



## Sex and the Limits of Enlightenment: The Irrationality of Legal Regimes to Control Prostitution

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**Abstract:** To assess the reasonableness of projects to improve the governance of commercial sex, the author explores how rationality in its current hegemonic Western sense is a cultural construction, perceived differently across time and space within Europe. The author examines some aspects of how varying conclusions are reached about which legal prostitution regime to impose, taking into account the role of cultures, worldviews, and interpretation. The author avoids the conventional classification of policy by country that results in unsubtle and overdetermined nationalistic explanations. Current projects to govern prostitution show how the traditional Western idea of rationality fails to lead to social betterment. Worldwide, social policy on prostitution tends to follow Western cues, in seeming acceptance that West is the best, with the most progressive, most enlightened approach. The rational project is, therefore, not limited to European geography.

**Key words:** rationality; licensing; trafficking; evidence; interpretation

In this article, I examine concepts of rationality and social progress (in their hegemonic Western sense) as cultural constructions so as to assess the reasonableness of projects to improve the governance of commercial sex. Such projects take the form of legal regimes to control prostitution. The word *prostitution* is neither a precise job description nor the designation of unequivocal or definite acts but rather an idea loaded with ambiguities and moral judgments. Social and feminist debates on this idea repeat themselves fruitlessly because there is no agreement on a single definition of prostitution; in fact, profoundly opposed worldviews come into play, with the result that participants talk at cross-purposes. The situation is even less viable when debates pretend to arrive at a system to govern prostitution.

I reveal how rationality is perceived differently across time and space by examining a few different European sites and cultural contexts. To look at some aspects of how varying and conflicting conclusions are reached regarding what to do about prostitution, I focus particularly on two concepts, trafficking and sex, taking into account the role

of culture, worldviews, and interpretation in explaining varying perceptions. I avoid the conventional approach that treats countries as wholly separable entities—an approach that results in unsubtle, overdetermined nationalistic explanations. I discuss the fact that many of those to be regulated avoid participating in regulatory projects (if they even know about them), rather prioritizing their personal convenience, goals, and financial advantage (apparently preferring to be marginalized, pitied, vilified, and criminalized). Finally, I reflect on how current projects to rationalize the governance of prostitution show the ways that rationality fails to lead to social betterment. Local European phenomena provide the case study here, but these so-called systems are debated, and in theory applied, all over the world. The fact that the projects do not work in European contexts is suggestive. A strong pan-European tradition holds that enlightenment rules social policymaking and that, once the right policy is identified, problems will be solved, at least for all supposedly reasonable members of society.

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In the domain of commercial sex, the search for the most rational, most just, and least upsetting model goes on, but almost exclusively in debates on sociolegal regimes that aim to prohibit or permit, punish, or tolerate the provision of sex for money. Based on moral and ethical worldviews, these assume that progress, in the shape of better societies with better social justice and harmony, will result.<sup>1</sup> The sociolegal schemes tend to assume an acultural, universalist ethic that does not account for local conditions; even more important, these schemes have never existed in pure form but only in partial, mongrelized versions. Almost all accounts of the effects of legislative regimes refer to the large—sometimes very large—numbers of people operating outside and against the law (whichever is in place), and a main element of all these regimes is toleration, areas outside the system in which the whims of local police and municipal policies decree whether those who sell sex will be persecuted. No cases of real social harmony are associated with these notions: On the contrary, police violence, continuous and abusive arrests, waste of court time and public money, community protests, social discrimination, and cruel stigmatizing characterize all regimes, all over the world.<sup>2</sup>

Julia Varela (1995) has called prostitution the most modern profession, contradicting the oft-repeated cliché about its antiquity. Numerous historians (Henderson, 1999; Nead, 1988; Walkowitz, 1980) have shown how our contemporary sense of prostitution was constructed at a particular time and place. In my own work (Agustín, 2007), I have tracked how the construction took shape during the *Rise of the Social*, when rationality came to the fore as Enlightenment and social helping of the poor and perverse came to be a profession. The idea of prostitution has come to seem natural in our time, as have proposals to abolish, prohibit, and regulate it. In the European context, all such proposals claim to be underpinned by rational thinking—even when they contradict each other wildly. In this regard, I consider several concepts that have been taken for granted in contemporary discussions of commercial sex, including rationality itself.

1 Consider, for instance, the title of one academic journal article, “The New German Prostitution Act—An Important Step to a More Rational View of Prostitution as an Ordinary Profession in Accordance With European Community Law” (Laskowski, 2002).

2 Not included here are fundamentalist religious laws against adultery, promiscuity, and prostitution that may lead to execution.

## Rationality and the Idea of Progress

Starting in the fifteenth century in Europe, numerous thinkers began to find explanations for the world that put human beings at its center, pushing religion and God to the margins. Human beings were increasingly seen as capable of objectively observing phenomena and drawing conclusions about them,<sup>3</sup> and history as “made by human beings following predictable and rational laws...not the passive victims of history but its masters” (Hooker, 1996, p. 2). As the concept of the divine right of kings also began to fall into discredit, by the late eighteenth century, self-appointed observers and commentators set out to consider social questions (e.g., poverty, industrialization, the growth of cities) as causes of perverse, criminal, or improper behavior—as defined by the same observers. Discarding traditional beliefs that destiny determined which members of society were lucky and which unlucky, social thinkers began to theorize how destitution and depravation could be prevented, believing that history could be understood, errors identified, and the future manipulated.

