

Problematizing Prostitution in Law and Policy in the Republic of Ireland: A Case for Reframing

Social & Legal Studies
2016, Vol. 25(3) 289–309
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sagepub.co.uk/journalsPermissions.nav
DOI: 10.1177/0964663915614886
sls.sagepub.com


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Abstract

This article attempts to uncover the discursive practices that have framed recent debates on prostitution in the Republic of Ireland. As Ireland prepares to introduce Swedish-style laws, which criminalize the purchase of sexual services, we are particularly interested in interrogating the dominant construction of prostitution in recent policy debates and consultations. Taking these spaces as sites for the reproduction of discursive and material practices, we employ methods of critical discourse analysis through Carole Bacchi's (1999) 'What's the problem represented to be' approach to question: How is prostitution problematized in Irish law and policy? We argue the representation of prostitution in neo-abolitionist discourse in Ireland operates through gendered and racialized assumptions about sex workers and migrant women. The material consequences of this have implications not only for current prostitution law and policy proposals but also for wider feminist spaces in Ireland.

Keywords

Criminalization, discourse, law, policy, problematization, sex work

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Introduction

Since early 2011, prostitution has received considerable public attention in the Republic of Ireland (hereafter Ireland). A group of 64 Irish activists – a coalition comprising of feminists, health care professionals, non-governmental organizations (NGOs) from civil and religious society and individuals – united under the auspices of the Turn Off the Red Light (TORL) campaign to lobby the Irish government to adopt the ‘Swedish model’ for prostitution that criminalizes sex purchase in Ireland. In 2012, the government initiated a process of consultation to review whether or not to amend the Criminal Law (Sexual Offences) Act (1993) on prostitution. This process involved submissions to, and public hearings by, the interparty Joint Oireachtas Committee on Justice, Defence and Equality (hereafter the JOC, Houses of the Oireachtas (2013a)).¹ Whilst prostitution is not an offence under the current Irish law, ss. 7 to 11 of the Act prohibit soliciting, loitering, brothel-keeping, coercion into prostitution for gain or living on the earnings of the prostitution of another person. Furthermore, section 5 of the Criminal Law (Human Trafficking Act (2008)) makes ‘soliciting or importuning a trafficked person for the purpose of prostitution’ a punishable offence on summary conviction by fine and/or imprisonment. As Ward and Wylie observe, the spirit of the law is not to criminalize or sanction the transaction or the person in prostitution but ‘to protect society from the more intrusive aspects of prostitution’ (2007: 22).

In 2013, we witness a step change in governmental attitudes to prostitution when the JOC released its official report and recommended legislative change in the area of prostitution should move to the Swedish model. Notably the Chairman, David Staunton TD, explained:

The Committee finds persuasive the evidence it has heard on the reduction of demand for prostitution in Sweden since the introduction of the ban on buying sex in 1999. It concludes that such a reduction in demand will lessen the incidence of harms associated with prostitution – particularly in view of the predominance of migrant women in prostitution in Ireland – the economic basis of human trafficking into this State for the purpose of sexual exploitation. (JOC, Houses of the Oireachtas, 2013b)

Whilst the TORL campaigners laud this as a successful outcome, they bemoan the pace of government action in response to this. Recently, they have exerted further pressure on the Minister of Justice and Equality, Frances Fitzgerald TD, to implement the JOC recommendations in light of recent developments in Northern Ireland, where members of the Northern Ireland Assembly backed proposals to criminalize the purchase of sex contained in Lord Morrow’s Human Trafficking and Exploitation Bill (2014). On 27 November 2014, the Minister for Justice and Equality announced the Heads of Bill and General Scheme of wide-ranging reforms to the Criminal Law (Sexual Offences) Bill (1993) on prostitution.² These reforms reflect the JOC recommendations to criminalize the purchase of sexual services. Furthermore, the proposed Criminal Law (Sexual Offences) Bill (2014) creates two new offences in the context of prostitution. The first is a general offence of purchasing sexual services. The second is a more serious offence of purchasing a sexual service from a trafficked person. In both cases, the person selling

sexual services will not be subject to an offence. Commenting on her decision to introduce these legal reforms the Minister for Justice stated, in line with the Northern Ireland Assembly's plans to adopt a similar approach: 'the proposal . . . reflects an All-Ireland consensus to targeting the predominantly exploitative nature of prostitution' (Department of Justice and Equality, 2014).³ We view these events as part of wider processes shaping Ireland's anti-prostitution lobby.

Whilst it is beyond the scope of this article to interrogate the broader social and political context influencing Ireland's prostitution debates (see Hanafin, 2001; Kearney, 1997), we cannot ignore how entanglements between Church and State in Ireland have shaped sexual and reproductive freedoms and this backdrop becomes a necessary part of the consideration of the evolution of the TORL. Since independence in 1922, sexuality, the family and a conservative, Catholic nationalism defined 'Irishness' as distinct from 'Englishness' (Harrington, 2006). This unifying discourse organized society though patriarchal, heterosexual marriage where women were the mothers and wives of the nation (Mullally, 2005). This structure predominated until the 1970s when feminists and human rights organizations challenged Church authority, lobbying for constitutional and legal reform on the status of women as well as for law reform on homosexuality. As Ireland underwent further social and political change, membership of the European Union (EU) helped to liberalize laws on homosexuality and divorce and wider European and global influences called for recognition of identity, diversity and equality as political and social justice issues. Still Ireland continues to subordinate the status of women and stymie their reproductive and sexual autonomy (Fletcher, 2005). In a country where reproductive and sexual rights are hard won, and where sexual 'others' have historically been exported through immigration or imprisoned in Magdalene laundries, it is unsurprising that the TORL represent the 'problem' of prostitution as reflective of the continued inferior status of Irish women (Luibhéid, 2011). And yet, it seems that on this issue of prostitution the women's movement has begun to invoke and demonstrate exclusionary and undemocratic practices. Such practices come under scrutiny in this article as we seek to interrogate the framing of prostitution in Irish law and policy.

