the Flemish media 130
3.1. Data and method 130
3.2. Results 131
3.2.1. Prostitution in neighbourhoods 131
3.2.2. Prostitution networks and trafficking 134
3.2.3. Other fragments related to prostitution 135
3.3. Conclusion in the light of prostitution frames 136
4. General conclusion 137
5. References 139

Chapter 7. Regulating street prostitution as a public nuisance in the "culture of consumption": A comparative analysis between Birmingham, Brussels and Milan
Anna Di Ronco

1. Introduction 145
2. The (gentrified) post-industrial urban space 146
2.1. Spaces of consumption and pleasure 147
2.2. Centripetal spaces 148
2.3. Spaces of deprivation 149
3. City selection 149
4. Birmingham 150
4.1. Spaces of consumption and pleasure 151
4.2. Centripetal spaces 152
4.3. Spaces of deprivation 153
4.4. Summary 154
5. The Brussels Capital Region 154
5.1. Spaces of consumption and pleasure 155
5.2. Centripetal spaces 156
5.3. Spaces of deprivation 157
5.4. Summary 158
6. Milan 158
6.1. Spaces of consumption and pleasure 159

6.2. Centripetal spaces 160
6.3. Spaces of deprivation 162
6.4. Summary 162
7. Explaining the difference: Cultural factors 163
8. Conclusion 165
9. References 166

Chapter 8. Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries
Julie Lima de Pérez

1. Introduction 173
2. The evolution of the "sex trafficking" mythology 174
3. The use of the term "trafficking victim" as a de facto label of deviance 177
4. The construction of the Brazilian victim archetype 178
5. The evolving trafficking narrative of the Brazilian woman 180
6. Confronting the use of the victim archetype in Brazilian and Iberian narratives 183
6.1. Brazil 183
6.2. Spain 187
6.3. Portugal 189
7. Conclusion 191
8. References 193

Chapter 9. The framing of prostitution as victimhood and violence for criminalisation purposes
Nina Peršak

1. Introduction 199
2. Contemporary anti-prostitution discourse: Framing issues 201
3. Victimalisation of prostitutes 204
4. What is violent or criminally harmful about prostitution 208
4.1. Harm and wrongfulness 208
4.2. Harm of prostitution 209
5. Playing dress-up: New moralism in harm's clothes 213
6. Concluding thoughts 216
7. References 218

PART III: PROSTITUTION POLICIES BEYOND MORALISM

Chapter 10. To punish or not to punish: What works in the regulation of the prostitution market?
Alexis A. Aronowitz

1. Prostitution 223
1.1. Defining prostitution 223

1.2. The prostitution landscape 224
1.3. Earnings in prostitution 224
1.4. Prostitution markets 225
1.5. Violence against prostitutes 226
2. Attitudes toward prostitution 227
2.1. The oppression model 227
2.2. The empowerment model 227
2.3. Misconceptions and false claims concerning prostitution 228
2.3.1. The prostitution market is homogeneous 228
2.3.2. Prostitution is synonymous with human trafficking 228
2.3.3. Prostitution is violence against women 229
2.3.4. Prostitutes are traumatized and cannot choose to work in prostitution 229
2.3.5. Violence is omnipresent in prostitution 230
3. Regulating the prostitution sector 230
3.1. Full criminalization 231
3.2. Partial decriminalization: Limited legality 232
3.2.1. Prostitution is demand driven 232
3.2.2. The Swedish model 233
3.2.3. The Finnish model 233
3.3. Legalization 233
3.4. Decriminalization 235
4. What works? Limited legality vs legalisation or the "Swedish" vs the "Dutch" model 235
4.1. The impact of limited legality: The Swedish model 235
4.2. The impact of legalization: The Dutch model 236
4.2.1. Aims of the law 236
4.2.2. Regulation 237
4.2.3. Worker safety 237
4.2.4. Supply and demand 238
4.2.5. Positive effects of legalization in other countries 238
5. Critique of the Swedish and Dutch models 239
5.1. Criticisms of the Swedish model 239
5.1.1. Impact on male buyers 239
5.1.2. Is the decrease in street prostitution real? 240
5.1.3. Prostitutes' rights are more limited 240
5.1.4. Street workers are less safe 240
5.1.5. Other harms caused by the law 241
5.2. Criticisms of the legalization model 241
5.2.1. Legal position of prostitutes 242
5.2.2. Social stigma 242
5.2.3. Abuses still exist 242
5.2.4. Emotional well-being of prostitutes 242
6. Does legalised prostitution lead to more human trafficking? 243

7. The way forward 244
8. Conclusion 245
9. References 246

Chapter 11. Self-regulation and public-private cooperation in the prostitution sector
Gert Vermeulen

1. Nuisance in the prostitution sector 253
2. Traditional municipal solutions 254
3. Vulnerability of the prostitution sector to human trafficking 256
4. Problematic blurring of prostitution and human trafficking policies 257
5. "Separation of markets" in the prostitution sector 258
6. Legalisation 258
7. Regulation 262
7.1. Government regulation 262
7.2. Self-regulation 264
8. References 267

Chapter 12. Client criminalisation for guilty knowledge of (trafficking for) sexual exploitation
Gert Vermeulen & Yasmin Van Damme

1. Introduction 271
2. Guilty knowledge of clients? 272
2.1. Guilty clients? 273
2.2. Guilty knowledge? 274
3. Client criminalisation in policy and practice 275
3.1. CoE/EU support for "knowing" client criminalisation 275
3.2. The UK 277
3.2.1. Policy background 277
3.2.2. Client criminalisation based on strict liability 278
3.3. The Netherlands 281
3.3.1. Policy background: Lifting of ban no undisputed success 281
3.3.2. Bill regulating prostitution and tackling abuses in the sex sector 283
4. Self-regulation and quality labelling of the sexual services market as an alternative basis for client criminalisation? 288
5. References 291

Chapter 13. Sex work, policy and empowerment in the media: Who's talking?
Alexander Witpas

1. Introduction 297
2. Health promotion, empowerment and participation 298
2.1. Health promotion and the Ottawa charter 298

2.2. Health, power and empowerment 299
2.3. Ethics and effectiveness 300
2.4. Easy to preach, difficult to practise 301
2.5. Sex work activism and empowerment 303
3. A media analysis of sex work policy in Flemish newspapers 304
3.1. Methodology 304
3.2. Results 305
3.2.1. Who is talking 305
3.2.2. Abolitionism or legalisation and regulation 308
3.2.3. Focus on empowerment and participation 308
4. Conclusion and discussion 309
5. References 313

PART IV. CONCLUDING THOUGHTS

Chapter 14. Prostitution undressed: From discourse to description, from moralisation to normalisation?
Gert Vermeulen & Nina Peršak

1. Multidisciplinarity 315
2. Multi-frame analysis 316
3. Multi-actor perspective 318
4. Conclusion 318
5. References 319

List of contributors 325

Chapter 1.
Faces and spaces of prostitution

NINA PERŠAK & GERT VERMEULEN

Unless one has a first-hand experience in prostitution or engages in prostitution research, one constructs the face of prostitution through the images that are mediated through various channels of communication. If the media (be it classic or social networking) shows a prostitute as a symbol of criminality or disease, this is the prevailing image of prostitution the majority of us will acquire. Images of drug-dependent and exploited prostitutes – clearly more marketable and soundbite-worthy – that are served to us day after day consolidate the social representation of a dangerous, violent and exploitative underground world of prostitution. While this representation is not always or completely wrong – many prostitutes do live in a dangerous environment, some are exploited and so on –, this is only a part (and a small one at that) of the truth. Not all prostitution is forced or abused by traffickers. Neither is all chosen or free from constraints. Like any other work, prostitution is characterised by a variety of forms, working conditions and possibilities for agency, resistance and negotiation. As such, it can be "a life-line for some, a life sentence for others" (Hubbard, 1999, p. 8). On a societal level, however, sexual desire has always been regarded as a disruptive influence on social order (Barker & Elliston, 1984). In addition to the variety in prostitution, the variety of societal responses should therefore be inspected as well. By co-examining descriptive as well as normative dimensions of prostitution, the present book aims to do precisely that.

1. FACES

Despite the imagery of a prostitute (red lipstick, heavy make-up, suggestively-dressed, black fishnet stockings, miniskirt, fur, a drug of choice, gyrating walk, tough talk or no talk or small talk with an "exotic" accent etc.) being so prevailing and seducing in the popular culture (be it films or news), it is interesting perhaps that "faces" are often missing in these stories. We see a body, standing on the curb or slowly moving around the pole, we see the skimpy clothes and men going for the wallet, but we rarely see the face, and even more rarely hear the voice of a sex worker. A prostitute, in particular, is all body, no face. The absence of the face (and voice) is perpetuated in policy arena by excluding prostitutes and their organisations from participating and inviting only those who are foreign, potentially exploited or trafficked and are, owing to language limitations, therefore not well articulated.

In the European context, the face of the involuntary prostitute-trafficking victim is an Eastern European white, young, shy girl. The face of a voluntary prostitute is much more blurred or more difficult to establish. In some places this role used to be filled by a student from the mainstream society who would engage in prostitution to supplement her income, for fun or thrill, but now with the new moral panic spreading through Europe, portraying "our children" at university who "have to" prostitute themselves to fund their studies, that image is no longer available. The British Belle de Jour, Dr Brooke Magnanti (who revealed a few years ago that she had been an escort during her Ph.D. studies and continues to speak of her experience in a positive way) is the closest we may currently have, i.e. the closest that is accessible to the wider public. There are of course many more escorts that tweet or publish blogs on their everyday experiences, and plenty more could be found within organisations representing prostitutes, yet they remain mostly under the radar of the mainstream. The media prefers to focus on exceptional encounters and unusual transactions, singular events that perforate or "punctuate prostitutes' lives" rather than to focus on the "more routine aspects of their existence, hence giving a false impression of the nature of their working practices" (Hubbard, 1999, p. 22).

The missing face adds to the invisibility of prostitution and particularly to the invisibility of those prostitution experiences that do not fit in the dominant representation of prostitution. It is the face that adds individuality, distinguishes the individual from the mass, where she is only a number. Face separates, stands out and prevents overgeneralisation, which can only happen when one does not see the variance between individual experiences. Moreover, a face has a mouth with a tongue that can give it a voice, and the latter again tends to be avoided, unless the prostitute says what e.g. the journalist or an NGO wants her or him to say, with personal stories highly preferred over their views on policy issues (see chapter 13 in this volume).

Prostitution is found at the cross section of many contemporary issues. The "visible" element of street prostitution, in particular, merges questions of ethics with aesthetics, giving rise to a certain "ethics of aesthetics", where that which is seen and considered "unsightly" is often deemed "bad". It also raises issues of identity and citizenship. A "good citizen" is not a prostitute and it is the former who is at the centre of urban planning. According to Hubbard (1999, p. 6), "[t]he ordering (and representation) of urban space plays a crucial role in producing and reproducing sexual and bodily identities which accord with notions of what it means to be a 'good citizen' in Western societies". Last, but not least, it also challenges traditional gender roles and dominant representations of femininity and of masculinity. Drawing on Rubin (1989), Hubbard argues that the heterosexual system of sex/gender identifies anomalies from "'normal, natural, healthy, holy' sex of the married, monogamous, reproductive kind as both erotic (arousing sex-

ual desire) and grotesque (arousing disgust)". It is exactly this simultaneous commodification and condemnation of unusual sexualities and practices (e.g. lesbianism, fetishism, homosexuality, prostitution etc.) that is said to reveal the complex way in which patriarchy and heterosexuality intertwine. What is more, it is often those relations that involve women's sexual gratification not aimed at procreation, which are constructed as "the worst" forms of sexuality (Hubbard, 1999, p. 44). Western cultures tend to treat sex with suspicion, as a negative, sinful force that, however, "may be redeemed if performed within marriage for procreative purposes and if the pleasurable aspects are not enjoyed too much" (Rubin, 1989, p. 150).

2. SPACES

The notion of space cuts across many issues in the field of prostitution. It is a sort of nexus that brings together the nerves of prostitution. The name itself means "to place" *(statuere)* in front or in public *(pro)* (Bernheimer, 1997). Place or space is here crucial. Some even assert that the structuring of space shapes the forms of human sexuality and sexual practice and that the lives of prostitutes are profoundly shaped by the space in which they work (Hubbard, 1999).

Location issues determine the visibility of prostitution, with street prostitution being the most visible and hence often most "problematic" for residents who tend to see it as nuisance, incivility or offensive conduct that makes them report alarm, fear or disgust. Street prostitution is also, however, the most exposed, poorest and the most vulnerable segment of prostitution and at the same time the most stigmatised by the public, thus "doubly victimised". Spaces where prostitution finds its "place" or is designated to are therefore often hidden, off the trodden path, pushed away from the centre towards more shady areas of the city, where prostitutes are less in the way of shoppers and moral majority. The culture of consumption may be blamed for many a repressive measure towards less desirable social conduct that is progressively being termed as "anti-social" or uncivil and criminalised (Hayward, 2004), either via criminal law proper or through civil orders (e.g. ASBOs in the UK) or administrative sanctions (as in Belgium). Processes of gentrification push "incivility" away from the gaze of the moral mainstream (Sassen, 1991), as if the "visibility" of it is still – even in societies that consider themselves as liberal – legitimately considered to be offensive or unacceptable. Moral order, in Hubbard's (1999) words, is spatially regulated.

Contemporary criminalisation and criminal policies thus focus on the exclusion of prostitution from public spaces. Even "zoning", a type of regulation of prostitution, is all about finding space or places for prostitutes to perform their work. "Displacement", a frequent side product of criminalisation of prostitution, is again about spaces, about shifting prostitution from one

place to another that is less problematic, less supervised, less visible, less regulated. Many European countries have decriminalised prostitution as such, seeing it as sex work and leaving moralism aside, yet at the same time criminalised the most visible segment of prostitution, the offering of sexual services for money or other material remuneration (Pateman, 1988) in the public space.

The NIMBY (not-in-my-backyard) syndrome attests to another spatial dimension of the public attitude towards prostitution. More concretely, it testifies of the doublespeak the public and politicians engage in, displaying an outward liberal attitude toward prostitution in general ("I have nothing against prostitution …") and a "…but" inward attitude, when it comes to putting the money where the mouth is. As long as prostitutes and other marginalised groups exist somewhere else, no one seems to have any objections. However, if they set up shop in our neighbourhood, it is suddenly a sign of community decline. Proximity of prostitution often taps into deep-seated fears of the unusual as well as into general anxiety of the community in question, stimulating discontents and protests that are, however, misdirected and channelled towards the prostitute.

Although the majority of prostitution tends to be concentrated in urban spaces and the "sale of sexual satisfactions [considered] an integral part of the urban life of mankind" (Bassermann, 1967, p. xi), the phenomenon is universal and ubiquitous. Universality can hardly be surprising, considering animals seem to "offer" sexual services in return for goods it, too (see chapter 5 in this volume). What is surprising, however, is that despite the prostitution being dubbed "the oldest profession", some still believe they can abolish or eradicate it. What may be useful to eradicate though is exactly this belief, in the name of which modern crusaders inflict enormous social and individual harm on the voluntary prostitutes who are denied their capabilities for making a rational decision, a life choice for themselves. Recognising that sex is an emotion – or has at least been understood as such for a long time (Frijda, 2007) – or recognising it as one of basic human needs (Maslow, 1943, 1970) may go some way in accepting the futility and harmfulness of wars waged against it.

The present volume engages in these topics, drawing on examples of prostitution from various points on the space-and-time continuum. Most of the time the term prostitute and prostitution, instead of sex worker and sex work, is used, as the latter focuses predominantly on the labour aspect and encompasses also other categories of workers in the sex industry (such as porn actors, lap dancers etc.). Moreover, it neglects the important stigmatising aspect of prostitution, whereas it is often this negative, emotional social reaction to prostitution that is the most interesting to examine, for it tells us more about the (judgemental) society in question than about the "object" to which it reacts (or targets). The volume, furthermore, acknowledges that

while time- and space-specific characteristics are important, they are often also (co)constructed by the law. While *space* defines the *place* of sex work, the legally defined *place* of prostitution conversely determines its geographical *space*.

3. STRUCTURE OF THE BOOK

The aim of this book is to explore the topic of prostitution, empirically and normatively, from a variety of social sciences perspectives and evidence-based approaches that shake certain myths or assumptions about prostitution and move beyond moralism. It addresses several interesting questions, such as how the prostitution is (and was) practised in different places with different regulation regimes, what the best practices in the regulation of prostitution are, why and how prostitution is being constructed as a social problem, as a type of incivility, crime or victimhood, and for what purposes. Further, it examines how the policy regarding prostitution is being made and how it ought to be made. The book is structured in three main parts that cover empirical, representational as well as policy aspects of prostitution and of the social reaction to it.

Part I of the monograph thus addresses prostitution in action or "on the ground" as it were, exploring its historical setting as well as modern-day practices. In Chapter 2, Rodríguez García takes us on a thematic tour of urban prostitution in world cities from the 17th century onwards when the profound political, military and socio-economic changes occurred. The analyses of the extent to which processes of colonisation, (proto- and de-) industrialisation, urbanisation, agricultural decline, the emergence of class systems, the rise of nation states and state control, military modernisation, revolution and development of modern forms of communication and transport had an impact on the practice of prostitution and on the societal reactions thereto offer us a better understanding of contemporary prostitution. The author observes that increased organisation of prostitutes and use of the Internet for the establishment of contacts in the sex industry as well as the rise of migration rates of men and women for prostitution and sex tourism are all developments that are strongly intertwined with past political and socio-economic changes. A historical and broad geographical perspective permits her, moreover, to observe the continuities and discontinuities in the way sex work was perceived, policed and practiced throughout time and space. More concretely, the chapter presents a general review of the legal and cultural definitions of prostitution, societal reaction and legal regimes towards commercialised sex as well as prostitutes' working spaces, working conditions, demographic characteristics and causes of prostitution.

Chapter 3 compares different models of prostitution in the red-light districts in three European cities: Amsterdam in the Netherlands, and Brussels and

Antwerp in Belgium. Weitzer begins by postulating that research on modern red-light districts is deficient: centred largely on street prostitution zones, the current literature gives insufficient attention to settings where red-light districts consist of indoor venues that are legal and regulated by the authorities. Using classic Chicago School writings on vice districts as a point of departure, the chapter then examines red-light zones in Amsterdam, Antwerp and Brussels. The comparative analysis identifies major differences in the physical ecology and social structure of the settings, which are explained by (a) the distinctive ways in which each municipal government manages its respective red-light district and (b) the contrasting social backgrounds and political capital of the population residing in the vicinity of each district. Lastly, the chapter discusses some policy implications and among others concludes that vice districts when detached from conditions that characterise socially disorganised environment do not necessarily have negative environmental effects (as claimed by the Chicago School paradigm). Quite the opposite; they may turn into modernised, award-winning zones, such as in the case of Antwerp.

Chapter 4 inspects prostitution from a relational perspective. As part of informal economy, Boels juxtaposes prostitution against other informal economies, drawing in particular on her empirical research in Belgium, where prostitution as such is not criminalised. Adult women and men are allowed to perform sexual services in exchange for money or other means (e.g. drugs, housing) on a voluntary basis in so far as these activities – and the income they generate – are properly declared to the government. However, several related and ancillary activities such as advertising for prostitution and exploiting prostitution are considered crimes and incorporated into the national penal code. Based on the typology of Sanders (2008), Boels argues that Belgian prostitution can thus be considered as a legal informal economy. In practice, certain cities (e.g. Ghent, Antwerp, Brussels, Liège) adhere to a certain "policy of tolerance" in that certain ancillary activities are tolerated (e.g. renting windows and rooms for the purpose of prostitution). In essence, prostitution is not criminalised but not specifically regulated either, whereas the exploitation of prostitution is criminalised but can be regulated to a certain extent by local governments. Based on semi-structured interviews with sex workers, policing agents and social workers, the author shows how this seemingly contradictory situation is expressed in the city of Ghent, offers insights into the organisation of this particular type of sex work in Ghent and reveals how sex workers themselves perceive their work within a "*de facto* legalised" informal economy of prostitution.

Chapter 5 continues with the economic motif, examining in more detail the economic factors of prostitution, particularly reflecting on the current global financial crisis and its impact, as recorded so far, on sex work. It begins by noting the essentially economic character of prostitution: sexual services

are offered for money (or something of value) and guided by market forces of supply and demand. Far from being a product (or, for some, an aberration) of *homo sapiens*, however, the supply-and-demand-driven sexual behaviour has been observed in the animal world as well. While driven by economy, prostitution, it seems, has been made in nature. In addition to looking at economy as (part of the) nature, the chapter examines the intersection between economy and prostitution also from another perspective; one that takes economic factors and societal responses to economy and prostitution as a "structure" within which the prostitute acts and expresses her agency (admittedly, to a varying degree in different settings). The chapter concludes with some tentative prognosis that may be policy-relevant in light of the existing trends.

Part II of the book focuses on how prostitution is constructed as a social problem, a crime, incivility and so forth. In chapter 6, Symons and Gillis observe that media representation or framing of prostitution tends to affect how prostitutes are being treated on a daily basis as well as the conditions in which they work. Concretely, the authors explore how prostitution has been framed in the Flemish television news in Belgium over the past decade. Based on the research literature, they first distinguish three relevant prostitution frames: the social/moral order, oppression/sexual domination and pro rights/sex work frame. By describing the different elements of these frames, ranging from the definition of the problem to the suggested remedy, the authors point out how these frames can be problematic or have real-life consequences for those working in prostitution. Then they present the findings of their analysis, which show that the examined reporting on prostitution mainly focused on organised criminality and social disorder in the public space, while women in prostitution were mostly framed as deviant rather than as victims, suggesting that Flemish television news reporting on prostitution can be better understood through a moral/social order frame. The chapter concludes with a discussion of the results in the light of policy making, together with a discussion of the limitations of the current study and suggestions for future research.

Chapter 7 situates the regulation of prostitution within public anti-nuisance initiatives, which have been experiencing resurgence in a number of European countries, targeting (harmful as well as harmless) behaviour deemed uncivil or disorderly and, ultimately, individuals and groups that are considered "a risk" for society. Prostitutes and their clients find themselves among the targets of such punitive interventions, as their (mere) presence on the streets has increasingly been regarded as causing nuisance or disorder within the community. In the UK, a reinforced regulatory trend against the phenomena of street prostitution and kerb crawling has been explained in light of the cultural changes brought about in the late (or post-) modern society by what Hayward (2004) calls the "culture of consumption". Accord-

ing to the theory, the consumerist culture has engendered changes in the physical layout of the urban space, which has been reconstructed around the creation of (exclusionary) consuming and recreational places of post-modern architecture, as well as played a fundamental role in forging all the dominant societal values and sensibilities which determine the contours of the "acceptable" conduct in public places. Di Ronco tests whether Hayward's theory can explain the exclusionary and punitive policies against street prostitution and kerb crawling in three European cities, namely, Birmingham, Brussels and Milan. In each, she fleshes out the three urban spaces (spaces of consumption and pleasure, centripetal spaces and spaces of deprivation), and reflects on the differences between cities by pointing also to the possible different cultural factors that may play a role in the partly different spatial distribution of prostitution in the case of Milan.

Chapter 8 analyses how the trafficking victim archetype is being used in Brazil, Spain and Portugal to represent not only the phenomenon of trafficking in human beings but also that of prostitution, to the detriment of the latter. Lima de Pérez argues that the trafficking victim archetype has been, despite its incongruence with most real life cases, a characteristic of the mainstream narratives of human trafficking since the appearance of the white slavery mythology in the global scene. She points out that even though the current Brazilian trafficking victim archetype reflects only a very small fraction of the reality of trafficking victims and migrant sex workers originating from that country, it is still commonly used in Brazil, Spain and Portugal. The label of "(potential) trafficking victim" is in her view used not as an instrument of human rights protection but as both a political weapon to curtail prostitution and a socially acceptable form of migration control to the detriment of Brazilian migrant sex workers and any women who fit the targeted "profile".

In chapter 9, Peršak examines contemporary Western anti-prostitution arguments (including those behind the new trend of criminalisation of clients), the aim of which is to generate support for condemnation and criminalisation of prostitution, through victimological and legal-philosophical lens. It firstly inspects how (voluntary) prostitution and prostitutes are framed as victims (enslaved, exploited etc.), capitalising on societal empathy as well as on insecurities and fears of the "other". Through the concept of "victimalisation" (Boutellier, 2000), it analyses how victimhood is pinned on the agents involved in prostitution and discusses repercussions of this process. Secondly, the chapter addresses the criminalisation proponents' logic of argumentation behind their claims, situating their endeavours within the realm of penal ethics, which deals with the question of legitimate grounds for criminalisation in a modern criminal legal system. It is argued that while the arguments of new anti-prostitution advocates seem to be harm-based, a closer inspection reveals that such "harm" is often either too broadly con-

ceived (to be useful for criminal law) or misrepresented. Such arguments, moreover, often rest on certain assumptions about prostitution (and prostitutes) that are untenable in light of the growing body of empirical evidence and prostitutes' own voices. After unpacking those claims of violence, harm and exploitation, the chapter concludes that what seems to lie behind the language of protection and safety is a type of (new) moralism, which disguises moralistic arguments into harm-based ones to make them appealing to wider audiences, minimise critique and legitimate criminal-law intervention.

Part III moves the debate even more into the normative, policy area. Aronowitz, in chapter 10, notes that the divisive discussion on prostitution is represented by two diametrically opposed views. On the one hand, pro-sex work scholars argue that prostitution, as a form of labour, should be decriminalised, regulated and controlled. Harm reduction lies at the core of this movement. In opposition to this position, abolitionists view prostitution as gender-based violence against women and argue that prostitution should be criminalised. The author observes that criminalisation of prostitution, however, often leads to the arrest of sex workers. The chapter exposes several misconceptions and false claims, surrounding prostitution and inspects various models of regulations, before focussing on the question of "what works", i.e. question of how effective the laws prohibiting the purchase of sexual services (the Swedish model) or the regulation of the prostitution market (the Dutch model) have been so far. The chapter examines the ongoing debate between these two models while inspecting empirical evidence that support and oppose both.

Chapter 11 investigates to what extent public-private cooperation or self-regulation scenarios (on the level of the prostitution sector) are to be preferred over public sector (state and municipal) regulation and enforcement in tackling trafficking in human beings and prostitution-related nuisance. Even if trafficking in human beings for the purpose of exploitation of prostitution may require repressive action, Vermeulen warns that the systemic blurring of the human trafficking and prostitution debates (that we still witness today) bears the risk of repressing non-coerced prostitution and immigration. The almost automatic qualification of the prostitution sector as a breeding ground for human trafficking mainly strikes at illegal prostitutes and prostitutes who have made an informed choice to offer sexual services for money. A focused approach at true exploiters and organisers of forced prostitution requires nuance and precision, which is likely to be brought about by the policy and enforcement separation of the prostitution market into a "mala fide" (human trafficking) and a "bona fide" (consensual) market. This chapter then explores the question of which "quality standards" are required for the labelling of sexual service providers as bona fide entrepreneurs, and whether a "separation of markets" based on such standards is

best realised through legalisation of the non-exploitative and non-coercive sexual services market or by regulation (either state/municipal regulation, public-private cooperation or mere self-regulation). In light of the noted problems with the public sector (municipal) design, control and enforcement of such concentration or delocalisation policies, Vermeulen suggests that public-private cooperation mechanisms or mere self-regulation may be more promising or useful in controlling prostitution-related nuisance and shows how "quality standards" must be tailored to that end.

The problem of the criminalisation of clients in the commercial sex market on the basis of their guilty knowledge of sexual exploitation is tackled in chapter 12. Vermeulen and Van Damme note that policy makers are on a constant lookout for new ways to eradicate trafficking for sexual exploitation and coercive sexual services. A highly debated criminal justice response to the ever-changing face of abusive commercial sex work is the criminalisation of clients that "knowingly" use the services of a trafficked victim. EU anti-trafficking legislation recommends such demand-side approach and several EU member states have taken or are in the process of taking legal action in this regard, for example, the Netherlands and the UK. After discussing the issue of guilty knowledge of clients from a phenomenological point of view, the chapter critically assesses the legal initiatives taken in these two EU member states, outlining several problems from the perspectives of legal theory, criminal policy and practice. The authors offer insights in how self-regulation in the sexual services market can be helpful for dealing with client criminalisation in a reasonable way. They argue that self-regulation has the potential to solve various obstacles identified in the two country studies and that re-thinking traditional visions on demand reduction may in fact benefit the quest for new responses to an ever-changing commercial sexual services market.

In chapter 13, Witpas starts by noting that one of the core principles of health promotion is that policies, strategies and interventions that seek to improve the health and well-being of citizens should always include a strong element of empowerment and participation of the people involved. This is especially the case when the target group is vulnerable, hard to reach, or suffers from social stigma. He observes that in the last three years Belgium and the Netherlands have witnessed heated debates about sex work and the consumption of online pornography. These behaviours have been in most cases framed as damaging to the mental and/or physical health of the people involved and policymakers frequently called upon to take action in order to protect society. The chapter investigates to what extent policymakers, NGOs and opinion leaders honour the principles of empowerment and participation when they communicate with the public about these topics, how much weight they attach to the actual voices of sex workers and their clients, or producers and consumers of pornography, and include them in the

public debate. It examines not only the theoretical concepts that are promoted, i.e. what they think should happen, but also current practices, i.e. what really is or is not happening in the field.

The final, concluding chapter brings together different ideas fleshed out in preceding chapters in an attempt to distil lessons learned, establish common themes and linkages between the chapters as well as point out ongoing challenges.

Last but not least, as drafts of the chapters were first discussed at the colloquium, organised at the Faculty of Law, Ghent University in March 2014, we would like to thank all the presenters for a lively debate that led to the success of this event as well as to the Crime, Criminology & Criminal Policy (CCCP) research consortium for generously providing the funding.

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Chapter 2.
Prostitution in world cities (1600s-2000s)

MAGALY RODRÍGUEZ GARCÍA

1. INTRODUCTION

This chapter provides a historical overview of prostitution from ca. 1600 to the present day. Since prostitution is an overwhelmingly urban phenomenon nearly always involving women servicing men, the focus of the study is world cities and the female sex trade. The accent on the modern and contemporary periods is justified by the profound political, military and socio-economic changes beginning in the seventeenth century. The extent to which "pre-modern" prostitution differed from "modern" prostitution requires further and systematic comparative research, but individual case studies point to the influence of the transformations which took place during the period studied on the sale of sex. Colonisation, industrialisation, urbanisation, agricultural reform or decline, the emergence of class systems, the rise of nation states and state control, military modernisation, revolution and development of modern forms of communication and transport all had an impact on the practice of prostitution and on societal reactions to it worldwide (Clement, 2006; Stearns, 2009).

An analysis of how and why those changes shaped prostitution contributes to a better understanding of prostitution now. A long historical and broad geographical perspective allows us to observe continuities and discontinuities in the way sex work has been perceived, policed and practised. Concretely, the chapter will present a general review of the legal and cultural definitions of prostitution; the legal regimes; the involvement of non-state actors in the repression of prostitution or in its re-definition as "sex work"; persecution of and violence against prostitutes; prostitutes' social profiles and their motivation for involvement in commercial sex; working conditions; the role played by intermediaries and the increased organisation of prostitutes. Because of its broad perspective, the article will be based primarily on the existing secondary literature, but as well as making use of the classic works on prostitution this study relies on information found in some of the overviews collected for the "Selling Sex in the City" project.[1] In this

1 Project organised by the author in cooperation with Elise van Nederveen Meerkerk (Wageningen University), Lex Heerma van Voss (Huygens Institute for the History of the Netherlands) and Marcel van der Linden (International Institute of Social History). A selection of the best papers of this project will be published in an edited volume in 2015. http://socialhistory.org/en/projects/selling-sex-city

contribution, I have used the terms "prostitute" and "prostitution" instead of "sex work" and "sex worker", because the latter include more than the exchange of sex for monetary or material compensation. The negative connotation attached to the terms reflects the stigma that has characterised most of the history of prostitution, rather than any judgement passed by the author on this form of labour.

2. DEFINING PROSTITUTION AND PROSTITUTES

The Cambridge online dictionary simply defines prostitution as "the work of a prostitute" and a prostitute as "a person who has sex with someone for money". Although commonly accepted, those definitions do not cover the very wide range of remunerated sexual activities, and if taken literally they can include practices that have most often been accepted as mainstream and as very different from prostitution. Marriage or other forms of intimate relationships, for example, have often involved sexual exchanges for livelihood but society – excepting radical feminists – has never linked such alliances to commercial sexual activity. Perhaps the less narrow definition of prostitution provided by the Oxford online dictionary gives us better guidance to its meaning across time and space: according to Oxford prostitution is "the *unworthy* or *corrupt* use of one's talents for personal or financial gain" (my emphasis). Indeed, it is the moral connotation or status attached to it, and not so much the exchange of sexual favours for money or benefit in kind that has characterised the understanding of prostitution in most cultures.

In past and present societies, legal and cultural definitions of prostitution often overlapped. Pawned and slave prostitution was legal in a number of African, American, Asian and Middle Eastern countries (in some cases as late as the 1900s) and women involved in it belonged to the lowest and poorest ranks of society. In Europe and the Americas, common prostitutes were often identified with marginality and were arrested under regulations against "disorderliness" and vagrancy until the twentieth century (Pluskota, 2013a; Schettini, 2013; Svänstrom, 2006, 2013). Even though law enforcement could be indiscriminate, there is evidence that some forms of prostitution came to resemble other survival activities. As Luise White demonstrates in her history of prostitution in colonial Nairobi (1990), scrounging was a form of accumulation through prostitution at the end of the nineteenth century.

At the other end of the spectrum some early forms of prostitution were linked to high prestige and were characterised by a much broader range of entertainment services than just sexual intercourse. But although commercial sex was legal and regulated in certain places in medieval Europe and pre-colonial Asia, high-class courtesans refused to be identified as prosti-

tutes. Furthermore, early regulations always encompassed more than the exchange of sex for money (Gronewold, 2013) and pre-marital sex, adultery or "indiscriminate availability" (Karras, 1996, p. 17) were included in the more commonly used term "whoredom". In Europe and the Americas, there was no clear distinction between "whores", "harlots", "mistresses" and "prostitutes", while from the mid-eighteenth century onwards the terms "prostitution" and "prostitute" became more widely used to differentiate the activities they implied from simple fornication and adulterous sexual behaviour (Nuñez & Fuentes, 2013; Laite, 2013; Mechant, 2013; Pluskota, 2013a).

During the nineteenth century, with the installation of the French system of regulation which required a clearer categorisation of prostitution, the economic aspect of sexual exchange became more prominent. However, in regulationist (or de-facto regulationist) countries the identification of "real" prostitutes remained problematic and frequently led to the registration and medical examination of other working-class women. From the twentieth century onwards, monetary transaction became central to a legal definition of prostitution, although of course sexual barter has always been difficult to categorise. During the early twentieth century in the United States so-called "charity girls" exchanged sex for entertainment expenses, but made a clear distinction between what they were doing and prostitution, which they considered immoral. In some African and Asian cities too, sexual bartering for material goods or privileges seems to have been commonplace. Similarly, the figure of the "cocotte" in Paris or Berlin at the turn of the century has always defied easy categorisation (Clement, 2005; Guigon, 2012; Umoren Ekpootu, 2013; Smith, 2013).

Colonisation brought a radical shift in the way people thought of prostitution. Women who in pre-colonial periods had provided more spiritual than sexual services to men, without necessarily participating in the commercial-sex trade, were now automatically newly identified as prostitutes by European colonialists. In India, for example, British colonists viewed temple dancing girls (*devadasi*) as prostitutes, and had criminalised them by the time of the early twentieth century. Courtesans too, whose services in China, Japan and other parts of Asia before the arrival of the Europeans had involved much more than sexual intercourse, became both more sexualised and commercialised, and so came to be identified with common prostitution. In other places European colonisation actually laid the foundations of prostitution. As Raelene Frances (2007) points out, prostitution was as unknown in Australian Aboriginal societies before the arrival of the British in the late eighteenth century as it was in pre-colonial New Zealand until women of Maori descent became increasingly involved in the sex trade as a result of the socio-economic changes colonisation produced. In Nairobi,

prostitution became established only in the 1910s (Frances, 2011; Levine, 2003; White, 1990).[2]

"Prostitution" and "prostitute" were words commonly applied by officials during the nineteenth and twentieth centuries to the activities of selling sex in exchange for money, although more insulting words like "whore" and its foreign equivalents were (and still are) widely used in common parlance. However, with the emergence of the prostitutes' rights movement in the 1970s such pejorative names came under attack. A restructuring of the sex trade's language took place and prostitution came to be defined as "sex work". The new usage of the terms "sex work" and "sex worker" was an important semantic shift signifying the strengthening of a movement that perceived prostitution in terms of labour and attendant human rights (Bindman, 1997; Delacoste & Alexander, 1988; Pheterson, 1989). Those terms encompass the whole sex industry, so that not only prostitutes and escorts but also all women, men, transgendered people and transvestites active in striptease, pornographic filmmaking, phone sex, lap dancing, erotic massage and so on, are described as sex workers. But although the labour perspective received much support from both state and non-state actors in various countries, an equally strong international movement of radical feminists launched a vigorous campaign against prostitution *and* against the idea of prostitution as "sex work". Outspoken women like Kathleen Barry and Sheila Jeffreys refuse to use the terms "sex work" or "sex workers" because in their view they normalise prostitution. Instead, radical feminists define prostitution as "sexual slavery" and prefer to speak of "prostituted women" rather than "prostitutes", as the former term "brings the perpetrator into the picture" and emphasises in their view the male sexual violence involved in it (Jeffreys, 1997, p. 5; Barry, 1979, 1995).

The twenty-first century has still not brought a consensus on the definition of prostitution. On the contrary, contemporary debates on human trafficking have radicalised the different viewpoints even further. As the next section will demonstrate, societal reactions play an important role in the establishment of legal regimes and policy-making with regard to prostitution.

3. SOCIETAL REACTION AND LEGAL SITUATION

In his study of sexuality in world history, Peter Stearns (2009) comments that even though some forms of high-level prostitution in earlier times

2 Although we know little about the existence of prostitution in pre-colonial Latin America, authors like Fernanda Nuñez and Pamela Fuentes (2013), as well as Pascale Absi (2013) argue that commercial sex in Mexico and Bolivia probably took off and certainly increased after the Spanish conquest. Amandine Lauro (2005) also doubts the existence of prostitution in pre-colonial Congo.

commanded respect and prestige, most societies have despised the sex trade. Most cultures have at one time or another tolerated and even regulated it, but more often than not, prostitutes themselves have been perceived as being of low-status or even outcasts. The view of prostitution as "an evil" – a necessary one for some and an unwarranted one for others – seems then to be ubiquitous. Even in cases where prostitution was (and is) instrumentalised and accepted by relatives or neighbours as a contribution to the family economy, society at large has generally viewed prostitutes as being part of "the worst class of workers" (van Voss, 2012).

During most of Chinese history, prostitution was legal and monitored by the imperial or local state. Within a highly patriarchal system, prostitution was a recognised occupation but one that was meant to protect "good" women from the others, the ones who provided social companionship and sexual services to men (Gronewold, 2013). For hundreds of years in pre-colonial India, common prostitutes formed part of the mainstream labour population, although they were perceived as "sinners". Furthermore, caste-based, hierarchical Indian society accorded them a low social status, putting them just above sweepers (Frances, 2011). In medieval Europe too, the municipal authorities of most large cities (apart from London) regulated prostitution and accepted prostitutes as members of society, again because they protected "honest" women from rape and served as outlets for male sexual drives (Laite, 2013; Karras, 1996; Perry, 1990; Trexler, 1981). European colonial authorities in the Americas reproduced similar systems of regulation in various countries, even as the women involved in prostitution were morally condemned. In cities of the United States, prostitution was quietly tolerated during the late eighteenth and nineteenth centuries, but "whorehouse riots" and violence against prostitutes were common (Rosen, 1982; Nuñez & Fuentes, 2013).

Cultural, politico-military and socio-economic changes from the late fifteenth century onwards altered the general perception of prostitution and above all, government responses to it. Growing incrimination of prostitution in Europe was the result of several factors. The religious reformation of the sixteenth century led to the closure of brothels and repression of prostitutes because both were perceived as threats to devout women and the family, and prostitutes came to be seen as carriers of venereal diseases who disrupted the domestic order. Even before the religious revival of the time, brothel owners had begun to see profits fall as the number of independent (i.e. clandestine) prostitutes increased along with the development of the early modern state and its large military apparatus. Unregulated prostitutes followed armies, undermined the existence of brothels, and contributed to the spread of disease. Authorities reacted to the new situation with the adoption of ordinances prohibiting prostitution and activities related to it, as well as rules for the confinement of women to hospitals or to harsh

prison terms. In Europe and the Americas, religious societies became increasingly involved in campaigns against prostitution, and in rehabilitation programmes for "fallen women". Indeed, during much of the seventeenth and part of the eighteenth centuries, prostitution was explicitly linked to sin (Conner, 2013; Nuñez & Fuentes, 2013).

Yet, in spite of all the official and non-official attempts to suppress prostitution, agricultural disruptions, urbanisation and industrialisation combined to draw more women into prostitution. Also, concentrations of men in cities and gender discrimination in the labour market, as well as freedom from community and family controls, facilitated the entrance of women into the sex trade. Taking place sooner in some places (Europe) than in others (the Americas, Africa and Asia[3]), such transformations contributed to the flourishing of prostitution. Aware of the negative effect the changes were having on the working population, once again societies developed a fairly tolerant attitude to individual prostitutes. The language of sin was replaced by a view that described prostitution as a condition, and later even as a pathological state. Moreover, prostitutes fulfilled an instrumental purpose in that they often led the police to real criminals. Early in the eighteenth century, there were even some voices calling for the regulation of prostitution, such as the Dutch philosopher Bernard Mandeville, for example, who argued that prostitution was not criminal, but dangerous when uncontrolled. Whether Mandeville was serious in what he said is still in debate, but what is important here is that ideas for the official regulation of prostitution re-appeared in the 1700s (Conner, 2013; Primer, 2006).

Sexually transmitted diseases became one of the greatest preoccupations of the century. Although men and women were equally responsible, the blame for the spread of diseases was given only to women. Of the case studies of the project "Selling Sex in the City", Nigeria was the only country where men (soldiers) were the target of measures against venereal disease. Moreover, the fact that in many countries in the world men often turned to other men or boys for the gratification of sexual urges was ignored when it was decided to lay responsibility at women's door (Clement, 2006; Gronewold, 2013; Hammad & Biancani, 2013; Umoren Ekpootu, 2013; Wyers, 2013). Physicians became increasingly involved in debates on prostitution, and called for the establishment of some form of health control for prostitutes. Embryonic forms of regulation appeared in the late 1700s in Berlin and Paris. By the early 1800s Napoleon had installed a regulatory system which included the licensing of brothels, registration of prostitutes and compul-

3 Deep agricultural changes, urbanisation and migration had also taken place in Asian regions much longer before the European expansion but the scale was lower and had a less global impact than the transformations that took place in Europe since the early modern period.

sory health examinations. In the 1830s, the sanitary engineer Alexandre Jean-Baptiste Parent-Duchâtelet developed a comprehensive and virtually carceral system of regulation which consisted of legal and regulated brothels, hospitals, prisons and reformatories. Known as the "French system", similar regulation spread to many cities worldwide during the nineteenth century (Bliss, 2001; Conner, 2013; Corbin, 1990; Schaepdrijver, 1986). Amongst the largest cities of the world, London and New York remained the exceptions as they never implemented the modern regulatory system, although there too, prostitution was tolerated and regulated, albeit informally. Laws against "night-walking" and soliciting existed (prostitution as such was not illegal), and women often fell victims to legal statutes against vagrancy and public disorder. However, until the end of the nineteenth century, policing of prostitution was disorganised, corrupt and abusive (Gilfoyle, 1992; Laite, 2011; Walkowitz, 1980). In Rio de Janeiro, an "extra-legal form of regulation" has characterised the history of prostitution there, in which the police acquired strong authority but without any specific legal mandate to control and organise the sex trade (Blanchette & Schettini, 2013).

Preoccupation with the sexual conduct of the population – particularly of the poor – was not linked to health alone. Amid periods of nationalist fervour in various places, political considerations motivated authorities to regulate the sex trade. From imperial Russia to recently independent countries such as Argentina, prostitutes and other women who defied conventional morality and family structures were perceived as threats to the nation (Bernstein, 1995; Janssen, 2011). Prostitution was legalised and regulated in Russia between 1843 and 1917, and in Argentina from 1875 until 1936. As Donna Guy (1991) points out in her study of prostitution in Argentina, while family represented a crucial factor in the nation-building process of the nineteenth century, prostitutes and brothels were linked to anarchism, the cabaret and other places of entertainment. State control of brothels and medical examination of prostitutes were seen as a way to protect not only the military but civil society and the family from political threats, disease and homosexuality (Gilfoyle, 1999). In some cases, regulation seems to have been perceived as synonymous with modernity. In Japan, for instance, the acceptance of British-administered Lock Hospitals in its territory and the installation of a central regulatory system by the turn of the century were probably a way for Japan to become accepted as a modern, enlightened and civilized nation by the great powers (Frances, 2011).

Effective control of the population played an equally, if not more important role in the colonies. The expansion of prostitution after the arrival of the colonisers posed a serious threat to the imperial project. Interracial sex and

prostitution of white women[4] could undermine colonial power and prestige, while the spread of venereal disease could cripple colonial administrators and troops. The Contagious Diseases Acts of the 1860s were not intended to regulate prostitution everywhere in Britain; as legal instruments designed to protect the empire's army they were confined to ports and garrison towns, but they never applied to London (Laite, 2013; Levine, 2003). In some colonies (e.g. Hong Kong and India), official regulation of prostitution actually predated the acts applying in Britain. Conflation of local sexual practices with prostitution and the real growth of commercial sex led colonial authorities to brand prostitution as a dangerous activity that needed to be codified and regulated, with prostitutes no longer perceived as sinners or fallen women but as quasi-criminals. Generally, the various forms of regulation introduced in the colonies were harsher than the systems adopted in Britain. Colonial legislation of prostitution not only applied to the whole of a territory rather than only to towns holding concentrations of troops, but was more invasive in women's lives and was more oppressive for poorer or non-white prostitutes (Frances, 2011; Howell, 2004).

Regulationist countries like Belgium, France and the Netherlands introduced their own strict methods of control of prostitutes in their colonies, and while some US states experimented only briefly with regulation and were moving towards a more muscular repression of brothel prostitution, the Americans took over the official system of regulation that had been introduced in the Philippines during the last years of Spanish rule (Corbin, 1990; Lauro, 2005; Tracol-Huyn, 2013).

Increasingly however, public opinion turned against official regulation of prostitution. As the number of unregistered prostitutes grew and the failure of the regulation system to control the spread of venereal disease became apparent from the 1850s onwards, an abolitionist movement became stronger. Abolitionism, the movement to eliminate state-regulated prostitution appeared for the first time in Great Britain under the leadership of Josephine Butler and gained strong support from feminists, Christians and civil libertarians from various parts of the world. Opponents of regulation viewed this form of state control of women not only as morally unacceptable but also as inefficient, since clandestine prostitutes and male clients were not part of the system. Vigorous anti-regulation campaigns resulted in the repeal of the Contagious Diseases Acts in England in 1886 and in the annulment of various regulations in British colonies in the late 1880s. Yet in various colonial settings the authorities refused to repeal their legislation or

4 Contrary to Great Britain, France did not discourage the migration of French prostitutes. The British banned migration of its prostitutes but permitted the prostitution of other white women in their colonies; the latter were, however, East-European Jewish women who were considered not-quite white (Kozma, 2013b).

instead opted for an unofficial continuation of the regulation system. As in the mother country, regulation in French colonies went undisturbed until late in the twentieth century (Levine, 2003; Corbin, 1990).

By the turn of the nineteenth to the twentieth century the anti-regulation movement had become stronger as abolitionists and feminists began to forge a link between licensed or tolerated prostitution and international trafficking of women. Campaigns against so-called "white slavery" originated in the 1870s and became influential after the 1885 publications of London journalist W.T. Stead, who told stories of British girls being kidnapped and sold to brothels on the Continent (Limoncelli, 2010; Mumm, 2006). Although convincing empirical evidence of great numbers of women and girls being forced into prostitution was never provided (Oude Breuil, Siegel, van Reenen, Beijer, & Roos, 2011), the campaigns of abolitionists and other reformists at the time reflected fear of real societal changes, such as widespread migration by both men and women, the entrance of women into the public urban sphere, labour unrest, urban crime, and the commercialisation and expansion or certainly increased visibility of the sex trade. The perception of prostitutes as the "victims" of seducers or of ruthless traffickers became more popular and influenced the debates on regulation, abolition and trafficking.

From the end of the nineteenth century the obvious failure of the system and the frontal attack on official and unofficial regulation, led to the passage of municipal and national laws against brothel-keeping, procuring and soliciting, as well as stringent migration legislation in Europe, Asia and the Americas. The First and Second World Wars saw brief revivals of regulation of prostitution, but shortly after 1919 and again after 1945 abolition became more widespread. International agreements and conventions against trafficking agreed upon in the twentieth century further strengthened the abolitionist cause.[5] Even though the regulations targeted forced prostitution, independent prostitutes could be (and indeed still are) affected by anti-trafficking laws as the distinction between exploitative working conditions and actual trafficking is not easily drawn (Knepper, 2012).

In countries such as Argentina, China, Japan and the Soviet Union, abolition or outright prohibition of prostitution were associated with the construction of a modern, twentieth-century state. Late comers to the official aboli-

5 International Agreement for the Suppression of the White Slave Traffic (1904); International Convention for the Suppression of the White Slave Traffic (1910). Approved by the League of Nations: International Convention for the Suppression of the Traffic in Women and Children (1921); International Convention for the Suppression of the Traffic in Women of Full Age (1933). Approved by the United Nations: Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).

tion of regulation were Belgium, Japan, Mexico and the preeminent regulationist country, France, which criminalised brothel-keeping in 1946, and procuring, pimping, soliciting and organised prostitution in 1960. Most countries enacted or strengthened laws against activities surrounding prostitution, not against prostitution itself. In principle, men and women are free to exchange sex for money but since activities related to prostitution are outlawed prostitutes automatically become immersed in the criminal justice system. Furthermore, real or imagined links between prostitution and organised crime redefined prostitutes as potential threats to national security. In the United States, for example, (although not in Nevada), the Soviet Union, China, Cuba, and various Muslim countries, prostitution became prohibited in the twentieth century (Conner, 2013; Gilfoyle, 1992, 1999; Hershatter, 1997; Hetherington, 2013).

By the latter part of the twentieth century calls for the recognition of prostitution as "sex work" led to liberalisation in countries like Germany, the Netherlands and New Zealand. In Istanbul too, where the system of regulation continued in place for most of the twentieth century, prostitution is still legal and is regulated. Since the end of the nineteenth century, however, the trend in most countries has been the de-facto criminalisation of the sex trade. With the influx of South-East Asian, Latin American, African and East-European women since the 1970s, legal measures on migration and human trafficking at the national and international levels have become tougher (Kempadoo, 2001). A few countries, like Sweden, Norway, Iceland and recently France, have focused on the demand side of prostitution and now penalise clients, not prostitutes. Worldwide, the number of countries where prostitution is outlawed or where prostitution is legal but procuring and soliciting are not, is much higher than the number of countries that allow prostitution, procuring and soliciting (Country Report on Human Rights Practices, 2008). And yet, in spite of the efforts of state and non-state actors, laws against prostitution – in the form of abolition, prohibition, anti-trafficking legislation or criminalisation of clients – have not led to the disappearance of commercial sex. They have, however, greatly affected the organisation of the trade and the working conditions of the people involved in it.

4. WORKING SPACES AND CONDITIONS

The working conditions of women engaged in prostitution have always depended on the legal – or extra-legal – market, technological and medical forces that shaped commercial sex and in fact female labour in general, as well as government and social attitudes to prostitution. Gender segmentation in the labour market in most places and during much of the period studied here resulted in a general marginalisation of women and led many of them towards full-time or casual prostitution. But in spite of the discrimina-

tion, different legislations recognising prostitutes as workers did exist in the period before 1600. During the pre-modern period, the official or de-facto regulation of prostitution was common in virtually all cities where the sex trade thrived. Licensed brothels in medieval Europe were often exploitative, but all the same offered women protection from harassment by the authorities or clients. Brothel managers were obliged to observe certain regulations concerning closing hours and days, and although they bore the stigma of prostitution registered prostitutes had more opportunities than other working-class women to make use of official institutions such as the courts, and were likewise much better placed than independent prostitutes working from unlicensed establishments (van Nederveen Meerkerk, 2013).

Although state-run brothels did not exist in Ottoman Cairo, prostitutes were taxed, had access to courts and were allowed to participate in guild processions – albeit marching at the end of parades and possibly not being fully integrated into the guild system (Hammad & Biancani, 2013). In New York, tolerated bordellos also offered some advantages. Throughout the nineteenth century, brothel prostitution was increasingly visible and perceived as beneficial to the interests of men *and* women, for although brothel owners and madams trapped women in a system of financial exploitation, they protected them from aggressive clients and police extortion. Women could make good money in brothels, but of course they were forced to share their profits with the madams (usually fifty per cent). What was left over, however, was still more than the average earnings of working women in other branches of the economy. Furthermore, the familiar environments created in brothels (madams were often called "mother") were attractive to women who had lost their ties with kin and friends, either because of death and family ruptures, or the ostracism deriving from their involvement in the sex trade (Clement, 2006; Rosen, 1982). Imitation of family relations was also common in many other cities worldwide (Absi, 2013; Nuñez & Fuentes, 2013; Gronewold, 2013).

The nineteenth- and twentieth century systems of regulation – official or not – imposed heavy burdens on prostitutes and other working-class women accused of prostitution, but they had certain benefits too. Regulated or tolerated brothels provided a certain amount of security and comfort although with considerable loss of freedom and societal respect. Prostitutes were subjected to close surveillance and harsh mandatory health checks and treatment, which in some cases had to be paid for by the women themselves. Furthermore, in several cities worldwide, female prostitutes were compelled to live in brothels. Whereas enclosed prostitution began to decline in European cities from the 1850s onwards, legal or unofficial rules restricted the movement of prostitutes in other parts of the world. Between the early twentieth century and the 1950s, prostitutes in Perth, Australia, were required to live on the premises of tolerated brothels, located in the

designated red-light district of the city. In Casablanca, the walled-in brothel district known as Bousbir functioned (between 1922 and 1953) as the model of a sterile environment for other French colonial cities. Registered prostitutes were not allowed to leave Bousbir without permission, many of them shared part of the profits with the brothel keepers and the majority were completely cut off from their families. Perhaps the sole advantage of Bousbir was the reduced incidence of venereal disease, along with the limited number and brevity of the sexual encounters required per day. However, since patrons often preferred unregistered prostitutes who offered longer and more "romantic" experiences, Bousbir prostitutes sometimes used their free time to engage in clandestine encounters in other parts of Casablanca, which enabled them to supplement their incomes but meant they ran more risk of infection (Kozma, 2013a).

Prostitutes perceived the compulsory medical control that was often part of regulated or tolerated prostitution as a humiliating intrusion into women's lives. Hospitals for the treatment of venereal diseases were experienced as being worse than prisons, not only for their painful routines but also for the long confinement, which prevented women from working or looking after their families. That certainly contributed to the increasing number of women operating outside the systems of regulated prostitution, so that regulation was both draconian *and* ineffective, as it cured only a small part of the prostitution population. However, as Raelene Frances notes in her comparative study of working conditions in the sex trade (2013), for some prostitutes the health care facilities available in regulated or tolerated brothels amounted to their only access to medical care. The system also produced an awareness of the dangers of venereal disease, and perhaps prompted some prostitutes to take prophylactic measures.

The stigma attached to registered prostitutes, as well as the accumulated debts or sometimes induced drug addictions often made it difficult for women to leave bordellos, but their working conditions were also dependent on their positions within society. Legal systems that allowed for the sale and pawning of women, such as those in existence in China, India, Japan, Singapore and Turkey, often led to dire working conditions as women had little control over the number or type of clients they received, nor over the services they were to provide. Between the 1870s and the 1920s, thousands of Japanese women – often very young girls – were sold into prostitution (*karayuki-san*[6]) and transported to virtually all corners of the world. Submerged in debt-bondage by the arrears accrued by their parents or by themselves while working in brothels, they were at the mercy of brothel keepers. Eventually, many managed to pay off their debts but stayed active

6 Literally translated as "gone to China" but generally used to mean a woman who went abroad.

in the sex industry (as independent workers or madams); others found other work and even married (Warren, 1993). Chinese prostitutes in San Francisco, Singapore and Shanghai were also often sold or pawned by their families. For many women, a life in brothels represented improved opportunities compared to the conditions their poverty-stricken families offered. Their work was often understood in terms of filial piety, and many felt proud of being able to help their families in settling a debt or in surviving a crisis. However, many of them were never able to pay off their debts. In San Francisco, where gangs (tongs) ran Chinese prostitution from the 1850s, prostitutes led a secluded existence in brothels. But young women could also be sold to luxurious brothels or to wealthy men. In such cases, services were provided in sumptuous surroundings and in much better conditions than in low brothels, filthy rooms or overcrowded dens; but always at the loss of personal freedom (Henriot, 2001; Hershatter, 1997; Tong, 1994; White, 1990).

Although venues for the sex trade have always been more diverse than the brothel, new spaces and working conditions have continuously developed with the politico-military, socio-economic and cultural transformations ever since the beginning of the early modern period. Women wanting to avoid strict municipal rules often opted for unregulated prostitution, and with the development of large armies and during armed conflicts, independent prostitutes could move to garrison towns to service the soldiers. Street prostitution too became increasingly common. Until the mid-1950s London's prostitution was primarily street-based; brothels were much less common there than in other cities. Women provided their services in "bawdy houses" which were private houses where rooms were rented to prostitutes, or in bath houses, cheap hotels, lodging houses, sometimes even traditionally in doorways or in the local park. From the nineteenth century onwards, with further growth in the entertainment and hospitality industries many prostitutes worked from cafes, restaurants, massage parlours, or took clients to their own lodgings (Laite, 2011). In New York too, the expansion of commercial activities and transport facilities led to an altered perception of sexuality, which became increasingly influenced by economic and market forces. Sexual behaviour stepped into public spaces and became a commodity, leading women and men to arrange remunerated sexual encounters not only in brothels but also in theatres, hotels, cabarets, saloons, taverns, tenement house and furnished rooms, speakeasies, or the streets. As in other cities of the world, self-employed prostitutes in New York were better placed to negotiate their working conditions with clients and owners of establishments. If working in secret women avoided stigmatisation, but always risked punishment or extortion from the authorities, and often involved third parties to help them escape police harassment, to provide money for legal bail and lawyers or to attract trustworthy clients (Clement, 2006; Gilfoyle, 1992).

A particularly interesting case of independent prostitution developed in colonial times was that of Nairobi. *Malaya* prostitutes rented rooms and waited discreetly for men to purchase access from the house owner. They could thereby avoid arrest and societal condemnation, but had little control over the men who came in. Like elite courtesans in China or the geishas of Japan, *malaya* women offered much more than sexual services, including conversation, food, baths, cleaning, and so on, and they claimed that their work mimicked marriage. In economic terms, *malaya* prostitution was a form of long-term investment; it was not a mere survival strategy but a way to accumulate capital and to prosper independently. *Wazi-wazi* women solicited from the windows, doors or porches of houses where they rented a room, so they naturally had much more control over the clients who came in, and over the time they spent with them. In contrast to the *malaya*, *wazi-wazi* women provided brief encounters and usually sexual services only. Most of them worked only temporarily in prostitution and were typically young women helping their parents re-establish themselves in smallholdings or trade. *Watembezi* were streetwalkers or prostitutes soliciting in public places like bars or hotel lobbies; they cherished their independence in choosing clients and determining how long they worked. *Watembezi* mocked *malaya* prostitutes for their passivity and marriage-like practices, and used their profits for family support, and not so much for independent accumulation. Like streetwalkers in other parts of the world, *watembezi* developed strong ties, shared rooms and helped each other over difficult times (White, 1990).

Luise White's study of prostitution in Nairobi helps us to rethink the presumptions and myths that often surround prostitution. Popular narratives, reformers' and feminists' accounts, as well as many scholarly studies have commonly depicted prostitutes as devoid of agency and have created hierarchies that do not always respond to women's motivations or the factors that led them to one or another form of prostitution. Whereas elite courtesans in Asia, *malaya* prostitutes in Nairobi or contemporary high-class escorts and call girls are typically placed at the top of the hierarchy, other indoor and outdoor prostitutes have acquired a lower status. However, freedom and the capacity to control working conditions were and are relative and dependent on the locations and types of clients. With a much larger pool of middle- or low-class clients, and contrary to brothel prostitutes who were often compelled by the brothel owner or madam to service anyone, outdoor prostitutes can pick and choose. Past and present elite prostitutes, self-employed or not, have always been in the position of entertaining clients in luxurious surroundings and can live in considerably more comfort than others in the same trade, but they often have less control over who their customers are and what services they provide – ranging from long working hours spent in non-sexual entertainment to the provision of extreme sexual favours. A high-class prostitute dependent on a few wealthy

men may be less inclined to refuse certain demands than a common prostitute who provides quick and unceremonious intercourse or only manual or oral sex to ten, fifteen or twenty customers a day (Laite, 2013). Whereas upper-class prostitutes are expected to follow patriarchal rules and protocol, common prostitutes often reverse the gender roles. Ethnographic research in Bolivian brothels shows how men are humiliated by prostitutes. Men are robbed or induced to spend more than they can afford in food and drinks, turning the concept of paying for sex on its head, with clients becoming indebted to women. By making fun of men's appearance or way of talking, prostitutes make sure that clients do not view them as submissive women willing to do anything for money (Absi, 2013).

The matters of violence and health in relation to prostitution need careful re-evaluation too. There is no reliable empirical evidence to establish the nature and extent of violence within the sex trade, nor the relationship between poor health and prostitution. Until the twentieth century, rates of venereal disease were extremely difficult to determine and it is unclear whether prostitutes in the past suffered more or less from such diseases than did other sexually active persons. Nowadays, HIV/AIDS has replaced syphilis and gonorrhoea as the most dangerous sexually transmitted disease, but it remains unclear whether persons active in the sex industry contract the infection during sexual contacts or through careless intravenous drug use. According to Julia Laite (2013) the evidence for the HIV/AIDS infection rate "amongst prostitutes who do not use intravenous drugs has been called into serious question". Furthermore, her conclusion about the situation in London can be applied to other cases: "it remains difficult to separate the actual health experiences of prostitutes from their pathologisation within the British criminal justice and social work systems". Women involved in prostitution perhaps perceived serious health problems related to pregnancies, legal or illegal abortions or infertility caused by venereal diseases as more serious hazards of the trade than sexually transmitted disease alone (Frances, 2013).

Generally, it has been assumed that the dire working conditions of prostitutes in past and contemporary societies necessarily lead to poor physical and psychological health. The question here is whether prostitutes have suffered more than other workers engaged in low-paid jobs. As far as I know, no systematic comparative research has yet been conducted on the general working and health conditions within prostitution and other occupations. Moreover, some contemporary case studies point to physical and mental problems as being the result of state repression, not of the sale of sex per se. A recent report on the situation in Shanghai, published by the China Sex Worker Organization Network Forum, describes the traumatising experiences of prostitutes who were exposed to brutal beatings, rapes and torture by the police (Gronewold, 2013). Prostitutes interviewed in Istanbul

reported sexually transmitted diseases, sleeplessness, malnutrition, respiratory infections, skin diseases and mental illness as being common in the trade. However, they also recounted that many of these complaints were caused by the stress that frequently affects unregistered prostitutes (Wyers, 2013).

Virtually all studies on prostitution provide data on violence against them, yet due to the general under-reporting of domestic violence and to the lack of comparative research with other labour groups it is difficult to determine whether prostitutes were or are more often victims of abuse than are other women. Another problem is that unregistered or clandestine prostitutes have always tended to be afraid of reporting cases of violence by customers, for they risk official punishment – and deportation in the case of illegal immigrant women. Historical data too sustains that streetwalkers were not necessarily any more vulnerable to male violence than indoor prostitutes (White, 1990). Ego documents and other sources containing first-hand accounts often point to prostitutes' fear of the police, rather than of violence from customers or pimps. Indeed, the paradox with state repression of prostitution is that it has never succeeded in abolishing the trade but it has produced sufficient material evidence of the high incidence of official abuse and actual violence against prostitutes. Next to fines, imprisonment and extortion, prostitutes have been the victims of much more extreme forms of brutishness, such as executions in Istanbul, drowning of prostitutes in the Nile by French authorities, mutilations of prostitutes in seventeenth-century Paris, floggings in Sweden and Vienna, and in the London of the late 1800s prostitutes' children were taken away from them by the authorities; while in twentieth-century Sweden there was forced sterilisation. Prostitutes under totalitarian communist and fascist regimes of the past century endured virtual sexual slavery in military brothels as well as forced medical controls, which occurred everywhere official and de-facto systems of regulation existed (Frances, 2013).

Official and unofficial abuse of prostitutes led to more protesting not only by feminists but also by affected women themselves. Although formal organisations appeared only in the second half of the twentieth century, prostitutes' protests occurred as early as the late 1800s and early 1900s. In British colonial territories, Indian prostitutes submitted petitions and organised public demonstrations against the Contagious Diseases Acts; in imperial Russia, prostitutes demanded health inspections of clients; in the 1930s, Argentinean women used the printed media to call for better working conditions (Guy, 1991; Hetherington, 2013; Levine, 2003). Then, as the cultural changes brought about by the 1960s led to a further strengthening of the feminist movement and to a freer sexual morality, prostitutes from different parts of the world became more vocal and began to organise themselves. The first well-known demonstration was organised by French prostitutes,

who occupied a church in Lyon in 1975, to protest against police harassment and lack of state protection. The initiative spread to the rest of France and inspired many other groups worldwide. Thereafter the prostitutes' rights movement gathered force. Factors that have contributed to the militancy and mushrooming of sex workers' organisations include the internet and increased travel opportunities, both of which have facilitated communication among concerned women (Janssen, 2011).

