

Pragmatism in the Polder: Changing Prostitution Policy in The Netherlands

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A conference room in Amsterdam in the autumn of 2001.¹ Behind the microphones at the tables at the top end are seated officials from the Internal Revenue Service, the Inspection of Work Conditions, Social Security, the Municipal Health Authority and the Fire and Security Department. In the audience there are representatives from the prostitutes' union the Red Thread (*Rode Draad*), the Confederation of Dutch Trade Unions (*Federatie van Nederlandse Vakverenigingen*, FNV) and the Foundation against the Trafficking of Women (*Stichting tegen Vrouwenhandel*, STV). Also present are employers in the sex branch industry, such as the Association of Entrepreneurs of Relax Businesses (*Vereniging van Exploitanten van Relaxbedrijven*) and the Association of Window Prostitution Owners (*Vereniging van Raamexploitanten*). There is even a man from a clients' organisation, the Foundation Man, Woman and Prostitution (*Stichting Man, Vrouw en Prostitutie*). They are all united in the National Platform for Prostitution (*Landelijk Platform Prostitutiebeleid*, LPP). Several interested scholars and journalists make up the rest of the audience. The topic of discussion is the implementation of the highly publicised legalisation of brothels in The Netherlands in 2000.²

The conference was a typical manifestation of 'polder politics'—the specific type of corporatism prevalent in The Netherlands, where all interested parties sit round the table to achieve consensus and compromise about policy in a certain area. Prostitution is no longer a controversial moral issue, but is now defined as sex work, provided the work is done voluntarily. Prostitutes are entitled to social insurance and can unionise if employed; they also have to pay taxes. Sex employers have to observe labour law, health and safety regulations, and pay social insurance and taxes. Brothels are permitted within certain areas and have to comply with local regulations; pimping is no longer a criminal offence. Forced prostitution, often tied to the trafficking of women, is to be eliminated. Traffickers can be sentenced to an 8-year prison sentence.

The legalisation in The Netherlands is almost unique; only New South Wales, Australian Capital Territory (ACT) and Victoria in Australia have similarly recognised prostitution as sex work, and in Europe, Austria has recently taken steps in the same direction.³ Most other Western European states follow an abolitionist policy that aims at eliminating prostitution and criminalises all those

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profiting financially from prostitution, with the exception of the prostitutes themselves. The case of Sweden is a noteworthy, as, since 1999, clients are also liable to prosecution, and prostitutes are to be reformed and rehabilitated. The city of Helsinki in Finland adopted a similar policy that same year.⁴ Britain criminalises nearly all activities associated with prostitution except the selling of sex itself.⁵ In Germany policies differ according to the state; strict regulation with designated sites for prostitution and registration of sex workers predominate.

What led The Netherlands to this major policy change, one which is highly controversial internationally, the more so as it is already notorious to many for its liberal drugs policy, the legal possibility of euthanasia and its flourishing gay scene? To answer the question, I shall first sketch the changes in prostitution during the 1970s which led to the first political demands to lift the ban on brothels and to legalise voluntary prostitution. I shall then present the political debate and the major actors involved in the political arena around the issue. Finally the legalisation will be discussed in the context of the culture of The Netherlands, relating it to the way controversial moral issues are generally solved in this traditionally highly pluralistic society.

Setting the Scene

The orderly scene of corporatism in process stands in stark contrast to the lurid reputation that prostitution in The Netherlands has abroad: the red light district of Amsterdam with women on display behind windows, sex shops and live sex acts on stage and the special sites for street prostitutes for 'handling' customers (*afwerkplekken*).⁶ In other towns too, the sex industry is usually concentrated in one area, catching the eye with explicit signboards; Utrecht has a river with canal boats where the clients can cruise along by car or boat to choose a prostitute. In addition there are so-called sex farms in the countryside and pick-up sites along the big highways frequented by lorry drivers and salesmen.

