

Prostitution, criminal law and morality in the Netherlands

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Abstract. In 1911 a new public morality act was enacted in the Netherlands. Article 250bis of the penal code states that it is forbidden to give opportunity for prostitution. This so called article on brothelkeeping was the result of growing pressure of a coalition between christian puritans, socialists and feminists at the end of the nineteenth century. In the nineteeneighties the government has proposed to scratch this general prohibition of brothelkeeping. This proposal results from another coalition, this time between feminists and bureaucratic powers. This change in the public debate on prostitution, and especially the influence of feminism, is analysed from a moral point of view. The Dutch prostitution issue is seen as a case of postmodern morality, that is to say as a result of bureaucratic needs for regulation and subjective experiences of the persons involved.

Introduction

In a period of about one hundred years the public debate on prostitution in the Netherlands has changed dramatically. This change becomes manifest in the oncoming abolishment of the so called article on brothelkeeping (article 250bis in the public morality act in the Dutch penal code). The article tells us that it is forbidden to keep a brothel, that is to say to give the opportunity for prostitution.¹ This article was part of the public morality act of 1911. The act was the result of an intensive public debate about the prostitution issue at the fin de siècle. The great left wing historian Jan Romein typified the Act as “the institutionalisation of prudery”.

75 Years later, in the 1980s, there was a strong societal pressure to scratch the article on brothelkeeping. In 1985 the government introduced a change of the article in the Dutch Parliament.² Brothelkeeping was no longer to be prohibited, except for cases of violence, force or overpowering. This revision of the law in case of prostitution, which is important because it opens the way to look at prostitution as “just work”, is still under discussion in the States General because of its relation to another article, that concerning the traffic in women. So it is still not clear if the revision will be sanctioned by the Parliament.

In this article I will analyse the moral developments in the Netherlands that made it possible or even necessary to change the law on prostitution. It will try to interpret the prostitution issue as a case of morality in postmodern society.

That is to say, I will describe the prostitution issue on a moral level and will abstract from the political and economical background of these developments.

A remarkable fact in both the establishment of the law in 1911 and the bill for changing the article on brothelkeeping in 1985, is the important role the Dutch feminist movement played. At the end of the nineteenth century there was the first feminist wave that supported the prohibition of brothelkeeping; in the 1980s the second feminist movement evolved, parts of which supported the abolishment of this prohibition. In both periods the standpoint on prostitution was extremely important for the identity of feminist discourse, but it seems that both movements reached different conclusions. What has happened in, let us say, one century in the moral debate about prostitution in Holland and, more specifically, what happened to feminist thought in that century?

In the first section I will describe the debate on prostitution at the end of the nineteenth century, resulting in the already mentioned article on brothelkeeping in 1911.³ In addition I will describe briefly some characteristic developments from this year on to the 1970s with the emergence of the second feminist movement, that will be described in the third section. Lastly, I will provide a short comment on the new Dutch policy on prostitution and draw some conclusions on postmodern morality.

Hygienists versus abolitionists

To understand the debate on prostitution at the end of the nineteenth century in the Netherlands it is important to note that in those days prostitution was regulated by the system of so-called regimentation. This system was introduced by the French during their occupation of the Netherlands in the second decade of that century (1810–1813). In the relatively liberal climate of the first half of the nineteenth century there was a strong tendency to see prostitution as a “normal” effect of male sexuality. Men were thought to need opportunities to have sex outside marriage: a biological sex urge that should not be suppressed. This biological argument was in line with the regimentation system, according to which prostitutes were registered by the police and medically examined for syphilis (all venereal diseases were called syphilis).

When the French withdrew in 1813, the medical examination was officially abolished, but in the Local Government Act of 1851 sponsored by the liberal statesman Thorbecke, local communities were obliged again to regulate local public morality.⁴ This obligation was especially inspired by the worries about venereal diseases (in 1860 about twelve percent of the Dutch army was infected).⁵ Prostitution was like a synonym for venereal disease. It is not surprising that among the defenders of this system were many physicians.⁶ These defenders were sometimes called the “hygienists”.

