

# Debating Prostitution in Parliament

## A Feminist Analysis

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**ABSTRACT** In 2000, the Netherlands became the first European country to legalize prostitution, a policy supported by Dutch feminists. It distinguishes forced from voluntary prostitution, defining the latter as 'sex work', in contrast to feminist positions viewing it as 'sexual domination'. This article examines the discourses used by parliamentarians in the debates since the 1980s and charts the shift from a traditional moral view to the sex-work frame, creating new meanings of 'prostitutes', 'clients' and 'brothel keepers' in the process. The new discourse allows for an active female sex worker but desexualizes the nature of the prostitution exchange. Neither does it offer an account of why it is mainly men buying sex from (mainly) women. The analysis also highlights the contradictions created by the forced/voluntary distinction when speaking of the trafficking of women from poor countries and current anti-migration discourse, as well as the near obliteration of the racial differences between 'clients' and 'workers' in parliamentary discourse.

**KEY WORDS** Netherlands ♦ politics ♦ prostitution ♦ trafficking of women

### INTRODUCTION

What does the minister think of the Netherlands' image, putting itself on the map as the first European country to allow brothels? . . . The comparison to Sweden presently enacting total prohibition is nearly inevitable. There it is not a call of conservatism, but the consequence of a call from the feminist world. . . . [Here] however, the present day women's movement is pressing for a lift of the ban on brothels.<sup>1</sup>

Speaking is a Christian Democrat member of the Dutch Second Chamber, slightly puzzled, the more so as his party tradition had supported

abolitionism, the elimination of prostitution and brothels, a tradition which had always included the defence of the 'dignity of women'. In the Netherlands and Sweden two very different discourses became dominant and were enacted in law and policy. The latter criminalizes all involvement in prostitution, except the prostitute herself, the former legalizes brothels and acknowledges prostitution as work if entered into voluntarily. Sweden, with its long-standing social-democratic tradition of the attempted reform of human nature, resulting in punitive laws ranging from the regulation of alcohol to work fare for the unemployed, amended in 1998 its already strict prostitution regime to allow for the prosecution of clients. The Netherlands, with its traditionally more cosmopolitan and pragmatic society, moved from a formally abolitionist but de facto regulatory regime to legalization in 1999, only outlawing 'forced' prostitution and prostitution of minors. It has never criminalized the prostitute herself. Both countries legitimated their new policy by claiming its legislation was in line with 'feminism'.

Being a Protestant Christian Democrat, the MP, Piet Biesheuvel, was aware that the women's movement of a former era had worked side by side with the Protestant moral reform movement to abolish brothels and to make living off the earnings of prostitution a criminal offence. They had achieved their objectives with the enactment of the Morality Acts in 1911, which had made brothels illegal (de Vries, 1997). The women's organization had been allied to Josephine Butler's abolitionist league, and its discourse about the evils of male lust and its threat to female virtue had proved to be compatible with the Protestant discourse about sexual sin and the need to be chaste. Today, abolitionism is still the most common position in West European states, and it is also the one codified in the 1949 UN Convention for the Suppression of the Traffic in Persons (Outshoorn, 1998: 191), which, incidentally, the Netherlands did not sign. Legalizing prostitution as sex work makes the Dutch case quite unique. To date, the only other country legalizing prostitution is Australia, where three states (New South Wales, Victoria and Australian Capital Territory) regulated brothels in the course of the 1990s (Sullivan, 1997).

In contemporary feminism, abolitionism acquired a new fervour when prostitution was redefined as the epitome of the sexual domination of women by men and as a form of male sexual violence. This position has been elaborated theoretically in the work of Kathleen Barry, who called prostitution 'female sexual slavery' (Barry, 1979, 1995), and also underlies the analysis of prostitution by Carole Pateman in her classic *The Sexual Contract* (1988). It is a position that has come to be associated with radical feminism. However, as prostitutes started to speak out for themselves, claiming their rights and defending their actions as a legitimate way of making a living (e.g. Phetersen, 1989), and feminist theorists started to explore female sexualities, a new discourse emerged in the 1980s. This

rival feminist discourse holds that prostitution can be a profession: a sexual service provided by women (e.g. Bell, 1994; Chapkis, 1997; Phetersen, 1989, 1996), which, for the sake of brevity, I call the 'sex-work discourse'. For the US, Zatz (1997) distinguishes no less than four positions: the radical feminist position, the sex-work position, the liberal feminist position and a sex-radical position. In the Netherlands, given the different social and cultural context, only the first two were in evidence; potential liberal or sex-radical feminist positions never developed a separate discourse.

In this article I present an analysis of the political discourses of parliamentarians and cabinet members in the prostitution debates in the Netherlands over the last 15 years. I ask the question how they are conceptualizing prostitution, what gender meanings they ascribe to actors in prostitution, and what policy solutions are implicated to their definitions of the problem. I argue that the sex-work position came to be the basis of policy about prostitution in the Netherlands, as in the end most actors came to agree that making prostitution 'work' provided the best chance of combating what they considered to be the undesirable side-effects accompanying prostitution, which were held to be not inherent to the phenomenon itself.

#### 'FORCED' AND 'VOLUNTARY' PROSTITUTION

Debate on changing the prostitution articles in the Penal Code started in the early 1980s, when prostitution was becoming a large-scale industry in the Netherlands and evidence emerged that women from the 'third world' were being trafficked to work as prostitutes. Parliament had to consider reform after courts struck down local attempts at regulating brothels. Consecutive cabinets introduced legislation to repeal the ban and provide more precise definitions for the Penal Code on trafficking and 'forced' prostitution. A law including higher penalties for trafficking and a new definition of the offence was passed in 1993; the ban on brothels was passed in 1999 and took effect on 1 October 2000.

