

LEGALIZATION AND DECRIMINALIZATION OF PROSTITUTION ARE NOT THE ANSWERS: A GLOBAL PERSPECTIVE

**Janice G. Raymond, Professor Emerita, University of Massachusetts, Amherst
and Coalition Against Trafficking in Women**

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I am happy to be a part of this important international conference on prostitution and trafficking. We are living at a time when prostitution and trafficking have become industrialized by a globalized sex trade that, as it expands, creates new forms of modern-day slavery.

Globalization

Globalization of the economy means globalization of the sex industry. Sex – or what passes for it -- has become a big business with the international sex industry grossing billions of dollars per year. In this free market view of prostitution, men are given the right to consume women, and women are given the right to be consumed. How did it ever become normal and acceptable to talk about prostitution-users as “consumers” and “clients?” How did it ever become normal for many government authorities and NGOs talk about buying sex as if it is no different than buying a car?

The free market version of prostitution is not restricted to western countries but also has had an impact on economic development theories and programs relating to the global south. Basically, the theory is that what developed economies enjoy, including revenues from a regulated sex industry, so should developing economies. Perhaps the most controversial articulation of prostitution as a development strategy came from a 1998 ILO report calling for the recognition of the sex industry for its potential contribution to the gross domestic products of Indonesia, Malaysia, the Philippines and Thailand.

A University of Philippines/UNICEF-commissioned study found that prostitution in the Philippines has become the 4th largest source of GNP in the country.¹ The same report said that poor developing countries like the Philippines have become major centers for the global sex tourism industry. I witnessed this myself in visits to Olongapo and Angeles city where it was

evident that former US military bases, which had promoted a culture of prostitution in the Philippines, provided the infra-structure for a later sex tourism industry to thrive. Talking with the women in prostitution who had been survivors of US military sexual exploitation, and were now subjected to the current influx of sex tourists, was a vivid reminder of the way in which military-based prostitution has readied the groundwork for the institutionalization of global sex tourism in many parts of the world.

There are 2 forms of neo-colonialism that are at work when we consider the global legacy of prostitution past, present and future. There is, of course the history of colonialist powers who promoted local sex sectors for their own military's rest and recreation purposes: the Raj in India, the comfort women system during World War II, the US military in Asia and other countries.

But there is a second form of neo-colonialism that has a more modern face. This is the globalization that channels mostly poor and third world women into the sex industry at great cost to themselves. This is the globalization that increasingly burdens poor and migrating women with servicing local men in the sex industries of Europe, North America, Latin American and Asia. This is the kind of globalization that makes it permissible and even fashionable for male officials and NGO members, engaged in the fight against poverty, repression of human rights and environmental degradation, to use women in prostitution when they travel abroad to international conferences and meetings, as happened during the UN Climate Conference in 2009 and the earlier Social Forum in Denmark.

Not only the globalization of the sex industry but the globalization of so-called "sex work" advocacy – the promotion of prostitution as simply another form of work -- is another form of neo-colonialism. Globalization of "sex work" advocacy has helped facilitate the return of sexual slavery in many parts of the globe and the normalization of treating women as "goods and services." Globalization of "sex work" advocacy has given the sex industry one of its greatest encouragements – a legitimacy that the industry could get no place else than from those who call themselves human rights defenders.

Choice

The issue of choice dominates the debate over prostitution – but it is always focused on *her* alleged choice to sell, seldom questioning *his* real choice

to buy. We have to reorient the debate over choice by focusing on those who really do the choosing, such as the pimps, brothel owners and the men who buy women and children for the sex of prostitution, and make all perpetrators accountable for their choices.

In the pro-sex work model of prostitution, the presumption dominates that if women choose to treat their bodies as sexual commodities, this is not problematic. At a conference I attended, one pro-sex work advocate argued that prostitution is a job no worse than working at Mc Donald's -- to which one survivor of prostitution responded: "At least when you work at Mc Donald's, you are not the meat!" A woman in prostitution who says yes to sex with a man who pays her, because her motivation is to earn the money to live or to buy her next cache of drugs, is not engaged in consensual intercourse.