These values were brought to bear on the acquisition of knowledge to underpin projects to legislate, influence, and control. As Timothy Mitchell (1989) has written, a fundamental element of social progress becomes

the characteristic cognitive maneuver of the modern subject, separating himself from an object-world and observing it from a position that is invisible and set apart. From there...one transfers into the object the principles of one's relation to it and...conceives of it as a totality intended for cognition alone. The world is grasped, inevitably, in terms of a distinction between the object—the thing itself, as the European says—and its meaning, with no sense of the historical peculiarity of this effect we call the thing itself. (p. 232)

An essential tenet of Enlightenment rationality holds that subject and object can be fully differentiated, enabling the subject (who is able to think logically) to produce knowledge about the object (which cannot). This rationalization imagines the world to be knowable, controllable, and capable of order and movement toward perfection. For believers, history becomes a bettering process, a social development project, advancement, and progress. Progress is seen as steady change for the better, to be

3 In this case, the radicals were the Deists, who believed that everything could be understood through reason, with no role for God at all.

acquired through identifiable steps, in a process known as modernization.<sup>4</sup> This thinking sees order and reason as essential to equality, justice, and freedom, an idea now so prevalent that many believe no other model exists for life but this stream of European modernism. Arturo Escobar (2007) has called this type of thinking the Giddens effect, which holds that “*from now on, it is modernity all the way down, everywhere, until the end of time*” (p. 181), in reference to Giddens’s skepticism about both traditional societies and postmodernity.<sup>5</sup>

For those wanting to find the right model for governing prostitution, Enlightenment assumptions work as follows: (a) Some fundamental truth (a moral bottom line) exists about the meaning of exchanging sex for money; (b) Rational thinkers can objectively arrive at this truth, analyzing and classifying information obtained through correct observation; (c) Once the truth is known, the best solution can be instituted and imposed; (d) Society as a whole will benefit and, therefore, eventually welcome the solution because it will result in more justice, more freedom, more choices, and more rights. Yet this general model of how policymaking is supposed to proceed has not worked in the domain of commercial sex. There is a strong argument for ceasing to engage in endless, identical debates and solutions that have yet to resolve the original complaint.

Max Weber broke down rationality into different types: practical, theoretical, substantive, and formal.<sup>6</sup> Here I am interested in two of these: (a) theoretical (or intellectual) rationality, “a conscious mastery of reality through the construction of increasingly precise abstract concepts” (Kalberg, 1980, p. 1152), and comprehensive explanations and (b) formal rationality, the domain of the bureaucrat, whose aim is to “calculate the most precise and efficient means for the resolution of problems

by ordering them under universal and abstract regulations” (Kalberg, p. 1158). Rationalization consists of ordering particularities into meaningful and methodical patterns, processes, and actions, and although mastery is the goal, Weber believed the potential for success to be limited.

Weber saw rationality, rationalism, and rationalization as historical, constructed concepts found in a variety of cultural schemes, such as ancient Judaism (1921/1968), Confucianism (1920/1951), and mystical contemplation (1920/1930). Furthermore, any individual’s pursuit of pragmatic, self-centered interest can be characterized as rational, including not only conventional ways of life but also magical and psychological projects:

Something is not of itself “irrational,” but rather becomes so when examined from a specific “rational” standpoint. Every religious person is “irrational” for every irreligious person, and every hedonist likewise views every ascetic way of life as “irrational,” even if, measured in terms of its ultimate values, a “rationalization” has taken place. (Weber, 1920/1930, p. 35 n 1)

The rationalized legal regimes associated with prostitution are often called systems, implying a relationship whose components fit together coherently: A system’s whole means more than its parts. There is an implication of machine-like efficiency that seems to many strange when applied to the complex, sometimes ineffable phenomenon of sexual desire, whether or not money is involved. In discussions of how to regulate commercial sex, all participants claim to have ethics, morality, rationality, and progressiveness on their side, yet their proposals are very different. If progress is to be judged as social improvement for people who sell sex and the neighborhoods where it is sold, governance remains chaotic.

My interest in this field began in 1994 with questions about just this disarray. I wanted to know, from a standpoint in Latin America, why there was no social betterment for women who sold sex and why there was such conflict about them and their migrations to work in the First World. For me, it seemed rational to look for solutions by listening to what these subjects said they wanted and needed. Why were their own ideas excluded from debates? Eventually I understood that the governmental impulse is to blame (Agustín, 2005, 2007).

### Reductionism—Limiting the Social and Discursive Field

The first irrational element encountered is the very limited scope of these legal projects because, in focusing on the vague idea of prostitution, they ignore the proliferation and variety of commercial sex—including erotic

4 The Declaration on Social Progress and Development (United Nations Office of the High Commissioner for Human Rights, 1969) has defined social progress and development as “the continuous raising of the material and spiritual standards of living of all members of society” (Part II, “Objectives”), going on to detail goals such as “the promotion of full productive employment” (Article 10[a]); “a steady improvement in levels of living” (Article 10[c]); and “the achievement of the highest standards of health” (Article 10[d]).

5 Escobar refers to Giddens’s (1990) work on modernity and to models of the universe in which the world is supported by, variously, a turtle or a white elephant, which is standing on another turtle or elephant, and so on, all the way down.

