

「翻譯與習作」課後心得

曾靖雯

本學期的課程藉由許多不同的上課方式及分組作業方式，來體驗翻譯的「過程」。透過分組互評選出翻譯佳作的方式，可以藉由比較句子的差異性，進而去討論不同選詞及翻譯方式的優缺點，也修正自己翻譯的不足。上課集體批改翻譯文章的方式，不僅可腦力激盪出最好的答案，也可以參考別人不同的選詞用字。

透過實際的翻譯演練，我發現在翻譯的過程中，有時會不自覺地被英文格式牽著走，而寫出「英式中文」的相對翻譯。這個現象，我認為翻譯者本身有時無法察覺，反而是讀者較易發現此問題。此外，中文雖然是我們的第一母語，但由於我們平時使用的中文較口語化，也較鬆散、不嚴謹，以致於我們在英翻中時，會發現我們的中文譯文不夠精準。從翻譯的經驗得知，中西文化背景的差異，經常使我們找不到相對等的字詞來翻譯文章，這個問題也讓我常在翻譯時不知該如何取捨。

此外，「選詞」也是我在翻譯轉換中覺得較困難的一部分。在上這堂課的同時，剛好發生了「廢統」的相關新聞，關於「終止」兩字所對應的英文，在國際間炒得沸沸揚揚。由此也可得知字的些微差異，也會引發不小的爭議性。在翻譯日日春互助協會的資料時，我對每個翻譯的字也總是小心翼翼，深怕因選字不慎而顯出對性工作者的不尊重。身為翻譯者，翻譯作品也通常肩負著責任及壓力。

如同老師說的，翻譯沒有一定的答案，我們隨時都可能找到更好的字詞來取代原有的翻譯。也藉由翻譯的過程，我了解翻譯人員必須有能力去掌握兩個語言間的準確，包括如何去拿捏翻譯文章中的口氣及字詞轉換。翻譯過程中遇到的困難，使我明顯看見自己能力的不足，也提醒我們加強中文程度及增加英文字彙的重要性。藉由翻譯理論文章更讓我們了解翻譯的發展、技巧及原理，也可在實際翻譯的同時，重新審視自己的翻譯作品及曾經犯過的翻譯錯誤。

以前常聽說翻譯人員必須是個「通才」，必須多方涉獵不同領域。這學期真正接觸翻譯課後，才能真正體會到這點。由於我之前接觸的英文大都是偏文學類，或是屬於一般的生活用語，極少觸及到專業的英文用語。這堂課中，我透過翻譯專業文章、商業書信、流行歌曲、散文小品、翻譯理論以及當日日春互助協會的翻譯義工，更深刻的體會翻譯不同文體的差異性。

透過當翻譯義工的機會，我學習到許多本科系領域外的知識。例如藉由翻譯日日春互助關懷協會的文件，我了解到瑞典及荷蘭「性工作合法化」的立法程序，也看見了不同國家對性產業的看法及態度。文章中對性工作的不同論點，也讓我用不同的角度來思考「性工作」此行業在社會中的價值。這是在這堂翻譯課中，另外獲得的特別經驗。

透過這一堂課，那我體會到翻譯領域的廣闊，更發現自己必須多加強自我的語文能力。雖然我們已長期地接觸中文及英文兩個語言，但要「專精」這個學問，需要花費的時間及精力的功夫是不可少的！

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Case Studies

An owner of a parlour operating with council approval as a 'massage centre' read council's policy and thought that they would not have their DA approved because they were 'within 100 metres of a church'. The expense of relocation was seen as too high so they ignored council's inquiries and tried to see 'regulars only'. Council's lawyers hired private detectives who collected evidence that the business was providing sexual services. Council was successful in obtaining court orders to close the business and for the owners to pay council's legal costs. Professional advice may have identified that being within 100 metres of the church would not be grounds for rejection on appeal to court.

The local police investigated the parlour and charged the owner, manager, contractors and workers with providing sexual services in a place held out 'for massage'. Some staff made statements to the police while others used their right to not answer any questions. Later, at court, the owner/manager and some workers pleaded guilty and were fined. Other workers successfully defended themselves by saying that they did not know that the business had council approval as a massage centre.

Escort Services

What is an escort service?

Businesses which make money by arranging for sex workers to provide services to clients at their location (hotel/home/office) are defined as escort services. This can include escort agencies, private escort workers and any worker doing escort work. This definition may also include some workers and businesses which do not see themselves as escort services such as private workers who do 'out calls'.