The emphasis on *choice* in the politics of prostitution has reduced prostitution to a question of sexual rights for women, sprung free from the context of male dominance and the commercial power of an international sex industry *that is allowed to remain mostly invisible because the debate has been dominated by women's alleged choice.*

In 1990, the Dutch government, at a UN ECOSOC meeting, used the rationale of a person's right to self-determination to promote a woman's right to choose prostitution: "The right to self-determination, enjoyed by every independent adult man or woman who has not been subjected to any unlawful influence, implies the right of that individual to engage in prostitution *and to allow another individual to profit from the resulting earnings*[italics mine]."² The sex industry couldn't have been given a better defense of pimping and procuring.

The Dutch have also institutionalized the segregation of forced and voluntary prostitution, which has proven to be a very powerful tool in normalizing prostitution globally. However, what gets simplified as choice is actually a *strategy of survival* for the majority of prostituted women.

Some will say that women in prostitution are not victims. But if feminists and human rights advocates don't acknowledge that women in prostitution are victims of exploitation and violence, who will? This does not mean that women in prostitution don't have agency, or cannot make certain choices within contexts of powerlessness. Women in prostitution choose all the time to survive under the worst of conditions. It does mean that we have to

question how much real value, worth and power these so-called choices have for women in prostitution.

Framing the issue of prostitution as mainly about some women's right to choose makes invisible its consequences for millions of women and children worldwide. Choice becomes a smokescreen used by the sex industry, NGOs and some governments to deny real choices to the majority of women trapped in systems of prostitution.

The *political* question becomes, should the state sanction the sex industry based on the claim that some women choose it, when most women's choice is actually *compliance* to the only options available? When governments idealize women's alleged choice to be in prostitution by legalizing, decriminalizing or regulating the sex industry, governments endorse a new range of *conformity* for women. Increasingly, it happens that some of the systems that are so uncritically defended as choices are not a triumph over oppression but another name for it.

Vocabulary

I have been asked to speak about the consequences of the legalization and decriminalization legal model of prostitution. In order to do this, first let me address the issue of vocabulary.

The consequences of legalization and decriminalization are similar. Both legalization and decriminalization make aspects of the sex sector legal – i.e., they remove penalties from pimping, procuring, soliciting and/or brothels. Many people agree that women in prostitution should be decriminalized. However, people may not realize that for many, decriminalization of prostitution mean decriminalization of pimping, brothels and prostitution-users.

Government implementation of decriminalization is impossible without some form of government regulation of prostitution. For example, in countries and states that have decriminalized pimping or prostitution zones, civil and administrative regulations usually follow such as: requiring specific brothel licensing, registration of the women involved in prostitution activities, health monitoring, taxes on prostitution venues, or other measures. Further *criminal* measures often follow that are perceived as necessary, for example, to stem the growth of organized crime in the prostitution sector.

In no country or state that I know of does decriminalization exist without some form of regulation. Decriminalized prostitution, without regulation is a myth.

When prostitution is decriminalized, control is for the most part, taken out of the hands of the police and usually given to the local councils. Council duties most often include dealing with complaints, including those alleging abuse of women and violence. However, local councils have neither police authority nor the resources to investigate or penalize. In most cases, they lack the capacity to confront illegal brothel operators. Thus illegal sex venues proliferate in cities and countries that have decriminalized or legalized prostitution and the sex sector, as in Australia where the same pimps and prostitution entrepreneurs control the legal *and* illegal brothels.³

Proponents of legalizing or decriminalizing the sex industry argue that such legislation will protect women by keeping women off the streets and allegedly “safer” in regulated settings such as brothels, sex clubs and other indoor venues. They claim that violence is considerably reduced in most indoor settings, and that off-street prostitution venues are much safer for women. This is simply not true, and it is a naive view of brothels and sex venues.

