

DECRIMINALIZING PROSTITUTION IN THE PHILIPPINES: A CHRISTIAN RESPONSE TO THE TRAGIC?

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Until very recently, Philippine law criminalized prostituted women in its anti-vagrancy/prostitution provision (Article 202), but was generally silent on pimps, brothel owners and customers. This ambivalent policy rendered women in prostitution vulnerable to exploitation and abuse. In the same spirit, the classic Christian doctrine of sin tends to blame the prostitute and exonerate the perpetrators. It detaches the prostitute from the moral environment that has bred the situation of prostitution. A new anti-trafficking law has been signed which decriminalizes the prostitute and punishes the pimps, brothel owners and customers. But will this redound to the well-being of women forced by poverty to engage in prostitution? This paper introduces tragedy as a heuristic lens for ethical discourse and posits that a “sense of the tragic” may allow Christians to be able to deal more squarely with the issue of prostitution in the Philippines, especially on the level of state policy. It explores, within the narrow horizon of the possible, decriminalization as a Christian response to prostituted women’s tragic situation. Decriminalization here means penalizing pimping and the management of brothels but not the sale and purchase of sexual service itself, as well as according women in prostitution the right to organize.

TRAGEDY AS HEURISTIC LENS FOR ETHICAL DISCOURSE

This first section aims to clarify how we shall understand the concepts of “tragedy” and “tragic moral situation” in our discussion. It begins by introducing the reader to the literary genre of tragedy and underlines that the concept and genre of tragedy is neither monolithic nor static but dynamic. Then it focuses on how selected theologians have used the above terms for ethical discourse and point out how we shall follow or depart from their line of thinking

Tragedy and the Tragic: Dynamic Concepts

Some authors have attempted to identify the central elements of tragedy as a literary genre in the West. First, a tragedy may portray the main character in a moment of glory but this eventually ends in darkness despite glimmers of hope. Second, in terms of theme and style, there is in a tragedy an oscillation between the “fatedness of the hero’s fall and the fierceness of the hero’s assertion of transcendence.”¹ There is, however, a sense of inevitability in the tragic fate of the hero. Third, the tragic hero is characterized as an isolated individual who stands apart from the rest and is oftentimes a king, prince or warrior and only in rare cases, a person of low status.

Raymond Williams, in his book *Modern Tragedy*, unmasked the discontinuity and the complexity in the Western tradition of tragedy. He explains, for instance, how the stress in the classical and medieval tradition of tragedy on the “man of rank” was more due to the fact that he embodies the fate of the house or the kingdom which he ruled. This notion, however, was rejected by bourgeois society with its liberal philosophy for whom the “individual was neither the state

1. Cheryl Exum and J. William Whedbee, “Isaac, Samson and Saul: Reflections on the Comic and Tragic Visions,” *Semeia* 32 (1984): 9-10.

nor an element of the state, but an entity in himself.”² The gain in this was that the suffering of a person without a rank could now be likewise considered as tragic (e.g., Arthur Miller’s *Death of a Salesman*).

However, in this whole focus on the individual, the link between the fate of the individual and the social conditions has been forgotten. Williams notes with lament how: “Before, we could not recognize tragedy as social crisis; now, commonly, we cannot recognize social crisis as tragedy.”³ Marxist critics were instrumental in restoring and recovering the historical and social dimension of tragedy.⁴

There is also the notion of a sense of inevitability in the tragic fate of the hero, which actually developed only in the 19th century when the concept of evil as inescapable and the link to “original sin” was appropriated in the tradition of tragedy.⁵ Williams rightly insists that there is nothing inevitable in tragedy. The concentration camp, for example, has been used to depict magnified evil where humans have reduced other humans into a thing. But while the Nazis built the camps, others risked their lives to destroy them. There is no evil which humanity has constructed which others did not resist. A tragic action, however, may precisely be involved in the overcoming of evil.

In relation to this, it is true that almost all tragedies end with the destruction of the hero. But some form of new life can also come about after the death. An example would be a new regime exemplified by a new Prince. “Life does come back, life ends the play, again and again. ... What is involved, of course, is not a simple forgetting, or a picking up for the new day. The life that is continued is informed by the death; has indeed, in a sense, been created by it.”⁶

2. Raymond Williams, *Modern Tragedy* (California: Stanford University, 1967), 50.

3. *Ibid.*, 63.

