

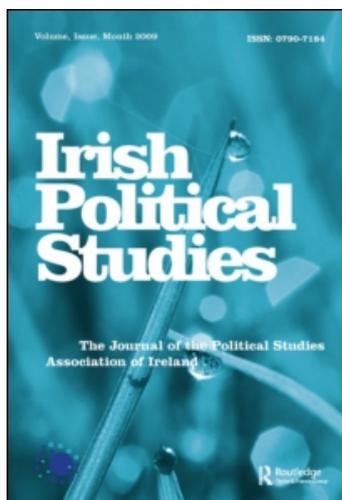
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### Prostitution and the Irish State: From Prohibitionism to a Globalised Sex Trade

Eilís Ward <sup>a</sup>

<sup>a</sup> NUI Galway, Ireland

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# Prostitution and the Irish State: From Prohibitionism to a Globalised Sex Trade

EILÍS WARD

NUI Galway, Ireland

**ABSTRACT** *This article argues that while the prostitution policies of the Irish state have changed over a long time from an unambiguous prohibitionism towards a partial abolitionism, overall policy is characterised by inconsistency and contradictions and legal changes have occurred outside of a comprehensive policy review. As Ireland is integrated into a globalised sex industry, with a consequent restructuring of the vice trade, prostitution itself may remain largely beyond the reach of the state, or, policy resistant.*

**Keywords:** prostitution; sex trade; Irish policy; prohibitionism; abolitionism

## Introduction

Current Irish state policy on prostitution prohibits pimping (managing and exploiting prostitutes), soliciting sex, living off the earnings of a prostitute, and brothel keeping, but engaging in transactional sex, or prostitution *per se*, is not a crime for either the client or the prostitute. Up until the change in legislation in 1993, however, being a ‘common prostitute’ was a crime in accordance with inherited British vice laws. In this regard Irish policy follows a contemporary international trend away from criminalising the prostitute which elsewhere was partly a response to both prostitutes’ and women’s movement activities from the 1970s onwards (Outshoorn, 2004).

In recent years, Irish prostitution policy has come under scrutiny not least because of the globalisation of the sex trade to include the sex-trafficking of women into the country (Ward & Wylie, 2006). With some exceptions little research exists on either prostitution policy or on prostitution in Ireland, most especially in the contemporary context.<sup>1</sup> This article addresses that gap by presenting an overview of the evolution of prostitution law and policy over time. It uses the history of legislative change to provide a narrative structure, to illustrate key discourses and to capture both shifts in

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*Correspondence Address:* Eilís Ward, School of Political Science and Sociology, NUI Galway, Ireland.  
Email: eilis.ward@nuigalway.ie

values and moralities and the dynamic nature of prostitution regimes, irreducible to the law alone but shaped by it along with the market and public discourse (Skilbrei, 2001). The narrative then incorporates discussion of the contemporary context of the globalisation of the Irish sex trade and concludes with analysis of the state's ability to respond to that phenomenon in the light of its history and of evidence from global trends.

In order to organise and understand the divergent practices, intentions and values of Irish prostitution policies over such a long time, the article draws on the model of prostitution regimes, or sets of laws and practices, proposed by Outshoorn (2004). Using two key variables of whether states provide/allow any space for prostitution or not and whether they condemn the prostitute or not, she conceptualises three regime types: abolitionism, prohibitionism and regulationism. Abolitionism seeks to ban prostitution but not to criminalise (condemn) the prostitute; prohibitionism seeks to ban prostitution and to criminalise all parties involved including the prostitute; and regulationism seeks to control and regulate prostitution activities but does not condemn the prostitute (Outshoorn, 2006: 6–8). In practice, few prostitution regimes are consistent in their application across space and time (Danna, 2000, 2003; Kilvington *et al.*, 2001; Hubbard, 2006). A broadly common pattern over historical time is evident however in Europe and the English-speaking world where prohibition has largely given way to abolition or regulation. Sweden's recent law (1999) which criminalised the buying of sex but not the person selling it (Eckberg, 2004; Svanström, 2006) conforms to abolitionism while the Dutch and German models of legalising prostitution in designated areas are regulationist regimes.

The article is in three sections. The first traces the history and contexts of change in the Irish regime over time, section two analyses prostitution in the context of the globalised sex trade and the third and final section concludes.

### **Prostitution and the Law in Independent Ireland**

This section traces the evolution of Irish prostitution regimes through changes in the law, its implementation and, where known, its impact on the business of selling sex, located in the wider regime context of Oireachtas and extra-parliamentary debates. Our evidence is explored against Outshoorn's regime types by identifying ideas and attitudes therein towards the spaces allowed to prostitution, or otherwise, and towards the condemnation, or otherwise, of the prostitute. Where available, prosecution statistics for prostitution-related offences are drawn in as indicative of regime. The absence of micro-analysis of criminal proceedings and changes in the law and in the reporting and recording of crime over the time frame considered point to the need for the kind of intense research beyond the scope of this article.<sup>2</sup> I use statistics for the prosecution of prostitution offences *only*, not those for reported crimes or for convictions or for offences attendant to the act of prostitution such as pimping.

Irish prostitution legislation rests on two pieces of law, the Criminal Law Amendment Act, 1935 (hereafter the 1935 Act) and the Criminal Law (Sexual Offences) Act, 1993 (hereafter the 1993 Act) whose principal purpose was to decriminalise

homosexuality. Other pieces of legislation, such as the Criminal Justice (Public Order) Act, 1994 and the Intoxicating Liquor Act, 2008, govern activities such as the licensing of premises and the advertising of brothels but are not foundational to prostitution politics and are excluded here.

