

LEGALIZING PROSTITUTION

Morality Politics in Western Australia

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There is now a sizeable literature examining moral panics and moral crusades in various societies, yet the literature is largely centred on the dynamics of panics and the social forces promoting them, while devoting almost no attention to the state. The state may play a key role in the process—either fanning or defusing popular alarm over a problem. In some panics, the state becomes an arena of struggle, or morality politics, between forces that promote and challenge claims regarding some social evil. The process of legislating morality provides a unique opportunity to examine the state as a dynamic actor in its own right. The article examines this in the context of the recent debate over legalizing prostitution in Western Australia.

Introduction

For almost four decades, researchers have examined the rise of moral panics and panic-inducing claims advanced by individual moral entrepreneurs, organized moral crusades, or the mass media (Cohen 1972; Goode and Ben-Yehuda 1994). Yet, the literature has devoted much less attention to the state, namely the government's role during unfolding panics, fanning or defusing popular alarm; the institutionalization of crusade claims in government policy; or conflicts within the state between elites who actively foster or exploit anxieties regarding some 'social evil' and elites who challenge the former's claims (exceptions include DiChiara and Galliher 1994; Dombrock and Hillyard 2007; Galliher and Basilick 1979; Sharp 2005; Schur 1980; Weitzer 2007a). The process of legislating morality or decriminalizing some illegal behaviour provides a unique opportunity to examine the state as an arena of struggle.

This article examines such struggles in the recent debate over legalizing prostitution in Western Australia. This event must be situated within the context of the globalization of prostitution debates and policies, which are no longer restricted to endogenous forces within a particular nation. Over the past few years, there has been a great deal of change in prostitution laws and enforcement practices in several jurisdictions. Much of this is due to the recent construction of sex-trafficking as a serious worldwide problem and its conflation with prostitution. Many nations have created new sanctions or intensified existing penalties for prostitution-related offences. Such changes have been analysed within the moral crusade framework, focusing on the ideology of the groups pressing for stiff penalties and official institutionalization of crusade claims in law and government policy (Ditmore 2005; Weitzer 2007a).

At the same time, some other societies are experimenting with policies that move in the other direction, away from criminalization. The claims driving these policies are

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important because they are diametrically opposed to both the conventional wisdom on prostitution and the specific claims of anti-prostitution crusaders. The Netherlands formally legalized prostitution in 2000 and New Zealand did so in 2003, while Germany, in 2002, decriminalized brothels and extended legal protections to sex workers to protect them from discrimination. In certain cases, such as Germany, the process leading up to statutory change saw remarkably little opposition (Dodillet 2004), whereas other cases have featured intense struggles over the legislation. Indeed, the 2003 New Zealand Bill passed with a thin one-vote majority, and the public was equally divided—with 43 per cent in favour and 42 per cent opposed (Mold 2003).

This article explores the political debate over a legalization Bill in Western Australia in 2007–08. As we shall see, the arguments against the Bill were intended to shame the Government and to arouse a host of fears in the public arena. Prostitution was defined as sinful and evil, inherently exploitative and abusive of women, and detrimental to society—problems that cannot be ameliorated by legalization. These charges clashed with the more pragmatic perspective of the governing party, which centred on harm reduction.

Alternative Paradigms

Different types of discourse appear in political debates on prostitution. The most common are those of public nuisance, traditional morality, oppression-of-women, and sex work (Kantola and Squires 2004; Outshoorn 2001). Public nuisance is most salient where the main problem is street prostitution and may be muted in contexts in which street prostitution is marginal. Traditional moral objections to prostitution—as sinful, evil, shameful—have been made for centuries and continue to be heard whenever the topic is discussed. The traditional moral model is distinct from an increasingly popular, modernized moral frame that I call the *oppression model*, which centres not on vice and sin, but instead on the subordination of women and children (Weitzer 2007b). The oppression model's two core tenets are sketched below, followed by those of the diametrically opposed sex work paradigm:

Claim 1: Prostitution inherently oppresses women. Prostitution is an institution of male domination and exploitation of women. The Coalition Against Trafficking in Women's (CATW) website proclaims that 'All prostitution exploits women, regardless of women's consent. Prostitution affects all women, justifies the sale of any woman, and reduces all women to sex'. It can never qualify as a conventional commercial exchange, nor can it ever be organized in a way that advances workers' interests. The favoured terms—'prostituted women', 'sexual slavery', 'violence against women'—clearly reveal the essence of prostitution as something done to people, not something in which agency might be involved. This perspective holds that most or all workers have been forced into the sex trade, are victims of trafficking, and that 'violence is intrinsic to prostitution', as CATW co-director Janice Raymond declares (Raymond 2004: 1175). All moral panics identify 'folk devils' (Cohen 1972; Goode and Ben-Yehuda 1994), in this case personified by the customers, traffickers and other profiteers who are depicted as exploiting and abusing women and, in so doing, reproducing male supremacy.

The sex work paradigm, by contrast, holds that prostitution is not necessarily oppressive to women, and that workers vary in the amount of agency they have with

respect to both entry into the trade and control over working conditions (Jenness 1993; Weitzer 1991; 2005*a*). This model challenges the notion that most workers have been trafficked or that force or fraud is employed in transporting most migrant sex workers (Agustin 2005; Doezema 2000). It also takes a more nuanced view of prostitutes' customers, recognizing that they vary in their background characteristics, motivation and behaviour, and buy sex for different reasons (Brooks-Gordon 2006; Monto 2000). In a nutshell, the sex work discourse focuses on the conditions of work and the need for workers' labour rights and state protection. The actor is treated as a worker selling a service, and no presumptions are made about any inherent features or deeper meanings of this activity.

