A ‘Liberal Profession’? The Norwegian Debate on the “Sex Buying Act”

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The Norwegian Sex Buying Act (SBA) was adopted by the Norwegian parliament in November 2008, criminalizing the buying of sexual services. In the Norwegian penal code, art. 202a, it says that buying sex is to be punished by fines or imprisonment for 6 months up to one year. The law also applies extraterritorially, something which is rather uncommon in national legal practice.

The SBA was heavily opposed by the organization for prostitutes in Norway (PION), research institutions like Fafo (Labour party’s research foundation) and Pro Senteret, an organization that helps prostitutes. The proposal for the new law was sent out to stakeholders for review and comment as is the procedure in Norway. The political parties that supported it counted the Labour Party which is the biggest party in Norway, SV (left Socialists), Sp (the farmers’ party), and KrF (the Christian democrats). All these three parties are small, but together with Labour they made up a majority, and the Labour government which proposed the law, saw it adopted. The opposition consisted of the Liberal-Conservatives (Høyre), the Liberals (Venstre), and the right-wing populist party FrP, the Progress Party. The ‘hearing round’ to stakeholders did not invite substantial discussion about the question of criminalization; it was determined beforehand by the majority that the government held.

The SBA has been legally in force since January 2009. Its main rationale was to prevent human trafficking and to change attitudes to prostitution. Other aims were to reduce the demand for sex in the market and help women into jobs and a different way of life. We will return to the analysis of arguments for and against the law below, suffice it here to say that it was and is very controversial and contested politically.

After 5 years in force the government decided to evaluate it, and the tender for the analysis was won by Vista Analyse whose conclusions you have just heard. The main findings are that the law has reduced demand, made it harder for traffickers and pimps to work in Norway (both are criminal activities), reduced economic conditions, and reduced the street market by 40-65%.[1] Importantly, the report also found that there was an attitudinal change in young men against the buying of sex. This finding is seconded by police information, according to the Vista report. They write that “our findings indicate that the law has had an effect on attitudes. This is also the conclusion in evaluations of a similar law implemented in Sweden in 1999”. [2] In the NYT of March 16th, 2015,[3] there is a report on the latest study of the effect of the Swedish law that dates from 1999. It says that prostitution has been cut by more than half since 1995 and that demand is down by 40%, and that this is “consistent with an official report completed by the Swedish government in 2010 which concluded that the law has reduced trafficking and transformed attitudes towards buying sex”: [4]

The article also mentions that this policy is being imitated by other states – Sweden’s law dates from 1999, Finland’s from 2006, Norway’s and Iceland’s from 2009, whereas the UK and the European Parliament have called for the same mechanism – punishing the buyer. As policy studies show, imitation of successful policies across countries is common (isomorphism). We may thus assume that reports that find effect of this type of law will greatly contribute to such policy ‘lending’. The evaluations of effect are the more important for this reason.

Yet in Sweden there are voices that contest the benign effects of the law. Prostitutes complain that they are forced off the street and into more dangerous situations with clients in hotel rooms or apartments, and that they cannot get social help from outreach groups without feeling the pressure to change away from prostitution. The normative content of the law is crystal-clear: this is not a profession, but something where the customer is breaking the law, i.e. committing a crime, as if he were buying drugs or contraband. The ‘trade’ therefore cannot be treated like any other any longer, the seller is not neutral when the buyer is criminalized – the implication
for her is that she should get out of this business that the state tries to destroy by chasing the customer. This is where the various arguments about prostitution come into conflict, as we will see later in this paper. Those NGOs that protect what they consider the work rights of prostitutes are all of a sudden in a new situation where they are tasked with helping girls and women to leave prostitution. Some oppose this vehemently because they regard prostitution as a profession that should not be stigmatized. With the SBA, the work of the prostitute is thus stigmatized as it is automatically redefined as undesirable and an unfree, harmful and destructive when the customer is redefined from customer in a market to criminal actor. Like the famous Hegelian dialectic in the master-servant relationship; once the master defines himself as master, he can define the other as servant. Only when the servant realizes that he is thus defined, can he redefine himself – perhaps in an analogy to this situation: once the sex customer is a criminal, the prostitute cannot insist on being a regular seller of a service in a regular market.