The prostitution market in The Netherlands is a segmented market, offering a wide range of services. At the top of the hierarchy are the women working in chic clubs for affluent businessmen; then there are the sex workers working in other private clubs; women working from their homes; the window prostitutes (a number of whom are self-employed); women in the escort business; and, at the bottom end of the market, there are the streetwalkers and the drug addicts who offer services at rock bottom prices and will work without a condom. Estimates of the number of prostitutes vary widely, and so do figures about the composition of the 'work force'. During the debates in Parliament in 1999, MPs usually referred to 50,000 to 100,000 sex workers, half of whom are assumed to come from outside the EU. Of the latter, half again are held to be illegal migrants. Researchers are predictably more conservative in their estimates; they calculated that in 1998 there were between 20,000 and 30,000 sex workers in The Netherlands, of whom about 5% are male and 5% transsexual or transgender.⁷ How many of these are victims of trafficking, is even harder to determine, given its underground nature and the debate around the definition of what constitutes trafficking. Trafficking is often confused with the smuggling of migrants, and some of those smuggled are sex workers intending to work in Western Europe. The most recent reliable figure is that there were about 3,500 victims of trafficking and forced prostitution in 2000; the majority of these women are from Central and Eastern Europe.⁸

The Rise of the New Sex Market

In The Netherlands, prostitution was regulated by the state and local authorities for reasons of public order, morality or health until the passing of the Morality Laws in 1911, when an abolitionist policy was adopted, ending brothels and criminalising living off the earnings of prostitution. The prostitute herself was not criminalised. The new policy did not end prostitution. In the big ports of Amsterdam and Rotterdam, the selling and buying of sex occurred in bars, on the streets and in private houses in certain working class areas. Local authorities condoned this as long as there was no disturbance of the peace and some measure of discretion was maintained.

The 1970s, however, saw a number of fundamental changes in the prostitution business as it turned into a modern sex industry. As sexual mores loosened in the 1960s and 1970s, leading from a highly regulated sexual life to a far reaching sexual liberty and openness in The Netherlands, sexual wishes and desires also underwent a transformation. This led to new sexual demands, and these could be accommodated by the new industry. With the rise of prosperity in The Netherlands (and the rest of Western Europe), sex tourism boomed. When the US army left Vietnam, sex entrepreneurs in South East Asia were able to attract Western male tourists as the new consumers of their services, catering for both heterosexuals and gays. The domestic scene also underwent a dramatic revolution. Sex phone lines, sex clubs and escort services proliferated, catering to the new demands of the increasingly affluent Dutch male (hetero and gay).

At the same time, and for the same reasons (rising living standards), the supply of prostitutes in The Netherlands ran low. Women no longer had to turn to prostitution when in financial need since the introduction of social welfare in 1964. This resulted in a rising demand for foreign prostitutes in The Netherlands; first recruited from the West Indies and Latin America, they later came from Thailand and the Philippines. At the beginning of the 1980s, it was becoming apparent that some of the women from these countries were being trafficked and that professional crime networks were involved in this activity. But as late as 1977, repealing the laws on prostitution was explicitly rejected by the incumbent cabinet, following a Commission report on repealing the 1911 Morality Acts. It recommended leaving things as they were.⁹ The ban on brothels was regarded as a weapon for local authorities to threaten those brothel keepers who overstepped the (informal) standards: no fights, no minors, no indecent behaviour (judged by the police) outside the premises.

In contrast to the small-scale businesses of the traditional red lights districts in the big cities, co-existing relatively peacefully with their working class neighbours, the new sex industry was exhibitionist and aggressive. Neighbourhood protest against its expansion and rowdy clients soon gained strength. Local councils responded by attempting to contain the expansion or to relocate the sex industry in industrial estates. In the early 1980s, the City Council of Rotterdam sought the solution in the creation of an 'Eros Centre' to centralise prostitution activities, but the courts struck down the plans, on the grounds that they contravened the prohibition of brothels in the Penal Code. The courts held that one cannot regulate what is forbidden.¹⁰ For Rotterdam, and other municipalities faced with similar dilemmas, lifting the ban became imperative to regulation, and this political demand was soon adopted by the powerful Association of Dutch Municipalities (*Vereniging Nederlandse Gemeenten*, VNG).

This association started the lobby for the repeal of the brothel ban and framed the issue in terms of law-and-order. The demand was supported by the Mr De Graaf Foundation (*Mr de Graaf Stichting*), the only interest group organised around the issue at the time, and which wanted to legalise all prostitution.

