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Women's Studies International Forum

journal homepage: www.elsevier.com/locate/wsif

Theory versus reality: Commentary on four articles about trafficking for prostitution

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Points of agreement and definitions

In this issue of Women's Studies International Forum it's refreshing to read Limoncelli's observation there are points of agreement between abolitionists and non-abolitionists regarding trafficking. There is agreement that trafficking is harmful and that it is a "gendered component of economic globalization" (Limoncelli, p 16*). There is no argument about how to prevent trafficking for prostitution. All agree that sex discrimination, race discrimination, and economic injustice are at the root of women's inability to avoid prostitution. A solution to the problem of trafficking arising out of this consensus would be to implement programs that promote sex, race, and economic equality, offering women alternatives to prostitution.

There is also agreement that women in prostitution should not be criminalized. An abolitionist feminist approach to trafficking from the political left differs in important ways from an abolitionist approach from the political right. A critical difference is the evidence-based approach of feminists based on a broad understanding of the realities of sex, race, and economic inequality. Feminist abolitionists advocate the criminalization of buyers yet also insist on the *decriminalization* of women in prostitution. Abolitionists from the political right emphasize the immorality of trafficking for prostitution from a religious perspective and some would pragmatically accept arrests of women in prostitution for their own protection or in order to compel their testimony against traffickers.

"In much feminist scholarship," Limoncelli notes, "analyses of material relations have been superseded by a focus on discourse" and as a result "ideas become the main issue to be discussed rather than the actual material practices" of trafficking for prostitution (p 14*). This is an extremely important criticism. In this Commentary, I will use the example of New Zealand to keep this discussion anchored in material practices.

Prostitution as chosen work

The common but erroneous theory that prostitution is simply work prevails in 3 of the 4 papers. This view that

prostitution is labor skirts recognition of the fact that the institution of prostitution promotes and cements sex and race inequality. Trafficking expands and markets women's sexual exploitation and their subordination to men. When these facts are ignored, theory about prostitution gets derailed into strange territory. For example the important issue of immigration abuse, as discussed by Segrave in this issue, is elevated to a central position in the debate. Trafficking for prostitution is then addressed primarily as an issue of transportation or migration, rather than as an issue of women's sexual exploitation, violence, and inequality. The notion that trafficking for prostitution is banal whereas immigration abuse is the essential harm - reaches its postmodern nadir in a comment by sociologist Laura Agustin about Proposition K (a 2008 initiative to decriminalize prostitution in San Francisco):

My guess is that if K passes there will be no great impact either way for migrants who sell sex in San Francisco. Some of them might benefit from not being criminalized per se, but being undocumented workers would remain their principle problem (Yeung, 2008).

The people described by Agustin simply as "undocumented workers" are in fact desperately poor Asian women (Vietnamese, Chinese, Thai, and Korean) transported by organized criminals to North America for men's sexual use under slave-like conditions of captivity, violent control, and debt bondage.

There is evidence that very few people freely choose prostitution. O'Connell Davidson (1998:5) notes that only a "tiny minority of individuals" choose prostitution because of the "intrinsic qualities of sex work." Research in 9 countries found that 89% of all those in prostitution said that they were in prostitution because they had no alternatives for economic survival and that they saw no means of escape (Farley et al., 2003:33-74). Even the International Labor Organization (which defines prostitution as work) found that in Indonesia 96% of those interviewed wanted to escape prostitution (Jones, Sulistyaningsih, & Hull, 1998:43).

Prostitution was decriminalized in New Zealand in 2003. Despite its firmly optimistic assessment that decriminalized prostitution was a success in New Zealand, buried inside the 177 pages of a 2008 Review of the NZ law are a number of disturbing facts about the consequences of both the theory and the practice of a law that defines prostitution as work (Prostitution Law Review Committee (PLRC), 2008:121). The Report noted that after prostitution was decriminalized, violence and sexual abuse in prostitution continued as before. “The majority of sex workers felt that the law could do little about violence that occurred” and that it was an inevitable aspect of the sex industry, according to the Report (PLRC, 2008:14 and 57). During one year post-decriminalization, 35% of women in prostitution reported that they had been coerced in prostitution (PLRC, 2008:46). The highest rate of coercion by johns was reported by women in massage parlor prostitution who were pimp-controlled (described as “managed” by the Report). Furthermore, the social stigma of prostitution persisted after decriminalization.