6 Thanks to Stephen Kalberg (1980) for helping to clarify Weber’s rich but dense work on these subjects.

phone lines and dance, web cameras, peep shows, graphic sexual publications, videos and films, fetish services, and so on. Prostitution legislation contemplates women (and generally only women) selling sex in massage parlors, in private apartments and clubs, at sex parties, and in the public outdoors. Yet a much wider range of people and sites are involved, including bars, restaurants, cabarets, beauty salons, discotheques, sex shops, hotels, dungeons, and cinemas, as well as occasions such as stag, hen, beach, and modeling parties and floating locations such as tourist and merchant ships (Agustín, 2005).

In most European countries, the majority of sex-oriented businesses are not recognized in official government accounting, which means that permits, inspections, taxes, workplace health and safety, and worker protections are not used to monitor and understand these businesses. When legal projects reduce the object by setting parameters around prostitution only, the problem misleadingly appears more feasible than it actually is. If the proponent of a plan excludes the messy complexities and ambiguities from the subject, it becomes easier to make the plan appear reasonable.

The second irrationality in these discussions is their failure to recognize that systems of prostitution control have never existed anywhere in pure form but are political and cultural fantasies. They are captivating as ideas, but in real life they have not achieved any but the most partial success in any geographic or historical setting. For example, although the system known as prohibitionism, in which both buying and selling sex are illegal, is said to reign in the United States (except in parts of Nevada and Rhode Island), an abundant gamut of commercial sex, including the more traditional forms of prostitution, is easily available everywhere. Similarly, the regime known as abolitionism generally demands that prostitution end, blames men for its continuance, and claims to avoid punishing women for engaging in it. Yet where versions of this regime are nominally in place, such as in Britain, client men are rarely arrested whereas women who sell sex often are, on pretexts of antisocial behavior of one sort or another (see, for example, Campbell & Storr, 2001).

With the system known as regulation, the possibilities are endless; there may be municipal registers of workers, obligatory medical exams, identity cards embedded with computer chips, and licensing of venues, to mention only a few common characteristics (see, for example, *Comunicación e Información de la Mujer*, 2007; Daalder, 2007; Scarlet Alliance, 2007). But despite such rules, large numbers of entrepreneurs and workers, wherever regulation is found, always ignore the rules and

fail to participate.<sup>7</sup> Given the failure of such regimes everywhere to be and do what they claim, it is not rational to continue to argue over which of them is best. Nevertheless, there is an obsessive quality to the repetitive, continuous debates characterizing European societies, reflected in the title of one national summary, “Italy: The Never-Ending Debate” (Danna, 2004).

Something else is being accomplished beyond the control of prostitution when one or another of these regimes triumphs in a legislature or social forum. Commentators typically speak of national situations and paradigms of legislation—the Dutch or Swedish model—making different nation-states appear to be culturally and physically separate from others, even those with whom they share permeable borders. Swedish feminists who support their law’s criminalization of clients have admitted, in informal conversations, that they know perfectly well that the law criminalizing the purchase of sex does not end prostitution and that many buyers of sex have simply moved out of police sight.<sup>8</sup> Nonetheless, they praise and defend their law on the grounds that it is more progressive than any other legislation anywhere and claim that Sweden’s role is to be a model of progressiveness, particularly in the moral realm.<sup>9</sup>

In another performance of national morality, current French policies allow prostitution in outdoor public spaces but want non-Europeans to stop doing it, as was made clear by former interior minister Nicolas Sarkozy’s 2002 initiative against illegal immigration, the poor, and streetwalkers (see, for example, Cabiria, 2002; *Collectifdroitsdesfemmes*, 2002). Sarkozy made it clear that the objective was to get rid of foreign prostitutes, a distinction having more to do with xenophobia than with prostitution itself, and with interneconomic political competition, given presidential candidate Jean-Marie Le Pen’s nationalist, France-for-the-French appeal to voters.

The Spanish panorama, which I studied as a participant from 2000 through 2005, illustrates how the search for a national moral position can be continually delayed and frustrated by changes of administration and competition among political points of view arguing for one or another prostitution regime. In 2006, under government

<sup>7</sup> So far, no one has proposed regulation of customers through computer chips, medical exams, or the like.

<sup>8</sup> Numerous research projects have tried to prove that this idea is true or untrue. See, for example, Kilvington, Day, and Ward (2001) and Stridbeck, Kristianssen, & Schei (2004).

<sup>9</sup> Interpretations of Swedish national motivations include Svanström (2004) and Kulick (2005).

by the PSOE (Partido Socialista Obrero Español), the Commission on Women's Rights and Equal Opportunities announced it would call for expert testimonies on the effects of prostitution law, with the object of recommending new national legislation (Cué, 2006). Neither the press nor the commission itself admitted that the same process had already been carried out in 2002, under the PP (Partido Popular), a process now disqualified or discounted, perhaps on a bureaucratic technicality.<sup>10</sup> The calling of a new commission was understood to respond to Cataluña's provincial government's recent decision to allow prostitution in licensed indoor locales, which had been quashed by Madrid.

The national commission's processes were long and expensive, involving the testimony of a wide range of interested parties, many of whom were invited to travel to Madrid to give their opinion twice in a period of 4 years. The conclusion to the second process decided that no new legislation would be recommended, neither a regime of criminalizing clients nor recognition of prostitutes' rights as workers nor any version of official regulation ([El País.com](#), 2007). The government tried to claim that this decision did not mean everything would go on the way it had before, but nearly all concerned were dissatisfied.<sup>11</sup> Cities such as Barcelona and Valencia passed municipal ordinances banning a selection of activities in public spaces, including offering sex for sale, as a way to institute some species of regulation (Ajuntament de Valencia, 2006; *La Vanguardia Digital*, 2005).