The cornerstone of Dutch prostitution policy was the construction of the distinction between 'forced' and 'voluntary' prostitution, and this was derived directly from feminist attempts at theorizing prostitution at the beginning of the 1980s. These saw prostitution as reflecting the power relations between men and women; the woman has to submit her sexuality to the man. But it was also acknowledged by feminists that prostitution could also be work (Acker and Rawie, 1982: 124). In the mid-1980s the distinction had found its way into the official cabinet documents on the status of women and sexual violence drawn up by the femocrats of the women's policy agency in the Netherlands, the Directorate for the

Coordination of Equality Policy (Directie Coördinatie Emancipatiebeleid – DCE) (Outshoorn, 1998, 2000). By including prostitution under the heading of sexual violence, these policy documents acknowledged that prostitution can be a form of sexual violence, but at the same time they accepted that women could ‘choose’ to do it as work. A fundamental view of the anti-sexual violence policy was the right of women to sexual self-determination; self-determination could be extended to prostitutes and prostitution. The role of the state is to guarantee the right to sexual self-determination and direct its activities to eliminating ‘forced’ prostitution and the trafficking of women. Making a ‘person’ enter prostitution by force, coercion, deceit or abuse of authority was to remain a criminal act, and this gender-neutral formulation of the offence was finally codified in the Penal Code.

In all ensuing policy debates, the various cabinets proceeded from the distinction between ‘forced’ and ‘voluntary’ prostitution, regarding the latter as work. Arguing that the state was not a moral police force, telling its citizens what to do in the sexual sphere, cabinets maintained that its role was limited to preventing the violation of the right to self-determination of ‘persons’ involved in ‘intimate relations’ and protecting minors and ‘other vulnerable groups’ (Outshoorn, 2000: 5). All cabinets have defended the distinction as a ‘realistic’ approach; it would enable authorities to set health and safety standards in legal prostitution, help maintain public order and provide security to prostitutes.<sup>2</sup>

#### THE DEBATE ON REPEALING THE BROTHEL BAN OF THE MID-1980s

During the first parliamentary debates on the repeal of the brothel ban in the mid-1980s<sup>3</sup> three discourses on prostitution can be discerned, which I label the modernized version of traditional moral discourse, the sexual domination discourse and the sex-work discourse.

The traditional moral discourse of the 1890s and early 1900s had defined prostitution as immoral, drawing on the Bible for its ideas about sin and unchaste women. It gave the state a pivotal role in eradicating vice and protecting the weak, even if these were ‘fallen’ women working as prostitutes. Men were required to curb their sexual urges and to be compelled to become just as chaste as women (de Vries, 1997). In the 1980s, this discourse was modernized. Prostitution was still seen as based on the exploitation of female sexuality, but the fallen women of the past were now victims of poverty or, in the case of trafficking, of deceit. No longer referring to ‘male lust’, and obliterating men’s role in the sexual exchange, it dropped the aim of reforming men. Within this revised discourse, prevalent among Christian Democrats and the orthodox

Protestant parties, the major issue became whether the state should maintain the former abolitionist position or become 'realist' by adopting some form of regulation. The Christian Democrats opted for realism; in the words of its parliamentary spokesperson, prostitution 'is an evil that cannot be totally banned from society, despite how much we would like to, as it is a phenomenon that definitely does not fit into the norms and values we would like to uphold. . . . The prostitute who is forced into her activities is the weakest party and should therefore be protected.'<sup>4</sup> For the Christian Democrats regulation was better able to do this than total abolitionism. This was strongly challenged by the orthodox Protestant parties. When 'citizens publicly display their sexual behaviour, offer their bodies for sale, sexuality becomes a matter of public order and public morals', and the state has to intervene. It should protect society against the 'immorality of the public business of prostitution'.<sup>5</sup> A 'government that no longer calls evil by its name, that for example, speaks of "sexual acts" instead of vice, is following a ruinous course'.<sup>6</sup> Government should ban 'the evil of the commercial exploitation of the human body from public life instead of accepting this activity that undermines marriage and the family'.<sup>7</sup>

The discourse about sexual domination was employed by the left-wing parties, but not followed to its logical consequence: abolition. The left framed prostitution in terms of power differences between men and women, described as 'ubiquitous',<sup>8</sup> and this enabled it to bring the role of men into the debate. Socialists pointed out that male demand creates prostitution in which prostitutes pay the price of being scorned and stigmatized by society.<sup>9</sup> According to the Social Democrat spokeswoman, 'the clients get off scot free, despite the fact that men take the initiative. Demand creates the market, the economists among us will say. Sexuality has always been dominated by men, at least in public.'<sup>10</sup> The sex industry was also discursively framed in terms of power by the spokeswoman of the Socialist Party, who pointed to the connection with the underworld and the increasing commercialization of the sex trade, in which the position of prostitutes is one of 'increasing danger, oppression, exploitation, object of divide and rule practices and expulsion'.<sup>11</sup>