Academic, political and civil society has subjected prostitution to critical examination. Feminist scholarship focuses on the politics of prostitution (O'Neill, 2001), the scales of its governance (Halley et al., 2006) and the interaction between cultural, socio-economic and historical contexts in which prostitution is situated (Bretners and Sanders, 2010; Walkowitz, 2013). Two schools of thought shape feminist thinking on prostitution and sex trafficking. One perspective argues prostitution reflects the continued patriarchal structure of society that shapes all women's lives and gender relations (Jeffreys, 2008; Mackinnon, 2011), and female prostitutes are the quintessential victims of oppression by males who predominantly manage, organize and profit from the sector (Barry, 1995; Hughes, 2002). The existence of prostitution is at odds with feminist commitments to gender equality as it is a crime of violence against all women. Such discourse informs law and policy in jurisdictions like Sweden, Norway and Iceland that intend to abolish prostitution and prosecute those who profit from or use it.

The second perspective argues many women and men work voluntarily as domestic and transborder sex workers (Anderson and Andrijasevic, 2008; Mai,

2011). Commentators assert sex workers should have the same rights and protections as other workers, including freedom from fear, exploitation and violence (Doezema, 2005; Kempadoo, 2003). Whilst there are abuses associated with prostitution, commercial sex need not be inherently exploitative; and it is those attempts to abolish prostitution, and the attitudes underpinning such attempts, that feed into the creation of an abusive climate for sex workers that must be changed (Chapkis, 1997; Saunders, 2005). Such thinking frames law and policy measures in jurisdictions like New Zealand, which has removed prostitution from its penal code and addresses it through health, labour and taxation law as well as wider social policies (Abel et al., 2010). A less frequent conversation in feminist inquiry is how Ireland understands and attempts to regulate prostitution and sexual practices (for exceptions see Luddy, 2007; Ward, 2010). To address this lacuna we offer a critical, feminist analysis of the dominant framing of prostitution shaping Ireland's current anti-prostitution debates. We wish to illustrate, uncover and reflect upon the unexamined ways of thinking underpinning these debates, and reveal the silences that will have effects for those who will ultimately be governed by the changes to Ireland's legislation.

With these aims in mind our article starts by outlining the understanding of the process of the problematization of prostitution underpinning our subsequent analysis. First we outline broadly Michel Foucault's theory of problematization. Then we introduce Carol Bacchi's Foucault-inspired: 'what's the problem represented to be approach' (hereafter the WPR approach) as the theoretical and methodological tool for our analysis. We use this approach to examine the role the JOC public hearings play in how the TORL frames prostitution as a pressing social problem in Ireland. Then we will briefly discuss our methods and explain our choice of data. Finally we turn to the empirical sections of our article where we pose three interconnected questions shaping our analysis. Bacchi's WPR approach proposes six guiding questions to assist the researcher in identifying and scrutinizing the effects of the construction of problems in specific policies.⁴ We feel answering six questions would be beyond the scope of our article. Therefore we chose three of Bacchi's questions to structure our analysis. In the first section we ask: What is the dominant way in which Irish neo-abolitionists/anti-prostitution lobby represent the problem of prostitution? Our objective is to highlight how the campaign frames prostitution as a problem. Then we ask: What are the assumptions about prostitution contained within this representation? Here we interrogate the unquestioned suppositions that permeate the campaign. Specifically we focus on the racialized and gendered assumptions about 'other' women that structure it (Kapur, 2005). As part of this discussion we examine how these assumptions reflect deep and unquestioned discourses about women's bodies, behaviours and sexuality that, in this context, serve as proxies to further this campaign. And finally we ask: What do campaigners accept uncritically in this problem representation? Here we indicate how this campaign silences other perspectives on prostitution. Taken together, we suggest this article contributes to a nascent critical analysis of the discursive spaces in current Irish debates on prostitution. Overall we wish to question the, as yet, unexamined effects that the proposed changes to law and policy on prostitution have created for sex workers in Ireland.

Thinking problematically

Bacchi's WPR approach is a reworking and extension of Foucault's concern with 'thinking problematically' (Foucault, 1985: 185–186). Foucault's problematizations attempt to understand 'how and why certain things (behaviour, phenomena and processes) become a problem' (1985: 115). He argues problematizations are techniques rooted in practices that illustrate how society questions, analyses and regulates issues. Within this understanding – with its emphasis on historically variable ways of creating power relations through the production of 'truth' and the creation of specific forms of 'knowledge' about human behaviour – Foucault wishes to disrupt the culturally established assumptions central to how we are governed (1980: 6). He states we must interrogate the 'practical' or 'prescriptive texts' created by those who govern 'for the purpose of offering rules, opinions and advice on how one should behave' (Foucault, 1984: 12–13). Foucault's objective in thinking problematically is to uncover how governing occurs 'through the production of truth' (1980: 93).

Foucault's ideas resonate with the discourses that shape Ireland's anti-prostitution debates. They remind us that we must be aware of the unquestioned 'truths' that frame certain problems, like prostitution, as a social concern. As Foucault (1985) argues, problematizations are sites of power relationships, and every problematization becomes a way of establishing new modes of governance. We could argue in Ireland's anti-prostitution debates the problem of prostitution as harmful to women and society and evidence of the persistence of gender inequality is a problematization that justifies more invasive forms of social control. Whilst Foucault's work concentrates on those problematizing moments that reveal times and places where practices change and problematizations emerge, we want to go further. We wish to highlight the impact of the culturally established assumptions central to how prostitution is governed in Ireland. Thus, we turn to Bacchi's WPR approach.

