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Abstract

Drawing on research in the UK and the Netherlands, this article considers the respective legislative backgrounds, recent policy changes and their implication for sex workers in off-street environments. It considers the impact of different regulatory models on the employment rights, safety and welfare of sex workers and explores how working conditions in different indoor settings might be improved through legal and policy changes. We argue that although decriminalization of sex work is a precondition to secure the labour and human rights of sex workers, the involvement of sex workers in policy development and facilitation of different modes of working are necessary to improve their working conditions and autonomy.

Keywords

Policy, regulation, sex work, the Netherlands, UK

Introduction

The regulation of sex work is the focus of continuing discussions at EU and national levels. Debates are frequently shaped by discourses emerging from particular ideological

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perspectives, with an abolitionist lobby defining all prostitution as male violence, for example, the European Women's Lobby campaign for a 'prostitution free Europe'.¹ Many of these claims draw on examples of young people and/or street-based workers, who tend to encounter a range of factors increasing their vulnerability, whereas, as research demonstrates, the experience of adults working in indoor sectors is markedly different (e.g. Sanders, 2006). Furthermore, there is a tendency to conflate the separate issues of trafficking and prostitution in some political campaigns which have influenced policy (Wagenaar and Altink, 2012). Despite a growing body of research challenging claims of the success of abolitionist policies, there are continuing calls to adopt the 'Nordic model' criminalizing the purchase of sex, denying the views and experiences of many sex workers (Jordan, 2012; Phoenix, 2009b). Discussions supporting increased criminalization frequently make gendered assumptions that sex workers are overwhelmingly female, ignoring male and transgender workers, as well as the agency of many adult sex workers (Comte, 2014). Moreover they often identify sex work as 'selling oneself' or 'one's body', whereas sex workers themselves tend to define their work as selling sexual services (Kesler, 2002). This framing of the debate makes it difficult to move beyond simple dichotomies of force versus choice, as refutations of the abolitionist ideological position tend to be represented as unequivocal endorsement of sex work, even where they offer critical appraisal of particular working practices and explore potential improvements to sex workers' rights and safety. Thus sweeping claims are often made about the 'failure' of systems where prostitution is legal, without consideration of positive and negative dimensions of regulatory systems (Weitzer, 2010). Debates rarely consider the occupational structures and organization of sex work and mechanisms for collective action (West and Austrin, 2002).

The principal question to be addressed in this article concerns the impact of different policies on the safety, well-being and autonomy of sex workers in indoor settings and their views on these policies. In the Netherlands there has been considerable research and evaluation on the impact of changes to prostitution laws and policies since 2000. In the UK, however, there has been little primary research on the outcomes of recent legal changes, although certain studies (e.g. Phoenix, 2009a) have drawn on existing research to consider the potential implications of regulatory reforms since 2000. This article brings together the combined research experience of the two authors over a number of years, together with the findings from recent research and evaluation studies in the Netherlands, a recent qualitative study exploring working conditions and experiences of adult male, female and transgender sex workers in diverse indoor settings in Great Britain, based on interviews with 36 sex workers, two managers and two receptionists in parlours² (Pitcher, 2014); and other secondary sources based on research with sex workers in the Netherlands and the UK. While these studies differ methodologically, a common approach is that they draw on the direct experience of sex workers in different indoor settings. Wagenaar and Altink (2012) note the need to bring together an international body of evidence on the effects of policy measures and the way in which they are designed and implemented. While we are not able to offer a systematic review of policies in the UK and the Netherlands, bringing together our separate research experience and the findings from different empirical studies enables some comparison to be made in terms of the effects of different policies on particular groups of sex workers, specifically

those working independently or in collectives. Through drawing out some of the parallels concerning sex workers' experiences under the two different regimes, this article can inform policy debates and also future comparative research studies. There is a precedent for this approach in the work of Sanders and Campbell (2007), who fruitfully brought together their separate research studies with indoor sex workers in different cities to draw out the policy implications of measures to prevent crimes against sex workers. By comparing the experiences of sex workers under different legal frameworks, the analysis in the current article emphasizes not only the negative effects for sex workers of criminalization or partial criminalization, but also highlights that decriminalization and/or regulation alone is not sufficient to protect sex workers' interests, nor facilitate more supportive forms of working.