But the left did not think abolition was the solution. 'Anti-prostitution law has never contributed to the improvement of women. Women in these laws have only been the object of masculine thinking about women. They tell more about the fantasies and projection of men than about women themselves and their sexual experience.'<sup>12</sup> Empowering prostitutes would be the best way to counter the sex bosses, 'as violence, coercion and deceit work best with victims without rights and are less effective with women who are protected by the recognition of their profession, protected by a strong legal, social and economic status'.<sup>13</sup> By decriminalizing prostitution prostitutes would stop being victims. It

would meet prostitutes' demands for recognition of their work. The policy potential favoured the new discourse, and it started to gain the upper hand in the course of the debate. In parliament the Social Democrat spokeswomen acknowledged the success of the women's movement in demanding the right to sexual self-determination and stated that the time has come to extend it to the prostitutes.<sup>14</sup>

Discursively the move was made by linking prostitution to the concept of self-determination. Sexual self-determination had been a key issue for the left, as it had been at the heart of the secular attack in the 1960s and 1970s against the long hegemony of Christian morality in the Netherlands. The secular agenda had covered such disparate phenomena as no-fault divorce, abortion on demand, gay rights, legalization of cremation and liberalization of Sunday observance regulations. The potential conflict between prostitution as the exercise of male power and the right to sexual self-determination in the left's discourse was solved by adopting the distinction between 'forced' and 'voluntary' prostitution. This enabled it to develop a position allowing for both legalization and regulation. Reserving the sexual domination discourse for forced prostitution (later linked with trafficking of women from abroad, turning them into victims of trafficking), the left drew on the sex-work frame when discussing voluntary prostitution, the third discourse used in parliament.

The sex-work discourse was congruent with individual rights discourse and liberal contract theory, which in fact underpin the distinction between forced and voluntary prostitution. In this discourse, prostitution becomes a sexual service or sex work, a profession a woman can enter out of free will. The prostitute can dispense of her body for the purpose of prostitution by contract, in which case the state should not intervene: it is the private affair of her as a citizen. As the Liberal minister stated during the debate on his bill: 'the phenomenon of prostitution concerns, after all, the private life of the prostitute and the client'.<sup>15</sup> The spokesperson of the Democrats 66 Party (D66 – the social-liberal party) phrased the idea slightly differently when he stated that, among the many types of prostitution of today, there are types in which 'people prostitute themselves temporarily or part time out of absolute free will and achieve a kind of independence with the money earned in this way'.<sup>16</sup> He held that legalizing brothels would enable prostitutes to practise their profession and rid prostitution of criminal elements. Other secular party spokespersons stated that acknowledging prostitution as work would meet demands from prostitutes, who would now be able to organize to further their demands and strengthen their position against the sex bosses. This became framed in the terms of prostitutes' rights. 'Now that the women's movement has more or less succeeded in realizing the right to self-determination about one's body, it is time to also acknowledge the rights of prostitutes', declared the Social Democrat spokeswoman.<sup>17</sup>

In the mid-1980s there was no sign in the debate of a later emerging difference in the discourse that marked off a 'feminist' from a 'market' variety of sex-work discourse. The left talked about improving the position of prostitutes and various hues of Liberals about the regulation of the sex business, an emphasis following the usual left-right divide. When drawing on sex-work discourse, the secular MPs all showed themselves to be aware of the coercion in much of prostitution, especially in the area of trafficking, but the 'free choice' argument the discourse was making was not theoretically explored in parliamentary debate. Sex-work discourse was attractive to MPs as it pointed to policy that could regulate the 'sex branch' and improve the position of prostitutes. This approach was congruent with the pragmatism endemic in Dutch policy when tackling moral or, more precisely, social-regulatory issues on which there is no consensus on values.

Looking at the three discourses of the mid-1980s, one can observe that, despite the fact that the repeal bill itself framed the issue of prostitution in a gender-neutral way, all three discourses were gendered discourses. The major difference between the modernized moral discourse and the sexual domination discourse on the one hand, and the sex-work discourse on the other hand, is that the first two view women as victims, while the latter allows for a modern sex worker, emancipated and assertive, who identifies as a service provider. The discourses also differ in their view of clients and sex-club owners. In traditional moral discourse (and in feminist abolitionist discourse), clients were men lusting after sex, and the brothel keepers and traffickers unscrupulous males or ageing whores enriching themselves at the cost of innocent young girls. Its modernized version genders clients, traffickers and brothel keepers as male, but males without sexuality. In the sexual domination discourse, clients are sexist men seeking to subjugate women by oppressive sex, and brothel keepers and traffickers become ruthless business people catering to male needs. The spokeswoman of the Social Democrats reminded the minister of this fact: 'You can take it from me that 99.5 percent of these are men!'<sup>18</sup> And the radical Socialist spokeswoman pointed out that 'the old-time pimp is the hard-boiled businessman of today's sex-world'.<sup>19</sup> In the new sex-work discourse clients are ordinary men, not any different to customers looking for a hairdresser or a doctor. Brothel keepers emerge as businessmen and only the trafficker retains his negative image of a profiteering dealer in people.

A final difference between the discourses is the image of women they contain. In both modernized moral discourse and sexual domination discourse women are victims denied agency and sexuality, while in the sex-work discourse the prostitute becomes a sex provider entering into a contract. Here prostitutes have agency and sexuality, but their sexuality and that of their clients is taken for granted and not questioned. This

discourse excludes any enquiry into the nature of the prostitution transaction, which deletes the sexual nature of the encounter, a point we are not allowed to forget in the other discourses. At the same time, it can be noted that all three discourses stay within the heterosexual order: men are paying for sex with women.