*Background to the Criminal Law (Amendment) Act, 1935*

At the foundation of the state Ireland inherited a *de facto* and *de jure* prohibitionist regime. Luddy's (2007) work records that public debate about prostitution in pre-independence Ireland was dominated by ideas of moral and epidemiological contagion by the prostitute and not the prostitute user and by attempts to reform and purify her. In the early twentieth century the buying and selling of sex was widespread and nationalist explanations of the phenomenon – as caused by British soldiers soliciting sex – were not credible in post-independence Ireland once its continuity remained visible. Now prostitution and sexual immorality were explained by the attrition of the violent transition to statehood on social and personal morality, on social stability and on parental control (Luddy, 2007: 195–198). If transaction sex continued, so too did Victorian public attitudes, namely the salient concern for public health, public order, vagrancy and social purity (Ryan, 1997: 33–34) and the justification of males' use of prostitutes alongside continued criminalisation of the prostitute (Bacik, 2004). The clearance of Dublin's 'Monto' (a red light district) by the Legion of Mary in 1923 was welcomed notwithstanding its displacement of activities to different parts of the city (Luddy, 2007).

It was in a context of what Luddy (2007) calls a 'moral panic' within the polity, fuelled by a conflation in the public imagination of juvenile prostitution with illegitimate births, that the new state first turned its attention to prostitution. In 1930, responding to that panic, Minister for Justice, James FitzGerald-Kenney appointed a committee of six non-parliamentarians to determine if the laws for the suppression of vice were adequate to prevent 'exposure of the public to evil' (NAI, Department of Justice, 90/4).<sup>3</sup> Known for short as the Carrigan Committee, it promptly set about gathering written and oral submissions emphasising from the start that in order to encourage freedom of expression, all information provided would remain unpublished. In the event information came forward from clerics, representatives of charitable organisations, a District Court judge and notably, General Eoin O'Duffy, then Commissioner of the Civic Guard who presented data on sexual crimes (NAI, Department of Justice, 90/4).

Now available to us, proceedings from that committee contain a rich compendium of attitudes to public morality and sexuality at the time, albeit, for our purposes, less focused on prostitution *per se* than on other concerns. Here a predominant view was of prostitutes as the cause of both male profligacy and sexual diseases and hence it emphasised the need to protect innocent young men from them. In this vein, contributors connected prostitution and the existence of brothels to a degeneration in social conduct and in public morality evidenced by illegitimacy rates and in the fraternising of young women and men in dancehalls and other public areas. Witnesses referred to

educational, structural (poverty, bad housing) and affective (moral weakness, temptation) causes of prostitution and some posited prostitutes as victims (NAI, Department of Justice 90/4/5/2). Nuanced understandings amongst witnesses were evident, however, as noted by Smith (2004); women tended to frame the problem of prostitution in relation to welfare and preventative measures, men in relation to criminality and punishment. Nonetheless, the Committee considered a proposal, for instance, to lock up all young women found wandering alone at night.

The Committee concluded its investigation within a year and its report, produced in August 1931, included many recommendations for change in law and practice. Our interest is exclusively in relation to prostitution and here the committee proposed a redefinition of soliciting by both prostitutes and clients, an increase in fines for prostitution, an exclusion of women under 21 years from the criminal category of 'common prostitute' and a redefinition of what constituted a brothel to include the flats, houses and lodgings of single women (Report of the Committee on the Criminal Law Amendment Acts, 1931). Reflecting perhaps divergent tendencies among both witnesses and members the recommendations were both punitive and socially reformist (Smith, 2004).

The report made its way to the Department of Justice where it was prepared for government by an official whose memorandum, *inter alia*, objected strongly to its 'vituperative language' and 'exaggerated claims', rejected the designatory powers in relation to the dwellings of single women and raised general concerns about granting increased powers to the Gardaí to declare any woman a 'common prostitute'. The author was also very exercised about the possibility that innocent men, such as those in relationships with women not their wives, could be criminalised if recommendations were adopted (NAI, Department of Justice, 90/4/4). He concurred with the committee's desire for non-publication of proceedings (including the report itself) because of the negative picture they painted of public and sexual morality in Ireland. In the event, the Committee's work was buried until after the 1933 elections but found its way into legal change in the Criminal Law Amendment Bill, presented to the Dáil in June 1934 following prior consultation with the Catholic clergy and prior approval by an All-Party Committee appointed by the new Minister for Justice (Smith, 2004).

### *The Criminal Law Amendment Act 1935*

In introducing the Bill to the Dáil, Justice Minister Patrick Rutledge cited the need for legal change in order to suppress brothels and prostitution (Dáil Debates, Vol. 53: 850, 21 June 1934) and later the Attorney General noted approval for the changes therein by both the Carrigen Committee and the All Party Committee (Dáil Debates, Vol. 53: 1246, 28 June 1934). Closure of the spaces for prostitution *per se* was therefore a goal of the new law. This was to be effected through the granting of greater powers to the Gardaí to search premises, provision of harsher punishments for solicitation by prostitutes and also for brothel keepers. It retained the concept of the 'common prostitute', whose loitering, importuning or giving of offence to