Problem representations

Extending Foucault's theorizations Bacchi argues 'every policy or policy proposal is a prescriptive text, setting out a practice that relies on a particular problematization' (2012: 4). She observes all political actors construct social problems through the ways we speak about and respond to them through policy (Bacchi, 1999). Bacchi refers to all competing understandings of social issues as 'problem representations', and she argues it is important to identify differing and competing representations of the problem as these operate as political strategies offering a range of potential outcomes and governing effects. The fastest route to identifying the assumptions within policies is to ascertain how political actors represent what is seen as problematic. Bacchi argues different problem representations determine 'what gets done, what is ignored or downplayed, and how people feel about the issue, about themselves and others' (2010: 64). She insists whilst governments are active in problem representation, this does not imply intentionality is always present in policymaking. She asserts problem representations operate at a deeper, conceptual level. Therefore rather than deciphering how political figures frame an issue for political ends, a WPR approach works by uncovering how meaning is created in both

the design and analysis of policy (Bacchi, 1999). The policy process provides us with opportunities for investigating the production of ways of knowing and the materiality such knowledge is awarded through modes of governance (Bacchi, 1999).

Reorientating Bacchi's ideas to Ireland's anti-prostitution debates encourages us to prioritize the political deliberations and practices, including discursive practices that produce particular ways of understanding prostitution. Importantly, we are challenged to recognize the established, unexamined and unconscious ways of thinking and subject them to critical analysis and 'reflect on their relative usefulness and possible limitations' (Bacchi, 2010: 65). In this article we start by opening up the issue of prostitution as a problematization in the interparty JOC reports, submissions and subsequent communications for analysis. We identify how groups and individuals, and the discourses and assumptions that influence them, represent the 'problem' of prostitution. In this way the consultation process convened by the JOC becomes ripe with meaning-creation. Before we discuss what emerges from our analysis of the oral submissions to the Committee, we want to briefly comment on the methods and sources we use in our analysis.

Methods and Sources

Bacchi's WPR approach is part of a wider critical discourse analysis, which provides a useful paradigmatic tool for our work. As Fairclough argues, critical discourse analysis contributes to critical social analysis through a focus on discourse and on 'relations between discourse and other social elements (power, ideologies, institutions, social identities, etc.)' (2013: 178). Critical social analysis is both normative and explanatory, not because it describes how things are but because it evaluates these realities and explains how structures and practices affect them (Fairclough, 2013). A critical, feminist analysis is concerned with evaluating the gendered construction of realities and seeks to explain how patriarchal structures and practices affect these realities.

This approach allows us to interrogate the relations between such dominant discourse and gendered power, ideologies and institutions operative in Ireland relating to prostitution. Importantly, this will enable us to link the current Irish debates to the wider international debates on prostitution.

Bacchi's WPR approach suggested a particular structure for our analysis and necessitated the development of a methodological framework that allowed us to deliver relevant data and appropriately assess these data relative to our study objectives. Following Bacchi's lead, our critical analysis approached the policy process as an opportunity for exploring the production and reproduction of ways of knowing. As described earlier in this article, we selected three of Bacchi's key questions to guide the development of our critical analysis and these translated into specific methodological objectives – to deliver evidence to highlight how the TORL campaign frames prostitution as a problem, to explore the assumptions that underpin this problem representation and to ascertain what is critically accepted and where the silences lie.

In order to operationalize these objectives, our analysis involves a number of key stages. First, we established parameters relating to the time frame for study. Given that our concern is with the ongoing policy deliberations that stem from the onset of the Irish government's consultation (August 2012) until its conclusion (November 2014), we

limit our 'population' of documents to those based on the oral submissions to the JOC. This involved three separate full days of hearings as well as the Committee's final report and the Minister for Justice and Equality's report and draft Heads of Bill. We limited our documents to publically available, written material produced for and arising from the consultation process, and so this limited potential ethical considerations in terms of data retrieval and management. Nonetheless, we wanted to implement an ethically conscious research approach from the outset. We drew on ethical guidelines from our respective institutions and the Sociological Association of Ireland, and we received ethical approval from Maynooth University Social Research Ethics Sub Committee for our research. Whilst acknowledging the limitations of discourse analysis of one type of textual output, missing as it is opportunities for examining data-rich public discussions and debates occurring outside the confines of the official consultation process, we felt it beyond the scope of this article to include analysis of wider texts in other media.

In the formal analysis stage we applied Bacchi's WPR approach to the sampled documents by selecting and extracting the relevant data for critical, qualitative analysis. Seeing critical discourse analysis as both a theory of and methodology for analysis of discourse, we approach our analysis of the data as 'an element or "moment" of the political, political-economic and more generally social which is dialectically related to other elements/moments' (Fairclough, 2013: 178). First, we sorted and coded the data for thematic content according to our key questions and study objectives set out above. We established a general coding scheme to observe 'problematizing repertoires' (or 'moments') that included the identification of devices such as conceptualization of prostitution, definitions, explanations and justifications for given proposals and the contextualization of issues. Since we decided to limit the scope and time frame of our study to the policy consultation on prostitution in Ireland, we limited our analysis to the three key questions as described above. In order to answer these questions we extracted the relevant data (problematizing moments) for critical, qualitative analysis from each document type (oral submissions and written reports). This allowed us to move from general coding of rhetorical devices and meaning-creating instances in the data to deliver evidence illuminating each of the three selected areas of the WPR questioning, essentially looking for how individuals communicate the discourse (van Dijk, 2011).