Although the bill passed the Second Chamber of parliament in 1987 with all the secular parties supporting it, and all the religious parties opposed, it failed to pass the First Chamber when it was debated along with a bill on the Trafficking of Persons in 1993, for reasons discussed further on.

### THE DEBATE ON TRAFFICKING OF PERSONS

In the course of the 1980s it became evident that a more precise yet broader definition of the offence of trafficking was required to combat trafficking, along with a higher penalty than the five-year maximum sentence required to hold a suspect in remand custody. In the ensuing political debate, trafficking became framed as a contravention to the basic human rights of sexual self-determination and bodily integrity of women (*Beleidsplan Emancipatie*, 1985: 49). The Standing Committee on Women's Equality Policy took the lead in 1987 by persuading the somewhat reluctant minister into drafting a bill.<sup>20</sup> The discourse developed in committee was a consensual one in which women from abroad were depicted as victims of unscrupulous traffickers tricked into prostitution in the Netherlands by false promises. This was tied into a parallel discourse about the dichotomy between rich and poor countries: the victims were also seen as driven by poverty to believe in the deceitful if seductive promises of the traffickers. This discourse tended to explain the supply of prostitutes in terms of a first world–third world divide, but women from the left parties also pointed to the clients creating demand, with the Social Democrat MP wondering how one could change the mentality of the men using trafficked women.<sup>21</sup>

At the same time, the Christian Democrats linked the rich–poor countries discourse to undesirable migration practices. Their spokeswoman pleaded for international cooperation in combating trafficking, and stated that stopping illegal migration would also stop the trafficking of women. 'Now the gates to Europe are wide open. Girls from South East Asia can travel freely via Frankfurt or Copenhagen, as visas there are not required. . . . From Colombia signals have reached us that combined with the trade in cocaine women and daughters are being trafficked by their own husbands and fathers. Those gates too should be closed.'<sup>22</sup> Thus in one sentence she combined victims of trafficking with girls freely entering the country to work. The left pointed out there was no reason to object to

foreign prostitutes, providing they were well informed and choosing to work in prostitution. If a woman has been trafficked against her will it is forced prostitution, whether she is already a prostitute or not.<sup>23</sup> All parties, including the Christian Democrats, demanded that victims of trafficking should receive temporary permits of residence to stand witness against the traffickers. In the Standing Committee ethnic difference was noted but not elaborated on: one MP mentioned women of colour doing window prostitution in Amsterdam, another noted the 'dubious preference of clients for exotic women'.<sup>24</sup>

When a bill proposing higher custodial sentences and a new formulation of trafficking was sent to parliament in 1988, the definition of trafficking of 'persons' was neatly tied to the already existing distinction between forced and voluntary prostitution. The memorandum to the bill about trafficking explicitly pointed out that in the past culpability had been independent of the fact of whether trafficking had occurred against the will of the woman concerned or not.<sup>25</sup> In the new regime, if the woman consents, there can be no offence in trafficking. Her arrival in the Netherlands and her work are seen as voluntary. If deceit, violence or coercion are involved, then forced prostitution and trafficking are in evidence. This allowed for foreign women working in prostitution in the Netherlands.

However, the wording of the bill did not survive a cabinet change in 1990, when it was redrafted in major ways (Outshoorn, 2000: 10). The new version no longer followed the distinction between forced and voluntary prostitution for women coming from non-EU countries.<sup>26</sup> All prostitutes from those countries were now defined as victims of trafficking. These women, so the reasoning went, are in a very vulnerable position, which makes them prey to deceit which – nearly always – leads to their exploitation. According to the new cabinet, trafficking could be presupposed if a foreign prostitute is 'found in a situation which is not equal to the circumstances in which the emancipated and assertive sex-worker in the Netherlands usually is found'.<sup>27</sup> The latter would never be found without a passport or personal financial means, with an expired visa or in extremely poor working conditions. The figure of a woman migrant actively seeking work as a prostitute in the wealthy West, often to support her kin, was thus defined away in the draft. The legal possibility for her doing so was also eliminated, as the new cabinet had no intention of providing these prostitutes with legal permits to work.

The modern assertive sex worker, however, did manage to insert herself in the modernized moral discourse of the Christian Democrats when the bill was debated in parliament. This discourse continued to allow for victims of trafficking and profiteering traffickers, but supported the move not to give women prostitutes from non-EU countries working permits, as this would not fit into Dutch migration policy. If these were to be granted,

'an uncontrollable stream of foreign prostitutes'<sup>28</sup> would come into the country. The Christian Democrat minister, author of the revised bill, talked about the necessity of stemming the stream of non-EU prostitutes and opposed work permits; these would constitute an 'open flank' of Dutch immigration policy.<sup>29</sup> Linking trafficking with illegal migration opened a space for 'false' victims, prostitutes from foreign countries helped by smart sex bosses to enter the Netherlands in order to ply their trade illegally.

Some on the left were quick to pick up the contradiction: if these women were sorry victims, they could not be purposeful illegal migrants coming to profit from the Dutch riches at the same time. But it left them in a quandary. Left MPs could, and did, speak about poor women forced into prostitution by poverty and fleeing to the West. But if they wanted to reinstate the crucial distinction between forced and voluntary prostitution and extend the sex-work discourse to non-EU women, they would at the same time be strengthening the image of the self-seeking migrant prostitute. Party politics decided the issue: the Social Democrats, who supported the Christian Democrat–Social Democrat coalition cabinet, accepted the bill despite the elimination of the distinction between forced and voluntary prostitution in the case of non-EU women in order not to embarrass their partners in government. Thus all women prostitutes from non-EU countries were encoded as victims of trafficking, but in the same move also as illegal migrants (Haveman and Wijers, 1992: 30).