The Women's Movement Intervenes

In the 1970s, The Netherlands had a highly mobilised women's movement which gained access to policymaking, leading to the establishment of a women's policy agency within the national bureaucracy, the Department for the Coordination of Equality Policy (*Directie Coördinatie Emancipatie*, DCE), in 1978.¹¹ Feminist groups had succeeded in putting sexual violence on the political agenda, and at first they regarded prostitution and the trafficking of women as varieties of sexual violence, along with rape, domestic violence, incest and sexual harassment. In this framing it gained the attention of the junior minister for Equality Policy, the feminist Hedy d'Ancona of the Labour Party (*Partij van de Arbeid*, PvdA) and her 'femocrats' (feminist bureaucrats, who had strong ties to the women's movement) in 1981. The DCE organised a high-level conference on sexual violence in The Hague a year later; after some debate it included prostitution in the programme. During the conference two frames on the issue competed. One held prostitution to be sexual violence, as a consequence of the power relations between men and women. In prostitution, the woman has to subjugate her sexuality to the man's, making prostitution a form of sexual domination.¹² The other held that for some women prostitution is a way of making a living and therefore it could be regarded as work. At the workshop the demand was raised to lift the ban on brothels as a first step in regulating the sex business and improving working conditions for prostitutes. Trafficking was recognised for the first time as a growing problem and was included in the debates about prostitution from then on. This issue was brought to public attention by the feminist Working Group against Sex Tourism, who picketed male tourists at airports on their return from sex holidays in South East Asia.

A new framing then developed from the cooperation of the femocrats of the DCE with movement activists, feminist lawyers and researchers, and it subsequently found its way into official government papers.¹³ A distinction was drawn between 'voluntary' prostitution, which should be regarded as work and regulated in order to improve the position of the sex worker, and 'forced' prostitution, which occurs when women are coerced into doing such work. The repeal of the brothel ban was required in order to introduce 'normal business practices' in the prostitution sector. Discussions with feminist activists and prostitutes had convinced the femocrats that this would be the best way to improve the position of sex workers. From then on, the sex work framing entered the political discourse around prostitution. In the women's movement it replaced the sexual domination frame, which had turned women into powerless victims on whose behalf feminists were supposed to be acting, creating a space for self-assured sex workers who would be able to fight for their own rights. The feminists involved in fighting sex tourism transformed into the Foundation against the Trafficking of Women (*Stichting tegen Vrouwenhandel*, STV), which was supported financially by the women's policy agency.

By the mid 1980s, there was no powerful women's lobby in The Netherlands in favour of abolition, the policy approach which follows from the sexual domin-

ation frame. This frame was espoused by radical feminists and supported by religiously inspired abolitionists, leading to the revival of strong and active anti-prostitution organisations in a number of other countries and at the international level. Radical feminism was important and highly influential in the Dutch women's movement of the 1970s, successfully putting the issue of sexual violence on the political agenda. Radical feminists, generally hostile to reformist strategies, strongly disapproved of 'state feminism' such as that represented by the women's policy agency DCE and provincial women's bureaux. The DCE provided substantial funding for many movement organisations and feminist projects, which radical feminists denounced as cooption. Many other feminists, however, seized the opportunities this policy offered, especially for maintaining service projects run by volunteers. Radical feminism failed to attract new support in the early 1980s and went into decline, following the often acrimonious debates on reformism and cooption. Other potential supporters of abolitionism, as found in the past among members of the Dutch Reformed Church, had all but disappeared since the rise of the welfare state. The large traditional women's organisations, which had survived the decline of the Dutch pillarisation (*Verzuiling*) in the 1960s, were hostile to politics in general. When they finally overcame their distrust of second wave feminism in the mid 1980s, they concentrated on the issue of economic independence; prostitution (or trafficking) was not on their agenda.

The First Attempt to Lift the Ban on Brothels

The demand for repeal of the brothel ban, made by the big cities and the VNG, required an act of Parliament, as it is listed in the Penal Code. From the outset it was clear this would not be a simple affair, as prostitution touches on the religious–secular cleavage in the Dutch party system, which cuts across the dominant left–right (socio-economic) divide. No political party has a majority, so coalition government is always inevitable. As the Christian Democrat Party and its predecessors were usually the largest party, they were inevitably part of the cabinet, either with the Social Democrats or the Liberals, who were always at cross-purposes on social and economic issues. The Christian Democrats were thus in a position to veto any reform touching on religious or moral issues. It had always subscribed to an abolitionist position, taking a moral view of prostitution with a discourse of fallen women and sinful men, and a belief that the state should guard and police morals. In contrast, the parties on the secular side of the divide have been arguing against state intervention in sexual matters since the 1960s, defining them as the private affair of citizens. The parties on the Left and the Liberals soon declared themselves in favour of lifting the ban on brothels in order to regulate the sex industry. They accepted the distinction between voluntary and forced prostitution and the framing of prostitution as sex work, although the Left emphasised the goal of improving the position of prostitutes and the Liberals the normalisation of the sex market.

