

2003

Goodyear

(Goodyear, M., 2009: 22)

Summary

After decades of study (commissions and legislation²⁰⁶ prohibiting the purchase of sex work) the essentialist – sex work *was* violence against women. The 1993-1995 commission had before it no alternative. Rigour. Sex workers were excluded from the discourse. After ten years there is little if any suggestion that it is capable of fulfilling any of its intended objectives, other than possibly discouraging immigrant women sex workers. On the other hand the predicted unintended consequences appear to have transpired.

Much effort has gone into speculating how such a unique law could have been enacted in Sweden and drawing contrasts between Sweden and the Netherlands. It would be easy to attribute the Swedish legislation to one of many factors, and indeed people have done so. Factors such as the relative organisation and homogeneity of the women's movement, lack of a liberal tradition, and isolationism, undeniably played a part, but most likely were facilitative rather than causal. Swedish cultural tradition has long favoured a strong state over individual rights and has been protectionist and paternalist under a long standing social democratic government. Sweden prides itself on being unique, and so unique 'solutions' are not unexpected. Sweden has a zero tolerance rather than harm reduction drug policy and much of the rhetoric in the prostitution debates resembled that of the drug debates. Sex work played a small part in Swedish life and was relatively poorly organised with no effective voice, given a long history of conceptualising it as not only an evil of various guises, but one that threatened society as a whole. By defining sex work as violence and bundling it into the reincarnated *Kvinnofrid* concept (ironically derived from a concept in which women had *no* agency), both the women's movement and the Government were provided with political capital, albeit at some risk, if the expansive claims failed to fulfil their promise.

Where the Netherlands is liberal, tolerant, diverse and inclusive, Sweden tends to social control, homogeneity and exclusion. If the Netherlands was pragmatic, Sweden was ideological. Differing concepts of social citizenship and social control created the backdrop for such disparate regulatory moves. When regulation is placed in the context of historical cultural and legal tradition, it becomes more understandable. These considerations lead to the need to be extremely cautious about 'exporting solutions' such as the *Svenska Modellen*.

New Zealand

Background

New Zealand shared many historical features in common with other colonial possessions, and in particular British ones, inheriting both statute and case law from the United Kingdom, for instance the 1824 UK Vagrancy Act, till New Zealand passed its own laws.²⁰⁷ Prostitution was part of the way of life of the colony from the first contact of Europeans with the indigenous population and early settler days.²⁰⁸ This was an era when there was a severe gender imbalance in the population and women were in short

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supply.²⁰⁹ New Zealand progressively codified offences around prostitution in a number of statutes, prohibiting many of the activities involved in prostitution, but not the act itself, largely shaped by events in the UK and empire, and eventually Commonwealth. Two unique features were a relatively large indigenous Māori population, and a history of a social-progressive tradition.²¹⁰

In the nineteenth century, prostitution was generally referred to as the 'Social Evil'.²¹¹ New Zealand was amongst those dependencies that British authorities pressured into passing Contagious Diseases Acts, New Zealand's being in force from 1869-1910.²¹² These were oppressive Acts, based on the mistaken belief, as found in a 1922 inquiry, that women represented vectors for the spread of venereal diseases and therefore threatened the armed forces, if not the entire nation. These fears reappeared throughout the British Empire in both World Wars.²¹³ The Acts emerged from a moral panic, tinged with racism.²¹⁴ In the post war period the concern was more with 'promiscuity', although prostitution was seen as an extreme form of this. The gendered rationale and practice of venereal disease policy formed a focus for early feminist activism in New Zealand as elsewhere.²¹⁵

Statute law dealing with prostitution in New Zealand at the time of law reform included the Crimes Act 1961, Massage Parlours Act 1978-2003 and Summary Offences Act 1981. These prohibited soliciting, brothel keeping, living on the earnings of prostitution, while the Massage Parlours Act effectively allowed indoor commercial sex under a facade. The sale of sex has never been prohibited. These statutes did little to actually stop prostitution, the industry usually maintaining a thin pretence of being something else. Sex Workers advertised their services as 'escorts' and brothels advertised themselves as 'massage parlours'. Indoor workers were required to be registered with the police, however many police forces also informally registered escorts, and the media often required such registration before accepting advertisements. In 2000 amendments criminalized both clients and operators where workers were aged under 18.