The next stage involved the analysis of relationships between categories identified in the splintered data, looking at specific contexts from where the data were extracted and also the wider meaning created by the emerging analysis. The goal of this stage was to identify and analyze the 'conceptual logic' (Bacchi, 2009: 5) underpinning the particular problem representation highlighted at stage one as well as reflecting on the silences. Following this, our analysis moved into a more formal level of abstraction, allowing for a theoretically informed critical analysis of the campaign's problem representation in the JOC public hearings. Employing our interpretative tools, based on Bacchi's WPR framework, we sought to illuminate how the knowledge and conceptual logic contained within the TORL problem representation is awarded materiality through regulatory practices. At this stage we challenged the tentative analysis or substantiated it in light of existing paradigms of understanding and the current evidence and knowledge base. With these thoughts in mind we turn now to our analysis of these public hearings.

What is the Problem Represented to be in Irish Anti-Prostitution Debates?

Although the JOC heard public submissions on how Ireland should respond to prostitution from thirty-nine stakeholders from civil society, it is clear the neo-abolitionist lobby dominated the process.⁵ We want to concentrate on how campaigners constitute the problem of prostitution as an object for moral reflection, scientific knowledge and political analysis. A central discourse that structures this process is prostitution is universally harmful to women (Barry, 1995). In Foucault's (1980) terms the alliance calls an array of scientific 'experts' such as the Irish Medical Organization (IMO), who strengthen its position through institutionally legitimized 'claims to truth' about the medical risks associated with prostitution. A delegate representing IMO declares prostitution is always harmful and sex purchase must be criminalized:

International research shows that sex workers and those trafficked for sex are exposed to a wide range of physical and mental health problems, in addition to sexually transmitted diseases . . . There is also a need to change attitudes towards prostitution and the growth of the sex industry through legislation criminalising the purchase, not the sale, of sex and a public awareness campaign to educate the public on the physical and mental harm caused by prostitution and trafficking. (JOC, 12 December 2012: 2–3)

The IMO alignment with the TORL gives us reason to pause. Its position is glaring in its divergence from WHO and UNAIDS evidence-based international standards and guidelines on this issue, which recommend decriminalization as part of a human rights-based approach to empower sex workers and effectively address harm reduction in sex work (WHO et al, 2013). We argue the IMO normative position is counterproductive because it risks reinforcing rather than removing the stigma of prostitution that will ultimately prevent women in prostitution from accessing health services or using extant support systems to exit the sector if they wish. We find the IMO position contravenes WHO recommendations on the provision of health services to sex workers, which must be 'accessible and acceptable to sex workers based on the principles of avoidance of stigma, non-discrimination and the right to health' (WHO, 2013: xix). Operating on a related register to the IMO representatives from the National Women's Council of Ireland (NWCI) claim:

No matter how a woman enters prostitution, it is harmful. Prostitution has a devastating impact on both the physical and mental well being of women and girls . . . We must seek to eliminate the sex industry, not regulate it. Regulation does not protect women and it does not work. It only legitimizes and encourages an industry that is inherently harmful to women. (JOC, 12 December 2012: 6)

On first sight we have no quarrel with aspects of these claims. Violence is endemic in prostitution (Scoular and O'Neill, 2008). In order to get at the nub of our concern it is useful to return to Foucault's (1988) understanding of problematizations and the claims to truth that govern them. He argues this occurs when problematizations exclude some voices for the sake of establishing the reliance of others. The above-cited quotations are

rich in meaning making and operate around strategic truth claims about harm in prostitution. One of the most important aspects of this strategy is it establishes power relationships by recognizing the TORL as the only legitimate voice on prostitution in Ireland whilst simultaneously marginalizing all other perspectives. For example, Ruhama, an NGO established by a religious order to work with sex workers, insists, 'those who favour decriminalizing or legalizing prostitution tend to take a highly utopian view of the sex trade' (JOC, 12 December 2012: 22). Understood in this way, it is not merely that campaigners have positioned themselves as the voice of authority on the problem of prostitution; it is they view the exclusion of other voices, including those of current sex workers, as valid.

This problem representation does other important discursive work. Whilst claims about prostitution as violence against women (VAW) have reached national and international political levels, there can be little doubt most people give it little or no thought. It is not an issue in their daily lives. One of the ways campaigners reposition prostitution and make it 'relevant' in Irish society is to repackage it as a gender equality issue that touches all Irish women. As previously mentioned, Ireland's historical failure to support gender equality opens up a space for campaigners to negotiate the troubled waters between 'women's issues' and 'sex work' in strategic ways. We get a flavour of this process when delegates from Ruhama declare:

In addition to the harm to each individual, there is the social, cultural and global impact, that is, the damage to the social position and perception of women both nationally and globally. If one woman's body is perceived as being for sale, the implication is that all women and girls potentially are for sale, which undermines directly the potential for gender equality. (JOC, 12 December 2012: 22)

Similarly campaigners from The National Women's Council insist that prostitution and gender inequality in Ireland are one and the same problem:

As long as it is tolerated, it is an obstacle to equality between women and men. A society that tolerates prostitution cannot achieve gender equality. The abolition of the system of prostitution is a progressive and realistic objective, based on the fundamental principles of equality between women and men. (JOC, 16 January 2013: 6)

The key issues here relate to the meaning the campaign ascribes to gender equality and the ramifications this has for sex workers. Let us take first the issue of gender equality. Gender equality is a contentious issue among feminists. Simply put, it relates to the view that the sexes should receive equal treatment, should have equal rights and opportunities and should not be discriminated against based on gender (MacKinnon, 2011). This includes issues like women's right to self-determination, freedom of movement, rights to education, reproductive and sexual rights to name but a few. The TORL figuring of prostitution as evidence of Ireland's continued gender inequality demands comment. The difficulty with its framing is it produces its own gendered effects. One example of this is how campaigners subordinate sex workers' right to self-determination in the service of its political agenda.