In the second half of the nineteenth century there were several groups of Christian puritans, feminists, and some socialists that wanted to abolish the regimentation system for several reasons. They are known as the “abolitionists”. In the first place, they argued that regimentation was not effective in the supposed function of control. Except for Rotterdam and The Hague, most city councils were indifferent to the governmental urge for control of prostitution.⁷ More important was the argument that hygiene was a matter concerning the individual, not an affair of the state. In addition, it was seen as unfair that prostituting women should be controlled while their male clients were not.

But the most important argument, from a moral point of view, was that regimentation was legitimizing fornication; family life, it was believed, was undermined by regimentation. Regimentation was seen as the acknowledgement of the state of prostitution. This view was strongly held by a minister of religion, called Hendrik Pierson, who wrote several brochures and articles in the journal *Getuigen en redder* (meaning something like “Testimony and salvation”).

In 1889 for example there was a large meeting, organised by the Dutch Union against Prostitution, another initiative of Hendrik Pierson. Among the members of the meeting were representatives of several groups of Christian churches, and also two women’s organisations. The first Dutch woman physician, Alette Jacobs, a well known feminist, was also on the attendance list. And several labour unions sent declarations of approval to the organizing committee. It is important to recognize at this point a growing coalition between Christian puritans and the feminist movement.⁸ Compared to Great Britain the socialist movement didn’t play an important role in Holland.⁹

As the anti-prostitution movement carried forward, there were more medical specialists that joined its position. From a medical point of view, sexual abstinence was increasingly claimed as promoting the healthiest life style. Prostitution became a perversion.¹⁰ With this redefinition of prostitution from a necessary complement of marriage to a perversion, the state lost its moral legitimation to regulate prostitution by registration and medical control.

The feminist movement emphasized what today is called the “sexual politics” of prostitution. Prostituting women should not be blamed for their activities. Instead, the men who organized their work, and the men that visited them should be held responsible. This point of view led to the view that judicial policy should be directed away from prostitutes and focused against brothel-keepers. As in many other European countries, prostituting oneself, as such, was not forbidden by the law of 1911. We nowadays still recognise this point of view to represent the abolitionist position in the prostitution debate.

So the feminist movement was quite successful in its struggle to improve the social and legal standing of prostitutes. It seems clear that prostitution was a kind of spearpoint for the feminist movement of those days. It was relatively

successful in politics, because of the coalition the movement made on the prostitution issue. This view was very well expressed in Great Britain by the slogan of the famous Pankhurst sisters: "Votes for women, chastity for men". The sexual issue and the political claim of women's right to vote were strongly related to one another. The coalition with the puritan Christians on the prostitution issue brought the feminist case, ideologically speaking, to a front position.

At this point I would like to emphasize that sexuality in those days meant male sexuality. Thus, the political opposition against male dominance fit very well with the puritan morality of the Christian parties. From this perspective the prostitute, in fact, was "a negative point of reference" in the movement for equal rights for women. The Public Morality Act of 1911 was the result of the compatibility of puritan and feminist ideology at the beginning of this century. Comparable revisions of law took place in Denmark in 1901, Germany in 1927, Sweden in 1918, and much later in France in 1946.¹¹

Social prudence

In accordance with the ideas of the abolitionists, the 1911 law centered on banning prostitution without blaming the prostitutes who were seen as victims. This attempt to ban prostitution was for the Christians a means to protect family life, for the socialists (for example in Great Britain) it was a method to fight an excrescence of capitalism, and for feminists a way to attack male dominance. Prostitution was like a hinge point for the case of public morality. Just a small group of liberals, intellectuals and artists opposed the conservative morals now surrounding the prostitution issue.¹²

It is remarkable that after the revision of law in 1911 a kind of moral silence developed around prostitution as a public issue. It is well established that the police was not very successful in enforcing the article about brothelkeeping.¹³ In addition, the first feminist wave abated in these years. It may be, as suggested by Walkowitz, that just because of the coalition with the puritans over prostitution, the women's movement lost its ideological position.¹⁴ Whatever the reason may be, it was not until the late 1950s that prostitution was once more an issue in the Netherlands.