In 2005, the Czech Republic set out through its parliament to decide on what prostitution regime to instate, because, as Prague City Hall remarked,

Even though it's ethically debatable as to whether prostitution should be regulated or not, we think that the current situation is untenable. At this time, we have no tools for dealing with street prostitution or the erotic industry in brick-and-mortar establishments, or for stipulating any rules. (Prague Deputy Mayor Rudolf Blažek, as quoted in Hovet et al., 2005)

Each legislature and municipality claims to be looking for the single correct policy, and politicians often

<sup>10</sup> See Diario de Sesiones de las Cortes Generales Comisiones Mixtas (2006) for the opening of new research into the subject by a commission specially constituted for the purpose, as opposed to the earlier, created one. Previous government entities had also financed research on prostitution with the goal of modifying national law.

<sup>11</sup> A rare example of positive interpretation of the event can be seen in the blog of politician Lourdes Muñoz Santamaría (2007).

speak of prostitution policy as though it will express national morality. Neighboring nations with shared cultural histories and open borders tend to revert to an old-fashioned rhetoric of statehood.

In this context, the intervention by the Southern Baptist Convention represents an interesting divergence. Based in the United States, the organization sent a letter<sup>12</sup> to the Czech Parliament in 2004 expressing its own view of the need for moral action anywhere on the globe:

We of course recognize the sovereignty of the Czech Republic to ultimately do as its political mechanisms determine, and rejoice in your democratic freedoms. But we are free as well—free to advise Czech officials not to be taken in by the siren song of legalization, free to hope that Czech's reputation and appeal will not be traduced, free to urge political responses by the United States, and free to urge similar responses by other countries whose women will be massively trafficked into the Czech Republic, free to resist Czech legalization actions that in our view will inevitably have major, adverse effects throughout the world. (Southern Baptist Convention et al., 2004)

The legislation did not ultimately go through, but proposals continue to pop up in the Czech Republic, and Prague's municipal government is continually discussing regulation projects (see, for example, ABCPrague, 2007, 2008).

For those who see nationality or, at least geographic proximity, as the only fit rationale for intervention, the Southern Baptist Convention's action seems like interference. For others, prostitution is a social issue that the world community ought to tackle collectively. But can it be done?

### The Idea of Evidence

Legalistic proposals about prostitution purport to be based on evidence, claiming that when correctly obtained research results are properly examined—lining them up, disaggregating them, shining a clear light on them—the best type of legislation to solve the problem will become obvious. Yet neighboring countries with not dissimilar cultural and political situations arrive at opposite solutions, and countries fluctuate from one solution to another within their own borders over time, allowing brothels to exist, then banning them, then later considering reopening them, or permitting solicitation in particular public spaces, later prohibiting solicitation again in the same place.

These fluctuations demonstrate that progress based on the evidence is not what is occurring; rather, governments

<sup>12</sup> Various other organizations appended their names to the letter.

change policies as social climates shift and as legal solutions inevitably fail to solve the perceived social problem. Societies tire of a particular phenomenon (street prostitution, for example, with its used condoms in front gardens and sometimes raucous noise) and conclude that the opposite policy would be a better remedy (in this case, sex sold inside buildings rather than outside them). Obviously, rationality is variable, differing across time and space. In the following section, I examine how variant conclusions are reached on the subject of what to do about prostitution.

The vast majority of prostitution research bases its conclusions on a small portion of the total of people who offer sex for money, whether researchers conclude from the evidence that prostitutes are victims or not. For researchers predisposed to the former, talking with residents at centers for the treatment of trauma and shelters for escapees from violence provides compelling evidence; for researchers predisposed to the latter, talking with people who attend sexual health clinics usually suffices. In both cases, gatekeepers play a large role and researchers' choices regarding the populations they consider reflect a bias from the beginning. Persuading people to participate in research is not easy if there is no reward for them; by using gatekeepers, researchers rely on the influence or power—overt, imagined, or implied—that service employees have vis-à-vis their clientele. Researchers can gain access to interviewees by approaching organized projects and convincing them of their studies' merit, after which they are offered an introduction by managers and space in which to hold interviews. This outcome is convenient for researchers but consistently excludes the many people who do not patronize clinics and projects. An overreliance on clients of clinics and outreach projects means limiting and biasing the research field.

Research results are also limited by what funders are willing to subsidize, and the favored topics generally reflect governments' interest in social exclusion, crime prevention, and epidemiology.<sup>13</sup> Thus, it is difficult to get sponsorship for research into the sex industry as an ordinary, nonpathologized human phenomenon. Another factor is that ethical review committees, which more and more European researchers must confront, might not accept participant-observation in sex venues, on the grounds that danger may be involved—for the researcher, the study participant, or both. Therefore, most who seek funding couch their proposals in terms palatable to

funders, nowadays most often as research into trafficking and victimization (Agustín, 2002). These biases significantly restrict the results that research can provide.