A report of 11 countries in Europe, commissioned by the European Parliament, found that “The wide-spread view that the exploitation of victims of trafficking is always more violent outdoors than indoors does not seem to be confirmed. The level of violence is quite homogenous between outdoor and indoor trafficked prostitution... and furthermore, in some countries (such as Austria and Spain), the level of indoor violence is also greater than the level of outdoor violence.”⁴

The majority of women in prostitution come from marginalized groups with a history of sexual abuse, drug and alcohol dependencies, poverty or financial disadvantage, lack of education and histories of other vulnerabilities. A large number of women in prostitution are pimped and drawn into the sex industry at an early age. These are women whose lives will not change for the better if prostitution is legalized or decriminalized but, rather, in establishing programs that help provide women with exit strategies and the services that they need to regain their lost lives.

Countries That Have Legalized or Decriminalized Prostitution

Germany:

In 2002, Germany decriminalized pimping and procuring, made it legally easier to establish brothels and other prostitution enterprises, lifted the prohibition against promoting prostitution, and proposed contracts and benefits for women in prostitution establishments. Before the law was passed, it was estimated that the total number of persons in prostitution was about 200,000. In 2004, after decriminalization, government statistics cited 400,000 persons in prostitution with 90 percent coming from foreign countries.⁵

Stopping human trafficking was one of the reasons why Germany made prostitution and aspects of the sex industry legal. However, a UN Office of Drugs and Crime Report on the global patterns of trafficking in persons ranked Germany as a “very high” destination for trafficked victims.⁶

One of the most influential arguments for any legal prostitution system is that it will help protect children from sexual exploitation. In 2003, a UNICEF-sponsored report found that child prostitution was rampant across the German border in the Czech Republic in areas “heavily frequented by German tourists.”⁷ *Deutsche Welle*, a well-known German newspaper, has called the German-Czech border region “Europe’s biggest brothel,” and states that child prostitution is significantly on the rise there.⁸

Another influential argument for decriminalizing prostitution is that a regulated system would control the expansion of the sex industry. Germany is one of the most lucrative and growing prostitution economies in Europe. In 2004, revenues from prostitution were reported to amount to 6.4 billion Euros.⁹ By May, 2006, 4 years after decriminalization, annual revenues from prostitution were reported to be 14.5 billion Euros.¹⁰

SOLWODI, one of the largest NGOs in Germany providing services for prostituted and trafficked women, wrote in one of their newsletters that in the late 1990s SOLWODI had good relationships with the police and local authorities who referred over 80 percent of the women they assisted. Today, it’s 10 percent. Why? “Because of the new legal situation, the police now hardly have the opportunity to gain access to victims of human trafficking and to free them...[SOLWODI] fears that the victims of trafficking in women

‘will now become altogether invisible’.”¹¹ Under the Prostitution Act, police have fewer ways of justifying brothel incursions.

These problems with the Prostitution Act were validated by the government’s own admission in a 2007 German government report.¹² The report concluded:

“The Prostitution Act has thus up until now also not been able to make actual, measurable improvements to prostitutes’ social protection.” As for “working conditions,” there is “...hardly any measurable, positive impact...observed in practice.” Nor has the Prostitution Act enhanced the means by which those in prostitution can leave the system (p. 79).

Significantly, “There are as yet no viable indications that the Prostitution Act has reduced crime. The Prostitution Act has as yet contributed only very little in terms of improving transparency in the world of prostitution (p. 79).”

...Finally, “Prostitution should not be considered to be a reasonable means for securing one’s living (p. 80).”

Reportedly, the federal government of Germany is drafting a criminal provision to punish the clients of those forced into prostitution or who are victims of trafficking.

The Netherlands:

The results are equally grim in the Netherlands where prostitution and the sex industry have been legalized since 2000. By 2008, it was clear *to the government* that the “Lifting of the general ban on the brothels” law had failed in many of its aims to reduce crime and violence against legal and illegal women in prostitution.