Which government departments control escort services?

Local councils have the major role in regulating escort agencies as a local business. Other government departments which regulate escort services include the Department of Health, Industrial Relations, the Police and WorkCover. As with any other business, laws concerning tax, industrial relations, occupational health and safety, workers compensation, criminal law, licensing, anti-discrimination and public health are also relevant to brothels. If your business does not comply with these laws, you may face fines or legal action from government departments. Local councils have the major role in regulating brothels. WorkCover and the Department of Health also have policies promoting workplace health and safety. For details of your rights and obligations see sections on Councils, WorkCover, Department of Health, Police, Department of Industrial Relations, Tax, Federal Police, Immigration, Anti-Discrimination in 'Regulators' section.

Do escort services need approval from the local council?

An escort service has to comply with local council regulations and may have to lodge a development application (DA) for approval to operate as an 'office' or 'agency'. An escort agency which provides sexual services 'on the premises' may be required by council to seek approval as a brothel. An escort service which provides sexual services 'off the premises' may be required to seek approval as a commercial business. Some local

councils include all escort services in their brothel policy.

What happens if I run the service without approval from the local council?

An escort agency that requires but does not have permission from council is vulnerable to legal action from council taking action to close it down. If you are a private worker who operates from home as an escort, especially if you employ others (such as a receptionist or driver, even if it's your friend, flatmate or partner) you may need to get council approval. (see local council planning rules). As one owner said 'the potential cost of fines or court costs from operating without council approval must be balanced against the cost and risk of seeking approval'.

Can the Police close me down?

The police do not have the power to close an escort agency, but they can enforce court orders which state that a business cannot directly advertise a sexual service or U9f the term massage when in fact they are providing a sexual service. Police rarely enforce these laws (see Massage section). The police can charge anyone employing a sex worker under the age of 18.

Can escort workers work from a hotel room?

Yes, provided you are doing outcalls, or visiting clients in their own hotel rooms. If you have rented the room and are seeing clients there can be restrictions based on liquor licensing laws (see private workers section). While one worker escort businesses are difficult for councils to locate because of their mobility, councils still can request that the business lodge a DA or pressure the hotel management to stop renting you a room.

Case Study

An escort agency was visited by a council worker who asked the manager questions about the type of services provided and if they were a brothel. The manager, after checking the workers photo-ID and getting a council business card, said that they would not answer any questions now but would ask the owner to contact council the next day. The owner's representative rang council and said that the business was not a brothel as there was no 'commercial sexual service provided on-site.' After further investigations council reluctantly acknowledged this but still required the escort agency to lodge a DA as a business.

譯文：

個案研究

一位店主在申請其按摩中心為合法場所時，看了議會制訂的政策，認為他們會因其地點距離教堂不到一百公尺，而無法得到批准的許可。但是遷移場地的成本太高，所以他們故意避開議會的調查，並進行營業。議會的律師聘了私家偵探去調查業者，蒐集他們提供性服務的證據。議會順利取得使業者倒閉的法院指令，並準備藉此讓業者付議會一筆合法費用。專業的諮詢指出，法律規定在教堂一百公尺

以內的地面不得建造。

當地的警察發現，此店以按摩院的名義私下提供性服務，於是對店主、負責人、契約主提出起訴。當大多人選擇保持沉默時，部分的員工對警察說了一番話。不久後，店主、負責人及某些員工坦承罪行並被罰款，其他員工則因宣稱他們對按摩院須經議會許可的事毫不知情，而獲判無罪。

何謂「性仲介護送服務」？

透過安排性工作者至顧客所在的場所進行服務，例如旅館、住家或辦公室，並從中賺取費用的行業，我們稱之為「性仲介護送服務」。此行業包括仲介處、私人仲介工作員、及其他從事性仲介護送服務的工作者。此工作定義甚至包括了不認為自己是性仲介護送服務的工作人員及行業，例如打電話給仲介者的私人工作者。