But research is also biased by a built-in disequilibrium when stigmatized workers are approached by someone wanting to ask them personal questions: On what grounds do researchers expect to be talked to, let alone told the truth? Pat Califia (1994) has described how lesbians in bars felt as objects of research:

Heterosexuals would not tolerate the presence of, say, a well-dressed group of drag queens who invaded a singles bar, took pictures, interrupted couples to interview them about what happened in their childhoods to cause them to become patrons of this bar, pressured them to accept drinks in exchange for this information... Yet something very like this scenario happens nearly every weekend at many lesbian bars. (p. 209)

People descended upon by those who want to know why they are victims or deviants may well say what they believe researchers want to hear. Given that so much research with sex workers has focused on their personal motivations (wanting to know why they got into sex work, which is assumed to be negative), it is not surprising that many tell sad stories making their present circumstances appear to be the fatal result of past events (Negre i Rigol, 1988)—especially when they have reason to believe that if they present convincingly as victims they will receive more services. Certainly, people who are the focus of research will not be eager to admit participation in crimes such as using false documents. Writing on secrecy, Sissela Bok (1984) has noted that

[t]o be able to hold back some information about oneself or to channel it and thus influence how one is seen by others gives power.... To have no capacity for secrecy is to be out of control over how others see one; it leaves one open to coercion. (p. 20)

These circumstances present too many impediments to the production of reliable (not to mention anything close to objective) research results to use them categorically as the foundation for general systems of legislation—perhaps especially in highly charged conflicts such as those involving the meaning of prostitution. Thus, the evidentiary basis of the project to arrive rationally at the correct system is severely undermined.

### The Problem of Interpretation

Even when research results are not disputed, interviewees' replies to research questions may be read in different ways by different readers. For example, a simple testimony such as that of the woman who says "There

<sup>13</sup> Roberts and Sanders (2005) have discussed the ramifications of being able to obtain funding versus not being able to obtain it.

was no work; I had to leave my country” may be understood to mean that she was forced to move or that she had few options and actively chose one. On such a difference in interpretation entire universes of meanings are built. Later, researchers tend to quote previous work that supports their own experiences in the field, work they believe in and interpret positively. To illustrate the problem of interpretation briefly in the European context, I will consider two examples of concepts that are understood and interpreted in very different ways in the research world: trafficking (including ideas about smuggling and transnational criminality) and sex (highlighting the case of London’s West End).

### *Trafficking, Smuggling, and Transnational Criminality*

These terms describe crimes committed not only inside national borders but also and especially across borders. In mid-2007, more than 60 studies worldwide demonstrated that the term *trafficking* is inadequate to describe the experiences of many migrants (women, men, boys, girls) who leave their homes and sell sex in other towns and countries (Agustín, 2007). A year later, there are many more of these interview-based studies in which researchers hear in interviewees’ words their rational choices to act as they do, even when they have few good options and, in spite of interference, unfair advantage-taking or outright violence from others in their lives.

In the case of Nigerian women selling sex, Kristin Kastner (2007) has investigated the meanings given to juju practices in the migration of women who sell sex in northern Africa, Spain, and Italy, finding considerable space for their agency. Other researchers, however, draw opposite conclusions from their interviews: For example, Esohe Aghatise (2004) has understood the same situations to be completely coercive, allowing no space for agency. The standpoints of these two researchers are different: Kastner is a doctoral candidate working independently and finding study participants in a variety of social contexts; Aghatise is president of a nongovernmental organization (NGO) that provides assistance to victims of trafficking and prostitution. Although the two researchers will not have spoken to the same women, they will have heard similar stories yet experienced and interpreted them differently. According to divergent worldviews, the same information about the roles taken by entrepreneurs making money through undocumented migrants’ attempts to cross borders can be understood as criminal exploitation or creative service provision, and each interpretation insists upon its greater truth.

Although the word *transnational* carries innovative, interesting, and even cosmopolitan connotations when students of migration, travel, and diaspora use it, the term becomes menacing when used in reference to crime. Vincent Ruggiero (2000) has noted how the terms *transnational organized crime* and *cross-border crime* suggest “a powerful and evasive menace, a looming peril whose lingering across countries adds to its destructive potential character” (p. 187), which he theorizes as simply a new version of an old *alien conspiracy theory* in which less-developed countries threaten to penetrate more enlightened ones and take over. Although the United Nations survey of transnational crime (Centre for International Crime Prevention, 2000) failed to find evidence of massive cross-border networks of organized crime, the threat seems to grow all the time, and is now frequently conflated with terrorism. For many on the planet, for a long period of time, fears centered on trafficking in drugs; for increasing others, they now focus on the traffic in human beings.

Protocols attached to the 2000 United Nations Convention Against Transnational Organized Crime (United Nations Office on Drugs and Crime, 2008) attempt to distinguish between trafficking and smuggling. As I have argued elsewhere (Agustín, 2006), the protocols make a gender distinction, the trafficking protocol expressing a presumed greater disposition of women—along with children—to be deceived, above all about sex, and a presumed lesser disposition to migrate. In the smuggling protocol, on the other hand, men are seen as capable of migrating and being handled like contraband (sex is not mentioned in this protocol).

Several studies brought together in a special edition of *International Migration* (Gozdziak, 2006) revealed how those labeled smugglers and traffickers by outsiders to migration networks provide services that insiders—potential migrants and their families—keenly desire. These businesspeople view themselves as rationally filling a gap produced by the bizarre European situation in which demand for migrant labor is strong but possibilities for migrants to enter, work, and reside legally are drastically curtailed (see, for example, Bilger, Hofmann, & Jandl, 2006; Neske, 2006; Pastore, Monzini, & Sciortino 2006). Migrants see the possibility that some such entrepreneurs charge too much or do not provide good value as separate from the unquestionable need for the services offered (which are considered informal travel agencies). However, those whose standpoints require full freedom for migrants to choose among attractive options do not hear this in the testimonies of these supposedly smuggled people. Instead, social commentators with different standpoints and

histories interpret key concepts in accordance with their preexisting points of view.