We begin by outlining the respective legislative backgrounds and then consider their implications for sex workers in off-street environments, drawing on a range of studies. We note that, while decriminalization of sex work is often seen as a precondition to secure sex workers' labour and human rights, questions remain regarding the potential consequences of regulatory reforms for sex workers' levels of autonomy and work organization, particularly for independent sex workers and those preferring to work in small collectives. Finally, we argue that the involvement of sex workers in policy development and a shift in thinking of state authorities from regulation and repression to a more emancipatory approach, aiming for increased control by sex workers over their work, are necessary to improve their working conditions.

Legislative Background

While there are different state models of regulation of prostitution, apparently contrasting legal approaches such as criminalization and legalization can sometimes produce similar consequences, particularly the marginalization of more visible forms of sex work (Scoular, 2010). We focus here on two examples of legislative approaches: the UK, with particular reference to England and Wales, where in recent years a number of measures have been introduced criminalizing aspects of sex work, and the Netherlands, where sex businesses are regulated and the organization of adult consensual sex work is decriminalized, but 'undesirable' forms of prostitution are penalized. The discussion focuses primarily on indoor-based adult sex work.

The UK has developed various pieces of legislation, resulting in an inconsistent approach to sex work whereby, while selling sex per se is not illegal, the laws relating to sex workers' working practices place a number of conditions on them, making it difficult for many to undertake their work in safety (Phoenix, 2009b). Over time, the British state has sought to regulate and control female sex workers, and more recently their male clients, through a series of measures (Scoular and O'Neill, 2007).³ Since the Street Offences Act 1959, which introduced the offences of soliciting and loitering in England and Wales, various legislative and policy changes targeting street-based sex workers have resulted in their increased criminalization (Pitcher et al., 2006). While the primary focus has been on more visible elements of sex work, legislation also relates to aspects of indoor-based sex work such as brothel-keeping, which is illegal under the Sexual Offences Act 1956.⁴ Some of the legal reforms have been influenced by concerns to combat human

trafficking into sexual exploitation, as a result of inflated claims about the problems (Phoenix, 2009b). The Sexual Offences Act 2003 extended definitions and penalties concerning brothel management and introduced new offences related to causing/inciting or controlling prostitution for gain.⁵ The Policing and Crime Act 2009 introduced a strict liability offence criminalizing clients of prostitutes subjected to exploitation,⁶ which as Parliamentary debates at the time showed was intended to reduce the demand for prostitution and, in turn, trafficking (Carline, 2011). The 2009 Act also allows for temporary closure of brothels on certain grounds. The term 'brothel' relates to premises used by two or more prostitutes for their work.⁷ Although there have been campaigns to change the law to allow small numbers of sex workers to work from the same premises for safety, and this was considered in the Home Office (2006) *Coordinated Prostitution Strategy*, the legislation has not been changed and this has implications for people working together in small numbers.

A model of intervention appears to have emerged in recent years in the UK, which Phoenix (2009b: 20) terms a strategy of 'enforcement plus support', which is underpinned by a focus on 'exiting' (Scoular and O'Neill, 2007). Although the language of recent legislative measures has become gender-neutral, male and transgender sex workers continue to be absent from most UK policy measures (Whowell, 2010). Thus within the UK, the legal approach to sex work may be seen as piecemeal, resulting in differences in interpretation according to local contexts, creating difficulties for sex workers, who struggle to maintain legitimacy in their working styles. While academics, sex workers and groups representing them, such as the English Collective of Prostitutes, have submitted considerable evidence to policy consultations noting the dangers of implementing various punitive proposals, including during the passage of the Policing and Crime Act, their voices appear to have had little impact.

