

State feminism and central state debates on prostitution in post-authoritarian Spain

Celia Valiente

Introduction

Spain, state intervention in the policy area of prostitution has been varied. In 1935, during the first democratic regime of Spanish history, the so-called Second Republic (1931–6), prostitution was prohibited (Decree of 19 June). From the mid-1930s to 1975 Spain was governed by a right-wing authoritarian regime headed by Franco which actively opposed women's rights. In 1941, the prohibitionist law of the Second Republic was suppressed by Decree of 27 March. Prostitution was tolerated and put under the surveillance and control of the police. On 18 June 1962, Spain ratified the 1949 United Nations (UN) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Decree 168 (24 January 1963) modified the Penal Code according to the 1949 UN Convention. Broadly speaking, Spanish legislation on prostitution was abolitionist from 1963. In this view, prostitutes were not legally defined as criminals, in contrast to people who promote the prostitution of others or benefit from it; they are punished accordingly – up to 3 years in prison (Cebrián Franco 1977: 116; Carracedo Bullido 2001: 1–4). State and society also make serious efforts to help women stop working as prostitutes. Such abolitionist legislation considers prostitution an affront to people's dignity; it is then irrelevant whether prostitutes voluntarily consent to prostitution or not (Carracedo Bullido 2001: 152–3). However, abolitionism was imperfect, because even if prostitutes were not legally defined as criminals, Act 16/1970 of 4 August on social menace and rehabilitation (Ley de Peligrosidad y Rehabilitación Social) considered prostitutes (and other categories of people) as individuals dangerous to society. Prostitutes could be confined to special centres, or, alternatively, be sent into internal exile, as judges could forbid them to live in a given place.

The (imperfect) abolitionist legislation did not change with the transition to democracy and the consolidation of the democratic regime. In 1995, Spain moved away from its former abolitionist position, since most

behaviours around prostitution, such as pimping, were decriminalised (except in the case of the prostitution of minors and those defined as legally incapacitated, like the mentally handicapped or disturbed; hereafter 'legally incapacitated people'). Subsequent legal changes focused on the fight against the traffic of women for the purposes of sexually exploiting them.

The reforms in central state legislation on prostitution since the mid-1990s were undertaken by governments formed by parties of different ideological colours: the social democratic Spanish Socialist Workers' Party (Partido Socialista Obrero Español, PSOE) up to 1996 and the conservative People's Party (Partido Popular, PP) since then. The impact of the women's movement on these legal changes was very small (but not negligible). The same was true with regard to the influence on prostitution policies by the main women's policy agency of the central state, the Women's Institute (Instituto de la Mujer, WI).

Selection of debates

The period of study for this chapter is post-authoritarian Spain from 1975 to the present. The main central state piece of legislation on prostitution is the Penal Code, which defines some behaviours related to prostitution (but not prostitution itself) as crimes. Recently, the phenomenon of high numbers of women being trafficked into Spain and forced into prostitution makes the Immigration Act the second most important legislative instrument regarding prostitution (but considerably less central than the Penal Code).

Both the Penal Code and the Immigration Act are made or reformed in parliament. Thus one institution dominates the policy area regarding prostitution at the central state level. Parliament is composed of two chambers: the lower chamber, the Congress of Deputies, and the upper chamber, the Senate. The former is much more important than the latter. Members of the Congress of Deputies are elected by proportional representation under the D'Hondt system with closed and blocked lists. The vast majority of senators are elected by a majority system. Although different units have the power to initiate legislation, in post-authoritarian Spain most laws have been initiated by government. Political parties dominate parliamentary life (Heywood 1995: 99–101; Newton and Donaghy 1997: 45–72).

Three main reforms in the policy area of prostitution have taken place in post-authoritarian Spain: the 1995 enactment of a new Penal Code; the 1999 reform of this new Penal Code; and the 2000 approval of a new

Immigration Act. Because of its wider scope, the 1995 reform is the most important of the three legislative changes. The first change, the new Penal Code of 1995, reformed Spanish legislation on prostitution, distancing it from the imperfect abolitionist past as it decriminalised behaviours around prostitution that had been considered crimes in the past (such as pimping). The only behaviour around prostitution that is still defined as a crime is the promotion of the prostitution of minors or of those legally incapacitated. The 1995 Penal Code abolished the 1970 Social Men- and Rehabilitation Act that considered prostitutes to be individuals dangerous to society.

The 1995 Penal Code regarding prostitution was revised in 1999, the second major change. This reform increased the punishment for crimes relating to the prostitution of minors and legally incapacitated people. The 1999 legal change defined a new crime: that of trafficking people with the aim of sexually exploiting them. The 1999 revision increased penalties when prostitution crimes were committed by criminal organisations. Other proposed amendments, such as the recriminalisation of the notion of adult prostitution, were discussed prior to the 1999 reform but not approved. The third legislative change was the new Immigration Act of 2000, which offers permanent residence and work permits to illegal immigrants trafficked into Spain and forced into prostitution if they denounce their traffickers or co-operate with public authorities in the prosecution of these traffickers.