In the five years since legally defining prostitution as work, the NZ law was unable to alter the exploitive quasi-contractual arrangements that existed before prostitution was decriminalized (PLRC, 2008:157). Most women in prostitution (either outdoors or indoors) continued to mistrust police and did not report violence or crimes against them to the police (PLRC, 2008:122).

As Roces points out in her article in this issue, trafficking for prostitution is not a “binary;” women have both agency and victimization in prostitution. Women who are in harm's way do what is necessary to survive and to obtain food, shelter and if they can, education for themselves and their children. While women are harmed and manipulated in prostitution most nonetheless survive, manage to deconstruct their experiences in prostitution, and in the Philippines as elsewhere, survivors fight back via theater, victim testimony, and by helping other women escape or avoid prostitution. Development Action for Women Network's (DAWN) analysis of the psychologically destructive process of internal commodification in prostitution is deeply accurate. The fact that women are earning money and supporting families offers the women a way to value themselves but it does not erase the human rights violations of prostitution that also cause profound harm.¹

As long as prostitution is considered work then it will inevitably function as a social and economic cage especially for poor and ethnically marginalized women. Almost always, when a woman has the resources to avoid prostitution, she does that. If we ignore the material evidence for the structural inequalities of sex, race, and class in trafficking for prostitution and if we ignore the clear statements of women in prostitution who tell us that they want to escape it, then we end up in a postmodern neverland where theory unanchored to reality frames prostitution as a problem of workers' rights or trafficking as an immigration problem (as Musto suggests in this issue).

Unionization as response to trafficking for prostitution

Limocelli suggests that forming prostitute collectives would make it possible to oversee conditions in sex industries and help to identify trafficked women. While this theory sounds reasonable, that is not the way prostitutes' unions operate in the real world. Many such unions function as

advertising agencies for sex industry pimps rather than as watchdogs.

Even though they represent only a tiny minority of all women in prostitution, the unions strongly influence public opinion, projecting what men who buy sex want to hear. When journalists, feminist theorists, or politicians want to learn about prostitution, women in prostitutes' unions are approached because they are easier to locate than women who have exited prostitution. Yet there is extremely low membership in prostitutes' unions in the Netherlands, Germany, and in New Zealand. Most women in prostitution avoid prostitutes' unions because the social stigma of prostitution remains the same regardless of legal status. Furthermore, the unions don't offer what most women want: alternatives to prostitution.

COYOTE (Call Off Your Old Tired Ethics) in USA, the DMSC (Durbar Mahila Samanwaya Committee) in India and the NZPC (New Zealand Prostitutes Collective) provide examples of the damaging effects of prostitutes' unions. All three of these unions have promoted prostitution as work, disappearing the harmful consequences of prostitution and failing to hold men who buy sex accountable for the damages they cause.

Task Force on Prostitution included pro-decriminalization advocates and members of COYOTE. Written with the purpose of decriminalizing prostitution, the *Task Force's Report* (1996) flatly denied the overwhelming violence in prostitution, refusing to include the testimony of those who had escaped prostitution because of its harms. In 1994, Norma Hotaling attempted to provide testimony to the San Francisco Task Force on Prostitution, reporting brutal violence that she experienced while in prostitution. She was removed from the Task Force and went on to found SAGE, an organization run by survivors of prostitution. Six other San Francisco organizations who were Task Force members later resigned in protest against the findings of the Report. In response to the Task Force's denial of violence, the San Francisco Commission on the Status of Women authored a 1998 report, “Violence against Women in Prostitution in San Francisco.” (San Francisco Commission on the Status of Women, 1998).

The DMSC in Kolkata, a prostitutes' and pimps' union that controls tens of thousands of women and children in prostitution, is similar in purpose to the San Francisco prostitutes' union. Former DMSC Director Dr. Samarjit Jana stated that since sex workers fulfill men's needs, prostitution must be seen as a profession (Dhar, 1999). Behind the prostituting women of Kolkata's brothel zone and out of public view are organized criminals who traffic women in prostitution, dominate the DMSC and control the money. Despite its description as a cooperative, the DMSC's women pimps and their male handlers extort 50% of the earnings of the women and children who are trafficked for prostitution in Sonagachi (Farley, 2006). At the time of this writing, the DMSC is lobbying in favor of laws in India that recognize prostitution as work.