In the Netherlands the ban on brothels in the Criminal Code⁸ was lifted in 2000, allowing regulation of the sex industry under administrative and labour law, and the treatment of sex work as labour. Since 2000 the Dutch Penal Code no longer treats organizing the prostitution of an adult female or male person as a crime, provided it is done with the prostitute's consent. This means it is legal to operate a sex business when it takes place on a consensual basis and involves adult persons above 18 (Wijers and Van Doorninck, 2009). At the same time 'undesirable forms of prostitution', such as the exploitation of involuntary prostitution and of minors, became more strictly penalized, as did clients of minors (Daalder, 2002). The current article 273f CC⁹ criminalizes coercion, (threat of) violence, deceit or abuse of authority with regard to both conditions of recruitment and work. The recruitment or exploitation of minors is punishable independent of coercion or consent, as is recruitment of sex workers across borders. Similarly, the Migrant Workers Act¹⁰ prohibits the issuance of working permits to non-EU citizens for work in the sex industry. This was justified when the ban on brothels was abolished by the argument of the then Minister of Justice that foreign prostitutes did not possess 'the mental ripeness to make deliberate decisions and oversee the consequences': they were considered to be victims per definition (Haveman and Wijers, 2001: 193).

In the majority of cities sex businesses are regulated through a system of licences. Brothels are subjected to a licensing system by city bylaws and have to meet certain standards concerning city planning, hygiene, fire safety and management (e.g. no forced

drinking, no unsafe sex, no minors and no undocumented workers). If a brothel owner violates the requirements the brothel can be shut down, a sanction which is more effective and easier to apply than criminal law (Wijers and Van Doorninck, 2009). Street sex work is not regulated under national (criminal) law but through local regulations and mostly prohibited. Sex workers have never been criminalized under Dutch law, nor have activities like soliciting or loitering.

The discussion on the abolition of the ban on brothels originated in wider debates in the 1980s on sexual violence and questioning of traditional divisions between 'good' women (deserving protection) and 'bad' women (who could be abused with impunity). By the time the bill was adopted by Parliament the major reason for its adoption, however, was the wish, especially of the big cities, for more instruments to regulate the growing sex industry. This is reflected in subsequent developments, which have put greater emphasis on regulation and control than on improvement of sex workers' social and labour position (Wijers and van Doorninck, 2009). This despite the fact that – next to the regulation of voluntary prostitution and more effective combat of involuntary prostitution and other abuses – the improvement of the position of sex workers was a major aim of the change of law.¹¹

Implications of the Different Legal Approaches for Indoor-Based Sex Workers

While there are significant differences between the legislative context and policy approaches in the UK and the Netherlands, there are also common threads affecting managed and independent sex workers. These relate specifically to their human and labour rights and the impact of stigma. Although there is no formal labour protection for sex workers in the UK, as sex work is not considered an occupation, legal changes in the Netherlands have resulted primarily in increased regulation and control of sex businesses, rather than improvements to sex workers' labour position. Thus the legislation in both cases, while distinct on the surface, appears to focus on interventions designed to manage and contain sex work for the convenience of the state, while taking a nominal approach to the needs and rights of sex workers. Here we consider the implications of the policies for sex workers' safety and workplace organization and also the extent to which the regulatory framework results in marginalization of sex workers.

Indoor-based commercial sexual services in the UK include escorts working independently or through agencies and workers in brothels, which vary in size and management practices. There is no distinction in UK law between types of brothel, yet there are considerable differences, in terms of size, management practices, charges to sex workers and safety precautions. While independent workers may be seen as comparable with self-employed sole operators in other sectors, lack of recognition as an occupation due to the criminal context results in sex workers being denied the labour and human rights afforded to workers in other labour market settings.

Within both the UK and the Netherlands there is a lack of clarity about the laws relating to sex work. In recent research with British sex workers (Pitcher, 2014), it is evident there is considerable confusion among sex workers, their clients and the wider population about which aspects of sex work are legal or illegal. In the Netherlands, insofar as

attention has been paid to improvement of sex workers' position, this has largely been interpreted as related to providing health and social services, rather than improving their labour and social position. Sex workers have been badly informed about the change of law, its consequences and their rights. Nor have they been involved in development and implementation of the new policies. Lack of consultation with sex workers and consideration of how the laws may affect them is a common issue in both the UK and the Netherlands.