A first attempt to remove the ban was made in 1985, when the Liberal Minister of Justice (in the Liberal/Christian Democrat cabinet Lubbers I) introduced a bill that incorporated the feminist distinction between voluntary and forced prostitution, defining the former as sex work.¹⁴ State involvement was to be limited to fighting forced prostitution (i.e., when violence and coercion are employed to recruit or keep a woman in prostitution against her consent) and leaving regulation to the local authorities, who could then set their own standards on

health and safety regulations for brothels. The Christian Democrats in parliament were strongly opposed to the distinction between forced and voluntary prostitution (in their eyes all prostitution is forced) and to the idea of sex work, and therefore voted against the bill. Still, it was passed by the Second Chamber in 1987; the vote splitting neatly along the religious/secular divide in the party system. However, the First Chamber suspended the vote for legal reasons.¹⁵ The definition of coercion in the bill was held to be inconsistent with a bill pending in the Second Chamber to rephrase the offence of trafficking of human beings and to increase the penalty for it. It was decided, therefore, to wait until the trafficking bill was introduced in the First Chamber.

The Christian Democrats were provided with a new opportunity to fight the framing of the issues when a new coalition cabinet of Social Democrats and Christian Democrats (Lubbers III) took power in 1989. A Christian Democrat became Minister of Justice and he amended the trafficking bill by mixing in elements from the brothel bill pending in the First Chamber, removing the distinction between forced and voluntary prostitution if 'Third World' women were involved. These women were seen as victims of trafficking by definition. He also made it possible for local councils to maintain a ban on brothels. Members of the Social Democrat parliamentary party in the Second Chamber were furious, but were afraid to vote against the cabinet, so the trafficking bill was passed in its revised version. It was then debated by the First Chamber in conjunction with the postponed bill lifting the ban on brothels, in 1992. This House does not have the right of amendment, but by intimating that it would reject both bills, it forced the minister to remove the offending passages from the trafficking bill and retract the brothel bill because of the option for local councils to maintain the ban. It then passed the trafficking bill.¹⁶ The ban thus remained intact in the Penal Code.

The Lobby for Repeal

The outcome left local authorities empty-handed. The sex industry continued to grow, while increasing citizens' protests against the nuisance kept up the pressure to act. However, as most actors in the policy arena expected that sooner or later a new bill would be submitted to Parliament, the authorities and police of the major towns started to anticipate the likely content of a new bill: the lifting of the ban, with regulation left at the local level. Amsterdam developed its own policy in the early 1990s, closing brothels outside certain designated zones such as the traditional red light district, checking on illegal migrant sex workers and minors in prostitution, as well as closing down sex clubs for fire hazards. Brothels with some semblance of decency—as determined by the local police—were condoned. The municipal health authorities had long-term relations with the prostitution scene and provided voluntary tests for sexually transmitted diseases for prostitutes—the AIDS scare had provided them with new funding. In 1994 the VNG developed a model ordinance for municipalities on how to regulate the business after repeal of the brothel ban. The lobby on the national government to introduce a new bill was sustained by the VNG, the mayors of the four big cities, the De Graaf Foundation and the STV.

Cracking down on trafficking proved harder. It was not one of the top priorities for the police, and the specialised vice squads who had some knowledge of the issue had been integrated into the regular police force in the early 1990s. The STV had won a concession from the Ministry of Justice when it decided to give

temporary residence permits to victims of trafficking willing to testify against their traffickers in 1988.¹⁷ It then focused on the legalisation of illegal sex workers migrating from non-EU countries. Very few traffickers were brought to trial, mainly because of the problems of providing the necessary evidence.

In the 1990s, the period after the rejection of the brothel bill, the social climate changed considerably. The ill-fated repeal law had been written in the more humanitarian and liberal spirit of modernising criminal law, which had been prevalent in the 1960s and 1970s. In the late 1980s, crime rates were rising steeply, and politicians and the police started to worry about the growth of organised crime. At the same time, attitudes towards migration were turning more hostile. In the emerging new discourse, prostitution was linked to the fear of mafia practices and 'floods' of illegal sex workers entering the country. International pressure was also on The Netherlands to tackle child sexual abuse after the discovery that child pornography was being produced in the country. These issues also kept the issue on the political agenda and threatened the framing of the original bill to lift the ban on brothels.