4. *Ibid.*, 202.

5. *Ibid.*, 59. An example of a philosopher who propounded this is Friedrich Wilhelm Nietzsche.

6. *Ibid.*, 56.

Oftentimes we think of tragedy in terms of the fate of the hero but Williams emphasizes that what is most important is really “what happens through the hero.”⁷

Theologians and the “Sense of the Tragic”

Several theologians have made use of the language of tragedy or the tragic to enlighten ethical discourse.⁸ Prominent among them were the Niebuhr brothers (Richard and Reinhold) who, in 1932, had a debate regarding the appropriate American response to Japan’s invasion of Manchuria. The two brothers employed the concept of tragedy in reflecting on the issue.⁹

Richard argued for non-intervention and advocated instead self-reflection on Americans’ complicity or sins; for he believed Japan was just following the United States and other European countries’ imperialist expansion. This inactivity was based on the America’s lack of moral fiber to stand on as well as a hope that, despite appearances, God is active in history and a deeper healing is at work.

Reinhold, although recognizing the need for the US to acknowledge its own sins, stressed the need to curb Japanese aggression. For him, one could not always act in history from a “pure love ethic” or in accordance with “perfectionistic moral standards”. Reinhold argued that it is justice and not love that must guide the actions of groups. Justice, as a norm, acknowledges the right of different groups and weighs all their conflicting claims to establish a “tolerable harmony”. For Reinhold, “To say all this is really to confess that the history of mankind is a perennial tragedy;

7. Ibid., 55.

8. For a review of tragic sensibilities in religious feminism, see Kathleen Sands, *Escape from Paradise: Evil and Tragedy in Feminist Theology* (Minneapolis: Fortress, 1994), 60-65.

9. We are indebted here to the article of John Barbour, “Niebuhr Versus Niebuhr: The Tragic Nature of History,” *The Christian Century* (November 1984), 1096-1099 available from http://www.religion-online.org/cgi-bin/researchd.dll/showarticle?item_id=99 (access May 2002) .

for the highest ideals which the individual may project are ideals which he can never realize in social and collective terms”¹⁰

Both brothers actually viewed life as tragic, although for Richard, it is not the history of humankind itself that was tragic but for certain individuals and nations, “history can have a tragic character.”¹¹ Because the two brothers did not define carefully what they meant by “tragedy”, they were not able to differentiate the tragic moral situation and the view of life itself as tragic. Reinhold’s view of the inevitability of tragedy was dangerous in the sense that it could lead us to justify actions we suspected were wrong or might prevent us from striving for the highest ethical ideals and exploring other alternatives. What Christians need is not a defeatist tragic sense of life but a moral and theological stance that can help deal creatively and faithfully with tragic moral situations.

Nevertheless, Reinhold’s use of the concept of tragedy for our purposes is its link to the insight that on the collective level, we often deal with a moral situation where we cannot achieve the good without the use of morally ambiguous actions. There is, therefore, a need to negotiate the distance between the ethical ideal and the need for collective action.

Stanley Hauerwas is another well-known theologian who stressed the need for a “sense of the tragic” in dealing with certain moral issues. On the debate of the Niebuhr brothers, Hauerwas notes that Reinhold accepts that his brother’s pure love ethic is more faithful to the gospel. For him, this ideal should not be abandoned even if our social ethic or actions will fall short of the ideal, lest we simply act on the basis of expediency. Hauerwas, however, departs from Reinhold in the latter’s view that “the peace Christians embody and seek” is impossible. The peaceable kingdom is a present reality. Christian hope demands that we live “beyond tragedy” and view