由哪個政府部門管理？

「性仲介護送服務」被視為是當地的行業之一，由當地的議會主要負責管理。對此行業也有管制權力的政府機關還包括衛生局、勞資關係局、警察局和職業局。與其相關的議題如下：稅務法律、勞資關係、職業健康與安全、勞工賠償、刑法問題、執照問題、反歧視以及公共衛生等與性工作場所有關的法律。一旦違反以上的法律，便得進入法律程序或是遭受政府機關罰款。管理性交易場所最主要的機關是當地的議會。衛生局與職業局對提升性場所的衛生與安全，也有制定幾項政策。要了解與此行業相關的權力及義務問題，可參照議會、職業局、衛生局、警察局、勞資關係局、稅務局、聯邦警局、移民管制局、反歧視部門等的規章條文，以得到更詳細的訊息。

「性仲介護送服務」是否需要當地議會的認可？

此行業必須遵守當地議會的規則，若想以辦公室或是仲介處的方式營業，則須先填寫發展申請書，等待相關的機構批准。

倘若「性仲介護送服務」機關想在其經營場所提供性服務，議會會要求其以性交易場所的方式提出申請，再給予批准。若僅是提供性仲介的護送服務，而不提供場地服務，則須以商務行業的方式提出申請。部分的當地議會將「性仲介護送服務」的相關事項納入於性交易場所的政策中。

未經批准而經營「性仲介護送服務」會有何後果？

未經議會批准的仲介處，議會會透過法律的手段使其停業。即使只是個在家工作的私人仲介員，只要有僱用他人的行為，例如：接待員、司機，甚至是朋友、夥伴或室友，都必須透過議會獲得認可。（詳情請參照議會規則）某位仲介負責人指出，沒有執照卻開業的仲介處，在罰款與開庭費用上的可能花費，與尋求合法批准所需的風險與開支差不多。

警員是否能使其停業？

員警並沒有關閉仲介處的權力，但若有刊登有關性交易的廣告，或是使用特別術語告知大眾此處提供性服務，他們則可以依據法院指令，執行公務。警察鮮少執行此類的法令。（詳見按摩院相關條文）但是員警可對雇用 18 歲以下性工作者的業者提出控告。

性仲介者是否能在旅館房間以外的地方工作？

若其工作性質是透過電話，或僅是到顧客所居住的旅館房間，這個情形是被允許的。但若是透過租借房間與顧客會面，則有可能違反售酒的法規。（詳見私人工作者相關條文）由於單獨行動的性仲介者移動性高，議會難以掌握其行蹤，所以都會要求業者填寫發展申請單，或是對旅館業者施壓，避免其出租房間給性仲介者。

個案研究

一位議會的專員到「性仲介護送服務」的仲介處，詢問其負責人他們提供何種服務、是否為性交易場所。當仲介處負責人檢查過議會工作者的身份證及議會工作證後，他表示他不會回答他的問題，並承諾會請他們的老闆隔天與議會連絡。仲介商的代理人回電給議會，表示他們並沒有提供現場的性交易，並非性交易場所。幾度調查之後，議會勉強地接受此事實，並要求此仲介處申請登記為商務行業。

翻譯者：曾靖雯

Decriminalising our lives and our work: The New Zealand Deal

The Young Women's Christian Association, and the Business and The New Zealand Prostitutes Collective began in 1987 when groups of sex workers met informally in massage parlours, on the streets, in pubs and on beaches, with the purpose of decriminalising prostitution. In 1988, we were offered a contract with the Minister of Health to provide a range of services related to the prevention of HIV/AIDS to people working in the sex industry. This loosely connected group of male, female and transgendered sex workers became an effective lobby group, and drove the agenda to decriminalise sex work.

On 25 June 2003, the Prostitution Reform Act was passed by the New Zealand Parliament with a majority of one vote. Brothel keeping, soliciting, living on the earnings, and procuring for the purposes of prostitution were removed as crimes from our law books. What had started as an eleven clause Bill, ended up a 52 section Act.

The Prostitution Reform Act, although badly named, is, however, mostly grounded on progressive principles. These are to create a framework that:

Safeguards the human rights of sex workers and protects them from exploitation;

Promotes the welfare and occupational health and safety of sex workers;

Is conducive to public health;

Prohibits the use in prostitution of persons under 18 years of age; and

Implements certain other related reforms.

Our goal in crafting the law was to achieve a wide range of choices for sex workers. We wanted sex workers from all sectors to be able to work within the law without impediments, and to avoid the creation of an illegal sector within the sex industry.

While a long way from perfect, the Prostitution Reform Act has delivered many of our wishes. The law has mostly been shaped to fit in with the activities of sex workers and other participants in the sex industry, rather than trying to get sex workers to fit into a hostile legal framework.