A social reform government (Labour) came into power in 1984-1990, which tackled a number of moral issues including decriminalising homosexuality in 1986. Growing concern over AIDS led to a rethinking of the laws involving prostitution and a decision was made to help form and fund the New Zealand Prostitute's Collective (NZPC) in 1987.²¹⁶ The rationale was health promotion, based on the 1986 Ottawa Charter for Health Promotion,²¹⁷ empowering groups to promote their own health through peer driven processes. The NZPC became increasingly aware that legislative reform was necessary to achieve their objectives and began to advocate for repeal of sex work legislation.²¹⁸

Debates

In 1997 a number of groups came together to hold a Woman's Forum out of which a working group developed to draft a bill, including the NZPC, academics, women's groups (New Zealand Federation of Business and Professional Women, National Council of Women, YWCA), and the AIDS Foundation. Other individuals included legal volunteers and MPs, in particular the Associate Minister of Health who successively championed

decriminalization in parliament. Labour returned to power (1999-2008) and Tim Barnett assumed responsibility for introducing the proposed legislation as a Private Member's Bill, based on the harm reduction model of New South Wales (1996).

The bill was introduced on 21 September 2000 and placed in the ballot box, being drawn and debated on November 8²¹⁹, passing first reading 87:21. Party support came from the Greens, but was opposed by New Zealand First, who proposed the Swedish approach of criminalising the purchase of sex. It then proceeded to select committee (Justice and Electoral), which amended and reported the Bill on 29 November 2002, recommending it be passed. Dissenting minority opinions were recorded by the National, New Zealand First, ACT New Zealand and United Future members. This was a Private Member's Bill, and theoretically members were allowed a conscience vote. However the three members of the 1999-2002 coalition (Labor, Greens, Alliance) all had decriminalisation in their manifestos. Later, the Prime Minister, Helen Clark, lent her support to the bill.

The Prostitution Reform Act (PRA)²²⁰ passed third reading on 25 June 2003 narrowly. Of 120 MPs, 60 voted for it, 59 against, and one politician, the only Muslim MP, abstained. The result was a surprise as most commentators had expected the bill to narrowly fail. The support of Georgina Beyer, a former transsexual sex worker and MP, was believed to have persuaded several MP's, to change their votes at the last minute.

Frames and Actors

One of the unique features of the New Zealand debates is the role of health, not only in the 19th century, but also the 20th. The Contagious Diseases Acts were constructed around the image of fallen women, especially non-European women, as the source of contagion that needed to be contained. The role of health in the debates that led to parliamentary reform followed a very different trajectory. The Health Department driven by concerns about AIDS in the 1980s embraced the principles of health promotion, including the role of peer driven processes. By funding sex workers and recruiting them as partners a form of legitimacy was provided which became increasingly incongruent with the extant prohibitive legislation. The NZPC exploited a New Zealand tradition of intersectoral collaboration, working with other agencies as equal partners. Their philosophical approach was Foucauldian²²¹ using resistance to forge a reverse discourse whereby the image of sex worker as vector was to be transformed into sex worker as health educator, health worker, and agent for the prevention of sexually transmitted diseases in the general population. Their own research demonstrated that the high risk actor was not the sex worker but the heterosexual male. The New Zealand Public Health Association and Law Society were powerful allies, as were women's groups. Opposition was framed as state sanction of immorality, although the Government was careful to frame its eventual support as being independent of any moral position other than that of improving the lives and welfare of sex workers. Other opposition was couched in familiar moral panic vocabulary of sanctioning sexual violence and slavery, the expansion of the trade, trafficking and sexual exploitation of minors. During the parliamentary debates and committees, support came from women's rights, human rights and public health groups.

Opposition came from some feminists, although the police were neutral. Christian groups were divided,²²² and fundamentalist religious groups were opposed.