10. Reinhold Niebuhr, “Must We Do Nothing?” *Christian Century* (March 23, 1932), quoted in *ibid.* 3.

11. Barbour, “Niebuhr Versus Niebuhr”, 3.

evil as ultimately under the dominion of a gracious God.¹²

Hauerwas employs the concept of “tragedy” to issues that arise in the medical field which he describes as a tragic profession: “for to attend to one in distress often means that many others cannot be helped. Or to save a child born retarded may well destroy the child’s family and cause unnecessary burdens on society.”¹³ Traditionally, such stories have been called “tragedy”. Medical practice within the condition of finitude provides a paradigm of moral life as a tragedy. A culture that loses a sense of the tragic explains its failures with self-deceiving explanations where the “policy” becomes the central story. This is manifested in expressions such as “current medical practice”, “standard hospital policy” or “professional ethics.” Abortion, for instance, which is a tragic occurrence, may, at times, be morally necessary. This cannot, however, be simply explained as “the fetus, after all, is just another piece of flesh”. Hauerwas rightly notes that “it takes no mean skill, certainly, to know how to hold onto a description that acknowledges significant life, while remaining open to judging that it may have to be destroyed. Yet medical practice and human integrity cannot settle for less.”¹⁴

Kathleen Sands, a feminist theologian, likewise recognized the need to deal with tragic moral situations. From her, we get our definition of the “tragic” which refers to the “conflicted context where we must create what right and reason we can, is meant to contribute something toward a more illuminating ethical discourse.” The “tragic” is most present in “extreme circumstances,” as in the morally reprehensible choices people are forced to make in the Nazi concentration camps. But although tragedy usually deals with extreme situations, in reality, “extreme circumstances are not rare.”¹⁵

12. Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* (Notre Dame: University of Notre Dame, 1983), 148.

13. See Stanley Hauerwas and David Burrell, “From System to Story: An Alternative Pattern for Rationality in Ethics,” in *Why Narrative? Readings in Narrative Theology*, ed. Stanley Hauerwas and L. Gregory Jones (Grand Rapids: Eerdmans, 1989), 188.

14. *Ibid.*, 189.

15. Sands, *Escape from Paradise*, 12.

In proposing the use of tragedy as heuristic for theology, Sands hoped for a way of doing theology that is more question-oriented rather than doctrine-centered. Tragedies, to her, are “stories or ways of telling stories that highlight elemental conflicts of truths.”¹⁶ These elemental powers (e.g. image of deities, racism, misogyny or class privilege) are neither permanent nor eternal and they are always presented in tragedies as question-worthy. In Greek tragedies, the chorus comments on the events in the play, as well as participates in them. An actor converses with the choral leader and his account of the events off the stage feed the chorus with ideas for new songs in the next scenes. Tragedies compel both the chorus and the audience to make their own judgment about the response of the tragic heroes. Through exposure to such stories, “the community can season its moral wisdom, sounding existential conflicts for their relative depths, discarding facile or immature solutions and, right within the narrow horizon of the possible, identifying acts and attitudes that warrant praise or blame.”¹⁷ In a tragic situation, the moral choice is, most of the time, not between the absolute good and evil; but rather, which is the lesser evil. “Moral judgments, in a tragic context, are not apprehensions of an unconditional good; they are strategic, contextual judgments about how the diverse goods of life might best be integrated and unnecessary suffering minimized in a particular place and moment.”¹⁸ Sands also rightly criticized the fixation in the past on the male as the locus of heroism.

PROSTITUTION: A TRAGIC SITUATION

In this next section, we shall delve into the fate of the prostituted woman both as a tragic victim and moral agent.

16. Ibid., 10.

17. Ibid.

18. Ibid., 15.

Fate as Constructed by Social and Historical Forces

Poverty has always been a major factor compelling Filipinas to go into prostitution. During the Spanish colonial period, the previous jobs of the *mujeres libres* manifest their depressed economic condition. The records showed that they were laundry washers, seamstresses, cigarette vendors, workers, vagabonds and mistresses abandoned by the members of the colonial forces.¹⁹

War and the preparation for war on the part of the colonial and neo-colonial powers have also contributed to the rise of prostitution. Prostitution increased in the last decades of Spanish colonial rule (end of 19th century) due to the arrival of thousands of Spanish soldiers who were brought from Spain to crush the Philippine revolution.²⁰ In like manner, prostitution increased at the height of the Philippine-American War in 1900 due to the destitution and ruin brought about by the conflict as well as the presence of thousands of American soldiers.²¹ Another significant increase in prostitution occurred around the 1970's partly because of the escalation of the war in Vietnam and the transformation of the Subic naval base as a center of services including being a rest and recreation area for American soldiers. Many of the prostituted women came from the most economically depressed regions of Bicol and Eastern Visayas. The major beneficiaries of the servicing activities, aside from the American military, were the brothel owners and government officials. In 1970, one-third of the city-council officials had interests in the prostitution industry.²² To assure their income, they even passed a law prohibiting independent solicitation outside the clubs.