Local politicians increasingly began to recognize that a culture of impunity prevailed in the prostitution areas and had opened up their cities further to international organized crime, trafficking in women and children and drug cartels.

Most major cities in the Netherlands have abolished their prostitution tolerance zones set up after legalization. Amsterdam eliminated its tolerance

zone as early as 2003, and later prohibited street prostitution in all areas of the city. Mayor Job Cohen stated that “it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime.”¹³ A Labor city councilor added: “The council must seriously ask itself if it still feels called upon to practise the trade of brothel manager.”¹⁴ Rotterdam closed down its tolerance zone in 2005, The Hague in 2006 and Eindhoven in 2009. Official policy on legal prostitution zones in the Netherlands has radically changed.

Legalization of prostitution has increased demand by bringing hordes of sex tourists into Amsterdam. The city’s original 450 window brothels, known simply as “the windows,” have been the main appeal for many male tourists who ogle the women on display, as if they are animals in a zoo.

A government-commissioned report in 2007 found that the majority of women in the window brothels are still subject to pimp control, and their emotional wellbeing is lower than in 2001 “on all measured aspects.”¹⁵ Thus, during 2007-08, the city shut down 1/3 of the windows by purchasing the former brothel buildings and turning them into shops.¹⁶

A 2008 National Police Report investigation, entitled *Beneath the Surface (Schone Schijn)*, tracked gangs of traffickers in the red light districts of 3 cities in the Netherlands. It found that criminal gangs, working as pimps and bodyguards, violently victimized dozens of women in prostitution over many years within the *licensed sector*. The report stated: “The prostitutes were totally in the power of the gang. They were never left alone or left unobserved. They were beaten and terrorized. They had to work long hours...hand over all of their earnings, and some were forced to abort...or to have their breasts surgically enlarged.”¹⁷

The National Police Report had two aims: to describe the ways in which the criminals operated in the legal sector and how they were able to accomplish their control of the women in plain view and not be detected; and a wider aim to analyze whether the current prostitution and trafficking policies were capable of identifying the abuses in the brothels. The report’s conclusion is very strongly worded: “The idea that a clean, normal business sector has emerged is an illusion...”¹⁸

Policies should be assessed by how they fulfill their goals. The closures of the

tolerance zones, the shuttering of brothels in the red light district, and the extensive presence of criminals in the legal prostitution sector give vivid proof that the aims of the prostitution legislation are not being met. Job Cohen, when he was mayor of Amsterdam stated: “The legalisation of prostitution did not bring about what many had hoped. We are still faced with distressing situations in which women are being exploited. It is high time for a thorough evaluation of the prostitution act.”¹⁹

A series of measures have been proposed, one of which has been to prosecute the *buyers* of illegal prostitution -- what the press has called “taking a step in the direction of how Sweden has been approaching the problem.” However, as of this date, the main change that the Dutch government has introduced, but which is not finalized, is to register women in prostitution.

Legalized prostitution fuels crime and trafficking, not only in Europe, but in the US state of Nevada where, because of its legal brothel industry in several counties of the state, other counties have become havens for sex traffickers. Traffickers know that prostitution is legal in some parts of the state and think they can get away more easily by bringing US and foreign girls and women into the brothels and sex clubs of places like Reno and Nevada that have no legal brothels. In her extensive report on the legal brothels of Nevada, Farley reports that “...at least 50 percent of the women in the [legal] brothels are under the control of illegal pimps outside the brothels...”;²⁰ and that legal brothels in Nevada are prison-like structures in which women are literally incarcerated during their “working times, not being able to come and go as they please.”²¹

Demand

This brings me to the alternative to legalizing and decriminalizing prostitution, which is to legislate against the male demand for prostitution. Civil society in many countries has yet to decide the legal status of prostitution-users, i.e., the buyers who purchase women and children for the sex of prostitution. Even fining the buyers (as in Sweden and Norway) has to be defended because opponents will argue, among other things, that boys will be boys, prostitution is inevitable, or the other myths that rationalize and excuse what men do to women in prostitution.

