On the "Swedish model" by Jesper Bryngemark

In 1998, the Swedish Parliament passed a law prohibiting the purchase, as well as the attempted purchase, of sexual services. The law entered into force on 1 January, 1999. From an international criminal legal perspective, the law is unique in that it puts criminal sanctions on the buyer, but not the seller. The law soon gained much international attention and has been subject to much debate in Sweden as well as internationally, and the Swedish government has promoted it to other countries as a solution to the "problem of prostitution".

About Sweden

To put this law in context, a few things should be said about Sweden. For more than 100 years, Sweden has – with a few exceptions – been under social democratic rule. The concept of social welfare through governmental rule is relatively strong and widely accepted. Comparing with most other countries in the world, prostitution is traditionally not a very visible phenomenon (for instance there are no red-light districts in Sweden), and the sex worker movement is weak or non-existent.

Sweden also keeps up a tradition of exporting social policies. During the rise and expansion of the Swedish welfare state, Sweden mostly exported models of economic governance. However, since the Swedish welfare system started to deteriorate during the 1980's, focus seems to have changed to exporting 'moral' policies, which are arguably cheaper.[1]

Swedish models in modern history

When it comes to prostitution governance, Sweden has applied most known "models" of legal responsibility through the last 150 years. By the latter half of the 19th century, prostitution was the object of municipal regulation in most larger Swedish cities. Sex sellers were subjected to mandatory registration as well as mandatory medical inspections. Following a general "abolitionist" turn in continental Europe by the beginning of the 20th century, however, focus shifted to prosecuting "procurers" of prostitution. From this time until the 1960's, female sex sellers were arrested by reference to anti-loitering laws.

The anti-loitering laws were abolished during the 1960's, and an era of crack-downs on "procurers" and "pimps" followed. Until this day, Swedish laws on procuring are much more strictly enforced than for instance in the neighbouring Scandinavian countries, where similar laws apply: Whereas tabloid newspaper publishers in Norway and Denmark do not usually face prosecution for publishing advertisements for sexual services, such publishing in Sweden would constitute procuring following a court case from the late 1970's (*Nytt Juridiskt Arkiv*, 1979 p 602).[2]

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[1] For a more elaborate discussion on Swedish social policies and "symbolic legislation" from the 1970's onwards, see Tham (2001).

[2] For historical accounts on Swedish prostitution governance, see Svanström (2006), Söderblom (1991), Frykman (1993) and *Könshandeln* (1995).

The 1980's saw the birth of a new "feminist" legal discourse where prostitution, among other things, was increasingly constructed as a form of "structural violence" against women. Traces of this discourse can be found as early as 1984, in a law reform on sex crime which also to some extent affected the laws on "procuring" at the time, but in 1998, an explicit analysis of systemic patriarchy was used by a government's enquiry commission in order to introduce a new responsible subject – the client.

Arguments to promote the law of 1998

The law of 1998 originates in a report of a governmental enquiry commission, published in 1995, which proposed not only penalising the *purchase*, but also the *sale* of sexual services as well as *production of pornography* in cases where the final product "depicts intercourse or is grossly offensive." The task of the commission had been to "investigate prostitution" and the account of their findings largely consists of a narrative where "prostitution" is portrayed as a kind of gendered sex-slave trade. When entering this trade, women are transformed into "prostitutes" who, apart from their selling sex, have "irreparable damages" in common. According to the commission, these damages would stem either from earlier physical and mental violations, from "prostitution" in itself, or from both (*Könshandeln* 1995:137–149).

The commission concluded that society must "take a stance" against such atrocities. Interestingly, the commission recommended that both parties of the transaction be equally punishable. A law criminalising the sale and purchase of sexual services would give women an incentive to stay out of the sex trade, whereas men would refrain from buying sex out of fear of getting caught. Arguments about "the women" (i.e. the sellers) being victims who should not be held responsible for the existence of prostitution were dismissed by reference to the following argument: If we agree that "the men" (i.e. the clients) should be punished, then we cannot conclude that "the women" should go free of punishment. "The women" may be victims in the sex trade, but even "the men" can be seen as victims of a larger oppressive structure. This means that you cannot escape responsibility solely by means of your status as a victim (*Könshandeln* 1995:224–228).