Work organization and labour rights in managed premises

Within managed settings in the UK, such as brothels, individual workers are technically self-employed, although as sex work in these settings is informal, they have no formally recognized employment or contractual rights (Sanders, 2009). While some brothels are well managed and supportive to their staff and operate strict rules about working practices and client behaviour, others may display exploitative practices, or be less well organized (Pitcher, 2014). The study by Pitcher found variation in quality and degrees of professionalism among brothels, with some establishments offering more favourable working conditions and safety strategies than others. Sex workers in some brothels were given greater autonomy over the clients they worked with, or the sexual acts they performed. The precarious nature of work in these settings, combined with lack of any legal protection or regulation, leaves workers open to exploitation. While regulation alone may not necessarily ensure optimum labour rights for sex workers, evidence from legal brothels in Nevada shows violence is less prevalent where systems are in place for protecting sex workers and regulating establishments (Brents and Hausbeck, 2005). Where an enterprise is legitimate, it can also be more confident of being protected by local law enforcement if required. The licensing system in the Netherlands has also to an extent improved working conditions within brothels. Workplaces now largely conform to health and safety standards that are normal in other industries, although working conditions may vary (Dekker et al., 2006).

As Gall (2012) notes, however, having legitimate status is not sufficient alone to facilitate labour organizing. Since the lifting of the ban on brothels in the Netherlands, there has been major confusion about working relationships in brothels and tax rules, especially whether an employment relationship exists. The vast majority of brothel operators in the 2006 evaluation considered a regular employment relationship out of the question, often claiming that the right to physical integrity of prostitutes stood in the way of a superior-subordinate relationship. This is only partially true, as although employers have authority to give instructions, sex workers always have the right to refuse certain customers and/or sexual acts (Zuidema et al., 2006). The proprietors' claims mainly served to support their resistance to granting sex workers proper labour rights, as an employment relationship would oblige brothel keepers to pay social security taxes, provide sick pay and observe laws protecting against unfair dismissal (Wagenaar et al., 2013). Their position was supported by sex workers themselves: the vast majority preferred to be self-employed rather than employees. They considered the disadvantages, such as increased bureaucracy, loss of anonymity and independence and the obligation to pay tax, as greater than the advantages of a regular employment relationship: clarity

about rights and duties; a secure income; sick pay; entitlement to welfare provisions (Dekker et al., 2006). In practice, however, many sex workers are not really free to decide about their working hours, clothing, payment method and charges, thus putting into question their actual independence (Zuidema et al., 2006). According to the experiences of the Red Thread (Altink and Bokelman, 2006; De Rode Draad, 2012), many operators continue to act as if they were employers, despite the fact that the majority of sex workers indicate they are always free to refuse certain clients or sexual acts. This applies especially to regular brothels; workers in 'window brothels' are generally more independent.

The lack of clarity about labour relations was addressed through introducing the so-called opting-in system in 2008. Under this arrangement the operator withholds income tax and VAT on the earnings of sex workers, as in an employment relationship, on top of the regular percentage system (usually 50/50). The sex worker, however, cannot derive workers' rights from this. Neither can s/he claim the (tax) benefits due to self-employed workers. This means s/he has the worst of both worlds: neither the advantages of an employee nor those of a self-employed worker. The operator determines which regime applies and concludes an agreement with the tax department.¹² The choice is between an employment relationship (which no operator wants), or the opting-in system. If the operator decides for the opting-in system, s/he has to comply with a number of conditions. These include that the sex worker must be free to come and go as s/he pleases, cannot be obliged to wear specific clothing, to use alcohol or drugs, take specific clients or perform services that s/he does not want to do, nor can the operator impose fines on the worker or prohibit her/him working for others. The operator is moreover obliged to provide receipts.¹³ Apart from the conditions imposed on the operator, the advantage for the sex worker is there is no or little red tape.

In practice, however, there is little control over whether the operator adheres to the conditions and sex workers mostly do not feel in a position to claim their rights vis-a-vis the operator. Complaints include withholding extra money, imposing unauthorized fines, refusals to provide receipts, fraud with the tax money at the women's expense, prohibiting the sex worker to work for another operator, being forced to provide unsafe sex or services the sex worker does not want to provide, no freedom to decide about working hours or mandatory clothing (De Rode Draad, 2012). Furthermore, the government consistently refused to intervene in labour relations between sex workers and proprietors, arguing that this was a matter of private law. When it finally stepped in, it only reinforced the latter's position that sex workers are self-employed (Wagenaar et al., 2013). For many sex workers the disadvantages of licensing have been reasons for working outside the licensed sector (e.g. home-based work). Moreover, it has had the unintended effect of removing the issue of working conditions from the political agenda: 'with the imprimatur of the Tax Office sex workers are now officially regarded as self-employed' (Wagenaar et al., 2013: 51).