### Sex

As I have argued elsewhere (Agustín, 2005), transactions involving both sex and money do not mean the same thing everywhere; sociocultural contexts change meanings. Discussing the tourist who pays for sex in Bangkok, J. P. Singh and Shilpa Hart (2007) have highlighted the cultural value of sex work: “She or he could have had sex in her or his country of origin but went to Bangkok because the cultural context of Bangkok matters” (p. 156). Various theorists have attempted to account for a supposed change in the quality of the sexual experience in the West (e.g., Arthurs, 2004; Attwood, 2006; McNair, 2002), sometimes referred to as the sexualization or pornographication of culture. There are varying interpretations of this trend, too:

The problem is with Paris itself, and probably France itself....They are both changing for the worse. Parisians are unhappy and that is expressed in their sexuality. A place like rue Saint-Denis represents everything that has gone wrong—it is not a place to go and have sex happily, as a person or as a couple....The myths of the orgies to be found there, that you read in Georges Bataille, may not have been entirely true but they did correspond to some form of reality. Now it is practically impossible to have good sex with strangers in Paris. (porn actress and film producer Ovidie, as quoted in Hussey, 2006)

Without entering into the depths of this debate, I offer here a suggestive sexual conundrum I encountered in 2005 while studying licensing regulations for sex businesses in London’s West End. In Stephen Frears’s film *Mrs. Henderson Presents*, which came out while I was conducting this research, the innovative producer of scantily clothed dance shows in 1930s Soho has lunch with the official censor, with the aim of getting his permission for her showgirls to appear nude on stage. The Lord Chamberlain, resisting this proposal, says he must allow only what is artistic, referring circuitously to certain body parts that should not be seen. “Oh! You mean the pussy!” replies Mrs. Henderson. At the end of lunch, the Lord Chamberlain has agreed to allow full nudity if the girls remain immobile. This vignette might seem outdated, but my research proved otherwise.

A list of British legislation in the past 50 years that has attempted to define what is sexually acceptable and unacceptable in the public realm would include, but not be limited to, the Obscene Publications Act 1959 and 1964,

the Indecent Displays (Control) Act 1981, Schedule 3 (Control of Sex Establishments) of the Local Government (Miscellaneous Provisions) Act 1982, the Cinematographic Act 1982 and the Cinemas Act 1985, the Crime and Disorder Act 1998, the Criminal Justice and Police Act 2001 and the Licensing Act 2003. The last of these grants local governments the authority to issue licenses for sexual displays and entertainment in businesses that apply for them and comply with specific conditions attached.

Soho, in the borough of Westminster (an area of London including the widely visited West End and the site of Mrs. Henderson’s business), still enjoys a reputation as sexually permissive, although nothing remains of the explicit and outrageous ambiance ended by an intensive police campaign in the late 1970s. Westminster’s government allows many more licenses for erotic dance venues (in the areas of Soho and Mayfair) than other boroughs allow, because Westminster views itself as the center of a world city that receives massive tourism, a significant segment of which comprises male business travelers with a great deal of money to spend on entertainment:

Businessmen come to Westminster from all over the world, from Japan, from Paris, and, you know, they are men of the world, they expect—you know, sophisticated entertainment. This kind of tourism is very important for Westminster (Conversation with a licensing officer, 2006).<sup>14</sup>

In an attempt to balance the sophistication of such tourists with local ideas of acceptability and morality, Westminster licensing policy carefully scrutinizes applications for licenses to provide erotic dancing and grants them contingent on fulfillment of conditions that range from specifying which areas of dancers’ bodies must be covered, at what distance they must remain from customers, how and where customers may give tips (in the hand, in the garter), hours of operation, and so on. In-house security personnel enforce these conditions, as do Westminster licensing inspectors. Business owners wishing to amend the conditions of their licenses must make a case to the council, and conversations with licensing personnel and policymakers show why dancing is deemed to need this apparatus:

You have got a young attractive woman dancing with no clothes on in a very provocative way in very close proximity to a young man...who has had a good drink. So, yes, it is potentially problematical.

<sup>14</sup> It should be noted that other central London boroughs handle licensing differently and have different notions of their role in the world city. See, for example, Lilith (2006).

Dancing is acceptable, naked dancing is acceptable, but we don't want too much of it because there is risk it would dominate and attract people who we necessarily wouldn't want too many of. And, of course, the more of these places you get, the more it attracts prostitution and other sex services, so we want to limit it. We don't want touching because that's where we draw the line. We think there is a line between dancing, simulation, and people copulating or, you know, girls delivering oral sex, you know, that kind of thing, in cubicles. No.<sup>15</sup>

Westminster's nighttime and evening economies are constantly undergoing evaluation (Greater London Authority, 2006). In the rationalized worldview of licensing, to exclude this entertainment would be inappropriate; the challenge is to attract the right kind of people, encourage the spending of money, appeal to different kinds of tastes, control disorder, and make London the safest world city. As one licensing officer noted, "The new licensing law is softly, softly; they want well-run premises to be let alone."