** Trafficked women or ‘liberal professionals’? **

The Swedish data tell us that in the late 1990s, trafficking was not an issue and most prostitutes were Swedish. [5] Now the women are mostly from Rumania, Bulgaria, and Nigeria. More than 8 in 10 want to return to their home countries.[6] The same situation occurs in Norway – whereas most prostitutes were Norwegian in the 1990s, they are now outnumbered by foreign women, mostly from Nigeria and the poorer states of Europe.

There is another interesting parallel in Sweden and Norway: Former opponents of the law have changed their minds after having worked on the problem in daily life: The deputy prosecutor of Gothenburg in Sweden, Tomas Ahlstrand, was against the law. But now he has worked on the problem of prostitution and trafficking for more than a decade he says that, “I realized by meeting and talking to these girls … that I was wrong. They were victims of oppression.”[7] In Norway, the chief prosecutor in the country of Hordaland where the second largest city Bergen is, has come to the same conclusion. He says that if the law is removed, the police will no longer care about what goes on the market, and traffickers will have impunity: “The sex act brings attention to the market and allows the police to detain traffickers”, he says, and adds that there are now no less than 33 cases of traffickers that have been sentenced in Norway since the law went into effect.

In sum, the laws against the buying of sex have had the intended effects in Norway and Sweden: they have reduced demand, changed attitudes and contributed to police attention to trafficking, leading to court cases and sentences. The women in prostitution in these countries have become non-nationals to an increasing extent, making it likely that many of them are trafficked. Thus, the law’s connection with the trafficking problem is a real one, and it enables the police to get to the traffickers and to persecute them.

The SBA is therefore not a law against prostitution in a more generic sense, but against women that are forced into prostitution. This is one of the most contentious points about it. Many argue that we talk about a profession that essentially involves two consenting adults and which therefore should not be criminalized, even if the latter only concerns one of the parties.[8] From such premises a lot follows: freedom to choose what to do in a contractual situation, selling a service for which there is demand, etc. However, if the position is unfree and the woman is under pressure to prostitute herself, the validity of such arguments disappears. Therefore it is very important to establish the factual situation for the women as precisely as possible at the outset.

As we have seen, the number of trafficked women has risen during the last decade, and this is likely to continue, given open borders and globalization. Are these women trafficked or no? Do they chose to come to Norway to work in prostitution? No one has exact data on this, but there is evidence of much trafficking in Europe and elsewhere. This contrasts very much with the so-called ‘luxury’ prostitutes that advertise on the Internet and are resourceful nationals, like the Norwegian law student Hege Grostad[9] who under full name gave interviews and participated in the debate about the SBA. She claims that there are no negative sides to her work as an escort girl along with her studies. Another student who calls herself “Sarah” says that she makes 10-15.000 NOK per night (1500-2000 euros) and that her customers are Norwegian businessmen who visit Oslo. Another Norwegian category – at the other end of the scale – are the Norwegian drug users who need income, but their numbers in prostitution have shrunk. It is obvious that students like Sarah or Hege live lives far removed from the oppression of foreign trafficked girls, and that arguments about ‘profession’ or not will vary accordingly. Yet arguments about this activity need not rely on oppression in order to maintain that prostitution is degrading and against human dignity.

** Arguments – the Norwegian debate **

The first debate on the SBA took place in 2008, before the act was passed. Fortunately we have an analysis of all the arguments in that debate in the form of an MA thesis in legal sociology by Peter Andersen.[10] He analysed all media debate on this between 2004 and 2009.
The legal arguments mentioned in the law itself concern trafficking. The problem that the law addresses is not prostitution as such, but the fact that so many prostitutes are trafficked. Trafficking is a new phenomenon compared to pimping and prostitution as such. Both are prohibited in Norwegian law.

In the Norwegian debate, the number of articles dealing with the act and whether to accept it, rose from a mere 23 in 2003/4 to 239 in 2007/8. The act was adopted in 2008. The main papers contained most of the articles, with the leading 5 papers that are dailies in Oslo. The main theme in these articles was the issue of criminalization of prostitution.

These papers which are opinion leaders in Norway, printed articles that had the following view of the matter: Almost 29% of the articles were in favour of criminalization, 26% were neutral, and 25% were against. The rest were mixed in their view. Thus, we see that there was no overwhelming public opinion in favour of the new act to begin with, but this changed throughout the debate.