Indeed, technological developments in communication and transport have had an important impact on the working spaces and conditions of prostitution. Just like the more widespread use of the original telephone in the early twentieth century, the internet and mobile telephones have enabled women to engage in full-time or casual prostitution. Those new technologies increased both the independence and invisibility of prostitutes, but procurers and pimps have not been totally absent. In early twentieth-century New York, for example, the increased use of the telephone facilitated the operations of call girls and of male "bookies" who controlled, booked and moved women and madams to different houses and flats on a weekly basis (Clement, 2006). But the secrecy of sexual encounters can also lead to unsafe situations, and as with venues for prostitution in the past, websites for sexual commerce are often constructed on an ethnic basis. It was often in colonial settings that racial segregation of red-light districts was institutionalised, but ethnic hierarchies were common in many cities around the world. The demand for certain types of women, as well as the socio-economic factors that led to the further development of the sex industry, contributed to an increase in female mobility and to a more diversified prostitution population over the last centuries.

Although foreign migration of women was not an unknown phenomenon in the early modern period, the rate of international female migration increased with the development of the transport infrastructure beginning in the late eighteenth century. In parallel with voluntary migration, a trade in African, Middle-East and Asian women for prostitution existed (Pluskota, 2013b) which led to a more marked presence of foreign women in the sex trade worldwide. But as in contemporary debates on prostitution, the number of foreign prostitutes always tended to be exaggerated and was often linked to the notions of white slavery or human trafficking. The demography and causes of prostitution, however, have always been much more complex than cases of foreign or rural women being forced into the sex trade.

5. DEMOGRAPHIC DATA AND CAUSES OF PROSTITUTION

Estimates of the number of women active in prostitution, as well as data on their backgrounds, are problematic. To nineteenth-century urban observers,

prostitution appeared to be a growing problem although that assertion cannot always be proved. In colonial cities, it is clear that the number of women involved in prostitution increased along with the development of new economic activities and the huge migration of male labour that supported them. Imbalance in the ratio of men to women created a huge demand for sexual services provided by women who had been greatly affected by the breakdown of traditional means of survival and social norms. As the new urban economies offered few labour opportunities for women and as human relations became increasingly commodified and commercialised, large numbers of women turned to the sex trade. Furthermore, the growth of the global economy propelled more women into international sex migration. Interestingly, that migration wave entailed men and women moving particularly to north Africa, the Middle and Far East, the Asia-Pacific region, South Africa, Canada, the United States and Latin America, rather than to the core capitalist countries in Europe (Frances, 2011; van Voss, 2012).

In non-colonial cities where prostitution had existed for a long time, it is much more difficult to establish the extent to which the sex trade increased as a result of industrialisation and urbanisation. As noted in previous pages, by the eighteenth and nineteenth centuries, many women were attracted to the burgeoning entertainment activities directly or indirectly linked to the sex trade but as the general urban population increased, it remains difficult to ascertain whether there were more or fewer prostitutes than in pre- or proto-industrial times. As Christine Stansell noticed for nineteenth-century New York, "there were more prostitutes simply because there were more people" (Stansell, 1986, p. 173). In other cities too, the amount of prostitution is virtually impossible to establish because of the groups that were often included in (e.g. unmarried, "unchaste" or "promiscuous" women) or excluded (e.g. casual and clandestine prostitutes) from the category of prostitution. Furthermore, the statistics-loving period that began in the nineteenth century enabled authorities and reformers to form a better picture of different societal groups but also coincided with an era during which prostitution or activities related to it became increasingly repressed and covert (Clement, 2006; Laite, 2013).

For the same reasons, the data on the nationalities of prostitutes is inconclusive. Social workers' reports, popular writings and media stories have often stressed the proportion of foreign-born women in prostitution. Sources for the early modern period indicate that most prostitutes in European cities came from surrounding villages from the same country; only capital cities like Paris and London or tourist cities like Florence or Venice attracted foreign women. As labour migration increased in the nineteenth century, the number of foreign prostitutes in world cities grew with it. Undoubtedly, hubs of international migration have always attracted foreign women and men to the sex trade but because of its furtive nature it has

never been possible to state with certainty the size of the foreign population in prostitution in relation to the local one. Recent reports on the prostitution population in Europe state that most sex workers are foreign migrants. Yet as the authors of the TAMPEP European mapping report admit, their results "should not be considered as absolute 'data' nor as entirely representative of the actual situation". As in past societies, the quantification of the sex industry and its workers remains extremely difficult as clandestine or hidden prostitution is not reported and many prostitutes successfully evade controls (TAMPEP report, 2009, pp. 8-9). Often, migrant prostitutes and women from minority groups become involved in the most visible forms of the sex trade, which might explain their overrepresentation in the statistics.

None of this means that the presence in the sex trade of foreign women or women from minority groups was ever or is today negligible. Indeed, the available sources rather confirm a strong presence of prostitutes of foreign origin or from ethnic minority groups, which has resulted in an increasingly mixed sex labour force. In colonial territories, black and indigenous women were coerced into the sex trade or entered it voluntarily, and along with European prostitutes they strengthened the ranks of the local population of prostitutes. In London, the first black women appeared in the 1700s and more came from the Continent in the nineteenth century but the sex trade sector of smaller British cities became racially mixed only much later (Henderson, 1999; Laite, 2013). During the nineteenth and early twentieth centuries, large cities in the Americas such as Buenos Aires, Havana, Mexico City, New York and San Francisco, as well as colonial cities in Africa and Asia, attracted large numbers of European women, above all French, German, Irish, Polish and Russian; and Middle-East and Asian women, particularly Chinese, Japanese, Indian and Ottoman.

Racial discrimination in the labour market also pushed many women into the sex trade. In colonial and many non-colonial cities subordinate women had access to only a limited number of badly remunerated menial factory or domestic occupations. In New York City, for example, where the proportion of black women in the population was low (two per cent in 1910; five per cent in 1930), they accounted for thirteen per cent of detentions in the state reformatory for women at Bedford Hills in 1910, and for fifty-four per cent of all arrests dealt with by the Women's Court in the second half of the 1930s. Yet while it is likely that black women resorted to prostitution more often than white ones because of the discrimination they faced in the normal labour market, their overrepresentation in the data just given probably derives from their involvement in the most visible and most vulnerable (i.e. to arrest) form of prostitution: streetwalking (Clement, 2006; Gilfoyle, 1992). Obviously, not all racially discriminated women turned to prostitution and many non-discriminated ones did, so the question of what motivates women to become involved in the sex trade remains.

Across time and space, prostitution has offered many economic and non-economic advantages. Although it is impossible in this study to quantify and compare the different payments for prostitution in different societies, it is clear that the sale of sex was and in many cases still is significantly more lucrative for women than most of the occupations available to them. Indeed, the literature on the history of prostitution contains sufficient evidence of women who appear to have become involved in prostitution to ameliorate their personal living conditions. Many others seem in the first place to have had the maintenance of their underage, ill or unemployed relatives or partners in mind as a strong motivation to turn to prostitution and to continue doing it. Everywhere, prostitution has formed part of the family economy, so clearly economic hardship is readily discernable in many cases, and in several instances the fear of starvation or sheer want appear too. As Kingsley Davis argued in his classic study on the theme, "prostitution embraces an economic relation, and is naturally connected with the entire system of economic forces" (Davis, 1937, pp. 749-751).

Yet the economic motivation does not answer the question of why so many women with similar socio-economic backgrounds are not attracted to prostitution. To quote Davis again, "prostitution, therefore, is not purely a matter of economic factors alone". Indeed, the available literature supplies evidence of numerous non-economic motivations for prostitution. A crucial one was the negative perception of conventional jobs available to women. Whereas domestic service, waitressing, peddling or factory work were considered burdensome, discriminatory, tedious or dangerous, prostitution was often linked to the idea of a more flexible and independent life. Contrary to what former authorities, doctors, social workers, anti-prostitution reformers or society at large often thought, prostitutes do not reveal any particular psychological nor physical defect which might make them different from "normal" women. As in nineteenth-century Paris, prostitutes in other cities seem to have been "very much like most other women" (Corbin, 1990, p. 53). Generally, they were no worse educated than other working-class women and although most prostitutes came from the heterogeneous labouring classes not all of them were from destitute families. Hence "if there are any discernable patterns", Eileen McLeod affirms (1982, pp. 31-34), they are "an independent stance" and "distance from family controls". Case studies of cities as varied as Lagos, London, Moscow, Nairobi, Rio de Janeiro or Shanghai provide evidence of thousands of women making use of the sex trade to evade the limitations of the patriarchal order and to enter the consumption society independently.

This does not mean that exploitative third parties and trafficking were merely the fantasy of moral crusaders against prostitution. Many women, particularly from Africa, Asia and the Middle East, were indeed sold, pawned or lured to brothels by false promises of marriage or employment. In Shang-

hai for example, in 1951, twenty per cent of some 500 former prostitutes gave "kidnapping", "sale" or "pawning" as the reason for their entry into prostitution (Hershatter, 1997). Often, women were sold to procurers by parents trying to escape starvation after the social turmoil, economic transformations and natural disasters of a colonial period. In many cases, however, women seemed to have been aware of the situation and to have accepted it as a survival strategy for themselves and their families. Moreover, the traffic of Asian women between the 1850s and the 1950s seems to have been only supplementary to the much larger voluntary migration of seasoned prostitutes (van Voss, 2012).

Although an over-arching white slave trade conspiracy has never been satisfactorily proven, some evidence exists of forceful or deceptive recruitment into prostitution in western cities. However, cases of coercion throughout the nineteenth and twentieth centuries seem to have been both infrequent and unconnected to any large networks of intermediaries of forced prostitution. In 1910, the grand jury charged with the investigation of white slavery in New York concluded that no evidence could be found of organised traffic in women. However, the investigators documented various cases proving that some females had been tricked or forced into prostitution, while some others were coercively kept in the trade. Ruth Rosen (1982) estimates that during the first decades of the twentieth century, fewer than ten per cent of the whole prostitute population of the United States experienced situations that fell under the white slavery label. Authors of the studies collected for the project "Selling Sex in the City" also confirm that cases of women being forced or tricked into prostitution existed but were rare.

Most often third parties did not represent the main cause of prostitution but they did play an important part in the recruitment of women and organisation of the trade. Whereas high levels of procuring were emphasised in the publications of national and international reformers, the available scientific literature indicates that procurers were not ubiquitous until the late nineteenth century. The more risky and secretive commercial sex became, the more important role procurers and other intermediaries played in the management of prostitution. Such other intermediaries might include madams, brothel keepers, escort agents, owners of theatres and massage parlours, proprietors of barber's shops or apartments, female relatives, friends and acquaintances active in the sex trade. As was the case with madams, women often sought procurers in order to protect themselves from violent clients, police or undercover investigators, and if they were arrested to provide money for bail and legal assistance. For the global migration of women from the nineteenth century onward, a whole range of intermediaries were involved to arrange the movement of females to overseas brothels or other forms of prostitution (Clement, 2006; Rodríguez García, 2012; van Voss, 2012).

The tripartite organisation of prostitution seems to be typical when or wherever women have not yet acquired sufficient political and socio-economic power to work as independent prostitutes. Migratory impediments and labour restrictions, as well as stigma, marginalisation and violence, encourage the involvement of third parties. The available literature and source material provide evidence of procurers or pimps moving from city to city to secure recruits but also of women actively looking for intermediaries to help them with travel tickets, money, documents, contacts with clients, fictitious marriages and so on, a situation which reverses the traditional view of recruiting for prostitution. In colonial Lagos, for instance, young men were recruited by women to act as intermediaries and to facilitate access to clients (Umoren Ekpootu, 2013). French police and emigration officials interviewed by members of the travel committee conducting an international enquiry on trafficking for the League of Nations in the mid-1920s, stated that recruitment often went in two directions. The recruitment of girls for prostitution is well known to the police of all countries and to the public in general, they said. "What is not so well known is the influence which professional prostitutes have in the recruitment of souteneurs."[7] It is that kind of female agency that has often been hidden in many histories of prostitution.

6. CONCLUSION

The study of prostitution from a long historical and broad geographical perspective gives us the opportunity to observe the continuities and discontinuities in the way the trade has been perceived, policed and practised. Among the commonalities, we can observe a quasi-universal view of prostitution as a substandard activity, a continuous effort of municipal and later also state authorities to control commercial sex *and* a constant supply of women. In spite of the stigma, many thousands of women worldwide have viewed prostitution as a logical – even attractive – option when compared to the alternatives available to them or when weighed against the fate that awaited the women's families if they did not support them financially. Scientific studies that include the views of the persons concerned provide sufficient evidence that a majority of women enter prostitution voluntarily and experience their activities as less traumatic than is generally assumed. Throughout time and space, prostitutes seem to have been more afraid of official repression than of violent clients or pimps. It must be recognized that a lot of prostitution in different times and societies was and remains hidden, but we can safely assume that independent sex work is easier to conceal than forced activities involving one or more intermediaries.

7 French report, December 1924-January 1925, pp. 10-11. League of Nations archives, Geneva, box S174.

When compared to other kinds of work, prostitution and societal reactions to it seem to have changed very little over time (Clement, 2006; Gilfoyle, 1999). Yet the political, socio-economic and cultural transformations of the modern period, especially after 1800, have had important repercussions for commercial sex. With the increased mobility of everyone, greater concentrations of men in urban centres or military towns, and gender discrimination in the labour market, the sex trade began to assume new forms. Furthermore, by the nineteenth century, sexuality had become not only increasingly commodified but also "a constant preoccupation" of bourgeois society (Foucault, 1976). Perceived as threats to national security, prostitution, venereal disease and sex-work migration required tighter control. Harsh measures to regulate prostitution in some cities and to repress it in others stimulated women to hide their activities, a situation that strengthened the involvement of often abusive third parties. Simultaneously, elite and middle-class women became increasingly involved in debates on prostitution and trafficking. New too was the increasing audibility of the voices of prostitutes themselves: rather shy during the late 1800s and early 1900s, they became bolder and much more assertive from the 1970s onwards.

The groundswell of activity by female activists and workers and their redefinition of prostitution as sex work were perhaps the result of an altered perception of labour among prostitutes. The limited and unattractive options for women in the labour market until more or less the Second World War led to a negative perception of conventional jobs. On the one hand, domestic work or jobs in industry and services were viewed as dull, burdensome or dangerous. On the other hand, prostitution does not seem to have been defined in terms of labour; prostitutes often depicted it as "easy life". Meanwhile, improvements in working conditions during the post-war period probably led to a more positive view of work in general, and to an easier identification of prostitutes as workers. That, however, is a hypothesis that requires further research into the perception of work and the self-perception of prostitutes in past and contemporary societies. The fact is that a growing number of women worldwide demand the right both to use their bodies to make a living and to the normal protections of the state. Whether society at large is ready to accept prostitutes and other sex workers as legitimate members of the labour force remains to be seen.

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Chapter 3.
Europe's legal red-light districts: Comparing different models and distilling best practices

RONALD WEITZER

1. INTRODUCTION

Research on erotic red-light districts is deficient in two important respects. First, most contemporary studies of publicly visible sexual commerce focus on *street prostitution zones*. Much less attention has been given to red-light districts (RLDs) with indoor prostitution businesses. This is surprising, given the visibility of such zones in cities such as Amsterdam, Bangkok, Frankfurt, Hamburg, Seoul, Singapore, and Tokyo.

Second, vice districts are often associated with *decay, crime, and disorder*. The Chicago School in the USA conducted studies beginning in the 1920s that accounted for the spatial distribution of street crime and vice by the presence of a set of conditions (transience, poverty, ethnic heterogeneity, family instability, physical dilapidation) and the absence of social control over deviant individuals. In his study of Chicago, Walter Reckless concluded that, "vice resorts concentrated in those tracts of the city which showed the highest rate of community disorganization," measured by rates of crime, poverty, disease, and divorce (Reckless, 1933, p. 252). Vice such as prostitution, gambling, and the drug trade "must hide in the disorganized neighborhoods in order to thrive" and "decaying neighborhoods have very little resistance to the invasions of vice" (Reckless, 1926, 171, p. 165). In places of such "vast social disorganization", "personal taboos disintegrate and appetites become released from their sanctioned moorings" (Reckless, 1926, p. 168). Note also that brothels themselves were historically labeled "disorderly houses" or "bawdy houses" in American, British, and Canadian laws – associating them with a public nuisance.

These traditional depictions of vice districts continue to be made today, and are the basis for municipal zoning laws that restrict adult businesses. Policymakers assume that such enterprises generate negative environmental effects (Lasker, 2002; Linz, 2004; Papayanis, 2000; Paul, Linz, & Shafer, 2001; Prior & Crofts, 2012; Ryder, 2004; Weinstein & McCleary, 2011). Prior and Crofts (2012, p. 131) summarize the effects: "blight and urban deterioration (e.g., decline in property values); deleterious effects on environmental and personal health (e.g., noise); antisocial behavior and crime (e.g., drug dealing, public urination); and the erosion of community standards." There is also a symbolic dimension – the idea that such businesses disturb local moral sensibilities either by their very presence or by offensive signage.

Despite studies finding no negative environmental effects in particular cities (Cramer, 2013; Linz, 2004; Paul et al., 2001; Prior & Crofts, 2012), Weinstein and McCleary (2011, p. 581) claim that properly conducted studies "will *always* demonstrate an association between adult entertainment businesses and negative secondary effects." It is *assumed* that RLDs have a "low police presence" and "attract predators" (Weinstein & McCleary 2011, p. 586).

But are negative environmental effects universal? Are there red-light zones that are *not* dilapidated, socially disorganized, and criminogenic? I argue that, in Europe, the social ecology of such areas differs significantly from place to place, and these differences are important for both the participants in sexual commerce and for stakeholders such as residents, merchants, and state authorities. The chapter documents differences between three RLDs and explains the differences by identifying the social and political forces that have shaped them.

2. RED-LIGHT DISTRICTS

A *red-light district* is defined here as an area containing a *cluster* of *visible* sexually-oriented *businesses*; it does not include street prostitution zones. Erotic businesses include strip clubs, porn shops, erotic bars, peep shows, massage parlors, and brothels.

Red-light districts vary in composition: Some are *single-use*: largely confined to erotic service. Such monolithic zones are usually remote from the city's central core, cater to local clients, and have "few or no spatial links with a wider entertainment industry" (Ashworth, White, & Winchester, 1988, p. 208; Hubbard & Whowell, 2008). Their composition differs from *multi-use* vice zones in cities such as Amsterdam, Bangkok, Frankfurt, Hamburg, and Tokyo – where prostitution is mixed in with other businesses (bars, restaurants, strip clubs, adult video stores, gambling arcades). Multi-use RLDs have a potentially normalizing effect on commercial sex businesses because of the latter's proximity to conventional businesses. A single-use zone can have advantages as well. Given their limited attractions and fewer visitors, they are potentially more manageable by the authorities, which can enhance public order and personal safety within the zone.

Each of the three RLDs examined here features *window prostitution*: The sellers remain indoors yet are visible from outside though their windows or glass doors; they engage in "performances" to attract the attention and solicit business from male visitors. Window workers are not employees; they simply rent a room from a building owner. The owner may exercise some control (e.g., screening out drug-dependent or underage sellers), but in general the window women operate independently of the owners.

3. STUDY SITES AND METHODS

I conducted systematic observations in RLDs in Amsterdam, Antwerp, and Brussels: photographing and mapping the configuration of businesses for an objective record of physical arrangements; recording the conduct of people on the street; and noting observed street interactions between the sex workers and visitors (similar methods to Aalbers, 2005).

Physical disorder has been measured by the presence of litter, garbage, syringes, cigarettes, condoms, empty alcohol bottles, graffiti, and abandoned cars (Sampson & Raudenbush, 1999). I included buildings that are vacant or in disrepair. *Social disorder* has been measured by persons loitering, consuming alcohol or drugs, being visibly intoxicated, selling drugs, arguing or fighting, and by the presence of identifiable gang members (Sampson & Raudenbush, 1999). I included street harassment, begging, auto congestion (noise and air pollution), and the lack of a visible police presence.

Observations were conducted during the day and night, on weekdays and weekends, and during different months from 1997-2011 in Amsterdam and from 2008-2014 in Antwerp and Brussels. Fieldnotes were recorded in a notebook and consisted of diagrams and descriptions of physical arrangements and detailed chronological observations of individual behavior and social interaction. Both sites are open access: there are no entry restrictions. Observational data were supplemented with information from other sources, including visitors' online discussion boards.[1]

Data analysis involved (1) identification of similarities and differences between the study sites in their physical arrangements, social organization, and behavior patterns and (2) contextualization of the study-site data within the larger political economy of each city. Most of the chapter focuses on Antwerp and Brussels, with Amsterdam serving as a contrasting case for the other two settings. One of the sites fits the classic vice model described above; one contrasts with it; and the other falls between the two extremes. The differences are explained by the convergence of two factors: (1) the amount and nature of local government engagement in the RLD and (2) the socioeconomic status and political influence of the population residing within or adjacent to each district.

1 I reviewed postings for the two cities on two client-oriented websites. I selected all entries, posted during the past five years, that described visitors' observations of and experiences in these RLDs; this offered independent data to supplement and cross-check my field observations.

4. DIFFERENCES BETWEEN THREE EUROPEAN CITIES

4.1. Amsterdam

A dozen Dutch cities have window prostitution districts, but Amsterdam's is the largest and most famous. It differs from other Dutch RLDs because of its *carnival atmosphere* – similar in some ways to Hamburg's St. Pauli district. Situated in the heart of the city and filled with tourists, it is very much a mixed-use site with bars, marijuana cafes, restaurants, souvenir shops, clothing stores, and snack shops nestled among window prostitution rooms, live sex shows, massage parlors, and shops selling adult videos and sex toys. Red lights glow from the small canal bridges, and neon marquees advertise various types of erotic pleasures. The RLD is quiet during the day but at night has a boisterous party or circus atmosphere.

This RLD is thoroughly integrated into the local economy and culture, quite different from erogenous zones that are more hidden and peripheral. The very existence of a historic RLD in the heart of the city, surrounded by other amenities and tourist attractions, contributes to its *semi-normalization*. The 17th century gable houses, adorned with fancy red lanterns and window decorations, and the red-lit canal bridges cast an aesthetic "halo effect" on this type of sexual commerce, muting some of the more seedy surroundings and rowdy behavior of visitors. That this RLD is itself a major tourist attraction is also important. Numerous tour groups walk through the area day and night.

Apart from some litter and graffiti, this RLD ranks low on the physical disorder scale. But social disorder is more evident. The high number of visitors and the fact that a significant number of them are intoxicated results in some disorderly behavior on the street and occasional altercations between visitors and sex workers. The public visibility of these problems makes Amsterdam's RLD more susceptible to adverse media reports and politicization than many other RLDs. And politicized it has become over the past decade. The mayor and some other politicians have made serious charges: claiming that many of the women working in the RLD have been trafficked, that pimps are ubiquitous, that the zone is physically deteriorating, that it is "out of control", and that the visible vice gives Amsterdam a "bad image". The charges are not restricted to prostitution, but also include alcohol and marijuana bars, porn shops, peep shows, and gambling arcades – all of which are associated with crime according to the city council (Municipal Council, 2008). Assessments of these claims have concluded that they are gross exaggerations (Aalbers & Deinema, 2012; Weitzer, 2012), but they have had enough traction to result in closing one-third of the window rooms, a ban on business between 4am and 8am, and other changes designed to "cleanse" this RLD, gentrify parts of it, and assert greater control over those who work and visit it. According to a report for the city government, the main goal is to

"reduce the surplus of businesses subject to criminal influences or of little economic value. This will bring to a halt the breeding ground for further neglect and decay of the area"; cleansing the city center will revive its "metropolitan allure" with "attractive amenities" and "shops for all tastes" (Municipal Council, 2008, p. 15).

For the most part, this has been a *top-down process* – orchestrated by some city officials – rather than something driven by local residents. In fact, the residents have mobilized to *prevent* the proposed changes from taking effect (Aalbers & Deinema, 2012). In February 2008, for example, upper-middle-class residents and business owners organized protest demonstrations and posted fliers throughout the area: "Hands Off the RLD. Enough is Enough!!!" But they have had only minimal success in resisting the clean-up efforts.[2] Their powerlessness is partly due to parallel developments at the national level: over the past four years, the Dutch parliament has debated several measures that seek to assert greater control over prostitution nationwide (Outshoorn, 2012; Weitzer, 2012).[3] The national-level reforms are largely in sync with Amsterdam's local changes, which makes it especially difficult for local opponents to challenge them. And the prostitution reforms are part of a larger joint effort by the city and national government to combat organized crime in Amsterdam (the "Emergo project", begun in 2007).

Also missing in this policy struggle are the preferences of sex workers themselves. The authorities almost never consult sex workers or organizations representing them – in any nation – with the result that public policies on prostitution usually fail to take their interests into account. The Dutch organization Rode Draad (Red Thread) – in addition to the brothel owners' and window owners' associations – vigorously opposed all recent government-imposed reforms, without success (Weitzer, 2012). The views of sex workers themselves are reflected in a survey of 94 window prostitutes working in this RLD in 2010. The survey found that 80% had heard about the city council's plans for the area, but only 2% supported these plans. Fully 88% thought the *current* policies toward prostitution were too repres-

2 This does not mean that residents were in complete consensus regarding the RLD; some residents had complained about public disorder and supported efforts to clean up the area. Approximately 3,000 residents live in the RLD.

3 The bill – first proposed in 2007 and, to date, passed by only one of the two Chambers in parliament – raises the minimum age for sex sellers from 18 to 21, creates a system whereby all prostitutes must register with the authorities, and provides a fine for clients who buy sex from unregistered prostitutes. In addition, some cities have recently begun to conduct interviews with individuals who wish to work in brothels or windows, with the purpose of screening out persons who may have been trafficked. In some cities the interviews are conducted by the police and elsewhere by brothel and window owners.

sive; 95% believed that the city's *plans* for the red-light district are "not good for prostitutes"; and 93% disagreed with the *idea* that "politicians know the issues of prostitutes" (Amsterdam Sociaal, 2010).[4] Regarding the closing of a third of the window-prostitution units, an official at the Ministry of Justice criticized the logic of this:

> *Why close so many windows? Windows give people the opportunity to be independent workers. It is not an internally consistent policy. Ridding the sector [RLD] of problems does not mean closing windows, and this may be counterproductive – forcing some window workers into the illegal sector*.[5]

Leading city politicians, however, believe that closing window buildings will give the authorities more control over the RLD.

In sum, neither the upper-middle-class status of residents nor the business background of local merchants who reject the "clean-up" efforts has translated into political influence over Amsterdam city officials with respect to this RLD, whose reforms are consistent with national-level developments. Similarly powerless is the prostitution sector: Red Thread and the brothel and window owners' associations. The remaking of this RLD has been entirely top-down, imposed by local government elites.[6]

Amsterdam is unique. Most European red-light zones are closer to the Brussels or Antwerp models.

4.2. Brussels

Third-party involvement in prostitution (e.g., pimping, operating a brothel or escort agency) is illegal in Belgium but tolerated and regulated in some cities.

Brussels' RLD is located next to the city's north train station, on Aarschotstraat and a few nearby streets.[7] Aarschot has 58 window buildings

4 The survey was not based on a random sample but did include a fairly significant proportion of window workers in this RLD. Questionnaires were distributed by female interviewers who visited all window occupants present during six days in February 2010. Interviewers conducted interviews on site or left the questionnaire with the woman and retrieved it at a later time.

5 Author's interview with Ministry of Justice official, June 26, 2008.

6 The city council in Alkmaar (the Netherlands) refused in 2011 to renew a brothel permit to an owner of 92 of the city's window rooms because the city suspected he had bought the buildings with money from criminal activities. Today, about half of Alkmaar's previous windows remain closed, with about 60 remaining open.

7 There is a small RLD elsewhere in Brussels, consisting of a row of about 8 strip clubs.

with 230-350 prostitutes depending on the time of year (Seinpost, 2008, p. 30). This street also has some residences, a few bars, and a peep show/porn shop, but the main attraction is window prostitution.

This RLD is located in a poor, working-class area of the city, a neighborhood with Turkish and Moroccan businesses and residences. Residents and merchants have clashed with the sex sector over three issues: (1) nuisances: traffic congestion, parking problems, noise, car break-ins, visitors' behavior (e.g., offensive language, fights), (2) building owners who do not repair their buildings, and (3) the erotic image of the zone, which clashes with local Muslim sensibilities (Seinpost, 2008, pp. 35-38).

The neighborhood is in physical decay. Buildings are in disrepair and graffiti marks most of them. Aarshot street has a single traffic lane, producing car noise and exhaust fumes. Individuals who post comments on client-based online forums describe this RLD as "seedy," "rough," "intimidating," "shabby," and somewhat unsafe (noting the risk of being robbed or pickpocketed), while other posters mention seeing drunks, drug users, beggars, or gang members.

I observed a few mild altercations between visitors and sex workers, but none among the visitors themselves. Some individuals were observed drinking alcohol on the street and a few were visibly intoxicated on alcohol or drugs. Almost all of the pedestrians and vehicle occupants passing through the area are men, and their behavior naturally varies between mundane, pleasant, amusing, obnoxious, and pesky. This RLD attracts some disorderly individuals, but the majority simply cruise the zone, looking at the women and perhaps briefly interacting with some of them. Most of the men walking through the area are young and Middle-Eastern, and most are in groups of two to four rather than single individuals. A significant number of them were observed entering window buildings as clients.

Local police play a minor role in this RLD. Their main activity is responding to trouble on the streets, less with regulating third parties or protecting the purveyors (Seinpost, 2008). Federal police, however, conduct occasional site visits to the window rooms in order to inquire about the prostitutes' circumstances. Yet in general, police involvement in this RLD is fairly limited. (Seinpost, 2008; Sivri, 2008). Some of the prostitutes working in the area complain about a "lack of police surveillance in the street, especially on weekends" (Seinpost, 2008, p. 32).

4.2.1. Workers and managers

In 2008, 70% of the sex workers on Aarschot were Bulgarian, with the remainder Romanian (15%) and Albanian (10%) (Seinpost, 2008, pp. 19, 30). The number of Romanians has increased recently (Novinite, 2010). Sex workers live outside the RLD.

Window prostitution in Brussels is largely organized by networks of procurers, pimps, and madams. Most of the window women have pimps. The Bulgarian pimps remain in Bulgaria, where they launder the money earned in Belgium through their ownership of residences, hotels, and other properties (Sivri, 2008).[8] Unlike the Albanian pimps who preceded them and were known for their exploitative and violent tactics, Bulgarian pimps and traffickers are less coercive toward the women they recruit (Petrunov, 2010). They enter into contracts with the women and allow them some freedom when they are not working (Petrunov, 2010; Sivri, 2008). Prostitutes keep half of their earnings, and earn more than what they could earn in Bulgaria (Sivri, 2008), but many of them are required to work 12-hour shifts per day.

A unique feature of this RLD is that *a madam* is present in the window buildings. In the past the madams were Belgian but today mostly Bulgarian (Seinpost, 2008, p. 32). The madams work in close partnership with each other (e.g., placing sex workers in specific rooms and periodically relocating them).[9] They sit in the room out of public view, do not solicit business, and leave negotiations to the sex worker. Madams serve the following functions:

- renting the room from a building owner;
- taking the client's payment and paying the worker a portion of the fee;
- informing the worker when her time is finished with a client;
- deterring altercations between clients and workers, and if a conflict occurs, she can intervene to protect the worker;
- supervising and controlling sex workers, allowing pimps to remain offsite and relatively secure (most pimps conduct their operations from the safety of their home country).

In all of these roles madams are clearly managing the prostitutes, therefore violating the national law against third-party involvement in prostitution.

Brussels is distinctive in having couches instead of beds in many of the window rooms. Municipal regulations outlaw beds in these rooms, because that would imply that sex was taking place, so proprietors have installed couches to give the appearance of a lounge (Seinpost, 2008, p. 33). For the same reason, showers are lacking in some of these places, rendering them unhygienic. These arrangements are designed to rebrand the window brothels as nonsexual settings (recall that brothels are technically illegal in Belgium). The rules are violated in some buildings (where there is a bed or floor mat-

8 Recently, a few pimps have been convicted of trafficking.

9 Email communication from Georgi Petronov (June 10, 2012), based on his interviews with madams and analysis of court cases against pimps.

tress) and the authorities generally ignore these departures from the norms (Seinpost, 2008, p. 33).

4.2.2. Assessment

Brussels RLD fits the classic vice-district model:

- located alongside a major train station (transience) in one of the poorest areas of the city;
- auto congestion, and the corollary noise and air pollution, is ubiquitous (a type of social disorder);
- dilapidation is pervasive: buildings in disrepair, abundant graffiti, and litter (physical disorder);
- madams, who are "assistant pimps" fronting for remote pimps, exercise tight control over the sex workers, dictating working conditions and deducting earnings (which may be exploitative), and
- police presence on the street is intermittent and their information-gathering visits with window workers far from optimal (a social control deficit).

Brussels therefore conforms to the conventional image of red-light areas – characterized by physical decay, social disorganization, and involvement of parasitical actors (madams and pimps).

4.3. Antwerp

In the 1990s, street and indoor prostitution were abundant in Antwerp. Window prostitution existed on 3 streets behind the central train station (60 windows) and on 17 streets in the *Schipperskwartier* (Skippers Quarter, 280 windows). The number of sellers increased in the 1990s due to immigration from the former Soviet empire. Meanwhile, organized crime groups infiltrated the prostitution sector. Occasional outbreaks of violence between competing crime groups drove "normal" businesses and some residents out of the affected areas. In locales with concentrated prostitution, Antwerp mirrored Brussels with dilapidated buildings, social disorder, and traffic congestion.[10]

4.3.1. Reforms

In the 1990s, city residents began to demand that the authorities deal with the increasing public disorder, just as the influential prostitutes' rights group, Payoke, was pressing for greater protections for prostitutes and a

10 Approximately 4,000 cars drove through the Skippers Quarter RLD daily during the 1990s (Willems 2009, p. 4).

crackdown on criminal involvement in the trade.[11] The city council responded with a reform plan in 1999:

- restrict visible prostitution to a single red-light zone;
- reduce public nuisances;
- eliminate involvement of organized crime;
- improve working conditions for prostitutes (Willems, 2009).

It is important to emphasize that these reforms were the result of a *convergence of interests between three key forces*: city residents, a sex workers' organization, and a new political regime in the city.

In 2000, the city began squeezing prostitution out of certain areas and confining it to a three-block "tolerance zone" of window rooms in the Skippers Quarter. Police closed all the window units (about 150) outside the tolerance zone and attempted to eliminate street prostitution, which was considered a public nuisance (Loopmans & van den Broeck, 2011). The cost of law enforcement and renewal of the Skippers Quarter required resources, and money from the national government (€10.5 million from 2000-2007) was spent in revitalizing the district. Few cities have been willing to embark on such an expensive, multi-faceted scheme when dealing with their commercial sex sector.

Today, building owners who rent windows to sex workers are required to apply for a permit, and there is a specific building code for window prostitution buildings (rules for sanitation, comfort, exterior conditions), and compliance is monitored by city officials. Partly because of this mandatory building renovation, "the working conditions for prostitutes thereby improved drastically" (Willems, 2009, p. 5). City officials meet with all window owners (about 40) twice a year, informing them of any new policies and asking them for input on improving the RLD further. Occasionally, a building owner is fined for failure to comply with regulations – e.g., a defective shower, faulty electricity, or unhygienic facilities.

Owners are prohibited from renting premises to minors and undocumented immigrants, neither of which operate in the RLD today.[12] After 2000, police launched investigations of persons suspected of organized crime – focusing on their sources of income, tax payments, and possible involvement in trafficking – and successfully prosecuted them in court. Pimps still exist,[13] but in

11 After its creation in 1988, Payoke "rapidly gained political strength and leverage, and was integrated into local policy networks" (Loopmans & van den Broeck, 2011, p. 554). One of the founders of Payoke was elected to the city council in 1988 and later played a key role in reshaping prostitution policy.

12 Author's interview with prostitution official, May 16, 2011.

13 Author's interview with prostitution official, June 24, 2008.

general, trafficking and exploitation have been greatly reduced within this RLD (Loopmans & van den Broeck, 2011, p. 558).

In 2002, the city installed a health clinic (Ghapro) in the heart of the RLD, which offers prostitutes free, anonymous psychological counseling, tests and treatment for STDs, and assistance for those who wish to leave the trade. Ghapro's mission is to promote "safer sex work and empowered sex workers,"[14] and it sees a large number of sex workers every year: 3,396 medical consultations were provided to 1,159 sex workers in 2011 (Ghapro 2011, p. 3). Ghapro also sends outreach staff to visit prostitutes at their workplaces.

According to city officials, Antwerp has largely succeeded in achieving the goals of its 1999 plan, including removing most organized crime involvement and redistributing window prostitution into a single erotic zone.[15] Antwerp's mayor described the changes:

> *We have concentrated prostitution into three streets and that means we can put in place tough criteria. Most of these people are working in extremely good conditions. It was not like this five years ago. Now we have been able to create a situation where women are more independent [and] they are safe.* (Patrick Janssens, quoted in Castle, 2006)

In 2006, a Belgian association awarded Antwerp a prize for its innovative reconstruction of its prostitution sector.[16] According to an academic study, "By 2007, the Schipperskwartier had completely changed character. From a highly mixed, unruly, and dilapidated area, it was turned into a totally segregated, highly regulated, and fashionably renovated sex work district" (Loopmans & van den Broeck, 2011, p. 558).

4.3.2. Antwerp's red-light district today

Antwerp's RLD contains a tattoo parlor, nightclub, restaurant, and two pornography shop/peep shows – but no other businesses. Barriers prevent cars from entering the zone. The lack of vehicle traffic, scarcity of activities apart from prostitution, and the fact that this RLD is a 20-minute walk from the tourist-oriented city center contribute to its tranquil atmosphere.

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14 The Antwerp Health House, www.ghapro.be.

15 Author's interview with prostitution official, May 16, 2011. Most street prostitutes relocated to other cities.

16 The website for a documentary, *Skippers Quarter*, presents it as "Antwerp's Prize-Winning Approach to Urban Renewal in its Red-Light District." The film was commissioned by the Flemish Association for Space and Planning in 2007. http://www.terenjavandijk.net/en/project/schipperskwartier/2/.

In 283 window units, about 400 women work day or night shifts (Seinpost, 2008, p. 80). Almost all of the women are eastern European. They are not allowed to reside within the RLD. The going rate for renting a window room is €800 per week. Split between two women working different shifts, this amounts to €400 per week ($520).[17] Madams are absent, which means that workers are not subject to direct control over their daily activities.

From a small police station in the center of the RLD, police patrol the area on foot looking for problems and monitoring anyone they think might be a pimp. Foot patrol officers visit each window worker to confirm that they are adults and citizens or possess documents allowing them to work in Belgium. The orientation is proactive community policing rather than the more reactive Brussels policing style. The police report that they have a generally positive relationship with the window workers (Bilefsky, 2005), and crimes against the women have decreased substantially since the RLD was reinvented in 1999-2001 (Bilefsky, 2005). Nearby residents' "complaints related to prostitution have stopped almost completely," according to an official report (Willems, 2009, p. 5).

Like Brussels, almost everyone visiting the zone is male. I observed no minors or single women, no groups of tourists, and only a few couples walking through the area. The zone is surrounded by residential areas that have been gentrified, and some local residents pass through the zone when walking to another place in the area.

In online discussion boards, posters describe Antwerp's zone positively: "very laid back and well policed"; "modern and clean"; "probably the best RLD that I've visited"; "a gem, fantastic place, clean, safe"; and "no gangs hanging around or any noticeable pimps." One poster rated Antwerp superior to any other RLD he had visited:

> *This place is as classy as a window RLD can be. Very clean. Windows are stylish! Everything is taken good care of, so that it looks new. [Rooms are] very spacey, with all necessary things for a girl to keep herself and the customer tidy. High ceiling, big bed. These are the best working conditions for a girl, and also the best visiting places for the customers.*

These assessments are consistent with my field observations. Visitors sometimes engage in disorderly behavior, but most of the time they are quiet and well-behaved.

The general lack of physical and social disorder helps to explain why Antwerp's RLD is relatively uncontroversial among the city's residents and elites. Nearby residents do not complain about it; clients are attracted to it

17 The cost to customers for 15-20 minutes of sexual contact is similar in Antwerp and Brussels: €40-50.

because it is clean and safe; youths and the general public are largely shielded by virtue of its isolated location; working conditions for the prostitutes have improved significantly over the past decade; and the authorities actively monitor visitors, workers, building owners, and physical conditions in the zone.

4.3.3. Assessment

Antwerp's RLD is the antithesis of Brussels' RLD:

- it is situated in a quiet area surrounded by a middle-class residential neighborhood and upscale restaurants and shops;
- it is accessible only to pedestrians;
- its buildings are well-kept, with owners subject to penalties for code violations;
- managers (e.g., madams) are absent, and overall exploitation is limited due to local government oversight of the sex sector, thus creating the conditions for some measure of sex worker control over their working conditions;
- police maintain a visible presence on the street and with an on-site police station, enhancing order-maintenance and public safety; RDSs do not necessarily suffer from a "low police presence," as claimed by Weinstein and McCleary (2011, p. 586); and
- police routinely visit window workers to monitor their situation and to build trust with them, which may increase workers' willingness to contact the authorities if a problem arises; this proactive "community policing" stands in stark contrast to Brussels' intermittent, reactive approach.

5. CONCLUSION

Table 1 summarizes key characteristics and influences on the three RLDs. Amsterdam's is located in the heart of the city – with a huge number of visitors, multiple entertainment opportunities, and a party atmosphere. It has more social disorder than Antwerp but less physical disorder than Brussels. Because of its size and density, visitor behavior in Amsterdam's RLD is much harder for the authorities to control than in the two other sites – and this social control deficit has been exploited by Amsterdam's conservative political forces, who are currently in the process of closing some window buildings as well as some bars, marijuana cafes, porn shops, and gambling arcades.

Table 1: Variables relevant to red-light districts

	Amsterdam	**Brussels**	**Antwerp**
physical disorder	Low	high	very low
social disorder	moderate / high	high	very low
police involvement	Moderate	low	high
local residents' class position	upper middle class	working class	middle class
local residents' main ethnic background	white/Dutch	Turkish/Moroccan	white/Belgian
local residents' political influence	Low	very low	high
local government intervention	High	low	high

It would be hard for anyone to claim that either Antwerp or Brussels is "out of control" Amsterdam-style. As small, single-use RLDs, Antwerp and Brussels have certain advantages over large, multi-use RLD's in Amsterdam, Hamburg, or Bangkok. At the same time, the two Belgian sites differ substantially in physical appearance, social organization, and in modal behavior patterns. Antwerp's has been thoroughly modernized and cleansed of its former slum attributes. As a reinvented, planned erogenous zone, it received substantial government funding for its renovation. Brussels, by contrast, is entirely unreconstructed and mirrors Antwerp's problem-plagued zone prior to its renewal at the beginning of the 2000s.

I argue that the differences between Antwerp and Brussels can be explained largely by the distinctive policies and practices of local government – reform-oriented intervention and ongoing oversight in Antwerp and laissez-faire tolerance and disregard in Brussels. But why do these authorities have such different orientations? Brussels RLD is nestled in one of the city's poorest neighborhoods, populated largely by middle-eastern immigrants. Their ethnic background and socioeconomic marginalization translates into a lack of political influence. The community and its RLD can be ignored by the local power elite. Antwerp's RLD, by contrast, is surrounded by gentrified, predominantly white, middle-class neighborhoods and some trendy businesses. In the 1990s, residents successfully pressured city officials to tackle problems they associated with laissez-faire prostitution. Thus, what Reckless (1926) considered *intrinsic* – residents' powerlessness – is evident in Brussels but not in Antwerp.[18]

18 "In the slums the vice emporia … experience practically no organized resistance from [residents of] the decaying neighborhood adjacent" and "decaying neighborhoods have very little resistance to the invasions of vice" (Reckless, 1926, pp. 165, 168).

The two contexts thus differ strikingly in local residents' ethnic and class status and their capacity to influence local authorities. This is not the entire explanation, however: government officials play an *independent role* as well, as they do in Amsterdam. The advent of a reform-oriented regime in Antwerp in the late 1990s contrasts with Brussels, where the authorities prefer to take a hands-off approach to the RLD. The relative lack of public pressure on Brussels' officials and the marginalized status of residents living near the RLD allows the city to continue its policy of minimal engagement and tolerance of the status quo. As other research has demonstrated, local government and law enforcement authorities play a crucial role in shaping the spatial distribution and social ecology of vice districts, but their policies may also be influenced by the presence or absence of influential political and economic interests and/or collective mobilization by local residents (e.g., Aalbers & Deinema, 2012; Hubbard, 1999; Weitzer, 2012). Pressures from civil society do *not necessarily* influence political officials, however: In Amsterdam decisions have been imposed top-down by city government despite opposition from local residents and businesses.

The findings are pertinent to the larger debate on legalization (Weitzer, 2012). Recall that Belgium's RLDs are only *de facto legal*: third-party involvement is unlawful but tolerated. In the absence of formal, nationwide legal regulation, each municipality intervenes in prostitution as it sees fit. This means that Brussels' policymakers could follow Antwerp's lead and reform the city's red-light district by (1) eliminating graffiti, litter, and abandoned buildings; (2) banning car traffic from Aarschotstraat; (3) forcing building owners to improve the conditions of their buildings, including amenities and hygiene; (4) capping the number of working hours at 8 per day; (5) increasing the number of site visits by government officials, to monitor prostitutes' working conditions and confirm their voluntary involvement; (6) banning managers (e.g., madams) from the site; and (7) conducting more police foot patrols, with potential benefits for social control in the zone.

The classic Chicago School paradigm assumed that vice was inherently associated with street crime, anomie, and community disintegration. Today, policymakers throughout the world continue to believe that erotic businesses necessarily have adverse environmental effects – reflected in Weinstein and McCleary's (2011, p. 581) claim that there is "always . . . an association between adult entertainment businesses and negative secondary effects." This is true for Brussels and to some extent in Amsterdam, but in Antwerp commercial sex has been detached from the conditions that characterize socially disorganized settings. In Antwerp's case, a multifaceted, resourceful approach by government officials transformed the city's vice settings into today's modernized, award-winning zone. And Antwerp is not unique: Some

other European RLDs resemble – including the Dutch cities of Alkmaar, Eindhoven, Groningen, Haarlem, The Hague, and Utrecht.

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Chapter 4.
Prostitution and its relations with informal economies

DOMINIQUE BOELS

1. INTRODUCTION

According to one of the world's most well-known clichés, prostitution is the oldest profession in the world.[1] However, only with the introduction of the term sex work in the late seventies (Van Loon, 2008) and the formation of the sex worker's position (defending sex workers' rights) (Spanger, 2011) was prostitution perceived by some as work (and thus as a profession, Gülçür & Ilkkaracan, 2002) rather than as deviant behaviour or a type of female suppression (Van Nunen, Gryseels & Van Hal, 2012). In this respect, different approaches and resulting policies towards sex work and prostitution still exist worldwide (Crowhurst, Outshoorn & Skilbrei, 2012; Felson, 2006; Gaffney, Velcevsky, Phoenix & Schiffer, 2008; Kilvington, Day & Ward, 2001). Notwithstanding this paradigmatic discussion, the term sex work has additionally a purely descriptive component. It refers to the exchange of sexual services for material compensation as well as to the sale of erotic performances or products (Weitzer, 2012, p. 3). It includes acts of direct physical contact between buyers and sellers (e.g., prostitution and lap dancing) as well as indirect sexual stimulation (e.g., telephone sex), whereas prostitution only contains a physical sexual service in exchange for money or other means (Van Nunen et al., 2012). In line with Daalder (2007, p. 21), we describe prostitution in this chapter as making oneself available for the performance of sexual acts with another person for remuneration.[2][3]

There exists a broad range of literature on prostitution, covering various topics (Crowhurst et al., 2012; Kingston, 2014; Verhage, Boels, De Pauw & De Pauw, 2013). However, the relation between prostitution and informal

1 However, Monto (2010) partly enfeebles this cliché by stating that prostitution has not existed in all societies. Kingston (2014, p. 56) on the other hand claims that "this old cliché is an accurate reflection of prostitution's existence".

2 In this respect, actual sexual services need not to be performed in order to speak of prostitution.

3 Although we consider prostitution as work, we will use the term prostitution and prostitute in this chapter, to make clear we solely focus on this type of sex work.

economy has been less widely studied (Peršak, 2013).[4] With this chapter, we aim to contribute to this under-researched domain. More specifically, we offer some insights into the relation between prostitution in Ghent[5] and informal economy. To this end, we answer following questions: (1) how does policy on prostitution influence the existence of informality in Ghent's prostitution sector and (2) which informal economic activities are present in Ghent's prostitution sector? We start by discussing the theoretical framework of Sanders (2008) on the relation between policy on prostitution and informality, as this offers the theoretical answer to our first question. Subsequently, we describe the policy on prostitution in Belgium and in Ghent, as this illustrates how Ghent's approach formalises an informal phenomenon (i.e., the exploitation of prostitution). After a short note on the methods used in our empirical research, we describe Ghent's prostitution sector and its informal economic characteristics. In the discussion section we analyse the pros and cons of the city's approach to prostitution in relation to informality and offer some conclusions.

2. PROSTITUTION AND INFORMAL ECONOMY: AN INTRICATE RELATION

The chosen policy on prostitution determines to what extent the phenomenon forms a part of the informal economy, as the informal economy can be described as "the reverse side of the official economy, the boundary between which is drawn by legislation and regulation" (Ponsaers, Shapland & Williams, 2008, p. 645). In this respect, the informal economy comprises all economic activities that are not officially regulated, registered (Adriaenssens et al., 2009; Chen, Jhabvala and Lund, 2001; Dell'Anno, 2003; Dobovšek, 2009; Henry and Sills, 2006; Lippens and Ponsaers, 2006; Slot, 2010) and ultimately taxed (Ponsaers, 2013). As a result, the enforcement of regulation (focused on compliance) equally has an important role in determining the boundaries between formality and informality. According to this definition, all non-regulated, non-registered and non-taxed prostitution makes part of the informal economy (see also Peršak, 2013). However, as Sanders (2008) argues, comprehension of the relationship between the formal economy and informal economy in relation to sex work is complicated by a myriad of laws that make some parts of the sex industry legal and

4 An important exception is the work of Verhoeven, van Gestel and Kleemans (2013), who have studied the presence and extent of informal activities within the legalised window prostitution in Amsterdam.

5 By focusing on Ghent we furthermore fill in a gap in research on prostitution in Belgium, as previous empirical research has focused on Antwerp and Brussels (e.g. Loopmans & Van den Broeck, 2011; Loopmans & Vermeiren, 2009; Van den Hazel et al., 2008; van San, 2007; 2009; Weitzer, 2012; 2013), but not yet on Ghent.

others illegal. Based on extensive research and literature review, she has developed a framework of four possible market relationships where commercial sex exists. In essence, the spectrum identifies a continuum that reflects the extent to which sex markets exist within, alongside or outside the formal economy.

In *legal formal economies*, the first type of sex market, prostitution makes part of the formal economy and sexual services are treated like any other type of labour. Prostitutes are defined as workers who pay taxes. Possibly they are registered and undergo regular health tests. Owners of brothels are considered as legitimate business owners (Sanders, 2008). Examples of such markets are the Nevada brothels in the USA (Brents & Hausbeck, 2005; Hausbeck & Brents, 2010) and prostitution in Turkey (Gülçür & Ilkkaracan, 2002). According to Sanders (2008) most sex markets make part of *legal informal economies* and fall into grey areas of the law as the actual buying or selling of sex is not illegal but relationships around prostitution are illegal (e.g., advertising, brothel keeping). As a result, the sex markets operate outside or on the edges of the mainstream formal economy. Characteristic for these economies is the lack of provisions by the state for prostitutes or businesses. Taxes can be paid for the activities, but not as sex workers. As we will illustrate in the following section, sex markets in Belgium fall into this category. Thirdly, in *illegal informal economies*, prostitution is illegal but tolerated in informal economies. Owing to to the lack of regulation, there exists the possibility of exploitation and organised crime (Sanders, 2008). Lastly, in *illegal criminal economies*[6] prostitution is completely (e.g., China) or partially criminalised (e.g., Sweden where the purchase of sexual acts is criminalised,[7] Ekberg, 2004; Gould, 2001). In these economies, some or all parties are handled by criminal justice systems (Sanders, 2008).

Furthermore, Sanders (2008) identifies several ancillary activities that facilitate and support prostitution (e.g., advertising, security, transportation). According to her, the parties involved in the ancillary industries surrounding prostitution are unregistered labourers. They can conduct both legal (e.g., supplying legitimate goods) and illegal work (e.g., supplying drugs). As we will illustrate later in this chapter, Ghent prostitution sector is characterised by some ancillary activities although not all participants qualify as unregistered labourers. Before turning to that, we describe the policy on prostitution.

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6 As Ponsaers, Shapland and Williams (2008, p. 646) argue, criminologists – in contradiction to economists – tend to term both illegal and unregulated activities as informal economic activities. In this respect, markets where prostitution is illegal equally fall within an informal economy.

7 Recently, the purchase of sex was also criminalised in France.

3. BELGIAN POLICY ON PROSTITUTION

3.1. Federal: Abolitionist approach with criminalisation of third parties

Prostitution *in se* was never penalised in Belgium (Stevens, 2002). In 1948 the then prevailing regulationist discourse (Wetsvoorstel, 2013) was exchanged for an abolitionist perspective with the introduction of the law of 21 August 1948.[8] Amongst other stipulations, it implied the introduction of the criminalisation of the exploitation of prostitution (Van der Vonder & Van Eynde, 1973; Van Loon, 2008) and the imposition of restrictions on the local regulation of prostitution. Regarding this last point, local governments were left the possibility to intervene with respect to prostitution in order to protect the public order and public decency but were forbidden to regulate the execution of prostitution for other purposes (Loopmans & Van den Broeck, 2011). By criminalising the exploitation of prostitution but not prostitution itself, the law aimed at abolishing prostitution without criminalising prostitutes (Loopmans & Van den Broeck, 2011).

Further changes to the legislation were implemented in the 80s-90s under the influence of several events, amongst which was the highly influential publication of a research journalist Chris De Stoop in 1992. This book exposed in detail the existence in Ghent (and beyond) of forced prostitution, trade in women and the poignant lack of adequate reactions to these phenomena, such as the serious blurring of moral standards, corruption by police officers, manifest lack of cooperation and information exchange between enforcers and even rivalry between enforcers (De Stoop, 1992). As a result, a parliamentary inquiry was installed on 23 December 1992 (Voorstel tot oprichting, 1992). In addition to several recommendations (Verslag namens de onderzoekscommissie, 1994), a new law[9] brought the legislative stipulations concerning prostitution up to date. In 2005, the law was modified.[10]

8 For a full description of the policy on prostitution in Ghent, we refer to Boels, Verhage & Bauters (2013). Law of 21 August 1948 regarding the abolition of the official regulation of prostitution, *Bulletin of Acts*, 13 September 1948.

9 Law of 13 April 1995 concerning stipulations on the battle against human trafficking and child pornography, *Bulletin of Acts*, 25 April 1995.

10 Law of 10 August 2005, changing several stipulations with the intention to strengthen the battle against human trafficking and human smuggling and against practices of rack-renters, *Bulletin of Acts*, 2 September 2005.

Today, prostitution is still not criminalised in contradiction to several related and ancillary activities, such as exploitation of prostitution (Art. 379[11] & 380 §1[12] of the penal code), prompting sexual acts in public space (Art. 380bis) and advertising sexual services (Art. 380ter). As many of these activities are tolerated by city authorities, the government calls for the use of (local) backdoor methods, thus installing or at least facilitating informality. In sum, prostitution in Belgium takes on the form of a legal informal economy (Sanders, 2008). Although prostitution is not forbidden, it is not specifically regulated either. Prostitutes can work on a self-employed basis[13] but, due to a lack of a specific statute, the activities are declared under other terms such as "other personal services" (Acerta, 2013; Securex, 2013) or "escort services and the like" (Acerta, 2013). In theory, prostitutes cannot work as employees as such a declaration would imply an employer exploiting[14] prostitution, which is a criminal offence. In Ghent however, many prostitutes do work as employees, albeit under another term. How this is done, is the subject of the following section.

11 Art. 379 stipulates: "He who commits an assault on the public decency by – in order to differently satisfy desires – arousing, favouring or facilitating sexual offences or the prostitution of a minor (of the male or female sex) is punished with a prison sentence of five to ten years and with a fine of 500 to 25,000 Belgian francs."

12 Art. 380, §1 stipulates: "With a prison sentence of one to five years and with a fine of 500 to 25,000 Belgian francs is punished:

1° he who – in order to differently satisfy desires – recruits, takes with him, transports or holds with him an adult even with his permission in order to commit sexual offenses or prostitution;

2° he who has a house of sexual offences or prostitution;

3° he who sells, rents or puts rooms or any other spaces at ones disposal for prostitution with the intention to gain an abnormal profit;

4° he who, in any way, exploits sexual offences or prostitution.

13 In that case, similar steps should be taken as for other types of self-employment (e.g., getting a registration number, proving knowledge of company management if required, joining a social security fund, having the necessary insurances, joining a national health service, paying taxes).

14 In the sense of *managing*, not in the sense of sexual exploitation. However, this equally falls within the description of Art. 380 §1 of the penal code.

3.2. Local: De facto legalisation

As Ghent has been confronted with the existence of the exploitation of prostitution, a *de facto legalization*[15] (Weitzer, 2012, p. 79) was opted for regarding this phenomenon.[16] Point of departure is that publicly accessible establishments where window and bar prostitution take place are considered as cafés and that non-self-employed prostitutes working in these premises are considered as waitresses. As a result, the regulation of the hotel and catering industry (*horeca*) is applicable to window and bar prostitution (in terms of management and employment) (Van Eeckhoutte, 2013), which has some important implications. First, the local police retain some control over these businesses through the delivery of licences, which cafés need to possess according to the regulation on cafés (Van Gaever & Lameyse, 2013). Second, in theory all regulations concerning employment in the *horeca* are applicable. Third, as premises of window and bar prostitution are referred to as *public accessible establishments of consumption and amusement* (Stad Gent, 2007), managers of these premises are obliged to declare the start and the end of employment of their personnel within 48 hours, on the basis of a police ordinance.[17] As a result, the prostitutes are registered at the local police. Fourth, hygiene in the premises must conform with the regulatory stipulations concerning cafés, which are not adapted to the execution of prostitution (Van Gaever & Lameyse, 2013). Apart from these stipulations,

15 This means that prostitution or aspects of it are illegal but regulated by authorities. Weitzer (2012, p. 79) argues that in such systems participants are allowed to operate freely as long as they do not disturb public order or violate other laws and as long as they abide by whatever rules are imposed on them by the authorities.

16 As a result of the publication of De Stoop's book and the enormous fuss it caused in Ghent, the city updated its regulation of prostitution and its exploitation. In the beginning, it was a purely police matter but over time, under the influence of the evolutions in the red-light district, it became more and more an integral approach, in which the tackling of nuisance has an important place. In this respect, societal actors involved in the red-light district (e.g., residents, managers of premises, regular shop keepers) have an important influence on this policy shaping through the installation of the residence association. This is partly in line with Wagenaar (2006) who argues that policy nowadays is not so much the result of concerted action by government agencies but the more or less unforeseen result of the interactions of a range of societal actors.

17 Art. 1 of the Police regulation concerning the obliged declaration of domestic staff employed in publically accessible establishments of consumption and amusement, approved by the city council of 16 February 1948, altered in the municipal council of 26 March 2007, published on 29 March 2007.

social workers of the specialised Meprosch-unit[18] of the local police invite new "waitresses" for a consultation in which the private life and motivations for prostitution are discussed. The goal of these consultations is to inform prostitutes of their rights and duties and to collect information on the women (e.g., situation at home, children, partner). As a result of this regulation and the rigorous follow-up (enforcement), the local police have a clear view on managers and prostitutes active in the window and bar prostitution.

In addition, the city has determined some specific regulations regarding prostitution. Legally, Art. 121 of the *Nieuwe Gemeentewet* (New Municipal Law) offers municipalities the opportunity to regulate prostitution insofar as the goal is to ensure the public decency and public peace. Based on this, the city has included the punishment of certain actions of prostitutes in window and bar prostitution (e.g., luring clients by dancing, making gestures or tapping on the window) in police ordinances (Stad Gent, 2012). In addition, a dress code for women is applicable in order to limit infractions on public order. Infractions are punished with municipal administrative penalties. Compliance with these regulations and stipulations is predominantly controlled by the Meprosch-unit.

All in all, in compliance with the law of 1948 and the New Municipal Law, the police ordinances solely regulate prostitution in order to protect the public decency and public order. In this respect, the city of Ghent is not violating any legal stipulations. Similarly, by regulating the exploitation of prostitution under a different name (*horeca*), we feel that the city does not legally breach any legal stipulations, as in this way the regulation is not in violation of the federal (cf., regulation of a criminal offence) nor of the municipal law. From a legal point of view, the regulation falls within the legal framework that determines what cities are allowed to regulate regarding prostitution. Indeed, the city does not legally regulate the exploitation of prostitution; it is legally adhering to the regulation of the *horeca*. However, in practice, of course, the city is regulating the exploitation of prostitution. From this point of view, we can conclude that the city is not *legally or juridically* regulating the exploitation of prostitution, but is regulating it *in practice*. Exactly due to this fact (and due to the lack of congruence between regulation – both national and local – and practice), a grey area between formal and informal economy is created (Ponsaers, 2013). The nature of this

18 This unit was established as a result of the parliamentary inquiry. A notorious gang – *Bende van de Miljardair* – was responsible for human trafficking of victims in the red-light district of Ghent. Some local police officers were found to corroborate with the gang. In order to avoid similar problems in the future, several safety measures were installed in the Meprosch-unit (e.g., mixed patrols) that have, however, partly faded away over the years.

grey area in Ghent is discussed more in detail below, after a note on the used methods in our empirical research.

4. METHODS

The empirical results[19] of this chapter draw on a qualitative research design (Flick, 2002) using a combination of document analyses and semi-structured interviews.[20] In line with previous research (e.g., Demir, 2010; Sullivan, 2010; van den Hazel et al., 2008; van San, 2007; van Wijk, et al., 2010), interviews were conducted with prostitutes (22 interviews) and experts/key informants (i.e., regulators, enforcers and social workers; 16 interviews). Given the hard-to-reach character of prostitutes (Benoit, Jansson, Millar & Phillips, 2005; Decorte, Stoffels, Leuridan, Van Damme & Van Hal, 2011; Harcourt & Donovan, 2005; Kavemann, 2007; Moffatt & Peters, 2004), a gatekeeper was found who was willing to facilitate access[21] (Agustín, 2008; Benoit et al., 2005; Decorte et al., 2011; Kavemann, 2007; Sanders, 2004; van San, 2007). As this sampling strategy entails a selection bias (van San, 2007), we additionally searched for respondents on our own – by going to windows and bars[22] (Van Nunen et al., 2012) – and through snowball sampling[23] (Atkinson & Flint, 2001; Kleemans, Korf & Staring, 2008). The sampled prostitutes had different nationalities[24] and worked in the different prostitution sectors found in Ghent,[25] which is necessary in order to obtain a view on the diversity of prostitution (van San, 2007). The end result of our sampling strategies (purposive and snowball) is a convenience sample, selected on the basis of availability to the researcher (Patton, 2002; Decorte et al., 2011; van Nunen et al., 2012). All interviews were fully and anonymously transcribed (Beyens & Tournel, 2010) and analysed using

19 The empirical phase ran from July 2013 to December 2013. The full case study on prostitution in Ghent ran from May 2013 to March 2014.

20 Case file analyses, as in previous research on informality within prostitution (Verhoeven et al., 2013) was not possible.

21 This sampling strategy lead to 17 interviews. Furthermore, to encourage participation (and as an expression of gratitude), prostitutes were given a financial reward (of €30), as has been done in other studies making use of interviews with sex workers (e.g., Agustín, 2008; Lever & Dolnick, 2010).

22 This strategy lead to four interviews.

23 This strategy lead to one interview.

24 Belgian (15, one of Congolese origin), Polish (2), Dutch (1), Hungarian (2) and French (2).

25 Window prostitution (6 women), bar prostitution (5 women), private prostitution (6 women of which 2 also do escort) and escort (1 man and 4 women).

MAXQDA 2. Due to the non-random small sized sample (Benoit et al., 2005) and thus non-representation of the sample (Decorte et al., 2011; Sanders, 2004; van Wijk et al., 2010), our empirical results have limited statistical generalizability.

5. PROSTITUTION IN GHENT

5.1. Prostitution types

The prostitution sector is characterised by segmentation (Daalder, 2007; Harcourt & Donovan, 2005; Monto, 2010). For the purposes of this chapter, we follow the categorisation of Decorte et al. (2011), since theirs is most in line with the existing types of prostitution in Ghent.

5.1.1. Street sex work

In street sex work, one tries to attract clients on the street or in other public places such as public cafés. The services are offered at the client's home, in the car, in public or in a hotel (Decorte et al., 2011; Porter & Bonilla, 2010; Van Nunen et al., 2012). In contradiction to other cities such as Brussels (Van den Hazel et al., 2008) and Antwerp (Ruyters, 2013), Ghent does not allow street prostitution (not even in specific delineated areas) as the full prohibition of the phenomenon is taken up in a police ordinance. As a result, most respondents argue street prostitution is rare in Ghent (see also Baelde, Bonte & Van Rumst, 2007; Boels et al., 2013). In the past, however, the city was confronted with male prostitution in the *Citadelpark*, but as a result of police controls and the rise of the Internet, this type of prostitution is supposed to have moved indoors over the last ten years. Currently, Ghent is believed to host a specific type of (hidden) street prostitution, namely in premises not publicly known for the delivery of sexual services (e.g., cafés, non-profit organisations) (Van Gaever & Lameyse, 2013). In these premises, managed by Belgians of Turkish (and to a lesser extent of Bulgarian) origin, women of mainly Bulgarian origin are supposed to offer their sexual services. Given the hidden nature of these activities and the foreign character of the community, very little is of course known about the characteristics and size of this phenomenon. As a result, information on this type of prostitution should be used with caution.

5.1.2. Window prostitution

This type is characterised by a prostitute attracting clients from behind a window, but offering her services in a separate room behind the window (Decorte et al., 2011). In Ghent, window prostitution is geographically de-

lineated in the red-light district (RLD)[26] by means of a licensing system. This delineation is grafted onto the Special Plan of Construction,[27] which determines functions that can and cannot be executed in different areas of the city (Stad Gent, 2002). According to a regulator, the motivation behind this licensing system and delineation is the wish to control nuisance related to *horeca*-businesses.