In the final analysis prostitution is not about women; it is about the male customer and the male consumer market. If we focus on the women's choice or right to engage in prostitution, we deflect attention away from the primary fact that there is prostitution because of male customer demand. (JOC, 12 December 2012: 36)

As delegates establish prostitution is a gender equality issue for all Irish women, they begin to articulate a normative agenda concerning the kind of society they want Ireland to be. Observers note neo-abolitionists advance their objectives by intertwining them with the international communities' interest in governance, security and law and order (Bernstein, 2012; Scoular, 2010). In the last two decades, we witness the emergence of 'governance feminism', which works by deploying the ideology of neoliberal social control in the service of radical feminism (Halley et al., 2006: 20). Returning to the JOC public hearings, it is possible to identify how governance feminism and state interests intertwine in mutually beneficial ways. For example, a delegate from the NWCI suggests:

It is not just a case of examining prostitution and violence against women, which is an area we encourage the Government to make a priority. It also concerns the involvement of organised crime and gangs, social problems and effects on the wider community. Resources targeted at the area will have a major benefit for women and for society at large. (JOC, 12 December 2012: 7)

At its most immediate the campaign's normative vocabulary posits neoliberal strategies of self-surveillance, discipline and governance will solve the problem of prostitution and gender inequality in Ireland whilst simultaneously tackling crime. Whilst on the one hand, we could argue feminists have rightly lobbied the state to take seriously issues such as VAW. On the other hand, it is arguable that TORL provide a state-friendly solution to prostitution, which privileges social control of segments of society. As critics observe, criminalizing clients to protect vulnerable women does little more than target behaviours such as kerb crawling among particular populations (Phoenix, 2007). Disciplining clients does not address sex workers' vulnerability and transform the socioeconomic relations that determine their lives and drive individuals into prostitution in the first instance (O'Connell Davidson, 1998; Scoular and O'Neill, 2008).

Governance feminism is also reflected in how campaigners turn their regulatory 'gaze' onto other women's bodies, arguing patriarchy is revealed in Ireland through migrant women's experiences of prostitution. They suggest this problem coalesces around the issue of sex trafficking. And here it is worth returning to Bernstein (2012) and her assertion that neo-abolitionists have advanced their political objectives by conflating separate issues like trafficking and migration and intertwining them with state interests on such matters as securitization and organized crime control. Interesting is the campaign's reliance on what a recent report published by the European Parliament's Committee on Women's Rights and Gender Equality critiques as unreliable and inflated statistics on the actual numbers of women trafficked for sex into EU nations.⁶ The report cautions 'the figures . . . on how many women are actually exploited, are estimations in which official national figures are usually lower than estimations of women's rights

organisations or international organisations. All figures should therefore be treated with care' (Schulze et al., 2014: 10). And yet, we find evidence of this strategy when delegates from Nasc, the Irish Immigrant Support Centre, declare with impunity:

Migration has had a significant impact on the sex industry globally and in Ireland . . . Migration and sexual exploitation are structurally linked . . . Numerous studies have shown that human trafficking for the purpose of sexual exploitation is a means of supplying the sex industry, as up to 80% of people trafficked worldwide are destined for the sex industry. In Ireland, between 83% and 97% of people engaging in prostitution are believed to be migrant women and children. (JOC, 12 December 2012: 30)

Perhaps most instructive are claims made by the Irish Nurses and Midwives Organisation (INMO):

Ireland is a destination country for trafficked women, with a staggering 97% of women available through the Internet being migrants . . . Their difficult life-related situations are used as a pathway to a better life when, in reality, they are being condemned to a life of slavery. (JOC, 12 December 2012: 31–32)

There are at least three consequences here that demand comment. First, when campaigners conflate women's voluntary migration with sex trafficking they reinforce racialized and gendered ideas that geo-specific populations of migrant women can only ever be travelling for prostitution and should always be viewed as 'victims of trafficking' (FitzGerald, 2015). Second, this idea, once established, allows campaigners to frame TORL anti-prostitution strategies in a more humane light, namely anti-trafficking measures (Chapkis, 1997). And finally, this figuring justifies stricter law and order responses that support the government's concern with immigration, security and organized crime and ultimately have a negative impact of migrant women's mobility and rights (Anderson and Andrijasevic, 2008). Ultimately, the problem of human trafficking in all its forms remains unresolved (Munro, 2008). Taken together, the preceding paragraphs provide the elements for a critique of the deep conceptual underpinnings that structure the TORL problem representation. What remains key, and what is not problematized during the campaign, is the extent to which rescuing vulnerable women from prostitution and sex trafficking may play a constitutive rather than a reflective role in the campaign. It is to this process we turn now.

What are the Assumptions about Prostitution Contained within This Representation?

For the purposes of discussion, let us return to the campaign's principle concern with prostitution as VAW. Empirical feminist research on prostitution has complicated this picture by showing how violence, social marginalization and poverty intersect to structure sex workers' lives (Platt et al, 2011). When Irish neo-abolitionists claim prostitution is VAW they do so from a position dependent on hegemonic suppositions about the sector that warrant critical consideration.

Alice Miller (2004) notes the VAW campaign has succeeded in translating individual female victims' experiences into a general women's human rights framework. This strategy is based on an idea of the universal 'sisterhood' that eschews differences among women based on conditions of class, ethnicity, 'race', religion, sexual orientation and so on (Kapur, 2005). This provides feminism with a unified position, from which it can make truth claims based on women's common experience of violence (MacKinnon, 2011). Critics observe this universalizing discourse invokes essentialism about women by assuming they have a homogenous identity and experience across cultures and social relations (Kempadoo, 2003). We find evidence that this framing operates in the TORL campaign. Here it works to demonstrate Irish women understand and experience inequality similarly. This figuring allows campaigners to assume the right to 'speak for' sex workers. This assumption is problematic because it decontextualizes the socioeconomic and political realities of sex workers' lives (O'Neill, 2001). If we accept Irish women are a diverse group and the contexts in which they live are not uniform, then, it is not inconceivable that Irish sex workers are not a unified group either. Whilst prostitution as VAW comes under the lobby's critical gaze, its exclusionary understanding of prostitution and the politics it sustains, has not.