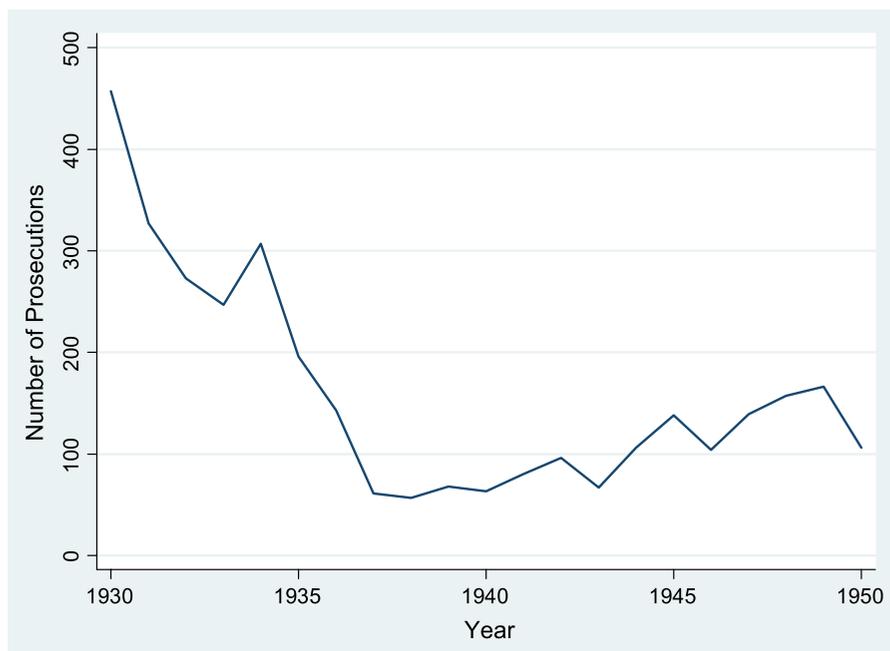
passers by could be criminalised. Hence, the prohibitionist intent was reflected also in an intention of continuing to criminalise the prostitute.

Although the changes in relation to prostitution policy did receive attention in the Oireachtas, debates were dominated by the bill's proposal to outlaw the sale, importation and display of contraceptives and to change the age of consent. Moreover, the ban on publishing all matters relating to the Carrigen Committee extended to the members of the legislature who found themselves debating change based on evidence to which they were not given access. Requests for the report from both Senators and TDs were firmly rebuffed based on the 'delicacy' of matters therein and the government side made strenuous efforts throughout to curtail all debate. In the Seanad in particular there were vociferous protests about the lack of openness in the debate.<sup>4</sup>

Where prostitution was considered, no voices were raised in objection to the proposed changes in the definition of soliciting or to the increased Garda search-powers. However, the continued use of the term 'common prostitute' and the power its status conferred on Gardaí to criminalise any women was controversial. Independent TD Robert Rowlette proposed replacing the term with the gender-neutral word 'person' arguing that the former and the powers it conferred on Gardaí endangered respectable women who would not, either, be protected from men attempting to purchase sex (Dáil Debates, Vol. 53: 2014, 1 August 1934) The Minister assured him that the Bill was intended only for those 'well known' to the Garda and later assured Senators that 'insulting behaviour' by men (those who solicited innocent women) would be dealt with in different legislation (Seanad Debates, Vol. 19: 1242, 6 February 1935). In the event, the Criminal Law Amendment Act (1935) was adopted in February 1935 with little discussion in either house on the act of prostitution, its causes or how to address it.

Following the act, the number of prosecutions for prostitution offences dropped, as evidenced in crime statistics (see Figure 1). However, for four reasons, caution is required in interpreting this drop. Firstly, no statistics are available for such offences prior to 1930. Secondly, the drop was, in time, reversed, though the state's decision not to publish statistics for prostitution-related offences in the period between 1958 and 1973 attenuates the possibility of identifying long-term patterns. Thirdly, such statistics tell us little about the extent of activity. Fourthly, prosecution rates may also be a function of targeted operational decisions or of a weakening of deterrence caused by adaptation on the part of those involved in activities. Causality between the law and the practice is therefore difficult to establish categorically. We do know, however, that on-street prostitution continued following the Act (Luddy, 2007: 219–225).

In summary, the 1935 Act sought to suppress prostitution through coercive prohibitionist policies that criminalised the prostitute and continued to make all women vulnerable to the charge of being a 'common prostitute' on the say-so of a Garda. While the state did not adopt the Carrigen Committee's proposal to proscribe the dwelling places of single women as potential brothels, the discourse in which the law was embedded posited every unmarried mother as a likely prostitute (Smith, 2004: 221). Catholic social thinking (Smith, 2004) and nationalist politics (Luddy, 2007) were evident in the Act. Promulgation of the legislation prompted much engagement,



**Figure 1.** Prosecutions for prostitution 1930–46  
*Source:* Garda Crime Statistics Office.

little of it on prostitution and the context for changes contained therein. That limited attention was given to the issue then signalled the low salience of prostitution as a policy issue, reflected in the decades to come when prostitution was not mentioned again, in any way, until 1966. The singular voice here was a Cork TD who tabled a question about prostitution in his city (Dáil Debates, Vol. 228: 1015, 28 April 1966). A one-off Garda sting operation to entrap male clients of street-prostitutes in Dublin in 1966 (Bacik, 2004), and which involved using female gardaí as ‘traps’, did not make its way into Oireachtas debates. Prostitution continued as a low-visibility issue within the Irish polity in the first decades of the state. Change was to come, however, and from the 1960s onwards the Irish prostitution business began to grow and transform (Mullins, 1995). This change, along with legislative change in 1993, resulting from a 1981 Supreme Court ruling, *King v. Attorney General*, and are dealt with below.

### *Background to the Criminal Law (Sexual Offences) Act 1993*

As stated, a restructuring in the Irish prostitution market began to occur from the 1960s onwards. More liberal attitudes to sexuality and the growth of brothels were a part of this change. From the perspective of regime change, reflected in new law and the opportunity that presents to us for an analysis of attitudes and values, the catalyst

was not the sex trade itself but the outcome of *King v. the Attorney General* [1981] IR 233, a case which related to vagrancy. The Supreme Court ruled in this case that evidence based on an a priori supposition of criminal intent or behaviour was unconstitutional. In relation to the state's ability to prosecute prostitutes the fall-out was significant. Up to this point sufficient evidence for a prosecution was the view of a garda that a woman was a 'common prostitute'. The dramatic impact of the ruling is unambiguously illustrated by the dramatic drop in prosecutions that followed (see Figure 2).