Since 1975 in Spain policy-makers have enacted two other measures in the area of prostitution, but these measures are significantly less important than the three aforementioned legal reforms. Article 2 of the Organic Law 5/1999 of 13 January on the reform of the Criminal Trial Act (*Ley Enjuiciamiento Criminal*) states that police officers can work under assumed identity (*identidad supuesta*) while investigating prostitution crimes committed by criminal organisations.¹ This measure is considerably less relevant than the other three because it deals with a procedure to combat a type of prostitution crime but is not a broad attempt by the state to intervene in the social reality of prostitution (as are the other three). Organic Act 8/2000 of 22 December on the reform of the 2000 Immigration Act did not modify the article of the Immigration Act that refers to people who have been trafficked into Spain with the purpose of being sexually exploited and who denounce their traffickers. Organic Act 2000 only changed the number of this article.

Spanish policy-makers have not regulated free prostitution as a profession (or as sex work), nor is it likely that the current conservative government will do so in the near future. On 19 February 2002, the Minister

of Labour and Social Affairs, Juan Carlos Aparicio Pérez, declared that 'prostitution lacks the characteristics of a profession which can be performed freely and voluntarily'. He also stated that prostitution is a 'set of circumstances that propitiates violence and the trafficking of people' (*El País* 20 February 2002: 24).²

In this chapter I shall examine the public debates leading to the three aforementioned legislative changes: the enactment of the 1995 Penal Code the 1999 reform of the Penal Code and the approval of the 2000 Immigration Act. The three debates were selected for analysis following the RNGS criteria of decisional system importance, life cycle and issue area salience. With regard to decisional system importance, all debates took place partly in parliament, the main institution making central state policy on prostitution. Regarding life cycle, although the second wave of the women's movement has been active and women's policy machineries have been functioning since the 1980s (the Women's Institute was created in 1983), the three selected debates took place in the 1990s. These are the most important policy deliberations regarding prostitution, thus overriding the criterion of the life cycle, also given the fact that no debates with policy outcomes took place in earlier years. In terms of issue area salience, I have already mentioned that the 1995, 1999 and 2000 legal reforms are the most important legal changes related to prostitution in post-authoritarian Spain (although the 1995 reform is definitely the most central of the three).

It is worth remembering that the legal structure in Spain is a codified system. In common law systems (for instance, those of the United Kingdom and the United States), judges build case law and great importance is placed on precedent. In contrast, in code law systems, judges are supposed to apply the principles of the code and laws in each particular case. The source of the law is therefore not precedent but what is written in the codes and other pieces of legislation. This is why it is important to study the public deliberation and debates on prostitution reform in Spain prior to the main changes in the codes and other laws regarding prostitution.

The sources for this chapter include the three parliamentary debates prior to the three aforementioned legal reforms, legislation, published documents from the WI and from groups of the women's movement, as well as interviews with a member of the WI directive team and members of the women's movement and other associations of civil society active in the area of prostitution. I have also consulted all daily issues of *El País* (the main national newspaper) between 1994 and 2000 and collected all references to prostitution.

Debate 1: The elaboration of the 1995 Penal Code, 1994–1995

How issue came to the public agenda

In 1994 the socialist government presented a new Penal Code as a legislative project. The existing code was a substantially modified version of the one instituted in 1848. This PSOE project contained several reforms regarding prostitution. Firstly, it no longer defined promoting the prostitution of others or benefiting from it as criminal behaviour, except in the case of prostitution of minors and legally incapacitated people. Secondly, it intended to punish people who force others to be prostitutes. Therefore, this project implicitly distinguished between voluntary and forced prostitution (Carracedo Bullido 2001: 155–7). It also tacitly stated that the role of the penal law was to fight the latter (but not the former) and to combat any type of prostitution performed by minors or legally incapacitated people. Finally, this project abolished the 1970 Social Menace Rehabilitation Act which considered prostitutes and other categories of people as individuals dangerous to society.

Dominant frame of debate

The parliamentary debate that led to the new Penal Code contained no reference to prostitution. Articles on prostitution are included in the Penal Code under Title VIII of Book II on 'Crimes against Sexual Freedom'. When parliamentarians discussed this part of the Penal Code in the mid-1990s, they debated other issues than prostitution, such as rape. Very few amendments were presented to the articles on prostitution. The few amendments were of minor importance and did not attempt to change the regulation of prostitution made by the new Penal Code. The main opposition at that time, the major party in the opposition, emphasised that it was especially concerned about the protection of minors (Intervention of Senator Ms Vindel López on 10 October 1995) (Delgado-Iribarren 1996: 2135). References to prostitutes were made in the debates on other articles of the Penal Code on other issues. The PSOE praised the Spanish legislation that defined rape as a crime regardless of the profession of the victim. As such, the rape of a prostitute is defined as rape in the penal law and could be prosecuted. The PSOE accused the PP of not supporting the legal possibility that a prostitute could be raped. The PP denied that possibility (Interventions of PSOE Senator Mr García Marqués and PP Senator Ms Vindel López of the conservative group on 25 October 1995) (Delgado-Iribarren 1996: 2401, 2403).