These assumptions about a link between prostitution and women's universal experience of violence extend the scope and reach of the campaign by invoking other normative assumptions about women's sexual behaviour and the impossibility that any woman would consent to prostitution. Whilst it is important to acknowledge some sex workers may wish to operate as professionals and access social services like other workers (Brents and Sanders, 2010), others may feel exploited and harassed and want options about exiting prostitution but may wish to return to it periodically (Scoular and O'Neill, 2008). One thing we cannot assume is in each of these contexts, and the variations of experience that exist between them, is that sex workers lack agency or choice (Bernstein, 2012). Our concern here relates specifically to how TORL negates choice for sex workers. We can trace how it delegitimizes notions of sex workers' agency by arguing the context in which women makes their consent irrelevant.

Without reference to any evidence from sex workers themselves, delegates from Ruhama refer to poverty, debt, abuse, addiction, grooming and coercion as creating a 'push-pull' into prostitution. They state in such contexts women do not have a choice. This runs contrary to written evidence presented to the JOC from eight current sex workers who described their voluntary entry to and continued independent engagement with sex work. Whilst the JOC invited two of them to attend the hearings in person they gave evidence in camera. Interestingly, the JOC report provides a disclaimer to the evidence presented by these independent escorts by citing other contributors and former escorts who maintain that 'these depictions of life as an escort, whether in Ireland or elsewhere, are at best uninformed and are frequently intended to deceive women who might not otherwise be willing to enter prostitution' (Houses of the Oireachtas, (2013a)). Notwithstanding these testimonies from sex-working women about their own lives, Ruhama pathologizes their decisions to enter prostitution as 'preceded by and conditioned on earlier traumatic abuse and an interplay of personal and economic factors' and so 'make the question of free choice almost meaningless' (JOC, 12 December 2012: 11). Whilst no

one would disagree that many sex-working women are constrained by the contexts within which they live, the problem with the above statements is how campaigners co-opt and delegitimize 'choice' as redundant in the context of prostitution. The deeper issue is how campaigners give guidance on what will count as appropriate discussion on prostitution. Its prescriptive text is not discrete but is deeply implicated in radical feminism's unwillingness to countenance any discussion on choice in relation to commercial sex. This text serves to silence opposition through a dismissal of the notion of the autonomy of sex workers as something at odds with the very notion of feminism. Within a context where campaigners flatten out differences between women based on assumptions about the universal sisterhood and pursue a campaign grounded on the irrelevance of women's consent to prostitution, we argue this has immediate implications for how society thinks about those involved.

Nowhere do these essentialist assumptions converge with greater affect than around the issue of migrant women. An important element in the campaign's construction of migrant women is it allows for a problematic slippage between women's migration and sex trafficking (Andrijasevic and Anderson, 2008). This discursive strategy permits campaigners to define other women as being in need of state and feminist protection because they are always, already the victims of sexual exploitation (Miller, 2004). We submit this figuring resonates with older discourses of geospecific populations of women as perennially naïve, helpless and incapable of exercising agency (Kapur, 2005). Feminist scholarship establishes the relationship between migrant women, trafficking and prostitution is not always straightforward; and, as we have seen, a closer analysis of a person's circumstances is necessary to determine whether a migrant woman is trafficked or a voluntary sex worker (Mai, 2011; Platt, 2011). Too often we see TORL forego this sort of consideration in favour of overarching statements based on supposition and condemnation of prostitution per se rather than empirical work and hard data on women trafficked for commercial sex. A delegate from the Women's Health Project states:

To me it did not make sense that we were not covering the whole issue of prostitution and sex trafficking, because it is all one industry, the sex trade. The needs of all of these women are very similar, irrespective of their entry into the sex industry, as they have been exploited and often suffer the consequences of prostitution. (JOC, 23 January 2013: 18)

Whilst to a certain extent we can agree a link exists between trafficking, prostitution and women's migration, we argue any unquestioned conflation of these separate issues is problematic. The hegemony underpinning this assumption allows campaigners to ignore the fact that, in many cases, women enter Ireland independently or of their own volition and very often legally (Munro, 2008; Ward, 2010). Trafficking has reawakened, to some degree, the public understanding of the global inequalities driving trafficking. This is important. It should be noted in this context the vocabulary of the 'protection' and 'rescue' of trafficked women is unproblematized. During the oral submissions to the JOC campaigners deploy implicit gendered discourses about other women to speak about migrant sex workers' lack of agency. Consider the nuances in the Immigrant Council of Ireland (ICI) statement below:

One cannot talk about sex trafficking unless one takes a stance on prostitution. Within the sex industry are varying views and voices, and all voices should be listened to and respected, but we must be very clear that one cannot confuse the fact that a minority of women have independence and agency within the sex industry . . . We cannot avoid the fact that the majority of women enter prostitution because of poverty, child abuse, gender-based violence, war or broken promises of a better life after having had few choices in their own country. (JOC, 12 December 2012: 15)

This conflation of trafficking, migration and prostitution does injustice to women. In terms of migrant women it infantilizes them (Kapur, 2005). In terms of sex workers it suggests under these conditions no woman could consent. And finally it denies us opportunities to devise appropriate solutions that are distinct from voluntary sex work. These assumptions have unintended consequences because they reinforce patriarchal socio-sexual relations between campaigners and the object of their humanitarian gaze, namely sex workers, migrant women, women of colour and trafficked women. This is, ironically, the very problem the TORL identifies as the root cause of prostitution in Ireland. The key point we wish to make is the campaign's response when concerned with maintaining its hegemony is, and to a large degree must be, to deny the relevance of alternative explanations and disregard other voices and identities that challenge its dominant position in Irish prostitution politics. A strategic manoeuvre that crucially warrants the silencing of current sex workers themselves.