Implications for Independent and Collective Working

There are some similarities between the position of independent self-employed operators in the UK and the Netherlands. Independent sex workers in the UK are self-employed,

some formally registered and paying taxes. Independent participants in a recent study (Pitcher, 2014) emphasized the degree of autonomy they experienced, which they compared with self-employed operators in other sectors. Within the Netherlands, around a third of participants in the 2006 evaluation preferred working independently in their own business, because of the greater control it gave them over their working situation, anonymity, finances and no red tape (Dekker et al., 2006). Although the status of independent lone workers is not illegal in the UK, the impact of social stigma means many work in secrecy and rarely acknowledge their working status to anyone outside their working environment, which exacerbates their isolation (Day, 2007). Similarly, a continuing problem for sex workers in the Netherlands has been persistent prejudice about their profession and consequent treatment, despite the change in legislation (Dekker et al., 2006).

The situation vis-a-vis collective working is somewhat different, however. While some British independent workers prefer to operate on their own, others would ideally work collectively, to bring the benefits of safety and companionship that accompany working with others, while retaining control over their working conditions and earnings (Cruz, 2013; Pitcher, 2014). This then creates complications with regard to their legal situation. Concerns have been raised that the UK legislation may be used against sex workers choosing to work together, as well as against receptionists who may offer additional protection and screening of clients (Carline, 2011). As a consequence, those who might wish to work with others are either reluctant to do so because of the potential repercussions, or put themselves at risk of prosecution through opting to work collectively. Participants in a recent study of indoor-based sex workers (Pitcher, 2014) commented on the inconsistencies in the current British laws, whereby independent sex workers can be registered as legitimate self-employed workers, paying taxes, yet at the same time run the risk of being criminalized if they work collectively.

the ideal situation is where you ... have a separate premises where you can work from, and share those premises ... Because then you've got companionship, added security, there's someone to interact with. Because of the legal situation you have to be very, very careful. Because obviously it's running a brothel, which has ... really dangerous consequences these days. (Christopher, independent sex worker, quoted in Pitcher, 2014)

The study found significant concern among research participants working independently on shared premises that measures they take to ensure their safety could be interpreted by the criminal justice system as illegal:

because we work together ... this could be classed as a brothel. This ... is *so* wrong. We work in a safe environment because there's two of us ... I can't see any other industry where you would be expected to work in what could be considered to be a fairly high risk environment on your own ... I think it's a basic human right that we deserve to be safe in our job. We go to the nth degree to try and make it safe, and then we're hampered by ... the people that are supposed to be looking after us, the judicial system. (Angel, escort working from home with partner, quoted in Pitcher, 2014)

The uncertainty of their legal situation may deter sex workers experiencing violence from reporting these crimes, for fear of repercussions due to the illicit nature of their

work (Sanders et al., 2009). Some recent high profile cases, for example, where an indoor sex worker reported a robbery and was subsequently charged with brothel-keeping, may add to a lack of trust in the authorities and confidence they will protect sex workers (ECP, 2011). A survey of staff in 35 projects (Pitcher and Laing, 2012) found that only 25 per cent of projects working with indoor-based sex workers stated their service users sometimes or often reported crimes against them to the police. Reasons for not doing so included fear of prosecution (e.g. they might be seen as running a brothel) and the perception that crimes against sex workers would be treated as an 'occupational hazard'. In the study by Pitcher (2014), workers in collectives voiced their concerns about their situation. For example, Rachel, an independent escort working in a flat with friends commented that: 'Working as we do makes us a target ... for people that know we can't go to the police.' Because of fears about the potential consequences for their livelihood should they share with other sex workers, as the study by Pitcher found, many independent sex workers in the UK have taken the decision to continue working in isolation, even if they might prefer working collectively. The current stance of partial criminalization in the UK, therefore, rather than supporting sex workers and promoting their human rights, prohibits collective working and thus appears to exacerbate the risks to their safety.