Gendering the debate

The (scant) debate was not gendered at all. Participants did not mention women or men explicitly. In this debate, references to prostitution were made in very general and abstract terms, and coined in gender-neutral legal language. The same was true concerning the people who worked as prostitutes or who participated in the business of prostitution.

Policy outcome

The new Penal Code was approved by Organic Act 10/1995 of 23 November by the votes of members of parliament from all parties except the PP, who abstained from voting for reasons that were unrelated to prostitution. Articles on prostitution from the 1994 project were included in the 1995 Penal Code with hardly any change.

Women's movement impact

Generally speaking and with some exceptions, prostitution was an issue of low priority during the authoritarian period for the Spanish women's movement as a whole. Unlike in other countries, in Spain the majority of (but not all) feminists discussed prostitution only rarely up to the late 1980s, and scarcely since then.

Up to the late 1980s, most members of the Spanish feminist movement conceptualised prostitution as an extreme form of women's exploitation which undermines the status of all women in society (whether prostitutes or not). The long-term goal to be achieved was therefore the eradication of prostitution (Garaizábal 1991). This position usually coincided with the abolitionist legal approach (Montero 1986; Oliván 1986; Partit Feminista de Catalunya 1986; Miura 1991).

The abolitionist position is supported by some feminist groups today, the most visible and active of which is the Commission for the Investigation of Violence against Women (Comisión para la Investigación de Malos Tratos a Mujeres). Some women's associations, whose main aim is to deliver services to prostitutes, are also abolitionist. The best known of these organisations is the Association for the Reintegration of Female Prostitutes (Asociación para la Prevención, Reinserción y Atención a la Mujer Prostituta, APRAMP). Members of APRAMP do not define their group as a feminist association (interview Rocío Mora Nieto and María Morales Moreno, APRAMP, Madrid, 4 April 2002). APRAMP can be seen as a part of the (non-explicitly feminist) branch of the women's movement. Other associations characterised by their members as feminist

l providing services to prostitutes also support abolitionism, such as Institute for the Promotion of Specialised Social Services (Instituto a la Promoción de Servicios Sociales Especializados, IPSSE) (interview Helena Barea, IPSSE, Madrid, 8 April 2002).

Prostitutes have traditionally received support and services from female religious associations and charities that are not usually considered part of organised women's movement, including the Little Teresa Association (Asociación Villa Teresita), which is also abolitionist (interview Mercedes Escue, Little Teresa Association, Madrid, 15 April 2002).

Since approximately the late 1980s, some feminists have stated that there are two types of prostitutes: those who perform this task voluntarily and those who are forced into prostitution by others. The state should actively fight forced prostitution but not free prostitution. These feminists conceptualise free prostitutes as sex workers and have demanded that the state treats them in the same way as other workers, for example allowing them to contribute to the social security system (Garaizábal 1991; Pineda 2005: 108–9; Forum de Política Feminista 2001). This position coincides with a legal approach aimed at regulation. The most vocal representative of this perspective today is the Collective in Defence of Prostitutes' Rights (Colectivo en Defensa de los Derechos de las Prostitutas, Hetaira). The regulation position has also been defended by some prostitutes (interview Concepción García Altares, Collective in Defence of Prostitutes' Rights Hetaira, Madrid, 30 April 2002; Olga-Prostituta de Madrid 1986).

It is important to note that not all groups in civil society active on the issue of prostitution are either abolitionist or supporters of regulation. Some associations have not publicly taken any position on the matter and their members hold different (or even contrasting) views. This is the case with some female religious organisations that provide services to prostitutes, such as the Hope Project (Proyecto Esperanza) administered by the Order of Worshipping Nuns (Congregación de Religiosas Oratrices) (interview Aurelia Agredano Pérez, Hope Project, Madrid, May 2002). The same is true for Cáritas, which is the main charity of the Catholic church formed by religious and lay women and men (interview Francisco Cristóbal Rincón, Cáritas, Madrid, 26 April 2002). The policy content of the 1995 Penal Code coincided with the goals espoused in the women's movement in favour of regulation but only to a certain extent. The position of these members and leaders in the women's movement (but not that of the members of abolitionist groups) supported the 1995 decriminalisation of behaviours regarding this matter, such as soliciting the prostitution of others or benefiting from it. People in favour of regulation would also approve the differentiation implicitly made by

the 1995 Penal Code between free and forced prostitution.³ In contrast, abolitionist activists believe that prostitution is hardly ever (or never) voluntary, so the state has to fight any type of prostitution instead of investing in the battle against the forced variety. Both activists advocating regulation and abolition agreed with the suppression of the 1970 Social Menace and Rehabilitation Act which considered prostitutes as individuals dangerous to society.