The actors in the debate were first and foremost politicians: here we find 126 pieces by this group. Next in line is the prostitution organisation Pro Senteret which had 56 articles, followed by police with 38, and prostitutes by 31. The rest of the articles (N=378) were written by journalists, academics, and the general public. There were 47 editorials on the theme. The opinion leaders were mainly strong actors in society – politicians and various professionals.

Among the politicians we find that most are parliamentarians, mostly from the Labour Party which proposed the act – 75 articles out of 126. The next group of 26 contain articles written by the Left Socialists, 18. The other parties partake less and have on average 6-8 articles. The Christian-Democrats which favour the SBA very much do not seem to debate much on it. Thus, the Labour party and the Left-Socialists which both are in favour of the SBA also argue for it and seek to set the agenda on the issue, something which is logical. The other parties are less interested.

Among the other participants we find the editorials of the papers. What they say is important in forming public opinion. One liberal paper, Dagbladet, moves from being against the SBA to a pro-position during the debate. [11] Such ‘conversions’ can be important as they communicate that new knowledge and better arguments can move positions, and when one major paper changes its opinion, others can more easily follow suit. This paper which is very liberal towards prostitution writes that the trafficking issue is what made it change its mind as this is no longer about consenting adults, but about oppression of women.

The organization for prostitutes (PRION) and the social outreach organizations for the former (Pro Senteret) are very active in the debate, but the sex buyers are absent. Even in a country where the liberal argument about prostitution as a profession is dominant and prostitution is legal, the soon-to-be criminalized customers did not participate in the debate. They could of course have written anonymously, but the fact that they did not suggests that there is shame attached to this kind of business transaction – i.e. that it is not really a normal business of service exchange.

There was at this point no dominant view in the public debate, so that we cannot interpret this as an instance of what Noelle-Neumann[12] calls the ‘spiral of silence’. Her thesis is that a dominant view of something in a public debate will force out dissenting views so that they are silent in the end. This could seem to be the case with e.g. abortion in Norway – from a fierce debate in the mid-70s when the law permitting abortion was adopted till the present where there is no debate on abortion at all. But as said, in the case of the SBA, the public debate did not have one dominant position although it was clear that there would be a political majority in favour in parliament. However, the Norwegian political system is one where ‘votes count, but resources decide’ as political scientist Stein Rokkan[13] famously wrote. The corporate channel of influence may be more important than the parliamentary. In this case there were no corporate actors involved, as the prostitutes are not well organized, but the importance of knowledge and expert findings do play a key role, as we shall see in the current round of re-evaluation of the SBA (2014/15). Moreover, the liberal view of prostitution as a profession was the dominant one in Norway when the SBA was proposed. For these reasons it might have been possible to influence public opinion and swing political opinion during the debate.

In sum, the main advocates were Labour and Left-Wing politicians, the police, and various feminists groups, in addition to the Christian-Democrats, a largely Lutheran party in Norway. The conservative party H was divided, and still is.

The feminist groups are very clear in their views. They favoured criminalization, but were more ideological than empirically based in their arguments.

Pro Senteret, an outreach organization for prostitutes, was in two minds about the issue, but concluded against criminalization. This organization ‘represents’ prostitutes to a large extent, especially Norwegian ones and tends to argue that they need to be helped so that they do not lose their income.
Did facts matter?

More than 30% of the articles referred to research on the issue, but there was no clear base of research to be referred to at the time.[14] This makes it interesting to note that the percentage here is fairly high. Most research is mentioned as references to international findings and studies, especially from Sweden which enacted a similar law ten years before Norway. Thus, there is a search for facts that can determine the issue position. Academic studies also clearly provide legitimacy in the public debate, but in this case there is not a large body of knowledge and no ‘scientific consensus’ on whether a SBA will work. The interest in evaluation of the Norwegian law in 2014 has therefore been great, as we shall see below, and the conclusions of the evaluation report seem to play a decisive role in determining whether the law should be repealed or not.