It is important to note that this renewed attention dealt with mainly social concerns. There was, for instance, a report about prostitution and social work in 1964 that expressed worries about the psycho-social problems of the persons involved in prostitution, both prostituting women and visiting men. Prostitution was still seen as a perversity, but those involved were thought to need help instead of prosecution. It was recommended that the police should be prudent

in law enforcement. Prostitution policy should aim at the rehabilitation of prostitutes and reinforce family ties and male moral standards.

In 1962, a judicial governmental committee advised, in line with this opinion, against a stringent prosecution of brothelkeeping cases.¹⁵ Revisions of law were not necessary, but strong law enforcement, it was argued, would have a deleterious effect. Although, the expected persistence of brothelkeeping would “undermine respect for the law in general”, public education, information and mental care were the best means to control prostitution, according to the Stoffels committee. This plea for prudence in controlling prostitution might have been one of the reasons why the Netherlands didn’t ratify the Convention of New York, forty years ago, that urged a stringent policy on prostitution.

Liberation of desire

During the so-called sexual revolution, this psycho-social approach was succeeded by a completely different view; one that I would describe as moral indifference. In the late 1960s and the beginning of the 1970s, there was a strong tendency to “unmoralize” issues of sexuality, like pornography, pedophilia and so on. The Dutch Union for Sexual Reform, for example, had about 400,000 members. Sexual variety was no longer seen as perverse, but as a signal of the emancipation of desire. Restrictions on sexual behavior were condemned as forms of suppression.

It is significant to emphasize that the liberation of sexuality was unambiguously seen as emancipation as such. The position of the objects of desire was no longer problematic; they were mainly seen as extension “pieces” by the pursuers of sexual pleasures, that is to say, men. In these years, nevertheless, there was some understanding of women’s sexual desires.

In line with the ideas about “unmoralization” of sexual pleasures, was the advice of a governmental committee in 1977, named after its chairman Melai. This committee, although in favor of the establishment of the Public Morality Act, warned the government about intruding into the private sphere of behaviour.¹⁶ The committee pleaded for a policy of selective combatting, of proceeding only against extreme forms of exploitation of individuals and against situations in which neighbours were distinctly annoyed by prostitution. In these years the world-famous red light district of Amsterdam grew into a free zone for sex-industries.

The topic of annoyance in neighbourhoods abutting or inside sex districts was dominant in the discussion on prostitution in the seventies. There were several studies on local problems and selective repression on prostitution in

terms of annoyances.¹⁷ A well known example of this kind of discussion concerned the policy of the city council of Rotterdam that for many years tried to find a place to accommodate soliciting without disturbing the surroundings. Several proposals (like sex-boats) had to be cancelled because of protesting adjacent communities or judicial arguments in terms of the article on brothel-keeping (“the city council as a pimp”).¹⁸

This meant that there was not much of a moral debate as a technocratical debate in terms of managing and controlling the problem of prostitution. That is why I term this period one of moral indifference. Prostitution, as a private matter, was no longer seen as a problem of morality but mainly as a technical-judicial problem of public order. In these years one could hear the first arguments for a policy based on labour legislation.¹⁹

Prostitution as a feminist issue again

The women’s movement of the 1970s and 1980s broke with the moral indifference over prostitution itself. Prostitution was again, like at the turn of the century, put on the moral agenda, although in a different way. The second feminist movement defined its identity explicitly in terms of “sexual politics”. Heterosexuality was seen as a key to male dominance.