Throughout the process of changing the law, there were many decisions to make- from arguing over the implication of the draft law to convincing Members of Parliament to vote for it, from chatting to the media to writing and presenting submissions. All kinds of sex workers were involved at all levels in this process.

New Zealand is a small country with lots of individual connections- it's not a case of six degrees of separation. Getting a point across to the right person is usually possible, as is being in a position in which you can "have it out" with them if they tell lies about you, or spread misinformation.

Nevertheless, change did not occur over a short period of time. It took fifteen years of wheeling and dealing, jumping up and down, and boring ourselves by repeating many of the same messages to new audiences to get this law changed. Governments came and went, and at times we felt we were "starting from scratch". Public support, nevertheless, seemed to be consistently on side, if they cared at all. Ironically, it was a male Member of Parliament from a conservative party who, in 1991, was the first politician to speak out frequently and passionately about the injustice of the laws. He was re-elected with the biggest majority of voters soon after, and remains in Parliament to this day. I would urge your politicians to speak out in support of this issue and not be afraid.

Major women's organisations, such as the National Council on Professional Women's Federation, and others (including feisty Catholic Nuns), added their voice to the call for decriminalisation. In most cases these groups were connecting to the human rights element of decriminalisation. Public health groups and the HIV/AIDS sector were among the most obvious allies. Importantly, the Council of Trade Unions, and political parties also lent their weight to the cause.

There were, of course, those who vehemently opposed recognising sex work. Typically their arguments rocked from labelling sex workers as victims while simultaneously supporting criminal sanctions against us. Predictably, some high profile anti-sex brigade, self labelled feminists diagnosed us with post-traumatic stress disorder.

Opponents, also clustered around biblical literalists, becoming more shrill in their claims towards the end of the debate saying it would lead to “more, more, more” of everything. More sex workers, more brothels, more violence, more coercion, more child abuse. While an effective strategy to scare off supporters, evidence to back their claims was, and still is, lacking. However, they continue to generate headlines with their “more” negative claims about the impact of the law change.

While some politicians withdrew their support over the nearly 3 years the law was before Parliament, and others became uncertain under this onslaught of mixed messages, fearing an electoral backlash, nevertheless, truth and reasoned thought won out, and the law was passed. Recent attempts by a few Members of Parliament to collect enough names for a petition to repeal the law, failed by a long way.

Embedded in the new law, there are some real victories. Street workers in New Zealand are often dehumanised in the context of law reform debates and are usually presented as a “nuisance” or a “menace”. So it was a big celebration that the law contained no restrictions on street workers. Street sex workers can work on any street anywhere. They are not required to work in specific areas. They can cluster, or they can spread out. They can stand in discrete doorways off the main routes, or they can present in more visible ways.

And did more people flock to work on the streets as a consequence of this extremely liberal law? I don't think so. Two years after law reform, street workers have, in the main, stuck to their same old working habits. New sites haven't appeared as a consequence of the law. Numbers of those working on the streets have remained fairly static.

Prior to the law change, street workers were often picked up for soliciting, and hassled by the police. They were prevented from working indoors as they could not acquire the necessary police authorisation to advertise in the newspapers for clients. In fact, prior to the law change, the police made up the rules as they went and applied them haphazardly to sectors of the sex industry- usually in accordance with their own beliefs and prejudices. But New Zealand police are not known for their corruption.

An important outcome of the new law is that individual sex workers do not have to register, or licence, or seek approval from authorities before they can work. There is no mandatory testing of sex workers. However, in the eleventh hour, politicians altered the reference to safer sex practices. Sex workers are required to “take all reasonable steps” to ensure condoms, etc., are used. We are not supporters of the 100% condom use

policy, and find this part of the law disturbing- criminalising sex workers for having unprotected sex is no solution. Clients and operators of brothels are similarly required to “take all reasonable steps”. As yet, no one has been criminalised.

Extraordinarily, some people felt sex workers gave away their right to say “no” to having sex with their clients when their work became recognised by contract and employment laws- despite the fact that criminal law states any person has the right to say “no” to sex- at any time.

Of course, not all sex workers work within a context of ordinary employment or contract law. However, they are still able to access the benefits of those laws in most situations. Operators of brothels are aware that they can be challenged for malpractices, such as bonding and fining, or constructive dismissal, etc. These practices still occur, but it is our observation that they have reduced under pressure from sex workers who are aware they now have rights.