This situation is beginning to change. Many of the Nordic countries

have passed legislation criminalizing the buying of sex, and the United Nations as well as the militaries of many countries, have prohibited their troops, peacekeepers and other personnel from using women in prostitution, even in jurisdictions where prostitution is legal.

The trend to penalize the buyers of prostituted women is gaining ground, as are other methods of discouraging demand. It is true that men must be educated not to participate in the sexual exploitation of women and children and enlisted as catalysts for change. But it is also true that men should be legally liable for the criminal acts they commit. It was not so long ago that it was acceptable for men to beat their wives. Now it is unacceptable, not only because both men and society have been educated to the fact that battering is violence against women, but because perpetrators have been made accountable for committing a crime.

If you're caught buying heroin, stolen or bootlegged goods, you are legally liable. But in most countries, men are free to buy women. Buying women and children for the sex of prostitution creates the demand for pimps and traffickers to procure yet more vulnerable women and children to sexually service, on average, 5-15 men daily in the sex industry. This abuse of women and children ought to command the same legal accountability as facing prosecution for buying illicit drugs or "hot" DVDs.

Nordic Model-lite

Other speakers have addressed the effects of legislation targeting prostitution-users in Sweden and Norway. I applaud the political will of these 2 countries, along with that of Iceland, that they were able to launch legislation that goes to the heart of the problem of commercial sexual exploitation that few countries want to tackle – the legal permission given to men to buy women and children for the sex of prostitution. As other countries consider such legislation, I want to sound a few warnings about how NOT to address demand.

Some countries have passed an anemic version of what I call *Nordic model-lite*, in which only prostitution-users who buy trafficked, forced or unlicensed persons in prostitution are made actionable. Take the example of Finland. In 2006, Finland passed a lackluster version of the Swedish law. The

Finnish law criminalizes the “buying of sex from a person who is abused in the sex trade, i.e., from a person who is procured or trafficked.” And police have to prove that buyers knew that the women were forced into prostitution.

The question is: Why would a buyer ask the woman he uses in prostitution if she’s been forced or trafficked – and why would she tell him? It seems obvious that it is not in the self-interest of either to ask or tell.

The latest official results of the law from the Statistics Finland Agency state that from 2007-2009, 37 men were sentenced to pay fines for the offence of buying sex from a person in the sex trade. In other words, only about 12 men per year have been issued fines over this 3 year period.²²

Nordic model-lite wins the award for being one of the most ineffective policies for addressing the buyers. As we go forward with addressing demand, it is important to resist legislation and policies that are weak instruments for challenging men's use of women and children in prostitution -- and not be deceived into thinking that these programs are better than nothing.

We know that legislation alone is not enough. Legislation must be consistently enforced to be effective; and police must be given the resources to enforce any law consistently and systematically. Also, we need to promote, support and implement prevention of sexual exploitation programs to discourage the demand for prostitution by educating young boys and men about the harm of prostitution to women, themselves and their societies.

At a time when some governments are trying – and failing – to combat sex trafficking by legalizing prostitution, the Nordic model stands out as an example of lawmaking that reduces prostitution, penalizes men, and protects women. It becomes less profitable for pimps and traffickers to set up shop in countries where their customers fear the loss of their anonymity. Less profit means less prostitution and less violence against women.

Criminalizing demand works. It is not perfect, but it certainly works much better than its alternative of legalization or decriminalization of the sex industry. Countries that want to fight sexual exploitation cannot sanction pimps as legitimate sexual entrepreneurs and must take legal action against the buyers. Especially in this Nordic region, there has been much progress on legislation that challenges the demand for prostitution. We hope that Denmark will soon be part of that progress.

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