The rise in prostitution in the 1970's was also directly related to the government's thrust to promote tourism and export labor-power. This was part of a planned strategy of economic development

19. Luis Dery, "Prostitution in Colonial Manila," *Philippine Studies* 39 (1991), 478.

20. *Ibid.*, 480.

21. *Ibid.*, 481.

22. Elizabeth Uy Eviota, *The Political Economy of Gender: Women and the Sexual Division of Labor in the Philippines* (London: Zed Books, 1992), 136.

devised and supported by the World Bank, the International Monetary Fund, and the U.S. Aid for International Development to supposedly help Asian countries increase their dollar reserves and enable them to pay their debts which the Western banks had indiscriminately lent to their governments.²³ The tours were of course not really cultural but oftentimes sex tours. At the peak of sex tourism in the late 1970's, we had around 350,000 women in the hospitality industry. Pimping has now gone beyond the level of the brothel owners and local government officials to the level of the state and transnational institutions.

Tourism has since then declined but instead of Japanese tourists coming to the Philippines, women go to Japan and other countries to work in the sex industry in the guise of entertainment. In 1989, around 93% of Filipinas working in Japan were into prostitution.²⁴

The prostituted woman is produced not only by an unjust economic order that breeds poverty, militarist expansions, and sex tourism but also by the social structure of male dominance. Many prostituted women were first victims of sexual abuse before they ended up in prostitution. The belief is ingrained in young women that they have no more dignity and respectability if they lose their virginity outside of marriage. Women who have been raped enter prostitution "to live with their 'kind'." Thus, pimps, recruiters and traffickers capitalize on this by raping women to make them submit more easily to prostitution.²⁵ This is compounded by the lack of other economic alternatives for women. Before multinational corporations rediscovered women as source of cheap labor in the 1970's, there were more men than women in the labor force. Women were basically defined as housewives and as suppliers of sex. Women's

23. Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labor* (London: Zed Books, 1986), 137. On Third World debts, see Susan George, *A Fate Worse than Debt* (London: Penguin, 1994).

24. Eviota, *The Political Economy*, 138.

25. Women's Legal Bureau (WLB), *Challenging and Subverting the System of Prostitution: A Policy Paper* (Quezon City: Women's Legal Bureau, 1999), 27.

jobs were also paid lower than men's jobs. A 1973 survey of massage attendants in Manila revealed that fifty percent were household heads (abandoned by their husbands) and many of them were former teachers and nurses, which just showed how low paying these female-dominated jobs are.²⁶ Single motherhood, itself already a cause of shame and ostracism, together with lack of jobs with decent income, combine to push women into prostitution.²⁷ A double standard of morality is also practiced in society. It is right for men to procure sex outside marriage or maintain *queridas*, creating a context rife for the purchase of sex.

Discordant Responses

The history of government response to prostitution, until very recently, has ranged from legalization to prohibition that, in general, punished the prostitute and protected the pimp, john and the brothel owners. In their three hundred years of colonial rule, the Spanish authorities did not implement a systematic program to regulate or control prostitution in the Philippines until the mid 19th century. The first arrest of prostitutes during the Spanish colonial period was in 1849 when there was great concern about the threat of the spread of syphilis.²⁸ To monitor women in prostitution, the Bureau of Public Health issued license to prostitutes. The prostitutes were subjected to medical examination twice a week by medical authorities who rounded up licensed prostitution places.

Prostitution was legalized during the Spanish era in 1897, the last decade of Spanish rule. The regulation required the control and licensing of prostitutes and brothels but many refused to register

26. Eviota, *The Political Economy*, 137.

27. Sylvia Chant and Cathy McIlwaine, *Women of a Lesser Cost: Female Labour, Foreign Exchange and Philippine Development* (Quezon City: Ateneo de Manila, 1995), 250.