In this regard, parliamentarians have spent long periods debating whether particular kinds of movements seen in Soho venues can be called dancing (e.g., Willowcell, 1995), entering into cultural minutiae to determine whether activities constitute sex. A few months after conducting this research, when I was reviewing legislation and licensing in a provincial Dutch city, I asked a senior police officer charged with enforcement about dance venues. When he looked nonplussed, I elaborated, naming striptease, table dancing, lap dancing, pole dancing. "Why would we license those?" he asked. "That is not sex."<sup>16</sup>

The varying rationalities seen in these examples—completely different perceptions of what constitutes trafficking and sex—can be ascribed to differently moralized worldviews and subcultures (including feminisms) within societies that all claim to be socially progressive and enlightened. Rationalizing projects attempt to ignore these profound variations by using the apparatus of imaginary objective research to obtain knowledge on which legislation will be based, but Charles Taylor's (1979) comments on meaning are a warning:

Things only have meaning in a field, that is, in relation to the meanings of other things. This means that there is no such thing as a single, unrelated meaningful element; and it means that changes in

the other meanings in the field can involve changes in the given element. (p. 33)

When the participants in a discussion do not share a common set of meanings or of fundamental ideas, they will understand differently any element of that discussion, including the methodological premises of a given research project and the data obtained. In turn, these variant interpretations drastically affect predictions about what will happen after one or another sort of legislative regime based on research results is imposed, because visions of the future, both utopian and practical, are at odds. "The ideal of a science of verification is to find an appeal beyond differences of interpretation" (Taylor, 1979, p. 67), but this task has proven impossible among those who hold strongly different views about sexual relations and the meaning of monetary transactions embedded in them. Describing the contrast between the conclusions reached on prostitution policy in Germany and Sweden, Susanne Dodillet (2004) has ascribed the disagreement to the different meanings German and Swedish politicians give to prostitution; these politicians "do not speak about the same issues when they discuss the question" (§ 3).

My own most dramatic experience in this area of disconnect occurred while addressing a large audience composed of NGO and municipal workers and feminists in Valencia, Spain, in 2005. After my presentation on migration and the sex industry, a well-known feminist lawyer asked for my opinion on a long disquisition of her own that compared the sex industry with both the arms trade and torture. Knowing full well that she wanted to show me up as amoral, I could only sincerely reply that I had little to say in answer to her question because I had never seen any relationship between arms and torture and the subject of my speech. As Taylor (1979) has stated:

We can only convince an interlocutor if at some point he shares our understanding of the language concerned. If he does not, there is no further step to take in rational argument; we can try to awaken these intuitions in him or we can simply give up; argument will advance us no further. (p. 28)

Given the enormous role of interpretation of the evidence found by research projects, as well as the wide disparity in perceptions and definitions of the most basic issues in the field, the attempt to control commercial sex through overarching but imaginary regimes or systems cannot, in general, be called rational.<sup>17</sup>

<sup>15</sup> Conversations with licensing officers and inspectors in Westminster, 2006.

<sup>16</sup> K. Liepe-Levinson (2002) has also discussed how lap dancing is considered to be sex by some and not by others.

<sup>17</sup> Perhaps one of these regimes works better in some times and places; Germany's present regulatory system may well be the best example, but German sex worker rights activists have plentiful criticisms about the system so far (Klee, 2005).

## Outside the System

Perhaps the most important reason for calling into question current attempts to rationalize commercial sex involves the overwhelming lack of compliance by many ordinary people in obeying any of the *-isms* proposed. It would appear that a large number of those who would be governed through legislation on commercial sex—customers, workers, and entrepreneurs alike—neither identify with such legislation nor consider it useful or relevant to their lives. In Germany and the Netherlands, where some sex businesses can and must be registered, many owners and workers do not sign up (Ananova, 2004; The Local, 2007; Westen, 2005; Woodward & Fischer, 2005). The Dutch police unit charged with enforcing licensing in one city told me that many more escort agencies were currently operating without licenses than with them, as were many workers. In Westminster, licensing personnel estimate that as many Soho sex shops operate without licenses as with them. One Dutch researcher found that

[i]n spite of the possible benefits, women with work permits have so far shunned to come into the open, proclaim themselves as prostitutes and pay taxes....The objective of the legalization, to recognize prostitution as a normal profession and so decriminalize it, has not been fulfilled....The majority of prostitutes work illegally. (Lotte de Pol, as quoted in Hovet et al., 2005)

In addition, few sex workers join trade unions or interest groups, where they exist.<sup>18</sup> It would almost appear that people prefer to be marginalized, pitied, vilified, and criminalized—the conditions reformers decry.

Business regulations requiring the buying of permits and licenses favor wealthier, already established businesses. The bureaucratic and financial processes and investigations involved in obtaining licenses may seem overwhelming and threatening. Owners of sex businesses see themselves as pragmatically catering to market demand, whether they are offered the opportunity to become fully legal or not. For many, engaging in so-called underground business activity is not considered a crime. In the United Kingdom, both Prince Charles and Prime Minister Thatcher claimed that the existence of an irregular economy proves “the British are not work shy” (as

quoted in Henry, 1987, p. 147), and Saskia Sassen (1998) has described the informal economy as a coherent and necessary “outgrowth of advanced capitalism” (p. 155). This pattern applies as much to those at the bottom of the social heap (drug runners, windshield cleaners, errand boys for prostitutes) as to those at the top (Gaetz & O’Grady, 2002). Ruggiero and South (1997) have described

the increasingly global nature and capacity of illegal entrepreneurialism, which defies attempts to draw neat boundaries between licit and illicit behaviours: a good example is the facilitation of money laundering by the international banking system....“Crime as work” is not just a metaphor but an apt description of the activities being conducted in parts of the late-modern city, where individuals seize legal and illegal opportunities intermittently. In other words, the individuals involved in illegal economies adopt and adapt a model of legitimate behavior....but in doing so, they also commute from the official to the underground economy—and back again. (p. 61)

The sex industry is, at this point, one of the most lucrative informal economies widely available worldwide to both entrepreneurs and workers. That most governments allow sex businesses to remain outside formal accounting and regulation means spectacular opportunities are available to those who do not mind a little social stigma. Among these actors, too, there is diversity, so that some object to the construction of their activities as illegal and are willing to advocate for legalization (see Agustín, 2007), whereas others prefer to stay out of the limelight.