Claim 2: Legalization would make the situation far worse than it is at present. If prostitution is intrinsically evil and oppressive of women, legalizing it is no solution. According to the oppression model, legal prostitution is detrimental in two respects: practically, by magnifying all the problems associated with prostitution (e.g. violence against workers, spread of STDs, organized crime, trafficking), and symbolically, by giving the state's blessing to a vile institution and condoning men's exploitation of women. Regarding the symbolic dimension, it is claimed that 'When legal barriers disappear, so too do the social and ethical barriers to treating women as sexual merchandise. Legalization of prostitution sends the message to new generations of men and boys that women are sexual commodities and that prostitution is harmless fun' (Raymond 2003: 322), and also poses a grave threat to moral order: '... the corrosive effect on society as a whole when prostitution is condoned through legalization or decriminalization' (CATW 2004). Anti-prostitution forces often express alarm about what they perceive as the 'normalization' of prostitution in various parts of the world.

The sex work discourse, by contrast, holds that certain types of decriminalization or legalization can advance workers' rights and institutionalize protections (Jenness 1993; Weitzer 1991). These protections have been documented in some legal systems, including Nevada, Queensland, and the Netherlands (Bretns and Hausbeck 2005; Crime and Misconduct Commission 2004: 75; Daalder 2007). The ability to operate legally can empower workers to report victimization to the police, whose role can be redirected to safeguarding workers instead of arresting or harassing them. Legalization also has the potential to reduce coercive ex trafficking, insofar as the sex trade is subjected to increased scrutiny by government officials.

Background

Until the 1980s, most prostitution-related activities were illegal throughout Australia, although some jurisdictions tolerated illegal brothels. In the 1990s, several states inaugurated legal changes. Today, brothels are permitted in Queensland, Victoria, New South Wales and the Australian Capital Territory; they must either register or obtain a license from the Government in each state except New South Wales. Street prostitution is legal only in New South Wales, provided it does not occur near schools, churches, residences or hospitals.

Since the mid-1970s, Western Australia has adhered to a 'containment policy' whereby the police allowed some brothels to operate, despite being illegal, as long as they adhered to a set of rules as monitored by police officers—a hybrid case of

illegal-but-regulated.¹ The containment policy was faulted for encouraging police corruption, including demands for sex in exchange for not arresting sex workers.²

In 2003, the Government offered the Prostitution Control Bill, 2003, which included provisions for a control board and mandated licensing for brothels, among other provisions. The Bill was opposed by the conservative Liberal Party, while the Green Party opposed it on the grounds that it violated sex workers' rights and gave too much power to the police (Watson 2003). Brothel owners opposed the Bill as well, stating that the stipulation that brothels be licensed and answer to a control board would encourage many workers to work illegally (Shine and Pitsis 2004). Similarly, the leading prostitutes' rights organization, Scarlet Alliance, argued that the Bill would lead to a two-tiered system of legal and illegal workers. Scarlet Alliance called for full decriminalization rather than legal regulation.

The Catholic Church opposed the legislation for predictable, moral reasons. Catholic Archbishop Barry Hickey claimed that prostitution inevitably harms those who participate in it as well as the affected communities, declaring that 'the right of a community to be free of licensed prostitution is, by its nature, greater than anyone's right to run a brothel' (quoted in Martin 2003). In the face of such opposition inside and outside Parliament, the Government withdrew the Bill.

Currently, in Western Australia, selling sex is not a criminal offence but associated activities are illegal, including procuring, living off the earnings of a prostitute or running a prostitution establishment. According to a government report, 38 illegal brothels exist in Western Australia, with approximately 380 workers employed therein, and a total of 1,200–1,700 prostitutes work in and outside the brothels (PLRWG 2007: 15).

In 2006, a task force was created by the ruling Labor Government to recommend reforms in prostitution policy. The terms of reference of the Prostitution Law Reform Working Group (PLRWG) were to (1) identify broad principles upon which prostitution reform should be based, (2) review laws in other jurisdictions, especially New Zealand, and (3) address the practical issues of legal reform (PLRWG 2007: 4). The committee was instructed to follow a model based on 'minimalist decriminalization' and to prioritize the promotion of public health, protecting sex workers from exploitation and deterring underage prostitution. Street prostitution was excluded from the committee's remit, leaving criminalization of street work intact. The task force modelled many of its proposals on New Zealand's 2003 statute, and the Group's recommendations were largely incorporated into the Prostitution Amendment Bill, 2007.³

The Working Group consisted of six members: Chairperson Sue Ellery (Labor Party, Minister for Child Protection and for Women's Interests), John Hyde (Labor Party,

¹The conditions were that the brothel remain drug and alcohol-free and not employ juveniles, and workers were subject to regular health examinations (PLRWG 2007: 14).

²Media exposés of police corruption generated policy changes in other jurisdictions. In Queensland in the mid-1980s, the Fitzgerald commission of inquiry recommended legalizing prostitution to prevent police corruption (Sullivan 1997).

³The Bill's key provisions are:

- certification of operators and managers of businesses providing sexual services (brothels, escort agencies), which must be renewed annually; employees are not subject to the certification requirement; applicants will apply to the Chief Executive Officer of the Department of Racing, Gaming, and Liquor, who will forward the application to the Commissioner of Police for a criminal background check in order to screen out persons with convictions for sex crimes, organized crime, drugs, and violence;
- permitting one or two individual workers, who have 'full control' over their earnings, to operate from private premises without being certified or registered;

Parliamentary Secretary to the Attorney General), Giz Watson (Green Party), and officials from the Department of Health, the Attorney General's Office, and the Organized Crime Division of the police force. With a member in the Working Group, the Green Party supported the Bill. The conservative Liberal Party was not represented on the committee or among the groups consulted, but some religious and anti-prostitution organizations submitted written commentary to the committee (PLRWG 2007: 39, 43). The exclusion of the Liberal Party from the Working Group almost guaranteed that the Bill would fail to win bipartisan support, and, indeed, the Opposition condemned both the Bill and the composition of the Working Group, claiming that the latter was merely a rubber stamp for the ruling party's position.