Following the ruling the state sought advice from the Law Reform Commission on all aspects of the law affected by the judgment and it reported back with recommendations in 1985 (LRC, 1985). However, no action was to be taken for some time to address the consequences of the ruling for the prosecution of prostitutes. Meanwhile, the reality of street prostitution in Dublin and elsewhere was changing, as were public debate and perceptions. Three specific changes are explored here as part of this wider context. First was the growth and consolidation of brothels, posing as massage parlours; second the arrival of heroin, particularly in Dublin and third, the emergence into public discourses of a feminist analysis of prostitution.



**Figure 2.** Prosecutions for prostitution, the Criminal Law Amendment Act, 1935, 1980–92 and prosecutions for prostitution (Sections 7 and 8) Criminal Law (Sexual Offences) Act 1993, 1993–2006

Sources: Garda Crime Statistics Office & Garda Síochána Annual Reports 2000–2004.

Prior to the 1980s prostitution in Dublin was almost entirely on-street in areas known to the public and subject to the kind of Garda surveillance which suggests that the trade was tolerated and considered localised and contained (Levine & Madden, 1987). Massage-parlour brothels began to open in the 1960s, and by the early 1980s 38 operated in Dublin (Mullins, 1995: 53). A senior Garda interviewed at that time explained that the state had reached a compromise: it neither turned a blind eye nor 'rooted' for offences (Sweetman, 1979: 182–185) a perspective supported by Mullins (1995: 132), who asserts that there was no 'moral objection' to brothels within the force. The arrival and consolidation of brothels, amply narrated in two detailed journalistic accounts (Mullins, 1995; Reynolds, 2003) can be considered the first major restructuring of the prostitution business in Ireland: the shift from on-street to off-street business. By the early 1990s advertising for brothels was commonplace. 'Adult Ads' constituted approximately 32 per cent of advertising content of *In Dublin* magazine (Reynolds, 2003: 192–213).

The arrival of heroin onto Dublin streets in the 1980s contributed further to that restructuring. Here a number of different sources identify prostitution as an economic support for many women intravenous drug users (IVDU) whose presence on the streets facilitated a stratification: experienced women working in brothels and younger, addicted women outside (Reynolds, 2003). Care is needed in the articulation of such binaries, however, as research with 18 on-street prostitutes in the 1990s revealed only one IV drug user (Foran & O'Neill, 1996). From the perspective of state response, however, the relationship between drug addiction and prostitution forced a significant shift – albeit directed at HIV prevention primarily. In 1991 the then Eastern Health Board established the Women's Health Project, as part of the state's HIV prevention strategy, to address the health needs of IVDU women in prostitution (Foran & O'Neill 1996), signalling, in its effect, the first harm reduction approach taken to prostitution.

The Irish women's movement took up the issue of prostitution as part of its feminist agenda (Levine, 1982: 286–288; Steiner-Scott, 1985) but two particular contexts grounded that agenda in the lives of real women. First was the murder of ex-prostitute Teresa McGuire in Dublin in 1978, which generated public attention, and second, ten years later, the auto/biographical story of one women in prostitution, Lynn Madden (Levine & Madden, 1987). By now, it was clear that Irish feminism had embraced prostitution as a public policy issue. In time, the Second Commission on the Status of Women debated prostitution, including the possibility of a regulationist approach (Seanad Debates, Vol. 137: 304, 29 June 1993), although the Commission's final recommendation to government was abolitionist. It proposed an integrated response based on collaboration between NGOs and prostitutes to, inter alia, develop exit strategies for women (Government of Ireland, 1993).

Against a background of the changes identified above and, in the continued shadow of *King v. the Attorney General*, the government turned its attention again to prostitution, albeit, as in 1935, indirectly and as part of wider policy change. In June 1993 the Criminal Law (Sexual Offences) Bill, proposing to reform homosexuality law, came before the Oireachtas in a legislative initiative which, in the event,

provided an opportunity to also address the lacunae that *King v. the Attorney General* had created in relation to public soliciting. Now the state faced two options: to decriminalise soliciting or to reform the law (DJELR, 1998: 94). The state went for reform as part of other legislative change.

### *The Criminal Law (Sexual Offences) Act, 1993*

The opportunistic nature of that reform was named by Minister for Justice Máire Geogheagan-Quinn, who told the Dáil in introducing the Bill that changes in prostitution did not come from a comprehensive review of the state's regime but were an attempt to update inoperable and unacceptable laws. The overall policy objective of the Bill (in relation to prostitution) was to protect the 'vulnerable' and to focus on clients and others who benefited from the trade (Dáil Debates, Vol. 432: 1972, 23 June 1993). The text of the proposed legislation, reflected in the words of the Minister, significantly replicate the recommendations of the Law Reform Commission (LRC, 1985: 97–126). Eight sections dealt with prostitution and proposed new crimes (kerb crawling, managing prostitution, living off the earnings of prostitution), increased penalties up to and including five years' imprisonment and increased Garda powers and removed the criminal category of the 'common prostitute'.