In the end, the bill never made it to statute, as in the further parliamentary debates the First Chamber forced parts of the bill to be withdrawn for other reasons (Outshoorn, 2000: 11). Instead, only higher penalties and a more precise definition of trafficking were inserted into the Penal Code in 1993.

Contrary to the debates in the Standing Committee in 1987, during the parliamentary debate on trafficking no one raised the racial aspects of the issue. The shift of the discourse from 'third world' women to women from non-EU countries did reflect the reality after the fall of the Berlin Wall in 1989, when women from Eastern Europe started coming to the West as prostitutes. But the new terminology obscured the fact that the majority of foreign women prostitutes in the Netherlands, trafficked or not, were Asian, black or Latin Americans of mixed descent, and catered to the sexual desires of (mainly) white men. This is the more surprising when one considers that the original moral outrage about trafficking in the 19th century had become framed in terms of 'white slavery', with similarly framed panics occurring as late as the 1950s (de Vries, 1997); one can now almost speak of the reverse. The discourse about illegal migration made (non-white) prostitutes look dangerous and came close to a second reversal by suggesting white men may now be at risk of ensnarement by 'exotic' women. This also undercut the possibility that

some of prostitutes may indeed not have had 'free choice' in becoming prostitutes.

Looking at the trafficking debate, several shifts since the brothels debate can be observed. The traditional moral discourse and sexual domination discourse both have an answer to the question as to why women are trafficked for the needs of men. Active male sexuality and female passivity are the basic assumptions of the two frameworks (albeit implicitly in the modernized moral version). But neither explore the racial tangle or raise questions about why there is a male sexual demand for women from abroad, a demand exceeding 'home supply'. This latter question can be handled in the sex-work discourse, but this discourse tends to degender the issue into a purely economic story of supply and demand. It also cannot account for why it is women who are being trafficked for the sexual purposes of men or untangle the racial knot. In actual life, the sex bosses had little problem in relating market to ethnicity. When after the fall of the Berlin Wall Eastern European women became cheaper to employ than 'third world' women, and less likely to be accosted as illegal by the police chasing illegal migrants because of their whiteness, the sex bosses proclaimed in the press that Dutch men had had enough of 'exotic women'.

As trafficking was by definition about forced prostitution, this had the effect that during the parliamentary debate discourses about voluntary prostitution were not developed any further. Along with the link to anti-immigration discourse, the only other innovation was the degendering of the issue. The bill was named 'Trafficking of Persons' and spoke in gender-neutral language. This recognizes that boys and men could also be trafficked and enabled prosecution of this offence, but at the same time this normal legal language conceals the power dimension involved in prostitution: that it is mainly women being trafficked for the sexual purposes of heterosexual men. The male heterosexual order also remained intact because the parliamentary debate ignored the fact that trafficking of boys (and men) is also for male sexual demand, thus not questioning predatory gay practices either.

#### THE DEBATE ON REPEALING THE BROTHEL BAN IN THE LATE 1990s

After the failure of the repeal bill in 1993, the next cabinet, composed of Social Democrats, Liberals and Social Liberals, took up the issue again and produced a new bill in 1997<sup>30</sup> which was finally passed by both houses of parliament in 1999. In the new version the distinction between forced and voluntary prostitution was reinstated in its original form: the state was to permit and normalize voluntary forms that are socially

acceptable and combat damaging forms of exploitation vigorously. The lifting of the brothel ban was portrayed as essential in order to control and regulate prostitution, protect minors from sexual abuse and 'protect' (not 'improve') the position of prostitutes. The bill left the details of the licensing of brothels and enforcement to local authority. In the memorandum to the bill the minister wrote that legalizing brothels would lead to the 'normalization, control, cleansing and regulation of the sex business'.<sup>31</sup>

The dominant discourse during this debate was the sex-work discourse. Its proponents stressed the 'work' aspect of prostitution. It is hard and exacting labour, demanding certain skills and requiring a certain degree of toughness: 'both a physically and mentally demanding profession'.<sup>32</sup> But it is also a form of sexual service 'that does not necessarily impair human dignity'.<sup>33</sup> Legalizing voluntary prostitution and lifting the brothel ban would enable, in the words of the minister during the debates, to make prostitution 'healthy, safe, and transparent, stripped of criminal side-issues'.<sup>34</sup> This discourse overrode the discourse of the religious parties. Some of the orthodox Protestants adopted sexual domination discourse by speaking of prostitution as sexual exploitation or slavery or condemning the commodification of sexuality as an injustice to a gift of God to humanity. The Christian Democrats maintained their realist discourse in the hope of containing the excesses of the sex-industry.<sup>35</sup>

The work logic, however, failed on one crucial point. It had to be conceded that prostitution was a 'special profession', in an 'exceptional branch': 'as sexual service directly touches on physical and mental integrity involved in sexuality'.<sup>36</sup> A prostitute cannot be held to her contract, as making her deliver would be in contravention of her constitutional right to bodily integrity. From this it followed prostitution could never be 'fit work' a woman could be required to do in order to retain her unemployment benefits or other social security allowances. The ambivalence about the sex-work position also shows up in the bill and in the parliamentary debates where the discourse reverted to talking about 'protecting' prostitutes instead of 'improving' their position, a lapse into the older discourses where they were seen as victims in need of protection.