The Labor Party's position was influenced by several quarters. A major player was the police force. For many years, police commissioners and the police union had expressed dissatisfaction with containment and called on successive governments to reform the law (Pryer 2005; *West Australian* 2006). One commissioner, for example, complained that 'Prostitution legislation is unclear, murky for the police, and leaves us exposed' (quoted in Morfesse 2005). The police were represented on and endorsed the recommendations of the Working Group. Another influence was public opinion, which has consistently favoured liberalization. A 2000 *Sunday Times* poll reported that 71 per cent of West Australians supported legalizing brothels and 70 per cent said the Government should establish a red-light district in Perth (Taylor 2000), and a 2006 poll found that 64 per cent favoured legalization (Taylor 2006). The most recent poll found that 60 per cent supported the current prostitution Bill (*West Australian* 2007). The Government cited this poll several times in defending the Bill. The state's leading newspaper also called for legalization. An editorial in the *West Australian* criticized previous governments for failing to act and declared that 'the time has come for both sides of politics to end at last the petty and fearful politicking on this issue and do right by the police and the community'; the paper took the position that legal 'regulation of prostitution would be in the public interest' (*West Australian* 2006). The reference to 'fearful politicking' can be viewed as an effort to counter panic-inducing claims by Opposition politicians. Finally, the Labor Government was influenced, to some extent, by the views of the leading prostitutes' rights group, Scarlet Alliance. Scarlet Alliance

- guaranteed workers' rights to refuse to engage in any sex act; agreement to take part in a commercial sex act does not constitute agreement to continue to participate in the act, a worker may withdraw consent at any time (penalty for violation is \$6,000);
- prohibition on employing persons under 18 years of age (subject to 5 years' imprisonment) and prohibition on allowing a person under 18 to be present in a prostitution business (\$24,000 fine for first offence, 3 years' imprisonment for second and subsequent offence);
- police empowered to enter sex businesses, but not private residences, without a warrant, to ensure that the premises are certified and that an approved manager is present at the premises;
- the Planning Commission will determine where premises may be located, but the Bill does not prohibit brothels in the vicinity of schools, churches or other establishments;
- the Department of Health, in partnership with nongovernmental outreach groups, shall disseminate information to persons involved in the sex industry regarding health and safe sex practices; condom use is mandatory, and proprietors must provide them gratis; regular health checks for workers is encouraged but not mandated because mandatory checks give the false impression that workers are disease free; infected persons who engage in commercial sexual intercourse are liable to a fine of \$6,000;
- restricting advertising of prostitution services to newspapers, periodicals, and the internet; no restriction is placed on the content of such advertising; \$50,000 fine for proscribed advertising.

supported the spirit of the Bill, though it objected to several key elements.⁴ It would be mistaken, therefore, to conclude that Labor's position was a simple reflection of the demands of this organization.

As we shall see, many claims by the Opposition drew upon folk wisdom—sweeping arguments that have been made about prostitution for centuries—but many other claims replicate the views of staunch anti-prostitution groups, most prominently the Coalition Against Trafficking in Women (CATW). CATW espouses the oppression model and advocates the total abolition of prostitution. Opposition members cited as an authority CATW and its leaders: Sheila Jeffreys and Mary Sullivan in Australia, Janice Raymond in the United States, and Gunilla Ekberg in Europe. The Opposition party also drew support from a coalition of conservative groups, whose members include the Australian Christian Lobby, Australian Family Association, Young Christian Workers Movement, Women's Forum, the Catholic Church, and Linda's House of Hope (an exit agency). As in some other recent campaigns against the sex industry (Weitzer 2007*a*), opposition in West Australia was, therefore, a hybrid movement of right-wing and abolitionist feminist organizations. The Christian groups also adopted the language of the oppression model. The Catholic Archbishop for Perth, Barry Hickey, wrote an open letter condemning the Bill: 'My biggest concern is the damage done to the girls and women who are enticed into the trade. On the other hand, there is considerable research evidence to show that males, and particularly young males, who use prostitutes have greater tendencies towards domination of women and violence towards them' (quoted in *Christian Today* 2007). Opposition also manifested itself in numerous petitions signed by constituents and presented in the State Parliament (see below), and in some street protests. In November, 2007, 300 people participated in a march protesting the Bill, led by Liberal MP Janet Woollard. The media in Western Australia occasionally reported on the debate as it unfolded in Parliament, and sometimes featured sensational headlines or quotations from Opposition leaders as well as articles on the defects of legal prostitution elsewhere in Australia. But, for the most part, media coverage of the issue was remarkably restrained. In fact, the state's leading newspaper supported the legislation.

The debate in Parliament took place from August 2007 to March 2008. Data for the article are derived from a review of all contributions to the debate, published in *Hansard*, in the lower house (the Legislative Assembly) and the upper house (the Legislative Council). The analysis focuses on two issues: (1) the competing paradigms driving the debate and (2) specific claims about prostitution and the predicted outcomes of the legislation if passed. One consideration is the extent to which claims are evidence-based or simply asserted as articles of faith or an appeal to the mores. The following discussion identifies the main themes in the arguments regarding the legislation.

What's Wrong with Prostitution?