Ghent's RLD has over 40 window prostitution cafés dispersed over four streets with 101 windows occupied 24/7 by female prostitutes[28] of more than thirty different nationalities[29] (Van Gaever & Lameyse, 2013). The rent[30] for the window, the so-called window money, ranges from €100 to €150 per shift (i.e., twelve hours). In return, women keep all the money they receive from their clients. The accustomed price for clients is €50 for a quarter of an hour (with protection). However, with the arrival of many Hungarian women,[31] the price has gone down (€20-€40) and unprotected services are also offered. In this respect, several respondents agree on the fact that the RLD is infamous for its purely sexual services: more than short sexual activities (e.g., drinking, having a shower/bath, having a chat) are rare. Furthermore, the RLD is characterised by a poor hygiene and a high turnover of lower class clients. Currently, the RLD is confronted with a bigger and faster turnover of waitresses, many young prostitutes from Eastern Europe and a rush of North-French sex tourists, causing many problems as regards viola-

26 In line with Weitzer (2012, x) a red-light district (RLD) is defined in this chapter as an area where sexually-oriented businesses are clustered and does not include areas where prostitution is confined to street-level transactions.

27 *Bijzonder Plan van Aanleg* (BPA). This was drawn up in November 2001 and approved on 29 November 2002 (Stad Gent, 2002).

28 In March 2013, there were 42 bars with 101 windows (ER1).

29 In 2013, the most registered nationalities were Hungarian (283), Belgian (91), French (45) and Dutch (43). These numbers have been procured to us by the local police.

30 This is used by managers to cover two main costs: (1) general costs of the premises (rent, heating, lighting, cleaning) and (2) social security contributions for their personnel. The latter implies that indirectly, prostitutes (partly) pay the social security contributions their employer should pay for them. As such, the size of the window money reflects the number of hours prostitutes are declared to the national social security office: the more number of hours they are declared, the higher the window money.

31 Some of these women have previously worked in the *Doubletstraat* in The Hague, also known as the €25 street. A rise in Hungarian women is detected as from 2011: 31 registered in 2010; 92 in 2011; 141 in 2012 and 283 in 2013. This evolution goes hand in hand with a decline of Belgian registered prostitutes: 216 in 2011; 146 in 2012 and 91 in 2013.

tions of the community order (Van Gaever & Lameyse, 2013). As a result, regular police actions are directed towards this clientele.

5.1.3. Bar prostitution

Two subtypes exist: (1) mixed window/bar prostitution where women advertise behind windows but a bar exists behind the window (Decorte et al., 2011) and (2) prostitution in bars or clubs: first drinks are served and contact is made with potential clients in the bar. Afterwards the possibility exists to deliver sexual services in separate rooms of the bar (Decorte et al., 2011; Van Nunen et al., 2012). On the territory of the city, three bars exist (all situated on the *Kortrijksesteenweg*) where mixed window/bar prostitution takes place. According to some respondents, these bars are cleaner and fancier in comparison to the windows in the RLD. In addition, another type of service is believed to be procured in these bars. Whereas sexual services are the main aspect of the activities in the RLD, bars are also the place to have a drink and a chat with girls. Based on our own observations, these bars also offer the place for clients to watch women performing erotic dances (e.g., pole dancing). In these bars, women earn a percentage on the drinks they sell to the clients and on the sexual services they procure. Mostly the division is 50/50, although this can vary.

5.1.4. Private prostitution

This is a non-visible type of prostitution, where women work alone or in cooperation with other women. In private houses or apartments, the responsibility to attract and select clients lies in the hands of the manager. The clients pay the manager and sex workers receive a percentage of the house's income. Clients choose a woman and go to a separate room in the house/apartment where the sexual services take place (Decorte et al., 2011; Van Nunen et al., 2012). A particular type of private prostitution is prostitution in massage salons. Here, the primary actions are erotic massages, however, they can evolve to sexual services if clients request this (Van Nunen et al., 2012). Third, women also receive clients at home or in rented houses or apartments (Decorte et al., 2011).

The federal police estimate the division between visible and hidden (private and escort) prostitution in Ghent to 70/30 (70% visible, 30% hidden). Naturally, owing to the fact that hidden prostitution is hidden (e.g., no registration of workers), it is impossible to determine the exact size of the hidden prostitution. This notwithstanding, the mentioned three theoretical subtypes of private prostitution do exist in Ghent.

5.1.5. Escort prostitution

Finally, escort prostitution equally takes place in Ghent (Boels et al., 2013; Van Gaever & Lameyse, 2013). Here, men and women offer their sexual

services on location. This can be organised by agencies or by individuals (Decorte et al., 2011; Van Nunen et al., 2012). Again, the size of this type of prostitution in Ghent is not determined. One regulator claims escort prostitution is sometimes combined with window prostitution. In this sense, regular clients of window prostitutes ask the girls to meet outside the window (e.g., restaurant, hotel).

In all these types of prostitution, several types of informal economic activities are detected.

5.2. Informal economic activities

5.2.1. Undeclared labour and income

In theory, women working in window and bar prostitution receive an income (paid wage) based on the minimum hourly wages of the *horeca*[32] and on their declared working hours. In practice, however, another remuneration system is used. In windows, women pay rent but keep all the money their clients pay them. In bars, a daily fee is paid (according to an interviewed bar prostitute) to the manager[33] and expenditures of clients are divided between the manager and the prostitute according to a predetermined key. Furthermore, working hours of prostitutes are usually not declared accurately to the national social security office: only a limited number of hours are declared in order to limit labour costs (mainly social security contributions) for both, the employer (i.e., manager of the bar) and the prostitute.[34] As official payslips are based on the number of declared working hours with minimum wages applicable to the *horeca*, the declared income of prostitutes is less than their actual income. The end result is that the real income is much higher than the declared income (even if employment hours were declared accurately).

Although this system results in significant untaxed earnings ("black money") for both managers and prostitutes, the latter can be subject to important disadvantages of the system. First of all, their social protection is based on

32 Within the joint committee of the *horeca*, no specific function classification exists for prostitutes; according to an enforcer they are appointed in practice to category 2, with a minimum gross hourly wage of €10,4990.

33 In order to cover the social security contributions employers pay for their employees. The same rule applies in private houses according to respondents working in that type of prostitution.

34 In order to be covered for controls, many managers make use of control documents, stating the prostitutes are exceptionally working outside their contract hours. However, often these documents are thrown away in case no controls took place. Some managers also de-declare employment of prostitutes retroactively.

their (limited) officially declared employment and income, which does not result in social protection that is in accordance to their actual labour. Strikingly, several interviewed policymakers somehow reconcile themselves to this, as a following quote from a social inspector illustrates:

> *So it does not reflect the real situation but it is tolerated in that way by the police, the court and by ourselves in the sense that okay, if at least that is declared. At least that is done. In that way one builds some basic rights*. (EE2)

However, as Van Eeckhoutte (2013) points out, prostitutes and managers are able to correctly declare employment and income should they want to. In this respect, the lack of a specific prostitution regulation has no direct influence on this type of informality. Indeed, it has more to do with a lack of compliance from prostitutes and managers.[35] We agree on this point, but still feel that applying the *horeca*-regulation to windows and bars does not stimulate prostitutes and managers to fully declare their employment and income as it offers several possibilities to facilitate informality (e.g., part-time employment, control documents, low minimum wages). We furthermore feel that the limited thorough controls on correct declaration of employment and income and the perceived (by our respondents) difficulties in proving black earnings have more influence on informality than the *horeca*-regulation.

Secondly, as some agreements (e.g., bank loan, tenancy agreement) require proof of a high enough income (payslip), problems can arise when prostitutes apply for such agreements. As most foreign prostitutes (especially the ones who do not live permanently in Belgium) are attracted by quick and high earnings, most respondents argue these disadvantages do not weigh up against their black earnings. Belgian and foreign prostitutes living in Belgium are divided on this matter: whereas some see their sex work as a temporary means of earning a lot of money on a short time span (and thus do not care much about their social security),[36] others perceive their sex work

35 In the Netherlands, the fiscal opting-in system can be applied to club, escort and private prostitution since 2008 (Van Wijk et al., 2010). Although the main aim of the introduction of the condition package (meeting the established criteria is necessary to be able to apply the opting-in method) was to enhance the position of sex workers (Bijlage motie Arib 32211, 2011), it also intended to enhance the fiscal transparency and fiscal compliance of the sector (Taildeman, 2010). Currently, researchers of Regioplan are conducting an evaluation of the regulation of legal prostitution in Netherland, which should mention this system as well. For several reasons, however, we doubt that such a system would be effective in Ghent, Belgium.

36 Other prostitutes have other means of income (e.g., other work) on the basis of which their social security is built and thus do not see the point of declaring their prostitution activities.

more as a real, long term job thus acknowledging the need to build up social security rights based on that work.

A similar modus operandi is used in private houses where only partial employment and income is declared.[37] Whereas three interviewed self-employed prostitutes (private and escort) acknowledge not declaring their prostitution activities at all (for varying reasons such as receiving an allowance), five others claim working partially formal in that they have all the necessary documents to work as self-employed but that they do not declare their full income from prostitution.

5.2.2. Pimping

Unsurprisingly, high consensus exists between our respondents concerning the presence of pimping, which in our study refers to certain people – pimps – living from the earnings of prostitutes.[38] Especially in the RLD, many girls are believed to have pimps[39]. This is somehow noteworthy given the frequent presence of the police in the area and their clear view on the area (as a result of the registration obligation of prostitutes and of the visible concentration of window prostitution). Notwithstanding, one enforcer explains how certain characteristics of the RLD (e.g., quick assessment of popularity of a girl, few intermediaries, low threshold for clients) still make it attractive for pimps.

In line with Demir (2010), several modus operandi are detected by our respondents to get women to enter into prostitution. Firstly, some foreign women are believed to be tricked into prostitution under the false pretences of a job in, for instance, cleaning of fruit farming. Secondly, others are believed to know that they will be offered a job in prostitution, without being aware of the working conditions (e.g., hand over earnings, long working hours). The third possibility is the so-called loverboy method, which is also applied to Belgian victims. In each case, pimps or loverboys are believed to

37 One respondent working in a private house additionally explains how her manager abuses the system of temporary unemployment. This system implies that if the employee does not receive his wage during the period of unemployment (e.g., for economic reasons) he can – under certain conditions – benefit from an unemployment allowances. In this respect, an undeserved allowance is combined with earnings from prostitution (as the prostitutes continue working instead of being unemployed).

38 Pimping has no legal definition. However, if pimps are prosecuted, this can be done on the basis of Art. 380 of the penal code or the stipulations concerning human trafficking (Art. 433quinquies §1).

39 Of course, this is partly attributable to the fact that enforcers have a better view of window and bar prostitution and that their knowledge of pimping in private and escort prostitution is more limited.

deliberately choose vulnerable victims. Regarding foreigners, mostly young women having a family to support, living in poor regions and/or having limited education are recruited, since they are believed to easily fall for the smooth talk of pimps.

Once victims are into the hands of pimps, several methods are used to keep them in line. They can be put under pressure to continue working or to obey the pimp by (threatening to) exert(ing) physical violence towards the victim and her family in the home country. Also, some girls have been made addicted to drugs and hence need their pimp who also functions as their dealer. Loverboys can furthermore threaten to inform the family of the girl about her activities. In line with Harcourt and Donovan's (2005) findings, women can also be forced to work extra shifts in case they have not earned enough money. In this respect, they often work under the accustomed price of €50 or procure unprotected sexual services in order to attain the required earnings, which in turn affects the business in the RLD.[40] In contradiction to the findings of Verhoeven et al. (2013), interviewed window prostitutes claim pimps do not sabotage their own work *directly* (e.g., by demanding protection money or by refusing clients to enter). Apart from taking money from the girls, some respondents attribute a protective role to pimps, which is not confirmed by prostitutes working in the RLD:

> *Maybe years before, the pimps, when you see they could make something. But now if you see, they all look like clochards and everything you know. They can't do anything… They only come, they only bring them* [girls] *here and take the money. But I don't think so they protect them. No no no! If you see them, come on! They don't look like they can protect. Maybe if the girl cannot make money, they beat the girl. But to make problems with the clients? I don't think so*. (SW22 – RLD)

Victims in Ghent are currently predominantly East-European (Bulgarian Roma people, Albanian and Hungarian girls). According to some interviewed policymakers, many victims do not consider themselves victims as they (1) share in the luxurious lifestyle of their "boyfriend" (i.e., loverboy), (2) earn more than in their home country, even after handing over (a part of) their earnings,[41] and/or (3) believe they will be permitted to keep their earnings one day. Notwithstanding, interviewed prostitutes working in the RLD claim victims of pimps are easily identifiable as they work long hours and look sad. For this and other reasons (e.g., fear of pimp, fear of police), victims are not likely to press charges against their pimps, which hampers investigations and prosecution of pimps as this seriously impedes the gathering of

40 E.g., unfair competition for other prostitutes, dispersion of sexual transmitted diseases, clients asking lower prices and unprotected sex.

41 The amount of money victims need to hand over to their pimps is highly variable.

proof against pimps. As a result, the existence of pimping – qualified as an informal economy as the activities are not officially registered and taxed – is more the result of enforcement difficulties than the direct result of the local regulatory approach on prostitution. Although legal stipulations are available to tackle pimping (e.g., Art. 380§1 and 433 quinquies penal code), enforcement of these regulatory measures is hampered. In this respect, policy – defined as the combination of regulation and its enforcement – does have an influence on this type of informality in that certain difficulties in proving pimping partly results in the continuation of the phenomenon.

5.2.3. Ancillary activities and its participants

In line with Sanders (2008) and Verhoeven et al. (2013) we identify several ancillary activities regarding prostitution, within and outside the RLD: real estate and *horeca*; shopping service; accounting and advertising.

5.2.3.1. Real estate and horeca

Both real estate managers and owners of windows or bars clearly are aware of the activities that take place in the premises. They rent[42] the premises to managers of the windows and bars knowing very well the purposes of the premises, thus *facilitating* prostitution and its exploitation and earning money from it. The same holds for the manager of the window: he/she receives money for his/her window, knowing very well this is used to lure clients for prostitution. A manager of a bar has an even more direct income from prostitution: he/she holds about half of the money paid by clients for sexual services and refreshments in the bar. Earnings from rent are deemed to be only partially declared to the government.

An interviewed enforcer strongly believes that official managers of windows are often straw men, which is also mentioned by Huisman and Kleemans (2014) and found by Verhoeven et al. (2013) in the Amsterdam RLD. The respondent assumes some windows are managed by other persons than the official managers as the actual persons in charge are not able to do official business due to their (criminal) history. However, great caution is necessary regarding this perception as this belief has not been proven yet.

Nearby the RLD, some regular cafés are renown for the presence of pimps. In line with Verhoeven et al. (2013), these cafés offer the perfect opportunity for pimps to stay close to "their" prostitutes. While the latter are working, the pimps pass their time in the cafés. These premises are equally infamous for their drug-dealing scene. Due to violations of the community order

42 According to the federal police, premises in the RLD are rented for similar prices as other commercial premises in the neighbourhood (i.e. approximately €1,800 a month).

by pimps (noise, drugs, fighting), one of these cafés has been temporarily closed by the mayor recently.

5.2.3.2. Shopping service

In line with Verhoeven et al. (2013), shopping boys offer their services to prostitutes in the RLD in exchange for a (small) remuneration. They perform different tasks such as taking the laundry of women to a launderette in the neighbourhood, running errands for women (e.g., condoms, cigarettes) or accompanying women home or to their car after their shifts to offer them some protection against potential thieves. One shopping boy has a daytime job and offers his services after his official hours. Others are elderly and the young with limited intellectual abilities.

5.2.3.3. Accounting

Accountants and accounting agencies execute legitimate tasks such as offering support for bookkeeping. However, three interviewed private and escort prostitutes explain working (or having worked in the past) with an accountant who determines the amount of income from prostitution that should be declared to the government. One of these prostitutes claims her accountant works for many private prostitutes, thus having the necessary expertise. Similarly, a manager of a bar, confirming her administrative work is entirely done by her accountant, explains that two accountants are responsible for the administration of all of the bars down the road. According to these respondents, the accountants are very well aware of their facilitating role in this type of fraud. Considering that one prostitute claims being referred to an accountant by social workers, the latter may have a facilitating role in the partial declaration of income.

5.2.3.4. Advertising

Advertising for prostitution is not allowed according to the Art. 380 ter of the Penal Code. Notwithstanding this, private sex workers and escorts advertise their services on websites such as 'afspraakjes.com', 'redlights.be', 'deernes.com'. Moreover, one Belgian newspaper – *Het Laatste Nieuws* – is infamous for its advertisements for sexual services. One interviewed (private) sex worker explains she pays money to an intermediate (X) who in turn makes sure the newspaper publishes the advertisement. In this way, no official invoices are traceable, linking the newspaper to sex workers:

> *Goh, how do you know X? You know X, if you call to Het Laatste Nieuws, you have Y or Z on the phone. Those are the ones who place all the adds. So they are informed about your request and they make sure it appears in the paper. So I call and then they say: yeah, you just call X. X will notify us*. (SW5 - private)

Again, these actors are involved in the facilitation of prostitution. Furthermore, fiscal obligations are not complied with, resulting in an informal economy.

5.2.3.5. Relations with criminality

Unsurprisingly, prostitution has some links with criminal activities. In this respect, drug dealing (and drug use) is prevalent in Ghent prostitution sector. More specifically, drug dealers are occasionally presumed to use their girlfriends – prostitutes in the RLD for their business: instead of procuring sexual services, women deal drugs of their boyfriends behind their closed curtains. The use of drugs, and more specifically cocaine, is highly prevalent in bars and clubs according to our interviewed prostitutes. According to one user, many clients propose to use cocaine together. In this case, drugs are procured by both, clients and prostitutes. According to one prostitute, her dealer passes regularly along the road, offering his goods in several bars and clubs.

Another relation between prostitution and criminality has to do with the fact that profit from prostitution can be used to invest in illegal activities such as the trade in weapons. Regarding other types of criminality, one sex worker active in the RLD thinks the area is free from major criminals. Instead, she uses the term "rats" to refer to small thieves of north-African origin who steal phones from prostitutes and clients.

In sum, several ancillary industries are present in Ghent prostitution sector. In contradiction to Sanders (2008) however, not all participants of these ancillary industries are unregistered labourers (e.g., accountants). In our case, we observe an intertwinement between the formal and informal economy in this respect.

6. CONCLUSION AND DISCUSSION

This chapter aims to offer more insights into the relation between prostitution in Ghent and the informal economy. Therefore, we have described several informal activities present on the Ghent prostitution scene and have illustrated how prostitution in Belgium and Ghent, in particular, makes part of a legal informal economy. In this respect, prostitution is legal but not specifically regulated. As a result, prostitution does not exist formally as one cannot declare one's activities as prostitution; prostitution is not recognised as a profession. Although prostitution can be executed formally under a different term, our empirical results indicate that most prostitutes work at least partly in an informal way. Exploitation of prostitution is illegal but tolerated insofar it (1) entails purely managing of prostitution businesses, (2) it does not include serious exploitation of women and (3) it does not cause too serious infractions against community order. By selectively en-

forcing the regulation concerning exploitation, local authorities partially permit the existence and continuation of an illegal phenomenon. Moreover, this phenomenon is even regulated albeit under a different term (cf. de facto legalisation). Therefore, the city partially formalises an illegal phenomenon (see also Boels et al., 2013). At the same time, the current policy facilitates untaxed earnings as the *horeca*-regulation is not adapted to the specific characteristics of the employment (e.g., way of remuneration) and as thorough controls are missing (e.g., fiscal controls on declaration of income). Several ancillary activities exist around prostitution. Whereas some are illegal but permitted (e.g., advertising) others are informal (e.g., shopping) or formal, albeit enabling informality (e.g., accounting). The end result is the creation of a grey area in which all participants of the prostitution sector (have to) operate.

Several enforcement agencies are authorised to control prostitution markets. The markets receive prior attention by the local and the federal police, but not by the special inspectorate services and the tax office. As all income from work – even income from illegal activities – should be declared to the government (Van Eeckhoutte, 2013), the government clearly misses revenues due to the slack enforcement of the tax office. Furthermore, according to a magistrate, the office of the public prosecutor did not focus specifically on prostitution markets up until three years ago. This is highly astonishing given the official priority of human trafficking in the national safety plan (illustrating a lack of continuity between detection and prosecution) and the city's history of sexual exploitation.

Apart from its influence on informality, the policy of Ghent has both advantages and disadvantages for different stakeholders. First of all, the geographical concentration of window prostitution, the registration obligation for prostitutes and the licence requirements for windows and bars imply that the local police have a good overview of the visible prostitution scene and its participants, which facilitates controls. In the RLD these are predominantly executed by the special unit of the local police (Meprosch) that invests much effort in the enforcement of the regulation. Of course, the monopoly[43] of this unit in controlling windows and bars raises the need of a thorough control system (control of the control) in order for the unit members not to relapse into the mistakes of the past (e.g., corruption, collaboration with pimps). Furthermore, pure visibility is insufficient in tackling

43 Regarding the local police, only members of the Meprosch-unit are allowed to enter the windows and bars to execute controls. Only in cases of emergency can members of the intervention teams enter the premises (e.g., after 911 calls). This measure was installed to prevent collaboration between police officers and managers/exploiter. However, we feel that as the traumatic effect of the *Bende van de Miljardair* is gradually slinking, this might have an opposite effect in the future.

forced prostitution and sexual exploitation. Admittedly, the difficulties in proving these offences (see for instance Boels & Ponsaers (2011) for difficulties in proving human trafficking) have little to do with the way the de facto legalisation takes form. Despite this, the de facto legalisation does not offer enough tools to successfully combat these phenomena. In this respect, one can seriously doubt the positive influence of the registration obligation of "waitresses" on combatting forced prostitution, considering waitresses are not required to come in person to the police station. Instead, it is sufficient for the managers to hand over the copies of the women's identity cards. Also, this is no guarantee to eradicate illegal employment. A positive aspect of the de facto legalisation is that working with employment contracts in *horeca* offers the opportunity for persons to build up social security rights without being registered as a prostitute (thus safeguarding their anonymity, which is of crucial importance for many prostitutes). Indeed, the majority of the interviewed prostitutes attach a huge importance to their anonymity. Furthermore, it still offers the opportunity for untaxed earnings, which is an important driving factor to start and continue in the prostitution industry (both for prostitutes and managers). The other side of the coin is that specific hygienic and psycho-medical provisions are not included in the *horeca*-regulation, which is regrettable. However, as such stipulations are hardly aimed at protecting public order and public decency, their introduction would be in contradiction to the legal framework cities need to adhere to in their regulation on prostitution. Fortunately, sex workers can have free psychological assistance and medical help (e.g., advice on safe sex and health checks) at the health center Pasop, which is partly funded by the city. This center fulfils an important role in the well-being and health-care of sex workers as it offers services that are not sufficiently provided by industrial medical officers.

This inevitably leads to the question whether the approach of Ghent is the best way to go. Several aspects are to be taken into account when answering this difficult question. As Weitzer (2012) argues, prostitution is notoriously difficult for authorities to manage given the varying interests and preferences of different stakeholders. The majority of our interviewed prostitutes are neutral to rather happy with the situation in Ghent, mostly because it offers them a relative[44] anonymity (as an employee, thanks to the *horeca*-contracts, and as self-employed, due to the lack of specific statute), the possibility to build up social rights if they wish to, the possibility of black earnings (due to slack controls in this respect) and relative freedom due to the lack of specific regulation (see also Agustín, 2008). This however does not

44 Relative, because the *horeca*-contracts and lack of statute do not rule out the fact that many prostitutes still have to live a double life, so that their family, friends and acquaintances do not to find out their profession.

rule out that some of these prostitutes would favour the introduction of certain rules regarding hygienic norms of prostitution premises and regarding healthcare norms (e.g., mandatory check-ups)[45]. In this respect, future research could study the feasibility of introducing a self-regulatory system in window, bar and private prostitution regarding hygiene and healthcare (see also chapter 11 in this book). More specifically, focus should be directed towards identifying perceptions of managers on this point (as they are crucial for the system to be successful), identifying realistic norms and establishing an effective monitoring and sanctioning system. By calling on the sector to regulate it instead of the government, local authorities are not in danger of violating the law.

A minority of the interviewed prostitutes – mainly private prostitutes - are scandalised by the lack of recognition of prostitution as a profession. However, most prostitutes insist on the maintenance of their anonymity, both for financial reasons (cf. black earnings) and societal reasons (cf. taboo and stigmatization) and are thus not fully in favour of a regulation of prostitution and its ancillary activities. Most regulators, enforcers and social workers have an ambiguous perception on the de facto legalisation, expressing at the same time its advantages, disadvantages and hypocrisy. As a result, some are in favour of the regulation of prostitution and its ancillary activities, as they believe this would enhance the (social and physical) protection of prostitutes, clarify the legal framework in which enforcers operate, enhance the income for the government, and facilitate the detection and exclusion of excesses. Interestingly, in Kingston's (2014) study on prostitution in the UK, police members and residents who were highly in favour of legalisation of prostitution markets mention similar reasons.

According to Loopmans, van Oijen and van den Hazel (2008), prostitution policy is no longer a local concern. They argue the need to supersede the merely local policy level, as the criminal sector takes advantage of the differences in policies on international, national and local levels. In line with this, the possibility of local governments to regulate prostitution (within the limits of the legal framework) leads to important policy differences between cities and communities (Boels et al., 2013). Furthermore, the lack of a uniform federal regulation hampers a clear view on mobility of prostitutes,[46] which is unfortunate given the prevalence of victims in the sector and their

45 Of course, it could be questioned if this proposal (which is a suggestion made by some sex workers) would have the desired effects. More specifically, mandatory check-ups could have some undesired effects such as certain sex workers (at risk) avoiding check-ups or the delivery of false certificates. These undesired effects were not mentioned by the interviewed sex workers.

46 For instance, once they are deregistered in Ghent, where do they go? As not all cities have a registration obligation, it is not clear to where prostitutes move.

tendency to remain unidentified. In sum, this might be the time to reconsider the approach Belgium has on prostitution and its ancillary activities. An extensive range of literature exists on policies and its effects (e.g., Brents & Hausbeck, 2005; Clausen, 2007; Daalder, 2007; Ekberg, 2004; Jeffrey & Sullivan, 2009; Kavemann, 2007; Kilvington et al., 2001; Raymond, 2003; Scoular, 2004; 2010; Scoular & O'Neill, 2007; Sullivan, 2010; van den Hazel, 2009; Van den Hazel & van Oijen, 2009; van Gestel & Verhoeven, 2012; van Wijk et al., 2010; Vermeulen & Van Damme, in press; Weitzer, 2012), illustrating that each policy has its advantages and disadvantages. Which policy is the most favourable will depend upon what the government wishes to achieve with it. On the basis of our results we would encourage a national regulatory framework that diminishes the significant local differences whilst at the same time leaving the possibility for local governments to adapt/fill in the regulation based on local needs. It should furthermore take into account the protection of prostitutes and the tackling of serious exploitation. However, at the same time the framework should hold all participants of prostitution responsible for adequately contributing to society (social security and taxes) as one cannot have one's cake and eat it too. At the moment, however, the ratification of the UN Human Trafficking convention of 1950 blocks the possibility to introduce a national legalisation and regulation of the exploitation of prostitution. As a result, I think alternative policies regarding prostitution and its exploitation (and specifically legalisation and regulation) will have to be very well thought through, argued and empirically based before the government might decide to change its approach towards prostitution markets.

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Chapter 5.
Economic factors of prostitution: Money, nature, crisis

NINA PERŠAK

1. INTRODUCTION

Considering prostitutes engage in their work for money (economic reasons being the prevailing reason for opting to work in this profession, the only common "reason" that all voluntary prostitutes share), one would expect economic crises to have a special effect on them. In this chapter, we shall first address the economy of prostitution, looking particularly at the impact of the current financial and economic crisis on prostitution. The review of data, which is admittedly scarce, across the Western world on the effects of global financial crisis on prostitution will reveal what sorts of reactions on the part of prostitution can be encountered in this situation. Next, we shall look at prostitution though the laws of economy, such as supply and demand and their shaping of the market. It will be suggested that these laws are rather the laws of nature. Prostitution, it will be shown, is not limited to humans or development of a society or civilisation; it is rather a "natural" phenomenon. Research is finding more and more animal species that seem to engage in it, too – finding that have important implications for the nature vs. nurture debate, not to mention ideas on abolishing prostitution. It seems that from time immemorial sex has been exchanged for something the party offering sex requires or desires, and this need not be money, not even when humans are concerned, although different societal standards are employed when prostitution is cloaked as something else. Economic laws seem to be the laws of nature. However, from the perspective of agency-structure dichotomy, which will be examined next, economy or economic conditions can also be understood part of the "structure" or structures within which the individual or prostitute acts or exerts her agency. Socio-economic as well as social policy responses to prostitution are important structural elements that can either help or severely increase vulnerability of the agent. The chapter concludes with some tentative projections regarding prostitution and its vulnerable socio-economic situation, owing to, on the one hand, the adverse economic context and, on the other, certain punitive societal regulatory trends.

2. THE ECONOMY OF PROSTITUTION

It is safe to say that economic factors play the most important role in one's decision to become a prostitute. This does not mean that economic factors play any less of an important role in deciding for other professions, only that

money is by far the most frequent reason behind the decision to enter into prostitution.[1] This, in turn, implies that economy shapes the prostitution market and that economic fluctuations will have ripple effects on prostitution.

In times of economic crisis, prostitution – similar to the informal economy in general – tends to increase and change shape. Being flexible, it quickly adapts to new conditions. It moves to where demand is and becomes an even riskier business. Its invisibility, flexibility and instability may act as downsides but also as advantages.[2] Its characteristics, however, vary according to the legal regime. Characteristics of the prostitution sector are different where prostitution is legalised than where it is decriminalised (but not regulated or legalised) or where it is criminalised. In the latter regime, the above-mentioned characteristics are more pronounced and its link to informal, even criminal economy greater.

The current global financial crisis and the economic recession it led to changed many working conditions, previously taken for granted by the

1 It may not be the only reason, though. The availability and readiness to engage in prostitution depends also on the (sub)culture into which one is born and its acceptance of prostitution. In India, there are groups, whole families, whose women have traditionally been prostitutes. Some stand along the highway and offer themselves to passing drivers. Poor, derelict groups, untouched by any law and "untouchable" in the eyes of the law, they come from the lowest cast, which has, on the other hand, embraced prostitution as a regular profession, with no particular stigma attached to it. In Sonagachi, one of India's largest red-light districts, children are born into brothels (Kotiswaran, 2008), making prostitution the obvious choice or way of making a living, a normalised, devictiminalised (Boutellier, 2002) job.

2 While these characteristics are mostly thought of as disadvantages (and contrasting with the formal economy), they may also act as advantages. For example, *invisibility* is a benefit when one wants to maintain anonymity or stay under the radar of tax authorities and other state institutions. While regulation can bring structure and legality to your work, *non-regulation* can also mean fewer constraints, higher income and so forth. Research on tourism and social exclusion in the Dominican republic in 2008 has, for example, concluded that the majority of people are relegated to unemployment, unstable activities in the informal sector (that include the commoditisation of sexuality and affective relations) or "at best, to positions of servitude in low-paid jobs in the formal sector" (Cabezas, 2008, p. 21). *Flexibility* can, on the one hand, represent unstable environment, where everything is more or less precarious, including working conditions; but on the other hand, it also allows one to adapt more quickly to changes in the environment, be they physical, social or legal. Research on the criminalisation of the clients of prostitution has shown that, as a result of criminalisation, the prostitution has moved indoors (as in Sweden and Romania, see Di Nicola & Ruspini, 2009), or moved to less controlled or monitored places (as in the case of UK anti-kerb crawling initiatives, see Cusick & Berney, 2005). Such adaptation or displacement of prostitution has been possible due to its flexibility.

regularly employed. Flexibility, previously defined as a characteristic of informal economic activities, has now become also a characteristic of many new formal, often precarious jobs (Brunhes, 1989; De Toni & Tonchia, 1998; Moore, 2009; Sen, Saha & Maiti, 2010; Standing, 2011). Particularly in times of economic hardship, one can observe increasing flexibilisation of work and employment, and increasing informalisation of jobs across the board. Sassen (2007) notes that the process of informalisation has in the advanced urban economies reintroduced household and the community as separate economic spaces, occupied mostly by women and immigrants. These spaces contribute, in her opinion, to the devaluation of these workers and increase the competition among poor workers, owing to the low entry costs and not many alternatives to such employment.

What is additionally troubling in terms of prostitution, concretely in terms of the reasons for prostitution, is the dire conditions in which the poorest segments of society and poorest societies have found themselves in the aftermath of the economic crisis. Contrary to some earlier predictions that the crisis would not affect developing countries and the informal economy to the same extent as the rest of the world in light of these countries' low engagement in globalisation, the crisis has actually quite harshly affected those countries and sectors (Brown, 2010). All form part of the global financial village, all are "subject to the vagaries of financialisation" (Engelen, Konings, & Fernandez, 2010, p. 53), partaking in the problems arising from it, although not necessarily to the same extent. At the individual level, it is the poor who have been affected the most, as even the smallest of fluctuations downwards can mean crossing the line between survival and death. Considering that the economic crisis disproportionately affects different segments and classes of society, the pressure to enter prostitution, particularly street prostitution, in order to survive is thus exerted the most on the lower segments of society.[3]

3. GLOBAL FINANCIAL CRISIS AND ITS EFFECTS ON PROSTITUTION

Even though economic hardships will not necessarily or automatically "push" people into prostitution, an economic recession has been known to play a role of a significant push factor. The economy in decline makes people more vulnerable in terms of the social insecurity (connected to not having a regular, permanent, well-paying job) and subsequent economic exploitation (including trafficking in human beings) by "employers" in the informal as

3 The urban poor, women in particular (Brown, 2010), are said to be one of the most affected segments, although the young, "rural poor" are extremely vulnerable, e.g. to fall prey to traffickers, as well. Poor households, moreover, tend to lose more during a time of market instability than they gain in times of economic growth, leading to a spiral of poverty.

well as formal sectors. The choice of those who will resort, or are more prone to resort, to prostitution in such circumstances will additionally be mediated by the surrounding (sub)culture and the availability of such a way of making a living.

The International Business Times (2012) has reported that, since the beginning of the global financial crisis in 2008, the number of people entering the sex trade has increased, while the number of "sex clubs" or brothels has been reported as decreased by 10-20%. While the crisis seems to have pushed more people into prostitution, it has inversely affected demand, which again comes at prostitutes' expense. Although there have also been reports of some sex workers (the high-end ones) experiencing a certain "boom" in business immediately at the onset of the crisis, the increased activity was short-lived (Venkatesh, 2008).[4] Brothel managers in the USA, Prague and Berlin have complained that the number of clients has reduced as a result of the worsened economy. The manager of the largest brothel in Berlin, called Artemis, thus reported that the recession had contributed to the reduction of revenue by 20 per cent in November, their peak season for the sex trade, while in Reno, Nevada, the multimillion-dollar Mustang Ranch has had to lay off 30 per cent of its staff due to a decline in high-spending clients (Bilefsky, 2008).[5]

Greece is one of the countries that have economically suffered the most in the last few years, so it comes as no surprise that economic troubles have had repercussions on the sex and pornography trade as well. The number of exhibitors at the annual sex fair, Athens Erotic Dream, has fallen by half since 2008 and only a quarter of the 300 to 400 sex shops that once existed in Athens have managed to survive the crisis (Reuters, 2012). The competition from abroad is fierce and, should Greece continue to have severe financial problems, the situation is predicted to become even worse.

In Norway, where it is illegal to buy sexual services, the number of prostitutes has first decreased (after the legislation coming into force in 2009),

4 The New York prostitutes interviewed by Venkatesh (2008) reported a boom in the short run. Their clients, many of whom were Wall Street brokers, came to them "for a mix of escape and encouragement". Many had lost a lot of money and could not face their wives or their children. However, they also reported that this pattern following an economic downturn lasted only about six to eight months, after which the money ran out and the clients had to "go back and deal with it".

5 While these reports make no particular distinction between the regular or "habitual" (Månsson, 2005) client and the occasional visitor, it is reasonable to conclude that the recession is keeping away mostly the occasional visitor and the sex tourist, but that it has a more restricted effect on regular clients, as their motives for going to a prostitute are not primarily amenable to monetary fluctuations. Moreover, routines and habits are more difficult to break.

but now prostitutes are coming back regardless, according to the 2011 annual report by Pro Senteret, the city of Oslo's resource center on prostitution-related matters. An increase of 70% since 2009 has thus been recorded, and the reasons for that linked to the Euro crisis. "The economic situation in Southern Europe will have an impact on these women. When they can earn more money in Norway, it is natural that they will try their luck in Oslo", said Bjørg Norli, the director of Pro Senteret (UNRIC, 2014).

Prostitution in Australia has also changed in view of the crisis. Although Queensland and Western Australia – regions with many mining towns that are considered boom towns for prostitution (more men with higher disposable income and not much else to do) – have not been hit as much as the rest, Tadros and Kellett (2008) report that customers are more likely to spend less, while the number of prostitutes is expected to increase. They point out that even in times of economic downturn customers do not stop going to brothels, "they just use cheaper services, so it is those high-end and mid-range services that will suffer" (Butler, in Tadros & Kellett, 2008). Customers have also been moving to online dating sites (in order to get "freebies") to the extent that may jeopardise prostitution. Internet dating sites such as RSVP and Matchmaker.com were reported to be the biggest threat to Australia's sex industry, as more men and women started going online to arrange intimate meetings.

Reported consequences for the prostitution sector owing to the economic hardship can thus be categorised into the following groups: the increase in the number of prostitutes, decrease in the number of clients, prostitutes' movement within countries or moving into city centres or the capitals in search for (more) work, new migration influx to Western and Northern countries or economic crisis-proof countries, brothels using new initiatives to attract customers, laying off of sex workers owing to the reduced demand, punters moving elsewhere or online to get access to cheaper or free services etc.

Yet, clients have not disappeared altogether and many remain optimistic. Prostitution is a resilient profession and often considered as one of the more recession-proof ones. Suzana Brezinova, a marketing director of the club Darling in Prague, comments that although people have less money, they also want to be "cheered up", particularly when times are hard (in Bilefsky, 2008). Taking into account that some men search for prostitutes out of loneliness or in order to cheer up, celebrate something or purely out of curiosity (Månsson, 2005), the optimism does not seems implausible.

4. ECONOMY AS NATURE: SEX FOR BENEFITS WITHIN BIOLOGICAL MARKET THEORY

While some believe that prostitution is a social, human, historically-determined phenomenon, caused mostly by extreme poverty, economic pressures and unequal opportunities for economic independence, others see prostitution as inextinguishable, owing to the fact that it is impossible to imagine a society in which forces, generating the demand for prostitution, would not exist (Kanduč, 1998, p. 61).[6] And this does not include human communities alone, but animal kingdom as well, it seems.

Some female Adélei penguins on Ross Island, Antarctica, for example, engage in extra-marital sexual exchanges with other males in order to obtain rocks for the nest they are building for their offspring. According to the Cambridge zoologist, Fiona Hunter, these birds who live in colonies about 800 miles from the South Pole, start hunting for stones – several hundred of which are needed for an average nest – at the start of the breeding season in the late October. They first collect all the loose rocks, then they attempt to fish them out of the frozen mud in order to construct a nest platform, which is crucial to keep eggs high and dry above mud and chilly melt water. As the stones are so important, they will also try to steal them from each other, at the risk of being attacked by the stone owners. Female penguins have, however, realised that another way of getting the stones off their male counterparts without being attacked is through offering copulation. The sexual encounter takes a few minutes, then she gets up, bags a stone or two and leaves, without any stigma attached to their conduct. This type of prostitution has, according to Hunter, also evolutionary benefits. The stone owner has the chance of fathering chicks, even though he does not spend time raising them (the female's spouse does that, apparently oblivious to how his mate got her stone), while the female Adélei penguin gains access to a broader gene pool and, more immediately, to a firmer, sturdier nest.[7] Although the sexual exchanges are often quite straightforward, female penguins have been on occasion observed to "trick the males" by first carrying out the elaborate courtship ritual, which usually leads to mating, after which they collect their stone and run off (BBC, 1998).

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6 The fundamental causes, which make prostitution a permanent feature of society, are: (a) institutional control over sex (in the function of safeguarding the interests of social order, reproduction and socialisation), (b) unequal distribution of physical features that people consider attractive, and (c) class and gender – economic and social – inequality (Davis, in Kanduč, 1998, p. 61, fn. 94).

7 http://www.zoominfo.com/s/#!search/profile/person?personId=56796511&targetid=profile

Another example is one of Macaque monkeys, where males perform grooming to get immediate access to "sexual resources", while females groom males for different purposes, most likely in order to secure their offspring. "Female grooming of males may be more linked to maintaining social relationships because this could later protect their offspring by forming bonds with the males of their group" (Gumert, 2007, p. 1664). Drawing on the biological market theory, which is described as "an explanatory framework for social exchange focusing on how proximate economic conditions can influence trading" and thus as potentially useful in explaining trades of social acts relating to sex, Gumert asserts that cooperation can be an important element of success in sexual relationships and that trade can be a way of cooperation between sexual partners with conflicting interests.

> *When applied to the social realm, biological market theory models social trade as if payment for social acts or partners occurs (Noë 2001). The model states that individuals trade social behaviour in a social market, and in this market there are differing classes of social partners that are distinguished by what they can offer to others (i.e. social commodities: Noë 2001). One class holds access to a social commodity (i.e. holding class) and another class seeks access to that commodity (i.e. demanding class). The dynamic between the two classes is the basis for a system of exchange where the demanding class offers something to the holding class to gain access to a social commodity. This system of trade will follow basic principles of economics. Factors such as supply, demand, advertisement and partner value will influence exchange in situations where the trade partner is not forced to cooperate.* (Gumert, 2007, p. 1655)

That sexual activity or mating opportunity can be a commodity that is traded between males and females has been observed before (Barrett & Henzi, 2001, in Gumert, 2007) as well as that grooming may be a form of payment that one can offer to obtain another social commodity from a partner (*idem*, p. 1657). Gumert's own study, moreover, shows a clear link between grooming and the obtaining of sexual opportunity in a primate species, where grooming as payment for mating was influenced by a mating market and market forces (*idem*, p. 1663, 1657). However, grooming need not be the only type of payment or trading-based strategy to obtain sexual opportunity. Gumert *(idem)* suggests that other social acts, such as coalition support or tolerance at feeding sites, could be traded as well for this opportunity.

What these examples show us is that market forces of supply and demand operate not only in human society but in nature as well, and that even (some) animals seem to be able to recognise the opportunity to exchange sex for something else and to possess the information that they have something to trade in/with. In this quid pro quo exchange, sexual activity is another commodity to be traded in for some other benefit. In Adélei penguin

world, this benefit are stones for her nests, in Macaque monkey world security, acquired through grooming. A *quid pro quo* basic economic operation is therefore a natural transaction.[8] Non-pecuniary exchange of goods (barter) and services is the oldest form of trade, and one that has never been entirely surpassed by monetary exchange either.

In the absence of physical power to acquire something that one does not possess but requires or wants, one trades with what one possesses or can offer to get what one wants. In Macaque world this may be sexual activity for the grooming (payment that increases chances of long-term bonding), back in human world the latter may be marriage or the increase in social status, long-term better living standard. From arranged marriages to websites dealing with matching western men to their ideal (usually significantly younger and more "exotic") woman, from bright foreign students who realise that even with their master from Oxbridge they cannot stay to earn a decent living and decide to re-focus on finding and marrying an Englishman instead to sugar daddies and their "sugar babies" – mutually beneficial trade is based on the female providing an intimate, (pending or immanent) sexual relationship, as something the male wants or needs, for something she wants or needs. Sugar daddy does the grooming by showering her sugar baby with gifts, while sugar baby plays the infatuation game for sugar daddy. Or, on the words of one sugar daddy: "The sugar daddy has the money, and the sugar baby has the sugar. Both have what they know the other person wants" (Whitelocks, 2013). And, "she might not want to be handed an envelope stuffed with cash" (*ibidem*).

Is this not just another iteration of the oldest profession? Does money make (that) much of a difference or is this just a case of double standards? After all, corruption, for example, does not cease to be corruption if a public servant gets a diamond instead of cash in hand to abuse his office for the benefit of diamond-giver. Neither the law nor society makes a distinction between getting paid in cash or check or goods or services. What "sugar baby" does is perhaps only in a "softer", more escort-like prostitution, that is less vulnerable and in particular less shamed that "regular" street prostitution; however, societal attitudes towards it are considerably different. While sugar babies and WAGs (Wives and Girlfriends of high-profile sportsmen) are often admired, rich sugar daddies even more so, prostitutes who identify themselves with the label and are forthcoming in what they do tend to be shamed. More than the honesty, people tend to be upset (or obsessed with

8 This is not to say, however, that human sexuality as such can be understood only (or fully) in naturalistic or biological terms. As Rubin (1989, p. 149) eloquently put it, "[s]exuality is as much a human product as are diets, methods of transportation, systems of etiquette, forms of labour, types of entertainment, processes of production, and modes of oppression".

the idea) about "easy money". That prostitutes earn their money the easy way is one of the recurring myths of prostitution, a myth that seems to frustrate others, not realising that if offering sexual services for money were such an easy way of making a living then one would expect many more people opting for this profession. Certainly nobody has a moral duty to make their living the hard way. Those focussing on the pecuniary aspect alone also fail to see the risk, stigma and other unpleasantries or costs that often come with the territory.

5. ECONOMY AS STRUCTURE (WITHIN WHICH THE PROSTITUTE DISPLAYS ITS AGENCY)

Another way of looking at the economic factors or economic forces in prostitution would be to see economic conditions of a given society as a structure, within which some people act by adapting (and resisting) to bad economic conditions through the use of their sexuality, acknowledgment of what it is that they have that others want (and are willing to pay for) and willingness to engage in such a way of making a living.

5.1. Structure and agency

We all live in a structurally determined world, some have more other less negotiating power, yet agency – as the capacity of individuals to act independently and make their own (moral) choices (Barker, 2005) – is present everywhere. Even when it is the poor economic and social situation, the "victim" is not without any negotiating or bargaining power. Her agency may be reduced but is not annihilated. Within the development literature, some talk about "microlevel impacts" of the crisis, which concern "the strategies employed by migrants to enhance their well-being and that of those 'left behind'" (Wright & Black, 2011, p. 557). The agency of the prostitute can be exercised in various ways. The very fact that prostitution is chosen as a survival strategy or "survival alternative" (Dalén, 2003, p. 47) attests to the prostitutes' agency and their active role in mediating the structural inconveniences facing them. The decision to enter prostitution can be understood as one's fight or rebellion against structural adversities, such as unemployment and looming poverty. The rhetoric of survival that some prostitutes use (e.g. in Dalén, 2003, p. 48) itself indicates that their self-image is not one of a passive "victim" but rather that of a "survivor", i.e. of a person, actively engaged in the fight against the challenges they are facing, an agent, able and willing to make a choice, even if or when the choice is severely restricted. Sex work economy entails differences that arise mostly from different social structures or social structuring of one's life, and these differences impact on levels of agency.

Although agency and structure are not completely separate but rather necessarily related to one another (Giddens, 2009)[9] and although the reproduction of structures in agents' dispositions (acquired schemes of perception, thought and action) thus influences the agent's choices (Bourdieu, 1990, 1994), this does not in any way take away the value and importance of agency as capacity for self-determination. Despite choosing within structures, prostitution can be such a choice. Despite certain current tendencies to portray all migrant sex work as trafficked[10] and prostitution in general as an involuntary profession or not a profession/work at all, but rather as violence or slavery[11], this is rarely the case. Despite widely held beliefs, not all sex workers are controlled (Day, 2009). In her longitudinal research only a small minority of sex workers said they began as prostitutes through their boyfriends encouraging them, essentially acting as pimps. Sanders (2005a) mentions encountering many women who worked independently as escorts through the internet, using massage parlours or using their own apartments who had clearly made conscious choices to sell sexual services, preferring them to other types of jobs. Some of them even left mainstream occupations such as nursing, teaching or administration, to work in the sex industry (Sanders, 2005b).

Instances of the individual agency of a class of persons usually seen as "victims" can differ, but they all serve to illustrate that there exist various shades of grey in the prostitution experience, even though not all are given equal voice or recognition in discussions on public policy. Moreover, they illustrate that what is seen as "prostitution" is also culturally and structur-

9 While we all work and act within structures, "all social action presumes the existence of structure" (Giddens, 2009, p. 90), social structures at the same time presume action, as structure depends on "regularities of human behaviour", on the continuous reproduction of structure by the individuals. However, structure also penetrates into agency. Through the operation of social structures these structures become part of one's dispositions or one's habitus (the individual's socially learned set of dispositions), which is acquired when practices required by social structures become internalised (Bourdieu, 1990, 1994). The reproduction of structures in agents' dispositions (acquired schemes of perception, thought and action) help the agent see objective structures as "natural" or "self-evident", and promote certain conduct and actions over others. Structures in this way influence one's choices, one's agency.

10 Agustin (2006) in this respect talks of the "disappearing category", when migrant sex workers are mistakenly placed in the same group as those women who have been trafficked.

11 See, for example, the European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality, claiming (in point B.) that "prostitution and forced prostitution are forms of slavery incompatible with human dignity and fundamental human rights" (European Parliament, 2014).

ally dependent: essentially the same or very similar actions may or may not be termed prostitution, depending on the surrounding circumstances and public sensitivities. Social structures and social positioning of an individual not only determine the ease with which one resorts to prostitution, they influence also the type of prostitution available to one. Becoming an escort or a call girl is likely to be less available to an uneducated person. However, even if an escort's choice cannot be generalised to those who are raised in council houses or slums, alternatives to prostitution (e.g. begging, stealing etc.) as well as various choices and agency within prostitution do nevertheless exist for all actors engaged in prostitution.

Comparatively speaking, however, some may claim that despite the exhibited agency of the prostitute, the latter is still very limited as opposed to the agency of a regular worker, employed in the formal economy. But is this really so, and particularly, is this so today? The individual, employed in the "formal economy" has similarly limited potential to rebel if we take into account the unemployment rate, difficulty of quickly finding an alternative job and growing precariousness in working conditions, which greatly increase the insecurity even of those who "manage to remain in work" (Chalabi, 2010). In such circumstances, the employee is more likely to submit to the employer and their demands, regardless of whether they are justified, fair, or even legal. In a similar way to the situation in the informal economy, some employers determine the salary and working time of the employees themselves and outside the legal framework. It is not only informal economy workers who accept these conditions, mostly due to the lack of other possibilities in the labour market (Ram, Edwards, & Jones, 2004), but also – and progressively so – many formally employed workers. Despite the exploitation and often quite blatant discrepancy between their job description and actual working conditions, economic downturns turn individuals into docile bodies (Foucault, 1991).

5.2. Societal reactions (to economy and prostitution)

Economically desperate times call for desperate measures. Societies, however, react to such measures is different ways. In Cuba, for example, the society adopted and accepted jiñeteras (Cuban escorts/prostitutes) and their way of making a living. It even incorporated them into the wider system, so that many others make a daily living from it. Getting jiñetera into her room often involves also paying the person who rented the room out and other people on the way. Prostitution there thus became normalised, socially accepted and integrated into the system (that many want to profit from), despite being officially prohibited. This tolerant attitude may help destigmatise the profession; it may, however, also become problematic, particularly if it is promoted for tourism purposes, e.g. when prostitutes become seen as "sexy tourism ambassadors" (Tomas, 2009). The political

economy of tourism development can also stimulate the marginalisation of the local population, exclude them from accessing certain well-paid jobs and sexualise their labour (Cabezas, 2008).

In Germany, where prostitution is legalised, creativity is put to use in order to attract clients, such as linking prostitution with ecology. The owner of Maison d'envie, one of Berlin's brothels, has been offering a 5-euro discount for customers who could prove they walked or bicycled to the brothel, and this reportedly helped to get the business back on track (Kauffmann, 2009). While it is far from certain that such an approach will attract ecologically aware people who otherwise have not contemplated becoming clients, it is something different, creative and perhaps even funny, which may give the organisers a competitive edge they need to survive the economic downturn. Prague is similarly adapting to economic changes, although with a slightly different tactic. In one establishment sex with a prostitute is free of charge, as long as the client agrees to be filmed. The videos are put online and accessible to customers (not only to the one "starring" in the video) on a pay-per-view basis, which is what generates income and perhaps compensates for the loss of profit due to the economic downturn. In Ghana, where prostitution is illegal, some brothels have been offering special promotions such as "pay one round and get one round free", loyalty cards and flat rates, that have helped attract customers and keep some sex workers fully employed (Kunateh, 2009).

Then there are societies, that do not react by acceptance and tolerance, but rather the opposite way, e.g. by expanding prohibition. The UK, France and Belgium have all been in the last few years (or still are) contemplating the criminalisation of clients of prostitution (Peršak, 2012). The French National Assembly has recently passed the law punishing the "soliciting, accepting or obtaining a service of a sexual nature with a person who engages in prostitution, including occasionally, in exchange for payment, the promise of payment, the use of a property, acquisition or use of movable property, or the promise of such an advantage"[12] with 1,500 euros,[13] whereas in Belgium, the idea of criminalising clients has been recently voiced by a political party cdH *(Centre démocrate Humaniste)* in the Brussels Parliament. In the UK the debate took place in 2009 within the context of the Policing and Crime Bill, which proposed the criminalisation of men who buy services from a woman "controlled for gain" by another person, without having to prove that the men actually knew or might reasonably have inferred that the woman was "controlled" (Day, 2009). The new Art. 53A of Sexual Offences

12 http://www.assemblee-nationale.fr/14/propositions/pion1437.asp

13 3,750 for recidivists (De Standaard, 2013; BBC, 2013). Currently (in April 2014), the Act is being discussed in the Senate.

Act 2003 finally criminalised the paying for sexual services of a prostitute subjected to force etc.

Certain European states therefore seem to be taking a punitive road to the regulation of prostitution. If the supply of prostitution in Europe increases due to the global financial crisis, i.e. with more women resorting to it as a result of the crisis, the question is whether we really want to face them with more criminal law. Is this really the most appropriate societal reaction to the impending social tragedy and to the most vulnerable segments of population?[14] In terms of more welcome responses for the current crisis, the International Labour Organisation (ILO, 2008) asserts that the best "solution" or the most appropriate societal response would aim at creating an environment for promotion of decent work. That includes the understanding and reducing of the difficulties that informally employed workers face, improving their working conditions and strengthening legal protection for informal employment. Considering criminalisation adds to the harm and stigmatisation of the profession, this would naturally mean acting counter this advice. Criminalisation (even if only criminalisation of clients) forces prostitutes to become even more invisible, move into less controlled areas and submit to even riskier propositions and demands, e.g. accept more clients due to the fall in customers or agree to performing sexual services that they would ordinarily decline. Without providing an actual and immediate alternative to gaining money, it is hard to see societal penal intervention as helpful in any way.

6. TENTATIVE PROJECTIONS: TWO-TIERED INCREASING OF VULNERABILITY

Considering we are not out of the woods yet in terms of effects of economic crisis, it is likely that the already observed trends will continue, with prostitution increasing in terms of numbers of prostitutes, but also decreasing in terms of the number of customers and generating less revenue due to clients looking for cheaper services. The increase in prostitutes may be aided by the fact that it is mostly younger people for whom prostitution is a possible option. The recent ILO report notes that the young are hit the hardest by the crisis and that in developing countries, young people can be disproportionately found among the working poor. Some young people seem to have completely withdrawn from the labour market and the prospects remain bleak. Essentially, "on the present course there is little hope for a substantial

14 In Spain, a few hundred sex workers have recently protested in Barcelona against the government's plans to prohibit prostitution, claiming that the plans threaten their livelihood and emphasised that sex work is the only way they can make a living, particularly in these hard economic times.

improvement in near-term employment prospects for young people" (ILO, 2012). In this situation many of those who may not ordinarily choose prostitution may contemplate sex work as a viable survival alternative.

It is not only voluntary prostitution that may increase though. More worryingly, trafficking in human beings for sexual purposes is likely to augment as well, not only due to people from poorer countries being even more strongly affected by the crisis and therefore trying to move abroad in the hope of finding a better future,[15] but also because they will be willing to take on bigger risks, which may also increase the risk of falling prey to traffickers. Moreover, clients looking for cheaper services can stimulate trafficking in human beings and the exploitation of prostitution, where it is not the prostitute herself but the third party (trafficker) who determines the price of the service offered. While trafficking in human beings for sexual exploitation (or forced prostitution) will particularly affect women, men may present a more vulnerable group for trafficking in terms of forced labour.

Another vulnerability for the prostitution sector is, however, not fact-based but rather normative or policy-based. It is unfortunate that moral panics around prostitution often feed on the fear of immigrants, merging the two issues together, including the fear of the (foreign) prostitute in the fear of the foreigner. Any new influx of foreign sex workers is therefore likely to increase xenophobia (even further).[16] The heightening of anti-immigration

15 The data regarding the effects of global financial crisis on migration are not entirely straightforward and conclusive. The implications of the downturn on international migration processes are "complex and unpredictable" (Wright & Black, 2011, p. 555). In some countries, such as Lithuania, a "migratory exit" of the many disillusioned and desperate people as a popular response to the impacts of financial and economic crisis and the collapse of mass living standards and expectations has indeed been noted (Woolfson, 2010), while others noticed some evidence of immigration slowing down in the period immediately following the onset of the crisis, e.g. of Mexicans in the USA (Wright & Black, 2011). Predictions at the onset of crisis in Europe included ideas that the downturn will result in Eastern-European migrants returning home where they have their support networks or at least leaving the current host country once it enters a sharp economic downturn (Day, 2009). It has also been suggested, however, that some countries of origin are trying to ensure that migrants stay abroad in order to guarantee remittance flows, whereas host countries are increasing restrictions, making migrants more reluctant to consider returning to their countries of origin (Martin, in Wright & Black, 2011).

16 Economic crisis in itself works in favour of this negative social sentiment. It is a criminological truism that in economically hard times, people start blaming immigrants and foreigners for their misfortunes, for not getting jobs or losing them or for crime. Wright and Black (2011), for example, note the escalation in conflict and fuelling of racial tensions (including protests in the UK on the part of British nationals against the employment of EU workers) as a broader psychosocial impact of the

discourse is a way to increasing marginalisation of immigrants and discrimination against them (Wright & Black, 2011). What can be observed in Europe is that the current trend of criminalisation of clients of prostitution draws heavily on this discourse, confounding issues of prostitution and trafficking, defining "work" as solely that which is self-actualising, neglecting the reality that many regular jobs fail this criterion as well as the fact that for many prostitutes their profession is rewarding etc. If punitive policies in Europe gain momentum, "sex workers will continue to inhabit the unregulated shadow sex economies and be faced with increased dangers, a lack of protection and citizenship rights" (Sanders, 2008, p. 713). On the other hand, economy has in most European countries just returned to growth, so perhaps we can end on a positive note regarding, at least, the deprivation-induced vulnerability of prostitution, hoping that policy-induced vulnerability will follow and diminish (or at least not spread out).

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financial downturn. They warn of increasing marginalisation of immigrants and discrimination against them, that accompany heightening of anti-immigration discourse. See also Winnett & Kirkup (2012). In Sweden, some observers of the criminalisation of clients and its preceding debate have similarly noted that that the impending criminalisation had been linked to Sweden's accession to the EU and its position within the EU, to its internal stability being challenged, and to its fear of Eastern European women "flooding the country" (Kulick, 2003). It was the fear *of* not *for* the Eastern European women, trafficked (or not) into prostitution, that triggered the legislative action. The action was not supported, however, by several social workers as well as by prostitutes and their organisations (who are traditionally excluded from the policy processes anyway). Fear of the "other", the "foreigner", the "poor" is thus the main driving force behind much criminalisation in times of economic crisis, if not in general.

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Chapter 6.
Talking about prostitution and the representation of a (problematic) group: Identifying frames in Flemish news coverage on prostitution

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1. INTRODUCTION

In 2006, the television show "Matroesjka's" made its way into numerous Flemish living rooms. For two seasons, the audience was presented a story about Belgian men tricking Eastern European women into prostitution, lured by the promise that they would be employed as dancers. What follows is a story about trafficking, rape, sexism, mafia, drugs and violence. Although popular understandings of prostitution lean towards this image, scholars and activists are involved in an intense – and divisive – debate on the nature of prostitution and whether, why or how it is a social problem (Weitzer, 2007). Academic research on the topic has not yet been endorsed on a large scale, meaning that there is plenty of room for subjective interpretation of the fragmented information that is available. The ways in which prostitution is represented or *framed* by political or social movements and organizations, is steered by beliefs regarding issues such as the motivations of women to sell sexual services, and the consequences this has on these women as well as on society as a whole. A *prostitution frame* in this sense refers to a generalized understanding and perception of the issue of prostitution.

It is important to be aware of how prostitution is framed because of its far-reaching real-world consequences. It affects how people who work in prostitution are treated by society on a daily basis, but also the conditions in which they work and the extent to which they – or their clients – become stigmatized and criminalized. Furthermore, dominant frames regarding prostitution have been found to inform the political debates at the state and supranational level (Outshoorn, 2005). Especially frames that associate prostitution – *the exchange of sexual services for money or other material benefits* – with human trafficking – *recruiting and transporting men and women across national borders for work or services by means of violence, threat, abuse of authority or other forms of coercion* – influence current evolutions in prostitution policies (Kantola & Squires, 2004; Outshoorn, 2012a).

The media play an important role in constructing and spreading frames on prostitution to a broad audience (Hallgrimsdottir, Phillips, Benoit, & Walby, 2008). For example, in the Netherlands the media have played an important role in inciting a "moral panic" regarding the existence of "loverboys", young

men who seduce young girls and subsequently push them into prostitution (Bovenkerk & van San, 2011). The sensationalist focus by the media on the most obscure and problematic aspects of prostitution such as trafficking, has also been said to have stimulated the political agenda setting of revising the legalization of sex work in the Netherlands (Outshoorn, 2012a). Research in the UK in its turn has concluded that the stereotypical and one-sided framing by the media of street sex workers as "antisocial" further complicates the relationships between sex workers and the residents of the communities in which they operate (O'Neill, Campbell, Hubbard, Pitcher, & Scoular, 2008). This illustrates that media framing is a powerful tool and hence the importance of standing still with this issue.

The present chapter explores how prostitution has been framed in the television news in Belgium over the past decade. First, based on the research literature, three relevant prostitution frames are distinguished and described further in depth. Second, the results of the framing analysis are presented together with an interpretation of these results in the light of the prostitution frames as described in the first section. Finally the chapter concludes with a general discussion of the results in the light of policy making, together with a discussion of the limitations of the current study and future opportunities for a better understanding of the issue.

2. ON FRAMES AND POLICY

Overall, intolerant attitudes towards prostitutes are rooted in western culture, ranging, for example, from the fear of moral degradation to the fear of the spread of venereal disease (Sanders, O'Neill, & Pitcher, 2009). There have been historical shifts, however, in the reasoning or motivations that underlie this intolerance and the foci in prostitution policy. In what follows, we distinguish between three prostitution frames: the "social/moral order frame", the "oppression/sexual domination frame", and the "pro rights/sex work frame". This distinction is not absolute and it should be kept in mind that there are other ways of differentiating between prostitution frames. The decision for distinguishing between these three frames is based on recurring emphases that are found in the academic literature with reference to prostitution in contemporary western society, in combination with opposing images that are constructed of the women who work in prostitution. The social/moral order frame in essence depicts the prostitute as a *deviant* against who society needs to be protected, while the oppression/sexual domination frame presents the prostitute as a *victim* who needs to be protected against society (or more specifically against men in society). In contrast to this, the pro rights/sex work frame does not problematize prostitution in itself but rather the conditions under which women who sell sex have to work and the prostitute is depicted as a *decision-maker*. After a discussion of these three frames, some general problems that arise with these

frames are pointed out. The instrumental value and power of these frames will also be illustrated by giving concrete examples of how they have been "functional" in underpinning prostitution policy across Europe.

To guide the description of the frames and of the problems that arise, we use four parameters of framing, as they are distinguished by Entman (1993), namely: a *problem* is defined in a certain way, the *causes* of the problem are identified, a *moral judgment* is made on the actors involved, and *remedies* are proposed.

2.1. The social/moral order frame

In the social/moral order frame, prostitution is presented as a *problem* for having disorganizing or destabilizing effects on society. On the one hand their assumed entrenchment with the criminal underworld and, on the other hand, the public nuisances they cause are seen as *causes* for decreasing community cohesion and perceived safety (Scoular & O'Neill, 2007). The changing landscape of prostitution with the influx of migrant women especially from Eastern Europe increases feelings of anxiety, as prostitutes become seen as the "visible part of a threatening criminal underworld" (Mathieu, 2012, p. 206). Street prostitution is especially regarded as highly destructive for the community. The presence of the prostitute is not only an affront to the public morality; prostitutes are also associated with antisocial behavior and drugs. In addition to this, they attract clients who cause further disturbances such as noise, increased traffic and harassment of residents (Kantola & Squires, 2004).

The *moral judgment* attached to prostitutes becomes one of deviant women to whom a range of problems are attributed. This judgment lays the basis for the "whore stigma" referring to the negative images of sex workers *because* they break social norms of appropriate behavior (Sanders, 2005) and they become scapegoated for an array of societal problems related to prostitution (Sanders, 2009). In addition to the individual sex worker, the underground prostitution networks are also held responsible for the criminality involved, although these networks are only visible to the public through the presence of the prostitute herself.

Within this frame, the *remedies* proposed range from regulation to eradication, depending on how inherently problematic prostitution is believed to be. It is important that, if its very existence is tolerated, at least its visibility in the city is lowered (Hubbard, 2002). Prostitutes should especially be prevented from intruding the more "respectable" spaces and gentrification and city development are important mechanisms in explaining where street prostitution is tolerated and where it becomes a problem (Hubbard & Prior, 2012).