Evidently, no matter how rational and clear the guidelines for the regulation of sex businesses, many entrepreneurs, tax evaders, freelancers, gangsters, and undocumented workers remain outside these regimes, risking fines, prison, deportation, and stigma to obtain the profits and benefits of unregulated economies. Prioritizing their personal convenience and financial advantage qualifies these social actors as *practical rationalists*, like the Italian and French merchants, artisans, and traders that Weber (1921/1968) studied. Ruggiero (1997) has remarked on how the entrepreneurial activities of many people, including illegal migrants, are interlaced in informal economies to such an extent that it is fair to ask whether the official line against trafficking “is part of what organizational theory would term as manifest goals...destined to be ignored because they are inoperative” (pp. 231–232).

## Other Rationalities

No matter which sociolegal regime is put into place, people continue to sell and to buy sex wherever they can. They resist rationalizing schemes even when such schemes

<sup>18</sup> Examples of trade unions and sex workers’ interest groups include Ver.di in Hamburg, Germany; Comisiones Obreras in Barcelona, Spain; the International Union of Sex Workers in the United Kingdom; and De Rode Draad in Amsterdam.

are liberalizing, a fact made evident by police reports, community protests, online client reviews, classified advertisements, and the demands of sex worker rights movements. In all systems, forms of commercial sex officially prohibited are tolerated haphazardly by local police forces, through pragmatic decisions to make arresting prostitutes a low priority, to ignore those selling sex while on a tourist visa, to allow peaceable businesses to continue, and so on. Police officials everywhere acknowledge that they are not granted even close to the resources they would need to truly enforce policy, which would involve continual raids, with all the paperwork and follow-up entailed. Policy, in other words, does not deter either the selling or buying of sex in any meaningful way.

Although street prostitution offends social sensibilities more than other types of commercial sex, it is by no means the only form for which societies want solutions. Those who believe that all of life has become oversexualized, with dire consequences for women and children, want to see the Internet monitored and censored, lap dancing banned, men who buy sex punished, pornography eradicated, and sexual relations delayed until marriage. Yet the legal regimes debated barely touch on the majority of these activities or on most sex businesses: the erotic phone lines, peep shows, lap dance and hostess clubs, Internet web pages, X-rated videos, and fetish venues. To legislate a model without considering commercial sex as a wide field is simply incoherent, not only because no clear boundaries separate activities or workers from each other but also because unhappiness and injustice can and do occur anywhere and everywhere.

The sex workers' rights movement calls for decriminalization. This utopian but vague concept generally posits the removal of all negative laws and the deprioritizing of police enforcement. The idea is rational in recommending the sweeping away of inefficient, hypocritical, and impossible regimes as a first step in a more progressive governance of commercial sex, but, so far, its proponents rarely address what forms of regulation might follow. In another rational proposal currently being tried in several countries, mainstream unions accept sex workers into the fold (e.g., Ver.di in Hamburg, Germany, and Comisiones Obreras in Barcelona, Spain). The concept is symbolically powerful in accepting them as workers like any other; whether the alliance can get past the symbolic stage remains to be seen.

The most interesting new conceptualization comes from the Durbar Mahila Samanwaya Committee of

Kolkata, West Bengal, India. In its background paper for a conference in early 2007, this group of 65,000 organized sex workers noted that

the work place in the 21st century seems poised to repeat some features of the 18th century. The eight-hour working day is no longer a norm in most of the existing and emerging sectors. It seems that 12 or more hours have come to stay. Result? More strain, less efficiency, less time for leisure and entertainment, more alienation and downward slide in the quality of labor. Now is the time for a vigorous mass movement demanding the Right to Leisure/Pleasure/Play/Entertainment for all the people and, for safeguarding and enhancing the social, legal, labour and human rights of all the entertainment workers of our country and of the whole world. (Durbar Mahila Samanwaya Committee, 2007)<sup>19</sup>

This framework would bring together all kinds of entertainers—folkloric, classic, and modern dancers and singers, as well as musicians, actors, circus artists, sex workers, film and TV workers, edutainers, and infotainers—of no matter what caste or social class. This idea avoids discussion of legal systems, instead addressing the contemporary alienating situation of a wide range of workers.

The collusion of so many serious social actors in the pretense that the classic prostitution regimes are rational makes me wonder how much evidence that such regimes do not work is necessary before their many adherents give up on them—unless, of course, maintaining the conflict and the debate is what matters, as rationality moves into the domain of politics, where each side uses a range of rhetorical devices to claim that its schemes are best and to discredit those with different worldviews. Whatever the reason, the field of sociolegal projects to control prostitution does not fit into any rational framework of social progress, even for so small a geographical region as Europe.

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