Like the San Francisco and Kolkata unions, the influence of the New Zealand Prostitutes Collective (NZPC) came about as a result of public health concerns about HIV in the 1980s when researchers learned about the devastatingly high rates of HIV among prostituted women. Seizing the opportunity to

promote a political agenda while they also did HIV prevention, the NZPC and other prostitutes' unions have used public health monies (that became available because of the HIV epidemic) to fund the promotion of decriminalized prostitution.²

Theory vs. evidence for the consequences of legally defining prostitution as work

The New Zealand Ministry of Health accepted information about prostitution almost exclusively from the NZPC rather than from less biased sources. The lobbying success of the NZPC in promoting prostitution as work has resulted in passage of a law and also production of a Report (*Prostitution Law Review Committee, 2008*) intended to support the law. The NZPC offers no programmatic support such as job training or housing advocacy for the large majority of those in prostitution want to escape it. The Report whitewashes or suppresses evidence that prostitution remains harmful to those in it even after its decriminalization (see the following paragraphs for details regarding the bias of the Report).

Governments are complicit in the prostitution of women when prostitution is defined as work and especially when government revenue is generated by prostitution. For example, the Philippines' government grants visas to women who are known to be bound to prostitution but who are named "Overseas Performing Artists." It's likely that the government assumes that money otherwise not available would be sent home. Extremely poor women who might otherwise demand local jobs that would compete with men were trafficked overseas for prostitution in what Roces (p 14*) in this issue accurately describes as the government's sacrifice of its women for economic gain.

Organized crime is another material reality that is always associated with trafficking for prostitution, yet rarely mentioned in theory. In 2006 Auckland lawyer David Garrett declared decriminalization a "disaster" that had resulted in an "explosion" of children trafficked for prostitution in Auckland and Christchurch as well as three murders of people in prostitution.³ The trafficking of children in NZ has increased since decriminalization, especially the trafficking of ethnic minority Maori children. A legal pimp who recruited children was arrested and charged in Auckland (*Woulfe, 2009*). Gangs have waged turf wars over control of prostitution in certain areas in Auckland (*Tapaleao, 2009*).

Most theories about trafficking fail to address the reality of prostitution's impact on communities. Since decriminalization, street prostitution has spiraled out of control, especially in New Zealand's largest city, Auckland. A 200–400% increase in street prostitution has been reported since prostitution was decriminalized in 2003.⁴ Yet the Prostitution Law Review Committee, dominated by the viewpoint that prostitution is a reasonable job for poor women, opined "For people whose employment options may be limited, sex work, and particularly street-based sex work, can offer a quick means of achieving financial gains..." (*PLRC, 2008:121*).

After decriminalization, New Zealand citizens found it difficult to challenge brothels even if they were located near schools or in residential neighborhoods. In response to numerous complaints, the Mayor of Auckland served an abatement notice on a brothel in a residential neighborhood

located near a school. Staff at an Auckland agency noted that the numbers of johns in the streets has doubled since decriminalization. Debbie Baker is Manager of Streetreach New Zealand, a support service for people in prostitution that encourages them to leave the sex industry by providing exit strategies. In September 2008, Baker noted adverse effects of New Zealand's decriminalization of prostitution.

We have also seen a marked increase in men cruising the streets trying to buy sex. Although the numbers vary from day to day, it appears to us that overall, the number of men buyers has doubled since decriminalization. We as a team have been solicited by men while working with our clients on the street. Before decriminalisation this had not happened. These solicitations of the Streetreach staff occurred both in the street and also in massage parlours. The staff at Streetreach believe that the clients of prostitutes who are trying to pick up women have generally become more open and forthright. (Baker in phone interview with Farley 15 September 2008)

Once defined as work, NZ's decriminalized prostitution law not only encouraged men to buy sex, it transformed prostitution into an acceptable, even attractive job for young, poor women in New Zealand. In one of the Report's own surveys 25% of those interviewed said that they entered the sex industry *because* it had been decriminalized (*PLRC, 2008:39*).

Theory vs. evidence for a link between prostitution and trafficking

"Once upon a time," wrote *Carolyn Maloney (2007:xiii)* founder and Co-Chair of the U.S. Congressional Human Trafficking Caucus, "there was the naive belief that legalized prostitution would improve life for prostitutes, eliminate prostitution in areas where it remained illegal and remove organized crime from the business. ...Like all fairy tales, this turns out to be sheer fantasy."