Sex workers are able to work together in groups of up to four before being required to obtain an operators certificate. There are no restrictions on the numbers of sex workers brothel operators may have working for them. An operator’s certificate is held by the courts, and the identities of operators cannot be accessed by the police or any other undesignated official or person.

As an indication of how secure this data is, recently the Ministry of Justice wanted to send information to brothel operators, but could not access the data held by the court. Instead they had to rely on information in the public arena, such as newspapers and telephone directories. It is important that law does not “out” the identity of people involved in the sex industry.

Of course, not all that has occurred since the Prostitution Reform Act was passed in 2003 has been good. For many years, the sex industry, in its various guises has been exposed to local body authorities’ desire to control it. We were fortunate that our Australian counterparts had gathered significant experience in dealing with hostile and supportive councils. We managed to prevent zoning from being a part of the Prostitution Reform Act, but were unable to stop a last minute addition that gave power to local councils to make bylaws that said where brothels could or could not be located.

Our decriminalisation story is really a tale of two cities. Auckland, our largest city, brought in horrendous bylaws that require brothels to operate 250m away from schools, churches, and “cultural” centres, residential zones, etc., and from each other. You may think this sounds reasonable, but the effect has been to create an intense environment with a significant proportion of brothels and sex workers operating, once again, outside the law. A number of other city councils have followed this lead.

However, in Wellington, the capital city, the seat of government, the council decided before the law was passed to prevent “commercial sex venues” from operating within one fifth of the central business district. Fortunately, brothels are now able to operate anywhere else in accordance with general zoning laws relating to all businesses and home occupation.

We feel that the debate over the decriminalisation of sex work will never go away in this context. Local body authorities are susceptible to conservative lobby groups and changes to their elected members. We have been battling city councils on many fronts on this issue for years as they sought to inhibit massage parlours and escort agencies, even before the new law was introduced. We have been successful in some cases, and less so in others.

Other concerns about the Prostitution Reform Act relate to migrant workers. It seems hugely ironic that sex workers who are migrant workers, and are often cited as being

very vulnerable, have been treated in what we perceive to be a callous manner by the Prostitution Reform Act. Late additions to the Act, while couched in the context of wanting to protect migrants from being exploited, have had the effect of pushing them underground, leading to a greater chance of exploitation. In as much as I would like you all to come to New Zealand, this addition states “No permit may be granted ... to a person [who] has provided, or intends to provide, commercial sexual services”. Any migrant worker who has received a permit may have it revoked.

As with all law, a lot rests on the interpretation.

Despite these obvious flaws, we strongly believe that, overall, the Prostitution Reform Act has made a positive impact on the lives of most sex workers.

譯文：

紐西蘭協議

使我們的生活及工作合法化

1987 年，一群性工作者為了推動性工作合法化，開始在色情按摩院、街道、酒吧及海灘上非正式地聚會，並在同一年成立了年輕女子的基督教協會及紐西蘭性產業組織。1988 年，衛生部長與我們訂定契約，提供一連串的防愛滋病相關服務給性工作者。這群由男、女性及變性的性工作者所組成的鬆散組織，變成了有效率的遊說團體，並且促使性工作合法化進入法律程序。

2003 年 6 月 25 日，紐西蘭國會以過半的票數通過了性工作改革法案。經營性工作場所、性工作者招攬顧客、性行為仲介者等罪名都從我們的法律書上消失。曾

經有罪的十一項條款法令，現在都被第 52 項條款法案中止了。性工作改革法案雖然名義上不甚好聽，卻是以先進的理念為基礎架構，創造新的雛型：

--保障性工作者的人權並防止其被剝削

--提升性工作者的福利制度及職業上的健康與安全

--促進公共衛生

--禁止 18 歲以下的未成年人從事性行業，並實施其他相關的改革

我們修改法律的原因是為了使性工作者擁有更多的選擇權，我們希望各地的性工作者都能在法律的範疇下無障礙地工作，並且避免性行業中有不法組織成立。雖然性工作改革法仍不甚完美，卻已經將我們許多的訴求都付諸實行。大多的法律都是配合性工作者的活動和性行業中的參與者進行修改，而不是試著將性工作者套入不通人情的法律框架中。