Representatives of the women's movement did not participate directly in the (little) parliamentary debate preceding the treatment of prostitution by the 1995 Penal Code. Some women's groups unsuccessfully attempted to introduce their ideas and discourses in the debate. For instance, in 1995 the abolitionist feminist group Commission for the Investigation of Violence against Women presented in the Congress of Deputies a report against the anti-abolitionist measures included in the proposal of the Penal Code (*Mujeres* Number 18, second quarter, 1995: 17). Members of this commission and other abolitionist feminists held several meetings with socialist parliamentarians and (unsuccessfully) attempted to persuade them to change the articles of the project that decriminalised behaviours around prostitution, such as promoting it or pimping. The same parties also tried to lobby female socialist parliamentarians selectively in this direction (interview Rosario Carracedo Bullido, Commission for the Investigation of Violence against Women, Madrid, 26 March 2002). In 1994 and 1995 the commission organised public conferences on prostitution around the country to raise awareness among the public about the problems surrounding prostitution. To run these conferences, the commission received financial aid from the WI (Instituto de la Mujer 1996b: 226–27).

Thus, with the articles on prostitution in the 1995 Penal Code partly coinciding with some of the goals of the regulation sector of the women's movement, but not directly including women's movement groups in the policy process, the state's response to the women's movement was one of pre-emption during this debate.

Women's policy agency activities

The WI was officially created in 1983 (Act 16 of 24 October). The WI has been the main central state women's policy agency since its establishment. The scope of the WI is very broad, because it has five comprehensive goals: to promote policy initiatives for women through formal enactment of policy statements; to study all aspects of women's situation in Spain; to oversee the implementation of women's policy; to receive and handle women's discrimination complaints; and to increase women's knowledge

their rights. The WI is a permanent bureaucratic agency (Valiente 5, 1997, 2001a, 2001b; Threlfall 1996a, 1998). Up to 1988 it was part of the Ministry of Culture and between 1988 and 1996 a part of the Ministry of Social Affairs. These ministries are two of the least important in the Spanish state. Since the WI was not a ministry but a department within a ministry, it has generally been distant from major power centres. In the mid-1990s, the WI had already acquired an extensive budget and budget. Between 1993 and 1996, the WI director was Marina Mirats, a sociology professor specialising in gender and education who had close links with the feminist movement and the PSOE.

Up to 1995, prostitution was a topic of low priority for WI state feminism. This is reflected in the very modest (but not negligible) coverage of the topic by the WI periodical *Mujeres* (Women) and the annual report on WI activities, *Memorias*. The WI position and goals on prostitution tended to coincide with those of the abolitionist sector of the women's movement. This coincidence is reflected in the first gender equality plan (1988–90).⁴ This plan mentioned prostitution frequently and contained numerous references to abolitionist ideas and goals. For example, it defined prostitution as 'a crime against the dignity of the people' (Instituto de la Mujer 1988b: 34) and stated that 'in general terms, it [prostitution] is not an option in life chosen freely and it leads the person who practises it to an extreme situation of exploitation at social, economic and psychological levels' (p. 33). The plan identified a general objective for prostitution policy: 'to resolutely help people who practise prostitution to enjoy a normal way of life, above all, by making possible their voluntary abandonment of their predicament' (p. 33). For concrete policy, this plan formulated two goals: 'the reform of the Penal Code to emphasise the criminal nature of exploitative behaviour in prostitution of persons under eighteen years of age', and 'the express annulment of the section of the 1970 Social Menace and Rehabilitation Act regarding prostitution'. The second gender equality plan (1993–5) contained very few references to prostitution and did not propose any legislative reform in this policy domain (Instituto de la Mujer 1993b).

As said, the new Penal Code contained anti-abolitionist reforms: the decriminalisation of behaviour around prostitution, such as promoting prostitution of others or benefiting from it; and the implicit distinction between forced and free prostitution. As shown in WI documents, the WI position was abolitionist. Therefore the anti-abolitionist aspects of the 1995 reform could not have come from the WI.

The two legislative goals proposed in the first equality plan (the emphasis on the fight against the prostitution of minors and the suppression of the 1970 Social Menace and Rehabilitation Act) were achieved with the

1995 Penal Code. However, this was approved only in 1995, five years after the theoretical completion of the first equality plan. This delay, and the fact that the second gender equality plan was already in its third and final year of application as well as not containing the two aforementioned legislative goals, suggests that the WI did not have a significant impact in the 1995 Penal Code regarding these two goals. The conclusion therefore is that the WI was unable to insert its preferences and definitions of the issue of prostitution into the new Penal Code. Since some WI goals and positions coincided with some of the aims and views of abolitionist groups of the women's movement, the WI activities should be characterised as marginal.