In principle sex workers in the Netherlands are offered greater access to protection since the legal reforms. Nonetheless, as Wagenaar and Altink (2012) comment, poor implementation of the reforms following the 2000 Act, accompanied by lack of proper monitoring, has led to variable working conditions and labour rights for sex workers. Since the reforms in 2000, it has been argued that it has become more difficult for sex workers to work independently or run their own business with one or two colleagues. As Outshoorn (2012) notes, research by the Red Thread has found that sex workers are more likely to be in the dependent 'employment' relationships discussed earlier than working independently. Licences have been given to existing brothels and most municipalities put a maximum on the number of licences, while formally or de facto prohibiting home-based sex work. As a consequence there is little room for innovation or for sex workers to start their own business, even though many might prefer independent contractor status. In general, therefore, the possibilities for sex workers to work independently seem to have decreased. Illustrative are the experiences of an escort who works independently and prefers to keep doing so, but also wants to work legally. Initially she just declares her income with the taxes, but then hears from colleagues that most municipalities also require a licence:

To be sure I contacted my municipality and was told that for 'limited activities' I did not need a licence, but they couldn't tell me what 'limited activities' were. However, when I called the police to check, as they issue the licences, they unexpectedly told me that all sex workers are obliged to have a licence in my city. Pretty frustrated, I called another city. There a friendly civil servant told me that I could practise my work without problems in their region. But after having worked contentedly there a few times, I unexpectedly got a phone call from yet another civil servant. It appeared that also here it was prohibited to work without a licence. [...] Why not just apply for a licence? Well, that has a number of nasty snags. Firstly, to put in an application often costs at a minimum 1000 Euros per year. An investment that goes down the drain when the application is rejected – which happens regularly. [...] But worse, applications are publicly made known, as the public has the right to protest against the issue of a licence. It doesn't need

much explanation to understand that the well-being of sex workers is not exactly served when the entire neighbourhood is informed about their activities. And it will also probably not benefit my future career. (Marie Christine, 2007: 22–23, translated by M Wijers)

She concludes that her only option seems to be to start working for a brothel or escort agency that has a licence, which is precisely what she does not want. ‘A rather meagre interpretation of the idea of improving the position of sex workers’, she comments.

A further consequence of the change in law in the Netherlands relates to the position of migrant sex workers. While EU citizens are permitted to work in the sex industry, sex workers from outside the EU are excluded from legally working in the sector and thus forced to work in the illegal and unprotected sector. Prostitution is the only kind of work for which a legal prohibition on the issue of working permits exists. Given that predominantly women work in the sex sector, this raises the question of how migrant workers’ exclusion from the legal sector, with its labour law protection, fits with the obligations under article 11 of CEDAW (equal treatment in employment) (De Boer and Wijers, 2006).

Current developments

Within the UK, there has been no evaluation of the current laws and their implications for sex workers and there appears to be little likelihood of any systematic review of the legislation. In recent years, however, there have been campaigns to implement the ‘Nordic model’ in Scotland and Northern Ireland; and in England and Wales the establishment of an All-Party Parliamentary Group (APPG) on Prostitution and the Global Sex Trade, with a focus on prevention and exiting, which has CARE, a Christian group, acting as secretariat.¹⁴ The APPG has recently produced a report which includes a recommendation to introduce a general offence for the purchase of sexual services (All-Party Parliamentary Group on Prostitution and the Global Sex Trade, 2014). The conflation of trafficking and prostitution, as well as the misconceptions outlined earlier, continue to be perpetuated in many campaigns. The abolitionist agenda also continually fails to include the voices of sex workers and presents serious barriers to their involvement in policy debate.