修改法律的過程中包含了許多決策的制定。從法律草稿含義的爭論、爭取國會議員的認同票、與媒體的對話到撰寫及上呈“提交仲裁協議書”，不同領域的性工作者都參與了這個修法的過程。紐西蘭這個國家雖小，卻有極密集的人際網絡，(這裡並非指六個等級的區分)。要使一個理念被該知道的人理解，通常是有可能的；就如同你可以透過公開的辯論與那些毀謗你或散播謠言的人解決爭端一樣。

然而，改變並非發生在朝夕之間。我們花了 15 年的時間想方設法、到處奔波，不厭其煩的把同一個訊息告知給新的聽眾，才促使法律的修改。政府官員不斷替換，有時我們覺得好像得不斷地重新來過。公眾的支持似乎永遠都站在一旁、漠不關心。諷刺地是，在 1991 年，第一位積極並熱心地指出法律不公的政治人物，竟是國會中的一位守舊黨的男議員。他在不久後的選舉，以多數票再度當選；直到今天，他仍是國會的一員。我迫切的希望現今的政治家都能無畏地為聲援這事件。

翻譯者 曾靖雯

主要的婦女組織，像是國家理事會中的婦女專業聯盟與其它等等(包含天主教修女)，全都加入聲援性工作合法化的行列。這些團體大多與人權的合法化做呼應。重要的是，不僅大眾健康組織和愛滋病團體並肩站在同一陣線，連貿易組織協會和政治黨派也同樣地為此目標盡一己之力。

儘管如此，還是有許多積極反對的群眾。雖然將性工作者視為受害者，但他們同時卻也希望對他們處以刑事處分。可以預期到這些反對人士，或是自稱女性主義者將給予我們創傷後壓力症的評斷。

在這場爭辯的結尾，那些拘泥於聖經字義的反對者更是堅定他們的論點，尖銳地說道：這只會衍生出更多更多的問題。更多的妓女、妓院表示將會有更多的暴力、脅迫、兒童虐待。然而，當他們成功地嚇阻了支持者，我們依然看不出任何可以支持他們論點的證據，但是他們還是不斷地製造頭條新聞，藉以宣揚更多的關於法律變革的負面評論。

在過去近三年來，一些政客在兩議院內逐漸地收回對此法的支持；另一些人則是在面對選舉壓力以及各方不同訊息的猛烈抨擊下改以採取保守的態度。雖然如此，事實真理和理性考量終究勝出，法律得以通過。兩議院內有少數議員對此結果感到不滿，企圖集聚各方反對聲浪，請願訴求能撤銷法律，但是最後還是失敗了。

在致力新法的過程中，我們得到了幾個勝利。在法律改革的辯論中，紐西蘭的街頭性工作者常貶低人性，被形容成一個令人生厭、具危害性的人物，所以當法律不再限制街頭性工作者工作時，實在大大地激勵了人心。從此之後，性工作者可以隨意地在任何一條街上工作，而不像以前被侷限在特定的地區。他們可以聚集結伴工作，也可以分散各自行動；當然，他們也能站在自家門口，或者是最顯眼的大街上。

會有更多人因為法律的開通而紛紛湧上街頭工作嗎？我並不這麼認為。在法律變革的兩年後發現，絕大部分的性工作者依然維持著原本的工作習慣、地點，並不因為法律的變革而有了新興場所。

在這以前，街頭性工作者常被警方騷擾。由於沒有警方合法的授權，無法在報紙上刊登廣告招攬顧客，因此便沒辦法在室內工作。事實上，警方早已有了先入為主的觀念與偏見，肆意地訂定規矩，並且要求性工作者遵守。但是紐西蘭警方並未意識到自身的腐敗。

新制法律出現了一個重大發展，個別的性工作者將不再需要登錄名單、就業執照，或者向政府當局申請許可，便可直接工作；甚至連原本必要的檢驗都不再強迫。然而不久後，那些政客卻又更改了性工作的執業標準。性工作者皆需依照適當的步驟以確保她們在工作時能使用保險套等等。但是，我們並不認為一定要在每次的工作過程中使用保險套，所以這條法令讓我們深感困擾。就因為不使用保險套，而把性工作者當成罪犯看待，其實並不是個好的解決之道。