What is Accepted Uncritically in this Representation of the Problem?

One of the most striking aspects of the campaign relates to what campaigners insist we accept categorically about TORL. Operating from the safety of the moral high ground campaigners infuse all their oral submissions with a common, hegemonic message; namely, it is the only organization with the moral authority to 'speak' on this topic in Ireland. It is very difficult to argue against political platforms that have as their stated objective the safety of vulnerable women and gender equality. This is something most people would support. And yet, the perniciousness of the unquestioned effects of this framing requires attention. For example, NWCI refers to its history of lobbying against VAW, suggesting support for neo-abolitionism is inexorable from anti-VAW campaigning.

The important point in terms of where the National Women's Council of Ireland is coming from and discussions among members is that prostitution was viewed within the context of violence against women . . . it is important that it is seen in the context of violence against women and moving on to supporting a particular model, which is the Swedish model. (JOC, 12 December 2012: 6)

This framing has at least two consequences that demand our attention in the context of the campaign's ability to establish its hegemony and dispense with any opposition to its agenda. First, it suggests given its political agenda Irish citizens should accept those campaigners' track records and give them the mandate to speak for all Irish women. And

second, this tactic suggests those who disagree with the campaign do so because they lack the 'appropriate' knowledge and expertise, are anti-gender equality or indeed are not feminist enough to make an informed judgement on this topic. We find evidence of this in the following statement by delegates from INMO:

The suggestion that the position held by many of the groups here is not evidence-based is erroneous. These are the groups that work face-to-face with these vulnerable people, and they must be listened to by the committee. They know what is wrong and what needs to be done to arrest prostitution. Any claims from those not on the front line of this problem should not swing the committee's review of the proposed legislation. (JOC, 16 December 2012: 32)

What this means is the campaign's hegemony bifurcates the debate into a partisan politics organized around an 'us' versus 'them' binary. Whilst the campaign makes gender equality and VAW key aspects in its agenda, it has failed to confront how its focus and the power relationships structuring it are based on a policy of excluding sex workers' voices from public debate. Given the campaign's adherence to radical feminism's view of prostitution, it is difficult for campaigners to avoid the conclusion that sex work is incompatible with gender equality. The only outcome that can emerge from this perspective is all other policy interventions must be silenced and Irish citizens must accept this uncritically as 'a progressive and realistic objective, based on the fundamental principles of equality between women and men' (JOC, 12 December 2012: 6). The sex worker in all her complexity must also be silenced if the campaign is to retain its hegemony and secure its position on 'the moral high ground'.

Just as the function of hegemony is unquestioned when campaigners determine their moral authority to speak on prostitution in Ireland, so too is their unquestioned acceptance of the Swedish model to solve the problem of prostitution in Ireland. We do not suggest individuals and groups do not voice their dissent and provide the government with a range of alternatives to criminalization. They do. The following statement demonstrates the challenges faced by those who wish to speak and 'think' an alternative policy solution. One individual from the Gay Men's Health Service, comments:

Coming here I was surprised that the Swedish approach is the one that has been spoken about most. I thought that, at a minimum, the committee would look at what recently happened in Canadian legislation where the laws are quite similar to those in Ireland. I believe a stronger example would be the New Zealand model, which is more a form of legalization and regulation. (JOC, 23 January 2013: 26)

For the campaigners who start from the position that prostitution is VAW, the Swedish model and no other seems to have the unquestioned potential to protect women from harm. There are some further observations we would like to make.

The first observation we can make is it is here the campaign's unquestioned support for the Swedish approach creates another series of silences. As previously discussed, it is a given that violence is endemic in prostitution. The difficulty with the campaign's unequivocal support of this response, from a broader feminist perspective, is the Swedish

model with its end goal being gender equality between the sexes makes this issue about a symbolic message around male violence and not a practical policy response to address sex workers' safety and rights (Scoular and O'Neill, 2008). This is something that is clear in statements made by delegates from the NWCI: 'The prostitution of women and girls constitutes a fundamental violation of their human rights and a serious form of male violence against women' (JOC, 12 December 2012: 5). By focusing on male clients as the locus of all violence and as sex workers as being always female and always at risk, radical feminism invokes universalizing gendered stereotypes (Brents and Sanders, 2010). These stereotypes cast all clients as perpetrators of violence as the very act of paying for sex is regarded as a violent act. The commercial exchange that once produces *violent* as well as *at risk* bodies and behaviours. Furthermore what it does achieve is it directs governments' regulatory gaze onto certain 'dangerous' criminal segments of society and vulnerable women for 'their own good' (Bernstein, 2012; Phoenix, 2007). In the official evaluation of the ban on purchasing sex in Sweden, the data showed sex workers experienced increased police scrutiny, stigma and discrimination (Dodillet and Östergren, 2011).

The second observation we can make is many of these arguments are borne out in the Irish neo-abolitionist's unquestioned support for the Swedish approach to prostitution and the negative social impacts this will have for sex workers. When asked by the Chairman of the JOC: 'is there a downside or anything negative about the Swedish model?', a delegate from Women's Aid declared, 'No, to my knowledge in terms of reading about it, there does not appear to be anything that strikes me in terms of the work of Women's Aid or the broader violence against women movement' (JOC, 16 January 2013: 7). Its sharpest illustration is in the fact that after a period of consultation, the JOC has recommended the government move to adopt the Swedish approach. The JOC finds it provides 'the normative, declarative and deterrent effects' of implementing a sex purchase ban (JOC, June 2013: 74, Houses of the Oireachtas, (2013a)). It finds the role of such law in 'identifying prostitution as a social wrong as much as a criminal one' as 'an important step in transforming views on gender and sexuality' (JOC, June 2013: 74, Houses of the Oireachtas, (2013a)). Silence in all of these circumstances is present in the hegemonic view that in time, Irish people will be convinced these measures are in Ireland's, and by default, their best interests, becoming normative and regulatory for all: 'perhaps the greatest success in the criminalization of the purchase of sex in Sweden to date has been the apparent shift in public attitudes to prostitution and trafficking' (JOC, 12 December 2012: 30).