While the decriminalisation of homosexuality dominated debates as the Bill moved through the Oireachtas, the prostitution proposals received considerable attention. A comprehensive analysis of those debates is beyond the scope of this article. For our purposes, an overview of regime change over time, it can be noted that in its generality the changes were welcomed by members. Objections to detail were nonetheless raised, most specifically but not exclusively in the Seanad. I have summarised these objections into five points as follows:

1. The law would punish the prostitute, and, to a greater extent than before, through the increase in fines for soliciting and the addition of penal sentencing for non-compliance.
2. The law would force prostitutes into the 'seedy underground' to avoid prosecution in the first instance and fines and/or imprisonment in the second instance, thereby, moreover, distancing her from health and welfare support with implications for the spread of HIV/AIDS and sexually transmitted diseases.
3. The possible imprisonment of prostitutes was questionable as both a deterrent and in terms of the nature of their crimes.
4. The law failed to address the anomaly whereby running a brothel was illegal but advertising one was not, thereby revealing a contradiction in state policy.
5. Given the opportunistic nature of the change, reflected in the absence of a prior comprehensive review of prostitution law and policy, the debate and the potential for reform were limited and inadequate (e.g. Dáil Debates, Vol. 432: 2002, 23 June 1993 and Seanad Debates, Vol. 137: 304, 29 June 1993). In this vein, an amendment from Democratic Left TD Éamon Gilmore to establish a Task Force on Prostitution to bring forward legal and social reforms to reduce the

incidence of prostitution was ruled out of order (Dáil Debates Vol. 432: 2255, 24 June 1993).

In the debates during the Bill's promulgation several key policy orientations of the government's approach became clearer. In accepting amendments on the penalty structure outlined in the Bill, Minister Geoghegan-Quinn stated that women in prostitution were there 'though no fault of their own' and needed the protection of the law and a programmed approach to assist them (Seanad Debates, Vol. 137: 327, 29 June 1993). The Minister also opposed an amendment to criminalise the advertising of brothels on the basis that it would drive them further underground with consequences for both surveillance and the health of prostitutes (Dáil Debates, Vol. 432: 2271, 24 June 1993). She told the Seanad that the criminal law had no role in 'trying to regulate sexual arrangements made in private between adults, whether or not money is a factor in those arrangements' but could regulate public manifestations of such arrangements (Seanad Debates, Vol. 137: 262, 29 June 1993). In the longer term the state's commitment to addressing prostitution would continue through strategic action between the Departments of Health, Education and Justice, as recommended by the CSW (Dáil Debates, Vol. 432: 2271, 24 June 1993).

Throughout the debates, a dominant perspective was of the prostitute as victim, as the most 'vulnerable' and as almost entirely female, although the Minister did cite consideration of the male prostitution. With one exception (Deputy Austin Deasy who proposed legalising both prostitution and brothels), the opposition adhered to the broadly abolitionist perspective of the government: that the solution to prostitution was not to criminalise the prostitute and that policies should seek to eradicate prostitution. Deputy Liz O'Donnell, for instance, argued that legalisation would be a 'misdirected liberal step' and that prostitution was exploitative of all women, not just those in prostitution (Dáil Debates, Vol. 432: 2270, 24 June 1993).

Once adopted, the impact of the 1993 Act was swift, as is evident in Figure 2. Within one year more prosecutions were brought than in the previous ten years and within five years, numbers were reaching peaks never before recorded in the state, culminating in the highest ever number of 927 prosecutions in 2000.

It is worth repeating, however, that these statistics tell us only about numbers of cases prosecuted and a comprehensive interpretation of these figures must be deferred for future research. However, it is clear that the state began to police its new vice laws through, *inter alia*, prosecuting the prostitute, a response which required appropriate operational decisions and resource allocations within the Gardaí. For the moment, based on existing available sources, an explanation for the steep rise in prosecutions at the end of that decade is not fully evident. However, as with all policing responses, public opinion does play a role and it is probable that the murders of two prostitutes, Sinéad Kelly in January 1997 and Belinda Pereira in June 1998, which generated widespread media and public debate, were a factor in the spike. Garda investigations in the Kelly murder case were protracted and brought Gardaí in close proximity with the vice trade, particularly on street-prostitution.<sup>5</sup> The case is made by several sources that the brunt of the changes in

the act were borne by prostitutes and not by clients (O'Connor, 1994; O'Malley 1996; Bacik, 2004) – a contradictory outcome to that outlined by the Minister in the Dáil as an objective of the Act.

In the light of the statistics, it is perhaps no surprise that research carried out with women in on-street prostitution in the wake of the Act confirms this perspective. These accounts speak of a belief that, after the Act, their relationships with the Gardaí became less friendly and more hostile, they no longer felt confident of Garda assistance in the event of violence, they were more likely to take risks to avoid prosecution and that their need for protection (from policing) rendered them more vulnerable to pimps (O'Connor, 1996; Foran & O'Neill, 1996: 9). O'Connor (1996) concludes that the law endangered their lives. O'Malley (1996: 202) suggests that the 1993 Act did little to alter the status quo: that prostitution remained a 'necessary evil' to be contained and hidden from public view. Looking at its broader impact, Reynolds (2003) and Mullins (1995) claim that the Act sheltered the growth of the brothel because as street work became more vulnerable to policing, indoor work became more attractive. By the mid-to-late 1990s hundreds of brothels were in operation in Ireland (Reynolds, 2003).

For its part, the Department of Justice, Equality and Law Reform remained non-committal on the impact of the 1993 Act on prostitution, reasserting its function to protect the public from the 'more intrusive' aspects of prostitution rather than primarily to prevent sexual contact. It also raised the possibility of legalisation on the basis that some women were in prostitution 'voluntarily and willingly' and that the state's capacity to reduce prostitution through welfare was undermined by the supply of prostitutes from outside Ireland (DJELR, 1998: 93–99).

In summary, the Criminal Law (Sexual Offences) Act 1993 allowed the state to reform the prostitution regime outside of any comprehensive review of policy, practice and goals. However, in decriminalising the prostitute herself (removing the category of 'common prostitute') and in extending criminality to a range of activities of pimps, clients and profiteers, the Act moved Irish state policy away from prohibitionism towards abolitionism. This regime reorientation met no resistance amongst the opposition with the exception of one TD (see above), who proposed regulation.