The work logic could also not accommodate the issue of age. Normally children in the Netherlands are allowed to work from the age of 15 and the age for consensual sex is 16. For sex work it was raised to 18, making paid sex with a minor illegal; it cannot be thought of as consensual sex. Employing a minor as a sex worker, or purchasing sex from a minor, was defined as forcing the minor into prostitution.<sup>37</sup> Discursively this move was achieved by focusing on the sexual aspect of the work, a matter glossed over, as we have seen, in the sex-work discourse, which tends to ignore the nature of the interaction. As one MP elaborated, it stands to good reason to exclude prostitution from consensual sex between minors, as 'making a discovery tour with your boyfriend [at age 15] is something

totally different to having sex with somebody for money twenty times a day'.<sup>38</sup> The emphasis on the sexual abuse of minors, a typical shift of the 1990s, caused the issue of the sexual abuse of women in prostitution to become marginalized in this debate.

The sex-work discourse also set the frame for the renewed debate about non-EU women coming to work as prostitutes in the Netherlands. In this discourse they were no longer victims of circumstance but illegal workers, to be prevented from coming to the Netherlands in the first place. This was seen as the best way of preventing trafficking. The bill aimed at stopping 'the stream of foreign prostitutes'.<sup>39</sup> The Green Left Party attempted to legalize the already estimated 10,000–15,000 non-EU prostitutes (estimated as 50 percent of all prostitutes in the Netherlands), but was alone in this attempt. Ironically, by wanting to legalize the migrant prostitutes, the Greens reinforced the definition of the issue as illegal migration. Here too the work discourse failed: by refusing these women work permits, it seemed as if working was not what these illegal migrants were doing. The Green Left was also the only party to deconstruct the implicit racial character of the dichotomy of legal and illegal prostitutes: white, EU citizens, protected by legal rights, and black, non-EU prostitutes without this protection.<sup>40</sup> Other parties stated that legalizing the illegal prostitutes would give a 'wrong signal' and attract even more of them.<sup>41</sup>

The only other discourse that challenged the sex-work discourse in the parliamentary debate was the time-honoured one about local autonomy vs central authority. The space for this discourse was provided by the fact that the repeal bill left further regulation of the sex industry and enforcement up to local authority. It was seized by the religious parties in an attempt to reinstate the ban on brothels at the local level, but was resisted by the secular parties, who invoked constitutional law, pointing out that the Penal Code is binding for the whole territory of the Netherlands. Local autonomy also gave the opening for a reappearance of the law and order discourse that had informed the original debate in the 1980s when local authorities had tried to fight the sex industry. As municipalities were to develop licensing and see to policing, the Liberals promptly went into their usual mode of demanding more money and personnel for the police.

The vote on the bill in 1999 split predictably along the religious and secular divide in both houses of parliament. This does not mean that there were only two competing and opposing discourses. Although the revised version of the traditional moral discourse predominated with its 'realist' position on state intervention among Christian Democrat MPs, the older moral discourse about sex and sin could still be heard among the orthodox Protestant MPs, which made them favour abolitionism and a strong role for the state. All religious spokespersons referred favourably to the new Swedish regime.<sup>42</sup> The sex-work discourse was not monolithic

either. Differences appeared between a pure market discourse, in which the regulation of the sex industry was the major issue, and a feminist version, which emphasized the improvement of the position of the prostitute. The market version, popular among various brands of Liberals, was genderneutral and desexualized the people engaged in acts of prostitution. The feminist version gendered the prostitute and reminded that prostitution is a 'daily occurrence': 'one man in four goes to whores', as the Social Democrat spokeswoman stated.<sup>43</sup> But sexuality does not enter into either discourse. Contrary to the older discourses and the sexual domination discourse, the sex-work discourse did not deconstruct male sexuality nor was it able to provide an explanation to the question of why it is mainly men buying sex from women. As we have seen, this is something traditional moral discourse or older feminist discourse could do, however unsatisfactory some of these older answers may have been.

## CONCLUSIONS

The most notable shift in the discourse about prostitution since the 1980s has been the rise of a new dominant discourse, the sex-work discourse, which has effectively displaced the older moral discourses in the Netherlands. The image of the prostitute emerging from Dutch prostitution law, however, is a split one. On the one hand, there is the modern, assertive sex worker who knows what she is doing; on the other hand, there are migrant women prostitutes who come to the Netherlands only to make money and do it in a disreputable way. With the article in the Penal Code about trafficking of persons, it is conceded that some women are victims of forced prostitution. The erstwhile unscrupulous brothel keeper has become a businessman who may well be willing to go along with local regulation if it is in his interest and enter in collective bargaining with other employers over working conditions and pay for their sex-workers. The archetype of the 'madam' – the older female brothel keeper – has no contemporary equivalent; maybe because of decent levels of social security. Clients are no longer lusting men but desexualized male customers.