28. See Ma. Luisa Camagay, "Mujer Publica" in *Working Women of Manila in the 19th Century* (Quezon City: University of the Philippines and University Center for Women Studies, 1995), 100.

because the high fees would lessen their income and the greater supervision and control from the State would restrict their mobility. The implementation of this decree was further hampered by the outbreak of the Philippine revolution. In the short-lived Philippine republic, the President prescribed all prostituted women to acquire a health certificate that was renewed weekly with the brothel owners shouldering the cost for the treatment of venereal diseases.

The ensuing American colonial rule tolerated prostitution for a time. A red light district, established in 1901 to cater to the sexual needs of the American military officers, had to be closed when all personnel were prohibited from patronizing brothels by the Commanding Officer of the US Army in the Philippines who had been influenced by the prohibitionist movement in the United States. Local officials followed suit. This, however, did not put an end to prostitution since some cabarets were not closed and other social activities like the two-week annual Philippine carnival, as well as the establishment of military and naval bases, provided the opportunity for prostitution to thrive.

Until mid-2003, the Philippines has maintained an ambivalent policy of criminalizing prostituted women through the anti-vagrancy law while “legalizing” prostitution by requiring women working in bars and cabarets to undergo periodic check-ups. Article 202 of the Revised Penal Code defines prostitution as “the habitual indulgence in sexual intercourse or the lascivious conduct of women for money or profit.”²⁹ The prostituted woman was regarded as the criminal in a crime committed against her person. When apprehended, the prostitute got further victimized by law enforcers who extorted money or sexual service from her for her release and by media who focused on her rather than on the brothel owners and pimps. As a criminal, she could not file charges of rape against her customers and abusive law enforcers. The law was chillingly silent about the

29. *The Revised Penal Code: Act No. 3815, as Amended*, 6th ed. (Manila: Central Book Supply, 1970), 73.

clients, pimps³⁰ and brothel owners who are involved in the proliferation of prostitution and who benefit most from the prostitution “industry”.

Neither legalization (before the advocacies for reform in various states in the 1970's) nor prohibition, as it had been practiced in the past, really took seriously the well-being of women in prostitution. Legalization, when it enforces licensing, puts a permanent stigma on the woman and may have the effect of further limiting her mobility out of the occupation.³¹ Even the requirement of mandatory medical check-up is not primarily geared towards the protection of prostituted women but the customers for there was never a rule against the entry or deportation of foreigners with sexually transmitted diseases, nor a requirement for the customers to use condom.

The resulting situation for prostituted women bears resemblance to the fate of women in the *komposo*, a modern ballad in the Central Philippines, which depicts domestic tragedies (incest, infanticide, physical abuse and homicide, etc.) based on actual events and feature female victimization by men. Four stereotyped scenes found in Visayan ballads of domestic tragedies are scenes in a courtroom, a church, with the parents and at a cemetery. In the court and the church scenes, neither the judge nor the priest chastises or punishes the killers of the woman. The parents are also depicted as simply accepting the fate of their child (i.e. the woman) while the scene at the cemetery ends by pointing out the culpability of the woman.³²

30. Article 202 criminalizes some pimps as vagrants.

31. Arlene Carmen and Howard Moody, *Working Women: the Subterranean World of Street Prostitution* (New York: Harper and Row, 1985), 199.

32. Herminia Meñez, “Female Victimization in Philippine Balladry,” in *Explorations in Philippine Folklore* (Quezon City: Ateneo de Manila, 1999), 102-14 and 104-5. See also “The Ballad of Domestic Tragedies and Applied Folklore,” in *ibid.*, 115-24.

TRAGIC HEROINE: VICTIM AND MORAL AGENT

Our tragic heroines, however, are not only victims but also moral agents. The focus in international discourse on prostitution especially the condemnation of forced prostitution has led to the neglect by both feminists and NGOs of the so-called “voluntary prostitution”.³³ This forced/voluntary distinction, however, is in a certain sense, simply a mental abstraction in the context of the Third World where it is oftentimes difficult to make a distinction between forced and voluntary prostitution.