The New Act

A new window of opportunity opened for the reformers when the elections of 1994 resulted in the exclusion of the Christian Democrats from the cabinet for the first time since 1917. In 1997, the new cabinet of Liberals, Social Democrats and Social Liberals (Kok I), the so-called Purple Coalition, tabled a new draft bill to lift the ban. This retained some of the earlier modern and humanitarian spirit, but placed more emphasis on child prostitution and the 'protection' of prostitutes. It promised a 'realistic approach without moralism', limiting the role of the state to eliminating forced prostitution. Its aims were to control and regulate the exploitation of prostitution, to fight forced prostitution more effectively, to protect minors from sexual abuse and to 'protect' (not 'improve') the position of prostitutes. Lifting the ban meant municipalities could impose standards and license the sex trade; prostitution would be treated as sex work. Decriminalisation, according to the memorandum to the bill, would lead to the normalisation and cleaning up of the sex market. The bill set an age limit for prostitution at 18 (the normal age of consent is 16).¹⁸ It did away with the ill-fated idea of regarding all 'Third World' sex workers as trafficked victims; non-EU prostitutes can work in a brothel, but brothel-keepers, as all employers in The Netherlands, are prohibited from employing illegal workers. Therefore, only women with valid papers can work in the sex business; the cabinet (and the vast majority of Parliament) had no intention of providing work permits for non-EU sex workers. Nor did they intend to legalise the already present migrant sex workers without papers (estimated at 10,000–15,000 non-EU sex workers in the memorandum to the bill).

Parliament debated the bill in 1999.¹⁹ Central to the debates was the idea of prostitution as sex work and the distinction between forced and voluntary prostitution.²⁰ The secular parties stressed the work aspect of prostitution and the right of the sex worker to refuse her services under the Constitutional article on the integrity of the human body. The religious parties tried to reinsert the right of municipalities to retain the ban, but this was rejected by the other parties as unconstitutional. The bill was passed with the vote splitting along the familiar religious/secular divide in the Chamber. That same year the First Chamber also voted in favour of the bill, again along predictable lines. The only concession the

religious parties were able to obtain was that the bill would only take effect from 1 July 2000, a date later postponed to 1 October 2000, in order to provide local authorities with more time to set up their own regulation and system for licensing.

After Repeal

The passing of the bill was not accompanied by a huge public debate. The media provided the occasional minor story, usually accompanied by suggestive images of blonde girls in a pink boudoir, but the repeal came as no surprise, either to the interest groups in the policy arena, who had organised themselves in the meantime as corporate actors, or to the wider public that had been expecting the repeal for years. This does not mean, however, that the repeal is uncontroversial for those who are involved in the policy arena. By 2002, most municipalities had set up a licensing system for brothels requiring legal workers and safety precautions. But many of the local councils try to limit the number of brothels, which has led to complaints from sex entrepreneurs, including some women who want to run their own business. The municipality of Leiden, for instance, granted licences to the four already existing brothels in 2001, but is refusing them to new sex entrepreneurs. Other municipalities, especially the small towns with an orthodox Protestant council majority, are trying to circumvent the law by redrafting their urban planning schemes in such a way that there are no suitable areas available for prostitution. One of these towns is now being taken to court by the Association of Entrepreneurs of Relax Businesses for obstruction. Other entrepreneurs have become creative in evading zoning, by installing caravans for sexual encounters in parking lots along the provincial highways, but the authorities have stated that these will not be condoned. The larger cities are heavily involved in promoting and monitoring the rules. The Mayor of The Hague recently made headlines by ordering brothels to stick to the same opening and closing hours as pubs (in The Netherlands 1 a.m. during the week and 2 a.m. at the weekend). The brothel keepers complained, saying that Dutch men prefer to come after having a drink! They took the Mayor to court, but the judge ruled that the Mayor's decision was within his authority and consistent with the intent of the new law.