Traditional and modern morality

If effectively presented by the guardians of moral order, threats to traditional morality may be panic-inducing among the public at large. Opposition political leaders depicted

⁴Scarlet Alliance (2007) opposed the continued criminalization of street prostitution; called the penalties for non-compliance with the regulations excessive; opposed special health requirements for sex workers; and wanted additional anti-discrimination legislation to protect sex workers. None of these demands was incorporated into the Bill.

prostitution as wholly despicable, labelling it 'sleazy', 'dirty' and 'abhorrent'. Traditional sexual morality was held up as the gold standard:

The act of making love with a woman is, I believe, something that is best encountered when one is deeply in love and has a connection with that person. (Murray Cowper, Lib., Sept. 20)

Although some Liberal members cited religious sources to affirm the harms of prostitution, generic moral fears were more evident:

Maybe I am naive, but to me a brothel is not an ethical or moral business. How can somebody running a brothel be described as somebody of good character? (Colin Barnett, Lib., Sept. 25)

This bill is all about breaking down our community and pulling out another thread from the moral fabric of our society. (Donna Faragher, Lib., March 13)

The moral fibre of Australian society was threatened by a Bill that would allow brothels and living off the earnings of a prostitute: '... offences [that] have offended our society since time immemorial This government that knows better wants to change the standards that our society has accepted for centuries' (Simon O'Brien, Lib., March 12).

Moral crusades typically exploit horror stories, in which the most shocking cases are described in vivid detail and generalized as the norm (Cohen 1972; Goode and Ben-Yehuda 1994), and the use of such tales is a staple in the anti-prostitution movement worldwide (Weitzer 2007a). The use of worst-cases is clearly designed to stoke alarm among the public. In Western Australia, this dynamic was evident in stories about particular individuals as well as larger, dire predictions. The latter is illustrated by the Leader of the Opposition, who raised the specter of schoolgirls being given classes on how to become prostitutes: 'The next thing we will have is compulsory training in schools for young girls so that they know whether they can go into a brothel [The Government wants to] create career paths in prostitution' (Paul Omodei, Lib., Sept. 25). Another evil considered inherent in prostitution was that it leads to an early grave. Parliament was informed that 'the mortality rates for girls and women engaged in prostitution are 40 times higher than the national average' (Paul Omodei, Lib., Sept. 18). Suicide is asserted as common:

One madam was telling me how many of her friends had committed suicide because they had no longer been able to live with the activities they had to perform and be involved in as prostitutes. The horrific activities ... have had such a terrible effect on their mental ability that they had not been able to carry on with their lives. They committed suicide rather than having to go back to the brothels. (Janet Woollard, Lib., Sept. 25)

Customers were the objects of special scorn:

I do not believe that any woman actually enjoys having this sort of sex 20 times a day with all sorts of gruesome-looking, smelly men. If the government believes they do, it is living in cloud cuckoo-land. I have news for the Attorney General: when these gruesome men sexually abuse these prostitutes ... they do not tell them they love them; in fact, they abuse them. (Robert Johnson, Lib., Sept. 29)

Much more frequent than the traditional moral discourse, however, was the Opposition's articulation of modernized moral claims consistent with the oppression

paradigm, namely that prostitution equals degradation, exploitation and violence against women:

There are no happy prostitutes. They are in a trap, where they are abused, used, and trafficked. (Graham Jacobs, Lib., Sept. 20)

[The Bill will lead to the] legitimization of sexual assaults against women. ... The passing of this bill will mean that the state sanctions the sexual violation of women. (Robert Johnson, Lib., Sept. 29)

Prostitution was equated with male domination and abuse of women:

Women are abused in brothels; they are not treated as equals. Men who use brothels pay for the women and feel, therefore, that the women must do what the men want them to do It is not normal sex that the women are participating in. It is horrible, horrific abuse they go through. (Janet Woollard, Lib., Sept. 25)

Considerable time was spent denouncing the term 'sex work' and insisting on alternatives highlighting victimhood, like 'slaves' and 'prostituted women':

They want to call it a sex industry. They want to call prostitutes sex workers. They want to tone it down. They want to use euphemisms so that prostitution goes away or sits in the background, so that it will not influence our daughters, our community, our kids, our families, or our marriages. ... It is an attempt to call the slave trade for women something else. (Graham Jacobs, Lib., Sept. 20)

Anti-prostitution forces throughout the world have increasingly tried to link legal prostitution to sex-trafficking (Weitzer 2007a) and this has been evident in Australia as well (Sullivan 2004). The Opposition argued that legalization would increase the amount of trafficking. One Liberal member claimed that Victoria (where brothels are legal) is a place where trafficking from Asia had increased, citing one case in which police discovered a group of Asian women whose passports had been confiscated upon arrival in Victoria and who had been forced to sell sex:

Because of this huge increased requirement for prostitutes, an increased incentive for sex trafficking is created. ... Clear examples of sex trafficking are being utilized in this country to bring young vulnerable women from overseas to fill the need for prostitutes in our system. It is an absolutely disgusting and abhorrent practice. (Troy Buswell, Lib., Sept. 20)

Research has yielded quite different findings. A study by Meaker (2002: 61, 63) for example, concluded that 'the majority of women know they will be working in the sex industry and often decide to come to Australia in the belief that they will be able to make a substantial amount of money. ... Few of the women would ever consider themselves sex slaves'. And recent assessments by the Government (Parliamentary Joint Committee 2004) and by independent organizations (GAATW 2007) concluded that trafficking was not a significant problem in Australia. As the latter (GAATW 2007: 29) reported, 'Trafficking numbers are low primarily due to the geographical isolation of the country, combined with a very strict immigration and border control. There are legal channels for migration into the sex industry, which reduces the need for migrants to depend on organized crime syndicates or traffickers'.