Women's movement characteristics

After emerging in the 1960s and early 1970s, and growing from 1975 to the early 1980s, the Spanish women's movement moved into a stage of consolidation. Nevertheless, the Spanish feminist movement, while not negligible, has been historically weak, its activities involving only a minority of women. The movement has occasionally shown some signs of strength, however. For example, since the 1970s it has organised national feminist conferences regularly attended by between 3,000 and 5,000 women. Nevertheless, in comparison with other Western countries, the movement in Spain has not achieved high visibility in the mass media or initiated many public debates. In the 1990s, most of the feminist groups were very close to the left, but this was not the case for the non-feminist branch of the women's movement. This branch is composed of groups that are close to the left, the right and to no party at all. Therefore the women's movement as a whole was close to the left (Threlfall 1985 1996a; Scanlon 1990; Kaplan 1992).

Prostitution was an issue of low priority for the women's movement in its entirety. The women's movement was divided on the issue, since movement organisations active on the issue substantially disagreed on the frame (abolition/regulation/neither of these) and policy proposals. To my knowledge, no counter-movement to the feminist movement was active around the issue of prostitution.

Policy environment

The debate under study took place in parliament, which has some characteristics of closed policy sub-systems: parliamentary proceedings are codified through regular meetings and rules, and participation is limited to leaders of political parties with parliamentary representation. As mentioned, there was very scant debate in parliament prior to the enactment

of the 1995 Penal Code. This dominant deliberation was very general, abstract and gender-neutral. The discourses on prostitution by the women's movement and the WI were more varied, elaborated, concrete and gender-sensitive. Given the general and vague nature of the parliamentary debate, the approach was compatible with the deliberation that took place in the women's movement and the WI. As mentioned, at the time of the discussion prior to the 1995 Penal Code the party in office was PSOE. The 1993–6 PSOE government was a minority government supported in parliament by the regionalist Catalan coalition of parties, Convergence and Union (Convergència i Unió, CiU).

Debate 2: The 1999 reform of the Penal Code, 1997–1999

How issue came to the public agenda

On 17 October 1997, the conservative government (in power since 1996) presented a bill in parliament on the reform of the section of the 1995 Penal Code on crimes against sexual freedom. This reform referred to various issues (such as sexual harassment) and not only to prostitution. Regarding prostitution, the proposal increased the penalties in four cases: the crime of promotion of prostitution of minors and legally incapacitated people; the crime of forced prostitution when perpetrated by public authorities or civil servants taking advantage of their positions within the state; prostitution crimes committed with the purpose of profit; and the crime of prostitution when the person who has parental authority, guardianship or custody over a prostitute younger than eighteen years or a legally incapacitated individual, does not actively attempt to stop him/her acting as a prostitute. The bill defined a new crime: that of trafficking people for the purpose of sexually exploiting them. The proposal explicitly referred to the frequency with which crimes related to prostitution were linked with the execution of sexual attacks and abuses against victims. The reform added the negative prescription for prostitution crimes when victims are minors. The bill included a definition of prostitution: acts of sexual intercourse performed with one or more individuals in exchange for an economic reward of any type. Finally, the proposal classified as a crime an act that had been illegal up to 1995, but legal since then: the promotion of prostitution.

Dominant frame of debate

The debate on the reform of the Penal Code only marginally dealt with the issue of prostitution, dwelling on other topics, especially around the new crime of corruption of minors that the PP wanted to define. The (very

scant) deliberation on prostitution included arguments against the definition of prostitution contained in the bill. The PSOE denounced the fact that the definition of the proposal was so broad that it would also include clients' behaviour. Penalising (male) clients seemed to be abhorred by socialist representatives. The PSOE argued that any definition of prostitution has to specify not only that sex is exchanged for money, but also a temporal element of 'persistency, permanence or frequency' (Intervention of PSOE deputy Ms Fernández de la Vega – *Diario de Sesiones del Congreso de los Diputados*, plenary session, sixth parliamentary term, 12 February 1999: 7044). The regionalist coalition of parties Canary Islands Coalition (Coalición Canaria, CC), the mixed group⁵ and the PSOE held that the definition of the bill was imprecise and did not contain the requirement of full sexual intercourse. Apparently (and surprisingly), the three groups implied that full sexual intercourse was necessary in the case of prostitution.⁶ The regionalist Basque Nationalist Party (Partido Nacionalista Vasco, PNV) argued that prostitution was a clear concept for any person and therefore perfectly coined: the exchange of sex for money.⁷ For this and other reasons, the four aforementioned political organisations demanded the withdrawal of the definition of prostitution from the bill.

These four political organisations also opposed the proposal to define the promotion of adults' prostitution as a crime. Several arguments were used. If the exercise of prostitution by adults was not a crime, the promotion of adults' prostitution should not be a crime either. The law had to distinguish between forced prostitution (which had to be prosecuted) and free prostitution and behaviours around it (such as the promotion of this type of prostitution) that should not be criminalised because these belong to the realm of the private behaviour of consenting adults. The criminalisation of the promotion of adults' prostitution would imply the criminalisation of behaviours such as running a newspaper that published advertisements on prostitution services. These types of behaviours should not be criminalised because they are widely accepted in Spanish society.⁸

Gendering the debate

There were no special references to gender or women's issues in the parliamentary deliberations that led to the 1999 reform of the Penal Code. Instead, a highly gender neutral frame was taken throughout the discussions which produced the legal reform. For example, no reference was made to the fact that the overwhelming majority of prostitutes are women and most clients (of female and male prostitutes) are men. There were no references to women or gender in the 1999 Act.