As a result of the new act, the Ministry of Justice has been quick to introduce a new law making it compulsory for sex workers to carry an identity card. They also have to register with the Internal Revenue Service. Compulsory identity cards are highly controversial in The Netherlands, and attempts by consecutive governments to introduce them for citizens have been strongly opposed, with opponents not eschewing comparison with the measures of the German administration during the occupation of the country in the Second World War. But in this case, the new ruling hardly received any publicity and only attracted opposition from the STV and the trade union for prostitutes, the Red Thread (*Rode Draad*). This does not augur well for the hoped-for effect of the repeal in improving the position of sex workers. Some predict that it will lead to sex workers leaving the profession; given the strong demand by the market, they will in all likelihood be replaced by migrants without papers.²¹

There are heated debates about the impact of the new law. Many observers predicted a displacement effect, arguing that prostitution has always been like communicating vessels. If the authorities crack down on brothels, street prostitution emerges; if they crack down on streetwalkers, prostitution in bars

and massage parlours increases. Now that brothels have to conform to certain standards which make large profits unlikely, untrustworthy entrepreneurs may invest in escort services, and start employing migrant sex workers without papers. The number of streetwalkers could also increase, as many sex workers would not want to pay taxes and be registered. However, at a recent conference in May 2003, it was reported there were not many signs of the proliferation of escort services in the various cities.²²

The implementation of the effect of the bill also led to the usual debates about the relative virtues of bringing vice out into the open or suppressing it. Social and health care workers used to be in favour of legalising prostitution, so that they could keep track of their clients and maintain contact with sex workers. The suppression of prostitution would lead to prostitutes going underground, especially illegal migrant sex workers, moving out of reach of the municipal health services and the women's aid shelters. Interestingly, since the legalisation, they now reverse the argument, claiming that the licensing of brothels is now driving prostitution underground.

Overall, it is debatable whether one can already assess whether the law is achieving its goals, such as reducing forced prostitution, as well as the overall impact of its introduction.²³ The first report monitoring its effects cautioned against conclusive judgements.²⁴ This has been supported by other researchers²⁵ and those familiar with the grassroots, such as health workers and the Red Thread. This contradicts the negative media coverage of the new situation, including that of the quality press. Generally, researchers and those involved in the policy arena recommend improved coordination of the law's implementation and increased cooperation between the various actors working on prostitution policy: in short, more corporatism.

Accounting for Change

At the political level there are several factors explaining why it was possible to legalise prostitution in The Netherlands. First of all, there were several tenacious actors in favour of repealing the ban on brothels who kept the pressure on consecutive cabinets. They included the powerful VNG, major city authorities, the *De Graaf* Foundation and, in the course of time, sex entrepreneurs themselves. They had their allies in the secular political parties. For those who fought against the Morality Laws during the 1960s on the platform of opposition to state intervention in private life, the ban was the last symbol of state interference in sexual affairs, telling citizens it was immoral to provide the facilities for sexual services. Moreover, in the course of the 1980s, they were able to construct the ban as the major obstacle to a sensible settlement of the endless complaints of neighbourhoods faced by the excesses of the new sex industry.

Secondly, the inside access of the women's movement to the national government also aided the demand for legalisation. Through this channel, feminist ideas, including regarding prostitution as sex work in order to improve the position of prostitutes and the need to combat trafficking as forced prostitution, made it into the key policy documents. Moreover, these ideas ran parallel to the market discourse of liberalism, in ascendance in the 1980s and well represented in the national political arena by the two liberal parties in The Netherlands, the Social Liberals of Democrats 66 (*Democraten 66*, D66) and the

conservative liberals of the People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie*, VVD).

Finally, there were no powerful organised interests opposing legalisation. For pragmatic reasons, the Christian Democrats could live with the repeal of the ban and the removal of pimping as an offence, but would not accept the concept of voluntary prostitution and regard it as sex work. But with the secular cabinet of 1994, they could no longer prevent the repeal. The orthodox Protestants stuck to their abolitionist position, maintaining that the state should preserve morals, but they were a small minority in Parliament. Their position could be constructed by their opponents as hopelessly moralistic and outdated. Radical feminism as a force had dissipated, and there were no other abolitionist organisations who lobbied the national government to retain the brothel ban in the Penal Code.