Or viewed from another perspective, the problems of this marginalized group will recede into the shadows, the public will return to life as normal and the TORL will have achieved its objective. And this, of course, is in line with neoliberal systems of governance. In typical neoliberal terms citizens will adhere to the rules of responsabilization and will trouble the state no more. Campaigners identify themselves as compliant with government objectives and most likely to contribute to the government's normative vision for Ireland's future. This is to be expected. Dominant campaigns such as these must deny the relevance of other perspectives, approaches and experiences because to do otherwise would result in an altogether different set of law and policy interventions that would delegitimize its agenda and divest it of its position as the only worthy voice on Irish prostitution. As Ireland moves towards a criminalization model on prostitution, an

individual's ability to choose to engage in sex work, the nature of the relationship between sex worker and client, the services provided and the contexts in which transactions occur are all irrelevant to the question of the criminal liability of those who purchase sexual services. Of course, for some this reasoning is not a problem. If we accept unquestioningly the TORL figuring, then, it is inevitable we will accept it is legitimate to exclude the voices and perspectives of sex workers to promote gender equality and eliminate VAW. And yet, such a conclusion is only a given if we frame our thinking about sex work by applying one perspective and by accepting the politics, ideology and analytical categories that drive it as hegemonic.

Conclusion

We sought to illustrate the discursive practices evident in current debates on prostitution in Ireland and how these frameworks of understanding inform law and policy. Bacchi's WPR approach provides a valuable interrogative tool, which allows us to look at how the TORL problem representation of prostitution categorizes, excludes, accepts without question and silences a range of voices. By employing three key questions to uncover the TORL discursive practices, we argue campaigners present as truth a particular way of knowing prostitution, namely as always exploitative. As prostitution is only ever exploitative, prostitutes by definition are always exploited. This categorization accepts categorically sex workers are always vulnerable and this framing dismisses notions of choice and autonomy. This discursive effect delegitimizes the choices sex-working women and men make daily and it excludes and silences sex workers who challenge victimizing frames. As Rose argues:

If policies, arguments, analyses and prescriptions purport to provide answers, they do so only in relation to a set of questions. Their very status as answers is dependent upon the existence of such questions. And in reconstructing the problematizations which accord them intelligibility as answers, these grounds become visible, their limits and presuppositions are opened for interrogation in new ways. (2000: 58)

Our analysis attempts to reveal the campaign's premises and discursive effects and interrogate its policy proposal for client criminalization. This enables us to explore the limits and presuppositions evident in these problematizations. What we found was problem representation not only partially constructs the bodies and behaviours of sex workers, but also the process of problematization becomes a space that the campaign claims to the exclusion of alternate views and through the silencing of sex worker's voices. These mechanisms of governance feminism have further used this space to frame prostitution as a women's equality issue, imposing a hegemonic, uncritical claims to truth delegitimizing alternative of knowing prostitution. As discourse has materiality, these discursive events support calls for the institutionalization of this framing of prostitution in law and policy responses.

As we write, Ireland has yet to introduce the Swedish model. And yet, the consultation process leading to this eventual outcome permits us to uncover the manner in which Ireland's questioning of prostitution in the policy arena has reached a Swedish-style

answer. Indeed the consultation process itself constitutes a bounded discursive event, and debates and discussions have seeped beyond the borders of this process and are ongoing. It is probable overtime the membership of the TORL will change as some organizations have begun to reconsider their position since the onset of the consultation. Whilst this scenario does not ultimately alter the analysis presented here, it does signal the fluidity of discourse and indicates strongly this law and policy space, though currently occupied and marshalled by TORL, may find itself dislocated over time by the mounting support for alternate models associated with the belated inclusion and prioritization of sex worker voices in the Irish policy arena.

Acknowledgements

With the usual caveats, we wish to thank our two anonymous reviewers for their valuable engagements with our work.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. The Oireachtas is the Irish Parliament. Traditionally the Defence, Justice and Equality Committee is a forum for Oireachtas members from all parties to input into legislation and policy areas. It is key in helping to shape opinion and policy in the fields of justice, security, the rule of law, equality, defence and immigration.
2. When the Government of Ireland indicates it wishes to bring forward legislation to deal with a particular issue the relevant government department will research and draft a preparatory Heads of Bill. The Heads of Bill sets out the key objectives, the chapter headings and the main provisions in each section. It sets the framework but it will not contain all the detail of the proposed legislation. Publishing the Heads of Bill allows further opportunities for stakeholders to provide input on the inclusions and gaps in the proposed legislation.
3. Press release (27 November 2014). Available at: <http://www.justice.ie/en/JELR/Pages/PR14000349> (accessed 3 December 2014).
4. Bacchi sets out six key guiding questions as part of her method. These include, (1) What is the problem represented to be in a specific policy? (2) What assumptions underlie the representation of the problem? (3) How has this representation of the problem come about? (4) What is left unproblematic in this problem representation? (5) What effects does this representation of the problem produce? (6) How/where is this representation produced, disseminated and defended? How could it be questioned, disrupted and replaced? (2009: 28)
5. Witness list. Available at: <http://www.oireachtas.ie/parliament/media/committees/justice/Witnesses-and-Submissions-on-Review-of-Legislation-on-Prostitution.pdf> (accessed 1 April 2015).

6 This report should not be mistaken for Mary Honeyball's widely critiqued report on prostitution. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN> (accessed 28 April 2015).

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