Policy outcome

Parliament, a new version of the original bill was prepared and became Organic Act 11/1999 of 30 April. Organic Act 11/1999 was very similar to the original bill except on four points. Firstly, the Act does not define the promotion of adults' prostitution as a crime. Secondly, it does not include a definition of prostitution. Thirdly, it increases the penalty when crimes related to prostitution are committed by criminal organisations or associations. Lastly, the Act does not increase penalties when crimes related to prostitution are executed with the purpose of profit.

Women's movement impact

As was the case in the elaboration of the 1995 Penal Code, representatives of the women's movement did not take part directly in the debate that preceded the 1999 reform of the Penal Code. However, female deputies had connections with the feminist movement and/or who had defined themselves in public as feminists participated in the parliamentary debate. As was the case of the PSOE deputy María Teresa Fernández de la Vega and deputy Cristina Almeida Castro – representative of the United Left (Izquierda Unida, IU), which is a coalition of parties to the left of the PSOE.

The content of the 1999 reform partly coincided with some (but not all) of the aims of the feminist movement. Most feminists were not in favour of the definition of a new crime made by the 1999 reform: that of trafficking people with the aim of sexually exploiting them. The majority of feminists also did not oppose the intensification of the fight against the promotion of prostitution of minors or the special zeal with which the state would execute and punish prostitution crimes committed by criminal organisations. Most feminists thought that these measures either were in the wrong direction or were useless (but not harmful). The same could be said about the increase in penalties for prostitution crimes perpetrated by criminal organisations.

However, the coincidence between the content of the 1999 reform and some of the goals of the feminist movement should not be overstated.

Most of the aims of the feminist movement were not satisfied by the 1999 legislative change. The abolitionist branch of the women's movement wanted parliamentarians to restore an abolitionist legislation.

The 1999 reform did not re-introduce this type of legislation in Spain. The regulation branch of the women's movement wanted the state to regulate free prostitutes as sex workers and to recognise their workers' obligations (such as contributing to the social security system) and workers'

rights (for example entitlement to retirement pensions). The 1999 Act did not make any significant step in the direction of regulating prostitution as sex work either.

In sum, two reasons suggest (with some qualifications) that the state reaction to the women's movement in the 1999 reform of the Penal Code was a case of dual response. Firstly, female deputies with links with the feminist movement participated in the parliamentary deliberation on prostitution prior to the enactment of Organic Act 11/1999 of 30 April, although representatives of the feminist movement did not directly take part in this debate. Secondly, the 1999 reform included in the Penal Code some (but not most) of the goals of the women's movement.

Women's policy agency activities

The characteristics of the WI were the same as during the first debate except for the leadership. In 1996 the PP appointed Concepción Dancausa as the WI director. She was a former civil servant with no ties with the feminist movement and with no previous significant experience in the policy area of women's rights. The third gender equality plan (1997–2000) paid very limited attention to the issue of legal reform in the area of prostitution (less than the first plan but more than the second plan). Under the heading of violence, the third plan explicitly talked about the grave problem of women and girls who are trafficked and forced into prostitution. In this and other situations, women are unable to enjoy the same rights as men. The plan stated that trafficked women are in an extremely vulnerable position that makes them potential victims of physical violence. As a goal in this policy area, the plan recommended in very general terms the adoption of measures to eliminate the traffic of women with the aim of sexually exploiting them (Instituto de la Mujer 1997: 73–4, 78). The definition of the crime of trafficking women with the purpose of forcing them into prostitution of the 1999 reform of the Penal Code coincided with the general proposals on prostitution of the third gender equality plan. This was not the case for the remaining measures on prostitution included in the 1999 reform. Therefore, according to the information provided by public WI documents, the WI was not the only or the main actor which set the agenda of this legal reform or set the content and tone of the 1999 legislative change.

As mentioned, the goal in the third equality plan of fighting the traffic of women and girls with the objective of sexually exploiting them was not opposed by members of the women's movement. This was the only instance in which the WI was an advocate for women's movement

s in the policy-making process on the reform. I therefore conclude the WI incorporated (although in a very limited way) women's movement goals into its own positions. All in all, in this debate, the WI was marginal.

Women's movement characteristics

characteristics of the women's movement were unchanged since the debate. The movement was in the stage of consolidation and as a whole was close to the left. Prostitution was a low-priority issue within the movement, and moreover, the movement was divided on the issue. There was no significant counter-movement against the reform of the Penal Code on prostitution.