There is now a large body of evidence regarding the effects of legal and decriminalized prostitution. Some of that has been described in the foregoing paragraphs. Nonetheless several of the authors of these four articles quote inaccurate theories about legal prostitution's relation to trafficking. Segrave for example, expresses the belief that legalization of prostitution will "combat trafficking" (p 5*) and Limoncelli (p 3*) suggests that the linkage between legal prostitution and trafficking might not in actuality exist.

Evidence supports the theory that legal prostitution is associated with increased trafficking. Traffickers and pimps can easily operate with impunity when prostitution is legal. A Nevada legal pimp told me in 2005 that a Russian trafficker offered to purchase his brothel.⁵ Wherever prostitution is legalized, trafficking to sex industry marketplaces in that region increases (for example to strip clubs, massage brothels, escort agencies, pornography stores, and bars). After prostitution was legalized in Germany and the Netherlands, the numbers of trafficked women increased dramatically. Today, 80% of all women in German and Dutch prostitution are trafficked.⁶

Segrave cites Australia as a trafficking destination country. This is probably a consequence of the country's legal

prostitution which in effect functions as a legal welcome to pimps and traffickers (Sullivan, 2007). Supporting evidence also comes from Sweden. When men who buy sex are criminalized (this might be the opposite of legalization) then trafficking significantly decreases (Ekberg, 2004:1199).

If decriminalization and legalization are no solutions to trafficking, what is?

The Netherlands has moved in the direction of *decreasing* rather than extending legal prostitution in the last decade. Explaining that legal prostitution did not reduce crime as they had hoped it would, Mayor Job Cohen closed more than 50% of Amsterdam's legal prostitution businesses. After legalization, organized crime spiraled out of control and women in prostitution were no safer than when prostitution was illegal (Charter, 2008).

In the past decade Sweden, Norway, and Iceland have passed abolitionist laws on prostitution. These laws criminalize buyers but not the person who sells sex. Thus we cannot agree with Limoncelli (p 5*) that there is a global trend "for the institutionalization of prostitution as formal work."

Roces cites the legal definition of trafficking in the Philippines that was modeled after the UN Protocol (United Nations, 2000). Both laws address the multiple forms of visible and invisible coercion of trafficking for prostitution.

The recruitment, transportation, transfer or harbouring, or receipt of persons *with or without the victim's consent or knowledge*, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal and sale of organs. (Republic of the Philippines, 2003)

These laws remove lacunae in previous laws that had been manipulated to define prostitution as labor. In both the Philippine law and the UN Protocol, the payment of money for prostitution is considered a means of coercing a person's sexual use. The laws provide recourse to victims of manipulation, exploitation, and coercion by johns and protection from the invisible coercions of sexism, racism and poverty used by traffickers to recruit women into prostitution.

In conclusion, several of this issue's authors fail to acknowledge prostitution's harms to women and its links with sex trafficking. Definitions of prostitution as work and proposals for its oversight by unions seem to result from persisting theoretical biases despite the growing evidence of harm. Theory must be anchored not to statements from those who lobby the hardest but to the material realities of trafficking for prostitution.

For example, giving credence to pseudoscientific reports from tobacco industry lobbyists resulted in 20 years' delay in the public's understanding of the harms of cigarette smoking. Similarly, a prostitutes' union in New Zealand lobbied not

only for a change in the law on prostitution but as discussed here, they also minimized and occasionally dismissed five years' evidence of the continued harms of prostitution despite decriminalization.

Theoretical distinctions between prostitution and trafficking simply do not exist in the real world. Men's demand for trafficked women cannot be distinguished from the demand for prostitution. The same qualities in women that are sought by men who buy sex are also risk factors for trafficking, for example, young age, low price, foreigner or "exotic," and inability to speak the local language. Studies of men who buy sex by Anderson and O'Connell Davidson (2003) and Di Nicola et al. (2009) indicate that most men who buy sex are aware of and have witnessed exploitation, coercion, and trafficking but this does not affect their decision to buy women for sexual use. The rationalization and denial used by men who buy sex ("All of them are exploited. However, they also have good incomes" Di Nicola, 2009:232) should be studiously avoided by those of us who construct theories or conduct research on trafficking for prostitution.