In practice, however, the impact of the Act was not congruent. As we saw, criminalisation of street prostitutes increased and off-street prostitution grew following the Act (Mullins 1995; Reynolds, 2003). The former contradicts the ministerial statement that the state's objective was to protect the most vulnerable in the prostitution business (i.e. the prostitute) – a policy goal which also jars with the latter, explicable, in turn, by the simultaneous intention of non-interference in private sexual contact between adults. Moreover, five years after the Act, as we saw, the Department of Justice, Equality and Law Reform seemed to posit a regulationist aspiration for the state (DJELR, 1998): that certain spaces for the act of prostitution would be free of state interference. Had prostitutes been invited to give their views, they might have found themselves in agreement with this perspective, as illustrated by a survey which revealed their preference for the creation of tolerance zones

(Haughey & Bacik 2000), or, in separate research, at least being 'left alone' (Foran & O'Neill, 1996: 10). For some women in prostitution, the 'problem' of prostitution should be addressed through better and safer work environments and legal protection (O'Connor, 1996).<sup>6</sup>

### Ireland and the Globalised Sex Trade

One of the consequences of globalisation is an intense transformation of the sex trade reflected in the migration of women to work as prostitutes and in the phenomenon of the trafficking of women for the purposes of sexual exploitation (Weitzer, 2000; Thorbek & Pattanaik, 2002). Ireland is not immune to this global pattern. This section discusses the nature and extent of the impact of globalisation on the Irish sex trade and focuses on lap dancing and its relationship to prostitution as illustrative of that context. With some exceptions (Ward & Wylie, 2006, forthcoming; ICI, 2009),<sup>7</sup> our knowledge is, however, limited and derived from media sources. A survey of Irish escort agencies, largely based on client responses, and published on the internet by escort agencies provides interesting insight into the buying and selling of sex via the internet (Escort Surveys, 2006), however, its veracity is impossible to establish.

Based on media sources, a picture emerges of swift and comprehensive change beginning in the early 1990s. Indicators include increased sales in pornographic videos, magazines and other electronic products, the expansion of adult chat lines and adult shops and the arrival of lap-dancing clubs and escort agencies, collectively valued by a newspaper at 100 million per annum (*Sunday Tribune*, 10 February 2002). Seven years later, internet-based escort agencies alone were valued by one source at 180m per year (ICI, 2009: 46). These figures reveal little of the globalised dimensions of the change, notably in relation to movements of women into Ireland, and here information derived from Garda activity is pertinent, for example Garda raids on brothels in 2003 which revealed that the majority of women found working as prostitutes were from the countries of the former Soviet Union (*Irish Times*, 12 October 2003). The Russian mafia was identified by one newspaper as the source of the trafficking of women into Ireland (*Irish Independent*, 12 July 2003). A series of Garda raids on lap-dancing clubs in June 2003 revealed that of the 104 lap dancers encountered 100 came from overseas, the vast majority from countries of the former Soviet Union. Others came from Asia, Africa, the Americas and Europe (Bailey, 2004).<sup>8</sup> Young Scottish women were reportedly flying to Dublin to work as prostitutes over weekends (*The Scotsman*, 6 May 2006). In 2008, Gardaí confirmed an investigation into prostitution by Chinese women in Chinese massage parlours (*Irish Times*, 21 July 2008). A survey of internet material of escort agencies in Ireland identified women of 51 nationalities available to men in indoor prostitution and concluded that between 3 and 13 per cent of women in indoor prostitution were of Irish nationality (ICI, 2009: 109). In relation to cases of sex trafficking, a baseline study for the 2000–2006 period identified a probable minimum number of 76 women who were trafficked for the purposes of sexual

exploitation (Ward & Wylie, 2006) and a second report identified 102 such victims in the subsequent two years (ICI, 2009). In both cases, the majority of women were from the African continent.

Accurate figures for the total number of women working in the sector in Ireland are probably unattainable. One newspaper cited at least 800 female escorts alone in 2007 (*The Examiner*, 21 January 2007) and an on-line audit in one day in 2008 identified 425 women advertising availability through escort agencies (ICI, 2009: 88). Some data, of varying reliability, is available in relation to on-street prostitution, which did not disappear with the arrival of the internet. In 1999, an estimated 400 IVDU women were involved in street prostitution in Dublin (O'Neill & O'Connor, 1999: 1) and a year later one newspaper claimed an estimated 600 women involved in just two areas of the city (*Irish Times*, 29 September 2000). In 2003, a different source estimated between 600 and 750 women in on-street prostitution in the city (Reynolds, 2003: xiii). Again, the absence of comprehensive research means that while broad patterns of change are undeniable, we know little about the details.

For their part, even in the light of this recent change, the Gardaí have never established a permanent vice squad, preferring time-limited, targeted operations.<sup>9</sup> One such initiative, Operation Quest, targeted lap-dancing clubs in June 2003, six years after the first club opened in Ireland.<sup>10</sup> Perhaps because of their visibility and because their arrival evoked several public campaigns,<sup>11</sup> the issue of lap-dancing clubs, including their relationship to prostitution, generated significant public debate. The censorship of government agency An Foras Áiseanna Saothair (FAS) by the Minister for Enterprise and Employment, Mary Harney, for allowing a club advertise a 'sex job' on its website used to recruit non-EU labour (*Sunday Independent*, 10 August 2002), was one of many controversies.