Threats of proliferation and contamination

Anti-prostitution forces frequently invoke the fear of proliferation in order to foil calls for legalization. Opposition members predicted that legal brothels would multiply

throughout Western Australia and, of especially acute concern, would pollute suburban, residential areas, where the Liberal Party draws much its support. Indeed, 'No town or suburb will be immune' (Donna Faragher, Lib., March 13):

There is no doubt that the legislation will open the floodgates to prostitution in the suburbs. ... There will be brothels in streets in which there were none before. Under the Labor Party's plan, prostitutes will be allowed to operate in the suburbs near and around family farms, family homes. (Paul Omodei, Lib., Sept. 18)

[Brothels] will attract undesirables, who will come past people's premises where their families dwell, come past their yards where their children are playing, come past their schools, and come past their shops. (Simon O'Brien, Lib., March 12)

The Bill had no provision prohibiting prostitution in particular areas (e.g. near schools and churches), as location decisions were delegated to the Planning Commission, but government ministers countered that the Commission would operate with model guidelines and exercise due caution in its decision making.

The parallel argument was that legalization would increase *illegal* prostitution as well. It was predicted that the costs (e.g. expensive licenses, taxes) and restrictions imposed on legal brothels would discourage many brothel owners from operating within the law. It is difficult, however, to imagine how legalization would lead to a net increase in illegal operations, given that *all* such establishments were operating illegally under the current system.

Not only will legalization cause an explosion of the sex trade and its invasion of residential communities, but it will also endanger families. Parliament was reminded that 'a prostitute is somebody's daughter, sister, or mother' (Robert Johnson, Lib., Sept. 29). The idea that no reasonable person would accept a family member engaging in prostitution was used to show how ludicrous the Bill was. Labor members were exhorted to 'ask any woman whether she would be happy for her daughter to become a prostitute and to be a victim of male abuse' (Janet Woollard, Lib., Oct. 23), and chided 'I am sure there are many male government members who do not want brothels in which their daughters, granddaughters, or daughters' and granddaughters' friends may end up working, and in which they will be abused by men' (Janet Woollard, Lib., Sept. 25). The danger was quite personalized in being directed at Labor members themselves:

How many members opposite would be prepared to let any of their daughters become prostitutes and work in one of those brothels? How many of them? None of them! Not one of them would let one of their daughters or their sisters work in a brothel, but they want other members of the public to do so. Would the Premier want any of his daughters to become prostitutes? (Robert Johnson, Lib., Sept. 18)

We should think about what this bill is going to do, maybe not to the Attorney General's daughter but maybe to his granddaughter. The Minister for Police may have granddaughters one day as well. He would not want them to work in this area. He would not want his wife to work in this area. He would not want his son's girlfriends to work in this area. He would not want his son to take a girl out for dinner and to then hear a few days later from someone that he had bumped into her down at the local brothel. That is what this bill will do. (Janet Woollard, Lib., Nov. 13)

One Liberal member implied that such legislation could not have been produced by people from traditional families, when she asked during Question Time which members of the Working Group had teenage daughters and 'live in a traditional conventional

family whereby they are legally married to a heterosexual partner and together they have children?’ (Helen Morton, Lib., Dec. 4). The assumption was that ‘normal’ people would never have entertained such an absurd piece of legislation.

Another, rather distinct threat to families is that legal prostitution would encourage extra-marital liaisons:

Infidelity is the number one cause of marriage and family breakdowns, and this legislation will increase the incidence of that. ... This bill will contribute to the increased availability of prostitution, and therefore cheating or infidelity. (Anthony Fels, Lib., March 18)

There is one final dimension to the proliferation/contamination theme. Opponents of legalization historically have assumed that it has adverse collateral consequences, and the Liberal Party repeatedly tried to link prostitution to other kinds of deviant behaviour, particularly drug use and organized crime:

I have spoken to my local police and they made the point about bikies [biker gangs] and drugs. They say that the drugs are there and that the reason a lot of women are in the industry is drugs. They have a drug dependency and they need to make money. Prostitution is the fallback position for them, which is very sad. (John McGrath, Lib., Sept. 20)

There is well-documented evidence that associates prostitution with organized crime—no arguments! ... And that is why I suggest to members that these women are in a trap. They are not only in a financial trap; they are in a drug trap and they are in an organized crime trap. (Graham Jacobs, Lib., Sept. 20)

According to the Opposition, legislation focusing on prostitution is naive because it ignores its inextricable connection to other crimes: ‘Prostitution cannot be seen in a vacuum. Prostitution goes hand-in-hand with crime, drugs, and the exploitation of women and children. ... It is linked to the worst issues’ (Robyn McSweeney, Lib., March 13). A colleague concurred: ‘The fact is, if we legitimize brothels, we legitimize a raft of other activities; we open the door to criminals’ (Donna Faragher, Lib., March 13).

An immoral government

When it comes to deviant behaviour, forces advocating a harm-reduction approach or some liberalization of the law are frequently accused of being ‘apologists’ for immoral behaviour or branded as deviants themselves. The principle of harm reduction is seen as a ludicrous policy by those who hold a moral absolutist view of, say, abortion, drugs, gay rights and assisted suicide (Dombrink and Hillyard 2007). The Opposition in Western Australia spent considerable time trying to shame the Government for its amoral harm-reduction approach. One Liberal member called the Government ‘morally bankrupt’ (Robert Johnson, Lib., Sept. 29), and others accused it of liking prostitution: ‘Members of the Labor Party do not have a problem with prostitution per se,’ said one Liberal, who wondered if Labor members ‘believe that every single woman involved in prostitution has a genuine smile on her face and really enjoys her job’ (Daniel Barron-Sullivan, Lib., Sept. 20). Labor was accused of having a rosy view, envisioning prostitution becoming a ‘great new industry that is socially acceptable’ (Simon O’Brien, Lib., March 18):

This government is saying that it is okay to work as a prostituted woman and it is okay to work in an industry in which they will be abused not once or twice but on a regular basis. (Janet Woollard, Lib., Oct. 23)

Others argued that, by regulating prostitution, the Government would function as a pimp:

What does that make the government? If I were to be uncharitable, I could say that it was a four-letter word that begins with 'p' and ends with 'p.' The government will make money out of women's misery, and I think there is only one word for that. (Robert Johnson, Lib., Sept. 29)

The chief executive officer of the Department of Racing, Gaming, and Liquor [the agency tasked with certification of brothel owners: see footnote 3] will be the new pimp. (Maxwell Trenorden, National Party, Sept. 19)

This guilt-by-association tactic was used frequently to shame the governing party into withdrawing the Bill.