Similar political pressures are also evident in the Netherlands. Irving (Majoor, 2005, Foreword) describes the way in which church, sex workers behind windows and kindergarten are able to coexist in Oudekerksplein in Amsterdam, which he views as a celebration of human difference. Nonetheless, as he observes, ‘No doubt, pressures are constantly being brought upon the city to more conventionally conform to the ordinary – or at least “clean up” its “too liberal” image.’ Although it seems unrealistic to expect that, by simply changing an article in criminal law, trafficking and other abuses will magically disappear, the general political attitude is that the lifting of the ban has ‘failed’: trafficking is seen to have increased dramatically – a claim not supported by any facts – and ‘something needs to be done’ (Parliamentary debate on Bill regulating prostitution, 2008–2013). Prostitution policies have become increasingly identified with anti-trafficking policies. Amsterdam has shut down a substantial part of the window brothels at the Wallen, aiming to address the perceived criminal infrastructure, members of Parliament

have visited Sweden and a (failed) bill was submitted to Parliament introducing mandatory registration for sex workers and criminalization of unregistered sex workers and their clients.

Assessing the Potential for Legal and Policy Changes to Improve Working Conditions for Sex Workers

It is clear from the studies discussed here that different policy approaches have a substantial impact on the working lives and welfare of sex workers. The research indicates that criminalization of sex workers decreases their safety and support networks. There are different perspectives, however, on which alternative is preferable.

Currently in the UK, brothel-working is in the informal sector and thus unregulated, which allows for unprofessional and coercive management practices to go unchecked. While the regulation of premises may not alleviate all the problems associated with sex work, such as wider gendered power structures, there is evidence that regulation and formal standards may help to reduce exploitation, violence and risk. In the Netherlands, for instance, licensing has led to standardization of health and safety within brothels. Although changes to the law will not necessarily address issues such as stigma, improving the rights of sex workers, who are currently a highly marginalized group, might afford them greater protection and reduce their vulnerability.

As Abel et al. (2010) have observed, decriminalization in New Zealand has led to increased employment, health and safety rights for sex workers. While the dangers of violence have not been completely obliterated (and it is questionable whether this can be said of any occupation), sex workers are now aware that they have a legal right to protection, rather than the onus being solely on them to ensure a safe working environment. Nonetheless, as the examples from the Netherlands show, legal changes are not sufficient alone to ensure sex workers' labour rights or increased autonomy. The impact of the reforms is particularly questionable for independent sex workers and those wishing to form small cooperatives. While collective working is problematic in the UK because of the precarious legal situation, the position is not necessarily improved in the Netherlands because of the licensing system, and therefore what is often seen as a preferred method of working by sex workers themselves is effectively prohibited in both countries for different reasons.

Arguably, assertions that lifting the ban on brothels in the Netherlands has been a failure are based on unrealistic expectations about the elimination of trafficking and other abuses by a sole change of law and do not take into account a backlog of more than a century of social and labour exclusion. Furthermore, it may be concluded that policy makers in practice find it extremely difficult to make the shift from their 'old ways' – control, repression, public order – to a more positive, emancipatory approach to sex work. It is easier to think 'what do we not want?' than 'what do we want?'. If sex workers are moving towards unregulated sectors, it is easier to expand control than to think about how to make the licensed sector more appealing. Although it is believed sex workers should be as autonomous as possible, freezing the number of licences has systematically created a large oligopoly of brothel owners at the cost of possibilities for sex workers to work independently or start their own business.¹⁵ Moreover, in the development of

licensing, the stigma associated with prostitution and the interest of sex workers to protect their privacy has been disregarded. As a consequence, not only undocumented migrants but also a substantial number of Dutch sex workers prefer to work anonymously outside the regulated circuit – which also undermines the aims of regulating voluntary sex work and combating trafficking and other abuses.

It is important, therefore, to develop a vision of what sex work might look like in the future and how to achieve this. Is a monopoly position for a few large operators desirable, for example, or is it preferable to facilitate development of small businesses of self-employed sex workers? What are the implications for licensing policy? How can a balance be achieved of control over abuses, while protecting sex workers' privacy and independence? How can criminal practices be addressed without increasing state control over sex workers, directly or through operators who in turn are controlled by the state, or pushing them further into invisibility?

What is clear, from evidence from the UK and the Netherlands, is that sex workers should be consulted on policy developments. As research studies confirm (e.g. Pitcher, 2014; Sanders, 2009), there is already a degree of self-regulation in indoor sex markets in the UK and thus it is vital sex workers are involved in the development and implementation of policies regarding sex work. Furthermore, support for labour organizing by sex workers is required to challenge employment practices such as those whereby workers are self-employed, yet working in situations where they are effectively managed, without the labour rights of employees. The extent to which this is feasible is debatable, however, given the current political agendas.