There are indeed cases when women were deceived about the real nature of the work that they would do. But many women also choose to enter or remain in prostitution (even if they had gained freedom from the pimps) for a host of other reasons like lack of self-worth combined with poverty. One cannot say in these cases that there is no element of freedom involved. But the choices are so limited that the women are in a sense “forced” to sell their flesh in order to survive.³⁴ Prostituted women relatively earn higher than in other types of women’s work even if they have to pay for “protection” and “steering” which they are not subject to if engaged in legal types of work.³⁵ Near American military bases, even college-educated women go on part-time prostitution in the hope of finding an American husband who can rescue them out of poverty. It is a mistake to judge this as sheer materialism on the part of the women, for oftentimes, this is done for the sake of the family. Female children,

33. See Jo Doezeema, “Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy,” in *Global Sex Workers: Rights, Resistance, and Redefinition* (London: Routledge, 1998), 37-41.

34. Than Dam Truong, *Sex Money and Morality: the Political Economy of Prostitution and Tourism in South East Asia* (London: Zed Books, 1990), 50. See also Eviota, *The Political Economy*, 134-35; WLB, *Challenging and Subverting*, 26-27.

35. In 1979, prostituted women in Manila earned an average of \$7-\$10 per day which was more than the minimum wage and much more than the earning of a factory worker or a sales clerk who earned \$1.60 a day. Eviota, *The Political Economy*, 37.

more than the men, are expected to sacrifice or take on anything for the sake of helping a sick family member or for supporting the education of a sibling.³⁶

Did they choose their lifestyle or were they trapped? “If you ask sex workers what they dreamed of being when they were children, none of them will say my ambition was to be a prostitute. No, they say, I wanted to be a teacher...a nurse.” No one aspires to be a prostitute.³⁷

In tragedies, the hero is not absolved from being responsible for his/her actions but s/he makes decisions in a world order that is not morally neutral. In the context of the world of the prostitutes, there exist sinful social structures (sexism, an unjust world economic order, etc.) which have pushed them into or made it more difficult for them to abandon prostitution.

The individualistic understanding of sin in Christianity and its one-sided focus on personal guilt in the past have led, on the one hand, to judging the prostitute as a sinner and, on the other, to ignoring the systems of exploitation and their perpetrators. Furthermore, this has fostered the notion that only the innocent victim (prostitute) does deserve her suffering. A sense of the tragic, however, allows for greater compassion for the victim, even if she is not innocent. It is able to acknowledge even more the ambiguities in which people live and survive rather than the dualism we have created between innocent and sinful victims. As Brock and Thistlethwaite underline, “[W]e must refuse to accept the demand for innocence in victims in favor of their survival skills, resourcefulness, and personal courage.”³⁸ Mary

36. WLB, *Challenging and Subverting*, 26.

37. Carlos Bongioanni and Kendra Helmer, “With or Without Visiting US Troops, Sex Trade is Thriving in the Philippines,” *Stars and Stripes* (June 18, 2001), 5 in <http://ww2.stripes.osd.mil/oi/jun01/ed061801a.html> (accessed August 2002).

38. Rita Nakashima Brock and Susan Thistlethwaite, *Casting Stones: Prostitution and Liberation in Asia and the United States* (Minneapolis: Fortress, 1996), 241. They also employed the Korean concept of *han* to describe the resentful bitterness and woundedness of prostitutes resulting from repeated experience of abuse and victimization, and which limits their moral agency. Ibid. 257-267.

Potter Engel also stresses the need to avoid blaming the victim and treating both perpetrators and victims as equally sinful, for the latter is responding from a position of powerlessness.³⁹

TOWARDS A “SYMPATHETIC PARTICIPATION IN TERROR”

Tragedy engages us in a “sympathetic participation in terror”. This needs not always mean approval, as King Lear for example is rarely approved; but in the “dramatic process of a tragedy, the observer identifies to some extent with the suffering hero.”⁴⁰

Prostitution is one of the most divisive issues in feminist and other progressive organizations. There are feminists and prostitute organizations that advocate for decriminalizing prostitution in order to de-stigmatize prostituted women, allow them to organize, and make them “visible” so that prostitution can be more properly regulated. Arguments in favor of this new approach to legalization push for the recognition of “sex work” as another form of work, albeit hazardous like boxing, but can be subject to government regulation. Those in the West also build a discourse on individual rights and freedom of choice in the line of liberal feminism that tries to de-stigmatize prostitution by asserting that it is a legitimate job so long as this is a product of free choice. For them, free choice exists only when the woman has developed her rationality, does not see herself simply as a sexual object, and when other job opportunities exist.⁴¹