But the legalisation of prostitution did not just come about because of favourable political circumstances. It should also be seen as a prime example of the pragmatic approach to moral issues in The Netherlands. This pragmatism, coupled with a tolerance of deviant behaviour as long as it does not threaten public order, has often been linked to the open and cosmopolitan character of Dutch society, a comparatively wealthy society already highly urbanised in the sixteenth century; a seafaring and commercial nation, with a regular influx of migrants ever since. It has also been linked to the absence of a dominant elite, as The Netherlands has always been a society of many minorities, none of which could dominate the others. To live together without disorder and violence, the various elites had to nurture cooperation and compromise in order to achieve consensus. This has led to a tolerant approach to issues touching on different moral values, with a series of strategies to accommodate conflicts arising from this diversity. This can range from condoning deviant behaviour, delaying policy action as long as possible, depoliticising moral issues by redefining them as technical matters for experts to solve, to coming up with procedural, not substantive, solutions.²⁶

However, these informal rules for dealing with divisive moral issues were no longer observed by the political elites with the breakdown in the 1960s of the system in which they evolved, the older segmented society of the *Verzuiling* (pillarisation). This paved the way for the legalisation of the issues prohibited in the Morality Acts of 1911: the display and advertisement of contraceptives, abortion and homosexuality. The 1960s did not, however, permanently damage the culture of consensus and compromise in the political system. A close analysis of the liberalisation of these issues has shown that the new laws which superseded the Acts were in fact also supported by the opposition, even if it originally resisted liberalisation.²⁷ As political scientist Daalder has pointed out, once convinced of the necessity to take action, the elites will move to arrive at a 'mutually acceptable solution', finding it easier to compromise than to make a definite choice for one alternative.²⁸ The historian Kennedy, writing on the revolution in morals of the 1960s, maintains that the Dutch create a new consensus by constructing a self-evident need for change: being 'modern' is a paramount cultural value, implying the necessity to keep up with the times. Social change is then construed as inevitable and positive.²⁹ He notes that with the crumbling of the old system, the Dutch adopted a consciously anti-moralistic posture on social issues, often finding solutions in procedural rules, leaving matters purposely vague: the state has now abrogated its function as a moral taskmaster.³⁰

Underlying the pragmatic approach is the conviction of nearly all the political

parties that prostitution is ineradicable and that, in the long run, human nature is hard to reform: mankind will sin. Therefore, policy should aim at channelling undesirable behaviour in controllable ways. The term 'realistic' abounds in the prostitution debates: making voluntary prostitution sex work is regarded as a feasible policy; licensing brothels is sensible and it is practical as it gives the police time to chase the 'real villains'. In no way should the Dutch legalisation of brothels be interpreted as a libertarian move: it is a policy to bring prostitution activities to the surface, in order to make for better control by the authorities. The state may have abrogated its authority to pronounce on moral matters, but it has not relinquished its regulatory powers. But in the best corporatist tradition, these are always exercised in consultation with the other actors involved.

Notes

- ¹ Conference of The Red Thread (*Rode Draad*), 1 October 2001.
- ² The law was passed in 1999, but took effect from 1 October 2000.
- ³ For Australia, see Sullivan, B. (2004) The women's movement and prostitution policies in Australia', in J. Outshoorn (Ed.) *The Politics of Prostitution. Women's Movements, Democratic States and the Globalisation of Sex Commerce*, pp. 21–41 (Cambridge: Cambridge University Press); for Austria, see Sauer, Birgit, Taxes, Rights and regimentation. Discourses on prostitution in Austria', in Outshoorn (Ed.) pp. 41–62.
- ⁴ For Sweden, Svanström, Y., Criminalising the john—a Swedish gender model?, in J. Outshoorn (Ed.) pp. 185–205; for Finland, Holli, A.M., Towards a new prohibitionism? State feminism, women's movements and prostitution policies in Finland, in J. Outshoorn (Ed.) pp. 103–123.
- ⁵ Kantola, J. and Squires, J., Prostitution policies in Britain, 1882–2002, in J. Outshoorn (Ed.) pp. 62–83.
- ⁶ 'Afwerken' means literally 'finishing off'. The sites were officially approved and intended to relieve the neighbourhoods from men cruising in cars; additionally they were supposed to make it safer for sex workers. There were two such sites, near industrial areas in Amsterdam and Rotterdam, where street prostitutes picked up by clients in cars can deliver their services. In recent years they were populated by Latin American transsexuals and transgenders, as well as East European women without papers accompanied by their pimps. Drug use and violence were rife. The Rotterdam site is slated for closure in 2005 after neighbourhood complaints; Amsterdam closed its site in January 2004. The police prefer the concentration of street prostitution as it makes for easier control; it also makes it easier for the women's outreach services to contact and help sex workers.
- ⁷ Figures are from the first official report of the National *Rapporteur* for Trafficking in Persons, appointed in compliance with the EU Commission Communication on trafficking in women in 1997; *Mensenhandel. Eerste rapportage van de Nationaal Rapporteur*, 2002, p. 83 (Den Haag: Bureau NRM).
- ⁸ van Dijk, E.M.H., *Mensenhandel in Nederland 1997–2000*, Zoetermeer: KLPD/NRI, quoted in: *Tweede rapportage van de Nationaal Rapporteur, Mensenhandel. Aanvullende kwantitatieve gegevens*, 2003, p. 82 (Den Haag: Bureau NRM).
- ⁹ Outshoorn, J., Voluntary and forced prostitution: the 'realistic' approach of The Netherlands, in J. Outshoorn (Ed.) pp. 185–225.
- ¹⁰ van Mens, L. (1992) *Prostitutie in bedrijf. Organisatie, Management en Arbeidsverhoudingen in Seksclubs en Privéhuizen* (Delft: Eburon).
- ¹¹ Outshoorn, J. (1995) Administrative accommodation in The Netherlands: the case of the Department for the Coordination of Equality Policy, in D. McBride Stetson and A. Mazur (Eds) *Comparative State Feminism*, pp. 168–186 (Thousand Oaks, London and New Delhi: Sage).
- ¹² For the proceedings, Acker, H. and Rawie, M. (1982) *Seksueel geweld tegen vrouwen en meisjes* (Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid/DCE).
- ¹³ See the basic *Nota Bestrijding Seksueel Geweld*, HTK 1983–1984, 18452, Nos 1–2; *Beleidsplan Emancipatie*, HTK 1984–1985, 19502, No. 2.
- ¹⁴ For the bill: HTK 1985–1986, 18202 (*Opheffing Bordeel verbod*), Nos 1–3, 24–9–85.
- ¹⁵ The Dutch parliament has two Houses, the Second Chamber elected by a system of strict proportional representation, making for a very low threshold for election; the First Chamber, a house of review, is elected by the representatives of the provinces (who are in turn also chosen by