2.2. The oppression/sexual domination frame

In the "oppression/sexual domination" frame, prostitution is a *problem* because it is seen as enforced upon women. This frame considers prostitution as inherently problematic but rather than a deviant, the sex worker is believed to be a victim who is abused and exploited by men (Weitzer, 2010). According to this frame, no woman can willingly choose to sell her sexual services and she is always forced, coerced or lured into it (Outshoorn, 2005). From this perspective, prostitution is per definition harmful and traumatizing regardless of the context in which it takes place. The exchange of sex for money is seen as an act of violence, in the first place against the prostitute but by extension to all women in society because of the endorsement of patriarchal suppression that it represents (Barry, 1979, 1995; Jeffries, 1997). On the *causal* side, this frame mainly focuses on the demand side of prostitution and especially on men who purchase sexual services. It is institutionalized sexism in a patriarchal society which allows that sexual services can be bought by men from women. To provide to the demand side, pimps, brothel keepers and human traffickers trick, deceit or force women into prostitution, thereby targeting at the most vulnerable women. The aforementioned changing landscape of prostitution with an influx of migrant women is also relevant for understanding why this frame gained importance, as it offered opportunities for equating prostitution with trafficking and "modern slavery" (Mathieu, 2012; Spanger, 2011).

The *moral judgment* in the oppression/sexual domination frame is clear: buying sexual services is wrong. Since no woman can actively choose to work as a prostitute, the oppression/sexual domination frame refrains from using the term "prostitute". This frame makes use of words such as "prostituted women", "victims" or "survivors" to emphasize that prostitution is something that is "done" to women as opposed to a voluntary practice (Weitzer, 2010). This frame refrains from ascribing agency to women who work in prostitution, explaining that those prostituted women that do claim to choose for prostitution are traumatized. The finding that women who work in prostitution tend to come from more troubled social backgrounds as compared to a general cross-section of women in society (Stoltz et al., 2007; Kramer & Berg, 2003), is used as a support for this trauma-claim. Additionally, this type of frame also develops a moral judgment against male sexuality, considering it as potentially dangerous. Men paying for sex are represented as sexual predators who sexually violate women (Outshoorn, 2005; Weitzer, 2007).

In the oppression/sexual domination frame a clear *remedy* is advised: the sex trade in its entirety should be eradicated. Legalization is no option since it would only legally confirm and sustain violence against women. All those benefiting from the sexual exploitation such as clients, pimps and brothel

keepers, should be punished. "Prostituted women" should be helped out of prostitution and guided towards a prostitution-free life (Outshoorn, 2005).

2.3. The pro rights/sex work frame

Contrary to abolitionists, pro rights activists do not problematize the act of prostitution in itself but believe that the context around prostitution is *problematic* (Outshoorn, 2005). While exchanging sexual services for money is not problematic, the labor conditions often are. These labor conditions are often underground or permeated by criminal stakeholders. While working together in indoor venues offers more opportunities for sex workers to protect themselves and each other against violent clients, socio-legal barriers may prevent such cooperation (Krüsi et al., 2012; Sanders, 2004a). Within this frame, the lack of recognition of prostitution as a legitimate way of earning money, and the silencing of the voices of sex workers who are labeled as either "deviants" or "victims", is believed to be *causal* to the challenges sex workers face. Underlying most of the difficulties for sex workers is the persisting stigmatization and denigration of women who sell sexual services (Scoular, 2004).

Within this frame, it is difficult to distinguish a *moral judgment* on the actors involved in the problem. There are, however, clear representations about women who choose to work in prostitution. The pro rights/sex work frame takes a liberal feminist stance on prostitution, whereby it is proclaimed that sex workers should have the right to control their own body and should be free to use it for sex work in order to provide themselves with an income (Agustín, 2006). Sex work is regarded as a legitimate economic survival strategy, as it may offer stability and security to women in deprived social conditions (Rosen & Venkatesh, 2008). In addition to pure survival, this frame also represents sex work as a possible advancement strategy, as a stepping-stone to a life with better opportunities (Saunders, 2005). Thereby the distinction between voluntarism and coercion is crucial because such agency self-evidently only applies to voluntary sex work. The term "sex work" is thus not applicable to those situations which involve exploitation, abuse and trafficking of people (Hardy, Kingston & Sanders, 2010). Furthermore, the distinction between "rational choice" and "free choice" is clarifying: a woman entering the sex industry may make a "rational choice" while this is not necessarily a "free choice" given the constraints she lives in (Chapkis, 1997).

According to this frame, *remedies* to the problems sex workers face lie in the regulation and recognition of prostitution as a legitimate work. Sex workers should be provided with the same legal and political rights as other citizens (Miller & Haltiwanger, 2004). Furthermore this perspective calls for the recognition and validation of the choices that women make when confronted with limited economic opportunities (Scoular, 2004).

2.4. General problems

In general, all the frames lack systematic supporting knowledge from women's experiences working in prostitution. Systematic information on the pull and push factors leading women but also men and transgenders to prostitution remains needed. Furthermore, the voice of sex workers or those who were forced into prostitution are greatly absent in most research projects on prostitution.

Concerning the *representation of the problem and causes to the problem*, the social/moral order frame mainly focuses on the most problematic and visible parts of prostitution, namely street prostitution and "survival prostitution" (i.e. women who sell sex in order to maintain their drug addiction). While violence and crime are part of the everyday reality of women who sell sex on the streets, this is not in the first place committed by street sex workers themselves. Rather they fall victim to clients, but also members of the community and the police (Sanders, 2004b). In addition, the associations that are made between sex work, drugs and other forms of criminality are by far not universal for the industry and important differences are found between on-street and off-street sex work (Sanders, O'Neill & Pitcher, 2009). The oppression/sexual domination frame in its turn is criticized for being too ideologically colored in defining the problem of prostitution and for relying on strongly biased empirical work (Weitzer, 2013). Within this frame, there is no room for diverging experiences from prostitutes and clients. By considering all prostitution as sexual slavery, this frame also represents prostitution and sex trafficking as two sides of the same coin. This association is criticized for leading to a further marginalization of women working in prostitution and complicating local prostitution debates (Outshoorn, 2001; Petersen, 2001; Kantola & Squires, 2004; Carson & Edwards, 2011). It also leads to a lack of understanding of why women migrate for sex work, of the complexity of these experiences as well as of the challenges these women face (O'Brien, Carpenter & Hayes, 2013; Agustín, 2006).

The *moral judgment* inherent to the three frames can also be problematic in numerous respects**.** By depicting her as deviant or traumatized, both the social/moral order frame and the oppression/sexual domination derationalize the prostitute. Her ability to act as rational and moral agent become questioned and as such she becomes further excluded and stigmatized (O'Connell Davidson, 2006; Bjønnes, 2012). The oppression/sexual domination frame also develops a strong moral judgment towards men buying sexual services. By depicting men as sexual predators, supporters of this frame target clients for violating women's human rights. This moral judgment is problematic since it also stigmatizes males and male sexuality while not acknowledging that there is a knowledge gap on why men buy sexual services and how they interact with prostitutes (Weitzer, 2013). Studies specifically focusing on male customers do point out that men who pay for sex are

not that different from men who do not pay for sex in terms of social characteristics. They are mainly motivated by the need of sexual relief as well as the need for engagement with another person, and the ease of the sexual transaction (Pitts, Smith, Grierson, O'Brien, & Misson, 2004). Although the pro rights/sex work frame, more than the other frames, opens up for the different ways by which women can enter or stay in prostitution, adherents of this frame are also criticized for focusing too much on the independence of sex workers. The more implicit moral judgment on the independence of sex workers leads to the critique that this frame does not critically analyze the social, economic and political inequalities that often emerge between clients and sex workers. Furthermore, it does not explain why mainly men buy sex from (mainly) women (Outshoorn, 2001).

Lastly, the three frames can all be criticized for the *remedies/solutions* they propose. The focus on prostitution as a nuisance and disturbance to local communities has led numerous cities to ban (street) prostitution from city centers, away from the public eye. The exclusion of especially street prostitutes from city centers is criticized for leading prostitution to more underground spaces such as industrial, deserted areas or off-street places such as bars or apartments. The lack of social control in such spaces is said to create a more dangerous working environment for prostitutes and more difficult for outreach workers to connect with them (Harcourt et al., 2010). The focus on diminishing the nuisances caused by prostitution has also led to prostitution laws being enforced differentially depending on geographical location, with a more severe repression in the more upscale and gentrified areas (Levy & Jakobsson, 2013). Policies that aim to abolish prostitution can be criticized for neglecting the dynamic between the supply and demand side of sex work, with a one-sided focus on the demand side in the oppression/sexual domination frame. The criminalization of the purchase of sex is said not to eradicate prostitution but rather to push it underground (Kilvingston, Day, & Ward, 2001). The pro rights/sex work frame represents legalization as the best remedy against the problematic context surrounding sex workers. Additionally, legalization would also make abuses and violations in the industry less frequent. However, there are different ways of legalizing prostitution and more research is needed to discover what exactly leads to the most beneficial situation for all the parties involved. Importantly, because of stigmatization, women working in prostitution might be reluctant to be "incorporated into civil society as a 'sex worker', even if this was an option for them" (Kilvingston et al., 2001). From this it is clear that more research is needed about the specificities or complexity of prostitution and the demands from those working in prostitution. However, only adherents from the pro rights/sex work frame recognize the necessity of such information.

2.5. Relevance in current policy debates, illustrations

Although we discussed the frames as three distinct entities, in reality frames can overlap within activities, analyses, or strategic alliances (Kempadoo, 2012). Rooted in their overlapping goals in terms of reducing or eliminating prostitution, the social/moral order and the oppression/sexual domination frame have become "unlikely allies" in their striving for anti-prostitution policy implementation (Outshoorn, 2005; Weitzer, 2006). This has led to a confusing "going together" of the framing of the prostitute as a deviant who disrupts social order as well as a victim of men and traffickers (Doezema, 2010). As Levy and Jakobsson put it (2013), "constructions of sex workers as passive victims lacking agency and self-determination are, it seems, not mutually exclusive from a construction of them as an immoral and deviant nuisance" (Levy & Jakobsson, 2013, p. 338). This becomes particularly clear regarding the migrant sex worker, who has played a central role in policy debates in several European countries, and who has thereby been framed as an illegal worker who undermines the fabric of the welfare state while at the same time being conceived as a victim of the international sex trade (Outshoorn, 2012b).

Prostitution policies can be connected with specific frames but equally they can borrow different elements from different frames. *The social/moral order frame* is especially recognizable at the level of communities or cities where public nuisance is felt more directly. For example, this frame is currently popular in Brussels where public nuisance leads a local committee to develop campaigns against the presence of street prostitution around schools, theatres or residential areas in general. In the UK such neighborhood committees have been particularly active and the reduction of public nuisances has been a major aspect of the prostitution laws implemented in the UK over the past years, such as anti-solicitation and kerb-crawling laws (West, 2000; Sanders, 2009; Kantola & Squires, 2004) and restrictions on the advertisement for sex work in telephone booths (Hubbard, 2002). Loopmans and Van Den Broeck (2011) illustrate, however, how residents in a prostitution area can also combine arguments from a social/moral order frame (focusing on public nuisance and crime caused by prostitution) with elements from an oppression/sexual domination frame (focusing on exploitation of prostitutes) or even elements from a pro rights/sex work frame (focusing on the need for a better environment for prostitutes). Research from the UK shows that such more varied and nuanced opinions are easily overshadowed by the – louder – anti-prostitution voices, ultimately leading to a misrepresentation of the opinions in the community in which sex work occurs (Sagar & Jones, 2012).

The oppression/sexual domination frame has successfully influenced the policy debates in Scandinavian countries, where sex workers are primarily conceived as victims and according policy models have been implemented

which criminalize the purchase of sexual services (Bjønnes, 2012). Sweden was the first country that criminalized the purchase of sex and by doing so intended to provide a "model of good practice", which could then be copied by other countries. Norway, Iceland and France have effectively followed in Sweden's footsteps, and the adoption of a similar policy has been debated in the UK and Denmark. Most recently, European parliament has on 26th of February 2014 passed a non-binding resolution which states that countries should criminalize the purchase of sexual services. The oppression/sexual domination frame can be considered a powerful frame with regard to (international) policy making on prostitution (O'Brien, Carpenter, & Hayes, 2013). International organizations such as the European Women's Lobby or the Coalition Against Trafficking in Women use this frame to lobby for the abolition of prostitution and can thereby fall back on powerful alliances with the more traditional political parties. An analysis of the prostitution policy making in France led to the conclusion that "the close links that the older feminists share with anti-globalization organizations and parties of the left […] explain their success in pleading for an abolitionist point of view within this part of the political field" (Mathieu, 2012, p. 205).

While a policy can be inspired by a particular frame it is equally important, however, to consider what happens after a law has been passed as well. The social intervention pillar of the law in Sweden, which was aimed at helping people out of prostitution, has not been put in place and as such the backbone of the law has never been realized (Florin, 2012). Also the actual penalizing of the purchase of sex is not executed in a consistent way. In Sweden as well as in Norway, it is found that the policing and execution of this law is selectively applied to target "public prostitution" and thus to "cleanse the public space" (Levy & Jakobsson, 2013). Also an in-depth analysis of the French prostitution policy suggests that laws which are passed under the flag of compassion become in fact a tool for removing migrant sex workers from the country (Mathieu, 2012).

The *pro rights/sex work frame* has been particularly successful in influencing the policy making in the Netherlands, and outside Europe in some Australian states and New Zealand (West, 2000). Although more recently, more restrictions and regulations have been implemented in the Netherlands as well (Outshoorn, 2012a). In Germany, a new prostitution law in 2002 extended labor rights to prostitutes who since then could register and fall back on social and legal protection. However, the implementation of the law has been difficult and only few sex workers have actually registered as a sex worker. As a consequence, this law has had little impact so far (Pates, 2012). The pro rights/sex work frame is used by international sex workers' rights movements, such as the International Prostitutes Collective, the Sex Workers Outreach Project, or – in Belgium – Espace P.

3. FRAMING PROSTITUTION IN THE FLEMISH MEDIA

This section discusses how prostitution has been framed in the Belgian television news over the past decade with a limitation to the Flemish news coverage on the topic (referring to Flanders – the northern, Dutch speaking region of Belgium). First, the data that were used are described together with a description of how the analyses were performed. Next, the results are presented. The section concludes with the linking of the results to the frames on prostitution as described above.

3.1. Data and method

Our analysis is based on a dataset containing the news reporting from the two major television channels in Belgium (which are the only two channels with their own news service), namely the public channel *één* and the commercial channel *VTM*.

The relevant fragments were selected from the News Archive of the Media Policy Research Center (Steunpuntmedia), which contains all the news fragments from the two main news shows over the last 10 years, starting in 2003. The fragments were coded independently from this study. A broad range of codes were available[1] yet there was no single code specifically referring to prostitution. In order to detect fragments related to prostitution issues, we selected fragments that were filed under the codes: "criminality" and "social affairs". We narrowed down the selection by looking at the fragments under the sub-codes: "human trafficking" and "sexual affairs". We like to point out that by relying on an independent coding system, it is difficult to assess the inter-rater reliability of the codes used. Furthermore, there might be news fragments about prostitution that were not coded as such. As a consequence we might have missed certain contents that were relevant. From January 2003 until June 2014, we identified 36 news fragments that mentioned prostitution. Four fragments were excluded from the analyses because they did not match our topic of interest. Two of these fragments referred to child sexual abuse and another two referred to the presentation of a new coordinated action against human trafficking (including in the fields of household labor, restaurants and construction).

For our analysis of the news contents we departed from the same four parameters as defined by Entman (1993) and which were also used for describing the prostitution frames above (namely, the definition of a problem, the identification of its causes, a judgment on the actors involved, and the presentation of a remedy). In addition, specific attention went to the images that were used in the news fragments and to the identification of the agents

1 For more information on the different codes: Steunpuntmedia.be

who were given the opportunity to talk on screen. As argued by Druckman (2001), "frames of communication" in terms of the images, words, presentations used may play an important role in shaping "frames of thought" in terms of the understanding of the situation (such as the prostitution frames described above).

3.2. Results

For the discussion of the results, emphasis goes to the news fragments covering events, which took place in Belgium. Regarding the reporting on events occurring in Belgium, two main themes recurred. A first theme referred to prostitution in neighborhoods (covering ten news fragments) and a second theme referred to criminal prostitution networks and trafficking (covering eight news fragments). The remaining fragments could not be clearly organized into specific themes and are thus referred to as "other fragments" (covering fourteen news fragments). In this latter category, news coverage of events from abroad is also briefly discussed.

3.2.1. Prostitution in neighbourhoods

3.2.1.1. Definition of the problem, its causes, and the agents involved

Ten news fragments covered prostitution as a problem for the neighborhood in which it occurred. Thereby the focus went to the most visible form of prostitution, street prostitution, and the prostitutes themselves were seen as the main cause of the problem. The problem itself referred to the direct nuisance prostitution caused to the residents and to its perceived inappropriateness in the particular part of the city.

First, the nuisance these women caused referred to their – sometimes perceived as aggressive – solicitation of clients. These women were seen by the residents as unreasonable and difficult to deal with, which was exacerbated by the fact that many of them were perceived to use hard drugs. When referring to these women in the news by the news presenter, words such as "whores" and "heroine whores" were used. Also, the fact that most of the women referred to were immigrants was seen as part of the problem, as this made it more difficult to "deal" with them. Explicit reference was made to "Eastern Europe" as a main region of origin of these women, and the term "illegal prostitutes" was used. Regardless of concrete events, the very presence of foreign prostitutes on the street was believed to increase feelings of unsafety among citizens.

In addition to the prostitutes themselves, their clients were also seen as part of the problem. Clients who are looking for a "suitable" woman cause annoyances when driving by in their cars, slowing down, and causing obstructions and noise. This problem extended to the neighborhoods around window prostitution and "rendez-vous houses", hotels where street prostitutes

take their clients to. In addition to their physical presence in the neighborhood, clients of prostitutes became an annoyance when they not only approached prostitutes but also approached women who were not a prostitute and who as a consequence felt harassed. A particular problem arose with French clients who, due to a more strict prostitution law in France, come to Belgium for prostitution. These French clients were found to cause more nuisance in prostitution areas and they were also more involved in criminal activities such as car theft. To a lesser extent, the reference was also made to "pimps" as a cause of nuisance (their presumed presence), although this was not in the focus.

Second, the presence of prostitutes in certain areas was also seen as a problem because of its inappropriateness in terms of moral decency. The presence of street prostitutes, especially those that use drugs, would leave a negative impression on people from outside who come to that part of the city. Being unwillingly confronted with prostitution would also be mentally disturbing to people. This was especially problematic in Antwerp where street prostitutes operated in the vicinity of an elementary school. In Brussels, the focus went to the presence of street prostitution in neighborhoods that are lively and where cultural activities take place.

3.2.1.2. Solutions proposed

The solutions that were offered to solve the neighborhood nuisances caused by prostitution focused on "getting rid of the prostitutes". Thereby the existence of "tolerance zones" in the city was seen as part of the reason why it would be feasible to exclude prostitutes from certain areas. However, it was also considered particularly difficult to relocate street prostitutes as they keep coming back to the same places. Therefore, it was suggested that the existing laws would be applied more strictly to them. Another solution was to move the focus onto the demand side, on the prostitutes' clients, by punishing them when purchasing sexual services from street prostitutes. This "solution" received particular attention in several of the news fragments, as it also became implemented. The repression of the clients referred to intruding on their privacy by sending them a fine with a detailed description of their "offence" to their home address, which was expected to have a discouraging effect.

Another specific solution that was mentioned referred to the rendez-vous hotels where many of the sexual transactions take place. By imposing a specific tax on each room, the hotels would be discouraged to profile themselves as rendez-vous hotels. This "solution" would also give extra tax income to the city council.

With regard to illegal prostitutes, report was made of the arrest and deportation of some of these women who caused public disturbances. It was thereby not clear to what extent this was seen as a blueprint for future

strategies for dealing with the problem. In a different news fragment it was proposed that "the arrival of prostitutes from Eastern Europe should be stopped". Only one fragment made reference to the precarious circumstances these women live in and the need for a more global approach, which would include giving these women legal documents so that they could find a different job.

3.2.1.3. Images and narratives

The images that assisted the news presenter when reporting on the issues described above referred in the first place to images of the neighborhoods involved and images of female prostitutes who were standing on the side of the street (and who were in fact filmed against their will). Also more typical images of window prostitution were shown. Two news fragments covered images of the police who performed controls on (French) clients or who patrolled the streets. These images were used to give the viewer an idea of the general atmosphere in the neighborhoods where prostitution was believed to cause problems.

The people who came on screen and who were interviewed were mainly residents from the neighborhoods, lawmakers and to a lesser extent law enforcers. First, neighborhood residents confirmed the nuisances they experienced and the difficulties of "getting rid" of the prostitutes operating in their neighborhood. They described the prostitutes as "difficult to deal with" and expressed little faith that the problem would soon be resolved. Second, the lawmakers – specifically the mayor and council members – were given the opportunity to explain how they were going to handle the problem, where the focus went to targeting the clients. The federal minister of internal affairs also appeared on screen when the problem referred to disturbances caused by foreign (French) clients.

Although images of prostitutes were elaborately shown for the aim of illustrating the problem, this did not imply that they were also given a voice in the news fragments. In none of these news fragments a prostitute was interviewed. The position of prostitutes was somehow represented in two fragments. One was a fragment in which a social worker explained the precarious conditions in which (illegal) prostitutes needed to work while at the same time having to take care of family members. Another fragment was one in which the owner of a rendez-vous hotel was given a word and who mentioned that closing rendez-vous hotels would make it more difficult for prostitutes to work in a safe environment.

3.2.2. Prostitution networks and trafficking

3.2.2.1. Definition of the problem, its causes, and the agents involved

In eight news fragments, prostitution was identified as an activity of criminal networks who lure women from abroad into prostitution and who exploit these women in Belgium. The main agents involved referred to the people who organize these networks, traffickers, and the women who fell victim of these traffickers. The networks mainly originated from Eastern Europe and explicit reference was made to the former Soviet Union, Georgia, Russia, Bulgaria, and Romania. The networks were labeled as "mafia" and were considered as well organized and dangerous. Furthermore, they were also involved in other criminal activities such as larceny and money laundering. One exception to this was a case where Belgian man was found responsible for bringing girls from Nigeria to Belgium, with the help of his Nigerian wife.

The problem with these prostitution networks not only referred to the victimization of trafficked women, but also to the negative effect this had on the Belgian prostitution industry. The exploitation of trafficked girls in brothels and bars was seen as creating unequal competition for Belgian brothels and bars. Another problem was that these "exploiters" did not pay taxes to the same extent as the Belgian bars did.

3.2.2.2. Solutions proposed

The news fragments on prostitution networks focused on the reporting of police actions rather than on the reporting of possible solutions. For example, police actions were reported where those believed to be key figures were arrested. If solutions were mentioned, this referred to "tackling the problem at the root" because of the wide tentacles of these networks, comparable to the structure of the mafia. The networks need to be identified and only large scale coordinated actions, preferably international, can tackle the problem.

One news fragment reported on the discovery of trafficked girls in brothels. However, in the course of the fragment these trafficked girls became labeled as "illegal" and were therefore deported to their country of origin. It was not clear to what extent this was seen as a possible "solution" for the problem of trafficking and the dismantling of prostitution networks in general.

3.2.2.3. Images and narratives

The images that were shown mainly referred to window prostitution and sex bars (brothels), but also footage of Eastern European cities. Images of Bulgaria and Russia were shown (with famous buildings and squares including young people on the background). Lawmakers and law enforcers especially came on screen as they were interviewed on the actions that were

undertaken. They presented the problem of the prostitution networks and the difficulties in tackling them.

Also people from non-governmental organizations came on screen. As such the director of the "Center for Equal Opportunities and Opposition to Racism" and the director of "Payoke", a refuge for prostitutes and victims of trafficking, were interviewed. They both focused on the needs of those women who had fallen victim to traffickers.

3.2.3. Other fragments related to prostitution

One category consisted of news fragments related to prostitution networks and trafficking but with reports from abroad. Two news fragments referred to the discovery of prostitution networks in the US and Spain, where it was not mentioned from which countries the presumed traffickers and victims originated. The women who had fallen victim to traffickers were presented as young vulnerable women coming from countries with limited access to financial resources and opportunities. One news fragment on prostitution networks and trafficking was from a different kind in that it covered the situation of women in South Africa in the context of the Football World Cup taking place there. With the arrival of huge amounts of tourists, traffickers saw opportunities for convincing women from the neighboring countries to come to work in South Africa. Some of these women were interviewed, and they explained that they were promised safer and cleaner working conditions in bars (clearly for selling sexual services) but upon arrival they found out that they had to work in harsher conditions on the streets.

Another category of foreign news related to important people getting involved in prostitution, which had a high sensationalist value. Six fragments reported on such cases which involved Dominique Strauss-Kahn, who was linked with sex parties, Howard Gutman, who was accused of engaging in sexual activities with male prostitutes while he was still the US ambassador in Brussels, and Italian prince Victor Emmanuel of Savoy, who was accused of being involved in a criminal network which was among other things active in the prostitution industry. In these fragments, the focus went to the important person involved rather than to the issue of prostitution itself. In the fragment referring to Howard Gutman, attention went also to the broader issue of male prostitution and a representative of "Alias", an organization that works with male prostitutes, was given screen time to frame the situation of male prostitutes.

Two news fragments related to a bill by the liberal political party which would create a legal framework for prostitution and in which sex work would be treated as a regular type of work. In one news fragment an ex-prostitute was interviewed who explained that the creating of a social and legal frame would improve the situation of prostitutes. In another fragment

a female brothel keeper was interviewed who expressed her support for the bill.

Finally, some various news fragments referred to prostitution. One fragment reported on students selling sex for money, with fragments of an interview with a student sex worker (made anonymous). Thereby neither a specific problem nor a solution was mentioned but it was rather informative (informing on the fact that student sex work exists). One fragment referred to a woman who was found murdered and who might have been a prostitute given that she was found on the street wearing scanty clothes. The police was further investigating the case. A final fragment referred to plans for the gentrification of a neighborhood in Antwerp, which used to be a (window) prostitution area but which was made prostitution-free and which needed to attract new residents for becoming more lively again.

3.3. Conclusion in the light of prostitution frames

The ways in which prostitution was framed by the Flemish news media contained several elements of a moral/social order frame. First, prostitution was considered a problem when it occurred in places where it was "inappropriate" (such as in residential areas, around schools and places frequented by visitors) or when it caused disturbances to the residents. In those cases prostitution in itself was not regarded a problem but it was a problem because of its location, its visibility and the nuisances it caused (whereby not only the prostitutes but also the clients were seen as a source of disturbance). Residents as well as lawmakers explicitly mentioned that prostitution in itself should not be eradicated but that it should be confined to certain areas where it is less disturbing. The fact that most of the women involved in street prostitution were foreign, and some of them used drugs, further increased social tensions and supported the perception that it was difficult to "deal" with them. This is also in line with what was described earlier as the de-rationalization of prostitutes (by depicting them as deviant), which excludes them from the debate. Furthermore, the use of the term "heroine whores" by the news presenter strongly suggests that the "whore stigma", as referred to earlier in the discussion of the social/moral order frame, is very relevant in the Belgian context. The negative images of marginalized groups of society, in this case sex workers, sent out by the media are not without consequences and they fuel further stigmatization and exclusion. A study in six British cities found that countering the sensational stereotypes of sex workers as spread by the media by giving voice to all the parties involved (sex workers as well as residents with more nuanced opinions) enhanced the relations between sex workers and community residents (O'Neill et al., 2008). In the news fragments, only residents who held negative opinions on street prostitution were given the narrative and it is not clear to what extent they represented the opinion of the wider community.

Research in the UK suggests that especially the voices of the more nuanced residents tend to become overshadowed (Sagar & Jones, 2012), which could also have been the case in the news reporting in Flanders.

Second, prostitution was a problem when it was organized by criminal "mafia-like" networks that lured women from countries with little economic opportunities to Belgium, where these women were sexually exploited. Here, some elements of the oppression/sexual domination frame can be recognized as these women involved were described as victims and referred to as "girls" which is in stark contrast with the narratives in the reporting on neighborhood issues. However, the focus in the news reports went to the eradication and control of the criminal networks rather than to the eradication of prostitution itself, as would be expected within an oppression/sexual domination frame. In fact, the exploitation of foreign girls in brothels and bars run by such criminal networks was seen as imposing unfair competition to the Belgian brothels and bars who treat "their girls" better. Thus, the image of the prostitute as a victim only applied to those situations in which actual sexual exploitation was identified. Even in these situations, however, the shift from the victim to the deviant was easily made. In two occasions, it was mentioned that women who were found to be trafficked were arrested because they were in the country illegally and subsequently deported to their country of origin. This shift can be explained by what O'Brien et al. (2013) describe as the "good" versus the "bad" victim. The good victim is innocent and had never the intention to engage in sex work (but she was tricked or kidnapped), while the bad victim knew that she was going to be employed as a sex worker (O'Brien et al., 2013).

Conclusively, prostitution is problematized in the Flemish news when certain boundaries are crossed, but it is tolerated when it takes place within those boundaries (i.e. when it is restricted to certain areas and not organized by criminal networks). Thereby the prostitute is depicted as a whore and a deviant as well as a victim and a sex worker depending on her personal background and the context in which she operates. In some occasions different representations became conflated when women who were described as victims subsequently were described as illegal immigrants. The voice of the prostitutes themselves remained marginalized despite the elaborate use of visual material.

4. GENERAL CONCLUSION

This chapter discussed the different ways in which prostitution is framed and how such frames are reflected in various prostitution policies. We presented the pro rights/sex work frame, the social/moral order frame and the oppression/sexual domination frame as three distinctive frames. The social/moral order frame and the oppression/sexual domination frame depict

prostitution as problematic and thereby benefit from the depiction of sex workers as a homogeneous group to which a range of problems is attributed. The pro rights/sex work frame emphasizes the voluntary choices that sex workers make and the harm that is done to them by failing to put good regulation policy in place. By describing the different elements of these frames, ranging from problem definition to remedy representation, this chapter pointed out how these frames can be problematic or have real-life consequences, mainly for those working in prostitution. In the second part, we analyzed how prostitution is framed in Flemish news shows. We found that reporting on prostitution mainly focused on organized criminality and social disorder in the public space. This depiction of prostitution as mainly crime-ridden is a characteristic of most Western media reporting on prostitution (Wagenaar, Altink and Amesberger, 2013). Women working in prostitution were mainly framed as deviant rather than as victims, suggesting that Flemish media reporting on prostitution can be better understood in the light of a moral/social order frame.

Yet, one of the most striking observations from our framing analysis is that in the past ten years, prostitution was hardly a salient issue in Flemish televisions news media. This lack of interest for prostitution related issues was also illustrated recently when Belgian Minister of Domestic Affairs and Equal Opportunities, Joëlle Milquet (CDH), spoke publicly about the need for a stricter prostitution policy in Belgium in September 2013 at the Inter-Ministerial Conference on the "politics regarding the fight against human trafficking and the exploitation of the prostitution of others". In an interview with the free newspaper "Metro" (30th September 2014), Milquet explained that a lot of women work in prostitution against their will. In order to combat such exploitation, the Minister claimed that policy should focus less on the supply side of prostitution but should aim at reducing the demand side. Following the example of Sweden, Milquet stated that by making visiting prostitutes punishable, the demand would diminish. Although Milquet's perspective on prostitution policy implies the hardening of the current policy that could drastically impact the lives of women working in prostitution, media attention for the topic quickly dissolved.

Notwithstanding the lack of media attention, prostitution policies are fiercely debated not only by scholars or activists but also at different government levels. Recently, an important plenary session was held by the European Parliament. Based on a report of the MEP Mary Honeyball, this plenary session voted a non-binding resolution to criminalize clients of sex workers, recognizing that "prostitution violates human dignity and human rights" (European Women's Lobby, 26th of February 2014). The Honeyball report was however contested by 560 NGOs and civil society organizations as well as 86 academics and researchers who signed letters to prevent the European Parliament for relying on the report. It is clear that who or what is con-

sidered as problematic and what type of remedies or solutions aid women who work in prostitution remains subject of debate. A general lack of broad scale empirical data on prostitution makes fertile ground for debates where certain frames (abolitionist frames) have become more powerful than others (pro rights frames) for influencing policy. As Wagenaar, Altink and Amesberger note (2013), it is important to be aware of the underlying moral nature of prostitution policy. How prostitution is framed as problematic and how such presentations are reproduced by media or other influential actors can impact considerably on what type of policies are developed and implemented (Wagenaar, Altink, & Amesberger, 2013).

We looked at the media framing of prostitution in the two major Flemish news shows. We do like to stress that more research is needed to fully understand the different frames that exist alongside each other. In a next step, we should research the different frames that are present in Walloon news shows and more regional based news shows or other media sources. Apart from media framing, it is equally important to gain insight into the frames that are used by other actors related to prostitution policy making, such as academics, NGOs, interest groups, social movements and policy makers, yet also sex workers and their clients. The next step, then, becomes the analysis of why some frames are more powerful than others in influencing prostitution policy or why certain frames are more accessible than others for the public to go along with. As a final remark we like to add that understanding the complexities that characterize prostitution cannot be captured by frames that are stuck at binaries such as acceptable/deviant, voluntary/forced. A frame that aims to leave such binaries is the polymorphous frame as proposed by Weitzer (2010), which states that the sex market is highly segmented and complex, where different segments need to deal with different challenges and risks. It remains to be seen if and how this frame will be picked up by powerful agents such as the media and if and how it will work through in policy-making.

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Chapter 7.
Regulating street prostitution as a public nuisance in the "culture of consumption": A comparative analysis between Birmingham, Brussels and Milan

ANNA DI RONCO

1. INTRODUCTION

In the majority of European member states, while the selling of sex by a prostitute is rarely criminalised, a number of related activities (e.g., soliciting in a public place, kerb-crawling, owning or managing a brothel, pimping and pandering etc.) qualify as a criminal offence. In recent years, however, a trend to locally penalise the nuisance behaviour of prostitutes (and clients) has increasingly gained foothold in some European cities (or, more properly, in some of their areas). Under these new local regulatory frameworks, while the sale and purchase of sex is generally tolerated, any visible evidence that such an exchange takes place is less so, for the nuisance and affront that visible prostitution is presumed to cause to individuals and communities.

A widespread trend at the local level to criminalise behaviour equally regarded as *anti-social*, *nuisance* or *uncivil* has been explained in criminological literature from different perspectives. For its frequent application in criminological literature (Burney, 2002, 2005; Scoular and O'Neill, 2007; Devroe, 2012; van der Leun and Koemans, 2013 etc.), David Garland's (2001) "culture of control" perspective is considered one of the most influential. In his book, the author contended that in the historical epoch known as "late modernity," rising crime rates, an increasing feeling of insecurity and fear of crime have determined the emergence of a "reconfigured field of crime control" (Garland, 2001, p. 6), which has increasingly relied on punitive and expressive practices and measures. Punitive mechanisms have also been applied to curb uncivil behaviour, which (even when consisting of minor disturbances) has been deemed to engender societal and individual insecurities and a fear of being victimised (Burney, 2005; Sampson and Raudenbush, 2004; Bottoms and Wilson, 2004; Peršak, 2014 etc.).

Notwithstanding the relevance of Garland's "culture of control" in explaining the rise in punitive regulations at the level of some (central/local) governments, this theoretical perspective has under-addressed the problem of the urban spatial location of crime and deviance within the same urban context. Across city areas, in fact, uneven attitudes to criminal and anti-social behav-

iour may lead to a specific spatial distribution of deviant conduct, that is, to its concentration in certain zones to the benefit of others.

A theoretical model that may contribute to the criminological understanding of the urban spatial location of crime and deviance is Hayward's (2004) "culture of consumption." In his book "City limits: crime, consumer culture and the urban experience," Hayward offers an explanation of the aetiology of crime and deviance based on the "culture of consumption" model. What the author suggests in his book is that consumer culture is a "cultural ethos" which is "propagating new (and often destructive) emotional states, feelings and desires that contribute to the crime problem in a number of new and novel ways" (p. 158). Such new emotional states, however, vary very much across the urban territory and notably in what the author identifies as "spaces of consumption and pleasure," "centripetal spaces," and "spaces of deprivation."

This paper will attempt, first, to detect the presence of "spaces of consumption and pleasure," "centripetal spaces" and "spaces of deprivation" in three selected cities: Birmingham (UK), the Brussels Capital Region (Belgium) and Milan (Italy). Secondly, it will inspect whether the chosen model may help to explain the attitudes to and geographical distribution of street prostitution, i.e., the nuisance behaviour selected for this paper. To this end, the current local approach to, and spatial location of, street sex work[1] is analysed against the backdrop of socio-economic, urban, and architectural changes that have occurred in the past two/three decades in the three selected European cities, drawing also on relevant literature and reports of national/international organisations, as well as on the findings of interviews carried out with, and/or surveys administered to, national experts.

2. THE (GENTRIFIED) POST-INDUSTRIAL URBAN SPACE

As argued by Atkinson and Helms (2007), in the late 1970s and early 1980s a rising fear of crime and social appeals for governmental (punitive) interventions against criminal and uncivil behaviour intersected with the revitalising programmes directed to contrast the blight and decline of deindustrialised downtowns and inner-cities. As a result of this urban re-planning, cities were transformed into "consumer playgrounds for the urban middle class" (Hayward, 2004, p. 82) or, as Zurkin (in Taylor, 1999) put it, into "places of residence and urban fantasy for the new professional middle classes." Regeneration programmes, however, have also promoted a process of "gentrification" which, by extoling the needs and living standards of the wealthier, have excluded the poorer residents of the community.

1 In this paper, the broader notion of "sex work" is used as a synonym for prostitution.

As Young (1999, p. 22) contended, regeneration programmes have succeeded in establishing "barriers" in public spaces, and in forming an "actuarial cordon sanitaire which separates the world of the losers from that of the winners." Barriers in urban space are exemplified by the presence of shopping malls, private parks, leisure facilities, railways, and airports - all systematically monitored by guards, security patrols and surveillance cameras. In the same fashion, Bannister, Fyfe and Kearns (2006, p. 924) argued that the "respectable" city, based on the adoption of zero-tolerance policies towards uncivil and anti-social behaviour, and the physical remodelling of urban spaces, has led to the exclusion of any individual whose consumption practices do not sufficiently conform to those of the "consuming majority."

In his book, Hayward (2004) analyses the novel (criminogenic) forms of subjectivity engendered by contemporary consumerism against the backdrop of the re-shaped post-industrial urban space. By recalling the binary categorisation of the "seduced" and "repressed" of Zygmunt Bauman (1987), the author identifies three areas of the contemporary city in which the borders between the spaces of consumption and hedonism of the integrated consuming majority, and the more marginalised spaces of thriving crime and deviance of the (increasingly marginalised) minority, are geographically demarcated. While the former regenerated areas are known as "spaces of consumption and pleasure" and as "centripetal spaces," the latter (left untouched by the aforesaid redevelopment projects) are called "spaces of deprivation".

2.1. Spaces of consumption and pleasure

The first (inner-city) urban zone referred to in Hayward's work is encircled within the so-called "spaces of consumption and pleasure." Public places as such have been the direct product of the urban renaissance projects implemented during the second half of the 19th century in a number of European (and North American) cities. Here, regeneration programmes have been spelled out with a view to transforming run-down city areas into revitalised places of consumption for middle and upper classes. As contended by the author, shops and, more notably, the shopping mall, can be regarded as the most powerful symbols of this first (regenerated, postmodern) urban area.

"Spaces of consumption and pleasure", however, do not only entail shopping arcades and centres. Referring to the work of Zukin (1998), Hayward (2004, pp. 190-191) also notes that in such areas a new "prototype entertainment store" can recently be found, that is, a "more vibrant, *ad hoc* environment[s] in which to consume, play with risk and explore the nature of transgression." In such areas, the quest for hedonistic experiences is especially en-

couraged and satisfied, for example, through the offer of nightlife entertainment and sex services, available both indoors and outdoors.[2]

In this paper, "spaces of consumption and pleasure" will be identified in newly regenerated high-end areas of the city, which, during daily hours, are characterised by buzzing shopping and other economic activities, and, in the evening, by a vivid nightlife environment. Within these spaces, the presence of outdoor prostitution will also be investigated.

2.2. Centripetal spaces

Located in urban (revitalised) town/city centres, "centripetal spaces" are the residential and shopping places of the urban middle-classes. As Hayward contended (2004, p. 185), in these inner-city areas, which have historically been recognised by (mostly, homogeneous and intolerant) residents as a "prodigious locus of criminality," techniques of Situational Crime Prevention (SCP) have consistently been employed for the control and reduction of crime.

Although Hayward does not mention any SCP technique other than auto-surveillance of closed-circuit television (CCTV), in Chapter 3, when he talks about environmental and administrative criminology (and their applications to urban inner-city spaces in an effort to reduce/prevent crime) he refers to other SCP measures which are based on both physical security and on private/public forms of surveillance. Despite Hayward's focus on CCTV surveillance systems when addressing and describing "centripetal spaces," in this paper the broader definition of SCP found in Chapter 3 will be used. This allows us to inspect in "centripetal spaces" the presence of both physical security measures (CCTV) and of public forms of surveillance (e.g. community vigilantes and police agents picketing and patrolling the streets).

2 In the section dedicated to "spaces of consumption and pleasure," Hayward (2004, p. 192) cites the example of London, where "today's cutting-edge urban sensation-seeker is more likely to be found in places like Shoreditch, Brick Lane or Brixon, which are places where drugs and prostitution are ready available." These streets are then contrasted with the areas of Leicester Square or Piccadilly Circus, where CCTV cameras have been installed. It is our contention that, while referring to the presence of sex work in the former area (devoid of CCTV and other physical surveillance systems), the author referred to both indoor and outdoor prostitution.

2.3. Spaces of deprivation

The last urban substrata enclosing (most) crime and deviance are the so-called "spaces of deprivation." The concentration of crime and deviance in these zones is explained by the author in light of the social and economic exclusion suffered by the people living there. Here, in fact, (unfulfilled) desires propagated by mainstream consumer culture bear criminogenic pressures: they can push the individual to engage in criminal and/or deviant activities in the attempt to acquire (or reinforce) a sense of identity, as well as a feeling of control over their life (e.g. through engagement in "edgework", or in "risk-laden practices on the metaphorical edge" (Hayward, 2004, p. 166)).

Together with elements of socio-economic deprivation (which are to be operationalized in this paper by reference to the levels of ethnical/cultural diversity and to resident's unemployment), such areas are also represented by urban physical degeneration – an indicator which refers to the presence of poor housing and urban environmental conditions. As crime and deviance are said to be thriving, the presence of street prostitutes will also be investigated in these areas.

3. CITY SELECTION

The regulation of street prostitution has proven to be very context-specific, varying substantially in time and space according to local sensitivities and tolerance levels (Burney, 2005; Huisman and Koemans, 2007; Millie, 2008a, 2008b, 2011; Peršak, 2014 etc.). For this reason, the focus of the research has been cast on three cities, namely Birmingham (in the UK), the Brussels Capital Region (in Belgium), and Milan (in Italy). A number of criteria have been taken into consideration in the selection of these three cities. Among them are demographic indicators (which refer to ethnic and religious diversity, along with the mobility of resident populations) and indicators of governance (which relate to the liberal or conservative bent of the political party running the city).[3]

3 According to official reports (ULB-IGEAT, 2010; Birmingham City Council, 2011a, 2011b; City of Milan, 2011a, 2012a; ORIM, 2013; ONS, 2011), in all three selected cities the number of residents amounts to approximately 1 million. Such cities are all highly ethnically mixed (due to the high number of ethnic minorities), and culturally very diverse. For example, among the religions embraced by the residents, there are Christian (Catholic, Protestant and Orthodox) and also Muslim beliefs. All these cities are also characterised by high mobility rates, both in terms of short-term and long-terms residence. In terms of governance, they are all run by parties embracing a liberal ideology. Birmingham City Council, for example, has been run by a Labour administration since 2012, as has Milan, which since 2011 has been administered by

After acknowledging the presence of shared characteristics between the three cities, it has then been possible to compare them, and, thus, to address the question of whether Hayward's (2004) model is applicable to explain the attitudes towards, and urban spatial distribution of, street sex work in these urban contexts.[4] In the conclusions, we will try to identify other factors that may explain eventual diversions from the aforesaid model.

4. BIRMINGHAM

In England and Wales, while both (*inter alia*) soliciting of, and procuring for, prostitution are considered criminal offences,[5] uncivil or disorderly behaviour of sex workers and clients is addressed by local authorities through the use of Anti-Social Behaviour Orders (or ASBOs) and other measures.[6] ASBOs are civil injunctions which prevent individuals from engaging in a certain behaviour deemed to be alarming or threatening to other people. Although the order has been designed as a civil law mechanism, its breach qualifies as criminal and may result in up to five years of imprisonment.[7] Because of its (indirect) link with the criminal law and its severe limitations to the individual's rights and freedoms, many UK scholars have hardly criticised the ASBO system (Burney, 2002, 2005; Squires, 2006, 2008; Simester and von Hirsch, 2006; Cornford, 2012).[8] The problematic use of ASBOs in the field of prostitution, however, was partially mitigated by the Home Office in 2006, when it published a document entitled *A Coordinated Prostitution Strategy*

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a left wing party (Partito Democratico or PD). More complex is the case of the Brussels Capital Region. While in Ixelles and the City of Brussels (as well as in the majority of the other 19 municipalities) the mayor belongs to a central-left political party, in Shaerbeek the mayor (Bernard Clefayt) is affiliated with a right-wing party (FDF or Fédéralistes Démocrates Francophones). However, the programme of the party for the five-year mandate 2012-2018 reads as rather liberal, especially when it comes to social assistance and welfare (see http://www.liste-bourgmestre.be/).

4 The selection of the city areas has followed different steps. First, we have looked at the areas that have recently been subjected to major architectural changes. Secondly, we have tried to identify those presenting SCP techniques. Thirdly, areas have been selected that register the highest levels of (socio-economic and environmental) deprived conditions. After having identified urban areas according to these characteristics, we have enquired about the presence/absence of street prostitutes.

5 1956 Sexual Offences Act, 1959 Street Offences Act, and 1985 Sexual Offences Bill.

6 ASBOs were introduced in the 1998 Crime and Disorder Act, which was later amended by the 2003 Anti-Social Behaviour Act. Other measures include Public Nuisance Injunctions (PNIs).

7 This system has recently been modified by the Anti-Social Behaviour, Crime and Policing Act (Home Office, 2014).

8 On the use of ASBOs against street sex work, see Sagar (2007, 2010).

(Home Office, 2006). Such a policy framework, which was fully implemented in Birmingham,[9] entails an increased policing of clients and the promotion of multi-agency work designed to help workers quit street sex work. While Matthews (2005) positively assessed such newly enacted regulation in light of its welfare-based approach, Scoular and O'Neill (2007) strongly criticised it. According to their account, in fact, these new responses to street sex work disguise more "expansive forms of control" (Scoular and O'Neill, 2007, p. 764): social inclusion is granted only to those who responsibly exit prostitution, while those who persist in it are further excluded and criminalised.

4.1. Spaces of consumption and pleasure

Ladywood[10]

From the mid-1990s onwards, following the successful development of the International Convention Centre and the regeneration of the Broad Street area, the Ladywood ward has been buzzing with hotels, bar, restaurants, convention avenues, and shopping malls (such as the Bull Ring shopping centre). Today, the district is considered a major entertainment and leisure location, attracting both business people and tourists. Due to the presence of a number of lap-dancing clubs and nightclubs supplying indoor sex work, as well as the presence of street prostitutes, it is currently regarded as the new "Red-Light District" (RLD). While soliciting of and procuring for prostitution takes place in the southern streets nearest to Hagley Road (the new regen-

9 According to the LPUs of Edgbaston (which is separated from the Ladywood by Hagley Road) and Lozells, street prostitutes are mainly viewed as victims of crime (i.e., of drug-related offences and trafficking of human beings for reasons of sexual exploitation). While the local police strategy regarding street prostitutes mainly relies on the issuance of warnings and on offering assistance and alternative "life pathways," actions and initiatives against kerb-crawlers appear much more repressive here. Through the organisation of regular uniformed and plain-clothes patrols and the installation of CCTV cameras, in fact, police agents are able to identify men approaching women and procuring them for sex. After being arrested, clients are referred by the police to attend a day course on the negative aspects of kerb-crawling and are given insight into the phenomenon of prostitution (i.e., the crimes that are connected to it). According to the LPU of Lozells, this course is "very impactive and one that they must take an active part in so as to be passed and only receive a police caution. This course also costs the Kerb Crawler to which a percentage of the money returns to then be used directly in the community that the offence took place, i.e. food bags for homeless/elderly/vulnerable."

10 In the Ladywood ward there is less ethnic and religious diversity as compared to other wards (ONS, 2011). In 2008, the rate of unemployed people scored below the level registered by the city. Among those economically active, people were predominantly employed in high level jobs and possessed a level 4 qualification or above (almost double the city average) (Birmingham City Council, 2008).

erated nightlife and entertainment strip), transactions mainly occur in the northern areas of the ward, around Summerfield Park and the Reservoir (Hubbard and Sanders, 2003; West Midlands Police and Crime Commissioner, 2013).[11] In light of these characteristics, the areas of Hagley Road and Broad Street seem to perfectly match the description of "spaces of consumption and pleasure" made by Hayward (2004).

4.2. Centripetal spaces

Balsall Heath[12]

Until the mid-1990s, street prostitution in Birmingham was traditionally limited to one notorious deprived inner-city residential district located one mile south of the urban centre, known as Balsall Heath. The area was a mix of low-rise council estates and private housing developments, and was characterised by a high proportion of transient and immigrant populations (Hubbard and Sanders, 2003). Here (at least, at first) street prostitution was usually tolerated by the local community and enforcement authorities, who were used to turning a blind eye to public manifestations of sex work in the area. However, starting with the community actions of the mid-1990s, different strategies of SCP have been put into place in an effort to eradicate street prostitution from the district.

Among the physical security interventions that were adopted in the area in the early 1990s, Hubbard and Sanders (2003) enlisted additional street lighting, road blockades and CCTV surveillance systems. In more recent times, the area has been undergoing substantial urban re-planning, and currently new spatial interventions are in the pipeline (LEPUS, 2012; Balsall Heath Neighbourhood Planning Forum, 2013). Such urban re-modelling has also been fostered by the Balsall Heath Neighbourhood Forum which was established in the 1990s to change the image of the area. Physical and environmental interventions promoted by the Forum have included the restoring of old buildings, the creation of green areas, and, *inter alia,* the installa-

11 Also according to the LPU of Birmingham South, "street prostitution is a continuing problem on the Hagley Road and roads off. Prostitution attracts kerb crawlers and other associated anti-social behaviour" (www.west-midlands.police.uk).

12 The ward of Sparkbrook is characterised by high ethnical and cultural diversity. The rate of unemployment is above the city average. People are here mostly employed in low skilled labour and possess either no qualifications or a level 1 qualification (Birmingham City Council, 2010a). Notwithstanding the presence in the ward of widespread social-economic and urban physical deprived conditions, the neighbourhood of Balsall Heath currently features long shopping streets (Fenton, Markkanen, Tyler, Clarke, & Whitehead, 2010) and has recently been targeted by a multitude of regeneration plans (LEPUS, 2012; Balsall Heath Neighbourhood Planning Forum, 2013).

tion of 15 CCTV cameras which interlink and are monitored by resident volunteers from the local police station.[13]

Forms of public surveillance have also been employed in the area in an attempt to curb the phenomenon of street prostitution. Since the community protests of the early 1990s, in fact, community members have started to patrol and picket the streets, with a view to making it easier for police authorities to identify and prosecute clients. Community involvement in patrolling the streets also continues today, as five neighbourhood warden posts have recently been established. Moreover, according to the website of the Forum, a group of volunteer residents also staff the front desk of the police station and answer enquiries regarding the security and safety of the neighbourhood.

A reduced tolerance towards the phenomenon of street prostitution in this area is also confirmed by an increased utilisation of punitive measures by enforcement agencies along the years. As contended by Hubbard (1998), starting with the community protests of 1994, police forces made a substantial use of the punitive instruments already available to them (but not used until then, because of the tolerant/lenient approach adopted towards street prostitution). Currently, according to the Local Police Unit (LPU) of Sparkbrook,[14] street prostitution "has not been highlighted as an issue to Officers in Sparkbrook and therefore there are currently no measures in place to deal with prostitution other than general patrols." This statement also argues in favour of the effectiveness of SCP measures in reducing street sex work.

4.3. Spaces of deprivation

Soho and Lozells

According to Birmingham City Council (2010), deprivation in the urban context is concentrated in a ring around the city centre. According to police reports, among the most deprived neighbourhoods, the ones which register the presence of street prostitutes are the wards of Soho and Lozells.[15] Such wards score very highly in the Index of Multiple Deprivation (Birmingham

13 See http://www.balsallheathforum.org.uk/start.htm.

14 Email received on 20/2/2014.

15 To identify such spaces, the research relied on information regarding the existence/extent of street prostitution made available by the official website of the West Midlands Police (http://www.west-midlands.police.uk/). After having identified the wards in which street sex work was said to be present, an email was then forwarded to the LPUs. They all acknowledged street prostitution as an issue in the ward.

City Council, 2010a, 2010b), both in terms of resident's social-economic conditions and of urban physical deprivation.

Diversity and socio-economic deprivation: The wards of Soho and Lozells are densely populated by Asian, white and black ethnic groups (ONG, 2011). The main religious beliefs are Christian and Muslim. Here, the number of unemployed residents is above the city average. Among those with an occupation, a significant number are employed in low skilled labour (e.g. the manufacture sector, wholesale and retail trade, repair of motor vehicles and motor cycles etc.) (Birmingham City Council, 2008). The majority of residents also have no qualifications or possess a level 1 qualification, and only a minority of residents have a level 4 qualification and above (Birmingham City Council, 2008).

Urban physical deprivation: Within the Index of Multiple Deprivation (Birmingham City Council, 2010a, 2010b), the Living Environment Deprivation domain inspects the quality of an individual's immediate surroundings both in terms of quality of housing and of quality of the "outdoor" environment (e.g. air quality and road traffic accidents involving pedestrians or cyclists). Under this indicator, both these wards are listed among the top 5% most deprived areas in England.

For the presence of street sex work, along with socio-economic deprivation and urban environmental degeneration, the two wards fall within the definition of "spaces of deprivation."

4.4. Summary

The three selected urban spaces resemble the traits of Hayward's (2004) model. The Ladywood ward, in fact, mirrors Hayward's conceptualisation of "spaces of consumption and pleasure." Balsall Heath falls within the definition of "centripetal spaces," whereas the two wards of Soho and Lozells match the description of "spaces of deprivation."

5. THE BRUSSELS CAPITAL REGION

In Belgium, although the soliciting of, and procuring for, prostitution are both targets of penal intervention, they can be formally tolerated by municipalities and confined to the so-called "tolerance zones" (Vermeulen, Moens, & De Busser, 2007). In such zones (or RLD), although street sex work is not allowed, window prostitution can be exercised, insofar as certain standards and rules posed by the municipality are observed. In RLD as well as in other urban areas, nuisance caused by prostitutes and clients can be addressed by police agents (and other civil servants) by way of administrative fines (the so-called Gemeentelijke Administratieve Sancties or G.A.S. fines). Since 1999, in fact, municipalities have been entitled to enact police regulations to

deal with different kind of behaviour equally falling under the broad term of *nuisance* ("incivilité" or "overlast"). [16]

Pursuant to such regulatory framework, municipalities have in some instances penalised the nuisance caused by street prostitutes. This is the case, for example, in the City of Brussels, one of the nineteen (normatively autonomous) municipalities of the Brussels Capital Region, which has adopted a clear-cut policy against street sex work. Although other municipalities have not enacted police regulations targeting behaviour of prostitutes and clients loitering on the streets (and are, therefore, not allowed to apply GAS fines), they have increasingly relied on the imposition of other forms of (equally punitive) measures to penalise sex worker's uncivil behaviour. [17]

5.1. Spaces of consumption and pleasure

Avenue Louise[18]

One of the inner-city "hot spots" where street prostitution is found is Avenue Louise, situated in the municipality of Ixelles (van den Hazel et al., 2008). After the regeneration project of 1930-1970, Avenue Louise was converted into a major site of "consumption and pleasure".[19] Currently, it is the place where most of the expensive boutiques and the great names of international fashion can be found, as well as famous shopping galleries (e.g. the Louise Gallery). While fashion design boutiques are concentrated in the upper section of the street (especially in the area around Porte de Namur

16 Law on municipal administrative sanctions of 13 May 1999, Laws of 17 June 2004 and of 20 July 2005, and Law of 24 June 2013.

17 In light of an interview carried out with a senior officer of the VVSG (Vereniging van Vlaamse Steden en Gemeenten), other measures that municipalities can (and have) utilise(d) against window prostitution include the imposition of taxes and the refusal/withdrawal of a business license. Taxes are imposed on sex workers behaving in a uncivil/prohibited way and/or on bar owners for the behavior of employees. The issuance of a business license can be denied or withdrawn in an attempt to close down a "sex bar" situated outside the RLD.

18 Although the majority of residents in Ixelles are of Belgian nationality, 42% are non-Belgians (among whom 72% are from one of the EU member states). The high number of non-Belgian citizens can also be connected to the proximity of the municipality to the EU district (situated in Etterbeek). The commune is also characterised by a population of diverse socio-economic profiles, stretching from the working classes to middle and upper classes. It registers a higher income and lower level of unemployment in comparison to the average of the region. Those occupied are employed in the private sector, or are self-employed or entrepreneurs (Municipality of Ixelles, 2010).

19 For a description of the architecture and urbanism of Avenue Louise, see Douillet & Schaack (2005).

and Toison d'or which is filled with high-end stores and big brands), the rest of the street is occupied by numerous embassies and the headquarters of international companies. A number of famous disco pubs are also to be found in the area (stretching from the Louise Gallery Event Hall and the iU Galerie Louise, to Studio 44 and Le Baron Livourne).

In light of the significant presence of sites of consumption, night entertainment venues and street sex workers, Avenue Louise matches the description of "spaces of consumption and pleasure" made by Hayward.

5.2. Centripetal spaces

Alhambra quarter[20]

Located between the streets of Rue de Laeken, Arduinkaai, Quai du Commerce, Boulevard d'Anvers, Boulevard Emile Jacqmain and Rue des Hirondelles, the so-called "Alhambra quarter" is a neighbourhood of the central municipality of Ville de Bruxelles (City of Brussels). The area is situated in the inner-city centre, 1 km north from the Grand Place and adjacent to Rue Neuve, one of the most famous shopping streets. As well as being a very well-known commercial and shopping area, it is also a residential neighbourhood. Here, community protests arising in the past few years have impelled the municipality to adopt a number of SCP initiatives in order to remove/displace street sex work from the area.

Police cameras (not indicated by signs) have been placed at the level of Boulevard d'Anvers and Rue des Commerçants since 2007.[21] The improvement of the urban environmental conditions of the area, moreover, has recently been put under the spotlight by a citizen committee established in 1999 with the express purpose of halting the phenomenon of street prostitution in the area, i.e. the *Comité Alhambra*.

The neighbourhood has also been subjected to an intensified public surveillance. To respond to increased resident complaints on the annoyance caused by the presence of street prostitutes, the central municipality of the City of Brussels (in partnership with relevant citizen's organisations and the

20 While the majority of people residing in the municipality of the City of Brussels are of Belgian nationality, 30% of the population living here are non-Belgians. The social and economic profile of the residents is much diversified, stretching from low (in the areas west to the pentagon and Laeken) to middle classes (mostly residing in the area of the pentagon). While issues of social and economic deprivation arise mostly at the level of the "popular quarters" (which present social housing and estates), they are less pronounced in the affluent neighbourhoods of the city centre (City of Brussels, 2010).

21 See http://users.skynet.be/fb436043/fr/nouvelles/camera.htm.

BRAVVO association) has recently designed a project with the aim of displacing street prostitution from the Alhambra district to the northern zone of the RLD (in the nearby municipality of Schaerbeek). According to the press report (City of Brussels, 2013), such a goal is to be achieved through intensified police patrols and the systematic presence of third-sector associations monitoring the health conditions of street sex workers. [22]

The aforesaid initiative has been carried out within the framework of the "Plan Intégré Communal d'Encadrement de la Prostitution" (PICEP), promoted by the mayor Freddy Thielemans at the end of 2012 (BRAVVO, 2013). In the same year, the municipality also adopted a punitive regulation against prostitution in the Alhambra district (City of Brussels, 2012). In this regulation, the Alhambra area is described as being blighted by a massive presence of street sex workers and "carrousel drivers" (kerb crawlers) which generate nuisance to residents. To effectively contrast and reduce such nuisance, the municipality has set out provisions prohibiting prostitutes from soliciting clients, and thus from using words, gestures, signs, or behaviours that make it evident that sexual acts are being offered in the Alhambra quarter. In Article 3, moreover, the regulation also prevents clients from procuring sex from a prostitute, and notably from approaching and conversing with street sex workers, offering money to them, along with repeatedly (carrousel) driving around the neighbourhood, ultimately attracting the attention of pedestrians through signs, gestures and sounds. Any breach of such a regulation is punished through the imposition of administrative fines (G.A.S. fines), amounting to 250 EUR. Kerb-crawlers have also been sanctioned through fines for traffic-related infractions in this area.

Community actions, together with (punitive) municipal regulations and practices, suggest that this inner-city area is characterised by a marked intolerance towards the phenomenon of street prostitution, thus fitting Hayward's description of "centripetal spaces."

5.3. Spaces of deprivation

Boulevard du Roi Albert II

The municipality of Schaerbeek is a site where both window and street prostitution can be found. Prostitutes mostly occupy Boulevard du Roi Albert II and the area of the RLD (which, for the most part, is situated in Rue d'Aerschot, Rue de la Prairie, Rue des Plantes, Rue Linné, Rue Verte and Rue

22 According to the public peace manager of the City of Brussels, actions to reduce nuisance also include an increased presence of "gardiens de la paix" (i.e. civic or town guards aim to fight incivilities), who are responsible for increasing the feeling of safety of the citizens and for preventing disorder and crime (see http://www.brussels.be/artdet.cfm?id=4068&).

de Brabant, adjacent to the Gare Bruxelles-Nord railway station) (van den Hazel et al., 2008).

Diversity and social-economic deprivation: According to the report issued by the municipality of Schaerbeek in 2008, 30% of the total population residing in the neighbourhood is non-Belgian (predominantly, they are Moroccan and Turkish). As figures show, population growth in the area has substantially increased in the last years due to substantial migration flows (Municipality of Schaerbeek, 2010). Currently, the population living in the area is highly transient and, especially in the north half of the commune, in precarious financial conditions. The area, in fact, registers very high unemployment rates compared with the levels attributed to Brussels Capital Region (Municipality of Schaerbeek, 2008).

Urban physical deprivation: As van Kempen, Wassenber and van Meer (2007) contended, particularly in its northern half, this neighbourhood is characterised by degenerated areas of social housing and by poor quality housing. The area is also generally affected by a decreased quality of life due to the high density of (heterogeneous) population and the heightened sense of insecurity felt among residents (Municipality of Schaerbeek, 2008).

According to the presence of outdoor prostitution, precarious socio-economic conditions and urban physical deprivation, the municipality resembles the characteristics of "spaces of derivation" indicated by Hayward (2004).

5.4. Summary

In the Brussels Capital Region, the three selected municipalities present the characteristics of Hayward's (2004) model. While Avenue Louise in Ixelles matches the description of "spaces of consumption and pleasure," Alhambra in the City of Brussels resembles "centripetal spaces" and Boulevard de Roi Albert II in Schaerbeek "spaces of deprivation."

6. MILAN

In Italy, after the enactment of the so-called "Legge Merlin" (Law N. 75 of 1958) criminalising the activity of pimping, both outdoor and indoor prostitution are neither prohibited nor regulated by law.[23] In spite of the official regulatory void, the phenomenon of outdoor prostitution has been subject to punitive local regulations since the early 1990s. As Danna (2004) reported, administrative orders (the so-called "ordinanze sindacali") addressing the clothing as well as the behaviour of street prostitutes have been pro-

23 Law N. 228 of 2003 has in fact introduced amendments to the penal code, in view of criminalising trafficking in human beings.

gressively issued by mayors in view to ensure public viability and urban security. From the year 2008 onwards, moreover, the (administrative) sanctioning of street prostitutes in the country has also been expanded through the so-called "Security Package" (Italian Council of Ministers, 2008) – a normative framework which awarded mayors more powers over urban safety and security. [24]

According to Parmigiani (2008), orders targeting street prostitutes have been adopted in many Italian cities. Among others, the anti-prostitution policy enacted by the city of Milan in 2008 is especially well known (City of Milan, 2008). [25] Here, in fact, police authorities have been empowered to fine sex workers and clients caught, respectively, soliciting or procuring for prostitution in all nine urban "zones." According to the municipal order, soliciting is intended not only when the sex worker directly negotiates sex transactions in a public space, but also when her behaviour, attitude or dress code suggest so. The action of procuring can be inferred by police authorities from the mere circumstance of a vehicle having stopped beside a sex worker. As read in the order, the soliciting of and procuring for prostitution are prohibited activities as they generate situations of "disturbance of public peace, of offence to common decency […], of hygienic and urban decay, which undermine the conditions of normal liveability in the concerned areas, and engender, to the detriment of residents, exasperating and continuous tensions." On the basis of this regulatory framework, administrative fines (amounting to 500 EUR) have been issued against prostitutes (and clients) in the whole municipal territory, with a prevalence in the areas surrounding the city centre (City of Milan, 2010).

6.1. Spaces of consumption and pleasure

Porta Nuova[26]

The area known as "Porta Nuova" (which includes the Centro Direzionale/Varesine/Porta Garibaldi/Isola neighbourhoods) is located 1.5

24 This, at least, until the judgment of the Constitutional Court, which re-framed the local regulatory power in the area of urban security (Const. Court, 7 April 2011, n. 115). See Di Ronco and Peršak (2014).

25 Order n. 29 of 4 November 2008. According to Maluccelli and Martini (in Campioni et al., 2009), the city of Milan had already started to adopt administrative orders against street prostitution in 1998.