Policy environment

The debate prior to the 1999 reform of the Penal Code took place in a policy environment, which generally speaking is a closed policy sub-system. The dominant approach was compatible with the discourse elaborated by the women's movement and the WI, although the dominant discourse was not shared in contrast to the latter ones. In 1996, the PP came into power, forming a minority government with three regional parties or coalition parties CC, CiU and PNV (although the latter withdrew its support from the government in the middle of the legislative term) that parliament controlled. The PP has been in power since then.

Debate 3: The 2000 Immigration Act, 1998–2000

How issue came to the public agenda

In February and March 1998, the IU, the CiU and the mixed parliamentary group presented in parliament three bills for a new Immigration Act. At that time, the older Immigration Act of 1985 was, according to many policy and social actors, outdated and no longer in line with the social reality of increasing numbers of immigrants coming to Spain. The three bills did not contain any reference to prostitution. On 18 November 1998, the PP in government presented an amendment to the three bills. According to this amendment, illegal immigrants who have been trafficked to Spain and forced into prostitution would not be expelled from Spain under two circumstances: if they denounce their traffickers or if they cooperate with public authorities in the prosecution of these traffickers, providing relevant information or testifying against them. These illegal

immigrants would be allowed to choose between returning to their country of origin or remaining in Spain with residence and work permits. The PP amendment did not ask these illegal immigrants to give up prostitution in order to be granted residence and work permits.

Dominant frame of debate

The parliamentary debate that preceded the new Immigration Act (enacted in 2000) referred not to prostitution but to many other immigration issues. The public debate outside parliament only rarely referred to the prostitution article of the bill. To my knowledge, no political and social actor opposed the amendment on prostitution proposed by the PP. This consensus can be interpreted as a sign of an agreement among the main political and social actors on the following points: that many immigrants were illegally being trafficked into Spain with the purpose of being sexually exploited; and that these immigrants would not denounce their traffickers or co-operate with the traffickers' prosecution unless given very strong incentives to do so, because these trafficked women were strictly controlled and terrified by their traffickers.

Gendering the debate

In general, the references to prostitution within the public debate prior to the 2000 Immigration Act were coined in gender-neutral terms. Participants in this public deliberation spoke about trafficked 'foreigners' or 'immigrants' instead of trafficked women. The same was the case for the proposals that became the 2000 Immigration Act, and the references in the 2000 Immigration Act to trafficked prostitutes.

Policy outcome

On 4 November 1999, the three bills were unified into a new one which contained the amendment on trafficked people forced into prostitution presented by the PP. The new bill became Organic Act 4/2000 on 11 January on immigration. Article 55 of the Act contains the prostitution amendment presented by the PP.

Women's movement impact

Members of the women's movement did not directly participate in the parliamentary debate on the Immigration Act. Most women's groups active around the prostitution issue were not against the citizenship right given by article 55 of the Act to trafficked people forced into prostitution

to denounce their traffickers or co-operate with authorities on their traffickers' prosecution. In not including representatives of the women's movement in the deliberation of the aforementioned article but in coinciding with (only) a goal of the women's movement, the state response to men's mobilisation was that of pre-emption.

Women's policy agency activities

The women's policy agency characteristics were the same as in the second debate. The third gender equality plan (1997–2000) contained proposal number 7.3.2 regarding women who have been trafficked into Spain and forced into prostitution: 'to study the viability of the establishment of a temporary residence permit for victims of traffic forced into prostitution who have shown willingness to testify in legal processes [against their traffickers]' (Instituto de la Mujer 1997: 79). With article 55 of the Act, legislators not only fulfilled this 7.3.2 WI proposal but went further. Legislators not only studied the WI proposal, but proposed offering some of these trafficked victims work and residence permits. The WI successfully assured law-makers to insert its demands into state legislation (interview Dolores Pérez-Herrera Ortiz de Solórzano, WI, Madrid, 19 April 2002). Women's groups active in the policy area of prostitution agreed with the WI proposal number 7.3.2 and article 55. Thus the WI's role can be regarded as insider.

WI documents that speak about illegal immigrants trafficked into Spain and subjected to sexual exploitation often employ a gendered language. These documents frequently talk about 'women' when referring to these migrants, and link the issue of trafficking women to the wider phenomena of violence against women and the commercialisation of women's bodies and sexuality (see for instance Dávila 2001: 22–3).

Women's movement characteristics

Given the similar time frame of the second and third debates, the characteristics of the women's movement in the third debate were similar to the second debate.

Policy environment

Since the second and third debates took place at approximately the same time, their policy sub-systems were similar (closed). The PP was still the majority party and formed the cabinet. The parliamentary discussion and deliberation in the women's movement and in the WI were compatible

but not exactly matching or the same, because the former was gender-neutral and the latter was gendered.