The first feminist ideas about prostitution were, as in the first feminist wave, formulated in terms of sexual exploitation.²⁰ Prostitution was seen as paradigmatic for the relationship between men and women in a patriarchal society. But gradually the prostitution-issue became a more and more complicated ideological problem in feminist thought. Prostitution was an institution serving men, financed and managed by men. On the other hand, however, there were thousands of women who didn’t appear have a problem working within such an institution. This dilemma was shown in the *Prostitution Papers* of Kate Millet published in 1975 particularly in her description of a meeting of feminists and prostitutes that ended in a physical fight because of the different judgements both groups had on prostitution. Millet decided to listen to the women directly involved in this issue. For one of the few times in contemporary western history prostitutes were given a voice in the prostitution debate. After the publication of Millet’s work there were several other and better publications from the prostitutes’ perspective.²¹

In the feminist discourse two different positions were taken; a structural one and a subjective one. In the structuralistic point of view dominant sexual morality was seen as a male “phallocratic” dominion suppressing women in several respects. Sexuality was no longer simply a case for emancipation, as it had been during the sexual revolution, but was now increasingly interpreted as a case of power and powerlessness. This point of view placed prostitution as

the most extreme form of male dominance: prostitution was the mirror of patriarchal society. In 1984 a much discussed Dutch movie, "Broken mirrors", was produced from this perspective. Structuralists argued that prostitution, by definition, was/is sexual violence. Moreover, in 1982, there was an influential conference, organized by the Dutch government, on sexual violence. Prostitution, pornography, sexual abuse, unwished sexual intimacy, rape, were all discussed in terms of sexual violence. The structuralistic position dominated and reminds me of the articulated position in earlier feminist discussions. Prostitutes, in this view, are victims of male sexuality, and thus male sexuality should be the main subject of concern.²²

The "subjectivist" point of view starts from the experiences of the women involved. Prostitution is seen as a legitimate form of labour freely chosen by thousands of women.²³ Therefore, a special governmental policy on prostitution is not necessary once the proper conditions for this kind of labour are set. Obviously the unions of prostitutes in Holland "De Rode draad", (the red thread), in the United States "Coyote" (Call off your old tired ethics), and in Great Britain the "English collective of prostitutes" support the subjectivist position. In 1986, Gail Pheterson wrote a report that made this stance very clear. According to her, the problem of prostitution is that of stigmatizing the "whore"; all policies on prostitution establish prostitutes as outcasts. As long as "unchastity" is something to be ashamed of, the problem of prostitution will never be solved.

It is important to note that in this point of view the prostitute, in contrast to the first feminist wave, has become a positive point of reference in feminist politics. In this subjective approach, the law about brothelkeeping is considered an obstacle in the strengthening of the position of prostitutes. And, like at the turn of the last century, we see again a particular coalition of certain feminists and other groups. Nowadays it is not puritan Christianity that is compatible with subjective feminist views, but the morally indifferent technocratic approach absorbed with management and control which is. In the bill favouring the abolishment of the prohibition of brothelkeeping, these views and interests reach the same conclusion: prostitution must be seen as "normal work".

Prostitution as "just work"

I will conclude my "moral" description of developments in the prostitution issue with some reflections on the possible effects of the abolishment of the article on brothelkeeping. As we have seen, the bill in favour of abolishment is the result of ideas about public order and strengthening the social position of prostitutes from a subjectivist point of view. The idea of prostitution as a

“normal job” is the morally neutral concept which created consensus between these very different interests. I would like to mention two points about this.

First, the approach of prostitution as lawful labour depends heavily on the creation of a system of licenses for brothels. Such a system demands administration and control; if not, the abolishment wouldn't satisfy the interests of the agents of public order. Several townships have already stated that they cannot start such a complicated administration and control system.

In addition, it seems likely that at least a part of the prostitution business will not be interested in licenses, control, taxes, and so on. This is even more the case for occasional prostitutes, like soliciting drug addicts, young boys and housewives who want to earn money, but do not want the legal status of prostitute. That means that a license-system must be either very stringently controlled or else accompanied by a policy of tolerance. And this last option would not differ very much from the existing permissive situation.

The other argument in favor of the abolishment of the prohibition on brothelkeeping is that it would “destigmatize” prostitutes and “inchastity” in general. This strikes me as particularly difficult. The idea that “bad behavior” is at stake will not easily fade. The argument for no regulation at all (proposed by the unions of prostitutes) overlooks problems with prostitution in dissenting neighbourhoods, and indeed society in general. Prostitution differs by definition – sexual services for money – from the dominant ideas about what sexual relationships should be. These ideas may be “narrow-minded” and “petty-bourgeois”, but it is hard to imagine how decriminalising brothelkeeping can change this popular “sexual consciousness”.