- proportional representation). For the debates: HTK 1986/1987, 18202, TK 66, pp. 34783502 (2-4-87), for the final vote: p. 3511 (7-4-87).
- ¹⁶ For the debate on trafficking, Outshoorn, Voluntary and forced prostitution, pp. 193–197.
- ¹⁷ Ibid.
- ¹⁸ HTK 1996–1997, 25437, Nos 1–3. (*Opheffing Bordeelverbod*), 1-7-97.
- ¹⁹ For the parliamentary debates: HTK 1998–1999, TK44, 27-1-99; TK 45, 28-1-99; for the vote: TK 49, 2-2-99.
- ²⁰ For this debate: Outshoorn, J., Voluntary and forced prostitution, pp. 197–202.
- ²¹ This could be countered by giving sex workers from outside the EU work permits, but this is explicitly prohibited in the Law on Labour by Aliens (*Wet Arbeid Vreemdelingen*). There is little support for revising it; The Netherlands also runs the risk of contravening ratified international treaties by doing so.
- ²² EU Conference on the Trafficking of Women in Europe, The Hague, 9 May 2003.
- ²³ Nationaal Rapporteur, *Mensenhandel*, p. 205.
- ²⁴ Daalder, A. (2002) *Het bordeelverbod opgeheven. Prostitutie 2000–2001* (Den Haag: Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC).
- ²⁵ Scholtes, H. and Wagenaar, H., Legalisering van bordelen ligt op koers, *NRC Handelsblad*, 12 November 2002.
- ²⁶ The classic description is from Lijphart, A. (1968) *Verzuiling, pacificatie en kentering in de Nederlandse politiek*, Chapter 8 (Amsterdam: De Bussy).
- ²⁷ Outshoorn, J. (1986) *De politieke strijd rondom de abortuswetgeving in Nederland 1964–1984* (Den Haag: VUGA); Kennedy, J. (1995) *Nieuw Babylon in aanbouw. Nederland in de jaren zestig* (Amsterdam: Boom Meppel).
- ²⁸ Daalder, H. (1966) The Netherlands: opposition in a segmented society, in: R.A. Dahl (Ed.) *Political Opposition in Western Democracies*, p. 219 (New Haven/London: Yale University Press).
- ²⁹ Kennedy, J. (2000) The Moral State: How Much do the Americans and the Dutch Differ?, in H. Krabbendam and H.-M. ten Napel (Eds) *Regulating Morality. A Comparison of the Role of the State in Mastering the Mores in The Netherlands and the United States*, p. 17 (Antwerpen/Apeldoorn: Maklu).
- ³⁰ Ibid, p. 21.