However, from 2007 onwards there was little uncontested knowledge of the extent of trafficking in prostitution and about the effects of the law in Sweden. It was simply too early to tell and only one case to study. [15]

Moral arguments

It is hardly surprising that moral arguments play a key role in the debate. In the study we cite from, 52% of the article contained moral arguments. Most of these were in the articles that advocated a SBA. Most of these arguments are grounded in trafficking as the main problem; then prostitution as degrading. However, the trafficking argument is much stronger. It is an unbeatable argument since no one would argue FOR trafficking. The key issue is whether trafficking is so important empirically that all prostitution should be affected by a SBA. This is, as said, difficult to show empirically, but there seems to be clear evidence that trafficking-based prostitution has increased very much since the 1990s and that this therefore has to be addressed. In the editorials in the Norwegian press this was underlined – prostitutes are victims of oppression, they are not free subjects. The more trafficking enters the argumentation, the less legitimate the opposition to the SBA becomes. The agenda setting or framing the issue was and remains of key importance.

In sum, the Norwegian debate in 2007-8 was characterized by a majority of arguments in favour of the SBA, led by Labour politicians and seconded by feminist groups. In addition some Christian-democrats participated and agreed with the argumentation, but they also argued that prostitution as such is a moral evil, and adding that trafficked women constituted a new case of immorality was hardly surprising. They played little political role in the government at that time, and therefore were not of key importance in getting the SBA passed.

Once the agenda was set and was based on trafficking, it was unassailable. The framing of the issue largely became one of trafficking or at least of oppression, but there were few moral arguments about prostitution as such – that it is not a ‘free’ profession where a service is sold in a market, but a degrading activity for women. We can assume that, absent the trafficking problem, Norwegian prostitution would have continued as before.

The Current Debate – 2014/15

The Norwegian SBA has recently been evaluated, as discussed at the outset and detailed in professor Strøm’s presentation. As we heard, the law has had the intended effects insofar as it is possible to conclude. These findings have become of key importance in the current debate and seem to change the current government’s policy plan to abolish the law, which is not a small feat on the part of academic research!

The current liberal-conservative government has pledged to repeal the law, and in particular it is the right-wing populist party FRP which argues strongly for this. But the evaluation report has had a major effect on this intention:

As expected, the Christian-democrats applaud the findings: Ingolf Ropstad from that party says that “Now the Conservatives, Liberals, and Right-Wing parties must take heed and not repeal a law that works”, and he adds that “before the law, there were only 5 trafficking cases brought to court, afterwards, we have 33 such cases”.[16] The governing party Høyre (Liberal-Conservative) is now in doubt about what to do: “The Liberal-Conservative Party does not know what to think about the SBA”,[17] reads the headline, but the Young Conservatives remain opposed to the act. One parliamentarian from the party, Peter Frølich, says that the evaluation report is somewhat uncertain in its conclusions, “thus it is not certain that we should accept it now”. Here there is a direct link between the empirical effects of the SBA and the political position, implying that if the law works, it must be retained. The party could have continued to argue that prostitution is work and that it should not be criminalized, but it does not. It simply says that if the law works well, it must be retained. This is not what the argument was about before; it was not that such a law could not work, but that such a law criminalized all prostitution. There is no logical connection between these types of arguments, but it appears that the governing party retreats from its opposition to the law simply because it is proven to have effects. His statement should rather be read as a retreat in the face of unpopularity, as public opinion now seems very much in favour of the law. Even the two key politicians in Oslo that both represent this party, the mayor and the head of the city administration, favour the law. Their clear support for it also contributes to the change in

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the party’s position which is now underway. It is ‘game over’ for the government in this matter, as professor Hege Skjøee wrote in her column in Dagens Næringsliv.[18]

In addition, the feminist movement, including the more moderate elements of it, are all “ready for another round of fighting” for the law, as they put it: “Can the government take yet another struggle with the women’s movement?” they pointedly ask.[19] Stating that they are ready to fight, they are seconded by the oldest women’s organization in Norway – one that is very moderate and close to the conservative party – Norsk Kvinnesaksforening from 1884. They have adopted a resolution that also strongly condemns prostitution as degrading to women:

“Prostitution is harmful and oppressive to women. There are huge health damages for women in prostitution. It upholds gender stereotypes of women as objects for men. These attitudes lead to violence towards women. We must therefore outlaw the buying of sex also for the future, and the government must enact programmes to help women out of prostitution now”.[20]

Thus, the current political situation is that the positive evaluation of the effects of the law has caused the government to change its stance on the issue. We can assume that the SBA will continue in Norway.