26 In 2012, within zone n. 8 only 18% have been counted as non-Italian residents. Here, as well as in other zones of Milan, no data is made available (or was provided by the Office of Statistics of the City of Milan) regarding the rate of unemployment in the urban areas. Data is available only for the city of Milan in general (not for the specific zones) (ORIM, 2013; City of Milan, 2011b, 2013).

km north of the core centre of Milan, and lies between the two railway stations, Garibaldi and Central. Although it had degenerated greatly before the 1990s, in recent years the district has been subjected to a major planning revision. Currently, the Porta Nuova neighbourhood is a major site of business, offices and retail services. Among other things, it is the place where the Porta Nuova Business District Varesine (composed of three high-performing, efficient and sustainable buildings) is found. The area also encloses the Business District Garibaldi (made of the three towers of glass and steel, such as the "Unicredit Tower" in square Gae Aulenti) and the eco-sustainable business area of Porta Nuova Isola. It is also the site where "Palazzo Lombardia" is found, hosting the regional governmental offices. The district is also one of the most famous shopping areas, enclosing major fashion and design shops, as well as numerous spaces for up-scale and boutique retail. Especially in Corso Como, it includes attractive "late-night venues" for the elite. A variety of disco clubs (e.g., the Hollywood Milano, Loolapaloosa, Executive Lounge Milano, Shocking Club, as well as the Tocqueville, Eleven and Lotus) and other lounge bars are present in this area.

Here, although indoor and outdoor prostitution seems to be (almost completely) absent, research reports the presence of escorts in the clubs of the area (Bernieri, 2011).[27] More "traditional" forms of indoor prostitution (i.e., massage centres and parlours) are found in the "Chinatown" area (or "Quartiere Paolo Sarpi") very close by, as well as in the degenerated district surrounding the Central Railway Station. By contrast, the presence of street prostitution is concentrated in the area of the Central Railway Station (and notably, in Loreto and Buenos Aires neighbourhoods, approximately 2 km east of Porta Nuova).

The absence of (outdoor and indoor) prostitution make the district divergent from Hayward's conceptualisation of "spaces of consumption and pleasure."

6.2. Centripetal spaces

Ticinese – San Lorenzo[28]

The "Ticinese - San Lorenzo" is a neighbourhood of 8000 inhabitants located in the historical centre of the city of Milan. It is mostly a residential area, and one of its main shopping venues. The western area of the district, known as

27 Moreover, recent media reports indicate the presence of escorts in the most famous discos of the area, who are very often (previous) models employed in the fashion industry, later dragged into prostitution.

28 In zone 1, according to the City of Milan (2012a), just 14% of the resident population come from foreign countries.

"Navigli," is one the major nightlife areas of the city. Here, night-time noise nuisance, signs of physical disorder (mainly glass bottles in the streets), vandalism, public drunkenness, and the presence of street sex workers in the surrounding streets[29] have all engendered a high level of conflict among local relevant stakeholders (e.g. residents, pubs and clubs managers, city government and people who wish to enjoy the nightlife in the area).

A number of SCP strategies have been put into place in order to mitigate the blight of the area of Navigli. Firstly, surveillance systems (CCTV) were installed in July 2013 (at the "entrances" of via Paoli, via Borsi, via Magolfa, Ripa di Porta Ticinese and Alzaia Naviglio Pavese). Electronic barriers were also erected to stop and limit the road traffic in the area. Pursuant to a municipal order (City of Milan, 2012b), for example, motor vehicles have been prevented from entering the area at nights (from 22.00 to 7.00), unless holding a residential plate. A specific area (localized within the streets of Ripa di Porta Milanese, via Magolfa, via Fusetti, via Argelati, via Gola, via Borsi, and via Pichi) has also been made a pedestrian precinct, impracticable for kerb-crawlers.[30] Along with the installation of surveillance systems and of traffic barriers, the urban physical environment of Navigli has also been improved with a new lightning system (especially in the area of Saint Eustorgio).

Public surveillance systems have also been adopted in the district. Mostly, they focus on an intensified police presence and police interventions against disorder.[31]

A general intolerance towards the phenomenon of street sex work is here testified by the number of complaints stemming from local residents and community committees (known as *Ticinese* and *La Cittadella*).[32] With the

29 Street prostitution is found also around this "protected" area in Porta Romana, Piazza Trento, Ripa di Porta Ticinese etc. In the past, the area was regarded as thriving criminality and prostitution (see Bovone (1999) for an account of Vicolo Calusca). According to the Ticinese Committee, street prostitution is currently present between piazza Belfanti and Viale Romolo. The hot spot is the park found between Via Argelati and Via dei Crollalanza.

30 Through another (punitive) order (City of Milan, order of 31 May 2013), the mayor has also prohibited the selling and purchasing of alcoholic beverages from 22 to 6 and imposed the closure of clubs and bars selling those beverages for the same time span. The administrative fine that applies in case of transgression amounts to 450 EUR.

31 See for example
http://notizie.tiscali.it/regioni/lombardia/articoli/13/07/09/navigli_milano_videosorveglianza.html.

32 Information provided via email by the Ticinese Committee.

presence of SCP techniques and of street prostitution, the district fits in with Hayward's (2004) description of "centripetal spaces."

6.3. Spaces of deprivation

Loreto and Buenos Aires

According to the document known as "Patto per una Milano Sicura" (transl.: "Agreement on a secure Milan") issued by the local Prefecture and the City of Milan in 2007, both indoor and outdoor prostitution in the city particularly flourishes around the central railway station, and more notably in the deprived neighbourhoods of Loreto and Buenos Aires.[33]

Diversity and social-economic deprivation: Since the 1980s, due to their proximity to work places (within the service sector or in the houses of the neighbourhood) and the readily available (cheap and deteriorated) apartments in precarious sanitary conditions, the neighbourhoods of Loreto and Buenos Aires have become the residences of an increasing number of incoming immigrants (Motta, 2005). Even today, the area is characterised by a significant population of non-Italian origins: they amount to 26% in Loreto and to 10% in Buenos Aires (City of Milan, 2011a).[34]

Urban physical deprivation: The area comprising the neighbourhood of Loreto is characterised by poor housing conditions and, more generally, by a situation of urban physical degeneration. Here, the bad (or very bad) conditions of a substantial number of buildings clearly explains the low value of the rents and of the real estates, and thus also the (massive) presence of incoming immigrants in the past as well as in more recent times (Novak, 2006). In the neighbourhood of Buenos Aires, conditions of urban physical deprivation coexist with a flourishing of commercial activities, which in recent years have succeeded in (at least, partially) regenerating the area (Motta, 2005; Novak, 2006).

The presence of outdoor prostitution in (socio-economically and physically) deprived areas means these two neighbourhoods match with Hayward's (2004) conceptualisation of "spaces of deprivation."

6.4. Summary

With the exception of the neighbourhood of Porta Nuova which does not mirror the description of "spaces of consumption and pleasure," the other

33 "Hot spots" for prostitution are to be found in Viale Porpora, Abruzzi, Piccinni and Paganini.

34 Available data on resident economic conditions refers only to the City of Milan (see footnote 26).

selected urban areas fall within the definition of "centripetal spaces" and "spaces of deprivation." More precisely, the Ticinese district presents the characteristics of "centripetal spaces," whereas Loreto and Buenos Aires resemble the "spaces of deprivation." The Porta Nuova district, by contrast, diverges from the description of "spaces of consumption and pleasure" for the (almost complete) absence of street prostitution. Here, in fact, prostitution is to be found mainly in the form of indoor escorts, supplying sex to elite/top-level people.

7. EXPLAINING THE DIFFERENCE: CULTURAL FACTORS

Hayward's (2004) model applies to the selected wards and municipalities of Birmingham and the Brussels Capital Region, however, it does not explain why, in the Porta Nuova district of Milan, the presence of outdoor prostitutes is lacking. The fact that in Milan street sex workers are not to be found in regenerated and high-end areas of the city may suggest that a heightened level of intolerance towards the phenomenon may exist here. Such a hypothesis has been confirmed by the third-sector association "Fondazione Padri Somaschi – Servizio Bassasoglia".[35] According to this association, while individual attitudes (of residents and law enforcement agents) may vary greatly according to subjective/personal sensitivities, resident's organisations in Milan strongly oppose street sex work, which is deemed to undermine people's quality of life and the liveability of public spaces.

Such negative attitudes have also been reflected (at least, until 2011) [36] in the municipal regulation of the phenomenon of street prostitution. According to the text of the 2008 "anti-prostitution order" (City of Milan, 2008), administrative sanctions are to be issued against outdoor sex workers on the mere basis of their presence on the public streets. According to Parmigiani (2008), such an order (as do many similar orders issued in Italy to contrast the phenomenon of street sex work) relies on the "presumption" that any woman standing on the street and displaying a specific attitude, clothing style, and/or behaviour is a prostitute. In Birmingham, by contrast, punitive interventions mainly target the demand side of the phenomenon, rather than addressing prostitutes selling sex.[37] Similarly, in Belgium one of

35 The association has submitted a semi-structured questionnaire, which also included questions on personal, societal and law enforcement attitudes to the phenomenon of street sex work.

36 Since then, according to the "Fondazione Padri Somaschi," the newly appointed mayor (Giuliano Pisapia, PD) has neither issued any such punitive regulation, nor has he shown any willingness to proactively address the phenomenon of street prostitution and its causes.

37 See footnote 9.

the main focuses of law enforcement intervention is the nuisance brought about by the clients of prostitutes.[38]

What may also contribute to explain the existence, in Milan, of heightened feelings of intolerance towards the phenomenon of street sex work are country-specific attitudes to gender, sex and sexuality. [39] According to a survey carried out by Eurobarometer (2012) in fact, in Italy the perception of discrimination (outside the working life) on the basis of gender, gender identity and sexual orientation scores highly.[40] For example, discrimination on the basis of gender is perceived to be very widespread, as opposed to countries such as the UK and Belgium, where the respondents seemed to regard such discrimination as quite rare. In Italy, moreover, a low tolerance to issues of gender identity (i.e., being transgender or transsexual) and sexual orientation (i.e.. being gay, lesbian or bisexual) is also quite widespread. Lower levels of (perceived) discrimination have been registered in Belgium and the UK, where (almost) half of the respondents considered such types of discrimination as occasional. Similar results have been published by the European Union Agency for Fundamental Rights (FRA) in 2012. While the level of perceived discrimination on the basis of gender is at its highest in Italy, it is considered fairly limited both in the UK and in Belgium.[41] Discrimination on the basis of sexual orientation is very widespread in Italy. Here, in fact, offensive language and casual jokes about lesbian, gay, bisexual and/or transgender are perceived to be quite widespread (including in po-

38 In light of an interview carried out with a VVSG senior officer, police authorities in some municipalities have recently been applying GAS and taxes only against the nuisance caused by clients.

39 Ideally, to accurately explain the differences in attitudes to street prostitution in the three selected municipal contexts, prevalence should be given to the analysis of city-specific cultural factors. Due to the dearth of responses (or the partiality of the ones that we received) of relevant authorities, we have not been able to fully reconstruct the municipal attitudes to sex work (and, more generally, to sex and sexuality). Notwithstanding this lack of data, a useful link can be made here to the attitudes existing at the national level. Although responses and attitudes embraced at the national level may not be fully reflected at the local level, they may in some instances be useful to explain the responses adopted by municipalities.

40 In recent years, (centre-right) coalitions have pursued a restrictive approach to sexual and reproductive rights (Bernini, 2010). For example, in spite of the numerous bills filed (and still pending) before Parliament, no legal rights have yet been recognised for homosexual couples (who cannot legally marry or adopt children), and heavy restrictions have been imposed on in vitro fertilisation (medically assisted procreation) by the "Legge 40" (Law N. 40 of 19 February 2004). Such limitations, however, have recently been checked by way of judicial action (see Const. Court, judgement of 9 April 2014).

41 See http://fra.europa.eu/DVS/DVT/lgbt.php.

litical discourse), as well as expressions of hatred and aversion, assault and harassment against them (FRA, 2012). By contrast, in both UK and Belgium discrimination based on sexual orientation registers a level below average in EU member states.

High levels of discrimination against women, homosexual couples, and transgender people may be explained in Italy by reference to the notion of "traditional Italian family" (Crowhurst, 2012, p. 230)[42] – an idea which embodies the core traditional (middle-class) values very widespread among the Italian population. The image of the family in this country is based on the union of a heterosexual couple and on a vision of the woman as "respectable," that is having a "respectable" occupation and being dedicated to her children.[43] The hold of the two notions of "traditional family" and of "respectable woman," however, are both said to be undermined by disruptive signs of moral decadence posed by prostitutes occupying public streets – especially when those streets are situated in the residential and shopping areas of middle and upper classes. Ultimately, normative pressures to protect families from such morally unacceptable presences (Quassoli, 2004; Crowhurst, 2012), may explain why street sex workers in Italian cities (and, in this case, in Milan) are more likely to be found in marginalised and rundown areas, rather than in regenerated, high-end urban districts.

8. CONCLUSION

Despite the fact that Milan's areas identified as presenting the traits of "spaces of consumption and pleasure" divert from Hayward's (2004) conceptualisation, his model contributes to an understanding of the current attitude towards, and spatial location of, street prostitution in "centripetal spaces" and "spaces of deprivation" in all three selected cities. Firstly, this model clearly explains why, in shopping and residential spaces, the visible presence of undesirable individuals and groups is (usually) not socially tolerated and cleansed away through the employment of SCP and other punitive techniques. Such initiatives, in fact, are aimed to remove and exclude those "others" whose presence in public spaces undermines the dominant

42 The importance of the family in southern countries like Italy and Spain has been highlighted (among other authors) by Jurado Guerrero and Naldini (1996), who contend that the degree of institutionalisation of the relationships within the family, gender, generation, and relatives is higher than in other Western European countries. On the role of the family in Italy, see also Naldini (2002), Bernini (2010) etc.

43 This specific role of women in the Italian society has been recently confirmed by the National Institute of Statistics (Istat). In a study of 2013, in fact, Istat pointed out that, in the course of their lives, a greater number of women than men have given up a job, a career opportunity or, more generally, reduced their job expectations to look after the house and the family.

values of the middle classes and threatens their (safe and homogeneous) consumption modalities (Hayward, 2004). Secondly, this model also helps to understand the reasons why, in more deprived urban areas, the presence of street prostitutes may be more tolerated by both resident communities and enforcement authorities. In these spaces people are said to be over-exposed to consumerist desires which, if unfulfilled, may engender criminogenic pressures and lead to a heightened engagement in deviant and criminal activities (Hayward, 2004; Hayward and Yar, 2006). Since the thriving presence of crime and deviance in these areas may lead community action groups and enforcement agencies to focus their priorities for intervention on the most serious/harmful forms of criminal behaviour, it infers that the nuisance behaviour of street prostitutes may here be addressed in a more lenient fashion.

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Chapter 8.
Analysing the use of the trafficking victim archetype by Brazil and the Iberian countries

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1. INTRODUCTION

Much has been written about the construction of a white slavery mythology in the end of the 19th century, reflecting much more the social anxieties of the period rather than the existence of a large number of cases of human trafficking for sexual exploitation. One of the basic pillars of this cultural myth[1] was the construction of the white slave archetype – female, young, beautiful, innocent, victimised and, of course, white – which engendered feelings of protection and pity in western societies (Irwin, 1996). Over a hundred years later, the victim archetype has changed to reflect the new being supposedly in need of protection from human trafficking: female, poor, uneducated, coming from developing countries and often coded as non-white.

Brazilian women in Europe have become closely linked with the sex industry, particularly in the Iberian Peninsula, and have been widely recognised as potential victims of trafficking, even in their own country. Although the contemporary Brazilian variant of the trafficking victim archetype corresponds only to a very small fraction of the reality of trafficking victims and migrant sex workers from Brazil, it is still prevalent in the country's media and its political discourses.

This chapter will reconstruct the historical development of the trafficking mythology's victim archetype, focusing on the recent debate about the construction of its Brazilian variant and how closely it reflects reality (or fails to do so). It will analyse how this archetype has been included in the development of official (anti-)trafficking narratives and policies in Brazil, Spain and Portugal since the turn of the millennium, concentrating on why it is being used and the consequences such use brings.

1 The use of the term "myth" does not mean to imply a complete fabrication of information. It is rather a simplification of the truth in more palatable terms which ends up distorting it and exaggerating the real dimension of a situation. It reflects a processing of a complex reality into a clear-cut narrative that is easily understood, particularly in the case of trafficking, where the categories of "victim" and "villain" seem to be so well defined (Doezema, 2000, p. 26).

2. THE EVOLUTION OF THE "SEX TRAFFICKING" MYTHOLOGY

The end of the 19th century saw a period of greater independence for women, some of which chose or were induced towards sex work as a strategy of economic and spatial mobility. The social anxieties related to women's growing freedom (sexual, financial, of movement) and independence, when combined with the shifting position of western countries in the global scene and increased prospects of upward social mobility created a scenario where the cultural myth of white slavery was encouraged to grow (Irwin, 1996).

The initial victim here was, of course, the western woman at the turn of the 19th to the 20th century: innocent (naïve), pure (white) and cruelly deceived (by non-western men). Of note is the fact that in this scenario the historical labelling of prostitutes as deviant was eclipsed by the idea that these women were somehow "forced" into debasing themselves. By positioning every woman as a potential victim, "protective measures," such as special passport requirements, could be extended to all of them.

Relatively few women corresponded to the archetype of the unwilling virgin who was kidnapped or deceived with promises of respectable situations, but that was not the point (Doezema, 2000, p. 26). The "moral panic" engendered by the myth was focused not on empowering women to help them safely achieve their objectives (including migration and/or profiting from sex work), but in creating an environment that was even more hostile to women's mobility, spatial or otherwise.

As societies changed, the myth evolved. When the western woman became widely regarded (in theory, if not always in practice) as liberated, the focus shifted towards women from developing countries. They came to be perceived (in direct or indirect terms) as unable to protect themselves or to make the "right" choices (i.e. the ones which would keep them in their home countries and away from sex work) when they are able to have choices at all (Doezema, 2000).

The official discourse of the new mythology which emerged in the late 20th century was the protection of women who were made vulnerable due to a number of factors, particularly their precarious economic situations. Rather than create safe paths of migration for them, however, the earlier divide was reiterated: some people (men, western women, third-world women whose migration is part of family mobility spearheaded by their fathers or husbands) are allowed to travel, while others (sex workers, single women from developing countries) should not move across borders "for their own good." By classifying some women as inherently "vulnerable," states gained socially acceptable ways of controlling their movements.

The identity of the (no longer white) slave was not the only significant change to the myth. By the late 20th century the idea that all prostitution was exploitative was being hotly contested and the sex workers' rights movement gained strength. Debates soon started making a distinction between so-called "voluntary" and "forced" prostitution. Although this dichotomy did not receive universal support, it seemed at first glance to be a reasonable compromise that recognised that some situations in the sex industry were indisputably exploitative. In practice, however, it created a division of women into two categories: the "innocent victim" (the "forced" prostitute who deserved to be rescued) and the "guilty whore" (the "voluntary" sex worker who deserved whatever mistreatment she got due to her deviant behaviour) (Doezema, 1998, p. 48).

In the trafficking narrative, this division soon developed nuances. The term "forced" gained more connotations than it had in the original myth, where it referred mostly to physical force and abduction. Here economic vulnerability became a form of "force," as women from developing countries were understood as having no choice but to participate in sex work.[2] Deception, an element already present in the white slavery narratives, gained full strength, with stories of women who had accepted "decent" jobs abroad (nanny, waitress, housemaid) being tricked and forced into prostitution (Doezema, 1998, p. 43).

As more research began to emerge, two trends became noticeable. First, that while economic considerations were very clearly important to women who decided to perform sex work abroad, they were rarely the only factor taken into account. Secondly, most women were perfectly aware of the nature of the job they would undertake, although they were at times deceived about the conditions involved (Doezema, 2000, p. 32).

This information, however, is often ignored and the image of the struggling third-world woman forced by her circumstances into prostitution still carries a lot of weight. Yet to reinforce the fact that these women are "true victims," deserving of special consideration rather than of being treated as ordinary irregular migrants (who should be punished with deportation for their transgressions), a particular emphasis is given to the suffering they have endured, particularly its physical aspects. This generates what Claudia Aradau (2004) calls a "politics of pity."

There is an element here very reminiscent of the catholic imagery of the martyrdom of the saints, in which ordinary people are transformed through great trials and physical suffering. Here the "unsuitable" behaviours of the

2 The term voluntary, conversely, was associated with women from developed countries, who were the only ones considered to be in a position to truly consent to sex work.

victim (her ambition, her willingness to become an irregular migrant, her engagement in prostitution) are "cleansed" by the violations she has suffered, rendering her an object of pity rather than scorn.

Not all trafficking victims, however, bear physical marks. Threats and psychological abuse can be just as effective weapons of control, yet they are much more difficult to perceive at a glance than bruises. This often leads trafficking victims that do not resemble the "physically abused and locked-away slave" image that is so pervasive in trafficking campaigns to be completely ignored (Aradau, 2003).

Even physical suffering is not always redeeming. Many migrant sex workers who have had their rights violated, but whose victimisation is not linked to complete deceit and trafficking see the abuses they have endured be ignored and often considered to be expected and even acceptable. Here their desire for money is read as ambition, not necessity, and as such not seen as a valid cause to perform sex work; they are thus classified as "not victims" and their plight is ignored (Aradau, 2004, p. 263).

This leads to a Catch-22 for many migrant sex workers. On the one hand, to adopt the identity of a trafficking victim is often to be put into a position of infantilisation and objectification, where their agency is stripped by their "rescuers," who appoint themselves as more capable of deciding what is best for the victims than the women themselves. These rescuers are often law enforcement agents, who in the trafficking mythology play the part of the heroes who succour the damsels in distress. Yet the myth ignores, despite large amounts of evidence, that law enforcement agents often physically, sexually and verbally abuse sex workers and that many victims who are "rescued" end up being arrested and expelled from the country they are in without being heard, even in cases where there are compelling trafficking indicators (Agustín, 2007).

On the other hand, to give up the label of victim means in most cases to give up the possibility (even if small) of benefiting from the provisions accorded to trafficking victims which are almost never offered to irregular migrants: shelter, access to medical and legal services and even temporary permits to stay in the country. These benefits lead many women to choose to, in the words of Spencer and Broad (2012, p. 272), "negotiate victimhood for services" despite the negative consequences victimisation may bring.[3]

3 Note that this "choice" does not mean that they are lying. Rather, they may choose to interpret their migration and any exploitation they have suffered as trafficking when they would not do so without incentives, particularly in cases where the exploitation is offset by gains.

Most significant is the fact that when it comes to cases of human trafficking these women are not often given the choice to accept or reject both the "vulnerable" or "victim" labels. Rather, such labels are institutionally imposed on them, frequently to their detriment, as despite the overwhelming victim protection rhetoric being used by most western countries, true victim status (with all the benefits it provides) seems to be granted to very few people (Agustín, 2007).

3. THE USE OF THE TERM "TRAFFICKING VICTIM" AS A DE FACTO LABEL OF DEVIANCE

The longstanding connection between the anti-human trafficking and anti-prostitution movements is well known. It was perfectly exemplified, for instance, in the language of the earlier trafficking conventions (particularly the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others) and remains very clear to this day, when many countries (including Brazil) still fail to recognise any form of trafficking besides that for the purpose of commercial sexual exploitation.

Rather than forms of human rights' protection, throughout the years anti-trafficking instruments have been used as forms of migration and prostitution control which have targeted women in particular. A very clear example of this are the so called "inspections" which take place in many European countries to supposedly identify trafficking victims, particularly those submitted to commercial sexual exploitation. In practice these inspections are raids which have two clear objectives: to constrain (migrant) sex work, even in places where prostitution is not illegal, and to identify and expel irregular migrants. This is highlighted by the fact that inspectors often only care about the situation of undocumented migrants, ignoring the working conditions of nationals or of those who are legally in the country. Moreover, many of the "potential trafficking victims" (i.e. irregular migrants) which are identified are deported without having their situations examined or considered (Piscitelli, 2012).

Ken Plummer (1979, p. 108) once posited that "… labels alter the nature, shape and incidence of the experience." Here it is clear that the use of the label of "trafficking victim" often alters migration experiences for the benefit of those in power. Associating the deviant labels of "prostitute" and "illegal migrant" with actions which target these groups means leaving these actions open to extensive criticism of the social, economic and racial profiling which is often involved in them. In this sense, actions such as widespread raids to identify and expel unwanted migrants (often non-western women in the sex trade) or migrant profiling at international airports (which frequently target young women seen as potentially involved in prostitution), which might have been condemned if identified as such, are reinterpreted

and justified in the name of the protection of vulnerable to trafficking. The label of "(potential) trafficking victim" is much more palatable and much more likely to generate public support for the aforementioned actions.

This power imbalance is made very clear once we consider that when any sort of benefits or protections are offered for those that are labelled as victims, they often come with a heavy price tag attached. To qualify for benefits, a trafficking victim must often not only pass stringent standards (which frequently demand the existence of large amounts of physical and/or sexual harm as proof of genuine victimisation), but also sacrifice their safety and mental well-being by testifying against their traffickers (and often only have it count if the information offered ends up being valuable). Victims are frequently put into a position of complete infantilisation, where their agency is stripped and decisions regarding their lives are made by those in positions of power, who believe themselves to be more qualified to decide their fate (Piscitelli and Sprandel, 2011).

In this context, "(potential) trafficking victim" is clearly a label that brings more problems than benefits for the majority of migrants and one which is frequently associated with deviant behaviour on the part of the victims which is only "pardoned" through considerable victimisation. For those who fit the disseminated trafficking archetype, migration itself is often considered a deviant act, as it is frequently associated with unwanted actions such as irregular border crossing, overstay and sex work.

4. THE CONSTRUCTION OF THE BRAZILIAN VICTIM ARCHETYPE

In the initial "white slavery" narrative of the turn of the 19th century, Brazil was categorised as a receiving, not an origin country. One hundred years later the shift in the mythology from "white slavery" to "human trafficking" also shifted the position of the country. Although Brazil is still a destination for trafficking victims, it is now positioned on the global scene as a major source of victims, particularly for Europe. The widely disseminated profile of the "typical" Brazilian victim matches the modern trafficking victim archetype perfectly. This compatibility takes an interesting turn, however, when we analyse where this profile comes from.

The first major study about trafficking in Brazil – commonly known as PESTRAF (Leal and Leal, 2002) – was published in 2002. Applying a highly questionable methodology,[4] the study enshrined the archetype of the Brazilian trafficking victim: female, poor, uneducated, non-white, relatively young, hailing from peripheral regions with poor infrastructure, possessing a low

4 A thorough criticism of the study can be found in Blanchette and da Silva (2012).

skilled job and having at least one child (and often other family members) dependent on her earnings. The authors adopted the position that the consent of women who fit this profile was always "induced" by their socio-economic circumstances and thus to be disregarded. The abuse of their alleged "position of vulnerability" was to be presumed, without supporting evidence, in all cases.

The serious methodological failings of the study were considered secondary by its coordinators, who acknowledged that their main goal was to create a widespread discussion on the subject of trafficking (Piscitelli, 2010, p. 370). This statement ties very neatly with the discourse used to spread the white slavery myth at the end of the 19th century, where facts were secondary considerations in the creation of a moral panic which would induce people to act (Irwin, 1996).

In the case of PESTRAF, this objective was certainly achieved. Not only it was and continues to be used as one of the cornerstones of the current Brazilian trafficking policy, but more than ten years and innumerable criticisms later, its assumptions (such as that trafficking is a widespread phenomenon in Brazil despite the lack of supporting data) are still widely regarded as entirely factual. In the past few years its claims have often been misattributed to the United Nations (UN), which further legitimises them (Blanchette & da Silva, 2012).

Although the terms to describe victims that are now used in official narratives were purposely chosen to be politically correct ("afro-descendant," "economically disadvantaged," "low level of formal education"), Blanchette (2009, p. 31) stripped them down to their core meaning in the discourse: "black, poor and dumb." In this we find a striking parallel with the words of Chandra Talpade Mohanty (1984, p. 352) about what she calls the "colonial gaze," where "[…] third world women as a group or category are automatically and necessarily defined as: religious (read 'not progressive'), family oriented (read 'traditional'), legal minors (read 'they-are-still-not-conscious-of-their-rights'), illiterate (read 'ignorant'), [and] domestic (read 'backward') ..."

Here the gaze is inflicted not by western activists, but by the (mostly white) socio-economic and cultural elite, which moulded the initial Brazilian trafficking policy as a "protection strategy" geared towards those they considered to be the most vulnerable members of society, presuming (without much evidence) that they were the main victims of trafficking (Blanchette, 2009, p. 26).[5] Rather than focus on the stated wishes of those they allegedly

5 The gaze becomes quite literal when we consider that members from the Brazilian Federal Police claim to be able to tell "at a glance" which women are "unsuitable" to travel (Blanchette & da Silva, 2010, p. 345).

want to protect, this elite group tailors policies that respond to their own interpretations of trafficking and vulnerability and which can be manipulated to serve their own interests. The "moral panic" they encourage is but one more way to ensure that their policies are legitimised.

In the terms of Goode and Ben-Yehuda (1994, pp. 135-136), this elite engineered panic acts as a form of displacement for the anxiety generated by other issues. In the case of Spain, Portugal and Brazil, increased concerns about migration (with several racist, sexist and, on the European side, xenophobic implications) and the control of sex work are reworked into a human trafficking narrative where increased forms of control and the human rights' abuse they generate are considered acceptable as they are made under the guise of protection.

5. THE EVOLVING TRAFFICKING NARRATIVE OF THE BRAZILIAN WOMAN

The core profile of the "typical" Brazilian trafficking victim has changed little in the past two decades, although her narrative has evolved. Blanchette and da Silva (2011) presented a thorough analysis of the myth of the "exemplary" trafficked woman.[6]

The initial standard discourse[7] presented a "vulnerable woman" (in the terms described by PESTRAF) who, in her innocence, accepts an offer from a charming (white) foreigner to go abroad, either to work in a respectable (i.e. non-sexual) situation or as a response to an offer of marriage. Her Cinderella story, however, takes a dark turn when her Prince Charming reveals himself to be the villain of the tale. When she finds herself abroad the woman learns that she has been deceived and that the man she believed had saved her from a life of poverty has brought her to a life of degradation, forcing her to become a prostitute.

Here the trafficked woman hits rock bottom, becoming a mere object to be bought and sold. Many narratives emphasise her physical suffering, her drug and alcohol dependence, the great likelihood she has of contracting a fatal disease. There are only two possible outcomes in this scenario: either the trafficked woman succumbs to her despair and dies (either from illness or at the hand of her traffickers or clients) or, if she is lucky, she is rescued, usu-

6 Later works which further explore this narrative include Blanchette, da Silva and Bento, 2013a and 2013b.

7 Examples of such narratives can be found in news reports (Summa, 2005) and in warning pamphlets distributed by non-governmental organisations (NGOs) such as Chame (1998).

ally by the police forces of the country she is in. Her saviours make sure she is returned to Brazil, her rightful place.

With time, this narrative began to change slightly. The evil foreigners (a staple of the white slavery mythology) have gradually been substituted by the figure of the "treacherous Brazilians", who can now be either male or female and who are willing to sell anyone – even their own friends and relatives – to gain money.

Even if this acknowledges the fact that traffickers are often not complete strangers, it fails to recognise that the majority of migratory journeys undertaken by Brazilians (be they regularised or not) depend heavily on support networks of acquaintances and family members who offer everything from money and job offers to accommodation and information. These support networks are not "mafias" by any stretch of the definition, even if the aid they provide is not always selfless.[8]

There has also been an increasing acknowledgement that the victim may have worked as a sex worker previous to her migration and that she could have been aware of the true nature of the job abroad. Nevertheless, her purported ignorance is still highlighted, emphasizing the fact that she was not truly prepared to travel abroad and had no idea of what she was getting into.

There is no mention of the fact that migration has long been considered a viable path for sex workers in Brazil (particularly for those who wish to own property and businesses, invest in their education or have enough money to allow them to retire) and that these women are very likely aware of the potential problems associated with sex work. Moreover, no mention is given to the fact that women (and those who worked previously in the sex industry in particular) are often not passive respondents to these opportunities. Many of them actively search for people who have the knowledge and means to aid their migration project (Blanchette & da Silva, 2005).

The alleged poverty these women live in is supposed to drive them to a state of desperation where any offer for a better life is accepted without question. However, while this is not reflected in the standard narrative, there is an increasing acknowledgment, even on the part of the Brazilian authorities, that these women do not come from the most economically deprived segment of society (Procuradoria da República no Estado do Rio de Janeiro, 2013). To them migration is not the only alternative to total deprivation, but a rational path towards better living conditions.

8 See for instance Padilla (2006) for an exploration of the role played by these networks in the migration of Brazilians to Portugal.

Particular emphasis is also given to the women's lack of formal education, which in the discourse is tied to a supposed inability to face life abroad. This lack of adequate preparation is also underscored by presenting their decision to migrate not as a rational choice where many factors have been taken into account, but as a thoughtless gamble in the search for money. Their "naïveté" in believing they can change their fate without "really working for it"[9] is seen as akin to stupidity (Blanchette & da Silva, 2011, p. 86).

The existence of debts has become more present in the narrative in recent years, as has the fact that most women are aware of their existence. The debts, however, are characterised as "unpayable" and an instrument of control over the victims. The fact that most Brazilian women consider debts to be a fair and normal part of the migration process and that they are often able to repay them in relatively short amounts of time is conveniently never mentioned (Malgesini, 2006).

The myth's narrative is so strong that it is often the case that when Brazilian sex workers are "rescued" and affirm that they have not been trafficked, their statements are considered to be irrelevant. They are often seen as "too afraid of their traffickers to talk," with no mention given to the fact that they might not want to accuse acquaintances who from their perspective performed a valuable service. The alleged victims are also frequently dismissed by being characterised as "unable to recognise themselves as trafficked," with the implication being that they are too "uneducated" to perceive their reality, rather than that they might not have been exploited or that the level of (financial) "exploitation" was considered by them to be acceptable in face of their gains (Piscitelli, 2006).

At no point does the myth recognise that the greatest fear of many Brazilian sex workers living irregularly abroad is not the possible abuse from their alleged traffickers, but an encounter with the local police which is tasked with "rescuing" them. In the majority of cases the police forces the women to return to Brazil against their will, often confiscate their savings and in some places are even known to be physically, verbally and sexually abusive (Piscitelli, 2011). Rather than be thankful for being returned to Brazil, many of the alleged victims soon search for other migration opportunities.

9 There still exists a recurring idea in some segments of Brazilian society that prostitution is not a true form of work, but simply a way to gain "easy money." This is apparent even in how some judges word their decisions about human trafficking (see for instance Wiecko V. de Castilho, 2008, p. 110)

6. CONFRONTING THE USE OF THE VICTIM ARCHETYPE IN BRAZILIAN AND IBERIAN NARRATIVES

In recent years a number of academic works have countered the established trafficking mythology and undone the certainty that surrounds the existence of the trafficking victim archetype.[10] Yet the myth has not disappeared – although it has, as mentioned above, evolved – and its influence is still present in several official narratives about human trafficking as detailed below.

6.1. Brazil

It is very clear that the trafficking mythology has had a strong influence in the development of Brazil's anti-trafficking policy. This can be explained by a combination of factors.

At the turn of the 21st century, as Brazil's relevance grew on the international scene, the country became increasingly preoccupied with its image and reputation abroad. Trafficking became a concern not because of the human rights violations involved, but because it reinforced the idea that Brazil "is not a serious country" and thus unsuited for a bigger role in international politics (Piscitelli & Sprandel, 2011).

Forbidding potential trafficking victims (in practice, all migrant sex workers) from travelling[11] and thus safeguarding the "dignity and honour of the country," in the words of an employee of the Brazilian Ministry of Justice (Blanchette & da Silva, 2010, p. 342), was thus seen as more important than capacitating people to travel with safety. This is reflected in the "preventive actions" which take place in international airports, where Federal Police officers "detect" women who they suspect of planning on engaging in prostitution abroad and try to persuade them to desist from travelling. The Federal Police boasts of this as a successful anti-trafficking strategy; sex workers' rights activists classify it as a harassment of (potential) sex workers to induce them to give up their right to migrate (Piscitelli & Sprandel, 2011).

This safeguarding of the image of the country by curtailing the movement of women (particularly those considered as potentially involved in the sex trade) is not a new phenomenon.[12] The official explanation for curtailing

10 See for instance the works of Laura Agustín and, in the case of Brazil in particular, Adrianna Piscitelli, as well as Thaddeus Blanchette and Ana Paula da Silva.

11 Article 231 of the Brazilian Penal code characterizes human trafficking as the aided movement, to or from the country, of a person who will engage in prostitution.

12 Blanchette (2009), for instance, shows that, when it comes to making it difficult for certain types of women to travel, in some respects little has changed between the rhetoric employed by the United States in 1918 (in the middle of the white slavery

free movement, a constitutional right of every Brazilian citizen, is the protection of these citizens the government has labelled as "vulnerable." Even the right to obtain a passport is seen as "dangerous" for certain kinds of women (non-white, of the lower socio-economic strata, with low levels of education). During a 2005 seminar debating human trafficking in Rio de Janeiro, an employee of the Federal Police reminisced about the times of the Military Dictatorship in Brazil (1964-1985), during which the authorities could simply "look at a person," somehow perceive they were "not fit to travel" and refuse to emit the appropriate documents (Blanchette & da Silva, 2010, pp. 341, 344).

When these women do manage to migrate, however, the alleged concern about their well-being seems to disappear. In the past decade there have been an increasing number of reports of Brazilian women being identified as sex workers by foreign border officers, particularly in Europe, and being refused entry into other countries and at times subjected to veritable interrogations (and even rights' violations) to "confess" their true intentions (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça & ILO, 2007). It is of note that the complaints made about these situations in Brazil are often worded as extreme dismay in having "family women" (i.e. not prostitutes) be treated as if they were "whores." The implication is, of course, that the degrading and at times severely abusive treatment would be justifiable (or at least not objectionable) if it were directed towards bona fide sex workers (Blanchette & da Silva, 2010).

The remedy offered here is also notable and ties back to the original premise of the anti-trafficking campaigns: instead of advocating for a change in the treatment offered by European countries to those who are seen as (potential) prostitutes, the solution most often advocated is to curtail the migration of sex workers, less they continue to "besmirch the name" of Brazilian women abroad (Blanchette & da Silva, 2010, pp. 353-354). Note that the issue is never broached in terms of the women being irregularly in foreign countries, nor points to the legal ramifications of performing sex work in countries where that activity is illegal, but centres on curtailing prostitution in itself.

The recurring preoccupation with restricting the movement of certain types of women under the guise of protecting them against trafficking takes an even more interesting turn when we take into consideration some of the results of the published work of the "humanised assistance office for migrants" of São Paulo, hereafter referred to as the Guarulhos Airport studies (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça & ILO, 2007), whose data collection took place in 2005 and 2006. The studies,

moral panic and during a time where the country was consolidating itself as a major power in the international scene) and that used by Brazil in 2008.

which analysed interviews with people who had been either deported from or non-admitted to foreign countries, showed some evidence that the Brazilian trafficking victim archetype might correspond more closely to women who had been denied entry into other countries than to the women who were deported for being irregular migrants (many of which either admitted to or were suspected by the researchers of being sex workers). A significant percentage of the women whose entry to the European Union (EU) was denied fulfilled all legal entry requirements; some claim that they were not given a reasonable explanation for the denial they received, but most seem to have been told that their stories were false or contradictory despite evidence to the contrary.

More recently, however, there has been some indication of a shift in the way trafficking is being presented in Brazil, perhaps as a result of an expansion of the groups involved in the development of trafficking policies, which now occasionally include members of civil society and NGOs associated with sex workers. This is very clear when we analyse the evolution of government-sponsored anti-trafficking campaigns.[13]

In the first nationwide Brazilian campaign against trafficking ("International Trafficking in Women – Report it!"), co-sponsored by the United Nations Office on Drugs and Crime (UNODC) in 2004, the information about how to protect oneself from exploitation had a very clear agenda. Targeting women specifically, it asked them to be sceptical of offers to work abroad, even if coming from acquaintances or relatives, but offered no suggestions about how to ensure the offers were legitimate. It affirmed that success stories of women working in prostitution were rare, which is debatable, especially since people may interpret "success" differently. Perhaps even more tellingly, it outright stated to women that they "w[ould]not work abroad, [they] w[ould] be enslaved," leaving absolutely no space for the existence of migrant experiences (even those not linked to sex work) that did not involve slavery or exploitation.

This type of campaign makes a clear divide between spaces which are safe (in this case Brazil) and unsafe (in this case, other countries), failing to recognise that "home" is not always a safe place and that people can find better living conditions abroad, even if their migratory process is not idyllic. Rather than an anti-trafficking campaign designed to educate potential victims so they could be able to make informed decisions, this campaign appeared to want to curtail feminine migration through scare tactics. This particular campaign also presented a highly sexualised gaze upon the body

13 Folders, posters and other materials of these campaigns can be found on the website of the Brazilian Ministry of Justice (http://portal.mj.gov.br).

of the female victims, a problematic pattern among many anti-trafficking images (Andrijasevic, 2007).

Another government-sponsored campaign, launched in 2010, started to offer more valid information about how to ensure one's safety when travelling abroad. Nevertheless, it continued to focus its imagery on the sexualised female body, this time caged (another recurring motif).[14] Its slogan was also telling: "Help Brazil not to fall into this trap". The concern here was turned not towards the women who may be victimised, but towards their country, which may experience negative repercussions if it is considered a source of trafficked women.

A 2011 campaign, co-developed with the International Centre for Migration Policy Development (ICMPD), started to distance itself from the initial approach, abstaining from the sexualisation of women's bodies in its images. Yet despite tentatively approaching other forms of trafficking besides sexual exploitation, it still visually tied trafficking to slavery and presented strong indicators of victim blaming (its slogan was "The decision to travel is yours. So are the consequences").

The government's 2013 anti-trafficking campaign "Tips to travel safely," whose folder is modelled after the Brazilian passport, seems to have finished the cycle. It does not rely on sexualised imagery, nor does it target only women and trafficking for sexual exploitation. It offers helpful information on how to secure a journey abroad, who to contact in case of exploitation and how to identify a situation of trafficking. Moreover, when giving suggestions about aiding those who might have been potentially trafficked, it encourages people to talk to the alleged victims and offer them information about possible resources, rather than to make decisions for them. This offers a particular contrast to seminaries sponsored by the Brazilian Foreign Ministry around 2006, where people being capacitated to deal with human trafficking were encouraged to report to local police forces any circumstances where Brazilians were involved in sex work, regardless of the presence or not of exploitation and without consulting the supposed victims (Piscitelli, 2012, p. 282).

Yet despite a much more liberal rhetoric being in place in recent years, which encourages responsible migration and includes sex work as a viable labour alternative, in practice the actions of the Brazilian Federal Police

14 Federal Public Prosecutor Daniel de Resende Salgado points out that this type of imagery, which associates trafficking exclusively with slavery and the most extreme cases of control, is actually counterproductive, as people who went through less extreme, but nonetheless exploitative situations do not make the connection between the trafficking they see depicted in the campaigns and what happened to them (Procuradoria da República no Estado do Rio de Janeiro, 2013).

(which enforces the anti-trafficking legislation) and of the country's judicial system are both still tied to the Brazilian legislation and thus focus on restraining and punishing all migration for sex work, regardless of its conditions. The label of "(potential) trafficking victim" is still applied to many women, often to their detriment, heedless of their own interpretation of their situation.

6.2. Spain

Spanish trafficking legislation makes a clear division between victims who are worthy of maximum state support (in the form of a residence permit) and those who are not. To be a worthy victim, one must not only have been victimised, but utilised this victimisation as a way to punish traffickers, providing useful information and testimony.

The anti-prostitution stance adopted by Spain[15] is very clear in every official policy and document issued about human trafficking. Sexual exploitation is broadly understood, as per the National Plan Against Trafficking, as encompassing prostitution as a whole, sex tourism, the buying of mail order brides and servile marriages (Gobierno de España, 2008, p. 3).

Trafficking and prostitution are thus seen as closely linked. The official report on prostitution by the Spanish legislature claims, for instance, without offering supporting evidence, that most women that are in a situation of prostitution are or have been victims of human trafficking (Cortes Generales, 2007, p. 23).

Spain's anti-prostitution position goes far. In its annual trafficking reports, the Spanish Civil Guard classifies as a (potential) victim of trafficking every person who is engaged in prostitution, as they consider that the vast majority of women become prostitutes because they live in a state of necessity. The claim that anyone can "voluntarily" become a sex worker is viewed with great scepticism.

> *… although [to become a prostitute] is a free decision, we observe that in reality they have been pushed by the economic difficulties in their countries of origin. Detailing the socio-economic and cultural conditions to which this report refers …. the majority are people from regions which are economically disfavoured and have family obligations, who see in prostitution a way to subsist* (Guardia Civil, 2009, p. 18).

15 Note that despite this prostitution, even if unregulated at the national level, is not illegal in Spain, although third-party control is.

In a classic trafficking mythology tradition,[16] a combination of insufficient economic means (not-emancipated), family obligations (not-modern) and cultural factors (not-western) is interpreted as lack of agency. Sex work is seen not as a strategy of socio-economic mobility, but as a survival mechanism, despite the fact that research shows that trafficking and survival sex are not necessarily closely linked (Saunders, 2005, p. 253).

It is thus very clear that in Spain the archetype of the trafficking victim is cantered around women from developing countries that have been commercially sexually exploited although there is no hard evidence to support this assertion. Brazilian women, who are frequently associated with sex work in Spain (Badet Souza, 2010), as well as women from other parts of Latin America, who are particularly prominent in the Spanish sex industry, seem to fit this mould perfectly.

Fitting the archetype, however, rarely seems to gain these women anything but frustrated journeys or expulsion orders. Sex workers and NGOs have repeatedly affirmed that the "inspections" undertaken by the police to identify trafficking victims and minors engaged in sex work are in fact raids in which irregular migrants are identified and deported. Multiple newspaper reports seem to confirm this, as they often state in the same paragraph that a number of "trafficking victims" have been "rescued" during a police operation and that they will all be expelled from the country without delay due to their irregular situation.[17] The anti-immigration stance becomes even clearer in airports, where border officers seem to adopt an even broader approach and target Brazilians with a vengeance.[18] Brazilian women report that cases of verbal, physical and sexual violence enacted by both border and police officers are not uncommon (Secretaria Nacional de Justiça, 2006; Piscitelli, 2011, p. 18).

16 In Spain the strength of the "white slavery" mythology goes beyond official policies. The term "*trata de blancas*" (trafficking of white women) is still – despite its now widely recognised racist implications –often used as a synonym for trafficking for sexual exploitation (see for instance Fiscalía General del Estado, 2006, p. 445).

17 See for instance several news reports written by Anelise Infante for BBC Brazil (http://www.bbc.co.uk/portuguese/) .

18 In the past decade minor diplomatic conflicts between Spain and Brazil have become recurrent as Spain has increasingly tightened its borders. The effect against Brazilians has been felt in such a way that the Brazilian government has retaliated on a number of occasions by refusing to admit selected Spanish citizens, as per the website of the Brazilian Ministry of Foreign Relations (http://itamaraty.gov.br/).

6.3. Portugal

The current Portuguese trafficking legislation does not, unlike the Spanish one, contain a "usefulness" requirement. This means that all those who have been trafficked to Portugal are eligible to receive aid and a temporary residence permit, even if they choose not to cooperate with the investigation against their traffickers. However, we can still find traces of the "worthy" and "unworthy" division that permeates the trafficking mythology when it comes to the more permanent residency arrangements. To be eligible, victims must cut all contact with their traffickers and show that their personal circumstances (their health, safety or, significantly, their high level of vulnerability) makes a permission to stay in the country essential to their survival and well-being.

In the Portuguese national trafficking plans there is a clear link between increased vulnerability and women and children, as per the UN Trafficking Protocol's[19] example. The first two plans stated that precarious economic circumstances are closely associated with the possibility of exploitation, yet other factors present in the Brazilian victim archetype (such as race) were not mentioned. The First Plan (2007-2010) cited "more vulnerable social groups" which could be "potential targets" for recruitment into trafficking (Presidência do Conselho de Ministros, 2007, p. 3943), but did not clarify which groups these were.

The official reports of the Portuguese Observatory on Human Trafficking are limited to relaying cut and dry facts, without trying to create vulnerability narratives in which to contextualize them. They do, however, cross examine some statistics: age/sex, sex/nationality, type of exploitation/nationality/sex. Note that information that is considered essential in the Brazilian trafficking archetype (race, education, economic circumstances) does not appear to be relevant in this data collection.

Despite the widespread perception in both police forces and NGOs that Brazilian sex workers, who are predominant in the Portuguese sex industry, are the group most vulnerable to trafficking (de Sousa Santos, Gomes, Duarte, & Ioannis Baganha, 2007), this does not seem to correspond to the facts assessed by the Trafficking Observatory. Since 2010 most confirmed victims of trafficking have been men who had had their labour exploited. This offers a contrast to the fact that most potential cases flagged from 2009 to 2011 were of Brazilian women who were considered to be potential victims of sexual exploitation (Observatório do Tráfico de Seres Humanos, 2010, 2011, 2012 and 2013). Thus, while the first impulse seems to have been to focus

19 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (2000).

on supposedly sexually exploited women from developing countries, men working outside the sex industry appear to be in practice the group most vulnerable to trafficking.

Even though they are not necessarily the segment most susceptible to trafficking, the Guarulhos airport studies (Secretaria Nacional de Justiça, 2006; Secretaria Nacional de Justiça and ILO, 2007) showed that in 2005 and 2006 Portugal was one of the countries which most often denied entry to Brazilian women. As previously noted, most of the women, interestingly enough, fit the Brazilian victim archetype perfectly, offering a contrast to the fact that those being "returned" (i.e. deported), some of which were involved in the sex industry, usually did not fit this mould so neatly.

Perhaps even more significantly, multiple reports from non-admitted women recorded in the studies claim that Portuguese border officers made it very clear that they associated Brazilian women with prostitution and that they were humiliated and mistreated so that they would "confess" their "true purpose" in coming to Portugal. The concern of the officers here was clearly not that the women were being potentially trafficked, but that they would become irregular migrants working in the sex industry.

Although the concept of vulnerability is not very present in official reports, it does not mean it is completely absent from the Portuguese trafficking narrative. One of the most thorough government-backed studies about trafficking for sexual exploitation in Portugal (de Sousa Santos, Gomes, Duarte, & Ioannis Baganha, 2007) makes a very clear connection between increased vulnerability to trafficking in the face of poverty and social inequalities. The study goes even further by also mentioning cultural aspects, particularly "the weakening of social and cultural values and the disintegration of family structures" and the existence of "patriarchal cultures which are permissive to violence against women" (p. 317).[20]

The same Portuguese study contains a variety of statements from law enforcement officers, magistrates and NGO staff members about trafficking victims. A cursory analysis shows that while most of them consider that the majority of women involved in the Portuguese sex industry are independent workers who made a rational choice to migrate based solely on financial motives, there is still a perception that there are cases of ingénues trafficked

20 This seems to play very much into the contemporary trafficking mythology that classifies non-western countries as places which are less evolved and where women are routinely subjected to exploitation and violence. This, of course, neatly ignores the fact that gender inequality and violence against women also exist in western countries. According to the Council of Europe (2002), for instance, one in four European women will be victimised by domestic violence in their lifetime, compared to one in five women in Brazil (Núcleo de Opinião Pública da FPA, 2010).

into miserable conditions who have been completely deceived about the nature of the job, even if evidence to support this seems scant. The use of the "poverty as force" rhetoric seems to also be present in the perception of many of these individuals, particularly when associated with Brazilian women.

7. CONCLUSION

Since the emergence of human trafficking as an issue in the global scene, the victim archetype has been used by many actors (states trying to control migration and sex work, organisations who benefit from participating in the rescue industry,[21] anti-prostitution activists) to defend their own interests rather than those of the alleged victims. It is beneficial for these actors to continue to perpetuate the modern trafficking mythology rather than conduct well-sound methodological research on the subject which could disprove many of the premises their policies and actions are based upon.

The perpetuation of the trafficking mythology is particularly detrimental for migrants who fit the victim archetype, especially if they are involved with sex work. Some are considered to be guilty parties and are promptly given expulsion orders; their victimisation (which is not necessarily tied with trafficking) is seen as an expected comeuppance for their transgressions in the realms of sexuality and migration and thus dismissed. Others are labelled as victims and stripped of their agency and decision-making capacity and often returned to their countries of origin against their will "for their own good." In both cases, the issues that affect migrant sex workers – be they related to the unregulated nature of the sex industry or to the problems faced by all (irregular) migrants – are never addressed, perpetuating the problems they face.

In the case of Brazil it has not been different. The Brazilian trafficking victim archetype, which was constructed with little basis in fact, has often been used as a justification to create barriers to the migration of "non-suitable" individuals. Moreover, the creation of anti-trafficking actions has become tied to an increase in anti-vice campaigns inside the country which negatively affect sex workers, but do little to respond to the trafficking phenomenon (Amar, 2009).[22]

21 See Agustín, 2007.

22 According to sex workers' rights activist Gabriela Leite, conditions for prostitutes in Brazil got worse during the Lula government (2003-2010) and further deteriorated throughout the Dilma Rousseff presidency (2011–) (Moribe, 2013), periods in which anti-trafficking activities flourished.

Although the way the country addresses trafficking has been slowly distancing itself from the trappings of the classic approaches to the issue, in practice the actions of its Federal Police and judicial system, as well as the opinion of its lawmakers, are still heavily influenced by the trafficking mythology. The rhetoric of a victim-centred, human rights conscious approach to deal with human trafficking, although widespread, has little basis in reality.

In Brazil the fight against trafficking has become a symbolic fight for justice and human rights which was kick-started not by internal concerns, but after the issue was brought into the limelight by international organisations (Sprandel & Mansur Dias, 2010, p. 163). The time and money which are spent in anti-trafficking activities is justified by the repeated assertion that there exists an invisible, yet extremely large number of Brazilian trafficking victims. In 2010, for instance, the Brazilian National Justice Secretariat claimed that on average 60,000 Brazilians were victims of transnational trafficking each year (Platonow, 2010).

Recent statistics from the Brazilian Ministry of Foreign Relations (Ministério da Justiça, Secretaria Nacional de Justiça & UNODC, 2013), however, told a very different story: during the 2005-2011 period there were on average less than seventy Brazilian victims of transnational trafficking identified per year. Despite these official figures, there is a continuous insistence by policy makers and civil servants that trafficking is a major problem in Brazil. Many other more statistically significant issues, such as the country's horrifyingly high rates of sexual violence, are much less empathically debated. Data from 2010, for instance, shows that 41,680 cases of rape were recorded in that year, a rate of approximately 21.85 cases per 100,000 inhabitants (Fórum Brasileiro de Segurança Pública, 2013, p. 234), a fact which made few headlines and did not generate widespread moral outrage. In the same year, a record-high number of 218 Brazilian victims of transnational trafficking were detected (88 of which were victims of sexual exploitation), at a rate of approximately 0.11 cases per 100,000 inhabitants. This was considered a national crisis.

The difference can be explained by the fact that there is considerable international pressure on Brazil to "clean up" its alleged bad trafficking record.[23] Yet once more this pressure is not motivated by an international wave of concern about possible human rights violations, but exists much more because focusing on "the tragedy of human trafficking" has become an acceptable way for developed countries to curb and control undesirable migration flows. The alleged protection of those being trafficked justifies the tighten-

23 There is also, in the perception of Gabriela Leite, a considerable amount of financial resources at stake for both the government and NGOs who support the existing trafficking narrative (Piscitelli & Sprandel, 2011).

ing of borders, the creation of "(risk) profiles," the unleashing of punitive actions against origin countries and the existence of raids aimed at discovering "victims," but which in practice detect and expel irregular migrants, particularly sex workers.

This can certainly be felt in Europe. In Spain in particular and in Portugal to a lesser degree, the Brazilian victim archetype has been adopted by state institutions and representatives. Such is the case with border officers present at airports, who often turn away those who do not fit their expectations of what a legitimate migrant looks like, even when they fulfil all the financial and documental requirements to enter the EU. This is done despite the fact that identified victims of trafficking in both countries very often do not correspond to the official victim profile.

Rather than be primarily concerned with the rights of trafficking victims, both Spain and Portugal use the "victim protection" rhetoric as a way to legitimise two specific types of actions. Externally, the focus is on aggressive forms of border control,[24] despite the fact that more restrictive migration barriers have been recognised by many (including members of Brazil's National Immigration Council), as making migratory processes even riskier and thus more attractive to smugglers and traffickers (Procuradoria da República no Estado do Rio de Janeiro, 2013). Internally, the alleged desire to "liberate" victims of trafficking has led to a perennial cycle of "inspections" whose main aim is in fact to punish those involved in prostitution and, most importantly, detect and get rid of irregular migrants.

Thus, while the trafficking victim archetype has proved to be inaccurate and based upon sexist, racist and classist assumptions of "vulnerability," as long as its use continues to enable countries to fulfil a number of their political objectives without significant backlash, it is unlikely that it will soon fall into disuse.

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24 Jorge Fernández Díaz (2013), Spain's Minister of Interior, has recognised that the intensification of border controls is one of the main strategies being used by that state in its fight against human trafficking.

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Chapter 9.
The framing of prostitution as victimhood and violence for criminalisation purposes

NINA PERŠAK

1. INTRODUCTION

If prostitution is the oldest profession, then the social control of prostitution must be the oldest social control. There is scarcely another area of human conduct that incurred so many societal interventions, tested so many "solutions" or attracted so many strategies in order to tackle its "problem". Prostitutes have been "cured", locked up, shamed, hanged, celebrated as priestesses, burnt at the stake as witches, removed from streets, sequestered in certain areas, hailed as tourism ambassadors, finger pointed as culprits for the break-up of marriages and general social decline. From the outright prohibition to regulation, decriminalisation to legalisation, from zoning areas to designated establishments, brothels and "Eros centres", this is an area where in terms of legal solutions not much awaits further invention. Criminal law has always come handy when dealing with prostitution, as it not only removes the problematic individuals from society through detention, incarceration (or displacement of prostitution as a result of criminalisation) but it also legitimises the societal censuring[1] treatment of a deviant individual in such a repressive way through labelling him or her as a criminal. Yet, criminalising clients, i.e. the demand side of prostitution, in order to curb prostitution is a fairly recent idea.[2]

Criminalisation of clients is often seen as a softer, more prostitutes-friendly option, as it does not directly target or victimise the prostitutes but rather their clients. It stems, however, from the belief that prostitution is a form of violence against women and that it therefore needs to be abolished. All types of prostitution are considered violence; here no distinction is drawn be-

1 Censure or moral reprobation is what distinguishes punishment, i.e. criminal legal sanction, from other types of sanctions (von Hirsch, 1993).

2 The so-called Swedish model of regulation of prostitution – based on the law Sweden passed in 1998 – criminalises the use of a prostitute's services. The offence (created in 1998, in force since January 1999) penalises the "purchase of sexual services" with a fine or imprisonment for up to 6 months (Hughes, 2001). "The idea that that prostitution might be thought of as voluntary, as a job, chosen like others, was thought to be anathema to the Swedish mentality" (Gould, 2001, p. 445).

tween voluntary and forced prostitution in this respect.[3] Although Sweden was the first to take that road, it is not alone in thinking along those lines. Norway and Iceland have, too, criminalised clients. The French MPs have recently approved a bill penalising the purchase of sexual services of a prostitute,[4] while in the UK, the new article 53A of Sexual Offences Act 2003 criminalised "the paying for sexual services of a prostitute subjected to force etc".[5] In Belgium, the idea to criminalise clients has been raised by a political party in the Brussels Parliament (cdH), proponents of which similarly consider prostitution as such to be violence towards women and draw heavily from the Swedish discourse. Unfortunately, even the European Parliament is taking on this stance, with a non-binding resolution being passed on 26 February 2014, appealing for the criminalisation of clients, and arguing that prostitution is a form of violence against women, whether it is forced or voluntary.[6]

The chapter will examine contemporary anti-prostitution discourses (including those behind the new trend in the (punitive) regulation of prostitution, i.e. criminalisation of clients) in the Western world through victimological and legal-philosophical lens. It shall firstly inspect how prostitution and prostitutes are framed as victims (sometimes diseased, sometimes enslaved), playing up on societal insecurities and fears from the "other". As in these discourses, acknowledgment of the heterogeneity of prostitution seems to be lacking, focussing only on the prostitute-woman, the representation of womanhood within this discourse will also be critically examined. Secondly, it shall address the criminalisation proponents' logic of argumen-

3 The radical feminist perspective, which advocates this line of reasoning and is politically very powerful in Sweden sees prostitution as a violation of the women's rights and often emphasises that prostitution cannot be entered into "voluntarily", but that it is in fact a phenomenon ridden with violence and exploitation of women in a patriarchal society. In this they differ most starkly from the stance taken by the liberal feminist perspective. For the differences between various feminisms and their approaches to prostitution, see e.g. Bromberg (1997); Kanduč (2007).

4 In April 2014, the bill was being discussed before the French Senate, which still needs to approve it. The Senate formed a special committee (*Commission spéciale chargée d'examiner la proposition de loi renforçant la lutte contre le système prostitutionnel*), which has scheduled a public debate on the law, where different experts will be invited to voice their opinion on the matter. For the current formulation of the law, see the chapter 9 (under the section 5.2.) in this volume.

5 One engages in exploitative conduct if one uses force, threats (whether or not relating to violence) or any other form of coercion, or practises any form of deception (Section 53A(c)).

6 Point X. of the Motion for a European Parliament Resolution on sexual exploitation and prostitution and its impact on gender equality (European Parliament, 2013).

tation behind their suggestions, situating their endeavours within the realm of penal ethics. The latter deals with the question of legitimate grounds for criminalisation in a modern criminal legal system, in light of the principles of criminalisation that represent moral limits on criminal law, such as the harm principle, offence principle, legal moralism and legal paternalism. The arguments of new anti-prostitution advocates seem to be harm-based, yet on closer inspection, it will be shown that such "harm" is either too broadly conceived or misrepresented. It will be argued that what it seems to lie behind the oft-caring language, the language of protection and safety, is a new type of legal moralism. This "new legal moralism" or legal neo-moralism disguises moralistic arguments into harm-based ones to make it appealing to wider audiences and minimise critique. Lastly, we shall conclude with some policy-relevant suggestions.

2. CONTEMPORARY ANTI-PROSTITUTION DISCOURSE: FRAMING ISSUES

Fascination of society with the prostitute is as old as prostitution itself. Émile Zola noted this fascination of "respectable women" with "the fallen woman" more than 100 years ago. In *Nana*, a story about a Parisian courtesan, a prostitute/femme fatale who does not discriminate between classes of men to whom she keeps company (often at the same time) and whom she eventually financially and emotionally drains, he describes how Nana's presence was disconcerting her neighbours at the property Fondettes. "Every morning during lunch good Mme Hugon returned to the subject despite herself, told her guests the news the gardener had brought her and gave evidence of the absorbing curiosity with which notorious courtesans are able to inspire even the worthiest old ladies" (Zola, 1962, p. 157). Projection of one's own fantasies with immediate self-censure? Secret pleasures of moral indignation? Fascination with a woman who comes from nowhere, has no proper name or money, and yet can possess any man in her surrounding?

In contrast to Victorian anti-prostitution rhetoric, which employed openly moralistic language when discussing prostitution, contemporary prohibitionist discourse tends to frame prostitution through harm or violence – concretely, through the issue of trafficking, immigration, health scares and sexual exploitation of children, most of which paints it rather black, slavery-like and exploitative. Jo Doezema (2001), for example, shows how CATW (Coalition Against Trafficking in Women) link prostitution with trafficking and construct "third world prostitutes" as a "damaged 'other'" in order to justify their own interventionist impulses. Another useful stereotype frames prostitute as a dirty, HIV-infected prostitute, and prostitution consequently

as a health issue,[7] despite the fact that many studies reveal that often it is the prostitute who needs to be protected against the clients, who are often promiscuous, unhygienic and reckless in wearing a condom (as it "ruins the experience" or as not wearing one "reinforces the masculinity"), thus spreading sexually-transmitted diseases.[8] Invoking children, which elicit the notion of innocence and purity (Ost, 2009), is always useful when a powerful emotional dimension needs to be added to support an otherwise problematic, repressive political agenda. Interestingly, "sex" itself is in these cases rarely used or talked about, yet it is at the core of things.[9] It is a dirty word, the elephant in the room.

Those that do talk about it note that sex is in itself a very loaded topic. Sexual conduct of women, moreover, is what intrigues and scandalises in particular. From the best-selling novel *50 Shades of Grey* to twerking (or copying the African *mapouka* dance), the new "it" thing to do, sex and in particular female sex (or the imitation thereof) captures audiences. Some get excited, others cringe; all, however, stare (as with a traffic accident) and inevitably at some point ask "where is this going"? Are the pop stars being oppressed and used by the industry or empowering and liberating themselves through this conduct? Sex, or imitation thereof, elicits emotions; emotions, on the other hand, have been known to occasionally block reason. While, in the words of one prostitute (in Chapkis, 1997), prostitutes are usually much

7 Carpenter (2000) writes that the 19th century feminists became involved with the issue of prostitution during the mobilisation against the extension of Contagious Diseases Acts. The original C.D. Act stipulated that "a woman identified as a diseased prostitute by a plainclothes member of the metropolitan police is to undergo examination. If found diseased, she could be detained in a hospital for up to three months" (*idem*, pp. 35-36). The C.D. Act of 1866, moreover, established a system of compulsory fortnightly examination of all known prostitutes by medical police.

8 Sex workers are often found to be very conscious about the possible diseases and protection against it – more than the general population, in fact. Cusick and Berney (2005, p. 598), for example, report that while the females attending London genito-urinary medicine clinics in the UK reported a 56 per cent increase in the prevalence of gonorrhoea and a 54 per cent increase in the prevalence of chlamydia between 1995 and 2000, a recent research on STIs amongst London female sex workers found declines of 75 per cent and 55 per cent in the prevalence of gonorrhoea and chlamydia infections, respectively.

9 This should not be understood as saying that prostitution is simply sex and nothing more, but rather that it is the sex of prostitution that makes the anti-prostitution campaigners so ready to intervene. The latter remain silent on the issue of animals' prostitution or on the topic of other people's emotional disassociation from the work they do and their lack of (full) job satisfaction. It is the sex of the human female, when clashing with their vision of what it should be like, that seems to be the crux of the matter.

more discrete than modern-day pop stars and their wannabes, it is prostitution which often acts as a catalyst for societal frustrations and alarm around public displays of female sexuality and it is the prostitute that fills the role of "dangerous and deviant urban 'other' – a ubiquitous but spectral presence represented through tropes of desire and disgust" (Hubbard, 1999, p. 6).