Aftermath: Implementation and Evaluation

The Act replaced the previous legislation, largely removing voluntary adult prostitution from the criminal law and replacing it with civil law at both national and local level. A distinction was made between voluntary and involuntary prostitution. It remains a crime to coerce 'someone to provide sexual services'. Sex work is also prohibited for those with temporary visas, and immigration for and investment in sex work is prohibited. Contracts between provider and client were recognised, and providers have the right to refuse services. Contested contracts can be referred to the Disputes Tribunal. Advertising is banned with the exception of print media which is restricted. The Summary Offences Act remains in force in relation to offensive soliciting. The Clean Slate Act 2004 also allows sex workers to apply for previous convictions to be removed from the record. Sex work is recognised (but not promoted) as legitimate work by Work and Income New Zealand. Sex work can now operate under employment and health and safety standards similar to other work. Employment disputes can be referred to the Labour Inspectorate and Mediation Service. Occupational health and safety standards were developed in consultation with NZPC. There is an obligation on employers and employees to practise and promote safe sexual practices. The Ministry of Health has the responsibility for enforcement. Registration of indoor sex workers with the police was replaced by certification at an administrative law level of brothels employing three or more workers. Prior records have been destroyed. Refusal of a certificate is permitted for prior criminal offences not related to prostitution. Police activities changed from registration and prosecution to protection. The Police Manual of Best Practice was amended to include prostitution.

Local government was empowered to develop by-laws for zoning and advertising, but not prohibit sex work. In summary the Act decriminalised soliciting, living off the earnings of prostitution and brothel-keeping. After the passage of the Prostitution Reform Act, the Maxim Institute and other conservative Christian organisations tried to gain an appropriate number of signatures for a citizens initiated referendum under the Citizens Initiated Referendum Act 1993. The initiative was sponsored by two United Future MPs, who had been outspoken critics. Although it was allowed an extension, anti-bill groups fell well short of gaining the number of authenticated signatures required.²²³

The sponsoring MPs left United Future, forming The Kiwi Party, making repeal of the PRA part of its platform in the 2008 election. Neither were re-elected, and the party failed to win any seats. United Future and New Zealand First which also opposed the bill, lost most of their seats.

Local Government New Zealand provided model by-laws and procedures. A private bill to restrict prostitution, the Prostitution Law Reform (Manukau City Council) Amendment Bill 2005 led to hearings before a select committee, but failed to pass its second

parliamentary reading. In addition, court challenges have usually failed to uphold restrictive municipal by-laws that try to obstruct the purposes of the PRA, namely decriminalisation, health and occupational safety for sex workers. By 2006, 17 of 74 local governments had drafted or implemented by-laws. Zoning by-laws have however thwarted attempts to move street work to 'safe houses' as better practice.

Evaluation

The Prostitution Law Review Committee (PLRC)²²⁴ was established to provide research on the effect of the law and provide reports, in collaboration with academic researchers. Sex workers are represented on the committee. The inclusion of evaluation within the Act helped to counter criticism²²⁵ based on ideology. In 2005 the PLRC published a survey of the nature and extent of the industry.²²⁶ Independent review by New Zealand academics working with sex workers was also provided for. These included developing a framework for evaluation,²²⁷ a systematic literature review,²²⁸ stakeholder interviews,²²⁹ and reviews of international legislation,²³⁰ existing practices,²³¹ and the role of local in relation to central government.²³²

Other research was carried out on the health and safety practices of sex workers.²³³ An initial report in September 2006 indicated that the number of prostitutes plying their trade on the streets, since the changes of the Prostitution Reform Act 2003, had remained the same or was reduced in some cases, contrary to allegations.²³⁴ The extent of sex work was compared to 1999, the only notable change being a trend from managed sex work to the private sector. An examination of entry and exit factors showed little incentive to leave, and as expected, financial return and independence were attractive features. Workers seemed more empowered, but there was still violence on the streets. Some deficiencies in safe practices, especially for oral sex, were identified. Perceived stigma remained a problem. Inconsistencies were noted between local and central government intent, the former being more restrictive, causing problems for some workers. The overall impression was positive.

The PLRC presented its final report in May 2008²³⁵ It found no evidence for the claims of critics at the time of introduction. There was no expansion of the industry, and on the whole the PRA had achieved its purpose. However employment conditions still left a good deal to be desired. Stigma remains a major problem, and the traditional distrust of authorities also remains. They suggested a further review in 2018.²³⁶ While the Government welcomed the report,²³⁷ critics were unimpressed,²³⁸ and suggested the committee was biased.

Summary

New Zealand provides a number of unique features, including its social-progressive tradition, often described as a social laboratory, proportional representation that allows greater diversity amongst legislatures, and a tolerant political culture. Nevertheless decriminalisation passed by the narrowest of margins on a conscience vote, and many people felt the politicians had exceeded the public's level of comfort. However a subsequent attempt to reverse the change failed, politicians and parties most opposed to