However, opposition continues from younger politicians and opinion makers in the liberal camp. The liberal think-tank Civita published a report in 2014 which advocated decriminalization. Tonning Riise argued that prostitutes in Norway are now much more at risk when they sell sex because they have to hide from the police and also protect their customers from the latter. This leads to more indoor prostitution, to less trust in the police, and to social stigma to a much greater extent than before. The SBA destroys the working conditions for prostitutes, he argues; conditions that were poor enough to start with.[21] A major academic contributor to the debate, Maj-len Skilbrei at the research institution Fafo, argues that trafficking has become almost synonymous with prostitution in the debate, but that this concept is ill defined and that there is little empirical research that proves its pervasiveness. In a report, she and co-author Marianne Tveit write that “it is very hard to say anything conclusive about the extent of trafficking in the Norwegian prostitution market, and our mapping does not yield clear results”. [22] Skilbrei also criticizes the evaluation that has been presented at this conference: “Those who know the sex market in Norway also know that it cannot be mapped in just six months”, she says.[23]

Tonning Riise argues in a consistent, liberal direction: the SBA means that prostitutes are hindered in their work by police, stigmatized, and categorized with trafficked women. He suggest de-criminalisation of customers and that the police should go after the traffickers and pimps, which are criminals according to Norwegian legislation. There must be a distinction between the sex workers that want to work in this ‘profession’, he says, and those that are forced to do so. He claims that such a policy is the mainstream solution internationally, citing evidence from various international bodies.[24]

Conclusions

As we have seen, the SBA in Norway seems to be politically solid by 2015 because it has been evaluated as having the intended effects. The attitudes towards buying sex have changed, especially in younger men, as one major effect, and the market for selling sex has contracted considerably. Street prostitution in Norway has almost disappeared. The facts about trafficking are hard to establish in great detail, but it seems clear that the law has had very important effects. The fact that street prostitution has nearly disappeared is obvious to everyone in Oslo, for instance. What used to be a big problem in the main streets of the city has virtually disappeared. The same objective measure applies to the number of court cases re trafficking: the rise is considerable. It is therefore not a valid argument to say that the evidence is too scanty or subjective to preclude conclusions about effect.

Moreover, the change in attitudes is important in its own right, perhaps very important. Smoking was criminalized some years ago in Norway when the smoker was inside a public building or in a restaurant. Now virtually no one smokes. The social stigma attached to smoking through its semi-criminalisation is great, and perhaps more effective in combating smoking than the ban itself. The SBA act conveys that prostitution is no longer a ‘liberal’ profession, a market relation where a service is sold in a market, but that it is a criminal activity on the part of the buyer. This in turn also redefines the seller as something less than a market actor, and it is understandable that prostitutes protest the disappearance of their livelihood. Yet they must accept that society says that they are engaged in ‘work’ that is not good for them, although this moral argument about human dignity has been less prominent in Norway than the pragmatic argument about effects. By setting the agenda on trafficking and not on prostitution as such, the debate has avoided the moral dilemmas and the moral arguments about prostitution since no one can oppose criminalization of trafficking.

Now that the SBA seems to have come to stay, the government has incurred a moral obligation, however: by ‘freeing’ women from trafficking, what will it offer them instead? There is an obligation here that is just now
starting to become recognized. Therefore the topic ‘beyond criminalisation’ follows logically, as this conference points out.

[1] Presentation of the report by professor Steinar Strøm at this conference.
[2] Ibid.
[4] Ibid.
[6] Ibid.
[7] Ibid.
[8] E.G. Tonning Riise’s report from the liberal think-tank Civita, to be discussed later.
[10] Sexkjøpsloves fremstilling i media før lovens ikrafttredelse (The debate in the media about the act before its enactment), MA thesis, Faculty of Law, Peter Andersen, University of Oslo, November 2013.
[14] An exception is Skilbrei et al, see discussed later.
[15] Finland introduced such a law in 2006, Denmark chose not to.
[21] K. Tonning Riise, «Trenger vi en ny prostitusjonspolitikk?» (Do we need a new prostitution policy?), Civita Report, March 2014, available online at www.civita.no
[24] This is contestable ‘evidence’.