Such arguments, however, gained little adherence by the government. In its law proposal of 1998, the government instead argued that it would be "wrong" to criminalise the "weaker party" in "prostitution". According to the government, there is no doubt that "prostitution" is "harmful" to society as well as individuals. However, it would "suffice" to criminalise the purchase (and the attempted purchase) of sexual services. Such a law would, in short, send a *moral message* to the population who would then hopefully learn that "prostitution" is *wrong* (*Kvinnofrid* 1998:104–107).

Upon reading the government's law proposal, it becomes evident that the "feminist" or "anti-patriarchal" kind of arguments, so fundamental to the recommendations put forward by the commission in 1995, were not useful to the government in 1998. The "harmfulness" of prostitution was now instead described in terms of criminality and social despair, and the proposal was promoted to the Parliament without a trace of "feminist" arguments. Still, in contemporary Swedish debates the law is generally defended by "feminist" debaters, and it is generally considered to be a product of

"feminist" politics, although a recent trend has been to emphasise the alleged successfulness of the law as a tool in the struggle against *sex trafficking*.

It should be noted that none of the visions put forward in the argumentation above, neither before nor after the law was passed, is founded in empirical research. The preparatory documents give no clue as to how the proposed measures would lead to the desired outcomes; the connection instead seems to be based on ideological reasoning and "common sense" arguments. The new claim that the law hinders "sex trafficking" also seems to be generally accepted without any reference to research.

In a report from 2001, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) expresses concern that the current legislation may have rendered prostitutes more vulnerable, and asks the Swedish Government to evaluate the effects of the current policy (CEDAW 2001:79). The Swedish Parliament recently voted for a proposal to undertake such an evaluation, but to my knowledge no investigation into the matter has been initiated as yet.

"Effects" of the current law

I am sometimes asked to say something about the practical effects of the law of 1998. This is not an easy task: A law is merely a document; it neither talks nor acts on its own. The "effect" of a law being in the world is therefore not very easy to assess. Yet, political discourse often attributes law with such "acting" abilities, using "the law" as a metaphor for different phenomena such as police actions, court sentences, etc. But even within that discourse, it is more or less impossible to assess the "effects" or "results" of the law since it, in spite of its character of social experiment, has never been officially evaluated.

A few reports have been written, however none of them meet acceptable scientific requirements on methodology. Two Swedish official reports (Socialstyrelsen 2000 and 2003) state that "street prostitution" appears to have decreased but that no causal link can be drawn between this effect and the law. It is not clear to the writers of the two reports what happened to the sex sellers who stopped working from the street. According to the same reports, "clandestine prostitution" has increased since the law entered into force.

Soon after the law was passed, the Swedish government put political pressure on neighbouring Norway to adopt the Swedish legislation. As a response to this, the Norwegian government appointed a commission to investigate the matter. The result was a report (Stridbeck et al 2003) concluding that the only scientifically proven effect of the law is that a majority of the Swedish population are in favour of it. Thus, the ambition of "sending a moral message" to the population can be said to have succeeded in part, but the question whether the other goals have been reached or not remains unanswered.

The law has proven difficult for courts to put into practice. Unless the client is brought to admitting the action, the prosecutor must present proof for two assertions: (1) that payment has been offered or given, and (2) that this payment relates to a sexual act. In practice, this means that the police must catch the buyer and the seller in the act and preferably record the bust with a video camera. A report issued by the National Police

Board (Nord/Rosenberg 2001) instructs the police to confiscate condoms if found, as these can be used as evidence – critics claim that such practices give sex sellers an incentive not to use condoms. According to the same report there are indications that sex sellers are more exposed to violence since the law entered into force, but again it is unclear what conclusions can be drawn from these claims.

The "Swedish model" on export

Nevertheless, the Swedish government has promoted the "Swedish model" to governments around the world as an attractive alternative to other models of prostitution governance. It seems the model often appears in various debates around the world, but still it is only rarely seriously considered by the governments. So far, the "Swedish model" in its original form has not been adopted by any other country. There are, however, a few cases where countries have constructed their own models, to some extent inspired by the Swedish example (Lithuania and South Korea are sometimes mentioned).

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