Not the least was the debate about whether lap-dancing clubs were places of or conduits into prostitution. Part of the challenge lies in the nature of lap dancing itself, which blurs the boundaries between exotic dancing and prostitution (Lewis, 2000: 203). The possibility of a hierarchy was hinted at by one lap dancer who told a newspaper that there were some clubs which allowed/expected prostitution, some which did not and some women who would engage and some who would not (*Sunday World*, 6 December 2002). Other sources from this period provide equally competing accounts. Club owners, dancers and some journalistic accounts denied that prostitution was involved.<sup>12</sup> In contrast, Ruhama, which works with women in prostitution, affirmed it did (*Irish Times*, 30 August 2002), supported by other journalistic accounts. In relation to court proceedings over licence renewals, a judge in one case found no evidence of illegal activities (*Irish Times*, 13 December 2001) and in another, evidence of transactional sex was upheld (*Irish Times*, 29 April 2003). Of the 100 lap dancers identified during Operation Quest, none sought assistance from Gardaí and several re-entered the country following repatriation to continue working in clubs.<sup>13</sup>

In the event, laws other than those relating to vice were used by the state to regulate and, in some cases, shut down lap-dancing clubs. Garda activities focused on criminal law relating to criminal assets and labour and advertising laws. Given

the absence of legislation making sex-trafficking a crime at the time of Operation Quest, potential prosecutions in this regard simply did not arise.

It is to this lacuna in the law that this article turns now for concluding analysis of the evolution of the state's laws in relation to prostitution. The promulgation of the Criminal Law (Human Trafficking) Act, 2007 through the Oireachtas, although not exclusively related to sex trafficking, reflected some complexities that were beginning to emerge, not least in relationship between prostitution, the domestic sex industry and sex trafficking. The Bill as first presented to the Dáil was, in time, amended by the government to include the criminalisation of the soliciting or importing of a trafficked woman. While this was welcomed in itself on all sides, it fell short of opposition proposals, from both Dáil and Seanad, to criminalise clients of *all* prostitutes (for example see Seanad Debates, Vol. 188: 1189, 26 February 2008), whose significance, for our considerations, is that they constituted the proposed adoption of a Swedish-style abolitionist regime.<sup>14</sup> In response, the Minister for Justice, Equality and Law Reform, Brian Lenihan, cautioned against such a regime on the basis that there were difficulties in enforcing abolitionist law and in its efficacy in the long term (Select Committee on Justice, Equality, Defence and Women's Rights, 20 November 2007). The Swedish approach was, nonetheless, being monitored by Department officials, he said.

In summary, the rapid and profound change occurring in recent decades speak of a second restructuring of the Irish sex industry through its incorporation into the global sex trade. Prostitution in its multiple forms is quickly and universally available in Irish society and operates in a globalised context which has profoundly altered the places where sex can be bought and sold, who sells it and in what circumstances. Available evidence indicates that prostitutes now work predominantly in private or 'mobile' brothels rather than on the street. This renders them beyond the reach of traditional garda surveillance and evidence gathering and renders transactional sex a challenge to law enforcement. The principal escort site in Ireland operates from outside the state and is not subject to domestic law or policing (*The Examiner*, 24 January 2007) and private brothels and escort agencies can grow and adapt to the law.

## Conclusion

This article traced the evolution of Irish state policy towards prostitution from the foundational prohibitionist regime to the current context in which a globalised and complex sex industry exists. It argued that the 1935 Act continued the prohibitionism of British rule based on problematising female sexuality, through criminalising the prostitute in preference to the client and through seeking to abolish prostitution through coercion. The 1993 Act decriminalised the prostitute and sought to criminalise, in contrast, profiteers and beneficiaries of prostitution, including male clients, and brought the regime into the realm of abolitionism. This reorientation, in turn, reflected a greater sympathy for the prostitute evident in parliamentary debates and in the women's movement.

However, in implementation, the abolitionist orientation was limited. Firstly, the state limited its role in policing the act of prostitution to public nuisance and public order aspects of the act and precluded intervention in matters of sexual contact between two consenting adults, even when money was exchanged. It did not aspire to abolish prostitution *per se*. The state re-affirmed this principle in the anti-trafficking legislation on the basis that trafficked women, by definition, are non-consenting adults. The Minister, unlike members of the opposition, was not willing to breach the limits understood to exist in the state's role in the act of prostitution *per se* and criminalise all clients of prostitution. Secondly, the state continued to prosecute prostitutes in ever larger numbers through the 1980s and 1990s. Thirdly, the Department of Justice, Equality and Law Reform posited prostitution *per se* as a) inevitable, b) not necessarily always the act of desperate or addicted women and c) beyond the reach of ameliorative welfare initiatives due to the presence of non-national women. Taking our variables in relation to determining regime identity, we can conclude that after 1993, Irish policy was partly abolitionist in aspiration, prohibitionist in law-enforcement practice and regulationist in its philosophical orientation.

As we saw, a comprehensive abolitionist model, in which the *purchasing* of sex would be criminalised thereby shutting down all spaces for transactional sex, emerged in public and parliamentary debates. The question remains as to whether such or indeed any comprehensive regime will be introduced in Ireland. Casting a backward glance it could be argued that no Irish prostitution law has ever achieved its general policy goals. Through time the practice of prostitution has adapted to the law regardless. Brothels took root in Ireland, initially in the 1960s and 1970s, under the more coercive prohibitionist regime whose power collapsed following *King v. the Attorney General*. Although the Minister introduced the 1993 Act as being sympathetic to the plight of prostitutes and hostile to others, the law was used unambiguously to criminalise the prostitute. The globalised sex trade established in the wake of this legal change operates via technological and communications systems which keep it largely beyond the reach of the state.