Another tactic used to question the Labor Government's moral authority is the presentation in Parliament of citizen petitions by Opposition members. Petitions were signed by residents of Western Australia, and ranged from a few signatories to several thousand. The petitions made claims echoing those of Opposition members. Petitioners expressed both specific and general fears: predictions that both legal and illegal brothels will proliferate if the Bill passed; that legalization will amplify sex-trafficking, drug addiction and organized crime; that the law would 'legitimize, institutionalize and sponsor exploitation and the further expansion of sex as a commodity'⁵; that 'prostitution ruins the lives of sex workers and their families',⁶ is 'dangerous and harmful' and 'causes lasting psychological, spiritual and physical harm'⁷; demanding that the Government fund programmes to facilitate the exit and rehabilitation of workers and conduct 'a full review of alternative legislation that provides better options to help the girls and women who become the victims of prostitution'.⁸ The Swedish law targeting johns exclusively (discussed below) was endorsed in several of the petitions. Nearly 2,000 residents signed a petition stating, *inter alia*, that the Bill would only exacerbate 'the degradation of women who enter prostitution' and perpetuate 'the demeaning of women whose husbands and boyfriends use prostitutes'.⁹ The fact that the petitions often used identical language to that of Opposition MPs, and were presented subsequent to parliamentary debates in which the Opposition voiced its criticisms, suggests that the Opposition had some success in its panic-inducing strategy, particularly when the alarmist tone of the petitions is considered.

Hellish legal prostitution regimes

Other sources of ammunition for forces opposed to liberalization are existing systems of legal prostitution. Recently, opponents of legalization have successfully caricatured it and blocked legislation that would have decriminalized or otherwise liberalized prostitution law in Britain, Canada and Bulgaria. The generic argument is that decriminalization or legalization inevitably worsens the situation for workers and institutionalizes 'sexual slavery'—a key tenet of the oppression model: '... legalization

⁵ Petition presented by Barry House, Lib., 27 November 2007.

⁶ Petition presented by Daniel Barron-Sullivan, Lib., 15 November 2007.

⁷ Petition presented by Paul Omodei, Lib., 16 October 2007.

⁸ Petition presented by Simon O'Brien, Lib., 4 December 2007.

⁹ Petition presented by Paul Omodei, Lib., 25 September 2007.

has led to more and more abuse' (Janet Woollard, Lib., Sept. 25). Specific legal systems were also targeted. Opponents point to what they consider failed experiments in New Zealand, the Netherlands, other Australian states, and Nevada in the United States as cautionary tales. New Zealand is a prime target in Western Australia because the Bill was based on the New Zealand model. It was asserted that trafficking was a major problem in New Zealand and that the number of prostitutes and brothels had grown since legalization in 2003, despite independent evidence showing that this has not been the case (Abel *et al.* 2008; *New Zealand Herald* 2007).

The same problem, *inter alia*, is asserted to exist in other Australian states in which prostitution is legal, with Victoria receiving the most criticism:

The Victorian example illustrates that legalized prostitution increases problems such as child prostitution and the trafficking of women by big business. Trafficked women and children are kept in conditions of slavery, and trafficking has increased to supply the new brothels. Bikies, providers, and pimps have been redefined as newly respectable sex businessmen. Child prostitution has increased in Victoria since legalisation. Before legalisation, there were 50 brothels. Since legalisation, there are now 400 illegal brothels and 100 legal brothels. (Paul Omodei, Lib., Sept. 18)

Similarly, it was asserted that illegal brothels outnumber legal ones in Queensland and New South Wales, and that this was inevitable whenever prostitution was legalized.

Legal systems elsewhere were described quite unfavourably. An anecdote from one worker in Nevada is used to condemn Nevada's entire system of legal brothels:

I listened to a program that was being aired on Radio Australia about prostitution in America. The program told the story of a prostitute who had worked in Nevada. ... Her impassioned and powerful speech made it clear to me that whether or not prostitution is legal, it is a shocking occupation for women. There are more problems with prostitution in Nevada where it is legal than there are in other American states where it is illegal. (Terrence Waldron, National Party, Sept. 20)

There is no evidence to support the claim that prostitution in Nevada is more of a problem than elsewhere in the United States (Hausbeck *et al.* 2007). In fact, a comprehensive study of Nevada's legal brothels concluded that they 'offer the safest environment available for women to sell consensual sex acts for money' (Brents and Hausbeck 2005: 289).