Conclusions

Despite recognition in the UK that disallowing sex workers to be based together would negatively affect their safety, it failed to make this vital legislative change, opting instead for fragmentary measures which further criminalized aspects of sex work. In the Netherlands, lifting the ban on brothels has not resulted in significant improvements to sex workers' labour position, but rather increased controls within the legitimate sector and created a dual system whereby illegal workers have become increasingly disenfranchised. While workers within licensed brothels have more rights vis-a-vis employers – even if insufficient and fragmentary – it also created a constricted legal market excluding undocumented workers who cannot, or independent workers who do not want to comply with all the conditions imposed. In both countries, it is apparent that the voices of sex workers have been marginalized.

While we argue that decriminalization is a first step towards recognizing the human and labour rights of sex workers, it is clear this is not sufficient alone and that a more proactive approach is needed to improve working conditions in diverse indoor settings. This may include greater clarity in the legal and regulatory context, avoiding the situation whereby workers are de facto employees, yet lack the employment rights and benefits of employees, and also supporting independent or collective forms of sex work. As we have argued, sex workers have considerable knowledge of professional and effective practice in sex work and it is vital they are involved in development of policies affecting them and that their labour rights are facilitated. Finally, it is

important to develop occupational standards and a professional support infrastructure based on the body of knowledge already built up among sex workers.

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Notes

1. <http://www.womenlobby.org/spip.php?rubrique187&lang=en.eu>.
2. Brothels in the UK are often termed parlours/saunas or working flats.
3. Much legislation discussed here relates to England and Wales. While Scotland and Northern Ireland sometimes have separate Acts relating to prostitution and sexual exploitation, similar provisions often apply.
4. This Act mainly applies to England and Wales. Scotland has its own legislation relating to soliciting.
5. Sexual Offences Act 2003, Part 1, ss. 52, 53 and 55(2). Relates to England, Wales and also Northern Ireland. Similar provisions apply in Scotland.
6. S. 14 relates to England and Wales and S. 15 to Northern Ireland.
7. The word 'prostitute' has been gender-neutral since 2003.
8. The amendment removed the general prohibition on brothel-keeping (article 250bis CC) from the Criminal Code; there was no new national prostitution law. It is therefore better to speak of 'decriminalization' than of 'legalization'. Regulation was left to the municipalities.
9. Alongside lifting the ban on brothels, the article on trafficking (250ter CC) was renumbered to 250a CC. It has been amended several times since, to bring it in accordance with the UN Trafficking Protocol, and is now numbered article 273f.
10. Article 8(1)(g) Wet Arbeid Vreemdelingen (Wav) jo. Article 3 Besluit Uitvoering Wav.
11. The abolition of the ban on brothels served six major aims: to control and regulate the organization of consensual prostitution; intensify the fight against involuntary prostitution; protect minors; protect the position of prostitutes; disentangle prostitution from marginal crime; and reduce prostitution by illegal aliens (Daalder, 2002).
12. See http://download.belastingdienst.nl/belastingdienst/docs/vaststellingsovereenkomst_dv7041z1ed.pdf; http://download.belastingdienst.nl/belastingdienst/docs/informatiemapt_dv7011z3ma.pdf.
13. <http://www.prostitutie.nl> (accessed 24 April 2013).
14. The stated aims of this group include 'to develop proposals for government action to tackle individuals who create demand for sexual services as well as those who control prostitutes; to protect prostituted women by helping them to exit prostitution and to prevent girls from entering prostitution'. Available at: <http://www.publications.parliament.uk/pa/cm/cmllparty/register/prostitution-and-the-global-sex-trade.htm>.
15. This seems in line with the tendency observed by Van Doorninck (1999) that in times of repression brothels tend to be small-scale, mainly run by women and scattered throughout the city, while in times of open tolerance they are large-scale, often concentrated and run by men, due to less risk of losing financial investments.
16. Note: access to interview data is restricted for reasons of confidentiality.

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