In Asia, an organization that promotes the acceptance of prostitution as a form of work, as well as the protection of the human rights and dignity of women in prostitution is the Asian

39. See Mary Potter Engel, “Evil, Sin and the Violation of the Vulnerable,” in *Lift Every Voice: Constructing Christian Theologies from the Underside*, ed. Susan Brooks Thistlethwaite and Mary Potter Engels (San Francisco: Harper Collins, 1990), 156.

40. Martin Buss, “Tragedy and Comedy in Hosea,” *Semeia* 32 (1984): 73.

41. Alison Jaggar, *Feminist Politics and Human Nature* (New York: Rowman and Littlefield, 1983), 180-181.

Women's Human Rights Council (AWHRC). The council does not adhere to the notion that sex work *per se* is exploitation. "[S]ex work *per se* is not the problem; abuse, violence, and criminality are the social problems."⁴² The council also recognizes prostituted women's right to work under safe and humane conditions, as well as their right to self-determination.

It can be asked, however, whether in an attempt to protect women in prostitution, they minimize the systemic violence embedded in this system. Brock and Thistlethwaite, focusing on the special nature of prostitution, comment that to "use the term 'work' as if selling one's body for sexual use were the equivalent of typing someone's letter or serving someone food, masks too much to be useful much of the time."⁴³

While some sex workers would argue that humanizing relationships can be formed with the customers, a study of personal narratives of johns in Thailand show that many of them were obsessed more with how much they get for their money. "Sex work is alienated labor ... in the emotive sense: that is, separated and causing separation from authentic feelings, giving rise to isolation and revulsion."⁴⁴ This may be a factor why more women in prostitution suffer from depression and get addicted to alcohol and drugs as a way to dissociate them emotionally from what they are doing.⁴⁵ Most ethicists would argue against the commodification of the body even in the form of selling one's organs, for as embodied beings, our whole personhood is affected by what we do with our bodies.

42. "Asia Pacific Women's Meeting Declares: Recognize the Work, Dignity and Human Rights of Women in Prostitution," 1. <http://www.hartford.hwo.com/archives/50/008.html> (access May 2005).

43. Brock and Thistlethwaite, *Casting Stones*, 2.

44. Ryan Bishop and Lilian Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* (London: Routledge, 1998), 247.

45. See Janice Raymond, "Health Effects of Prostitution," in *Making the Harm Visible: Global Sexual Exploitation of Women and Girls Speaking Out and Providing Services*, ed. Donna Hughes and Claire Roche (Rhode Island: Coalition against Trafficking in Women, 1999), 59-60.

Within a global capitalist order, international and local entrepreneurs have amassed profits from the purchase of women's bodies. In the "sale of bodies and organs", Third World peoples are usually forced to sell because of poverty. Legalizing pimping and brothels may further increase the coercion and trafficking of women and children for prostitution since the now legalized prostitution industry needs a supply of women to meet the demand of customers.

In May 2003, the President of the Philippines signed a new law known as Anti-Trafficking in Persons Act of 2003. It defined trafficking broadly to include prostituting others with or without the victim's consent or knowledge (Sec. 3).⁴⁶ Unlike Article 202 of the Revised Penal Code, this law criminalizes (Sec. 4 and 5) and penalizes (Sec. 10, 11) the brothel owners, pimps and the johns while decriminalizing the prostitute who is considered a victim of the act of trafficking: "[I]n this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant" (Sec. 17). Whereas Article 202 defined prostitution as a habit or lascivious conduct of women for the purpose of earning money, the new law defines prostitution in a way that places greater responsibility on the brothel owner, pimp and customer. It "refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration" (Sec. 3). In its repealing clause (Sec. 32), the new law has implicitly revoked the section in Article 202 that criminalized the prostitute.

Does this law promise new hope for women in prostitution? It is definitely an improvement over previous laws which punish the prostitute and exonerate the perpetrators. This time, the law punishes only the second and the third parties. It also implicitly protects women working in bars, massage clinics, and the like from forced prostitution and exploitation.