The MPs drawing on the sex-work discourse were not unaware of the limitations of the approach. Given the principle of bodily integrity, it had to be conceded that sex work is a special type of work that cannot be exacted from a 'sex worker' under the usual labour legislation. In the 1980s, sex work was discussed without reference to what was being transacted, but in the 1990s, MPs were necessitated to provide sex work with substantive meaning. Prostitution now became a very personal service, demanding high skill and hard work and involving very close body contact. (In parliament no one dared become any more explicit about

these contacts.) The work also had to be re-sexualized if one wanted to prevent minors from doing the work. The discursive solution was to differentiate the sexuality involved in prostitution from the experimental and exploratory sexuality of young people. In the same turn teenagers were turned into children in need of protection against the lusts of adults. The latter appear as unsexed, which hides the fact that it is predominantly men who sexually abuse children. This constitutes a considerable shift over time if one remembers that the whole issue of prostitution, then still defined within the sexual violence frame, started off with feminists worrying about men sexually abusing women.

MPs using the sex-work discourse could also not deal with the matter of non-EU prostitutes without getting involved in a new set of contradictions. People from non-EU countries were getting work permits for all kinds of work in the Netherlands. If prostitution is just normal work, why then can female prostitutes not obtain a work permit? The answer in the debate was not a denial that it was work, but an affirmation of the construction of the 'national interest': the standard requirement of the Aliens' Law being that work permits are only granted to non-EU residents if this is in the Dutch interest.<sup>44</sup> Nobody challenged this construction of the national interest. Was there an underlying consensus about a sex worker becoming a 'dirty whore' when linked to the xenophobe commonplace of the 'dirty foreigner'?

The religious parties in parliament, who in both the Second and First Chamber of parliament voted against legalizing brothels and sex work, all mentioned the new Swedish abolitionist law. Having been brought up in traditional Christian moral discourses it is understandable that they felt more at home with Sweden's feminist sexual domination law than the sex-work discourse of the majority of the Dutch parliament. In fact, no less than three feminist discourses circulated during the debates in the Dutch parliament. There was the older feminist discourse about fallen women and unchaste men, employed by members of the orthodox Protestant right to support their demand for state intervention. There was the sexual domination position inspired by radical feminism about victimized women and predatory sexists, which showed up in the leftist discourses in the 1980s, but was later only employed when discussing trafficking. And there was the sex-work discourse about women voluntarily entering prostitution with customers purchasing sex. The traditional moral discourse evolved into the modernized moral discourse of the Christian Democrats, but the revised version had no answer to the question of why it is men who buy sex from women. Neither did it retain the feminist argument about the dignity of women.

The sexual domination position in the Netherlands was partly assimilated into the construction of the distinction between forced and voluntary prostitution, making trafficking and leading somebody into

prostitution by force or deceit the former, and all the other cases the latter. This is a transgression from the original radical feminist discourse, in which the concept of forced prostitution is a pleonasm, as it maintains that all prostitution is forced. The problem with the sexual domination discourse is that it does not accommodate the wide range of sexual activities that can be labelled as prostitution, with varying degrees of autonomy ranging from none to a great extent. It denies all prostitutes agency by regarding them as victims. For most MPs (except the orthodox Protestants) this was an unattractive framework to adopt, as the policy measures associated with abolitionism patently had never worked in the past to regulate prostitution. Neither had it worked to protect or improve the position of the prostitute or to contain the undeniable excesses. The third feminist discourse, prostitution as sex work, opened the door to new policy measures. One could regulate it like any other form of economic activity, but that could only be done by glossing over the sexual nature of the activity. Acknowledging the range of paid sex acts, the third discourse solved the problem of oppressive forms of prostitution by taking recourse to the dichotomy of forced and voluntary prostitution.

However, the feminist sex-work discourse has the propensity to revert to a market discourse that denudes people of gender and sexuality and lose its – albeit imperfect – feminist content. Here too there is a shift over time. While in the 1980s the secular side of the religious cleavage in parliament elaborated the sex-work discourse, in the course of the 1990s a market variety developed with precisely these tendencies. Feminists will do well to follow the current debates on the implementation of the law at the local level. There, one can see that the sex-club owners as employers are better organized than the workers. Prostitutes, more likely to see themselves as temporary workers or as self-employed, are less likely to organize, as they would have to come out as sex workers. Illegal sex workers will remain underground under the new regime. Local authorities are keen to regulate the prostitutes along with the business itself, which may lead to increasing control over them. The effect of implementation may well be one more shift away from the original intent of the feminist sex-work discourse, which has always been to improve the position of the prostitutes themselves.