This is also closely connected to the society's vision of what a woman is or should be, as the "problem" of prostitution today tends to be gendered and linked with the "woman issue", usually emphasising that it is affecting mostly women and then continuing with the listing of harms women face today, extend it to pornography, lap dancing, portrayal in the media etc. These discourses are limited and limiting not only because it is not only heterosexual women who are engaged in prostitution – male and transgender prostitution, for example, often remains invisible, unrecognised in public discourses, and seemingly entirely absent in contemporary discourses advocating criminalisation –, but also because they are portraying (and endorsing) only a certain kind of femininity, a certain kind of a "woman".

There is some merit in addressing the issue of womanhood also in the context of prostitution, of course. Society always has a problem with women who tend to break the norm in some way. While children may be unruly, women certainly not. From time immemorial, fearless, smart, too outspoken, liberated or loud women were deemed "mad"[10] and consequently hospitalised or restrained in some other fashion (e.g. through marriage), or "bad", immoral and excluded from society in some other way, as prostitutes, harlots, criminals. Woman is (has to be) humble, powerless, sensitive, "passive and emotional" (Duda, 1995), to be a woman. If she isn't, if she violates this norm, she is not a woman[11] and she is likely to be seen as deviant, often as crazy. And if they are not crazy, then they are sluts. In the film North Country (2005), inspired by a true story about sexual harassment and a landmark case that changed American sexual harassment law, Bill White, an attorney and friend, tries to convince Josey not to seek justice in court as they will try to portray her as crazy or a slut: "It's called the 'nuts and sluts

10 "Women who protest are deemed hysterical. Their resistance needs to be crushed. Woman who decides for herself is aggressive. Women who do not realise themselves in the context of their own sexual stereotype are pathologised" (Duda, 1995, p. 7).

11 "If a woman behaves 'as a woman' – kind, weak, attentive and in need of help –, then she is exploited, as in the eyes of men she does not count much, yet she is dependent on them, as they have the power. If a women resists and behaves 'like a man', powerful, capable and self-confident, then she is no 'real woman' and equally does not count much in the eyes of men" Pusch (1995, p. 307, translation: N.P.).

defence'. You're either nuts and you imagined it, or a slut and you asked for it."[12]

This monochromatic treatment of women is not, however, restricted to past, patriarchal society or simplistic media depictions. The proponents of criminalisation of clients, who are often radical feminists similarly exclude other women who do not belong to a certain (oppressed) category, or do not agree with them, from "womanhood", reproaching them of being misled, playing the man's game and stripping them of the right to define pleasure in their own terms. These groups re-define not only what is or means to be a "woman" but also what a woman's pleasure is or rather should (and should *not*) be. One of the arguments, claiming to support the argument that prostitution is violence and coercion, is, for example, that prostitutes do not "enjoy" sex with their customers. Although many may not (and many wives and girlfriends may not either),[13] some or sometimes they may. The fact that this situation is rejected as not possible, owing to the fact that they are being paid for it, enjoyment or pleasure is normatively and subjectively granted only to those sexual acts (or sexual relationships) that anti-prostitution campaigners designate as "worthy". Pleasure, in other words, becomes not a description of what one experiences but rather a normative, value-laden concept that one ascribes to those acts that one deems in line with one's own moral standards. This has repercussions for their identity, including gender identity of "outsiders", as those falling outside of what is expected, cannot express themselves without feeling guilty or dirty.

3. VICTIMALISATION OF PROSTITUTES

Not every injured party becomes a "victim" in the eyes of society; a person who has been harmed has to be first perceived or "turned into" a victim in the process, known as "victimalisation". According to Boutellier (2000, p. 58) "[v]ictimisation has to do with making someone a victim, and victimalisation with turning them into someone perceived as a victim". Victimalisation is a process in which society grants the injured party the status of a

12 Film North Country (Class Action) was based on the literary text *Class Action: The Story of Lois Jenson and Landmark Case that Changed Sexual Harrassment Law* (2002) by Clare Bingham and Laure Leedy Gansler. See also the case *Jenson v. Eveleth Taconite Company.*

13 In fact, not all women have sex exclusively as part of a loving relationship (e.g. one-night stands) or motivated by love, desire etc. This may be an ideal but the reality is often different. People have sexual intercourse for various reasons. The recent study by the University of Toronto categorised the most common reasons why people have sex into two groups: "approach" (pursuing positive outcome, e.g. increasing closeness) and "avoidance" (evading negative outcome, e.g. to avoid conflict or not to feel guilty). See Muise, Impett, & Desmarais (2013) and Bernstein (2013).

victim; it is a process of selection, of definition, of moral evaluation and of granting of privileges. "Victim" is a much more emotive word than "injured party". It evokes the image of pain and stimulates our empathy quicker that (merely) "injured party". The bestowal of the status of victim upon someone can thus result in the legitimation of such a person, gives this person a voice and justifies her potential demands.

Throughout the history, prostitutes have provided an object of victimalisation and devictimalisation. In different times and different cultures, they have been granted the status of the victim; at times the status has been forced upon them and at other times revoked or fought against (Peršak, 2010). Those seeing prostitution as a voluntary, chosen profession, as work and prostitutes as sex workers, equal to other workers, tend to devictimalise them. Those who are convinced that prostitution is an evil and that prostitutes are themselves responsible for the bad things that happen to them (e.g. mass murders of prostitutes) have often denied them the status of the victim. Those who tend to victimalise prostitutes, however, range from benevolent groups, which portray prostitutes as victims of pimps, clients, economic circumstances, life situations etc. in order to attract sympathy from the public, to those with more controversial motivations, who force victimhood upon prostitutes, with all the passivity, powerlessness and vulnerability that this status brings to the agents who do not see themselves as victims otherwise.

Can someone be a victim if they do not feel as a victim (victimised non-victim)? Legal history is full of cases where the answer to this question has been affirmative. Numerous examples of so-called victimless crime continue to be criminalised to this day; for this purpose the victim is in some cases sought outside the narrow confines of the individual bearers of legal interests to include community, abstract notions such as public morality etc. Certain feminist perspectives similarly continue to see all prostitution as violence and prostitutes, in turn, as eternal victims, without exception.

When a conceptual distinction between suffering and victimisation is drawn, the existence of "victimised non-sufferers" could, in principle, be considered. As opposed to "suffering", which is a subjective experience, "victimisation" is said to be the legal appraisement of this experience (Grant-Stitt, in Boutellier, 2000). Victimhood is, in this view, a legal category, not a subjective matter. "A person has been victimised whenever any of his or her rights have been violated by another" (Bedau, in Boutellier, 2000, p. 57). However, a normative argument can be made that even when a person has been objectively (*de facto*) harmed or victimised in some way but does not feel like a victim, she should not be victimalised, i.e. victimhood should not be paternalistically imposed upon her. The status or identity of a "victim" may bring with it a series of benefits, e.g. sympathy of the public, readiness of the legislator to fix injustice done to her, willingness of NGOs to offer

help etc., but at the same time it also carries certain drawbacks, which the individual may legitimately wish to avoid. For one, the notion of "victim" (particularly if close to the "ideal victim" (Christie, 1986)) invokes an image of a person who is passive, powerless and rather static in her situation. Many actual and real victims do no wish to stay in this position for too long, but rather to restore their life, regain their power (become empowered) and control over their lives.[14] Many prefer to see themselves as "survivors", rather than "victims", as the former emphasises the individual's power to overcome an unpleasant experience,[15] rather than the individual's helplessness. Victimisation thus comes to be seen as yet another life experience that the individual went through, making her come out stronger and more experienced at the end. The characteristics of a "survivor" are thus characteristics of a strong, proactive person, while the "victim" is riddled with powerlessness and evokes our feelings of empathy and desire to help. Secondly, one of the downsides of the social representation that all prostitutes are necessarily victims lies also in the fact that such a stand allows no shades of grey, no room for individual stories of prostitutes whose experiences are different. That, consequently, reinforces the myth of the prostitute as a (female) victim (Peršak, 2010) and self-legitimises such skewed representation. Thirdly, labelling a person as a "victim" legitimises various governmental, non-governmental, media and other self-proclaimed guardians' incursions into privacy of the victimised person, aiming to "eradicate the problem". Such actions do differ in their benevolence; while some do focus on the victim, others clearly abuse the victim for their own political or personal goals. Every time some victim is appealed to, used in speeches and promotional material of some sort, one has to ask oneself whose interests are being served by pronouncing this person as a victim. In whose interest is it that a certain group of people are recognised as victims? Is this truly the

14 It is not necessary that these harmed or "injured parties" are any other than those who identify themselves as "victims". Identity of a victim is often dynamic in character. The victimised individual may first recognise herself as a "victim" and enjoy the benefits this label brings, but later – when the initial shock is over and she wants to regain her life and control – resist the label or even reject it. In their desire to regain control over their lives, victims may sometimes even take on (part of) the responsibility for their own victimisation, which may be or may not be justified. Psychologically, this is a coping strategy to deal with the consequences of victimisation. Being convinced that victimisation has been to some extent "chosen" can bring back certain self-confidence and belief in the self-determination of one's life as well as enable re-evaluation of victimisation as acquiring useful information (additional knowledge or skill) on how to react or not react in a similar situation in the future.

15 This preference for the concept of a "survivor" can be found even among the feminist victimological perspective, as this notion puts the emphasis on "women's resistance to their structural powerlessness and consequent potential victimisation" (Walklate, 2007, p. 27).

identity that people involved (harmed) wish and use when telling their story, or is it rather an attempt of various commentators to rally support for projects (ratings, funding etc.) that first and foremost serve them?

Victimalising such individuals, when such victimalisation is unwanted, means forcing victimhood on them. The tendency to victimalise female prostitutes or even "capitalise on the image of women as victims" (Petchesky, cited in Oriel, 2005, p. 393)[16] quashes the alternative women discourses that stress a more active or even more equal and powerful (and empowering) role of women in shaping their own sexuality and consensual sexual conduct. Victimalisation of prostitutes, when it is unwanted, can be understood as a type of victimisation itself and the harm that arrives at prostitution as the harm caused by the anti-prostitution discourse. Elias (1986) observes similar in relation to all victimless crimes. In his view, "victimless" crimes do after all produce extensive victimisation, "yet ironically, they result primarily because they have been defined as criminal" (*idem*, p. 55).[17] There is and should be, therefore, room for alternative discourses outside the dominant two which "either victimise women as helpless sexual slaves or glorify them as proud whores" (Stoebenau, 2009, p. 2052). This bipolar view is misinformed and prejudiced, but difficult to change. The stereotypes are formed, reinforced by the media, shaping (narrowing) future options or solutions in this area.

Furthermore, the perspective that sees all prostitutes as victims also does not help much to clarify the separate, albeit connected, phenomena of prostitution and human trafficking, little to distinguish between the two extremes and give voice to all who are involved prostitution and their different experiences. Forcing one-dimensional view of prostitution on all prostitutes is as patronising as some of the past (usually male or state) responses to prostitution and attitude to women in general have been. Indeed, some even go on to argue that "the white western feminist projects of saving other women [from prostitution – NP] are grounded in the masculinist logic of protection" (Penttinen, 2006, p. 147), which drives the protector, i.e. white Western feminists, to objectify and silence the other – the protected, i.e. foreign, exotic prostitutes, whose desire to be "saved" is presumed and their gratitude expected. This is why some see the proponents of such criminalisation as engaging in a long dead discourse, as stifling all values and

16 Petchesky *(ibidem)* notices a "victim-izing tendency" in human rights discourses of feminists, which lies in focussing solely on the sexual violence perpetrated against women instead of asserting women's right to sexual pleasure.

17 Kanduč (1998, p. 69) similarly observes that the case of criminalised prostitution, the prostitute can be seen as a victim of repressive legal order, which pushes the prostitute underground, into the sphere of illegality (where she/he is more likely to be faced with police harrassment, exploitative pimps and brutal clients).

achievements of female emancipation and in fact betraying feminism in its core.

Imposing victimhood on people also unjustifiably legitimises criminal law intervention in cases where the latter is highly questionable from the viewpoint of the individual's autonomy. Such victimalisation is purely instrumental, as its aim is simply to justify criminalisation. By devictimalising these groups, i.e. removing their status as victims (the status they never wanted or desired in the first place), the doors to decriminalisation could be opened and paternalistic elements of such a criminal law that violates the right of adult, competent people to self-determine their lives, removed. Non-victimhood ought to become one of criteria for decriminalisation or modification of criminal legislation. In order to change the mentality, social climate and prejudice, decriminalisation has to be preceded by destigmatisation of prostitutes as renegades or moral outsiders as well as by acceptance and devictimalisation, i.e. removal of the label of "victim" from voluntary prostitutes. The latter would mean that prostitutes are not seen as victims but rather as "normal", regular workers, sex workers, workers that are in terms of moral value no different than other workers.

4. WHAT IS VIOLENT OR CRIMINALLY HARMFUL ABOUT PROSTITUTION

The proponents of criminalisation tend to argue that prostitution is violent or exploitative. They talk about "harm", which can arise through various channels, such as the exploitation of a (psychologically, economically, socially etc.) vulnerable position or direct (physical or psychological) violence.

4.1. Harm and wrongfulness

A so-called *prima facie* good reason for criminalisation is made when both, harm and wrongfulness of the conduct in question, can be established (Feinberg, 1984). Criminal harm is therefore harm, i.e. an intrusion or setback to one's interest, that is also wrongful, i.e. reprehensible or censureworthy. Harm, arising out of natural disasters or self-defence or consent, is, for example, not wrongful and therefore not a good candidate for criminalisation. While consent eliminates wrongfulness *(consenti non fit iniuria)*, no-consent makes it a wrong. For criminal law scholars, the question is not so much what makes *x* right, but rather what makes *x* wrong, e.g. what denies the consent. This is in line with liberal society (and its modern criminal law), where all that is not expressly prohibited is allowed – albeit not necessarily good or socially desirable, but legal nonetheless.

Many radical feminists addressing prostitution start from a different point of departure. Their question is just of the opposite: What is right? Where is the consent? The default position for them seems to be "no-consent". This

initial assumption then not only frames their further analytical exercise but also shifts the burden of proof on the liberally oriented person, as if is the latter who should provide proof or argumentation that consent has been given (preferably explicitly). This, in itself, does not accord with the criminalisation discourse in which the legislator or proponent of criminalisation should prove that something is harmful enough for it to warrant criminal law prohibition.

However, although wrongfulness is an important component of legitimate criminal law, wrongfulness alone is not considered sufficient to justify some criminal law prohibition (Simester & von Hirsch, 2011). Further, harm-based arguments need to be presented to make a successful case for criminalisation.

4.2. Harm of prostitution

At first sight, this seems to be taken on board by the proponents of criminalisation of prostitution (which currently tends to focus on the criminalisation of clients), as the gist of their claim is based on the premise that prostitution is in itself harmful. Considering that criminalisation of harmful conduct is widely accepted as a legitimate basis for criminal-law prohibition, this would then seem a strong argument in favour of criminalisation. The widely accepted principle of criminalisation, the so-called harm principle states that "[i]t is always a good reason in support of penal legislation that it would be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) *and* there is no other means that is equally effective at no greater cost to other values*"* (Feinberg, 1988, p. xix). This principle rests on J. S. Mill's "principle of liberty", which argues that "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others" (Mill, 1991 (orig. 1859), p. 14).[18] Only harm to others, i.e. "harm" (not, for example, offendedness) and "to others" (to persons other than oneself), provides on this view a legitimate ground for criminalisation of someone's conduct.

Seeing criminal law as a "solution" seems to show amazing trust in preventive capabilities of law – which however runs contrary to empirical evidence. As the history of prohibition of e.g. alcohol and other "vice", the conduct of this nature when criminalised mostly ends up being displaced (to less policed areas or countries) or goes underground, where black markets offer less visibility and consequently also less protection to the individuals involved. In the case of Sweden and Romania, the research has shown that

18 For more on harm principle and criminalisation based on it see e.g. Feinberg (1984); Peršak (2007); Simester & von Hirsch (2011).

the legislative constraints had effect on prostitution in the sense of moving it mainly indoors (Di Nicola & Ruspini, 2009). The prohibitionist perspective further ignores the biological fact that sex is a natural human need, which is why people will always look for it in some way or the other, which consequently means that the demand for sex (even in the form of prostitution) can never really be extinguished, not even if criminalised under severe punishment. It also ignores the fact that availability of prostitution can do a lot of good for some groups (handicapped, elderly, prisoners etc.) that would find it difficult or impossible to satisfy their sexual needs and needs for intimacy otherwise, and the fact that clients are in a good position to notice whether some prostitute is a victim of trafficking or not. By reporting it to the police, they become a valuable source of information and of consequent help to the trafficked victim – the source that will cease to exist should the clients be criminalised.[19]

More to the point, however, does prostitution really equal violence, i.e. harm? Is prostitution as such violence or is it rather that prostitution is a high-risk profession where "employees", if insufficiently protected, can be exposed to physical as well as psychological violence? Answering affirmative to the latter would rather require better oversight, regulation and protection of prostitutes than outright prohibition. Some, however, claim that prostitution is violence *per se* and that "[t]o understand how violence is *intrinsic* to prostitution, it is necessary to understand the sex of prostitution. The sexual service provided in prostitution is most often violent, degrading, and abusive sexual acts, including sex between a buyer and several women; slashing the woman with razor blades; tying women to bedposts and lashing them till they bleed; biting women's breasts; burning the women with cigarettes; cutting her arms, legs, and genital areas; and urinating or defecating on women" (Raymond, 2004, p. 1175, emphasis added).

First of all, the representativeness of these cases in terms of sexual transactions between the prostitute and the client is highly questionable. Empirical research available on this issue can turn up with a very different picture (e.g. Xantidis & McCabe, 2000; Månsson, 2006). More importantly, however, one has to distinguish between something that happens to *x* and inherent characteristics of *x*. Acts that have not been consented to on the part of prostitute (and "slashing the woman with razor blades" or cutting her in any way was most likely not part of the deal) or in the extent that they supersede her consent, either in form or in intensity, are not an inherent part of prostitution or of the "sex of prostitution" – they are criminal acts, they are crime.

19 This conclusion seems to be supported by empirical evidence in the case of Sweden. Eriksson (2005, p. 2) thus notes that "before the law, the police often got information about pimps and traffickers from clients. But because of the law, the clients are afraid to go to the police as they will get caught themselves".

Abuse of prostitution is not prostitution; it is abuse. The fact that these incidents happen within prostitution does not mean that they are intrinsic to it. These things also happen within marriages, but are we then allowed to conclude that marriage is a crime or violence? Smoking (these days) may attract shaming, but this does not mean that shaming is intrinsic to smoking. Jane may live alone in a house, into which John breaks and rapes her, but it does not follow from this that living in a house or living alone entails rape.

Prostitution or living alone may be more risky and its subjects more vulnerable to victimisation;[20] however, that does not mean that violence is *intrinsic* to those practices in the sense that they are *per se* harmful (and that they should, for this reason, be criminalised). What it should mean, however, is that the society ought to work on diminishing those risks by, for example, better regulation and supervision, by equipping prostitutes or their premises with safety devices, allowing them to work not far from each other,[21] warning them of certain clients with known violent record or stimulating them to work in establishments that have been inspected and granted some sort of official approval based on their reaching of certain (high enough) standards[22] and so forth.

Some see prostitution as a sort of rape. Prostitution, it is claimed, "inescapably involves rape, for no prostitute lets her clients enter her body out of desire or love alone, which makes it a rape" (Gilead, 2010, p. 90). On this account, any sexual intercourse that is absent of love or desire amounts to a "rape". Such a definition of rape is problematic. Should this be the accepted definition of rape, many a woman is unknowingly raped every day, e.g. if she has decided to have a one-night stand or have sex with someone more out of curiosity or wish to experiment than out of desire, let alone love. Absence of love or desire does not mean rape and the absence of pleasure cannot be equated with violence. It may be selfish not to give pleasure to someone, after having received it, but certainly this is not a case of violence. Not having been unconscious throughout the act, it would be rather hard to argue rape that one has not been aware of. However, awareness or knowledge or

20 Due to, for example, the fact that such a possible victim is seen as weaker and therefore more "suitable" a target, or due to the lack or invisibility of "guardians", who may intervene and protect the victim. See e.g. Cohen & Felson, 1979.

21 Cusick and Berney (2005) criticise the Sexual Offences Act (2003) in the UK, which made it an offence for two or more sex workers to work together at the same address, rendering sex workers more vulnerable to violence. They note that 87 sex workers have been murdered in the UK since 1990 and refer to a study a study by Kinnell, which pointed out that the victims were street-based and lone sex workers.

22 Vermeulen (2007), for example, proposes the imposition of certain quality standards in this area and self-regulation of the *bona fide* or non-problematic part of this sector. See also Vermeulen in this volume.

perception does not seem to be an obstacle for some who continue that "sexual relationship that does not rest on passion, desire, love, or wish for giving birth to child/children of both partners, is involved with this or that kind of rape. In other words, such relationship is very much against the will of the prostitutes, whether s/he is aware of this or not." Here, in presuming also that we know better what is and what is not in one's interests, a paternalistic dimension also creeps in. The main objection to paternalism, as expounded by Mill (*ibidem*), is that the individual "cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right." In other words, "[s]omeone's own physical, psychological or economic good should not be a basis for criminal prohibitions against voluntary behaviour" (Feinberg, 1984, p. 149). Harm to self (if it were present in these cases) is not the same as harm to others and therefore does not provide a justification for criminal law intervention.

The harmfulness is through "exploitation" often pinned onto prostitution also through linking it with trafficking of human beings for the purpose of sexual exploitation. Prostitution is represented as "a sort of slavery", which confounds the phenomenon of prostitution with the phenomenon of trafficking in human beings. This confusion may be unintended, inadvertently arising out of lack of knowledge and fallacious reasoning,[23] or intended on the part of the advocates of criminalisation and abolition of prostitution in order to strengthen their position. Moreover, as argued by Penttinen (2006), the western feminist abolitionists need to create and maintain the category of "threat" (trafficking) and of the "vulnerable victim" (of that threat) in order be able to justify themselves as protectors and saviours. This merging of issues of prostitution and trafficking is, however, detrimental to finding tailored solutions that would benefit both groups.[24]

23 Typically, circular reasoning (petitio principii), where the truth of the conclusion is assumed in the premises or in hidden assumptions (an example: Prostitution violates human rights because it is harmful/exploitation. Prostitution is harmful/exploitative because it violates human rights). Other common fallacies in the abolitionist discourse include "deductive fallacy" (If B (e.g. harm) happens around A (prostitution), then A is B) and "fallacy of composition" (If B is a property of some part of A, then it is a property of the whole of A).

24 Cusick and Berney (2005, p. 597), commenting on the UK's Home Office consultation document and its conflation of sex work with associated problems, such as slavery, trafficking and child abuse, emphasise that these serious abuses also occur outside the sex industry. They believe it should be apparent therefore that "given the wide range of factors involved, any review of sex work policy, especially one that focuses on solutions at the individual level, will not have the scope to resolve these problems".

5. PLAYING DRESS-UP: NEW MORALISM IN HARM'S CLOTHES

The arguments based on harm to others therefore do not hold water; but are these arguments really harm-based, as they purport to be? Behind the language of harm that they use, their discourse seems to reveal rather some sort of "legal moralism" (Feinberg, 1988; Devlin, 1965; Peršak, 2007, p. 18-22). (Old) legal moralism argues that it is legitimate to criminalise conduct, which the society of the day deems inherently immoral, violates shared moral values or merely conventional mores. Some juxtapose it explicitly to harm (or the harm principle) by defining it as "the view that the law can legitimately be used to prohibit behaviours that conflict with society's collective moral judgments even when those behaviours do not result in physical or psychological harm to others".[25] Although it is far from clear that moral judgments of, for example, the proponents of the criminalisation of clients are so widely shared to represent the society in general, enforcing their views through criminal law, in the absence of clearly established harm to others, amounts to legal moralism – new legal moralism. It is "moralism" because the underlying argument against prostitution is moralistic (although often hidden in the language of protection and care) and "new", because the arguments are not traditionally and straightforwardly moralistic but rather cloaked as harm-based arguments. The language used, as mentioned, is namely not based on moral/immoral dichotomy but on harm. This was clearly observed also in the Report by the Swedish Commission on Prostitution, appointed in 1993 to investigate the sex trade, which started by expressing great concern about the damage prostitution did to all those involved (prostitutes, clients, families, society) such as prostitutes' spreading of HIV and AIDS, then went on by sketching out physical harms done to prostitutes and worrying about possible future harm from organised importation of women or trafficking from Eastern Europe (Gould, 2001).[26]

Moralism is revealed also in the moral indignation that many of their statements exude. A cursory discourse analysis of some such texts, even purportedly scientific ones, exposes this indignation, directed towards those who are of a different opinion, involving ad hominem arguments and calling

25 http://www.iep.utm.edu/law-phil/#SSH2a.i (Internet Encyclopaedia of Philosophy)

26 Kulick (2003) argues that it is particularly the latter, i.e. fear from organised crime from Eastern Europe, and fear from the EU itself or Sweden's anxiety about its position in the EU, which channelled into Sweden's anxiety about prostitution. Prostitution, he claims, emerged as a way for Swedes to talk about and negotiate their relationship to the EU. Even though the law was passed in 1998, it was namely first proposed in late 1992, just as the campaign for the referendum on EU was in progress (Kulick, *idem*, pp. 210-211).

those with opposing views a variety of pejorative names. This often silences the opposition. Commenting on the discussion on criminalisation of clients in Finland, Penttinen (2006, p. 134) notes that the logic of the dominating discourse was such that if a man was not willing to criminalise buying it was taken to mean that he used prostitute's services himself and that views opposing criminalisation were "ridiculed" and "stigmatised as supporting prostitution and violence against women".

What is particularly perplexing – and at the same time revealing in terms of moralism and cross-fertilisation of old and new discourses on prostitution –, is that in the discourse on client criminalisation one can find, often within the same text, the chastising of clients through emphasising the victimhood of prostitutes as well as the representation of prostitutes as a rather debased creatures themselves, having no feelings, not caring about her client, only about is his money. Although prostitutes are elsewhere recognised as "victims that need protection and help" (Gilead, 2010, p. 89) and slaves, they are also considered uncompassionate, emotionless, uncaring and not bothered by anything but the satisfaction of their financial needs.[27] As we can see, it is often through the language of care and protection that dehumanisation of the prostitute is brought in. Prostitute is at the same time the victim of horrible people, such as her clients and pimps, and an emotionless, money-grabbing non-person living a "horrible", "indecent" way of life (*idem*, p. 88).

Another indication of the moralism hiding underneath this discourse can be found in the abolitionists' interests in males' motives for going to a prostitute.[28] Should we, in the context of criminalisation, be interested in the clients' reasons for going to the prostitute, interested in men's motives? These reasons are important, i.e. hold any value, for the debate on criminalisation only if we allow the possibility that the using of sexual services is not harmful, i.e. does not represent violence to women, *per se*. Only if violence/harm of voluntary prostitution is content-dependent on the clients' reasons, then reasons need to be examined in order to decide on a legitimate criminalisation of clients, i.e. of their conduct (the purchase or use of prostitute's services). If one believes that prostitution (the conduct of providing sexual services) *per se* harms prostitutes, understanding clients' motives is not

27 "She wants the clients to be satisfied [with] her services just to keep him as a source for her income. His health, well-being, or state of mind as such does not bother her at all, as long as he satisfies her financial needs" (Gilead, 2010, p. 87).

28 Radical feminists often generally ground men's motives for buying sex on his sexual right, perceived as his right to use women as objects for sex or his right to access to women's bodies, and patriarchal mentality where using of another person and the subordination or women is a way to reinforce man's masculinity (Oriel, 2005; Bromberg, 1997).

necessary for condemning prostitution through criminalisation. If offering sexual services to a client causes harm to the prostitute, then it does not matter whether the client came to her out of loneliness, out of his insatiable sexual desire or out of the need to have his insecurities about his manhood and potency satisfied. It should not matter whether the client's motives are more benevolent or more sinister, as it is the conduct, which causes harm to others and is as such a potential object of criminalisation.

For abolitionists, who claim that prostitution is per se violence or harm against women, reasons should therefore not matter, unless they derive the "harm" of prostitution from the vested motive of the client's conduct, not the conduct itself. Yet, funnily enough, many abolitionist studies do very much dwell on the question of male reasons. Even if their major claim against prostitution is often couched in terms of harm, their focus regarding the clients' motives is on the perceived *immorality* or wrongfulness of their conduct, not the *harmfulness* of it. What they derive (and can only be derived) from reasons/motives is the moral/immoral component of the conduct, not the non-normative harmfulness of it.

But why frame it then as harm and hide under harm rhetoric? Firstly, for legitimisation purposes. This is likely due to the fact that legal moralism is not widely considered as a legitimate ground for criminal-law prohibition – in the modern criminal legal systems, issues of sexual morality between consenting adults are namely not considered to legitimately fall into the realm of state or public intervention through criminal law. Framing the issue in terms of harm, on the other hand, takes the debate – on the surface at least – out of the sphere of legal moralism into the sphere of the harm principle. Using the rhetoric of harm gives the essentially moralistic discourse the coat of legitimacy it needs for the medicine to go down swiftly, as it were. Secondly, and linked to the first, harm rhetoric represents a powerful tool for quashing opponents, as harm discourse is a well-accepted one and needs no further legitimation. As such, it is useful for generating support for interventionist initiatives, punitive policy agendas and criminalisation. It tends to quash other (feminist) debates, labelling them as pro-harm or pro-violence to women or anti-human rights. Similar to arguing against the prevailing security discourse, which increasingly legitimises over-reaching surveillance and intrusions into our privacy and other human rights (not to mention suspects' procedural rights) in the name of security (where such arguments are often understood as arguing against security itself), arguing against the radical, over-criminalising, zero-tolerance, prostitution-equating-with-violence stance, is similarly wrongly understood as defending violence against women, which prostitution in itself is assumed to be. Thirdly, grounding the abolitionist perspective on harm is useful for identity reasons: as observed by Pentinnen above, some prohibitionists need to cre-

ate and maintain the imagery of threat or harm and of victim in order to see themselves as saviours.

6. CONCLUDING THOUGHTS

A knee-jerk response towards criminalisation, notwithstanding ample evidence, testifying to its harmfulness, can be understood in light of the observation that penal law institutionalises and channels public retributive emotions (Mihai, 2011). Analysing discourse of criminalisation proponents reveals retributive emotions galore. Prostitution is for many an emotive topic and it seems that some firmly cling to the strict differentiation between "us" (the virtuous) and "them" (prostitutes or their clients, or both), hence their demands that the criminal law support them in their moral indignation and disgust. They hold on to the "othering" of sex workers (even if indirectly, through targeting those that provide them work) as moral outsiders. The question is why. Why do we need moral outsiders? Perhaps so we can make ourselves feel better ("at least I'm not a hooker")? Or do we expect a certain reward for our restraint or abstinence from promiscuous sexual behaviour and cannot therefore stand being on a (moral) par with the prostitute?

Beyond the question of "why" is the question of its consequences. Here, the law plays a crucial role. The changes of law are a reflection as well as a stimulant of societal changes, including changes in social representations of prostitution. The latter need changing, although that is no easy a feat,[29] when they harm sex workers. This society-inflicted and often state-supported harm is something truly worrisome and cannot be neglected. Even when it is not the prostitutes themselves who are being criminalised, but their clients, they are secondarily victimised and harmed by the state in the sense of having to suffer the financial loss (due to the loss of some part of clients), possibly resulting in them having to work longer hours or accept riskier customers whom they otherwise would not receive, which makes them more exposed, more vulnerable to violence. One often hears that the issues of (and policies towards) prostitution vis-à-vis prostitutes should be distinguished, arguing that one may be tolerant towards prostitutes, while

29 Stigmatising stereotypes and myths are difficult to break, as social representations change slowly and with certain inertia, resistance even. When a certain representation is faced with possible extinction, our universe is upset (Moscovici, 1984). What is more, our fear from the unknown is such that, when faced with a certain dissonance between something new and our own paradigmatic category, in which we have classified an object, we tend "cling" to the approximation, to the imperfect fit between our representation of the object and the object itself to preserve at least a minimum of coherence between the unknown and the known (*ibidem*). In this process, the too unfamiliar, too strange characteristics of a new knowledge, phenomenon, object etc. are often ignored.

harsh on prostitution, e.g. by criminalising the clients of prostitution. However, it is doubtful whether one can really merge both stances comfortably. Allowing prostitutes to do their work, while prohibiting them from having clients is similar to allowing a businessman to open shop while not allowing him to have any clients. It is not possible for the latter not to have direct negative repercussions for the former. Eradicating clients incapacitates the prostitutes from providing their services.

In our paper we have discussed only prostitution, i.e. voluntary offering of sexual services for money, within a European context and only voluntary prostitution, i.e. excluding forced prostitution, the abuse of prostitution within the trafficking in human beings. Any type of forced prostitution is the *abuse* of prostitution and exploitation, and when dealing with such cases, the term trafficking in human beings is more appropriate a term to use. Here, criminal law has a justified role to play, as well as law enforcement.[30] Persons who are of age, informed and choose prostitution without being subjected to force, one the other hand, ought to stay outside the scope of criminal law. The right to autonomy and self-determination, including determination of one's own (sex) life, quashes the state's right to criminally intervene in such cases. This argumentation is not at odds with the recognition that prostitution activities may lead to certain harm to individuals who practise it (as may other psychologically and physically intense professions). It may, for example, have negative consequences for their emotional life, their sexuality or search for a partner etc., but this can only be seen as *harm to self*; the latter, however, does not provide a good reason to criminalise adult, freely chosen conduct. The opposite would mean criminalising on the basis of legal paternalism (Feinberg, 1986), which is an encroachment upon the individual's autonomy.

The normative choice against criminalisation (or more widely, against treating prostitution as the problem of criminal law) does not, however, mean that something is necessarily advocated or socially desirable[31] and it certainly does not exculpate the state from finding and adopting other (more effective and liberty-respecting) measures, which would offer alternative lifestyle or money-gaining opportunities to prostitutes, should they wish to change their profession or opt for a less risky, safer and more stable profession. Social policy measures, social support systems and increasing educational and employment opportunities can and should be employed to reduce

30 It is a well-known criminological fact that probability of getting caught (which relates to e.g. the regularity, thoroughness and frequency of detection activities) is a bigger deterrent factor than the severity of punishment.

31 Similar to suicide or drug addiction; even though criminalisation thereof would not be appropriate, this does not imply that the state should not treat these phenomena as socially undesirable and adopt other, non-penal measures to address them.

the number of sex workers who have entered the profession because of the lack of better or readily available alternatives.

The entire burden does not rest on the policy maker and legislator, though. It is also a task, social responsibility and perhaps even a moral duty of a social science researchers in this area to expose the flaws and contradictions in the mainstream prohibitionist discourse and challenge (criminal) policy that fails to treat prostitutes as competent human beings and adds to the harm or victimisation and stigmatisation, to which they are already disproportionately exposed.

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Chapter 10.
To punish or not to punish: What works in the regulation of the prostitution market?

ALEXIS A. ARONOWITZ

1. PROSTITUTION

Prostitution, said to be the world's oldest profession, varies between places and changes over time. From ancient Greece and Rome, through the Middle Ages, to modern times, forms of prostitution have been described in literature, historical documents and art. Attempts to regulate or eradicate the practice have, historically, been incorporated into both canon and penal law.

1.1. Defining prostitution

Prostitution, a form of sex work, is the provision of sexual services for money or its equivalent (Harcourt & Donovan, 2005, p. 201). The complexity of sex work is mirrored in the fact that within the larger subsets of "direct" and "indirect" sex work, Harcourt and Donovan (2005) have identified 25 discrete types of commercial sex work ranging from street, brothel, window, hotel, private home and escort service prostitution (direct) to massage parlor, lap dancing, swingers clubs, beach boys[1] and survival sex[2] (indirect).

While most legislation refers to prostitution, academic discourse and those working in the field often refer to sex work(ers). The term sex worker was coined to avoid the stigma attached to the word "prostitute".[3] While sex work may encompass other forms of "entertainment" in the sex industry, such as stripping, pole or lap dancing, and web-cam sex, the terms sex work and prostitution, sex worker and prostitute will be used interchangeably in this chapter.

1 Beach boys is the name given to young men who serve as "escorts" for older women who travel to vacation (beach) locations.

2 Survival sex is the exchange of sexual services for shelter, food or clothing. This form of prostitution is often found among runaway children.

3 The term "sex work" was first used by *Carol Leigh* as a reference to prostitutes and others working in the sex industry to emphasize a labor or workers perspective (Prostitution Education Network, no date).

1.2. The prostitution landscape

The majority of individuals working in prostitution are women. Research in Europe shows that 87% of those working in prostitution are women,[4] 7% are male and 6% are transgender. These figures differ across countries[5], but in all countries, the large majority of sex workers are female (Tampep International, 2009).[6]

A study on the escort branch in the Netherlands identified two large and two smaller segments of this form of prostitution. The largest is the segment which supplies female escorts for men, followed by male for male escorts. Smaller markets involve transgender and gigolo escorts (Eysink Smeets et al., 2007).

1.3. Earnings in prostitution

Prostitution is a low-skill, high-income profession and economics is the main motivator for those entering prostitution (Abel & Fitzgerald, 2012, citing numerous authors). An individual working in prostitution, even in the type worst paid – that of street prostitution – will generate much more than those working full time in comparable low-skill sectors (Edlund & Korn, 2002; Levitt & Venkatesh, 2007). Based upon figures from different accounts, the authors question how it is possible that a woman "…with only rudimentary skill and capital requirements … can make in a day what for most women takes weeks or months?" (Edlund & Korn, 2002, p. 182).[7] While a study of street prostitutes in Chicago found that women earn $25 to $30 an hour (Levitt & Venkatesh, 2007) and in Spain from €5 to €50 (Villacamp & Torres, 2013), at the higher end of the prostitution market, in the escort branch, prostitutes can earn $280 an hour (Edlund, Engelberg, &

4 In the 2005 mapping project, 86% of individuals working in prostitution were found to be women (Tampep, 2009).

5 In some Western European countries (France, Greece, Luxembourg, Belgium and Italy) the number of transgender sex workers is reported to be as high as 15% - 25%. Any statistics, though, on the number of prostitutes in general, and on male and transgender prostitutes in particular, should be viewed with caution as these populations tend to be more hidden.

6 The project involved in mapping prostitution in Europe does not pretend to represent all forms of prostitution.

7 "For instance, newspaper reports of earnings for prostitutes in Sweden in 1998 were as high as SEK 14,000 (U.S.$1,750) a day (*Aftonbladet,* September 25, 1998), amounting to about a month's earnings in a regular unskilled job. *The Economist* (February 14, 1998) reported that Arabic women could make $2,000 a night in the Gulf states, and in the same article, a Latvian prostitute claimed she averaged $5,000 per month, 20 times the average wage." (Edlund & Korn, 2002, p. 182).

Parsons, 2009).[8] The figures for the escort branch have been supported by studies in the Netherlands which found that in the escort branch, 4 different levels can be identified. Payment to the escort clubs ranges from 250 Euros per hour for the high end clubs, to 50 Euros per hour for the lower level clubs; payment is divided between the club and the escort (Eysink Smeets et al., 2007). For those working independently, prices will of course vary.

1.4. Prostitution markets

Prostitution markets vary depending upon the country (Vanwesenbeek, 2001; Weitzer, 2012). Prostitution takes on diverse forms and sex workers are exposed to different conditions within the varying markets. Some forms of prostitution, such as street prostitution are ubiquitous, whereas the (open) existence of brothels will depend upon the jurisdiction and whether the operation of brothels is allowed by law.

At its most basic level, the prostitution sector can be divided into the street (outdoor) and indoor sectors. Street prostitution is the lowest form of sex work and is often characterized by prostitutes battling drug addiction (Daalder, 2007) or selling survival sex (National Network for Youth, no date). Abel and Fitzgerald (2012), in a study of the sex market in New Zealand, identify 3 different sectors. These are the street sector, the managed sector (brothels and escort agencies) and the private sector, in which prostitutes work on their own from apartments or homes.

In a study of the prostitution market in the Netherlands, Daalder (2007) identified two important factors which differentiate the sector. These factors are whether the business operates from a permanent address (location-bound and non-location bound sectors) and whether or not the business is operating legally or illegally. At a location-bound and legal business such as window prostitution, the negotiation for sexual services and the transaction take place at the same address. This is the most visible form of prostitution in the Netherlands. An example of location-bound prostitution which is often unlicensed, is home prostitution. In the non-location-bound but licensed sector of the escort branch, the customer may arrange for the services of a prostitute but the encounter takes place at a different location. In the non-location-bound, unlicensed sector of street prostitution, contact is made on the street and the sexual act is completed elsewhere. Figure 1 below shows

8 Ron Weitzer, who has done extensive work on prostitution in countries around the world, reports that escorts don't really work per hour at the high end, but have a minimum amount of time for the "date" which can be 2-3 hours. Escorts can charge several thousand euros for a single date (personal communication with the author).

the relationship between the location and licensing branches of prostitution in the Netherlands.

Figure 1: Prostitution in the Netherlands according to location and license

	licensed	unlicensed
location-bound	*window prostitution*	*home prostitution*
non-location-bound	*escort service*	*street prostitution*

The indoor prostitution market may comprise visible and invisible forms of sex work. Window prostitution is a form of public yet indoor prostitution. Other less visible forms of prostitution can be found in massage parlours, saunas, bars, hotels, escort services and individuals operating out of private apartments.

1.5. Violence against prostitutes

Sex workers in these various markets are exposed to different levels of harm, violence (Abel & Fitzgerald, 2012) and social exclusion. Most research on prostitution is not representative, lacks matched groups of non-sex workers, has been conducted on small samples (Weitzer, 2005), and focusses predominantly on street prostitution, but shows that violence against women occurs in both indoor and outdoor prostitution differing in severity and frequency (Rafael & Shapiro, 2004; Farley, 2004; Weitzer, 2012). Prostitutes working in the outdoor sex market are often at risk of assault, rape, robbery (Weitzer, 2007) and abuse by customers and pimps.[9]

Women working in the indoor prostitution sector are at lower risk of violence perpetrated by customers, tend to use drugs less frequently (or for different purposes) than sex workers involved in street prostitution, and tend to be exposed less often to sexually transmitted diseases (Weitzer, 2007; Daalder, 2007).

In a study of 130 prostitutes working in San Francisco,[10] Farley and Barkan (1998) found that 68% had been raped while working as prostitutes, and slightly more than 80% of the sample had been physically assaulted, threat-

9 While this characterizes street prostitution in many jurisdictions, Weitzer (2007) reports that this is not always the case. A Miami study found only 7% of the prostitutes in that city worked with a pimp.

10 Farley and Barken (1998, p. 39) state that they "…interviewed respondents from several regions in San Francisco where street prostitution occurs". Without specifically stating so, it must be assumed that the respondents in their study are working in street prostitution.

ened with a weapon and reported being homeless (also in the past). This clearly contradicts the experiences of women working in prostitution in other venues.[11] In countries regulating the promotion of brothels, those working in this form of prostitution are offered a level of protection not secured by those sex workers on the streets.

2. ATTITUDES TOWARD PROSTITUTION

The divisive discussion on prostitution is represented by two diametrically opposed views.

2.1. The oppression model

While the religious right objects to prostitution due to the threat it poses to the family and on moral grounds, radical feminists portray prostitution as a model of oppression. They argue that prostitution is gender-based violence used by men against, and to subjugate women (Farley, 2004; Rafael & Shapiro, 2004). Prostitution is both the cause and consequences of social and economic inequalities in patriarchal societies (Weitzer, 2012).

In their zealousness to eradicate all forms of prostitution, radical feminists argue that rather than liberation, prostitution is humiliation, torture, rape. Women are prostituted and men are rapists and sexual predators (Farley, 2004; Rafael & Shapiro, 2004; Ekberg, 2004; Wallace, no date, p. 2). Many of the arguments put forth by radical feminists or those advocating abolition are filled with emotional tirades (Weitzer, 2009),[12] rely on stereotypes (of both sex workers and clients) and selected cases focusing on street prostitution, but are backed by little or no data. This approach supports criminalization of prostitution or at the least, criminalization of the purchase of sexual services.

2.2. The empowerment model

Other scholars argue that prostitution is a form of labor and one that can be chosen freely. This empowerment paradigm argues that individuals who exercise control over their choices, bodies and commercial transactions are exercising agency. A number of studies on prostitution have shown that sex work is empowering, particularly to the marginalized groups working in the homosexual or transgender prostitution markets (Weitzer, 2012).

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11 This contradicts the findings of studies on prostitutes working in the Netherlands.

12 An example of this is Ekberg's (2004, p. 1193) statement "In 1999, it was estimated that 125,000 Swedish men bought about 2,500 prostituted women one or more times per year".

Pro-sex workers do not deny that prostitution can be dangerous, that prostitutes are victims of violence or that individuals can be deceived, coerced or trafficked into prostitution. They do, however, argue that (some) individuals working in prostitution can exercise agency and free choice in choosing this line of work. They challenge the notion that every woman working as a prostitute is a "passive, disempowered victim" (Wallace, no date, p. 6) or that all sex workers are marginalized and forced into prostitution. This more pragmatic approach views prostitution as a form of labor, and supports protection of sex workers' rights, decriminalization, regulation and control of the market. Harm reduction is at the core of this movement.

2.3. Misconceptions and false claims concerning prostitution

Two misconceptions cloud the academic and political discussion on prostitution. Based upon these misconceptions, a number of false claims are made regarding prostitution, in particular, by those seeking to criminalize sex work.

2.3.1. The prostitution market is homogeneous

The first misconception is that the prostitution market is homogeneous (Weitzer, 2012; McCarthy, Benoit, Janssons & Kolar, 2012) . Arguments for criminalizing prostitution are often aimed at the more visible forms of prostitution - street prostitution – which, because of its visibility, contributes more to social unrest and disturbances. It is also the sector in which women experience more violence (Weitzer, 2007; Daalder, 2007; Abel & Fitzgerald, 2012).

2.3.2. Prostitution is synonymous with human trafficking

The second misconception is that prostitution is always coercive and has often been confused or conflated with sex trafficking (Weitzer, 2009; McCarthy et al., 2012; Levy & Jakobsson, 2013; Huisman & Kleemans, 2014). Whereas prostitution may be voluntary or involuntary, human trafficking is never voluntary.[13] Weitzer (2006) argues that this conflation has led to false claims about prostitution, influencing policy on prostitution and human trafficking[14] when in fact, it is human trafficking, and not prostitution, that should be targeted.

13 The use of children under the age of 18, even when the child consents to sexual relations, is always considered exploitative and a case of human trafficking.

14 The U.S. Government, passed the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C. 7601, which commonly became known as the "anti-prostitution pledge". See section 3.1 for more on this piece of legislation.

2.3.3. Prostitution is violence against women

Radical feminists argue that prostitution always involves male dominance over, and exploitation of women, that women have been forced into prostitution and are victims of human trafficking (Jordan, 2012; Weitzer, 2009; Wallace, no date). This argument overlooks the fact that some forms of prostitution are voluntary, others involve men providing services to men (Daalder, 2007), and others involve women traveling abroad to enjoy the sexual services of young men (Aronowitz, 2012).[15]

Studies in the Netherlands (Daalder, 2004, 2007; Eysink Smeets et al., 2007), Australia (Seib, Dunne, Fischer & Najman, 2010) and New Zealand (Abel & Fitzgerald, 2012) show that prostitution markets differ. Levels of violence against sex workers differ in different sectors. A study by Levitt and Venkatesh (2007) found that not only did the organization of prostitution activities differ across neighborhoods in the city of Chicago, but that prostitutes were better off where pimps were active, as the pimps provided protection and paid efficiency wages.

2.3.4. Prostitutes are traumatized and cannot choose to work in prostitution

The argument has been made that women in prostitution have been traumatized either prior to their entry into prostitution or as a result of it and that female prostitutes are victims who lack agency (Weitzer, 2006; Bruniskovis & Surtees, 2008). According to Weitzer (2006), prostitution is seen by some writers as something "done" to women, not something that can be chosen. Sex workers are "… generalized, pathologized and infantilized as traumatized survivors of abuse and violence experienced both during and as an antecedent to sex work" (Levy & Jakobsson, 2013, p. 335). One radical feminist has gone so far as to claim "To the extent that any woman is assumed to have freely chosen prostitution, then it follows that enjoyment of domination and rape are in her nature" (Farley & Kelly, 2000, p. 30). This rather one-sided argument points only to the pathology of those working in prostitution.

Research on prostitutes, however , portrays a different reality. While a study on prostitutes in New Zealand comparing female sex workers to samples of age-matched women (non-sex workers) found that sex workers were exposed to more adult physical and sexual abuse than those in the comparison group, no differences were found in measures of mental health or self-esteem, their assessment of their physical health or the quality of their social networks (Romans, Potter, Martin, & Herbinson, 2001).

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15 These young men are referred to as "beach boys" and the practice labeled as "romance tourism". This practice has been documented and studied in Gambia, Kenya and locations in the Caribbean (Aronowitz, 2012).

Research carried out in the Netherlands a few years after the lifting of the brothel ban involved face-to-face interviews with 354 prostitutes (many of whom were not Dutch). It was found that involuntary prostitution identified during the field research occurred to a limited extent. However, only eight per cent of the prostitutes interviewed "… stated that they began working in the sex business due to some form of coercion" (Daalder, 2007, p. 95).[16]

2.3.5. Violence is omnipresent in prostitution

The claim that violence is omnipresent in prostitution (Farley & Kelly, 2000; Farley, 2004; Ekberg, 2004) has not been supported by evidence-based research. Most samples involving research on prostitutes are not random and are not representative (Weitzer, 2005), may be small (Miller & Schwartz, 1995) and focus on street prostitution. In fact, despite the dangers associated with prostitution, the danger is often overstated and the majority of commercial sexual transactions do not involve harm (Abel & Fitzgerald, 2012).

Perceptions of safety are a measure of one's experience with, or assessment of risk concerning violence. Research conducted in the Netherlands after the lifting of the brothel ban with 237 prostitutes in 17 regions throughout the country on window prostitution, massage parlours, escort agencies, private clubs and home-based prostitution found that "[t]he vast majority of prostitutes in the regulated sector often or always feel safe" (Daalder, 2004, p. 30).

3. REGULATING THE PROSTITUTION SECTOR

Regardless of the approach that countries have taken to control and regulate prostitution, the argument for doing so is based on the need to maintain public order, defend morality, protect women and minors from forced prostitution and sexual exploitation, and stop the spread of HIV/AIDS and other sexually transmitted diseases (Outshoorn, 2005; McCarthy, Benoit, Jansson, & Kolar, 2012; Levy & Jakobsson, 2013; Pates, 2012).

There are four basic models regulating the prostitution market. These are full criminalization, partial decriminalization or limited legality, legalization and decriminalization. In 2009, in half of the 100 countries examined, prostitution was legal. In another 39, prostitution was illegal, and there was

16 Mariska Major, director of Amsterdam's Prostitution Information Center, began working as a prostitute at age 16 when she needed money to buy a dog and decided that sex work was a good way to earn money. She worked for years in the industry and now educates visitors about prostitution. For more on Mariska and the work of the Prostitution Information Center, see http://www.pic-amsterdam.com/.

limited legality in 11 countries.[17] Each of these models will be discussed below, but a distinction will be made between legalized and decriminalized approaches to regulating prostitution. A more in-depth discussion on the legalized and limited legality approaches will follow, examining empirical support for the model's success.

3.1. Full criminalization

Prostitution, prohibiting the sale of sexual services, is illegal in almost 100 nations around the world (McCarthy, Benoit, Jansson, & Kolar, 2012). In countries such as the United States (with the exception of rural counties in Nevada), prostitution is illegal. This is aimed not only at the sexual contact, but also at offering to perform or purchase a sexual service (soliciting for prostitution). Full criminalization has often resulted in sweeping arrests of women working in prostitution or those selling sex, and less so on those purchasing the service (Ekberg, 2004). Aggressive enforcement and policies aimed at prostitution make no distinction between consensual sexual contact between adults and forced prostitution or sexual contact with minors.

This pattern may be changing. In an attempt to reduce demand, jurisdictions have also targeted customers of sex workers. "John Schools" introduced in the U.S. and Canada aim at educating clients arrested for soliciting for paid sex about the harms of prostitution. After attending lectures by former sex workers and, health and law enforcement officials, the man's arrest record will be cleared if he is not rearrested within a given period of time (Lovell & Jordan, 2012; Weitzer, 2012). Other, more harsh sanctions as the forfeiture of a driver's license, seizure of the vehicle or plastering the identities of customers on huge billboard signs have been introduced in the U.S. (Aronowitz, 2010).

These pedagogical and aggressive measures may have acted as a deterrent and may explain the decline in arrests of males between 2003 and 2012. According to FBI arrest statistics for prostitution and commercialized vice, arrests of adult males decreased 26.9% from 16, 382 (2003) to 11, 977 (2012). It is evident from arrest statistics that females – prostitutes – are still arrested more frequently than their male customers, but even these statistics declined 39.9% over the ten year period, from 32,131 arrests to 24,954 (FBI, 2013).

17 For more on individual countries and their legislation, see 100 Countries and Their Prostitution Policies at:
http://prostitution.procon.org/view.resource.php?resourceID=000772

This decline in arrest statistics may have more to do with enforcement policies than an actual decline in the amount of prostitution in the U.S. With prostitution having moved on to the Internet and indoors, it is expected that arrests would decline. Actions and enforcement vary across states within the U.S. Even where prostitution is illegal, however, one study in Chicago found that punishment for both prostitutes and their customers is minimal and that "A prostitute is more likely to have sex with a police officer than to get officially arrested by one" (Levitt & Venkatesh, 2007, p. 2).

This conservative view on eradicating prostitution (and conflating it with human trafficking) led the U.S. Government to pass the The U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C. 7601, commonly known as the "anti-prostitution pledge". The law imposed conditions such that "… no funds 'may be used to promote or advocate the legalization or practice of prostitution' and no funds may be used by an organization 'that does not have a policy explicitly opposing prostitution'"(Justitia U.S. Supreme Court, no date; 1). This effectively cut off funds to NGOs working to provide social services and health care to prostitutes. In place for international NGOs since 2003, the Pledge became applicable in 2005 to U.S. NGOs as well. It was challenged and overturned by the US Supreme Court in 2013 in A*gency for International Development et al. v. Alliance for Open Society International, Inc., et al.*[18]

3.2. Partial decriminalization: Limited legality

3.2.1. Prostitution is demand driven

Markets are driven by supply and demand. Prostitution, it is believed, is fuelled by male demand for the purchase of sexual services provided by women. Eradication is only possible if demand is reduced.

In countries such as Sweden (1999), Finland (2206),[19] Norway (2008) and Iceland (2009), the sale of sexual services is legal, however the purchase is illegal. This approach, known as the Swedish or Nordic model, protects the sex worker and targets the customer. In most countries where the purchase of sexual services is illegal, the offenders can incur a fine or a prison sentence. In these countries, the operation of brothels and living off of the proceeds of one involved in prostitution (pimping) is prohibited.

18 http://supreme.justia.com/cases/federal/us/570/12-10/

19 In Finland (2006), the buying of sexual services is only illegal if the sex worker is a victim of forced prostitution or human trafficking.

3.2.2. The Swedish model

In Sweden, prostitution is officially acknowledged by the Government as a form of male sexual violence against women and children. "Buying women and girls for sexual exploitation and prostitution purposes is seen to be firmly against the basic tenets of Swedish gender equality politics" (Ekberg, 2004, p. 1208). Prostitution is seen as the sale and purchase not of sexual services, but of women and children themselves. It cannot be voluntary, therefore all women involved in all acts of prostitution must be protected (Ekberg, 2004).

In 1999 Sweden was the first country to pass The Ban Against the Purchase of Sexual Services – legislation targeting only the customers by outlawing the purchase of sex. Driving the banning of the purchase of sexual services was the idea that prostitution is "… incompatible with ideas on freedom of the individual and gender equality, which have long been prevalent in Sweden" (Swedish Institute, 2010, p. 5). The law was meant to protect the prostitute, but punish the client, who could be fined or receive a prison sentence up to six months. A further aim of the law was to assist prostitutes, through outreach programs, to leave prostitution (Niemi, 2010).

The law is extra-territorial. Swedish men who purchase sexual services from prostitutes in countries where this is illegal can be prosecuted for this in Sweden. According to Ekberg (2004, p. 1197), there has been no "notable increase in the number of Swedish men who travel to other countries as sex tourists" since the enactment of the law.

3.2.3. The Finnish model

Finland modified the Swedish law, in essence, giving more freedom to customers of prostitutes. The Finnish law, "Exploitation of a Person Who Is the Object of Sex Trade" came into force on October 1, 2006 (Niemi, 2010). The purchase of sexual services in Finland is only illegal if the sex worker is coerced into prostitution (human trafficking).

3.3. Legalization

Legalization of prostitution is not the same as decriminalization. In all countries in which prostitution has been legalized, there are regulations concerning such things as the management and operation of brothels, soliciting for prostitution in public places, living off of the proceeds of a person working in prostitution and hiring or working as a prostitute under a particular age (usually 18 or 21) (Ministry of Justice & the Police, 2004; Weitzer, 2012; Ministry of Foreign Affairs, 2012; Seals, 2013). Forced prostitution is illegal in all jurisdictions where prostitution has been legalized.

At the core of this approach is the idea of agency – that individuals can exercise freedom in choosing to work in prostitution – and that the government has no right to dictate what occurs between consenting adults (Wallace, no date). A number of Governments have taken a more pragmatic approach to regulating and controlling the prostitution market. This harm reduction approach focuses on protecting the labor rights and health of prostitutes (Ministry of Justice & the Police, 2004; Weitzer, 2012). Such practices are found in among others, Germany,[20] the Netherlands, New Zealand, a number of states in Australia (either legalization or decriminalization), and rural counties in the U.S. state of Nevada.

Countries that take a regulatory approach view prostitution as a form of labor which should adhere to the same standards as other forms of work regarding working hours, health care regulation, pension and sick leave (Kavemann & Rabe, 2007; Ministry of Foreign Affairs, 2012). Prostitutes are expected to register with the Government and pay taxes.

Governments reserve the right to regulate licenses and limit prostitution to certain sectors of the city or to licensed brothels. In the case of government licensed brothels or escort services, inspections may take place. These are conducted by police, health and tax services where brothels operate legally (Ministry of Foreign Affairs, 2012).

In all countries, forced prostitution and prostitution involving minors is prohibited by law. While living off of the proceeds of a prostitute is, in some countries illegal, in others, it is only coercive pimping which is against the law. Living off of the proceeds of a prostitute is legal in countries such as Germany, the Netherlands and New Zealand if this is done by licensed escort or brothel owners (Kavemann & Rabe, 2007, Daalder, 2004; 2007; Weitzer, 2012).

20 In 2002, Germany enacted the Prostitution Act legalizing prostitution. For an evaluation on effectiveness of the Prostitution Act in Germany, see Kavemann & Rabe (2007).

3.4. Decriminalization

Decriminalization is the lifting of all laws criminalizing commercial sexual transactions. In 2003, New Zealand decriminalized prostitution with the passage of the Prostitution Reform Act. Driving this Act was the desire to protect sex workers from exploitation, and improve the health and safety of sex workers. Five years after its enactment, a review of the law found that the "…vast majority of people involved in the sex industry are better off under the PRA than they were previously" (Abel & Fitzgerald, 2012, p. 9).

There is some disagreement as to whether or not New Zealand's approach is best characterized as decriminalization or legalization. The new law removed criminal penalties but coupled this with a number of regulations to include periodic inspections of prostitution premises by the health department, social services and the police. This would qualify the system as one of minimalist legalization (Weitzer, 2012) rather than decriminalization. In fact, Weitzer argues that no country has completely decriminalized prostitution, as all jurisdictions in which prostitution is legal, have some regulatory codes in place.[21]

4. WHAT WORKS? LIMITED LEGALITY VS LEGALISATION OR THE "SWEDISH" VS THE "DUTCH" MODEL

How effective have the laws prohibiting the purchase of sexual services or the regulation of the prostitution market actually been? This section examines these two models focussing on the countries of Sweden and the Netherlands.

4.1. The impact of limited legality: The Swedish model

In 2008 the Government of Sweden appointed the Committee of Inquiry to Evaluate the Ban against the Purchase of Sexual Services. The committee, chaired by the Chancellor of Justice, Anna Skarhed, released its report in 2010. This report (Swedish Institute, 2010) has subsequently become known as the Skarhed report.

The Government of Sweden claims that the ban against the purchase of sexual services has been successful in accomplishing its goals. According to the Government report (Swedish Institute, 2010), prior to the implementation of the law, the prevalence of street prostitution in the capitols of Sweden, Norway and Denmark (countries which are economically and socially similar) was comparable. After the ban, the prevalence of street prostitution in Stockholm was halved, while in 2008, street prostitution in Norway and

21 Interview with Ron Weitzer, Gent, Belgium, 27 March 2014.

Denmark was estimated to be three times higher than in Sweden (Swedish Institute, 2010).[22]

Further support for the law lies in the fact that, according to experts working in the field, there does not appear to be an increase in prostitution or in other forms of indoor prostitution (massage parlours, hotels, sex clubs) as a result of the shift from the street to these markets. The Skarhead report makes claims that the ban has counteracted the establishment of organized crime and maintains that "…there has been a change of attitude with regard to the purchase of sexual services, which coincides with the criminalization of the purchase of such services" (Swedish Institute, 2010, p. 9). Police officers, social workers and prostitutes themselves note that buyers have become more cautious due to the fear of being caught and shamed.

With respect to prostitutes, organizations assisting sex workers to leave prostitution and find other work, have reported that many of the women who leave, cite the law as an incentive in their decision to seek assistance (Ekberg, 2004).[23]

4.2. The impact of legalization: The Dutch model

4.2.1. Aims of the law

The fundamental right to choose one's profession is guaranteed in international human rights conventions and in the Dutch constitution (Ministry of Justice and the Police, 2004). This, and the realization that legalization would improve the sex work branch, the Dutch Government introduced the Law on the Purchase of Sex and Prostitution which repealed the ban on brothels in 2000, making the running of brothels in the Netherlands legal.[24] Prior to the lifting of the ban, sex clubs were illegal, but "tolerated". Moving them into the legal sphere meant that they were now subject to regulation. The aim of the law was to improve the position of sex workers ensuring their health and safety, and the sector as a whole, to combat the employment of minors, forced prostitution (human trafficking) and individuals without a valid residence permit in the sex industry, and sever the ties between prostitution and organized crime (Ministry of Foreign Affairs, 2012).

22 See Figure 5.3 Number of individuals engaged in street prostitution in Stockholm, Oslo and Copenhagen 1998-2008 (Swedish Institute, 2010).

23 In spite of claims that the law has provided an incentive to leave prostitution (Ekberg, 2004), 130 persons contacted the Prostitution Center for assistance in leaving prostitution. Only 78 persons (60%) left permanently over a 3-year period.

24 Voluntary prostitution in the Netherlands has always been legal. The new law in 2000 legalized and regulated brothels.

4.2.2. Regulation

Prostitutes residing legally in the Netherlands may work as independent prostitutes or as employees for an escort service or brothel. Regulation of the prostitution market occurs at the municipal (local) level. The licensing system is enforced by a coalition of police, municipal and health services, building and housing inspectorates, labour inspectorates and the tax authorities (Daalder, 2007; Ministry of Justice & the Police, 2004; Ministry of Foreign Affairs, 2012). The department of public health has unobstructed access to brothels (Kavemann & Rabe, 2007; Ministry of Foreign Affairs, 2012). Health checks are not mandatory, but recommended four times a year. These are anonymous and are free to sex workers (Ministry of Foreign Affairs, 2012).

Whereas before the 2000 law brothels operated in a grey area and were illegal but "tolerated", legalization has brought stricter enforcement of the law. Municipal governments have a firmer understanding and regulation of location-bound sex operations (window prostitution and brothels); there is less control of the non-location-bound (escort) operations (Daalder, 2007). Street prostitution is limited in most municipalities to certain times of the day and certain areas of the city. This has contributed to increased safety for street prostitutes and reduced problems associated with street prostitution in residential areas (Ministry of Foreign Affairs, 2012).

As prostitution is now viewed as any other form of labour or employment, employees and employers (brothel owners) must meet their social insurance and tax requirements. Prostitutes are required to register. Unregistered prostitutes or prostitutes working in unlicensed premises as well as clients who use unregistered prostitutes will be liable to prosecution (Ministry of Foreign Affairs, 2012).

4.2.3. Worker safety

Worker safety is a primary concern and licensed businesses are required to follow regulations concerning hygiene, the minimum size of the working area and fire safety. Businesses are required to provide condoms, and every working area must be equipped with a panic alarm. Brothels are forbidden to force sex workers to engage in unprotected sex or unusual sex acts, nor are they allowed to force workers to consume alcoholic beverages with clients (Ministry of Foreign Affairs, 2012).

For those working in the regulated sector, sex workers reported positive developments to include improved hygienic conditions and better protection (Daalder, 2004). Police who carry out inspections report that the new law increased prostitutes' awareness that violence and exploitation are illegal and unacceptable (Daalder, 2004).

4.2.4. Supply and demand

An evaluation of the prostitution sector after the introduction of the law concludes that both supply and demand has declined. It is unclear if this is a result of the law, a declining economy, or, as Daalder (2007) reports, a result of the shift to the Internet. Closed circuit cameras in the prostitution areas[25] (Red Light Districts) may have led to a decrease in customers visiting such area, or a decrease in the diversity of the supply. After the new law, many of the foreign women formerly working in prostitution while living illegally in the Netherlands, were no longer able to work (Daalder, 2007).

4.2.5. Positive effects of legalization in other countries

The prostitution markets, the legalization approach as well as the objectives of the German Prostitution Act, are similar to those in the Netherlands (Kavemann & Rabe, 2007; Weitzer, 2012; Seals, 2013). The situation and degree of regulation in Nevada differs from that in the Netherlands or Germany.

In rural counties in the State of Nevada prostitution in brothels is legal and heavily regulated. Unlike the case in Germany and the Netherlands where brothel owners must make condoms available and medical testing is voluntary, in the State of Nevada brothels, condom use and mandatory health checks are required of those working in prostitution. Health checks for all sexually transmitted diseases are carried out weekly (gonorrhoea and chlamydia) and monthly for HIV and syphilis (Seals, 2013). Test results are reported to the local sheriff.