Others targeted Germany:

Prostitution is considered by German society to be a legitimate job. Perhaps that is where we are heading, and if that is where we are going I am absolutely appalled. I want to tell the people of Western Australia as loudly as I can that that is bad. (Maxwell Trenorden, National Party, Oct. 16)

The Opposition endorsed the Swedish model of criminalization. In 1999, Sweden passed unique legislation criminalizing customers exclusively, directing the police to arrest johns in order to stem the demand for sexual services.¹⁰ Many Opposition members

¹⁰ A Swedish government report describes the logic of the law: prostitution 'is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful not only to the individual prostituted person but also society at large. The objective is central to Sweden's goal of achieving equality between women and men. ... Gender equality will remain unattainable as long as men buy and sell and exploit women and children by prostituting them. ... Prostituted persons are considered the weaker party, exploited by both the procurers and buyers. ... By adopting the legislation, Sweden has given notice to the world that it regards prostitution as a form of oppression of women and children and that efforts must be made to combat it' (Ministry of Industry, Employment, and Communication 2003: 1).

claimed the Swedish law had been a tremendous success, and they invoked a leading anti-prostitution activist, Gunilla Ekberg, to support their case. Ekberg formerly served as an advisor on prostitution in the Swedish Government, and is now executive director of CATW-International. Independent assessments indicate that Sweden's law has not had the salutary effects claimed by advocates (Clausen 2007; Scoular 2004).

The Perspective of the Labor Party

The Prostitution Law Reform Working Group and the Labor Party largely adopted the sex work paradigm. Labor frequently used the terms 'sex work' and 'sex industry' and insisted that legalization would allow sex work to be treated like other occupations:

We are proposing that prostitution will become subject to the same controls and regulations that govern the operation of other businesses. The proposed legislation will enable sex workers to access, for the first time, the same protections that are afforded to other workers. (John Hyde, Lab., Sept. 18)

Despite charges by the Opposition, there is no evidence, at least in the debates, that the Labor Party condones or celebrates prostitution.¹¹ Instead, Labor acknowledged that 'in an ideal world there would be some structure around it, and that in an absolutely perfect world it would not exist' (Judith Edwards, Lab., Sept. 20). The 'structure' refers to regulations to reduce harm and increase health and safety.

In defending the Bill, Labor cited public opinion polls, reported earlier in the article. Although Labor leaders stated that they recognized that a minority of the public opposed the Bill, they criticized the Opposition for being motivated by moral indignation and for failing to accept the principle of harm reduction. The Parliamentary Secretary to the Attorney General, John Hyde, painted the opposition as closet moralists:

I respect people who have a philosophical opposition to prostitution. I fully respect their moral stance, but the Leader of the Opposition [Paul Omodei] and other members opposite must be brave. ... Members opposite are making a moral stance: they should be proud enough to say that they are on a moral crusade and that they will not deal with the real planning issues and the real policy issues involved in dealing with sexual services of a commercial nature. (John Hyde, Lab., Sept. 18)

Labor insisted that policy should be evidence-based:

When the Leader of the Opposition read his speech, it did not sound right. He quoted no research. I find it so interesting, in fact, that nobody opposite did that. We always find that if people come from a moral stance, they are not able to quote legitimate research. ... The member for Nedlands said ... it is all about organized crime and drug trafficking, but she provided no evidence. (John Hyde, Lab., Sept. 18)

¹¹ At one point, the Premier, Alan Carpenter, favourably compared prostitutes to a member of the Liberal Party:

I spent about 20 years as a journalist, and I have met lots of prostitutes. Many of them ... are far better people than the member for Hillarys [Robert Johnson], and they express a better world view than does the member for Hillarys. They express more understanding of the human condition than the member will ever have. (Alan Carpenter, Lab., Sept. 19)

This comment should be seen in the context of the Premier's response to Johnson's queries on 18 September (presented above) regarding Labor members' daughters, which the Premier found distasteful:

It is completely and utterly offensive to me to have the member for Hillarys suggest that this legislation ... is somehow or other going to encourage my children, my daughters, to become involved in prostitution. ... Perhaps the next time I bring my wife and children to Parliament for dinner, the member can come over and explain to their faces his views of what their likely career paths might be. (Alan Carpenter, Lab., Sept. 19).

Labor (and Green) members sometimes cited studies in defence of their arguments. For example, the Green Party leader cited a recent academic book by Perkins and Lovejoy (2007) in an attempt to debunk the Opposition's efforts to link prostitution to other kinds of deviance:

The overwhelming majority of Western Australia sex workers have never known a drug dealer, have never witnessed sex slavery or under-age sex work in their workplace, and have never been sexually exploited, and certainly have no associates involved in organized crime. (Giz Watson, Green, March 11)

In a long speech, John Hyde addressed many of the Opposition's charges. He noted that many of the problems in Victoria were not due to decriminalization, but rather to the burdensome restrictions put on the industry by government. He also argued that Australia does not have a big problem with pimps or organized crime in the sex industry, citing research from the Australian Federation of AIDS Organizations. And he rebutted claims about the success of Sweden's customer-targeted approach. In response to the Opposition's use of Gunilla Ekberg's account of the success of Sweden's law, Hyde counters with Clausen's (2007) research:

An examination [by Clausen] of 11 of the specific claims that Ms. Ekberg has reported shows that much of the article is a presentation of ideological positions. I have no truck with such people who are putting an ideological or a moral position, because such an argument should have population and health considerations, police support, and objective information. The main failure in Ms. Ekberg's position is that she is not able to specify any sources for her claims. (John Hyde, Lab., Sept. 20)

Hyde also spent a great deal of time refuting claims made in Janice Raymond's (2003) article, 'Ten Reasons for Not Legalizing Prostitution'. Raymond is a well known activist and co-director of CATW-America. It is instructive to quote Hyde's rebuttal at some length because it provides a point-by-point clash between the sex work and oppression paradigms:

Raymond said in 2003 that legalisation and/or decriminalisation of prostitution is allegedly a gift to pimps, traffickers and the sex industry. The reality is that Australia does not have a culture of pimps involved in the sex industry [where it is legal]. ... Another of Raymond's claims is that legalisation and/or decriminalisation of prostitution and the sex industry promotes sex trafficking. There is actually no evidence in Australia that the sex industry has increased in jurisdictions with either a legalised or decriminalised sex industry. In fact, New Zealand and Australia have a low incidence of sex trafficking. Raymond also claims that legalisation and/or decriminalisation of prostitution does not control the sex industry; it expands it. The reality is that the size of the Australian sex industry has not expanded in the states and territories that have decriminalised or legalised the sex industry. ... Raymond [claims] that legalisation and/or decriminalisation of prostitution does not promote women's health. Nothing could be further from the truth. Most studies in Australia have shown that sex workers enjoyed better sexual health than the general community and much lower rates of HIV-AIDS and sexually transmitted diseases. ... Another claim is that legalisation and/or decriminalisation of prostitution increases clandestine, hidden, illegal and street prostitution. New Zealand is the only country that has used the decriminalised model that we are adapting in WA—it created a good example of the outcomes of decriminalisation. The only authoritative study of New Zealand has shown that in its early stages there has been no increase in the number of street-based sex workers since the decriminalisation of the sex industry. Another of Raymond's claims is that legalisation and/or

decriminalisation of prostitution increases the demand for prostitution. She says it boosts the motivation of men to buy women for sex in a much wider and more permissible range of socially acceptable settings. Again, that is wrong. (Sept. 20)

Citing a 1986 survey showing that 19.2 per cent of Australian men had ever paid for sex, which dropped to 15.6 per cent in 2003, Hyde concluded that ‘decriminalisation and regulation actually decreases demand’ (John Hyde, Lab., Sept. 20). It is not established that decriminalization reduces demand, as Hyde claims, but other aspects of his critique of Raymond and Ekberg are generally consistent with academic reviews of the research literature (see Vanwesenbeeck 2001; Weitzer 2005*a*; 2005*b*; 2007*b*).

Another Labor Party strategy was to argue that the Bill was superior to both total criminalization and containment: ‘When activities such as prostitution are driven underground, the level of abuse, intimidation, and corruption ... increase, and they are also driven underground’ (John Hyde, Lab., Sept. 20). (Labor did not apply this argument to street prostitution, however, which would continue to be illegal.) Containment was perhaps even worse than criminalization as a policy because it forced the police into an untenable position and encouraged corruption:

Since the previous government’s failure to act, a royal commission into police corruption has been held in Western Australia, in 2003–04. It recommended that the government do exactly what it is now doing in introducing legislation to deal with the prostitution industry to avoid the exposure of police to corruption coming from their having to turn a blind eye to breaches of the law on a daily basis. ... Western Australia Police was part of the working group that I appointed last year, and therefore supports the legislation that has now come forward to the Parliament. (James McGinty, Lab., Sept. 18)

The Minister for Police quotes a previous police commissioner who complained that the ‘police remain in an ambiguous position’ (quoted by John Kobelke, Lab., Nov. 22), and Attorney General McGinty quoted a *West Australian* editorial criticizing containment as ‘grossly unfair to the police. They are put in the position of having to tolerate and try to contain illegal activities. They are left exposed to perceptions of potential corruption’. Clearly, the endorsement of the Bill by the police force and by the state’s leading newspaper was a major source of leverage for the Government—as such institutional support would be any time an illegal behaviour is decriminalized.

Conclusion

The Prostitution Amendment Bill, 2007, passed the State Parliament in April 2008. This event is noteworthy in its own right, given the extreme stigma attached to prostitution throughout the world. The law and the parliamentary debate over the legislation are important in several respects. My analysis draws attention to an under-researched issue in the moral panic and moral crusade literature—that is, the ways in which socio-political forces may successfully challenge the claims of moral entrepreneurs and, in this case, their political advocates. The literature is lopsided in its focus on moral entrepreneurs and moral crusades, while devoting almost no attention to countervailing forces. Legislative debates provide a unique arena in which both forces can be studied, as they directly confront each other’s claims and engage in moral politics.

The opposing political parties in Western Australia differed significantly in the sources used in support of their claims. As in conflicts over some other types of deviant behaviour (e.g. needle exchange programmes for heroin users (Buchanan *et al.* 2003)), the two sides differed in whether claims were grounded in scientific evidence versus moral principles. The Liberals rarely attempted to document their claims and, when they did, the sources were typically the writings of anti-prostitution activists. The ruling Labor Party more frequently cited academic studies or government reports.

The analysis also illustrates the ways in which two radically different paradigms (originally formulated in academia and by interest groups) were espoused by political elites. The ruling party adopted key features of the sex work paradigm and the associated harm-reduction policy. Most of the Opposition's claims are derived from the oppression model—a perspective driving a growing international campaign against the sex industry. What is noteworthy is the intractability of the Opposition's claims, even when presented with counter-evidence. Moreover, the Opposition did not attempt to address the fact that the police, public opinion and the state's leading newspaper supported the legislation. Instead, during the course of the debate, it continued to reiterate its articles of faith—that prostitution is immoral, inherently an institution of violence and degradation of women, and that legal prostitution will endanger families and contaminate residential communities throughout Western Australia.

The analysis also reveals how polarized moral politics can be. The debates were not a forum where bipartisanship was evident on *any* dimension of prostitution or *any* provision in the legislation regarding it. The Liberal Party criticized a host of specific problems that it associated with prostitution (drugs, organized crime, etc.) and also expressed alarm about the larger symbolic meaning of prostitution, in terms of how women are viewed and the message sent to the public in places where it is legal. For them, *abolition* is the only solution. The ruling Labor Party avoided the larger symbolic issue, but considered eradication utopian, making *harm reduction* the only practical solution. In so doing, the governing party provided a textbook case of how forces within the state can counter both traditional and modern moral objections to prostitution and thwart attempts by forces that seek to arouse alarm among the wider public—just as the New Zealand Labor Party succeeded in doing five years earlier.

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