To avoid misunderstanding, I am not saying we shouldn't abolish the article on brothelkeeping. Abolishment might indeed be helpful in strengthening the position of prostitutes. I do not think, however, that we can see this kind of decriminalisation as the solution for all the conflicting problems and interests involved. As in Dutch drug policy, some kind of permissiveness will keep the problem acceptable for all parties involved.

Prostitution and morality

At the beginning of this essay, I stated that prostitution is an interesting subject for research on morality. Why is this the case? Both feminist movements, the first and the second, were able to put the prostitution-issue in moral terms. But there was a major difference. The approach of the first one was unambiguous; sexuality was a male affair. Prostitution was synonymous with male dominance and had to be abolished in such a way that it would not hurt the women involved.

The second feminist movement is far more ambivalent, because it claims an independent position for female sexuality. Women are no longer just victims of sexuality, they claim another definition of sexuality. In this claim it would be very problematic to neglect the experiences of prostitutes. In one way or another “the whore” has to be incorporated in a definition of female identity and feminist morality.

This interest in the subjective position of women in general, and prostitutes in particular, that I call a form of “subjectification of sexual morality”, can be seen as an example of a more general process in moral societal development. Until the 1960s moral judgements were part of the encompassing political ideologies of a religious, socialist or liberal kind. Lately, these ideologies – at least in the Netherlands – seem to have lost their importance in defining social problems. This change is often referred to as the “individualisation” of society.

The sphere of morality can no longer be located in the struggle between opposing ideologies that sometimes reach the same conclusions. Morality today might more usefully be seen as the mediation between individual experiences and the state bureaucracy. This secularization of morality (Boutellier, 1990) can also be seen in the victimology movement, especially the attention given to the sexual abuse of children.²⁴

Morality is thus no longer a clash of familiar ideologies defining good and evil as in the 1911 law, but is now far more concentrated on the issue of subjectivity in terms of suffering and humiliation.²⁵ The subjects involved have a say in what these terms ought to mean. The feminist movement can be credited for contributing to this new train of moral thought. The prostitution issue is not nearly what it once so much was – an issue of ideologically defined morality – but an issue about the subjective experiences of the persons involved and the bureaucratic necessity of regulations.

Notes

1. In the Netherlands it has never been forbidden to prostitute oneself.
2. Tweede Kamer 18202, 1985.
3. This historical description is based on secondary literature about prostitution in the Netherlands: Hekma (1987), Stemvers (1985), Altink (1983), Volmuller (1966), Sijmons (1976).
4. Stemvers, 1985.
5. Stemvers, 1981.
6. For this matter Foucault (1978) refers to the strong position the physicians had on defining sexual categories.
7. Stemvers, 1985.
8. Sijmons, 1985.
9. Walkowitz, 1980b.
10. Hekma, 1987.

11. Kiedrowski, Van Dijk, 1984.
12. Altink, 1983.
13. Stemvers, 1985.
14. Walkowitz, 1980a.
15. Stoffels, 1962.
16. Melai-committee, third report, 1977.
17. van der Werff, van der Zee-Nefkens, 1977; van den Berg, Scholtes, Mentink, 1978; Overman, 1982.
18. See f.e. Scholtes, 1981; Altink, 1982.
19. For this matter it is important to refer to the mr. De Graaf foundation, founded in the beginning of the sixties in order to develop rehabilitation programmes for prostitutes. The foundation has played an important role in "unmoralizing" the subject (see f.e. Scholtes, 1980).
20. Kathleen Barry, *Female sexual slavery; from prostitution to marriage*, 1979.
21. f.e. Giesen, Schumann, 1980; Jaget, 1980.
22. f.e. McIntosh, 1978.
23. Vanwesenbeeck, 1986.
24. Boutellier, 1989, 1990.
25. See f.e. Rorty, 1989.

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