In a study of violence in Nevada brothels, Brents and Hausbeck (2005) concluded that legalization of prostitution, and with it, official regulation and public scrutiny, has decreased the risk of violence against prostitutes and disturbance of the public order, and has resulted in a reduction of sexually transmitted diseases.[26]

In a study of the impact of decriminalization of indoor prostitution in the state of Rhode Island in 2003 on the composition of the sex market, rape offenses and sexually transmitted diseases, Cunningham and Shah (2013) made a number of surprising findings. As expected, decriminalization led to an increase in the indoor prostitution market. Unexpectedly they found that decriminalization led to a decrease in forcible rape as well as a decline in the incidence of gonorrhea. Based on these declines, the authors estimate that

25 Cameras were installed to ensure the safety of prostitutes, their customers and tourists in these Red Light districts.

26 Over a four-year period, the authors interviewed prostitutes, brothel owners, state regulators and clients of prostitutes.

decriminalization resulted in a savings of $200 million. They conclude that "[d]ecriminalization appears to benefit the population at large, especially women – and not just sex workers" (Cunningham & Shah, 2013, p. 1).

5. CRITIQUE OF THE SWEDISH AND DUTCH MODELS

Criticisms of both regimes exist. Those offering criticisms of the Swedish model claim that prostitution has simply moved from the street to the Internet and the indoor more hidden sectors, and that it has put prostitutes at more risk. Those supporting criminalization argue that legalizing prostitution has increased prostitution and subjected more women to violence, but has also led to more human trafficking. The impact of the laws in Sweden and the Netherlands will be examined in more depth.

5.1. Criticisms of the Swedish model

Because Sweden was the first country to criminalize the purchase while legalizing the sale of sexual services, and due to the Government's own evaluation of the law as well as the wealth of literature written specifically about the Swedish model, this section will examine the impact of the legislation.

5.1.1. Impact on male buyers

Sweden's law is accused of relying on sexual morality. It attempted to regulate prostitution by targeting the behaviour of buyers. The threat of fine or imprisonment is supposed to increase stigma and eradicate the demand for commercial sex. It is, in effect, an attempt to change the attitudes and behaviour of men in Sweden – what Jordan (2012) refers to as *a failed* experiment in social engineering. The Skarhed report admits that little is known about the behaviour of buyers (Swedish Institute, 2010). While the Government's evaluation sheds some light on the number of street prostitutes, any change in the number of prostitutes tells us nothing about the number of buyers. The Swedish Government has been unable to provide numbers of buyers prior to or after the introduction of the law (Jordan, 2012). Research cited by Dodilette and Östergren, (2011) show that the law had no impact on male buyers, in part because they mostly buy sex abroad. Furthermore, according to some prostitutes, "…criminalization has not affected buyers because so few are caught and the penalties are so lenient" (Swedish Institute, 2010, p. 9).[27]

27 Ekberg (2004) reports that in 571 cases in which men were suspected of having bought sexual services under the Swedish law, 40 men had been prosecuted and another 16 were awaiting prosecution for purchasing sexual services.

5.1.2. Is the decrease in street prostitution real?

Those looking for empirical evidence to support Sweden's claim to success will find little. While street prostitution has decreased, it is unclear whether this decrease is due to the law (Swedish Institute, 2010; Jodan, 2012) or a general trend seen in Sweden since the 1970's. The "decrease" may also be a result of the extent of police surveillance and enforcement rather than the law (Dodilette & Östergren, 2011), or the use of mobile phones and the internet (Ministry of Justice & the Police, 2004).

There are no accurate numbers to indicate whether street prostitution has simply been displaced to the indoor sector (Jordan, 2012) or has moved to other areas of the city. In fact, the Swedish Government reports that selling sex over the Internet has increased (Swedish Institute, 2010), but it is unclear if these sex workers formally worked on the streets. It has been further argued that the ban has been selectively applied and targeted only street prostitution (Levy & Jakobsson, 2013) so that its impact on other forms of prostitution cannot be measured.

5.1.3. Prostitutes' rights are more limited

In interviews with sex workers following the implementation of the ban, Östergren (2004, p. 1) reports that "[t]hey feel discriminated against, endangered by the very laws that seek to protect them, and they feel under severe emotional stress as a result of the laws." In spite of the legality, but because of the social stigma, sex workers find it difficult to rent apartments and are often forced to move or pay exorbitant prices. Because of a ban on brothels, women are unable to work together, which puts them at greater risk. Prostitutes feel victimized by the state as they are marginalized, forced into dangerous situations and not taken seriously unless "…they say the correct things, i.e. that they find prostitution appalling, that they are victims, that they have stopped selling sex and will never go back, and that they are grateful to the current prostitution policy and to the policy makers" (Östergren, 2004, p. 3).

5.1.4. Street workers are less safe

For those sex workers who could not afford to move indoors, the situation became worse after the ban. Because of the ban, there are fewer men purchasing sexual services on the streets. There is more competition, the price of sexual services has dropped, forcing women to service more men than before. Customers on the street are demanding unprotected sex or more aberrant forms of sexual services.[28] Because negotiations in public must

28 A crackdown on street prostitution in Spain showed similar results. Not all of those who took part in the survey and interview were working in street prostitution.

happen quickly, this increases the likelihood that a prostitute will end up with a dangerous client (Östergren, 2004; Dodilette & Östergren, 2011; Jordan, 2012). The possibility also exists that if sex workers are moving into more hidden locations,[29] they may end up in the hands of pimps or other third parties to help find clients and keep the police away (Dodillet & Östergren, 2011, Jordan, 2012). In fact, according to a Norwegian Government report, prostitutes in Sweden are using pimps for protection (Ministry of Justice and the Police, 2004) which can put them at additional risk as social workers have problems reaching them. They have also expressed a reticence to report their clients to the police when they are the victims of a crime as this puts them in danger of losing clients (Östergren, 2004).

As a result of this, sex workers report an increase in emotional stress and several reported "…that they now have more anxiety, sleeping problems, concentration problems as well as problems related to eating disorders, alcohol and drugs" (Östergren, 2004, p. 4).

5.1.5. Other harms caused by the law

Sex workers report more police harassment (Dodillet & Östergren, 2011; Jordan, 2012; Ministry of Justice & the Police, 2004). Additionally, driving sex workers underground because they can no longer operate freely on the streets, means that outreach workers have a more difficult time in identifying and reaching them (Jordan, 2012).[30] Because of the risk of criminalization, it could be assumed that clients will be less inclined to report to or assist law enforcement and cooperate in prosecutions (Jordan, 2012). Prostitutes also report increased social stigma (Dodillet & Östergren, 2011; Jordan, 2012).

5.2. Criticisms of the legalization model

What in theory sounds admirable is in practice difficult to ensure. The legalization model has been incapable of delivering everything that is envisaged.

Respondents, though, reported increased policing (29,1%), a decrease in the number of clients (17.7%), lower revenues (12,7%), more difficulty in negotiating with the client (11,4%) and changes in the type of customer (7,6%) and an increased perception of risk (6,3%). They also complained of being fined and having difficulty in working to pay the fines (Villacampa & Torres, 2013).

29 Mariska Major, director of the Amsterdam Prostitution Information Center, argues that when clients of prostitutes are criminalized, the prostitutes begin working underground which decreases control and increases their risk of harm (Pel, 2014).

30 Jordan (2012) citing a UNAIDS study in 2002, reports that sex worker invisibility is the greatest obstacle to help STI and HIV/AIDS prevention and education.

5.2.1. Legal position of prostitutes

Sex workers who are employed by a brothel or escort service are subject to the same compensation as workers employed in other businesses. When employment is involuntarily terminated, they are eligible for unemployment benefits, or disability if they are unable to work in other jobs (Ministry of Foreign Affairs, 2012). In practice, though, brothels and escort services do not wish to enter into official employment contracts with prostitutes. Prostitutes are considered "self-employed" which allows businesses to avoid paying social insurance and income taxes (Daader, 2007). Forcing prostitutes to remain self-employed makes them more socially vulnerable and puts them at greater risk for exploitation (Seals, 2013; Weitzer, 2012).

5.2.2. Social stigma

Legalized prostitution means that those working in the sector are required to register with the municipal government. Despite the fact that the Government recognizes prostitution is legitimate work, it is still not socially acceptable and years after the law was enacted, the nature of the work was still stigmatized (Daalder, 2007). Many prostitutes, therefore, do not wish to register with the municipal government (or pay taxes), which forces them to work in the unregulated sector. By not registering, they move into the unregulated realm and are also involved in criminal activities by avoiding paying taxes.

5.2.3. Abuses still exist

Illicit brothels and escort services, and home-based prostitution still exist and were not affected by the Dutch law (Ministry of Justice & the Police, 2004; Daalder, 2007; Van Wijk et al., 2010; Huisman & Kleemans, 2014). While municipal authorities and the police are better able to control the licensed sector, serious abuses – human trafficking, forced prostitution and minors working in prostitution – were identified (Daalder, 2007). The shift to the Internet and home-based prostitution makes it difficult for regulatory bodies to monitor abuses in prostitution (Van Wijk et al., 2010).

5.2.4. Emotional well-being of prostitutes

The change in the regulation is said to have resulted in a decrease in the emotional wellbeing of those working in prostitution (Daalder, 2007). Furthermore, while illegal migrants worked as prostitutes – even in the window sector – prior to the lifting of the ban, legalization and regulation of the market drove them into unregulated sector, putting them at greater risk for abuse.

6. DOES LEGALISED PROSTITUTION LEAD TO MORE HUMAN TRAFFICKING?

One of the most powerful arguments to criminalize the purchase of sexual services is that legalized prostitution will lead to an increase in human trafficking (Outshoorn, 2005; Farley, 2009; Hughes, 2000). From a market perspective, one of two scenarios can occur. Legalized prostitution can either lead to an expansion of the prostitution market thus increasing human trafficking (the scale effect), or, as more prostitutes are available, the demand for trafficked women will decline as legal prostitutes are favored over trafficked women (the substitution effect) (Cho, Dreher, & Neumayer, 2013).

Cho, Dreher and Neumayer's (2013) study of 150 countries (and three case studies) found an association between countries with legalized prostitution and higher trafficking inflows; those countries with legalized prostitution saw a greater incidence of trafficking inflows. Their data show, furthermore, that it is the legalization of prostitution and not the legal approach to third-party involvement (e.g. pimp, brothel owner or others who facilitate prostitution), which has an impact on prostitution. The authors caution that because of the hidden nature of both prostitution and human trafficking, statistics are unreliable and that it is "...difficult, perhaps impossible, to find hard evidence establishing this relationship" (Cho, Dreher, & Neumayer, 2013, p. 26).

The Bureau of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children in the Netherlands is critical of the study. The data relies upon statistics of known and registered cases of human trafficking in individual countries. What is visible and has been recorded will not reflect the total number of cases. Furthermore, a large number of identified victims may be influenced by "…factors such as the attention devoted to human trafficking in society, political will to address the problem, capacity and expertise to uncover the offense and priorities that are set by investigative or enforcement agencies" (Bureau of the National Rapporteur, 2012). Equally important, a small number of victims of human trafficking is not indicative of the lack of a problem, but may reflect a Government's failure to uncover cases.

Further flaws in the data used are linked to the fact that Cho, Dreher and Neumayer (2013) use data from the United Nations Office on Drugs and Crime (UNODC, 2006) which rank countries based upon the number of times the country is mentioned in various sources as a country of destination. UNODC (2006) itself cautions that the report does not provide information on the actual numbers of victims. "The prominence given to a country in the report is to a large extent determined by the attention devoted to human trafficking in that country"(Bureau of the National Rapporteur, 2012, p. 4). Just as problematic is the authors' reliance on aggregate national human trafficking data (combining sex trafficking together with other kinds of

human trafficking) resulting in a "glaring mismatch between the trafficking figures and their relationship to prostitution" (Weitzer, 2014, p. 13). The National Rapporteur also believes that the limited number of case studies are too few to allow any conclusions about prostitution policies at the international level.

It appears that until we are able to uncover the hidden populations of both prostitution and human trafficking, and our registration of those working in prostitution and exploited in human trafficking accurately depicts the landscape, it will be impossible to determine whether legalized prostitution increases human trafficking.

7. THE WAY FORWARD

In February 2014, a non-binding resolution in the European Parliament to reduce the demand for prostitution by punishing the clients who purchase sex was adopted by 343 (to 139 votes with 105 abstentions). Supporting the Nordic or Swedish Model, the resolution advocates punishing men "…who treat women's bodies as a commodity, without criminalising those who are driven into sex work." (European Parliament/News, no date). The legal regulation of prostitution is up to individual Member States, but this non-binding resolution suggests a policy direction which Member States may be inclined to follow.

Around the same time, a policy document on sex work prepared by Amnesty International was leaked to the public. Amnesty International's Policy Background Document on Decriminalization of Sex Work opposes the criminalization of prostitution and the "…punishment of activities related to the buying or selling of consensual sex between adults" stating that these acts should be protected from state regulation as long as they are free from threats, violence or coercion (Amnesty International, 2014, p. 1). Amnesty's policy on sex work advocates the following:

> *Amnesty International does not take a position on the morality of sex work. Our focus is on how to ensure that all human beings, including those who engage in sex work, are most empowered to claim their rights and live free from fear, violence and discrimination. Amnesty International believes individuals are entitled to make decisions about their lives and livelihoods, and that governments have an obligation to create an enabling environment where these decisions are free, informed, and based on equality of opportunity* (Amnesty International, 2014, p. 3).

According to the organization, sex workers face increased health risks due not to the work itself, but due to the stigma attached to sex work and the fact that sex workers are often threatened with criminal sanctions. The criminalization of sex work increases the risk of police abuse and extortion (Amnesty, 2014)

Opinions are and will continue to remain divided on the best approach to effectively deal with the issue of prostitution. Both sides – legalization and criminalization – agree that individuals working in the sex industry should be protected from coercive and violent practices. All countries, regardless of their legal approach, agree that the health and welfare of sex workers must be protected.

In countries with complete criminalization (e.g. the U.S.) and limited legalization (e.g. Sweden), prostitution and human trafficking continue to exist. Human trafficking and forced prostitution has also been identified in jurisdictions in which prostitution has been legalized (e.g. Germany and the Netherlands). None of the three approaches eradicates (illegal) prostitution – human trafficking. The question then remains, which approach offers more safety for the community and for those working in prostitution?

This question can perhaps be answered by asking what prostitutes themselves want. Street prostitutes working in Sweden report more dangerous situations since the implementation of the law (Ministry of Justice & the Police, 2004; Östergren, 2004). Even street prostitutes, where prostitution is illegal, show that they prefer legalization of prostitution and the promotion and protection of their rights (Lutnick, A. & Cohan, D., 2009).

8. CONCLUSION

Empirical studies on prostitution show a very varied market subject to different levels of violence and social stigma (Daalder, 2004; Daalder, 2007. Van Wijk et al., 2012; Weitzer, 2012). It is a fallacy to treat prostitution as a homogeneous market, just as it is to conflate consensual prostitution with coercive sex trafficking.

There is no empirical evidence to support a reduction of prostitution, increased safety or health of sex workers in countries adopting models aimed at complete criminalization or limited legality. Large scale studies in the Netherlands, while showing that abuses still exist, have also shown that many sex workers entered the business of their own volition and feel safe in their work. The Nevada model also shows that worker safety and improved health can be ensured for those working in prostitution.

Governments should take care to protect adults' rights to choose their profession – including sex work – and to protect their rights to health, dignity and safety. The coercive side of prostitution, as well as sex work involving minors, should be addressed and forcefully prosecuted.

Regardless of the approach taken – whether prostitution is illegal, the purchase of sexual services is criminalized, or whether sex work is legal – coercive (human trafficking) and child prostitution must be eradicated. Violence prevention and harm reduction should be at the core of all government ini-

tiatives to assist sex workers. Measures include empowerment, education, access to social care and health services, establishing and enforcing occupational safety and health standards (Seib, Dunne, Fischer, & Najman, 2010).

The stigma attached to sex work must be reduced. Most importantly, though, and regardless of the legal framework in a country, opportunities must be created to allow sex workers to leave prostitution if they so desire.

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Chapter 11.
Self-regulation and public-private cooperation in the prostitution sector

The potential of quality standards for the prevention of trafficking in human beings and prostitution-related nuisance[1]

GERT VERMEULEN

1. NUISANCE IN THE PROSTITUTION SECTOR

Nuisance in the prostitution sector (Happe, Spruyt, & Suy, 2007) is mainly caused within the contexts of window and brothel prostitution, on the one hand, and street prostitution on the other. The problem is not usually found in the context of the escort sector, due to the private nature of this sector.

On the client side, nuisance may take the form of, for example, kerb crawling, littering, urinating in public, and noise disturbance (yelling, honking,…). On top of that, traditional criminality may also be found (such as theft, damage to cars, burglary, vandalism, gang formation, brawling, and the use and possession of drugs).

On the side of the prostitutes, nuisance problems usually involve (excessively) visible and aggressive methods of touting for clients. Within the context of window prostitution this may take the form of, for example, window tapping (which may disturb neighbours). Within the context of street prostitution, it may entail not only, for example, the hazardous soliciting of passers-by, but also the use of so-called sex drive-ins or 'sex boxes' in public areas such as public roads, parked cars, etc.

Finally, the general problem of the decay of neighbourhoods, especially in the context of window and brothel prostitution, should not be underestimated as a general cause of nuisance. The buildings involved are often in a (very) bad state (no running water, damp, pollution,…), which causes further impoverishment of the neighbourhood (and marginalisation of prostitution), may attract additional nuisance (whether in punishable forms or not), or may function as a natural breeding ground or catalyst for nuisance.

1 This text is an updated version and English translation of Vermeulen (2007a: 15-26, 2007d and 2008).

2. TRADITIONAL MUNICIPAL SOLUTIONS

A solution for the above-mentioned challenges is usually sought (and sometimes found) at municipal level through a certain (government directed) geographical concentration of window, brothel and street prostitution (if tolerated at all) (Happe et al., 2007).

For window and brothel prostitution, it is not possible for the municipal authorities in Belgium to have a licensing policy that allows for the geographical planning of the spread of the prostitution industry. This is not possible because the exploitation – in the sense of the "management"[2] – of prostitution remains illegal (and therefore keeping a brothel, or renting out rooms or spaces and making them available for the purpose of prostitution, with an eye to realising an abnormal profit, also remains illegal).

Some cities such as Antwerp have sought an alternative solution for maintaining public order and safety and eradicating, or at least controlling, nuisance: they demand proof of suitability for window prostitution premises or brothels (minimum surface area, running water, toilets, adhering to certain safety norms, adhering to hygiene norms, …) and for those who apply for them (proof of good behaviour, minimum age,…). As useful as these norms may be, this system does not allow for objective geographical steering, as adhering to the above-mentioned preconditions will prompt a decision that the premises are suitable, no matter what their location.

If the exploitation of prostitution were to be de-criminalised, a special zoning plan could offer an additional judicial (urban planning) instrument to ensure the concentration of prostitution in a certain area (and this would obviously indirectly limit the number of premises). Special taxes on the rent from premises that have become slummy, as well as the adapted law of 2005 concerning slum landlords, can equally prove their purpose in the context of a local prostitution policy. However, they do not directly allow for geographical concentration.

The tolerance level for street prostitution in municipal or city centres is especially low. Tolerance usually depends on the possibility of concentrating prostitution in (a) soliciting zone(s) (which in fact means delocalisation) and adequately providing for lighting, rubbish bins, urinals, 'sex boxes', and preferably also of introducing low-key minimum provisions for hygiene, crisis care, referrals, medical care and information about or prevention of health issues, addiction, violence, etc. Official government regulation or governance is difficult, when it comes to both urban planning

2 "Exploiting prostitution" is understood to mean being involved in the sex sector as an entrepreneur or manager of a sex establishment.

and criminal prosecution, municipal authorities having insufficient or simply no control over these Moreover, tolerating soliciting zone(s) requires a selective enforcement of the Criminal Code, since the Code criminalises the enticing of others to indecent behaviour, in any sort of public place and through words, gestures or signs.

Generally speaking, municipal authorities, through all kinds of municipal regulations and police decrees (whether or not maintained through the administrative sanction system), for the purpose of public order, tranquillity and safety (or of public decency), often enforce, through the criminal justice system, several "additional" norms relating to the exploitation of sexual acts or prostitution (Vander Beken, Vermeulen, Steverlynck, & Colle, 2003) (for example, as previously mentioned, the requirement of a declaration of suitability, or determining the distance between a window and the road, regulating the opening/closing of the curtains of prostitution-windows,…).

Such norms should, in particular, allow "the prostitution problem" to be channelled, and render and keep it acceptable to society. The often envisaged geographical concentration or delocalisation policies, put forward to control nuisance, can however not be sufficiently or objectively realised in this manner. We cannot allow for a free fall into scenarios of municipal enforcement of a "moral" public order, without it being proved that the 'material' public order is being violated (i.e. that there is an actual disturbance of the public order, safety or tranquillity). Although quite a few (municipal) policy makers are leaning towards this kind of approach, the improper use of administrative authority is unjustifiable (Vermeulen, 2004) and, hence, can be successfully contested through a procedure before the Council of State (Vander Beken, 1993-1994). Moreover, a genuine licensing or urban planning policy or the establishment of (a) soliciting zone(s) is close to impossible due to the current state of the legislation.

Certain norms enforced at municipal levels, such as minimum norms for prostitution premises and their owners/managers/landlords, are (likely to be) useful in the context of fighting (perceived) public nuisance. There is a question of whether norms of this type can best be created, controlled and enforced (only) at the governmental level, or whether the paths of public-private cooperation or mere self-regulation (at the level of the prostitution sector) would be (more) useful here.

This question is all the more urgent because the current municipal prostitution-specific norms as a whole do not contain (nor can they – *infra*) a single criterion (except merely indirect criteria such as the demand for proof of good behaviour on the part of applicants for a certificate of suitability) to ensure the protection of prostitutes against exploitation or forced labour, and thus against human trafficking. It is, however, clear that where human trafficking (with subsequent exploitation and abuse) prevails,

(punishable) nuisance in and around the sectors concerned is exponentially more significant than where it does not prevail.

This paper explores the extent to which public-private cooperation or self-regulation scenarios can better achieve the twin goals of fighting and preventing human trafficking (Vermeulen, 2007a, 2007b and 2007d), and avoiding traditional nuisance in the prostitution sector.

The traditional (municipal) approach to nuisance in the prostitution sector has been adequately explained. Before answering the research question, it is necessary to touch briefly upon the parallel goal of not only fighting against but also preventing human trafficking in the prostitution sector; from a human rights perspective, this must be considered the more important end-goal of prostitution policies.

3. VULNERABILITY OF THE PROSTITUTION SECTOR TO HUMAN TRAFFICKING

An important component of human trafficking is still linked to exploitation for sexual purposes. The link with window and brothel prostitution and the escort sector is inevitable. The public character of street prostitution (and the relative difficulty of using coercive measures in the public eye) means that street prostitution, contrary to what was written above regarding nuisance, is not connected as such with human trafficking.

In contrast to the escort sector, which traditionally has never been particularly associated with human trafficking (possibly because it has been quite justly presumed that it primarily concerns consensual or independent activities), it has been assumed for a long time that, in most cases of window and brothel prostitution, unsuspecting women are lured and forced into prostitution, and that they are locked up, humiliated and beaten. Today this stereotype no longer corresponds with reality. This position has even been proved by official studies on female victims of human trafficking who are registered with Belgian victim support centres (Vermeulen, Van den Herrewegen, & Van Puyenbroeck, 2007). Foreign and illegal prostitutes appear, in many cases, to move to Belgium with full awareness and prior knowledge of the sector in which they will be put to work. This does not mean that it was an easy choice, or that possible problems of exploitation, underpayment or bad working conditions may not arise afterwards. These latter problems, moreover, also apply, at least to a certain degree, to escort work. Even if the escort work was initially chosen on a completely voluntary base, the risk that the initial consent was based on inadequate or imprecise information regarding the actual working circumstances is certainly far from imaginary. Escort work is often conducted on the basis of assignments, and thus under conditions imposed by an agency or company. Obviously it remains highly problematic if those conditions eventually result in unhappy

surprises for the – initially consenting – person involved, in relation to, for example, the nature or frequency of work, the level of control, the remuneration, the possibility of leaving or refusing and the physical and health conditions in which one needs to perform one's duties (not least in relation to unsafe sex). The risk of human trafficking in both these subsectors of the prostitution sector (so prostitution other than street prostitution) remains, at least to a certain extent. This is particularly true now that it has become clear that the legalisation of voluntary brothel and window prostitution has provoked a movement towards the – non-regulated and much more concealed – escort branch, when, as in the Netherlands *(infra*), no adequate measures to prevent this are foreseen. As such, the whole prostitution sector (apart from street prostitution) will remain intrinsically marked by a heightened potential vulnerability to exploitation and thus to human trafficking – even where, as in Belgium, it generally concerns initially consensual services.

4. PROBLEMATIC BLURRING OF PROSTITUTION AND HUMAN TRAFFICKING POLICIES

It must be noted that today there is still too much confusion between the policy debates on prostitution and on human trafficking, in the sense that the human trafficking ideology dominates the debate on prostitution policy.

There is a lack of nuance, as the unrealistic view is maintained that even the transportation, transfer or housing of a person with a view to making a profit from this person's prostitution services that will be provided with informed consent can be considered to be human trafficking. This is manifestly incorrect. The actual reason for criminalising human trafficking can be found in the element of coercion or lack of freedom, even though this is not recognised by the revised Human Trafficking Act of August 2005 (Vermeulen, 2005). According to Article 433 *quinquies* of the Criminal Code, which was inserted by this Act and which is contrary to the current international consensus of the definition of human trafficking (in the UN Human Trafficking Protocol of November 2000, the EU Framework Decision of July 2002 that has, in the meantime, been replaced by the EU Trafficking Directive of 2011, and the Council of Europe's Human Trafficking Convention of May 2005), there can be human trafficking without there being any coercion, violence, threats, misleading information, fraud, abuse of power, vulnerability, and so on. Consent is irrelevant. In other words, Belgium opted for the use of the term human trafficking with its core characteristic being missing. However, it is in forced exploitation, employment, slavery, etc. that the rationale behind the fight against human trafficking should be detected.

Moreover, when the two debates are confused, there is a real threat that, in fact, a battle is waged against non-coercive prostitution (from the moral dogma that a free choice to provide sexual services is intrinsically impossible), against nuisance (which, as we have seen, can be linked to some forms of prostitution) or against immigration (because the exploitation of prostitutes from third countries remains illegal by definition, in countries such as the Netherlands, even after the lifting of the ban on brothels). A quasi-automatic qualification of the prostitution sector as a breeding ground for human trafficking, and the subsequent repressive action in that field, actually mainly and negatively affect illegal prostitutes or those who have otherwise made the undoubtedly difficult but informed choice to offer sexual services for money. This definition misses the nuances and precision that are necessary for a focused targeting of the real exploiters and organisers of forced prostitution.

5. "SEPARATION OF MARKETS" IN THE PROSTITUTION SECTOR

It is exactly that nuance and precision that can be found in the separation, on both a policy and an enforcement level, of the prostitution market into a *mala fide* (human trafficking) market segment and a *bona fide* (without human trafficking) market segment. The core question here is to what extent measures that are focused on regulating, controlling and tolerating, from a criminalisation point of view, the *bona fide* market segment[3] could have a positive effect on the prevention of human trafficking and the further actual repression of the *mala fide* market segment. In attempting to bring about such a "separation of markets", there are, by and large, two theoretical options: a genuine legalisation of the non-exploitative and non-coercive forms of sexual servicing, or the strict regulation and limited tolerance of prostitution.

6. LEGALISATION

The route of the legalisation of the non-exploitative and non-coercive forms of the management of prostitution by adults originates from the premise that at least adults (for minors having reached the age of sexual majority the issue is more sensitive and disputed) have, or should have, to decide for themselves whether or not they want to offer sexual services or performance for money. As a consequence, running a prostitution establishment or an escort company, in the absence of any form of coercion, should not be a criminal act, and every prohibition should be lifted. A policy

3 I.e. the less problematic segment that is based on informed consent and the legal protection of prostitutes.

that does not punish the non-exploitative exploitation (the exploitation solely focused on profits) of sexual services or performance that are offered with informed consent, and that gives adult sex workers the same rights as any other working citizen, conceptually serves a dual purpose. It not only recognises a fundamental right to self-determination of the individual, but it also allows for a more effective approach towards real exploiters and human traffickers within the prostitution environment, by distinguishing more clearly, and by obtaining a clearer view on, the *mala fide* segment of the sector. Herein also immediately lies the essential theoretical advantage of legalisation in the fight against human trafficking for the purpose of sexual exploitation. By normalising working in the *bona fide* market segment (for example in the form of a recognition of a person as an employee or as a self-employed person and the granting of social security rights from a so-called "labourist" vision), and also by immediately offering *bona fide* 'entrepreneurs' the legal security that comes with legal business management, we at the same time increase the chances that the *mala fide* market segment will not only decrease but can also be more easily held within the criminal law loop. At the September 2004 World Conference of the *Association Internationale de Droits Pénal* (Beijing), a majority of attendees (who had also taken part in a preparatory world conference on this topic in Rio de Janeiro in April 2002) were of the opinion that there could be no human trafficking when adults freely agreed to be hired, transported, transferred, housed, incorporated or put under someone else's control for the purpose of non-exploitative prostitution. In an earlier phase of the conference preparations (Noto, June 2001) it was specified in that context that, for the purpose of allowing law enforcement authorities to focus their attention on human trafficking for the purpose of sexual exploitation, countries could opt to de-criminalise forms of non-coercive and non-exploitative employment in, or organisation of, the prostitution of adults. The policy debate about the regulation or even legalisation of the exploitation of prostitution is happening in many countries, outside and within the European Union. In October 2000 such legalisation was adopted in the Netherlands. A few years after the lifting of the ban on brothels, opponents of legalisation pointed to the relatively meagre results of the operation. However, the limited success of the Dutch legalisation exercise (which has, as mentioned earlier, even been accompanied by certain displacement effects, with the previously illegal but visible brothel prostitution giving way to more concealed forms of prostitution, such as escort work and apartment prostitution) did not appear to be inherently linked to legalisation itself. Instead, it was the case that the, at least partial, failure could be traced back to the lack of certain prerequisites and subsidiary measures for a successful legalisation. The manifestly weak points of the lifting of the ban on brothels were (are) that a legal framework was only created for working with prostitutes from EU Member States, that

an effective criminal law approach to the market segments that remained illegal lagged well behind, and that the municipalities – due to the decentralisation of the licensing policy (although since then the licensing conditions for "sex establishments" have been unified throughout the nation,[4] which constitutes an important step forward) – have all too easily been able to pursue a zero tolerance policy. The Dutch example just demonstrates that the manner in which legalisation is conceptualised and embedded is particularly crucial to its success. Let us evaluate this step by step.

First, legalisation only applies to EU subjects, especially within the philosophy of the right to free establishment for EU subjects for self-employment activities within the EU.[5] According to the law lifting the ban on brothels, an employment permit cannot be granted for "employment completely or partly consisting of performing sexual services with or for third parties", meaning that third country nationals by definition remain or become involved in illegality. Conceptually the Dutch legalisation exercise not only fails to recognise reality (a significant proportion of the prostitutes in western European countries come from third countries), but it also largely undermines its own potential success in advance. It has been alleged that the Dutch Cabinet was well aware of this shortcoming and that the chosen policy option consciously sought to target illegal third country nationals.

Secondly, tackling the remaining illegal segment of the prostitution sector has generally remained of less importance. Evaluations of the Dutch regulation have pointed out that the police were (and are) mainly occupied with checks (in the context of the administrative supervision) in the regulated sector. Consequently, there was (and is) a lack of capacity for the meaningful supervision and detection of punishable forms of the exploitation of prostitution outside the regulated sector. This lack of capacity, however, is essential for making (and keeping) the system of regulation sufficiently attractive for those who wish to comply with the licensing rules, which in turn supports the entire system.

Finally, there was a problem with the decentralisation of the policy. That decentralisation has created a total lack of uniformity in the prostitution and licensing policies at the local levels. Even though each municipality was

4 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 3. Memorie van Toelichting*. Tweede Kamer, Handelingen 2009-2010, *Algemeen deel, Hoofdstuk 1 Inleiding, 1.2 Inhoud wetsvoorstel*.

5 See on this topic the decision of the European Court of Justice of 20 November 2001, case C-268/99, ("*Jany* v the Netherlands", 2001).

obliged by law to formulate a prostitution policy and allow at least one brothel on its territory, most municipalities formulated their policy in such a way that new enterprises were not eligible for a permit. Under the auspices of the fight against nuisance, or enabled by anti-prostitution municipal development plans, the municipalities often banished brothels to totally unattractive locations. In a large part of the Netherlands this could be reduced to a hidden zero tolerance policy in respect of legal brothels. In some cases it even amounted to an improper use of administrative authority, at the expense of the prostitutes employed in the relevant brothels. The withdrawal of the licences of one third of the sex establishments in the Amsterdam red light district[6] at the end of 2006 after the screening of their managers on the basis of the BIBOB Act (*Wet Bevordering Integriteitsbeoordelingen door Openbaar Bestuur*; the Public Administration Probity Screening Act) shows, moreover, that even in cities such as Amsterdam (which obviously does not pursue a zero tolerance policy) the prostitution licensing policy has been used as an instrument. Brothels were apparently being administratively closed, without this having anything to do with a violation of the licensing conditions, merely in order to give a *de facto* punishment to managers who were suspected of drugs trading and money laundering but against whom regular criminal investigations were deemed unlikely to succeed.

In many countries, including Belgium, the legalisation of non-exploitative forms of sexual services offered with informed consent is perhaps one step too far. Even though an improvement in the position of prostitutes was announced in the federal coalition agreement of July 2003 ("the social and legal uncertainty of prostitutes will be ended"), there has so far been no broad political support for the legalisation of the exploitation of non-problematic adult prostitution. The Human Trafficking Act of August 2005, as mentioned earlier, has more than ever brought the exploitation of prostitution into the human trafficking realm. A second – legal – obstacle to a better protection of prostitutes remains the UN Human Trafficking Convention of 1950; unlike the position in the Netherlands, this was ratified by Belgium (as by most countries around the world). The convention reflects a pure abolitionist view with regard to prostitution, and demands that any form of exploitation of prostitution be made punishable, irrespective of the form and even in the case of the (informed) consent of the prostitute. In ratifying countries this has led to the paradoxical situation that working as a prostitute is not punishable, in contrast to all aspects that are connected with working as a prostitute, whether as a self-employed

6 "Amsterdam City Council closes 155 brothels. Happily bonking on in the red light district" ("Amsterdams stadsbestuur sluit 155 bordelen. Vrolijk voortwippen op de walletjes," 2006).

person (because this includes advertising and renting out rooms in which to offer sexual services), or under the authority of a "manager" (because this is the exploitation of prostitution). That is why for years – including in Belgium – several people have pleaded for the UN Convention to be altered or dissolved. This would clear the way for an (inter)national decriminalisation of non-exploitative and non-coercive employment in, and organisation of, the prostitution of adults.

7. REGULATION

In the short run, it is likely that more is to be expected from the mere regulation of the sector, without taking the step to formal legalisation. In this way, the less problematic – due to the informed consent and legal protection of the provider of sexual services – and, thus, *bona fide* market segment remains subject to the Criminal Code, although this is not being enforced.

Market separation in illegal sectors is not at all new in itself. It is in fact rather common. One should think of, for example, the drugs market or child labour. The mere possession of cannabis for consumption for personal use is often (and not just in the Netherlands) not prosecuted, even though it is punishable, as long as it is not problematic in other ways (such as minors being involved, or there being nuisance and so on). Thus a distinction is made, in an institutionalised manner, between possession of cannabis and other drugs crimes that have (a higher) prosecution priority. In relation to child labour, which is prohibited in principle, the International Labour Organisation (ILO) in 1999, via Convention No. 182 that banned the worst forms of child labour (labour in prostitution, child pornography, etc.), introduced a distinction between these worst forms and other, albeit punishable but still less problematic, forms of child labour. In the same sense the ILO makes an especially useful distinction between "forced labour", which they recognise as the core element of human trafficking, and other violations of labour or social security norms that are of a lower order. In that sense it is – in the fight against human trafficking for the purpose of sexual exploitation – perfectly legitimate to pursue, with priority, the ending of forced sexual servicing, while at the same time reducing the enforcement of other, secondary standards (good morals, legal employment etc.). This is merely a question of having clear priorities within the investigation and prosecution policy and adequately making the municipal (administrative) sanctioning policy correspond.

7.1. Government regulation

To a certain extent, in Belgium we witness a tendency for regulation of the sector when it comes to the exploitation – in the sense of the management –

of sexual servicing. This is, as previously mentioned, especially the case at the level of the municipal authorities that, through all kinds of municipal rules and police regulations, impose norms that are enforceable in the criminal law system (even if these can sometimes be sanctioned with administrative sanctions) for the purpose of public order, tranquillity and security, on sex establishments. As indicated earlier, this especially entails the imposition of norms based on the prevention of nuisance and the upholding of good morals, which allow the channelling of the "prostitution problem" and for it to be made and kept digestible for society, without it being possible to pursue a real concentration or delocalisation policy in an objective manner. Such rules, in theory, actually add new offences to those already embedded in the Criminal Code (which prohibits the exploitation of sexual servicing altogether), although they are based on a different rationale and protect different values. That is why these offences are not considered incompatible with the nationally applicable criminal prohibition on "exploiting" – again in the sense of managing – sexual servicing. To a certain extent this actually works, mainly because of the non-prosecution policy with regard to the main rules that are embedded in the Criminal Code. However, such a regulatory policy remains very diffuse, since it remains highly dependent on variations in the municipal policy and the local prosecution policy. On top of that, the regulatory policy is ambiguous, because it does not offer adequate legal certainty to the sector's stakeholders (the providers of sexual services, and the brothel and window "managers"). As mentioned before, the municipal sexual servicing policies do not promote any norms that actually ensure the protection of the providers of sexual services against exploitation and forced labour (as municipalities, if they did this, would go against the standardisation in the Criminal Code itself, such as e.g. Article 433 *septies* concerning severe human trafficking), norms which could as such be complied with quite easily by the sector in order to stay prosecution-free. On the contrary, the norms imposed are put in the broader context of the municipal competence concerning public order, tranquillity and safety, which can be handled with quite a wide degree of discretion and randomly changed quite easily, and can also be easily (whether or not suddenly) enforced on a municipal level for a variety of reasons other than tackling *mala fide* "managers" or pimps who exploit or force their victims into the sex sectors (a municipality does not monitor this) or who fail to abide by sector-specific municipal rules or regulations by, for example, causing actual nuisance. Consciously and willingly complying with norms that only proscribe working with adults who have given their informed consent, and that require nuisance to be avoided and good morals not to be disturbed, does not offer a guarantee to managers of sex establishments that they will not be subjected to, for example, administrative targeting (Van Heddeghem, Vander Beken, Vermeulen, & De Ruyver, 2002), or a raid to detect illegal employees or

illicit work, or even actual criminal prosecution. The organisation of and the working in the *bona fide* segment of the sexual services market is not consistently rewarded, not even when one follows additional sector-specific municipal norms. This is ambiguous.

7.2. Self-regulation

Maybe the better option is therefore that the *bona fide* part of the sector imposes specific quality norms on itself, and that it commits to monitoring and enforcing these norms, without in this way becoming too susceptible to the volatility of municipal agendas. This would bring clarity and stability in the norms, which is essential for avoiding or fighting exploitation and forced sexual services or, to put it better, human trafficking for the purpose of sexual exploitation in the actual sense of the word. In parallel, such standards can help to limit the municipal nuisance concerns.

In a study financed by the European Commission (JLS/2005/AGIS/063) by the Institute for International Research on Criminal Policy (IRCP) of Ghent University (Vermeulen, 2007b), sector- or activity-specific quality norms were developed with an eye to the prevention of human trafficking and the sexual exploitation of children, for a broad range of private sectors/organisms in a wide range of activities. Institutional research partners in the study were the Institute for Legal Sciences of the Hungarian Academy of Sciences, the Department of European and International Public Law of Tilburg University and the Service for Criminal Policy (*Dienst voor het Strafrechtelijk Beleid*) of the Belgian Ministry of Justice.

The quality norms entailed standards for, for example, the classic prostitution and escort sector. The study also examined – through empirical research carried out in the Netherlands – whether support for this idea could exist or does exist in the minds of several stakeholders (establishment "managers", prostitutes, escorts, clients, police/justice departments, NGOs,…). The choice of the Netherlands was made because the prostitution sector has been partly legalised since the lifting of the ban on brothels in 2000. Research-wise, it was thus plausible that useful experiences with existing legal norms could be collected, and that the possible added value of (additional) quality norms, to be introduced through legalisation or (self) regulation, could adequately be assessed (and an extra benefit here is the relative openness in the sector, to which the lifting of the ban on brothels has contributed). The research hypothesis was precisely that a system of self-regulation within the prostitution sector, by means of quality norms that all involved parties would deem valuable, appropriate and adequate to prevent and exclude human trafficking and the sexual exploitation of children to a maximum level, could be a useful alternative for the traditional (criminal) law system or (municipal) government actions – or control in the broad sense. Conducting the empirical research in the Netherlands (where

broad support for the idea was detected) obviously means that its conclusions cannot easily be transposed into countries – such as Belgium – where the legalisation (even partial) of prostitution appears to be politically unfeasible (in the short term).

However it is – at least theoretically – plausible that the classical ambiguity that comes with government regulation and the monitoring of illegal or informal (economic) activities can be avoided through self-regulation on the basis of quality norms or via legalisation (Vermeulen, 2007c). Also it has already been demonstrated in practice that self-regulation in the prostitution sector has much potential.

An example can be found in Antwerp, more specifically in the "Protocol concerning the rental prices for window prostitution" that has been in place for many years now. The protocol was the result of informal consultation at the level of the sector itself: between prostitutes, owners of buildings and "managers". Its purpose is two-fold: on the one hand using a maximum price that is acceptable for all parties involved (and subsequently setting the rental prices for a workspace or window and for the use of common spaces belonging to a window prostitution building), and on the other hand the determination of a measuring tool for measuring what is abnormal profit for renting, selling or offering rooms or other spaces for the purposes of prostitution. Such selling, renting out or putting at disposal, with the intent to realise an abnormal profit, is, of course, punishable under Article 380, §1, 3° of the Criminal Code, which was inserted in the Criminal Code by the Human Trafficking Act of 1995. With this protocol the sector demonstrated that it was capable of coming to acceptable rental agreements – with the full agreement of the prostitutes as the most important parties involved. How could the police and prosecution authorities possibly still argue that rental prices that respect the protocol are focused on abnormal profit? This example illustrates that agreements made at the level of the sector and monitored by the sector have the potential to serve as a basis for a tolerance policy, in which criminal prosecution is de facto reserved for situations in which protocol agreements are not followed. The sector thus delivers its own interpretation of criminal law concepts and demonstrates that it is willing and capable of *bona fide* behaviour, stimulated by the promise of non-prosecution.

In other words, it is plausible that self-regulation and monitoring, and a criminal tolerance of the *bona fide* sexual services market, has, on the one hand, a positive effect in terms of the prevention of human trafficking and, on the other hand, actually enhances the repression of the *mala fide* market segment.

Quality standards for the prostitution market can, for example, include (Vermeulen, Balcaen, & Van Puyenbroeck, 2007): sexual services or performance only being given or delivered by adults who have given their

informed consent; services/rooms for prostitutes only being rented out at all-in prices without abnormal profit margins; a clean and safe working environment being provided for prostitutes; the required insurances being obtained; a right to protected sex being granted; the cost of regular medical checks (including checks for HIV and other STDs) by a doctor of their own choice being refunded; no excessive work days or hours, and no under- or non-payment being permitted; a sex worker having the right to decide for herself or himself to offer services while she is having a period or during pregnancy or when he or she has an STD; sex workers having the right to refuse certain customers/partners or certain sexual actions (even though this can of course lead to a breach in the working relationship with a manager); the manager or owner of a sex establishment or window having at least a functionally clean criminal record (meaning, at a minimum, no prior convictions for sexual offences, sexual exploitation, human trafficking, or other crimes committed in this context), and the active permission for monitoring by authorities (police, inspectorates, etc.).

With respect to this last standard, the importance of, first, monitoring the recognised and publicised quality norms via a monitoring mechanism at the level of the prostitution sector itself must be emphasised. To this end, the sector has to offer absolute transparency and be open to possible additional checks by governmental authorities. Primary governmental monitoring is irrelevant in a system of self-regulation and monitoring; the benefits and adequacy of this should not be questioned because the system has economic benefits for the sector itself. It is even a contradiction in terms. Also, as mentioned above in the context of the evaluations of the Dutch legalisation, the police should avoid at all costs mainly carrying out checks in the regulated sector, as this leads to a decreased capacity for the necessary monitoring and detection of that part of the prostitution sector that has, by not recognising the quality standards, not (yet) labelled itself as being *bona fide*. The enforcement focus must, in other words, be on the *mala fide* or the not *bona fide* market segment.

For (self)regulation to work, the detection and prosecution authorities must be willing not to act against the exploitation of adult prostitution, even when those who offer sexual services in that context have an illegal residence status. Outside a legalisation scenario, a regulation scenario that is floating on an institutionalised conditional tolerance policy does not hold the disadvantage that the employment of illegal third country nationals in a legal framework causes a contradiction. In a continued illegal but tolerated *bona fide* segment of the prostitution market, it is usually impossible to create legally binding contracts, since these go against good morals.

It is of course necessary that, on a municipal or prosecution level, it remains possible to act against manifest nuisance and against infiltration of the *bona fide* prostitution market by persons who (want to) use this as a vehicle for

such things as money laundering, human trafficking, organised crime, and drugs trading.

In the end it is obviously mainly the sector itself that must see the advantage of strict compliance with certain – publicised – norms. The sector can commit to an ethical engagement that can free it of its reputation of being intrinsically linked to human trafficking. Furthermore, a complete refusal by the *bona fide* entrepreneurs to allow forced sexual services must allow them to avoid criminal prosecution. Finally, quality certification offers additional economic benefits and potential. There is a tendency nowadays to criminalise those who consciously make use of (among others sexual) services offered by victims of human trafficking (this tendency was promoted in the Council of Europe Human Trafficking Convention of 2005 and was proposed in Belgium in 2007)[7]. It is thus of increasing importance that consumers of sexual services can have a guarantee that they use these services in an ethically responsible manner, so that they can remain free from prosecution. This implies that they can consciously choose services that are free of the risk of criminalisation, and services that are offered with informed consent and in proper legal and employment circumstances – and thus by people who are obviously not victims of human trafficking. Consumers can in such cases best call on establishments that are certified and thus in compliance with the quality standards explained above, in the same way as they might choose products holding a "fair trade" or "quality butcher" label or ISO-certified services (Vermeulen, 2007d).

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Chapter 12.
Client criminalisation for guilty knowledge of (trafficking for) sexual exploitation

GERT VERMEULEN & YASMIN VAN DAMME

1. INTRODUCTION

As the EU's *Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*[1] confirms, it is not clear-cut which sex work should today be considered a result of (trafficking in human beings for the purpose of)[2] sexual exploitation. People who travel abroad in search of a better life may well realise that they will be working as sex workers upon their arrival or they may deliberately choose to go and work in the sex industry abroad (Vermeulen, Van den Herrewegen & Van Puyenbroeck, 2007). Still, they may, unexpectedly, face exploitative or coercive working conditions. Sometimes, also, doubts can be casted on the freedom of choice to work in the sex industry, as sex workers may have no viable alternative. In other words, the distinction between voluntary and coerced commercial sex work remains quite blurred today (Brooks-Gordon, 2006; Davidson, 2010; Di Nicola, Cauduro, Lombardi & Ruspini, 2009; Munro, 2008; Phoenix, 2009; Sanders, O'Neill, & Pitcher, 2009; Vermeulen, 2005; WODC, 2011). Willing sex workers find themselves in a grey zone between a genuinely consensual choice to engage in commercial sex work or sexual services provision and the borderline coercive reliance on pimps, traffickers or the like. Logically, policy makers are seeking new ways to specifically address the problem of commercial sex work "gone bad." One of the trends in current anti-trafficking discourses is the focus on reducing demand, if necessary, by the criminalisation of prostitution clients. The generic acceptability of paying for sex and the criminalisation thereof has been abundantly discussed (Brooks-Gordon, 2006;

1 European Commission (2012). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. COM(2012) 286, 19 June 2012.

2 For the purpose of this text, all forms of exploitation in the commercial sex market are considered equally relevant, even when they do not entail trafficking in human beings. The potential for client accountability, if any, is necessarily broader than for the prevention of trafficking in human beings only. From a client's perspective (as a direct consumer of sexual services), the essential issue will be whether the sexual services concerned are being voluntarily delivered, irrespective of whether actual trafficking has occurred or is occurring.

Brooks-Gordon, 2010; Coy, Horvath & Kelly, 2007; Davidson, 2003; Di Nicola et al., 2009; Earle & Sharp, 2007; Farley, Bindel & Golding, 2009; Keren-Paz & Levenkron, 2009; Kulick, 2003; Phoenix, 2009; Sanders, 2008a, 2008b; Soothill & Sanders, 2004; Svanstrom, 2004; Zaitch & Staring, 2009). This text aims to go beyond that discussion, its specific focus being on (the criminalisation of) clients who use the sexual services of a prostitute who is exposed to coercion or has no real alternative to prostituting her or himself. To set the context, it starts off with a brief, preliminary exploration of the role clients play (through their behaviour and attitudes) in sustaining the problematic, involuntary, so-called *mala fide* sex market (a key question being how demand-driven the latter is). Also, the difficulty clients may have in adequately distinguishing between voluntary and coerced prostitution is addressed as a preliminary issue. Thereafter, taking stock of the suggestion embedded in both the Council of Europe's (CoE) and EU's anti-trafficking instruments that demand reduction may require member states to criminalise the "knowing" use of (sexual) services provided by victims of human trafficking, it will critically assess the related domestic developments in two EU member states: the UK and The Netherlands. Both countries have recently introduced (or have considered introducing) client criminalisation, which is specifically aimed at reducing the demand for coercive, involuntary sexual services, and thus, adopts the suggestion of the CoE and EU. As will be discussed below, the UK, in doing so, has opted for the strict criminal liability of clients when exploitative sex work is detected. In The Netherlands, the debate in recent years has concentrated on criminalising clients who choose sexual services that are provided by a sex worker who has not registered with the government. Both legislative options are attempts to introduce client responsibility in the sexual services market, but pose considerable problems from the perspectives of legal theory and criminal policy and/or practice. Hence, this text concludes by exploring the potential of self-regulation in the sexual services market as a tool to deal with client criminalisation. Self-regulation certainly seems capable of overcoming various obstacles that were identified in the two country studies and likely offers a more reasonable and practicable solution. Re-thinking traditional visions regarding demand reduction – by shifting to a more liberal approach and leaving responsibility predominantly with private actors in the commercial sexual services market – may, in fact, benefit the quest for new responses and distinguish adequately between *mala fide* and *bona fide* sexual service providers.

2. GUILTY KNOWLEDGE OF CLIENTS?

Before exploring the (possible added value of) the criminalisation of clients who "knowingly" use the sexual services of victims of trafficking and/or exploitation, two essential preliminary questions must be considered: (1)

what do we know about clients' moral and ethical stands *vis-à-vis* involuntary, exploitative or coercive sexual services (in order to shed light on how demand-driven such services are) and (2) can clients really know (and how) whether sexual services are provided involuntarily, in an exploitative, coercive context?

2.1. Guilty clients?

Is involuntary or exploitative sex work demand-driven? To what extent do clients have moral and ethical restraints towards engaging in exploitative sexual servicing? Is there such a thing as an inherent moral restraint within the minds of sex consumers that offers a sufficient and proper counterbalance to the purely economic assessment of a purchase (see also Haynes, 2009)? Only if an inherent moral restraint toward becoming an actor in a criminal market is not present or is insufficiently present due to being overridden by the pursuit of "profit" in the form of the best sexual service for the least amount of money, may external pressure to refrain from contributing to these processes be in order. The increased risk of criminal liability could be such an external influence. Choosing the lawful option then becomes more attractive (Van Damme & Vermeulen, 2012). This reasoning obviously stems from the (deterring) function of criminal law and the rational choice theory. Also, proponents of the idea that all sex work is per se coercive in nature (which assumes that one can never freely choose to "sell sex") use the rational-choice perspective in their anti-prostitution discourse. This may result, as in Sweden (Ekberg, 2004; Leander, 2006; Sanders et al., 2009; Svanstrom, 2004), in the criminalisation of all clients of prostitution (Coy et al., 2007; Dworkin, 1981; Farley et al., 2009; Simmons, Lehmann, & Collier-Tenison, 2008). The reasoning in such discourse is that the criminalisation of all clients in the commercial sex market will reduce demand and that, consequently, the sex market in its entirety (including its exploitative segment), will disappear. Hence, the criminalisation of clients of prostitution in general solves the problem of (trafficking for) sexual exploitation. These policies fall beyond the scope of this text, which deliberately envisages a specific assessment of the policy option of differentiating between clients based on whether they knowingly choose sexual services in either the *bona fide* or the *mala fide* market segment. Little research has been conducted specifically regarding sex consumers who, knowingly or unknowingly, circulate in the *mala fide* segment of the market. An interesting exception is a 2009 study by Di Nicola et al.[3] The study reveals interesting points in rela-

3 A similar study was conducted by Anderson and Davidson (2003), who examined the relationship between the demand for trafficked prostitution and/or domestic labour and the extent of trafficking in human beings in six pilot countries (India, Thailand, Italy, Sweden, Denmark and Japan).

tion to the behaviour and attitudes of clients. The most relevant finding is that a specific demand for involuntary sex work actually seems to be non-existent. No evidence could be found of sex consumers who specifically search for sex workers that are clearly being coerced. On the contrary, most, if not all, consumers reported a preference for prostitutes who showed some enthusiasm for their service, who seemed to be in good shape and did not appear to be controlled by someone else (see also Anderson & Davidson, 2003). However, the study also found that clients were very likely to deny any form of responsibility in cases in which exploitation had indeed occurred by stating that it is very difficult to recognise abusive circumstances. Also, the study revealed that many clients reported that they did not think about the possibility of exploitation, and that sometimes, indicators of exploitation may have been present, but were nonetheless ignored by clients. In sum, the outcome is somewhat ambiguous. On the one hand, there is no demand whatsoever for exploitative sex work; on the contrary, clients prefer free, willing sex workers. On the other hand, clients are not very concerned with exploitation and deny responsibility when it occurs; they are not diligent in their behaviour. Two policy-relevant conclusions can be drawn. First, the key question regarding client criminalisation becomes whether it can be a meaningful tool to counteract the inherent lack of a sense of responsibility among clients (instead of a tool to counter the specific demand for exploitative or involuntary sex). Second, tools need to be (made) available to meet consumers' principal desire for willing sex workers.

2.2. Guilty knowledge?

A second preliminary issue is the difficult boundary between voluntariness and coercion. Models like the Swedish one (and recently, also the French), in which all clients of sex work (which is assumed to be inherently coercive in nature, generically, or at least from a gender perspective) are criminalised, bluntly avoid the issue. That is why they are uninteresting in addressing this subject matter. The fundamental questions are whether, and if so, how, clients can ascertain whether sex work is voluntary. More than a decade after the Palermo Protocol,[4] we have learned a great deal about the actual face of trafficking in human beings for sexual exploitation. We have gained insights about foreign sex workers who travel to another country in search of a better life, well aware of the line of work they will take up, but surprised by the conditions of their work, the level of control by their pimps, and the small

4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo, 15 November 2000. United Nations. *General Assembly* Res. 55/25.

share of their earnings that they get to keep (Vermeulen, 2005). Even if no actual force or threat has been used, the fact that sex workers have no viable alternative but to work in the sex industry under harsh conditions may be enough to conclude that there is (psychological) coercion. Also, ambiguous cases are being treated as trafficking cases, including those in which (mostly) women are working in the sex sector to please those whom they believe to be their partners in a romantic relationship (NRM, 2009; WODC, 2011). A question that already has been raised in a vast amount of research (Smit & Boot, 2007; Brooks-Gordon, 2010; CoE, 2007; Davidson, 2010; Munro, 2008; Skrivankova, 2010; Vermeulen, 2005) is where voluntariness ends and coercion begins? It is important to contextualise a free choice for sex work in the face of broader social, economic, political and ideological conditions that sex workers have not chosen (Phoenix, 2009). Aside from some vague "indicators of likely exploitation" such as a lower price for the sexual services offered, the direct presence of a pimp near the establishment, some external signs of abuse or the lack of knowledge of the language (Di Nicola et al., 2009), neither academia nor policymakers seem to have a waterproof approach for making a clear-cut distinction between voluntary and coerced sex work. How then would clients be able to discern a difference between good and bad? It seems rather unfair and even unacceptable that a client would be criminalised for making use of the services of a victim of (trafficking for) sexual exploitation, if for example, the sex worker does not even consider herself or himself to be a victim or if the situation is unclear even to authorities. When examining client accountability, it seems, therefore, that it must first be determined that a case actually or likely entails an element of coercion or involuntariness, or, alternatively, that it is not a case in which there is manifest voluntariness. After this is established, a second step is to demonstrate guilty knowledge at the client level. Such a two-step procedure seems to be the only manner in which criminalisation of clients can pass the tests of proportionality, legality and the presumption of innocence. The practicability of such a policy option will hereafter be discussed, along with the lines of the legal initiatives adopted by the CoE/EU and two of its member states, the UK and The Netherlands.

3. CLIENT CRIMINALISATION IN POLICY AND PRACTICE

3.1. CoE/EU support for "knowing" client criminalisation

At the EU level, the general legal basis for criminalising clients can be found in current anti-trafficking instruments prescribing that countries must adopt provisions aimed at "discouraging demand" for trafficking in human

beings.[5] Such a measure criminalises clients who knowingly make use of the services of victims of trafficking in human beings, a step that was first recommended in the 2005 CoE Trafficking Convention[6] (Gallagher, 2006) and was later reiterated in EU anti-trafficking instruments. The 2011 EU Trafficking Directive states in Article 18.4 that "*in order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2* [added by author: which contains the definition of trafficking]*, with the knowledge that the person is a victim of an offence referred to in Article 2*." The explanatory report (points 229-236) of the CoE Trafficking Convention offers a basis for a better understanding of the idea and the current motivation behind the adoption of this provision. The report emphasises that the main consideration for the adoption of such a provision was the desire to discourage the demand for exploitable people that drives trafficking in human beings (point 230). It further explains who should be perceived as a "user" and gives the theoretical example of a client of a prostitute who knew full well that the prostitute had been trafficked. The report underlines that, in such a case, the client could not be treated as criminally liable as a trafficker because he or she has not him/herself recruited the victims of the trafficking nor has he or she used any of the means referred to in the definition of trafficking. The client would, however, be guilty of a separate criminal offence (Van Damme & Vermeulen, 2012). The practical problems for member states in adopting the "knowing" client criminalisation of the CoE/EU are manifold. First, as mentioned above, how will they operationalise "knowingly," and how will their authorities prove "knowledge"? Second, prostitution policies among member states are so varied that there is no one-size-fits-all answer to the call for the targeted criminalisation of "knowing" clients. These challenges have been faced and addressed both in the UK and The Netherlands, each in their own way, and each departs from a different prostitution policy *acquis.*

5 The most recent EU anti-trafficking instrument, the 2011 Trafficking Directive, states in Article 18 that "*Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings."* Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101) 1.

6 Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings*, 16 May 2005, CETS 197.

3.2. The UK

3.2.1. Policy background

In the UK, trafficking for sexual exploitation offences are contained in the Sexual Offences Act of 2003. A further offence, which criminalises holding another person in slavery or servitude or requiring them to perform forced or compulsory labour without the need to prove trafficking, was introduced more recently under the Coroners and Justice Act 2009. After the UK government published the document, *Human Trafficking: The Government's Strategy*, in June 2011, one of its commitments in the fight to eradicate trafficking in human beings was to review trafficking legislation in England and Wales. Furthermore, in July 2011, the UK opted in to the 2011 EU Directive on trafficking in human beings. Despite these trafficking-specific efforts, it is in the context of its prostitution policy, rather than its anti-trafficking policy, that recent measures targeting demand must be situated. Although the suggestion for criminalisation in the CoE/EU legislation is mentioned in the UK's anti-trafficking efforts, its initiatives to tackle demand by the criminalisation of clients stem from its long-standing prostitution policy. Prostitution is not *per se* illegal in the UK; however, most activities surrounding it are.[7] The present-day UK prostitution policy is the result of a lengthy legal process that has attempted to better regulate the sector. Following continued criticism regarding the lack of a coherent prostitution policy, in July 2004, the UK government published *Paying the Price* (Home Office, 2004), a public consultation paper on prostitution that was criticised by many as being a poorly conducted research report that lacked complexity or reality and contained misinformation (Brooks-Gordon 2006; Cusick & Berney, 2005; Phoenix, 2009; Sanders, 2012; Soothill & Sanders, 2004). Responses from a wide range of actors who were in some way involved in the debate on prostitution were used as a basis for the development of a *Coordinated Strategy for Prostitution,* which was published in 2006 (Home Office, 2006). The *Strategy*

7 Section 51A of the Sexual Offences Act criminalises the solicitation of another in a public place or on the street for the purpose of obtaining his or her sexual services as a prostitute. Section 51A was inserted on 1 April 2010 in the Policing and Crime Act 2009. Before 2010, it was only illegal for customers to solicit sexual services if it was done "persistently" or "in a manner likely to cause annoyance." Today, all forms of public solicitation by a customer are illegal, regardless of the manner in which the prostitute was solicited. Other prostitution-related offences are: brothel-keeping and associated offences (Sexual Offences Act 1956, sections 33 to 36), causing or inciting prostitution for gain (Sexual Offences Act 2003, section 52), controlling prostitution for gain (Sexual Offences Act 2003, section 53), kerb crawling (when a person in a motor vehicle attempts to solicit someone for the purpose of prostitution) (Sexual Offences Act 1985, section 1), placing of advertisements relating to prostitution in or near phone boxes (UK Criminal Justice and Police Act 2001, sections 46 and 47).

provides a framework for communities to tackle street prostitution and all forms of commercial sexual exploitation through preventative measures, with one of the most emphasised measures aimed at tackling demand (House of Commons, 2009d; Phoenix, 2009; Sanders et al., 2009d). This focus on tackling demand became more apparent in 2008 when the Government announced a six month "Tackling Demand for Prostitution Review" that began with a visit to Sweden, where it hoped to learn valuable lessons from the latter's policy of criminalising sex buyers in general.

3.2.2. Client criminalisation based on strict liability

Following this review, a proposal to prosecute men who pay for sex with a woman who is being exploited was first raised during the Labour Party Conference of September 2008 (House of Commons, 2009a; Reid, 2009).[8] A recommendation in favour of a strict liability offence was first incorporated into the 2008 Policing and Crime Bill. After consultation, some changes were made to the terms of strict liability and the provision is now found in Section 53A of the Sexual Offences Act 2003, which creates the offence of "paying for sexual services of a prostitute subjected to force, threats or any other form of coercion or deception".[9] The provision is a "strict liability offence"[10] (House of Commons, 2009a) due to its wording that whether or not the client was aware of the fact that the prostitute was forced into prostitution is irrelevant. This section was inserted on 1 April 2010 in section 14 of the Policing and Crime Act 2009. Already, during the negotiation phase, this provision has attracted much criticism, not in the least from NGOs that work with and for prostitutes in the UK. They have stated that the evidence used by the government in support of the provisions was one-sided and false (House of Commons, 2009b, 2009c). Section 53A could be perceived to be a result of the flawed assertion that prostitution is *per se* an instigator of sexual exploitation, ignoring the evidence that supports the existence of consensual prostitution (Sanders, 2012). Indeed, this provision was introduced after the escalation of the 2008 focus on tackling demand (Sanders et al., 2009). Home Secretary Jacqui Smith, during debates on the Policing and

8 Following Sweden's example of criminalising all sex buyers (even those without the exploitation element) was met with heavy criticism and thus not adopted as such (Sanders, 2012).

9 The wording of the provision was changed in that "controlled for another person's gain" was replaced with "force, threats or any other form of coercion or deception," which was still criticised as being too broad and vague.

10 I.e., liability for a crime that is imposed without the necessity of proving *mens rea*, most commonly understood as "intention." Strict liability is a legislative technique to make criminal law applicable and enforceable by avoiding heavy demands of proof (Blomsma, 2012, pp. 209-234).

Crime Act, made several statements regarding the undisputed link between the demand for prostitution and trafficking for sexual exploitation (House of Commons, 2009a). While the provision supposedly has been adopted for the protection of those who have been trafficked or forced into prostitution, from the wording of section 53A, it seems that exploitation is defined very broadly and vaguely, in that it encompasses "any form of deception" (House of Commons, 2009b, 2009c). The fact that it is difficult for clients to recognise such a broad spectrum of exploitation is circumvented by the fact that, according to the newly inserted provision, knowledge of exploitation is irrelevant. Strict liability offences require no proof of fault. Rather, strict liability offences are constituted by at least one material conduct element (*actus reus*), but do not require a corresponding mental element (*mens rea* or state of mind) (Reid, 2009). If an offence involves strict liability, and no specific defence is made available to the charge, the perpetrator can be acquitted only if he proves that he acted with due diligence, meaning that he did everything in his power to avoid being involved in the offence. The defendant thus bears a burden of proof, which distinguishes strict liability from a mere reversal of the burden of proof (Blomsma, 2012, p. 222), but it is almost impossible for him to negate proof of the offence. In the case law of the European Court of Justice, strict liability has not, in itself, been deemed incompatible with EU Law: As long as penalties are proportionate, effective and dissuasive, the Court sees no problem.[11] From a European human rights perspective, a number of relevant minimum requirements can be deduced from the ECtHR case law on Article 6 ECHR, in which the second paragraph requires that, at a minimum, a defence should be able to be raised against a criminal charge.[12] Although the presumption of innocence demands that the prosecution must prove all offence elements beyond a reasonable doubt, and that the defendant does not have to prove his innocence, this principle is not absolute. The ECtHR has allowed exceptions within reasonable limits if they are nonetheless compatible with the rights of defence.[13] There has been no decision made by the ECtHR that directly challenges strict liability. In the English legal system, a similar test exists regarding whether strict liability provisions meet the requirements of a legitimate aim and propor-

11 E.g. C-326/88, Anklagemyndigheden v. Hansen & Son, 1990 E.C.R. I-2911, C-177/95, Ebony Maritime and Loten Navigation v. Prefetto della Provincia di Brindisi and Others, 1997 E.C.R. I-1131.