Endnotes

¹ This Commentary will not address the harms of trafficking for prostitution in detail. Many others have written about that and are cited in, for example, Dworkin, Andrea (1997). Prostitution and Male Supremacy. In *Life and Death* (pp. 139–151). New York: Free Press; Farley, Melissa (editor) 2003. *Prostitution, Trafficking, and Traumatic Stress*. New York: Routledge; Mansson; Sven-Axel (2006). Men's Practices in Prostitution: The Case of Sweden. In Pease, Bob and Pringle, Keith (editors) *A Man's World? Changing Men's Practices in a Globalized World* (pp. 135–149). London: Zed Books; MacKinnon, Catharine A. (2005). Prostitution and Civil Rights. In *Women's Lives, Men's Laws* (pp. 151–161). Cambridge: Belknap Press of Harvard University Press; MacKinnon, Catharine A. (2001) *Sex Equality*. New York: Foundation Press; MacKinnon, Catharine A. and Dworkin, Andrea (1997). *In Harm's Way: The Pornography Civil Rights Hearings*. Cambridge: Harvard University Press; Raymond, Janice G., D'Cunha, Jean, Dzuhatyatin, Siti Ruhaini, Hynes, H. Patricia, Rodriguez, Zoraida Ramirez, and Santos, Aida (2002). *A Comparative Study of Women Trafficked in the Migration Process. Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)*. Amherst, Massachusetts: Coalition Against Trafficking in Women. Retrieved from <http://action.web.ca/home/catw/attach/CATW%20Comparative%20Study%202002.pdf>.

² For details of similar use of federal HIV prevention funds in California see Farley, Melissa (2004) 'Bad for the Body, Bad for the Heart: Prostitution Harms Women Even If Legalized or Decriminalized. *Violence Against Women* 10: 1087–1125.

³ Stuff.co.nz (2006, April 17). Barrister labels prostitution law 'a disaster.' Retrieved from <http://www.stuff.co.nz/stuff/0,2106,3640007a11,00.html>. In New Zealand, communities impacted by prostitution objected to the noise, to the antisocial behavior of pimps, to women in prostitution themselves, and to johns, used condoms, needles and other litter. See *Voxy News Engine* (2009, May 1). Ministry of Justice Street Prostitution Review 'Farcical.' Retrieved from <http://www.voxy.co.nz/politics/ministry-justice-street-prostitution-review-039farcical039/5/13191>.

⁴ The New Zealand Prostitution Law Review Committee (2008) (page 118) noted that street prostitution in Auckland more than doubled in just one year, 2006–2007. Other reports in the press place the numbers much higher. "Estimates indicate that the number of street workers in Manukau City may have quadrupled since June 2003...." Manukau City Council, Report of Manukau City Council on Street Prostitution Control available at http://www.manukau.govt.nz/uploadedFiles/manukau.govt.nz/Publications/Plans_&Policies/mcc-report-on-streetprostitution-aug-2005.pdf. Yet on page 37 of the Report issued by the Prostitution Law Review Committee (2008) the Committee noted its own "counting errors."

⁵ Legal pimps in Australia, looking to expand the global business of sexual exploitation, have approached possible Nevada affiliates. See Brents, Barbara G. and Hausbeck, Kathryn (2001). State-Sanctioned Sex: Negotiating Formal

and Informal Regulatory Practices in Nevada Brothels. *Sociological Perspectives* 44 (3): p. 317. Daily Planet, a publicly-owned Melbourne-based brothel corporation, expressed its interest in opening a brothel in Nevada. See Marks, Kathy (2003, May 2). A breathless scramble for shares in the world's first listed brothel. The Independent. Retrieved from <http://www.independent.co.uk/news/world/australasia/a-breathless-scramble-for-shares-in-the-worlds-first-listed-brothel-537886.html>.

⁶ 80% of women in the Netherlands' legal brothels were trafficked from other countries. See Budapest Group (1999, June). *The Relationship Between Organized Crime and Trafficking in Aliens*. Vienna, Austria: International Centre for Migration Policy Development (ICMPD). Rates of trafficking of women into Germany after prostitution was legalized are comparable to those of the Netherlands. See Altink, Sietske (1995). *Stolen Lives: Trading Women into Sex and Slavery*. London: Scarlet Press. See also Raymond, Janice G. (2003) *Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution*. In Farley, Melissa (editor) *Prostitution, Trafficking, and Traumatic Stress* (pp. 315–332). New York: Routledge. Retrieved from <http://action.web.ca/home/catw/readingroom.shtml?x=32972>.

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