Conclusion

This chapter has shown that in post-authoritarian Spain the women's movement has had a modest impact on the debates on prostitution that preceded the major legal changes in this policy area at the central state level. It is true that the content of the 1995, 1999 and 2000 reforms studied in this chapter coincided with some of the goals of the women's movement. However, this coincidence has to be interpreted with extreme caution. Prostitution is an issue of low priority for most of the groups of the women's movement. The part of the movement concerned with prostitution is profoundly divided on the issue. Different groups have supported radically different goals in this policy area (abolitionism, regulation or neither of the two). Therefore, with the possible exception of prohibition, any measure undertaken by the state will coincide with a goal of at least one group of the women's movement. The women's movement or people close to it have participated directly in the debates on prostitution to a very limited extent (only in the second debate). Two reasons can account for this limited participation: the closed nature of the political sub-system (parliament) in which decisions were made, and to a lesser extent the little debate and mobilisation of the women's movement as a whole around prostitution.

The impact of the Women's Institute on the debate previous to the 1995, 1999 and 2000 reforms on prostitution has also been very modest. In the three cases, the WI's goals coincided with some of the objectives of the women's movement. Since the women's movement came up with almost all conceivable demands regarding prostitution, any WI objective will match with at least one goal advanced by a group. The WI has been able to insert its positions into only one parliamentary debate on prostitution: the deliberation that preceded the 2000 Immigration Act. None the less, the 2000 legal reform is the least important of the three legal changes studied in this chapter and the measure was preceded by hardly any public discussion on prostitution. The closed nature of the parliamentary setting to outsiders' influence and the low priority conferred by the WI to the issue of prostitution explain the relatively minor role of the WI in the debates on prostitution reform.

The small impact of both the women's movement and the WI in the deliberations around prostitution policies has to be understood in the context of the marked lack of public discussion on the topic at the central state level. The main prostitution reforms were not undertaken separately

they were part of much wider legislative moves: the elaboration of a new Penal Code (1995), the modification of this Penal Code (1999) and the enactment of a new Immigration Act (2000). As shown in this chapter, the reference was made to prostitution in the public deliberations prior to the 1995 and 1999 reforms, and hardly any before the 2000 measure. Since the late 1990s the focus of state policies on prostitution has shifted markedly towards the fight against the trafficking of people for the purpose of sexual exploitation. Whether this new attention to one aspect of the matter (trafficking) instead of another (prostitution itself) would foster public debate or contribute to devitalise it is an open question. The answer will depend to some extent on whether, in contrast with the past, the women's movement and the Women's Institute adopt the fight against the traffic of women as one of their own high priorities.

NOTES

I would like to thank the staff of the library of the Women's Institute (Centro de documentación del Instituto de la Mujer) for their valuable help in the search for sources for this chapter.

According to article 81 of the 1978 Constitution, an Organic Act (*ley orgánica*) regulates, among other matters, fundamental rights and public liberties. An absolute majority of the lower chamber, in a final vote of the whole project, is necessary for the approval, modification or derogation of an Organic Act. For an ordinary – not organic – Act, only a simple majority is required.

Unless otherwise stated, in this chapter all translations from Spanish to English are made by Celia Valiente.

The coincidence of some of the reforms enacted by the 1995 Penal Code and the aims of the regulation groups of the women's movement is shown in Garaizábal (1991: 10).

A gender equality plan is a policy instrument. It contains gender equality measures to be applied during a given period by some ministries. In Spain three central state gender equality plans have been applied, between 1988 and 1990, 1993 and 1995, and 1997 and 2000 (Instituto de la Mujer 1988b, 1993b, 1997). When the period of implementation of the plans ends, the application of them is evaluated (Instituto de la Mujer 1990b; 1996b).

Parliamentary groups conduct most parliamentary work. In general, they are formed by deputies or senators from a party or coalition. If a party or coalition does not have the necessary number of members of parliament to form a parliamentary group, its representatives are included in the mixed group (*Grupo Mixto*) (Newton and Donaghy 1997: 52).

Amendment number 30 by the CC, and amendment number 31 by Ms Almeida Castro from the mixed group (*Boletín Oficial de las Cortes Generales – Congreso de los Diputados*, sixth parliamentary term, 16 February 1998, Series A (Bills), Number 89–8: 45).

7. Amendment number 23 presented by the PNV (*Boletín Oficial de las Cortes Generales – Congreso de los Diputados*, sixth parliamentary term, 16 February 1998, Series A (Bills), number 89–9: 25).
8. Intervention of PSOE deputy Ms Fernández de la Vega and CC deputy Mr Mardones Sevilla (*Diario de Sesiones del Congreso de los Diputados*, plenary session, sixth parliamentary term, 12 February 1998: 1044, 1049); Amendment number 17 presented by the PNV (*Boletín Oficial de las Cortes Generales Congreso de los Diputados*, sixth parliamentary term, 16 February 1998, Series A (Bills), number 89–8: 23); Amendment number 31 presented by deputy Ms Almeida Castro from the Mixed Group (*Boletín Oficial de las Cortes Generales – Congreso de los Diputados*, sixth parliamentary term, 16 February 1998, Series A (Bills), number 89–8: 27).