12 E.g. Salabiaku v. France, 1988-X Eur. Ct. H.R. 27, in which the Court (Chamber) stated: "In principle, the Contracting States may, under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or from negligence".

13 E.g. Salabiaku v. France, 1988-X Eur. Ct. H.R., Västberga Tax Aktiebolag and Vulic v. Sweden, 2002-VII Eur. Ct. H.R., Khelili v. Switserland, 2011-X Eur. Ct. H.R.

tionality, pp. 226-228). Strict liability is generally repudiated in academic literature (Blomsma, 2012; Salako, 2006; Simester, 2003, 2005; Stanton-Ife, 2007) due to the challenges it poses to the principle of guilt, the presumption of innocence and the lack of evidence that strict liability offences have a greater deterrent effect than offences that require proof of fault (Blomsma, 2012). The only sphere in which strict liability seems to be more or less accepted without much debate is in less serious regulatory offences, such as certain traffic violations, though questions accompany the main argument of procedural convenience. Strict liability offences are quite common in the English legal system.[14] The strict-liability character of the client criminalisation provision was defended during debates regarding the Policing and Crime Act as being necessary to change the current dynamic, in which a man who purchases sex does not think about the possibility that the prostitute is being forced or exploited. The rationale behind the choice of a strict liability offence was said to be the belief that, rather than introducing "something cosmetic that made everyone feel good but did not drive down to that particular interaction, something far stronger was needed" (House of Commons, 2009c). Some opponents of strict liability advocated that, at the very least, there should be an element of intentional knowledge or belief on the part of the person subject to prosecution under this clause, as difficult as such intent may be to prove, with alternatives such as "recklessness" or "negligence" being mentioned as available tools in the creation of new offences (House of Commons, 2009b). The introduction of strict liability understandably raises suspicions that the provision is intended to be an anti-prostitution tool instead of an anti-exploitation tool. Another critique was that the provision would not lead to any prosecutions because information will not come to light due to a lack of cooperation by the prostitutes themselves in offering testimony about exploitation (Sanders, 2012). Committing a sexual offence without the need to prove *mens rea* goes against the very nature of sexual offences; as a result, strict liability seems inappropriate in this context. Aside from the procedural rights challenges the provision poses, serious questions need to be raised as to the enforceability of the new rule as well. Considering the novelty of the offence, no meaningful evaluation of the prosecutions under this article has been undertaken. The Crown Prosecution stated that "the offence is most likely to arise in police brothel raids where there is enforcement against suspects controlling or exploiting prostitution for gain and where clients are apprehended in the operation".[15]

14 Most of the approximately 8000 offences in England are strict liability offences with relatively low penalties and almost half of the more serious offences contain an element of strict liability (Blomsma, 2012).

15 Prostitution and Exploitation of Prostitution. Retrieved on 7 December 2012 from http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution. Though the extent to which this provision will be used to obtain actual convictions

Considering the lack of evidence supporting the insertion of this section into the criminal law in the first place[16] (Sanders, 2012), its actual practical usefulness or value remains dubious.

3.3. The Netherlands

3.3.1. Policy background: Lifting of ban no undisputed success

To properly contextualise the recent debate in The Netherlands regarding client responsibility for exploitative sex work, it is helpful to briefly recall and sketch the evolution of Dutch prostitution policy. After a period of thorough societal and political debate, the ban on brothels was lifted on 1 October 2000, meaning that the "exploitation" of prostitution was legalised, in as far as it involves adult and voluntary prostitutes who legally reside in The Netherlands (Daalder, 2007b). At the same time, Dutch legislators sharpened legislation regarding the unacceptable exploitation of prostitution and trafficking in human beings, for instance, by increasing the criminal penalties. The lifting of the ban, however, did not happen without any flanking measures for authorities that were aimed at enabling them to maintain proper control of the (lawful character of the) industry. The licensing system that accompanied the lifting of the ban is most relevant. While the national penal code criminalises and severely punishes coerced prostitution, the municipalities are primarily responsible for regulating prostitution within their territory and 95% of them are doing so via a licensing system (NRM, 2002, p. 20). The municipalities are unrestricted regarding how to organise and control their licensing policy, which has led to a diversity of policies throughout different segments of the Dutch territory. Forms of commercial sex exploitation other than brothels, such as the escort service or home prostitution, remained unlicensed. "Lawful" prostitutes are those

remains to be seen, some numbers have been made public. In 2011, 43 convictions in the full first year of operation were reported. Few convictions under law for using prostitutes. 28 July 2011. http://ww.bbc.co.uk/news/uk-14333370. Retrieved on 8 January 2013.

16 The lack of evidence was one of the main concerns of the Joint Committee on Human Rights in the debates on the Police and Crime Act. It stated: "We are disappointed that the Government has failed to provide the evidence which, in its view, demonstrates the necessity for the new strict liability offence. We recommend that the evidence be published without further delay so that Parliament can be properly informed when debating the need for this new strict liability offence" (Joint Committee on Human Rights, 2009). The government replied that the Demand Review was the result of thorough research on demand, but admitted that it had not really focused on the benefits of strict liability, as "this was not the aim of the research" (UK Government, 2009).

who are over 18, native to the EU and are voluntarily working in a licensed sex venue as a self-employed person or pursuant to a labour contract. The intention of the legalisation movement was to grant the same rights as any other employed person to lawful sex workers. A 2007 study concluded that all Dutch municipalities had practically completed the licensing process and were carrying out inspections on the basis thereof, though some have been more thorough than others (Daalder, 2007b). This has created significant differences in policies within the Dutch territory and has led *mala fide* market players to move across municipalities to carry out their activities in the most lenient ones. Another important conclusion was that the police mainly carried out monitoring and enforcement inspections in the newly licensed sector. Brothels that failed to comply with the licensing requirement were liable to administrative punishment or, depending on the violation, could be prosecuted for the offences covered by Article 273a of the Criminal Code (the Dutch trafficking in human beings criminal law provision, which has been deemed complicated and broad in scope (Zaitch & Staring, 2009)). It also has been documented that the police lack the capacity to monitor and investigate the *mala fide* market segment, which continued to conduct punishable forms of sexual service operations outside of the licensed sector (Daalder, 2007b). It is safe to say that this situation seems quite paradoxical. Without taking a stance on the possible abuses of the licensing system by *mala fide* actors, the fact that the available law enforcement capacity has so far been directed towards those who are licensed, and thus, apparently constitute the *bona fide* segment of the market, has understandably caused frustration. Those who are making the effort to abide by the licensing conditions feel that the new system, in fact, has created a stricter regime than the one that existed before the ban on brothels was lifted (CoE, 2007). Moreover, the fact that only EU citizens can be "lawfully" (self) employed and that only brothels are covered by the lifting of the ban was heavily criticised as pushing non-EU citizens and other commercial sex ventures such as escort businesses further into illegality. Among others, a 2011 study (WODC) that documented several trafficking in human beings cases in the Amsterdam red-light district has shown that the licensing system was anything but waterproof and that it left a lot of opportunity for the circumvention of the rules by *mala fide* market players. Overall, the main problems of the licensing system were the lack of control and supervision of the *mala fide* market segment and the limited prostitution activity covered by it. In a study involving the clients of Dutch brothels, the clients reported their observations of some of the police control actions. They felt that owners were well-informed of these visits and had instructed prostitutes, as well as clients, beforehand to behave in certain ways. Therefore, Zaitch and Staring (2009) conclude that these controls did not represent any meaningful contribution against illegal prostitution, let alone trafficking. In general, no evidence of a decline in coerced prostitution has been scientifically documented (Daalder,

2007b), which, for some, was enough to conclude that the lifting of the ban was a failure (van de Bunt, 2007). In evaluation reports on the lifting of the ban, it has been stated that the sex sector continued to be a source of illegal employment, trafficking in women and other forms of illegality and criminality (Daalder, 2007a; Dekker, Homburg, & Tap, 2006; KLPD, 2008). France used the so-called failure of the Dutch system as an argument in favour of its new law of December 2013, in which it has chosen (apparently inspired by the Swedish system as well) to criminalise all clients of prostitution. With the new law, France claims to answer the victim-centred call in the 2011 EU Directive, by stating – without proper empirical underpinning – that about 90% of prostitutes in the French sex market are victims of trafficking and sexual exploitation.[17] Despite the many challenges and loopholes that the Dutch licensing system was and is facing, simply dismissing it is a step too far for The Netherlands, which has chosen to keep it in place, but reform it.

3.3.2. Bill regulating prostitution and tackling abuses in the sex sector

The ideas for the improvement[18] of the licensing system that have stemmed from the above critiques are particularly interesting with regard to the research topic of this text. For the past few years, a bill has been debated that aims to regulate prostitution and the fight against abusive situations in the sex sector, including all forms of sexual servicing, not solely the brothel

17 A client of prostitution will have to pay a 1500 euro fine for visiting a prostitute, irrespective of whether the prostitute works voluntarily or not. http://www.assemblee-nationale.fr/14/propositions/pion1437.asp. Retrieved on 1 December 2013. The explanatory memorandum stated: *"Les dispositions de la directive 2011/36/UE du Parlement européen relative à la traite qui n'ont pas à ce jour été introduites dans notre droit et demandant de supprimer toute victimisation supplémentaire des victimes de la traite et de la prostitution. Il abroge donc le délit de racolage prévu par l'article 225-10-1 du code pénal qui sanctionne les personnes prostituées, qu'il convient de protéger plutôt que d'interpeller. Comme l'indique la directive signée par la France en 2011 et ratifiée en 2013, les victimes devraient être protégées contre les poursuites ou les sanctions concernant des infractions sur la prostitution, le but étant de garantir aux victimes les bénéfices des droits de l'homme, de leur éviter une nouvelle victimisation, un traumatisme supplémentaire, et de les inciter à intervenir comme témoins dans le cadre des procédures pénales engagées contre les auteurs des infractions."* In other words, France refers to the obligation of the EU Trafficking Directive to protect victims, which pursuant to France's reasoning, includes nearly all prostitutes. No reference is made, however, to the EU suggestion of specifically (and only) criminalising clients who knowingly make use of the services of a trafficking victim.

18 Originating in the Policy Program of the Cabinet of Prime Minister Balkenende IV, 2007–2011, 5.5 *Bestrijding van vormen van ernstige criminaliteit* (Fight Against Serious Crime), 68.

sector.[19] The goal of the bill is threefold: first, to reduce the differences in municipal licensing policies; second, to gain a better overview of the entire sector by the introduction of a national registration and licensing system; and third, to simplify supervision and control of the sector.[20] The bill was first presented in November 2009, and after a change in the proposal and subsequent discussion in 2011, its adoption currently is still being delayed due to a decision in October 2012 that re-contemplation is needed as a result of the numerous critiques and questions that it had generated. In July 2013, it was partially dismissed. The original proposal entailed a national obligation for all commercial sex establishments to obtain a license, with the licensing conditions being uniform throughout the country. Escort companies had to register in a national register. Furthermore, all individual prostitutes were required to register in a national register to avoid criminal liability and clients were required to check to see whether a prostitute was effectively registered before actually visiting her or him. Making use, as a client, of the services of a non-registered prostitute, was criminalised. This part of the proposal, however, was dismissed in July 2013. Nonetheless, given its relevance to the discussion about the criminalisation of "knowing" users, it is further analysed hereafter. The proponents stressed that, by introducing the new rules as outlined, the difference between voluntary and coerced prostitution would become clearer, especially to the client. The bill was intended to specifically implement the targeted client criminalisation suggestion embedded in the 2005 CoE Trafficking Convention.[21] An important critique raised, among others, by the Dutch *Raad van State* (from which the government must mandatorily seek a written advisory opinion regarding every bill it intends to introduce in Parliament) is that the envisaged new law would not change anything with regard to one of the biggest challenges of the existing policy, in that it would mainly further regulate the already regulated *bona fide* segment of the market instead of focusing more on the illegal and *mala fide* segment. The *Raad van State* further commented that, considering the higher administrative obligations due to the new registra-

19 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 2. Wetsvoorstel van 10 november 2009*. Tweede Kamer, Handelingen 2009-2010.

20 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 3. Memorie van Toelichting*. Tweede Kamer, Handelingen 2009-2010, *Algemeen deel, Hoofdstuk 1 Inleiding, 1.2 Inhoud wetsvoorstel*.

21 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 3. Memorie van Toelichting*. Tweede Kamer, Handelingen 2009-2010, *Algemeen deel, Hoofdstuk 7 Strafbepalingen*, 7.2.

tion rules, more actors on the market would be driven into illegality, as it was said that avoiding administrative burdens was characteristic of the sector.[22] Also, the *Raad* noted that, according to the bill, the enforcement of the policy would remain in the hands of the municipalities, and would change nothing about the abovementioned differences across the nation, which have proven to facilitate abuse.[23] The bill will be discussed again in this regard,[24] as the only part of the proposal that remained after July 2013 was the introduction of a "uniform system of licensing", which would be nationwide instead of by municipality. This is not the place for a full evaluation of the bill, so the analysis hereafter is limited to the proposed measure to criminalise clients who choose sexual services by unregistered sex work-

22 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211) No. 4. Advies Raad van State en Nader Rapport*. Tweede Kamer, Handelingen 2009-2010. See also: *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). Notitie van Vereniging Vrouw en Recht Clara Wichmann ten behoeve van expertmeeting,* Eerste Kamer. Handelingen 2011-2012, 12 June 2012. In the discussion document of 12 November 2012 on the proposed bill (*Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche) (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 5. Wetsvoorstel.* Eerste Kamer, Handelingen 2012-2013, October 2012) it has also been raised that registration is likely to affect the privacy of prostitutes who want to work legally, but anonymously, so that they will not register. Also, the effectiveness of registration as a tool in the fight against exploitative sex work was challenged, for it would only occur once every three years. Registration was also said to bear the risk of legitimising trafficking and exploitation, since traffickers or other exploiters may well encourage or force their victims to register and/or only start exploiting them upon or after registration. The arguments were also recalled that registration was only open to sex workers over 21 and that EU citizens would further endanger the most vulnerable prostitutes, who operate in the illegal segment of the market. The proposal was said to be equally detrimental to the efforts that have been made in the past to encourage the self-employment of sex workers. With the bill, self-employed sex workers would not only need to register, but also would require a license as a sex establishment. That would erode anonymity and privacy even further, which would direct sex workers into employment relationships and would render them more prone to exploitation than if they were self-employed.

23 Another factor reinforcing this problem is that municipalities would still (as under the current licensing regime) be allowed a so-called zero option, meaning that, for reasons of general interest or for the protection of prostitutes and clients, they may choose to refuse licenses to any sex establishment desiring to establish a business in their territory.

24 http://www.eerstekamer.nl/motie/motie_strik_groenlinks_c_s_over_9. Retrieved on 29 November 2013.

ers, although that measure has been dismissed. The first challenge to the proposed client criminalisation is that registration does not *per se* mean that a given sex worker is working voluntarily. The moment of administrative contact with a prostitute who wants to register is obviously not sufficient to make a decision regarding her or his free will. Also, it is very likely that, for obvious privacy reasons, voluntary sex workers will be unwilling to register, for example, because they have a family, another job, etc. Moreover, no significant flanking measures, such as training for those responsible for the registration, were proposed.[25] Briefly put, the rationale behind the obligation to register, namely, distinguishing between voluntary and involuntary sex work, seems somewhat superseded. In the proposal, the criminalisation of clients of unregistered prostitutes as a tool to tackle the demand side of exploitative sex work was flawed. The proposed system could only work within a waterproof system of registration in which it is 100% certain that 100% of voluntary sex workers are registered, which obviously can never be guaranteed. Also, the question arose as to how clients were expected to be aware of whether or not a prostitute is registered. To that end, the bill entailed a duty for clients to ascertain for themselves the fact that a prostitute was effectively registered. It was suggested that clients check this by calling, sending a text message or emailing a national system that would check if the registration number of a self-employed prostitute corresponded with her or his personal service number.[26] In a licensed sex establishment, clients could logically assume that only registered prostitutes were employed, as this was a precondition for obtaining a license. However, there was no hard guarantee for clients that the numbers provided by either a self-employed sex worker or a sex establishment were genuine. How the system would then be enforced and how clients would need to prove that they had observed their "ascertaining duty" remained unclear in the bill. From the debates, it seems that, according to the proponents, the practical problems would have been solved by the submission of proof that an inquiry had been sent by mail or message or by a telephone call, which could be derived from the client's email or telephone traffic data. That, however, would be a challenge from the perspective of the clients' privacy and the conditions that are required for such invasive investigative measures. Also, it was unclear in the proposal for which cases traffic data would actually be checked: The obligation to allow for a control of traffic data would seem-

25 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 5. Wetsvoorstel, item 7.* Eerste Kamer, Handelingen 2012-2013, October 2012.

26 This so-called "*burgerservicenummer*" (BSN) is a unique number provided to every citizen that is registered with a municipality, for example, at birth. The number is marked on identity cards.

ingly only have been enforceable upon clients if they were caught red-handed when visiting an unregistered prostitute; moreover, if it was not clear whether the intention to engage in a sexual act was sufficient to trigger criminal liability or if the sexual service actually had to have taken place. The minister of justice admitted that the concrete rules for the implementation of the new law on this particular aspect were yet to be determined in a so-called "amvb,"[27] i.e., an executive government order.[28] Its legitimacy was – rightly – challenged in light of the principle of legality by opponents of the proposal, who asserted that, since their criminal liability was at stake, the manner by which clients would have to inform themselves should be included in the law itself. Considering the flaws in the principles of legality as well as from a procedural rights perspective, and given the doubts that the proposed new system would genuinely contribute to the fight against sexual exploitation, the proposal was disregarded on this aspect.[29]

27 *Algemene maatregel van bestuur.*

28 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). Nadere memorie van antwoord door Minister van Veiligheid en Justitie, I.W. Opstelten.* Eerste Kamer. Handelingen 2011-2012, E, 16 March 2012.

29 A case that is relevant with regard to the registration obligation is the *Khelili* case before the ECtHR (Khelili v. Switzerland, 2011-X Eur. Ct. H.R.). The Court held that the classification of a woman as a "prostitute" for five years in a Geneva police database violated her right to respect for private life. The Court recognised that the data were retained for the purpose of the prevention of disorder or crime and the protection of the rights of others. The Court, however, reiterated that the word "prostitute" could damage Ms Khelili's reputation and make her day-to-day life problematic, given that the data contained in the police records might be transferred to the authorities. The Court considered that the retention of the word "prostitute" for years was neither justified nor necessary in a democratic society. From the authors' point of view, the registration obligation would not *per se* be contradictory to this judgement. First, the proposal entailed a three-year and three-months limit on data retention in the register. Moreover, the registration was to be initiated by the sex worker, while in *Khelili*, the police labelled Ms Khelili as a prostitute, though it was not even certain that she, in fact, was one (at least, Ms Khelili persistently denied this, which was deemed problematic by the Court). Also, the fact that the Geneva police database was automatically linked to other authorities was considered problematic by the Court, while the Dutch registration system was not supposed to be linked to any other authority and the data stored would only be used for the purpose of the prostitution law (see also the opinion letter of the Dutch Minister of Security and Justice of 26 April 2012, which responded to concerns raised during debates in this regard).

4. SELF-REGULATION AND QUALITY LABELLING OF THE SEXUAL SERVICES MARKET AS AN ALTERNATIVE BASIS FOR CLIENT CRIMINALISATION?

Given the considerable problems from the perspectives of legal theory and criminal policy and/or practice that were encountered in the assessment of the attempts in the UK and The Netherlands to successfully introduce targeted client responsibility in the sexual services market, the quest for an alternative, more reasonable and practicable solution is ongoing. It is explored below whether self-regulation and quality labelling in the sexual services market, i.e., leaving responsibility predominantly with private market actors, may constitute such an alternative solution, in that it would allow the relevant actors to distinguish more adequately between *mala fide* and *bona fide* sexual service providers and, at the same time, to provide an acceptable and workable basis for "knowing" client criminalisation.

Self-regulation and quality labelling, in brief, would imply that entrepreneurs in the sexual services market should commit and organise themselves to abide by certain sector-specific *bona fide* standards, and for doing so, they would obtain a certificate thereof, which they could then portray or publicise in order for anyone to be able to know that they abide by certain standards, for example, of voluntariness, quality, safety and reliability (Vermeulen, 2007, 2008). A 2007 EU research project by Vermeulen et al. addressed the possibility of self-regulation and the use of quality labels in certain market sectors that are vulnerable to sexual exploitation and/or trafficking in human beings. The window and brothel prostitution, escort and pornography sectors were among those for which the option for market operators to self-impose quality standards to establish themselves as rule-abiding and non-exploitative sex establishments and to portray quality labels as proof thereof, was examined. Self-imposed quality standards for the sexual services market may, for example, include the provision of safe and sanitary venues, the guarantee that the operator of the establishment has not been convicted for trafficking in human beings or sexual offences, refunds for STD/HIV and other medical check-ups, the provision of protection, the guarantee of the right to refuse certain clients or sexual acts, the guarantee of reasonable pay and working hours, but also – most importantly – the guarantee that the offered sexual services are provided voluntarily, by genuinely and freely consenting adult prostitutes (Vermeulen, 2007).

A first, distinct potential asset of self-regulation in the context of assessing the feasibility of client criminalisation, is that it can be applied to both the legal (as in the case of brothel-keeping in The Netherlands when it involves adult and lawfully residing EU citizens) and the illegal sexual service market segments (as in the case of brothel-keeping in The Netherlands that involves illegal third country nationals) or markets (as in the case of brothel-keeping

in the UK altogether). In many European/EU countries, the exploitation of prostitution, in the sense, for example, of managing a brothel or an escort service, is a criminal offence, much like in the UK, but it is often tolerated in practice, which creates an unclear and ambiguous context for a sector that is already prone to rule-circumvention. The self-regulatory approach that is proposed is theoretically eligible for introduction throughout the commercial sexual service market in European/EU countries, irrespective of whether the exploitation of voluntary prostitution is (under certain conditions) lawful, fully illegal and prosecuted or in-between, i.e., illegal but (most) often not prosecuted. Especially in countries where the sector is officially illegal, the government (be it national or local) is handicapped in its attempts to regulate (or license) the sector, as this will ultimately constitute a contradiction in terms. At best, government action is then necessarily limited to the geographical implantation of sex establishments (based on competencies in the sphere of urban planning) or to the avoidance or channelling of prostitution-related nuisances (relying on competencies in the sphere of public order and safety) (Vermeulen, 2008).

Whether a self-regulatory approach as outlined is theoretically capable of providing further solutions for the series of the problems encountered in both country studies is systematically assessed below.

The criminalisation of clients for being involved in what is "believed" to be an exploitative situation, without sufficient clarity regarding how they could have been aware of it, is both unfair and problematic from a procedural rights viewpoint. At least some sort of "publicity" that manifestly establishes *bona fide* sex work will be required as a minimum tool for clients to act in a duly diligent fashion, i.e., by not choosing sexual servicing that has not been quality-labelled as *bona fide.* Taking the risk of being serviced in the non-*bona fide*-labelled market segment could then be taken into account in the establishment of "guilty knowledge."

The main concern with strict liability (as in the UK country study) was that no *mens rea* was required before concluding the criminal liability of clients, which challenges the principle of the presumption of innocence. First, in the proposed self-regulatory system, a *mens rea* element would be required. It would lie exactly in the choice of a non-*bona fide*-labelled service. Second, the problem that, in the UK, there is virtually no chance for clients to prove that they were unaware of exploitation and that their liability thus is "strict," as in definitive, would be solved by the fact that certification would be merely a tool in the determination of "guilty knowledge." In the proposed self-regulatory system, it is not being suggested that a client's choice of an uncertified service should *per se* trigger criminal liability. What is suggested is that if, after an investigation, exploitation or involuntariness is effectively proven, when deciding on a client's "guilty knowledge," it can be taken into account whether he or she could have known that the service might have

been problematic (which will be the case if a non-certified or non-quality-labelled service has been chosen).

In the abovementioned sense, the proposal that has now been rejected in The Netherlands, whereby clients would commit a criminal offence by using the services of an unregistered self-employed prostitute or a prostitute working in or for an unlicensed sex establishment, surely was a step in the right direction. Government licensing, though, is only eligible for use in systems in which the exploitation of prostitution is, under certain conditions, legal. Moreover, the licensing and registration system in The Netherlands is largely unattractive, mainly because it has not been accompanied by subsequent monitoring of and law enforcement attention towards the unlicensed sector (controls having been primarily or essentially focused on the licensed sector). Moreover, the Dutch system (including the newly proposed targeted client criminalisation) has ignored the specific sensitivities of the sector, such as privacy issues or its reluctance *vis-à-vis* administrative burdens. As a result, the Dutch system cannot guarantee that the distinction between registered and unregistered prostitutes or licensed and unlicensed sex establishments effectively corresponds with the distinction between voluntary and involuntary (or coerced) prostitution. The replacement of the government-organised registration and licensing system with a system of self-regulation and *bona fide* quality labelling seems to have the potential to resolve the main obstacles that have been identified in The Netherlands.

First, a self-regulatory approach could more adequately address sensitive issues such as privacy, since the personal data of sex workers would not (need to) be stored in official, government-held registers or databases. The amount of "red tape" would be similarly limited. Even self-employed home-prostitutes or escorts could simply quality-label themselves in their advertisements, without having to sacrifice their privacy.

Moreover, self-regulation could also work for illegal (migrant) sex workers, in contrast with the Dutch government-imposed system, which obviously could not "regulate" illegal sex work.

The proposed self-regulatory system would likely also solve the issue of the need for intrusive investigative measures such as checking a client's ICT traffic data. The presence of the quality label *an sich* would be a sufficient tool to investigate a client's potential "guilty knowledge."

Although more extensive research regarding how to practically organise an effective system of self-regulation and quality labelling would be required, it is clear that it will not work unless it is adequately "picked up" by official (law enforcement and prosecuting) authorities, including those in countries where the exploitation of prostitution is illegal. First, a diversion of attention in the prosecutorial priorities of law enforcement toward the market actors that do not hold quality labels will be a necessary incentive to promote self-

regulation and the adherence to *bona fide* quality standards. The latter must become the most lucrative and competitive option for market players. Also, official authorities will have to endorse the self-regulatory system by properly taking account of the certified *bona fide* sexual service provision in their examination of client accountability.

Most probably, the so-called third-party certification (by a private but nonetheless independent certification service provider) would constitute the most promising form of self-regulation, as opposed to first-party certification (mere certification by the entrepreneur or prostitute him/herself) and second-party certification (certification by an sector-based umbrella organisation).[30] First-party certification lacks independence. Second-party certification has a higher independence degree already, but excludes certification of e.g. individual, self-employed prostitutes who either do not wish to register with an umbrella organisation or are excluded from doing so because they have no legal personality, whilst third-party certification is available to them.

By way of final note, it must be underlined that self-regulation and quality labelling or certification will never constitute a fully waterproof system. Abuses will remain possible, as is the case in all government-regulated and private sector-certified services. However, the dedication of *bona fide* entrepreneurs, who obviously would economically (read: financially) and competitively benefit from delivering certified services (clients will logically be oriented towards them, eliminating other, *mala fide* or non-*bona fide* entrepreneurs from the market), must not be underestimated, because their market "advantage" will be at stake. It may be assumed that they will take a strong – economic – interest in keeping *bona fide* services genuinely *bona fide*: private power for public good.

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30 An interesting example of a second-party certifier is the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB), active in thirty-nine US states and the District of Columbia, which recently has included anti-trafficking in its certification work. See Williams, M. (2014).

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Chapter 13.
Sex work, policy and empowerment in the media: Who's talking?

ALEXANDER WITPAS

1. INTRODUCTION

Over the past three years, a lot has been written about prostitution in the Flemish media. One of the most widely used concepts to frame the subject was the debate between abolitionists on the one hand and proponents of regulation and legalisation on the other. Abolitionists believe that all types of prostitution constitute a serious form of oppression and violence against women. It is considered an inherently harmful phenomenon that should be completely banished from society. Their strategy of choice is prosecution and punishment of customers and operators. Proponents of regulation/legalisation on the other hand believe that prostitution is not inherently harmful if the person who engages in prostitution does so voluntarily and if the working conditions are acceptable. It is an activity that entails a number of risks that need to be addressed, but it can continue to exist in society as long as the rights of prostitutes are guaranteed (Weitzer, 2012).

As a spokesman for the Flemish Association for Sexology (the professional association for sexologists), I followed these debates. What struck me was that both camps defend their positions with claims in the area of health and health damage. Everyone seems to agree that working as a prostitute makes one vulnerable to health damage, and that the prevention of this damage is an important reason why prostitution should either be criminalised (abolitionism) or legalised and regulated.

Based on this consensus one would expect both parties to frequently refer to the basic concepts and principles of health promotion, the discipline that deals with obtaining and maintaining health benefits for (communities of) people. Oddly enough, I got the impression that the opposite was true: the concepts, terminology and basic values of health promotion, empowerment and participation in particular, seemed to be completely absent in the debate.

Over the past decades numerous health programmes that aim at prostitutes have been implemented, particularly in the context of the fight against HIV and STI's. All these efforts have produced a wealth of scientific knowledge. We know what it takes for a project or a policy to succeed, and we know what it takes for it to fail (Gillies, 1998; UNAIDS, 2009). But in the debate

about the dangers of prostitution, all this evidence never seems to enter the picture.

If this is true, it is a clear cause for concern. The vast majority of voters in our society have no direct contact with prostitutes. Their knowledge about different aspects of this phenomenon is mostly obtained through the media. As a consequence, they are unable to correct false statements with first-hand information. When the media invariably give the impression that it is possible, advisable even, to improve the health of prostitutes, or any other kind of vulnerable community, without the latter having a say in the matter, people may come to believe this. In this way, public support is created for lobby groups and politicians promoting a policy of repression and stigmatization (Chomsky, 2002).

This text aims to systematically examine to what extent the above concern is justified. Is the debate in the media about prostitution really as deficient as it seems? How big is the gap between the theory and practice of health promotion, with its emphasis on empowerment and participation, and the debate on prostitution in the media?

First the concepts of health promotion, empowerment and participation are discussed, giving a description of the terms and touching briefly on some critiques and discussions.

The body of the text discusses the results of a media analysis conducted on the topic, based on all Belgian relevant newspaper articles from the past three years. The articles have been analysed in order to answer the following questions: who is speaking about prostitution policy in the written press, what position do they take in the abolitionism/regulation debate, and to what extent do they give attention to the principles of empowerment and participation?

Finally, some conclusions are drawn and a number of topics for discussion are suggested.

2. HEALTH PROMOTION, EMPOWERMENT AND PARTICIPATION

2.1. Health promotion and the Ottawa charter

The concept of "health" has a lot of definitions, but the one most commonly used among professionals is that which was drafted by the World Health Organization (WHO) in 1948. According to this definition health is not the same as the absence of disease or infirmity, but a state of complete physical, mental and social well-being (WHO, 1948). 38 years later, in 1986, the first definition of health promotion was written in the Ottawa Charter, a definition which is still in effect (WHO, 2009).

> *Health promotion is the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical, mental and social well-being, an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy life-styles to well-being.*

The Ottawa Charter puts great emphasis on the social and emancipatory aspect of health and that is not a coincidence. In the century prior to this declaration, health professionals had become more and more convinced of the fact that if you want to improve the health of a population, it is not enough to build an efficient healthcare system. The utopian idea that one could purge society from every kind of disease as long as one had enough doctors, hospitals, and medication was shattered by a number of findings (Ustün & Jacob, 2005).

First, it became clear that, at least in the short term, it would be impossible to find an efficient cure for some of the major diseases that were having a huge impact on public health, cancer being the most important. This came as a blow to the people who had put their faith in fast advances in medical technology.

In addition, it also became increasingly evident that a lot of health damage was not caused by an infection with some random bacteria. Instead, the main contributing factors were the environment in which people were living (pollution, stress, violence, discrimination...), their daily routines and their so-called lifestyle (smoking, drinking, exercise, food, unsafe sex...).

The socioeconomic status of people had (and still has) a large influence. In general, poor people, and the socially excluded, do poorly on all factors that determine their health: they live in an unhealthy environment, have an unhealthy lifestyle, and poor access to all kinds of care. Getting sick or staying healthy does not depend on a twist of fate, or the intervention of a higher power. It is largely the result of social determinants (Marmot & Wilkinson, 1999).

2.2. Health, power and empowerment

One of the key words in the definition of health promotion is "enable". The Ottawa Charter also explains the vision behind the term (WHO, 2009):

> *Health promotion focuses on achieving equity in health. Health promotion action aims at reducing differences in current health status and ensuring equal opportunities and resources to enable all people to achieve their fullest health potential. This includes a secure foundation in a supportive envi-*

> *ronment, access to information, life skills and opportunities for making healthy choices. People cannot achieve their fullest health potential unless they are able to take control of those things which determine their health. This must apply equally to women and men.*

These goals cannot be achieved if one works only with individuals. Promoting health means working with communities.

> *Health promotion works through concrete and effective community action in setting priorities, making decisions, planning strategies and implementing them to achieve better health. At the heart of this process is the empowerment of communities – their ownership and control of their own endeavours and destinies. Community development draws on existing human and material resources in the community to enhance self-help and social support, and to develop flexible systems for strengthening public participation in and direction of health matters. This requires full and continuous access to information, learning opportunities for health, as well as funding support.*

After Ottawa came other international conferences on health promotion, building on the foundation established in 1986 (WHO, 2009). The importance of empowerment and participation remained intact:

- Empowerment: one cannot improve the health of communities of vulnerable people if they have no control over their lives in general. If you want them to work on their health, you have to find a way to give them more power.
- Participation: empowering people also means giving them more control over the health programmes that are targeted at them. They need to have a say in all the important decisions: the setting of priorities, the selection of strategies, the implementation of the programme, and last but not least the evaluation.

2.3. Ethics and effectiveness

The importance of empowerment and participation in health promotion is based not only on ethical considerations, however important they may be. Empowerment and participation are also crucial from a pragmatic point of view: health promotion that does not take these concepts into account is simply less effective, if effective at all. In his report for the WHO, Wallerstein (2006) summarises the results from evaluation research as follows:

> *Much research has been focused on empowerment of socially excluded populations (e.g., women, youth, people at risk for HIV/AIDS, and the poor), though application of empowerment crosses to other populations and issues in public health. Youth empowerment interventions have produced multiple empowerment and health outcomes: strengthened self- and col-*

> *lective efficacy, stronger group bonding, formation of sustainable youth groups, increased participation in structured activities including youth social action, and policy changes, leading to improved mental health and school performance. Multi-level empowerment strategies for HIV/AIDS prevention which address gender inequities have improved health status and reduced HIV infection rates. Women's empowering interventions, integrated with the economic, educational, and political sectors, have shown the greatest impact on women's quality of life, autonomy and authority and on policy changes, and on improved child and family health. Patient and family empowerment strategies have increased patients' abilities to manage their disease, adopt healthier behaviours, and use health services more effectively, as well as increasing care-giver coping skills and efficacy. Coalitions and inter-organizational partnerships that promote empowerment through enhanced participation and environmental and policy changes have led to diverse health outcomes.*

The same research also shows that the two concepts are not only intertwined in theory but also difficult to separate in practice, and that the most effective interventions are those in which they reinforce each other (Wallerstein, 2006):

> *The most effective empowerment strategies are those that build on and reinforce authentic participation ensuring autonomy in decision-making, sense of community and local bonding, and psychological empowerment of the community members themselves.*

2.4. Easy to preach, difficult to practise

"Doing" empowerment and participation, in the broadest sense of the word, is about fighting oppression, injustice and poor health, along with the communities who are affected. It should be clear that this is not an easy task. Especially when it has to be done by professional health organizations, within the context of an existing policy defined by experts, and with the funding from the government in power.

The past twenty years have seen a lot of criticism concerning the concepts of empowerment and participation. It is not their desirability that is questioned, but rather the (lack of) real practice. Several authors have pointed to the fact that empowerment is getting a lot of lip service from professionals in policy documents, grant applications and other official texts (Carey, 2000; Raeburn & Rootman, 1998).

But in the field, most of the programmes are not designed with vulnerable communities in mind. Instead they are targeting individuals with certain characteristics that constitute a health risk (e.g. smoking). The main goal is not to make them aware of the forces that shape their lives, but to make them conform to a set of health standards (e.g. not smoking) To this end,

they are made aware, educated, trained, screened, treated, counselled and coached... until they comply with the directives of the health policy. A health policy that has been developed by experts on a national or international level and that is implemented top down by professional, state funded organizations (Woodall, Warwick-Booth & Cross, 2012).

According to some authors, the notions of empowerment and participation are, to a high degree, the products of their historical context. Of the historical context that has passed. They were developed in a society focused on emancipatory processes. Thirty years later, our society has adopted the neoliberal paradigm, in which society is primarily a sum of individuals, each responsible for pursuing their own goals, requiring different skills in different areas, including the area of health. In this context, the terms empowerment and participation are still in use, but in an individual, psychological sense. Their content is watered down to the point that they have lost their original meaning and purpose. Working with social determinants that are making communities powerful or powerless has disappeared from the agenda (McGregor, 2001).

Not everyone is so fatalistic though. A lot of health professionals, policy makers and academics believe that, between the bottom up ideal and the top down reality, there lies a space were the health goals of governments and the empowerment of vulnerable communities can go along. But it takes a serious amount of dedication and the right tools.

Laverack and Labonte (2000) developed a working model based on the typical planning stages of the development of health programmes: general programme design, setting goals, choosing strategy, implementing strategy management of the programme, and evaluation. For each of these phases, they suggest a number of questions. Answering these questions should ensure that health professionals pay the right amount of attention to participation and empowerment. The most important questions are:

- How can members of the community influence the process from the first to the last step? What organisational structures are put in place to enhance participation on an individual and group level?
- How does the programme strengthen the capability of the community to understand the socioeconomic and political factors that are influencing their lives?
- How is the local leadership of the community enhanced?
- How are the resources of the community used, enhanced and expanded?
- How does the programme work towards creating more equal relationships between the community and external stakeholders?

2.5. Sex work activism and empowerment

Health professionals have no monopoly on the concepts of empowerment and participation. Equally important in this respect are organizations promoting the rights of sex workers. Whereas health organizations are usually tied to a set of targets and procedures, sex worker activists have, in principle, the freedom to take a more radical bottom up approach.

A fine example of this kind of approach was the European conference on sex work, human rights, labour and migration in Brussels, 2005. It was organised by a committee of organizations with extensive experience in the field of defending the interests of sex workers, and was paid for through private funds. At this conference, 120 sex workers and 80 allies from 30 countries participated in the process. The final result includes two texts, the "Sex Workers in Europe Manifesto" and the "Declaration of the Rights of Sex Workers in Europe" (ICRSE, 2005).

What made this conference unique was the amount of attention paid to the leadership and self-representation of sex workers. The organisers reached out to the community in order to involve the widest possible audience of sex workers and guarantee diversity in terms of nationality, immigration status, job type, gender and prostitution policy. Particular attention was paid to participants from countries where the stigma and oppression of sex workers was the worst.

To ensure that the less privileged members of the community could take part in the discussions, the organization provided financial compensation for participants and translation into 12 languages. Finally, anonymity was guaranteed to all, so that the fear of persecution and stigmatisation on the home front would not constitute a barrier.

At the conference, a full day was set aside for discussions among sex workers only, with no outsiders attending. Carefully selected allies were invited during a second day, to take part in discussions with sex workers. On the third day, the findings were presented to a number of Members of the European Parliament (Garofalo, 2013).

It is remarkable and somewhat ironic that health organizations providing services specifically for sex workers were not invited as allies. Apparently, the organisers were convinced that health organizations lack the autonomy and the resources to participate in this kind of work... (Garofalo, 2013).

3. A MEDIA ANALYSIS OF SEX WORK POLICY IN FLEMISH NEWSPAPERS

3.1. Methodology

The material used for the analysis was published in the three-year period between 1 January 2010 and 31 December 2013, in the following newspapers and magazines (total distribution in the year 2013 in brackets, rounded figures) (Centrum voor Informatie over de Media (CIM), 2014):

- Het Nieuwsblad/de Gentenaar (256,000 daily copies)
- De Standaard (93,000 daily copies)
- De Morgen (52,000 daily copies)
- Het Laatste Nieuws (287 000 daily copies)
- De Gazet van Antwerpen (91,000 daily copies)
- Het Belang van Limburg (93,000 daily copies)
- Humo (150,000 copies, weekly)
- Knack (120,000 copies, weekly)

Inclusion was based on the criteria of high levels of distribution (for the newspapers) and relevant content (for the magazines).

Within this scope, I conducted a search in the "Gopress" digital database, formerly Mediargus, using the following terms: *prostitutie*, *prostituee*, *prostitutiebeleid*, *prostitueren*, *sekswerk*, *sekswerker*. This resulted in a list of 2195 items.

From this list I selected all articles that contained at least one reference to or statement about "policy": the way the government responds to prostitution, or the way it could or should respond to it. It was not necessary for inclusion that this statement was made by a policy maker; it could also have been by any other kind of stakeholder (e.g. a police officer, an academic...).

After this step, 264 articles remained. Articles that were not included typically fell into one of the following categories:

- Reporting on individual cases of prostitution (mostly court cases in which one of the persons involved has some link to prostitution)
- Fictional stories, and reviews of fictional stories (TV series, films, novels, comics...)
- Articles in which the terms are used in a metaphorical sense (for example, a politician who says he feels like a prostitute when he is trying to recruit voters)
- Articles on prostitution in a historical perspective, without a clear link to the present (for example, a discussion of images of prostitutes in medieval paintings)

For the remaining 264 articles, it has been examined which stakeholders got a say in the matter, organising them into the following categories:

- Police (all hierarchical levels)
- Judicial system
- Local residents (individually or as a neighbourhood organization)
- Politicians (all levels: federal, regional or local... and both executive and legislative mandates)
- Academics
- Sex worker, as private individual
- Sex worker, representing an organization
- Family and friends of sex workers (children, parents, partners...)
- Clients
- General healthcare or social services
- Healthcare or social services specifically aimed at sex workers
- Bar owners, owners of escort agencies...
- Governmental agencies
- Lobby group other than sex work (e.g. women's organizations...)
- Opinion leaders (columnists, writers...)
- Other

In addition, the articles were all screened for elements in regard to the following questions:

- Does the article mention a particular view on policy: abolitionism, regulation/legalization, both, or neither?
- Does the article in any way mention the idea of participation or empowerment?

3.2. Results

3.2.1. Who is talking

Below is a list of stakeholders and the number of articles in which they are included, arranged from "the most represented" to "the least represented".

politicians	107	40%
sex worker, individual	55	21%
healthcare or social services specifically aimed at sex workers	43	16%
police	42	16%
local residents	41	16%
government agencies	27	10%
lobby group	26	10%
bar owners	24	9%

sex worker, organization	20	7%
academics	17	6%
clients	12	4%
opinion leaders	11	4%
other	11	4%
judicial system	7	3%
general healthcare or social services	3	1%
family and friends of sex workers	1	0%

3.2.1.1. A clear predominance of policy makers and policy implementers

Politicians are leading on the list with the largest group of articles (40%). It is a mixed group of politicians from the local and the federal level. Although the Flemish community has important powers related to health and social care, the politicians of this level are virtually absent in the media when it comes to this topic.

Police is represented in 16% of the articles. It is the head of the local police department that does most of the talking. Government agencies (10%) come in to the debate when urban planning is involved or when a permit has to be granted to an establishment. An exception is the "prostitutieambtenaar" of the city of Antwerp, who has a coordinating role and a more global mandate.

The judicial system (3%) is strangely absent in the media when it comes to sex work. When they do get to speak, it is mostly about human trafficking.

3.2.1.2. Individual sex workers and services specifically for sex workers

Individual sex workers have a voice in about one in five articles. This is more than most other stakeholders (except politicians). But the fact remains that they are absent in the vast majority of the articles that are written about them.

When they speak, it is almost always to tell their life story (the "human interest" point of view). A positive point is that they get a lot more space to tell their story, compared to other stakeholders. The problem is that their views on policy issues rarely come into the picture. In the few cases where they do get to voice an opinion on the matter, they react to questions about abolitionist proposals, or police measures to control crime and public nuisance.

Organizations offering healthcare and social services specifically to sex workers are quoted in about one in six articles, about the same share as the police. Payoke, Pasop and Ghapro, the most important organizations in this field, are the most cited, as expected.

3.2.1.3. Lobby groups and sex workers representing an organization

Lobby groups occur in 10% of the articles: the national women's lobbies (the Dutch-speaking and French-speaking women's councils) and the European Women's Lobby take the lion share in this category. Subject is always a plea for an abolitionist policy. In a few articles on the criminalisation of clients in France, another group is also mentioned, for making a public plea against abolitionist measures (the manifesto "Touche pas à ma pute").

Sex workers representing an organization get to speak in 7% of the articles, almost always to react to abolitionist measure or police actions.

It is noteworthy that while the European Women's Lobby (EWL) is mentioned several times by name, the Sex Workers (ICRSE) is never mentioned, not even by sex workers representing organizations.

3.2.1.4. Local residents and bar owners

People living in neighbourhoods where sex workers are active feature in 16% of the articles. When they speak, it is to complain about the inconveniences, the nuisance and crime they experience. They also comment on the (lack of) response on the part of local politicians and local police to their qualms.

Bar owners and managers of escort agencies get to speak in two types of contexts. They react to the complaints of local residents and police activity. And they sometimes also get to tell their life story. A special case is the manager of the Antwerp Villa Tinto, who reacts on abolitionist proposals.

3.2.1.5. All others

All other categories make appearances only on rare occasions. Professionals from the sector of general health (1%) are interviewed in an article about the fact that prostitutes are afraid to reveal their activities to their general practitioner. Academics (6%) are generally asked to comment on abolitionist proposals.

Despite the fact that quite a lot of articles have the criminalisation of clients as their subject, the clients themselves never get to comment on this. They appear in 4% of the articles. In most cases, they are people with physical or mental disabilities who use the services of sex workers or specialised organizations such as Aditi.

It is striking that family and friends of sex workers only get a voice in one of the 264 articles. Although the policy in regard to sex work has a huge influence on their lives, they are rarely ever cited.

3.2.2. Abolitionism or legalisation and regulation

In 82 of the 264 articles (31%) at least one stakeholder made a plea for legalisation and regulation of sex work.

A frequently recurring type of article is one in which a neighbourhood committee or a local politician complains about the negative effects of the presence of sex work in a specific neighbourhood (het Zuid in Ghent, the Chaussee d'Amour in St. Truiden, the Alhambra neighbourhood in Brussels). Next, a mayor or a police officer explains how they try to address the issue. One of the elements of their answer is that there is a need for more and better regulation of sex work.

Important to keep in mind here is that in a lot of cases, when a stakeholder is asking for better regulation, it is because he or she wants to fight crime and reduce nuisance. Not because he or she is defending the rights of sex workers.

The abolitionist viewpoint was adopted in 41 of the articles (15%). It is mostly the European Women's Lobby taking the lead. The national women's council, the federal minister, Joëlle Milquet and some opinion leaders follow in their wake.

When abolitionists are present in an article, they talk from a proactive position: they set the agenda, make their case and demand specific policy measures to be implemented (usually the criminalisation of clients or any other aspect of sex work such as advertising).

Often the same article also discusses the regulatory point of view, but defenders of this type of policy must speak from a defensive position, as a response to the demands of abolitionists. Abolitionists make demands and generate their own content and media attention. Defenders of legalisation and regulation respond to these demands, and are thus bound to the framework of the opponent. Within this framework, it is possible to criticise the claims of abolitionists, but it is extremely difficult to change the subject.

3.2.3. Focus on empowerment and participation

It probably should not have surprised me, but it did: empowerment and participation were almost completely absent in the articles. Elements of the concepts were mentioned in five articles of 264 (less than 2%). It was always a brief mention, without exploring the importance, or the various options.

Also, the organizations working for the empowerment of sex workers were virtually absent from the discussion. There were a handful of short articles on police activity in the Brussels Alhambra district, where fines were issued to street prostitutes, purely on the basis of their presence. A coalition of the

French League for Human Rights and Espace P started a judicial procedure against this policy, and their lawyer was interviewed a few times.

4. CONCLUSION AND DISCUSSION

If I were to choose an image that can serve as conclusion of this article, it is that of separate worlds.

On the one hand, there is the world of health professionals who work with sex workers. In this world, there is no doubt about the fact that empowerment and participation are necessary conditions to improve the health and well-being of sex workers. Necessary from an ethical perspective but also from a pragmatic perspective.

There is doubt, however as to what extent empowerment and participation can be applied in practice. Promoting health from within a government-controlled logic does not always fit well with the bottom-up work that is necessary for vulnerable groups. But even if there is a tension, plenty of opportunities remain. For those who are prepared to accept the challenge, there are enough good examples and adequate tools to get started.

On the other hand, there is the world of the public debate on prostitution in the media. In this world, totally different rules apply. A media analysis indicates that concepts such as empowerment and participation are completely absent in this world. It is as if they simply do not exist.

When it comes to the societal response to the phenomenon of prostitution, it is mainly the people who develop and implement the policy that get to speak: politicians, police and government agencies. In general, they respond to problems of crime and public nuisance. At the local level, just about everyone seems to agree that we need better regulation, not because sex workers have rights but rather in order to combat crime and public nuisance.

When sex workers themselves are talking, this is usually in order to tell their stories. Stories that are often colourful, but with little or no mention of the policies that colour them. It seems as if sex workers themselves hardly have an opinion about how society should deal with them. They can provide criticism of abolitionist proposals and police interventions, but it all remains anecdotal.

The healthcare organizations offering services to sex workers have something to say about policy, but they are almost completely tied up in defending themselves against abolitionist proposals and have no time left to advocate positive alternatives.

The abolitionist lobby groups, almost always European and national women's organizations, seem to be the only stakeholders capable of proactively steering the debate. Their statements about sex workers, about harm

and criminalisation are ill-founded, but are taken up by the press nevertheless.

A number of other major stakeholders remain virtually invisible: clients, family and friends of sex workers, sex workers' organizations and academics.

This extreme discrepancy between the discourse of health and sex workers organizations on the one hand and the public debate in the media on the other is very problematic. One gets the impression that the people who know the most about empowerment and participation, have the least control over public opinion.

While I was writing this article, a report was submitted to the European parliament. It was prepared under the direction of Mary Honeyball (European Parliament, 2014). One of the key points was that the approach of countries like the Netherlands and Germany, where prostitution was partially legalised and regulated, had been disastrous and that countries needed to take the Swedish model, which criminalises clients, as an example.

When it was announced that this report would be submitted to the European Parliament, ICRSE took the initiative to organise the resistance. A comprehensive statement was communicated to MEPs in which the content of the report was heavily criticised (ICRSE, 2014). It argued that the report did not take into account the interests and voices of sex workers, or the scientific evidence on sex workers, and that the implementation of the recommendations would significantly endanger their health and wellbeing. A group of 94 scholars refuted most of the claims that underpinned the report. As many as 560 NGOs endorsed the statement and more than 1,500 people signed a petition. Hundreds of organizations, including the Flemish health organizations that provide services to sex workers, wrote to their national MEPs urging them to vote against the report and the resolution.

Yet, on February 26, the resolution was approved, without significant changes to the content. This is the text of an article that appeared in *De Standaard*, the next day:

> *Punish clients, not prostitutes*
>
> *Prostitution is a form of human rights violation and violence against women. Not the prostitutes themselves, but their clients should be criminalised. That is the conclusion of a resolution that was voted on Wednesday in the European Parliament.*
>
> *The report on which the resolution is based, comes from the British socialist Mary Honeyball. She was inspired by the policies of Sweden, Iceland and Norway. "Instead of legalisation – a disaster in the Netherlands and Germany – we need a nuanced approach to prostitution," says Honeyball. "It's*

the men who treat women's bodies as commodities that need to be punished not the prostitutes."

France recently passed a law that criminalises soliciting. Buying sex is fined with 1500 euros. The French law also creates a fund of 20 million euros, to which prostitutes can appeal if they want to get out.

France has been inspired by Sweden, where for nearly fifteen years now, it is illegal to pay for sex. Street prostitution is said to have decreased by 50 per cent. Germany is also considering to criminalise clients.

The resolution calls on Member States to tackle the problem of prostitution. They should organise exit strategies for women who want to leave the profession. Honeyball points out that 62 per cent of victims of trafficking end up in the sex industry. In total, about ninety per cent of women in prostitution are estimated to be working against their will or are victims of trafficking.

Critics claim that Honeyball doesn't understand the problems of sex workers and fear that criminalising clients will only create larger illegal networks.

This article illustrates how abolitionists control the media. They determine the agenda by their actions. Their press statements are reproduced in the article, in detail, and take up more than 90 % of the space. Meanwhile all efforts, petitions, letters and scientific refutations of the ICRSE have been reduced to one vague sentence. The idea that sex workers themselves should have something to say on the matter is not addressed.

The reluctance of health organizations to proactively participate in the public debate can be partially explained by their link to government and their limited mandate. But there is also the understandable concern that a high visibility in the media could create barriers for sex workers themselves to make use of their services. Trying to make a complex message heard in the media on a 'sensational' topic, in the midst of a highly polarized debate, is extremely difficult. There is a real danger of misrepresentation, and most organizations have had negative experiences in this area. As a result, some of them have come to the conclusion that it is best to limit themselves to a neutral position and a low public profile. Finally, there is also the problem of limited resources. Time and money spent on communication with the press and policymakers cannot be used to strengthen activities in the field. When organizations are forced to prioritize, which frequently is the case, they understandably choose to invest in delivering their core services.

This being said, the question remains: if health organizations refrain from taking a public stand on policy issues in the media and sex workers organizations fail at even getting the attention of the media, then how will the issue of empowerment ever make it to the public agenda? This question can-

not be easily answered, but some progress is likely if an open discussion were held on the following topics:

- What exactly are the key messages health organizations want to bring into the debate? When one reads abolitionist viewpoints in the newspaper, contents are very similar. Almost all of them repeat the same five statements. It is also very clear what their priority is: the criminalisation of clients. Health organizations on the other hand have an extensive list of different reasons why criminalisation is a bad thing. But it is much less clear what policy measures they themselves propose. If criminalisation of clients does not help, then what does?
- To what extent are health organizations prepared to invest time and money in a proactive approach of the media? Are they, for example, willing to develop a joint communication plan, and launch a campaign targeted at the general public and policymakers? Are they willing to do it at the expense of other core activities? Are they willing to invest in strategies to collect money for this cause?
- Is it possible to create stronger alliances with other stakeholders? Sex worker organizations and academics spring to mind as the most natural allies. But they suffer from the same weaknesses as health organizations: they are overworked and underfunded. Are there other factions in society willing to take up this cause, and if so, what kind of organizational structure is best suited to this cooperation?

I started this article with an intuitive concern about how sex workers policy is dealt with in the media. It was my hope that writing this article would take away some of that concern. Unfortunately, the opposite is true. After the resolution of the European Parliament on the criminalisation of clients, and the way it was handled in the media, I am more worried than ever.

In recent years, I have talked with all lot of highly intelligent people about this concern. Most of them share my frustration. But at the same time there is a distinct feeling of powerlessness and sometimes doubts about the seriousness of the situation. Is it all as bad as it seems? And anyway, what can we do about it?

At this point, we have to accept that the situation is serious. What can be done about it is not clear yet but it is high time that the right questions are asked and answered in an honest and practical way. It is my conviction that health organizations, sex worker organizations and their allies should look for better ways to make the voices of sex workers heard in the public debate on sex work policy. I am aware this is quite a challenge, but do not see who else could do it.

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Chapter 14.
Prostitution undressed: From discourse to description, from moralisation to normalisation?

GERT VERMEULEN & NINA PERŠAK

Commercial sex work, and in particular prostitution, is a divisive social issue (Outshoorn, 2004, Munro & Marina Della Giusta, 2008). Public and policy-related discussions are often caught up in a paralyzing dichotomy between interpretations of the prostitution phenomenon through opposed normative or moral values and opinions. Academic research on prostitution is mostly written through the perspective of a single research discipline, a single normative framework, or a particular stakeholder. Only to a minor extent, prostitution research relies on facts and fully unbiased empirical evidence. The compilation of findings and analyses in this book challenges this flawed research tradition. Instead of selecting empirical findings and instrumentalising them from and for a given normative perspective, we have aimed at overcoming such bias. None of the involved authors normatively views prostitution as intrinsically problematic. They all have open-mindedly explored the phenomenon and the policy around it, thus adding substantially to the "normalisation" of prostitution as a research topic, without however turning a blind eye to the various problems in the sex industry. The latter are not used as ammunition for the contra-prostitution debate, but simply as realities to be dealt with, in need of solutions.

1. MULTIDISCIPLINARITY

The book actively steps away from the traditional monodisciplinarity of publications on prostitution. It aims at enriching prostitution research and fructifying it by combining findings and analyses from a range of disciplines – history, political science, moral philosophy, sexology, sociology, law, criminology, victimology, health sciences and legal philosophy – in a single, truly multidisciplinary volume. Still, at least one particular research discipline is largely absent in this book, but also quite generally in prostitution research: economics. Even if the dearth of economic research on the subject of prostitution could be believed to be explainable, at least in part, by the difficulty of obtaining reliable data (Levitt & Alladi Venkatesh, 2007), prostitution demand and supply dimensions, the relationship between them and the elasticity degree of both, as well as the economy of prostitution careers and the prostitution industries require focused research attention. More empirical economic research would certainly contribute greatly to the current discussion on criminalising deliberate clients of exploited prostitutes.

In theory, the added value thereof would be that clients would choose sexual servicing more carefully and responsibly. Such a shift towards "ethical consumerism" could constitute a meaningful attack on the demand side of unreasonably cheap sexual services and the sexual exploitation (and related human trafficking) market. An increased client risk is likely to prompt a negative economic impact on the exploitative sexual service market, as rational clients would favour risk-free sexual services (Van Damme & Vermeulen, 2012). Empirical testing of such application of economic theory and getting detailed insights in the economy of prostitution (industries) would be much relevant for underpinning realistic, evidence-based prostitution policies in Europe and beyond.

2. MULTI-FRAME ANALYSIS

Thinking, researching and writing through one-sided or single-minded normative frames is a much prevailing flaw in prostitution (policy) literature, irrespective of the discipline concerned. Strongly subjective and biased empirical research has been conducted on the issue, mostly not (adequately) reflecting experiences/behaviour nor normative attitudes of sex workers and clients themselves (Kantola & Squires, 2004; Outshoorn, 2005; Brooks-Gordon, 2006; Pitcher, O'Neil & Sanders, 2009; Outshoorn, 2012b). An important contribution of this book is that it analyses, questions or falsifies a broad range of frames through which prostitution is typically viewed or through which the prostitution "problem" is often shaped, while at the same overcoming the one-sided- or single-mindedness that tend to underlie these, by bringing them together in a joint effort by authors. A first example of such a frame is the *victims frame*, through which commercial sex work is often viewed as inherently problematic and sex workers as victims of coercion and exploitation, as nobody can ever really choose this line of work, which is considered to be inherently harmful (Outshoorn, 2005; De Marneffe, 2009; Weitzer, 2010; Peršak, 2010; discussed critically also in chapters 9, 10 and 13 in this volume). From this perspective, the moral function of consent is minimalized. Voices fitting this frame are often (newly) feminist in nature, inspiring gender-based policies and currently inspiring the "male" criminalisation debate (Barry, 1979, 1995; Dworkin, 1981; Outshoorn, 2005; Simmons, Lehmann & Collier-Tenison, 2008; Keren-Paz & Levenkron, 2009). The "gendered" connotation of voices fitting this frame label (female) sex workers as weak and easily exploitable individuals who come from deprived social backgrounds (Stoltz, Shannon, Kerr, Zhang, Montaner & Wood, 2007; Pitcher, O'Neil & Sanders, 2009; Kramer & Berg, 2003). A second example is the *social order frame*, also viewing commercial sex work as inherently problematic (Phoenix & Oerton, 2005; Hubbard, 2002; Hubbard & Whowell, 2008; Hubbard, 2009; Bellis et al., 2007; Hubbard & Prior, 2012; see also chapters 3, 6 and 7 in this volume), in that a link

with crime, drugs, anti-social behaviour, un-safety and nuisance is assumed and the focus of empirical research is to prove this link (Letherby, Williams, Birch & Cain, 2008; Scoular & O'Neill, 2007; Baseman, Ross & Williams, 1999; Belcher & Herr, 2005). From this perspective, the moral and social problem lie with the sex workers themselves and the nuisance that sex work generates. Sex workers are seen as deviant individuals who do not live up to social standards and, hence, responsible themselves for prostitution-related problems (Sanders, 2005; Sanders, 2009). A third example is the *agency frame*, not viewing commercial sex work as inherently a social and/or moral problem, realising, however, that its context may turn it into one (Maher & Pickering, 2013; Outshoorn, 2001; 2005; 2004; Kantola & Squires, 2004; Scoular, 2004; Vermeulen, 2005; Peršak, 2005; Vermeulen, 2007a-b; Munro, 2008; Hardy, Kingston, & Sanders, 2010; Skrivankova, 2010; Carson & Edwards, 2011; Van Damme & Vermeulen, 2012; see also chapters 4, 5, 8 and 11 in this volume). Harm comes from the working conditions and possibly from clients' dealing with the sex worker (Sanders, 2004; Campbell & O'Neill, 2006; Moen, 2012). From this perspective, consent may make the commercial sexual transaction a morally defensible one (Primoratz, 1993; Fabre, 2006; Comte, 2014). The fact that commercial sex work is seen as illegal is considered one of the main reasons if not the main reason for the problems surrounding sex work (Sanders, 2004; Scoular, 2004; Outshoorn, 2005, Pitcher, O'Neil & Sanders, 2009; Van Damme & Vermeulen, 2012; Peršak, 2013; see also chapter 2 in this volume for some historical evidence). Sex workers are seen as free individuals who should have the right to choose whichever line of work they want to pursue to earn their income or even use it as a strategy to raise their living standard (Agustín, 2006; Rosen & Venkatesh, 2008). Yet another relevant frame is *human trafficking frame*, which is a good example of the existing dichotomy between interpretations of commercial sex as forced/exploitative on the one hand and as free/agentic on the other hand. Both dichotomous perspectives can suffer from methodological deficiencies in that they are selective by prioritizing specific groups of sex workers and clients and types of sex work (Bernstein, 2007), ideologically laden by starting out from opposing viewpoints on the very eligibility of sex as a type of work (Stark & Whisnant, 2004; Nagle, 1997) and hyperbolic in their interpretation of the quality of the choices involved (Barry, 1979; Delacoste & Alexander, 1987). In the scientific literature, specifically on human trafficking, the dichotomy between forced/exploitative and free/agentic sex work is even more problematic (Abramson, 2003; Aromaa, 2007; Haynes, 2009; Davidson, 2010; Skrivankova, 2010). Often, strongly subjective and biased empirical research has been conducted on the matter, departing from either the normative premise that a genuine choice is possible or impossible (Kantola & Squires, 2004; Outshoorn, 2005; Brooks-Gordon, 2006; Pitcher, O'Neil & Sanders, 2009; Outshoorn, 2012a). Other prostitution frames used, analysed or criticised in

the book are the *harm frame*, the *labour market-protection frame*, the *gender frame* and the *migration frame*, all of which are rather self-explanatory by name. The book not just uses, analyses, questions, falsifies or criticises these various single-sided or selective frames but deliberately brings them together, thus trying to overcome differences in perspectives or frames and contributing to their combination into a neutral, multi-frame analysis of prostitution (related problems and policies). The prostitution topic would benefit research-wise from being perceived and approached through the lens of a multitude of frames at the same time, since mono-framing inherently curtails the debate and research advancement. By largely adhering to this multiple-frame standard, the present volume aims to avoid stepping into the trap of one-sided approaches and to contribute to fine-grained, nuanced results.

3. MULTI-ACTOR PERSPECTIVE

This book also overcomes the traditional single-actor perspective in prostitution research, linked to the single normative frame tradition. Within the agency or trafficking frame, courts are an important stakeholder in that they have to pass a judgment on voluntariness or exploitation. The victims frame necessarily chooses the "vulnerable prostitute" perspective. Residents of certain prostitution areas or citizens of a certain municipality play the typical stakeholders in the social order frame that often focuses on nuisance. In general, prostitution research often one-sidedly reports on prostitution from the perspective of (or in the interest of) either clients, sex workers, pimps, brothel owners, traffickers, smugglers, migrant workers, sex industries, law enforcement, prosecutors, courts, policy makers, health organizations, NGOs or lobby groups. What is important is to grasp and approach realities from a multitude of actors and stakeholders, including the examination of their discourses, while giving priority to "description", i.e. portrayal of the realities of prostitution, from which various "discourses" may (and often do) deviate in pursuit of the interests and goals of those who use them.

4. CONCLUSION

We hope that prostitution research would build further on the zest of this book in that multidisciplinarity, multi-frame analysis and a multi-actor perspective should become the norm rather than the exception. Researchers from fairly different disciplines need to actively join forces by, for example, setting up large-scale, multidisciplinary research projects. Also, it is valid to recommend that in order to overcome the selectiveness of many a prostitution-related research, the focus should shift to a broader spectrum of commercial sex work, ranging from prostitution and escort work to stripping, lap dancing, phone and webcam sex, acting in the porn industry, working in

massage parlours, social erotic care etc. That will allow for more nuanced insights in the lived complexities of commercial sex work and consumption, and into how these possibly relate to life choices, opportunities problems, agency issues and normative values. Furthermore, attention needs to be directed also towards specific groups or populations that spur prostitution-related questions urgently needing answers, such as irregular migrants and students, to name just a few. While such research would be primarily empirical, it should not neglect to include the critical examination of the theoretical, cultural, normative and ethical concepts that inform much of the empirical work, policy and politics behind prostitution.

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Prostitution has always fascinated the public and bewildered policy makers. Reframing Prostitution explores several aspects of this multidimensional phenomenon, examining different ways in which prostitution is and was being practised in different places and different times, best practices in the regulation of prostitution as well as wider social and psychological issues, such as the construction of prostitution as incivility or of prostitutes as a socially problematic group or as victimised individuals. The book also addresses normative questions with respect to policy making, unmasking the purposes behind certain societal reactions towards prostitution as well as proposing innovative solutions that could reconcile societal fears of exploitation and abuse while meeting the rights and needs of individuals voluntarily involved in prostitution.

With contributions across social science disciplines, this international collection presents a valuable discussion on the importance of empirical studies in various segments of prostitution, highlights social contexts around it and challenges regulatory responses that frame our thinking about prostitution, promoting fresh debate about future policy directions in this area.

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