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## NOTES

1. The speaker was P. Biesheuvel (CDA [Christen-Democratisch Appel; Christian Democrat Appeal]), *Handelingen Tweede Kamer (HTK)*, 1998–9, 24537 (Opheffing Bordeelverbod), TK 44 (17-1-1999), p. 3068.
2. See for instance: the memorandum to the ill-fated bill 18202 of the mid-1980s, HTK, 1985–6, 18202 (Afschaffing van de bijkomende straf van plaatsing in een rijkswerkinrichting en in verband daarmee vervallen-verklaring van enige bepalingen in het Wetboek van Strafrecht benevens wijziging van artikel 250bis van het Wetboek van Strafrecht), nr 5 (Memorie van Antwoord) (24-9-1985), p. 2; the memorandum to the successful 1999 repeal bill: HTK, 1996–7, 25437 (Opheffing Algemeen Bordeelverbod), nr 3 (Memorie van Toelichting) (1-7-1997), p. 5.
3. For the debates: HTK, 1986–7, 18202, TK 66 (2-4-1987), pp. 3478–502. The bill was passed by the Second Chamber with all the religious parties voting against, and all the secular parties in favour. For the final vote: TK 67 (7-4-1987), p. 3511. This bill was defeated in the First Chamber in 1993.
4. De Hoop Scheffer (CDA), HTK, 1986–7, 18202, TK 66 (2-4-1987), p. 3478.
5. Schutte (GPV [Gereformeerd Politiek Verbod; Reformed Political Union]), idem, p. 3481.
6. Van den Berg (SGP [Staatkundig Gereformeerde Partij; Political Reformed Party]), idem, p. 3486.
7. Leerling (RPF [Reformatiorische Politieke Federatie; Reformed Political Federation]), idem, p. 3490.
8. Ms Jabaaij (PvdA [Partij van de Arbeid; Labour Party]), idem, p. 3438.
9. Idem, p. 3438; Ms van Es (PSP [Pacifistisch Socialistische Partij; Pacifist Socialist Party]), idem, p. 3487.
10. Idem, p. 3484.
11. Ms van Es (PSP), idem, p. 3487.
12. Idem, p. 3488.
13. Idem, p. 3487.
14. Ms Jabaaij (PvdA), idem, p. 3438.
15. Minister Korthals Altes (VVD [Volkspartij voor Vrijheid en Democratie; People's Party for Freedom and Democracy]), idem, p. 3503.
16. Wolffensperger (D66), idem, p. 3486.
17. Respectively voiced by Wolffensperger (D66), idem, p. 3486; Ms Rempt (VVD), idem, p. 3479; Lankhorst (PPR [Politieke Partij Radikalen; Political Party Radicals]), idem p. 3490; Ms van Es, idem, p. 3487; Ms Jabaaij (PvdA), idem, p. 3484.
18. Ms Jabaaij (PvdA), idem, p. 3488.
19. Ms van Es (PSP), idem, p. 3483.
20. HTK, 1987–8, Vaste commissie voor het Emancipatiebeleid, UCV 32, 1-2-1988 (Vrouwenhandel).
21. Ms Jabaaij (PvdA), idem, pp. 7–8.
22. Ms Soutendijk-van Apeldoorn (CDA), HTK 1987–8, UCV 32 (1-2-1988), p. 2.
23. Ms Jabaaij (PvdA), idem, pp. 5, 6.
24. Ms Rempt (VVD), idem, p. 8; Ms van Es (PSP), idem, p. 11.
25. HTK, 1988–9, 21207 (Mensenhandel), nr 3 (Memorie van Toelichting) (11-2-1989), p. 3.
26. HTK, 1990–1, 21207 (Mensenhandel), nr 6 (Nota van Wijziging art 250 bis van het Wetboek van Strafrecht) (11-12-1990).
27. HTK, 1988–9, 21207 (Mensenhandel), nr 3 (Memorie van Toelichting) (11-2-1989), p. 4.

28. Ms Soutendijk-van Apeldoorn (CDA), HTK, 1991-2, TK 81, (20-5-1992), pp. 4994, 4995.
29. Minister of Justice Hirsch Ballin (CDA), HTK, 1991-2, 21207, TK 81 (21-5-1992), p. 5001.
30. HTK, 1996-7, 25437 (Opheffing Algemeen Bordeelverbod), nrs 1-3, 1-7-1997.
31. Idem, nr 3, p. 6.
32. Ms Barth, HTK, 1998-9, 25437 (Opheffing Bordeelverbod), TK 45 (27-1-1999), p. 3141. Compare Dittrich (D66) 'a tough job' (p. 3054); Halsema (Green Left) 'a demanding job' (p. 3151).
33. Dittrich (D66), idem, p. 3054.
34. Minister of Justice Korthals (VVD), Handelingen Eerste Kamer (HEK), 1999-2000, 25437, EK 1 (5-10-1999), p. 10.
35. Respectively Rouvoet (RPF/GPV), idem, p. 3034; Van der Staay (SGP), p. 3061; Biesheuvel (CDA), p. 3064.
36. Minister of Justice Korthals (VVD), HEK, 1999-2000, 25437, EK 1 (5-10-1999) p. 10. He had also used this argument in the Second Chamber: HTK, 1998-9, 25437 (Opheffing Algemeen Bordeelverbod), TK 45, (28-1-1999), p. 3158.
37. The original bill had a limit of 16, but this was raised to 18 after an amendment of Ms Barth (PvdA) obtained a majority (Outshoorn, 2000: 5).
38. Ms Barth (PvdA), HTK, 1998-9, 25437 (Opheffing Algemeen Bordeelverbod) (27-1-1999), TK 44, pp. 3051-2; see also: Nicolaï (VVD), p. 3071; he repeated it later: TK 45, (28-1999), p. 3156.
39. HTK, 1996-7, 25437 (Opheffing Algemeen Bordeelverbod), nr 3 (Memorie van Toelichting) (1-7-1997), p. 13.
40. Ms Halsema (Green Left), HTK, 1998-9, 25437 (Opheffing Algemeen Bordeelverbod) (27-1-1999), TK 44, p. 3038, TK 45, p. 3135.
41. e.g. Dittrich (D66), idem, p. 3058.
42. Rouvoet (RPF, also speaking for GPV), idem, p. 3042; Biesheuvel (CDA), idem, p. 3068; Van der Staaij (SGP), idem, p. 3063.
43. Ms Barth, TK 45, p. 3142.
44. This was the minister's defence in the debate in the Second Chamber, HTK, 1998-9, 25437 (Opheffing Algemeen Bordeelverbod), TK 44, p. 3120.

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