This pattern may be a function of the lack of 'fit' between policy goals and policy implementation and cannot have been helped by the absence during the legislative processes of comprehensive consideration of the ethics, morality, politics and sociology of prostitution *per se*. However, it also reflects the contradictions and inconsistencies in prostitution regimes generally (Skilbrei, 2001) whereby using legal change to tackle prostitution may, in fact, be a large part of the problem (Self, 2003). In response to changes in the market and to public opinion, the law tends to repeatedly target the most vulnerable of women in prostitution, create impossible policing goals and mediate adaptive tendencies in the sex industry ultimately displacing and often strengthening activities (Hatty, 1991; Self, 2003: 229–293; Hubbard, 2006; Danna 2007).

Globalisation has indeed presented a challenge to the successful operation of any law which seeks to abolish prostitution through what ever measures. Much prostitution activity, privatised, highly mobile and flexible, may now be beyond the traditional reach of the state's capacity to maintain surveillance and/or enforce the

law (Wagenaar, 2006). The jury remains out on the long-term efficacy and consequences of the Swedish model (e.g. Ostergren, 2003; Kulick, 2003; WGLRPSS, 2004; Self, 2005; Clausen, 2007). Its adoption in parliaments was founded on a causal link between prostitution and sex trafficking thereby displacing the ethical and political complexities of the former by the unambiguous ethics of the latter. While Minister Lenihan's rejection of the Swedish model was pragmatic, awaiting more information, the debate to which he was responding had not solicited either the perspectives of those precluded from all Irish legislative considerations to date: those of the prostitute. In other jurisdictions such exclusion rendered women in prostitution more vulnerable (Skilbrei, 2001; Kantola & Squires, 2004: 85–86; Wagenaar, 2006). These voices, furthermore, require a gender critique which captures the complex continuum of oppressions facing women in prostitution (O'Connell Davidson, 2006) including the often contradictory and paradoxical lives which they shape for themselves (Pheonix, 1999).

The politics of prostitution are profoundly divisive not least within the women's movement and have generated protracted debates at intergovernmental level, including in the EU where prostitution policy has been devolved to individual states. That very divisiveness, reflecting core conflicts over public and private moralities, gender relations, and the role of the state, makes for rich academic enquiry and for challenging public policy processes. So far, the Irish state's policing of transactional sex has occurred with limited debate on the politics of prostitution itself and with little knowledge of the complex social, economic, psychological and gender realities of the Irish sex trade. In the face of globalisation such a debate may now be unavoidable.

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### Notes

1. The notable exceptions are Luddy's (2007) detailed history of prostitution up to 1940, Ryan's (1997) analysis of media representations of prostitution in British and Irish media, O'Malley's (1996) exposition of prostitution law and Ruhama's (2005) report on barriers affecting women in prostitution.
2. For instance, no records for prostitution-related crimes (amongst others) were identified or published by the state between 1958 and 1973 and the change in legislation introduced new crimes and removed or redefined old crimes.
3. The Committee on the Criminal Law Amendments Acts (1880–85) and Juvenile Prostitution set out to enquire if the Criminal Law Amendment Act 1880 and the Criminal Law Amendment Act 1885 required amendment and if new legislation was needed to address juvenile prostitution. Its members were: William Carrigan KC., Rev. John Hannon, S.J., Rev. H.B. Kennedy, Dean of Christ Church, Mrs. Jane Power, Commissioner of the Dublin Union and Miss V. O'Carroll, Matron of the Coombe Hospital. Mr. Christopher Smith, Department of Justice, was Secretary.
4. In an interesting interpretation of what constitutes a 'public', Catholic Bishops had suggested to the Minister for Justice in 1932 that circulating the report to all Bishops might be 'sufficient publication'

for the report (NAI, Department of Justice 90/4/4). The ban continued for some time. In 1974, Minister Paddy Cooney sent a copy to his cabinet colleague, Conor Cruise O'Brien, reiterating its non-availability for the public and later refused a request for it from Deputy John Horgan (NAI, Department of Justice 2004/32/105). The Carrigan Report file was released by the National Archives in 1999.

5. I was advised by a Garda source (October 2008) that the increased prosecutions may have been tactical to reduce the possibility of further violence by keeping women off the streets in the first place.
6. The Women's Health Project ran conferences for women in prostitution in June and October 1994 but no records of proceedings are available.
7. It is notable that research on prostitution commissioned separately by the Irish Council for Civil Liberties and the Irish Commission on Human Rights remains unpublished.
8. The countries of origin of those found were USA, Angola, Belarus, Brazil, Colombia, France, Gabon, Mexico, Mongolia, Poland, Ukraine, Venezuela, Bulgaria, Canada, Czech Republic, the UK, Estonia, Hungary, Ireland, Latvia, Lithuania, Nigeria, Norway, Rumania, Russia, Spain and South Africa.
9. Operation Gladiator was launched in 1999 to tackle brothels. Among its 'successes' were the prosecution of *In Dublin* under the Censorship of Publications Act and several brothels under the 1993 Act. Operation Quest was launched in 2003 against lap-dancing clubs. Prosecutions followed for breaches in labour law. Operation Hotel was launched in 2004 to tackle prostitution in brothels and apartments, as was Operation Boulder in Cork over 2005–06.
10. An internet search by the author in December 2008 accounted for 13 clubs in the country. The ICI (2009) cites 27 clubs in operation in 2009.
11. For instance the campaign against Stringfellows in Dublin which objected to its inappropriate location (*Irish Times*, 14 July 2009). Local resistance elsewhere confounded one club owner's goal to operate in every county (*The Sunday Mirror*, 7 April 2002).
12. For instance, *The Marion Finucane Show*, RTÉ Radio One, broadcast 2 March 2004.
13. Authors interview with Sgt. Alan Bailey (Operation Quest) Dublin, 30 June 2004.
14. Adoption of the Swedish model had been proposed by Ruhama, the National Women's Council and by opposition politicians around this time.

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