46. Republic Act No. 9208.

It is not, however, certain that its abolitionist approach towards prostitution, would lead to a better situation for “voluntary” prostitutes or those not coerced into prostitution through the use of physical force, intimidation or deceit. While penalizing the customers would address the male sexual behavior that perpetrates prostitution, this would deprive “voluntary” prostitutes of opportunities for earning and may simply push them to work underground or abroad where they do not have the support systems that exist in their own localities. The abolitionist approach may seem to be closest to the community’s ideal but, in actual practice, may work against the well-being of prostitutes.

Furthermore, the new law has a provision on confidentiality (Sec. 7), which protects the right to privacy not only of the trafficked person but of the accused as well and penalizes heavily those who violate this section. In a country like the Philippines mired by corruption, this may simply help deter the prosecution of offenders.

Where do all of these leave us? As a state, we are faced here with a situation where, on the one hand, the prohibition or abolition of prostitution may end up victimizing further the prostitute, while on the other hand, legalizing prostitution as another form of work may be compromising and blinding ourselves too much as to the nature of prostitution work.

We can only continue to grope for a collective response within the narrow horizon of the possible. The new anti-trafficking law may serve to effectively combat the coercion of women to prostitution by physical force, intimidation or deceit. It, however, criminalizes the second (customer) and third party (pimp, john, brothel owners) and thus all forms of prostitution.

It is in humility and with the knowledge that this will still lead to some form of suffering, that we pose the question whether we should consider allowing a limited form of decriminalization. Can a space be provided for the individual sale and purchase of sexual service by not criminalizing the customer? This implies a modification

of the anti-trafficking law and the repeal of the whole anti-vagrancy provision so that a certain form of prostitution (e.g., independent solicitation or street prostitution) is decriminalized. This is in consideration of the fact that many women resort to sex work as “survival strategy”.

In a way, the phrasing of the anti-pimping provision in the new law already prevents implicating the family, which a woman supports through her earnings. It says that it is unlawful “[T]o knowingly benefit from financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery” (Sec. 5). The focus of this provision against pimping is on the involuntariness or coercion and not simply benefiting financially from the prostitution.

Within this limited form of decriminalization, women in prostitution can be encouraged to organize themselves so that they can participate in the formulation of local ordinances (e.g., geographical and time zonings), protect themselves from violence, and assert certain rights such as the right to refuse customers or particular sexual acts. A questionable aspect in the new anti-trafficking law is its lack of recognition of women in prostitution as subjects with the capacity for agency and responsibility. This is at least recognized in our limited form of decriminalization.

In decriminalization, women will not be stigmatized by a criminal record or by a requirement of licensing. Hopefully it will be able to prosecute more the violence committed against women. It is said that where pimping is considered a crime, the tendency for the police is to ignore the battery or rape and concentrate on the man’s pimping crime. However, if women in prostitution were organized, then they may have greater courage and support for the prosecution of offenders. There should likewise be an active promotion and education of both men and women towards responsible sexual behavior.⁴⁷ Hygiene clinics should not target only the women in

47. WLB, *Challenging and Subverting*, 33.

prostitution and should be located in more neutral parts of the city to provide medical service for all.⁴⁸

Arrested pimps and brothel owners should be subjected to counseling. There should also be stricter implementation of laws against child abuse and prostitution (as provided for in the anti-trafficking law), domestic violence, rape, and strong institutional support for women who wish to leave prostitution (therapy, skills training, etc).

Using the lens of “tragedy”, decriminalization in this sense, should not be misconstrued as legalization, which regards prostitution as a job like any other. A tragic situation is never an ideal situation. But where viable economic alternatives are still absent, one should protect and empower, as much as possible, women in prostitution and redress the injustices that they have long suffered.

The issue of prostitution presents us with a tragic moral situation where the choice, if we keep our feet solidly on the ground, is not between the absolute good and that of evil but which state policy can best minimize suffering. A “sense of the tragic” can hopefully provide us with the imaginative holds necessary so we can continue to move forward as a collectivity.

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48. Bongioanni and Helmer, “With or Without Visiting US Troops,” 4.