特別的是，儘管刑法明文指出任何人在任何時間有權利拒絕與人發生性行為，有些人卻覺得當性工作被法律容許後，性工作者便喪失了她們對顧客說「不」的權利。

翻譯者 陳玟蓉

雖然不是所有的性工作者都有正式受雇或簽約，但他們在大多情況下也享有同

等福利。性行業的經營者也開始意識到，不當的經營手段如限制員工的行動自由、擅自予以罰金或蓄意解雇等都會招受質疑。而我們觀察到雖然現今還是有類似的不當待遇，但經營者因受制於員工權利覺醒已有所改善。

性工作人員最多可以以四個人為一組一起申請一份營業執照，至於有多少經營人員為他們服務則沒有限制。而營業執照是由法院負責保管，經營者身分需保密不得讓警方或任何不明官員及個人得知。

有一個案例可以顯示性行業經營人的身分確實是極度保密。日前紐西蘭法務部原擬通知經營人一些訊息，但卻無法從法院得知確切的聯絡方式。因此，法務部反而要藉由公共資源如報紙和電話簿來達成目的。畢竟，所有性行業的工作人員資料受到法律保護而不得外露是極其重要的。

不過，也不是所有問題在性工作改革法通過後都得到改善。多年以來，地方勢力渴望控管以各種形式或偽裝出現的性產業。而我們很幸運的是澳洲夥伴們已經累積了長足的經驗熟知如何和無論是善意或惡意的地方勢力協調。我們不願身為性工作改革的一份子，卻不能阻止地方勢力介入，讓他們定下額外的規範來控制性產業該坐落於何處。

我們分別在兩個不同的城市爭取性工作合法化。首先，紐西蘭最大的城市 - 奧克蘭。奧克蘭訂定了驚人的地方法規要求性行業只能在遠離學校、教堂、文教中心和住宅區等兩百五十公尺的地方營業，甚至包括性行業彼此間也要保持這樣的距離。如此的法規看似合理，但結果只是創造出了一處不受法律管轄，且性行業與性工作者高度密集的地帶。而其他也有幾個城市群起效尤，制定了和奧克蘭類似的法規。

在威靈頓，我們的首都和政府所在地，因為和地方的協商工作更早展開，成功的避免了導致性產業高度密集成為犯罪聚集地的法案通過，也避免讓紐西蘭五分之一的商業重鎮皆執行此一法規。威靈頓的性行業如今除了要配合一般都市區域劃分的法規，避免妨礙到住家和商業區外，很幸運的可以在任何地方營業。

因為地方政府容易受到保守派施壓且任用保守派的官員，我們認為在推動性工作合法化的過程中，和地方政府協調是避免不了的。例如，當政府決定立法掃蕩色情按摩院和以護送為名介紹性工作者給尋歡客的仲介公司時，我們在提案前即展開和政府的協商工作。而在大多數案例中，我們成功爭取到性工作者的權益。

性工作改革法的另一缺失則是和外籍勞工有關。性工作改革法常視外籍的性工作者為弱勢群體，但就我們所知諷刺的是其法案內容對外籍性工作者反而是有害無益。在它最新的增修條文中，為了保護外籍性工作者免於被剝削，反而導致性工作的地下化使得外籍性工作者可能面臨更大的威脅。當我們敞開雙臂歡迎所有人來到紐西蘭時，這項增修條文卻規定：「所有從事或有意從事商業性行為的人，一律不得入境，如已獲得入境許可者，則一律註銷。」而這項新條文也和其他法規一樣，應

該還有很大的解釋空間。

儘管性工作改革法還有這些明顯不足的地方，無論如何，我們還是堅信這個法案對多數性工作者是有所助益的。

翻譯者 李欣娟

The European Conference on Sex Work, Human Rights, Labour and
Migration 2005
15 to 17 October 2005 in Brussels Belgium

Whose debate?

Very often in commercial sex a large majority of workers are women and a large majority of clients are men. It may well be for this reason that gender is considered a central issue in commercial sex, and it is by now taken as granted that women should have an important voice in the debate. It is actually one of the few public debates where women are given more space as women at least in Europe. However, the women that are given voice to are not the ones who work in the sex industries. Sex workers are indeed systematically excluded from public debates, also feminist ones, and non-sex worker women often speak on their-our behalf as if they-we were unable to speak for themselves-ourselves.

This exclusion is unbearable both from a feminist and from a loosely democratic perspective. And this is nowadays one of the main causes why it is so difficult to develop a public voice as a sex worker unless you are very privileged and educated or unless you are ready to come out as a victim.

There are several reasons for the substitution of sex workers by non-sex workers women in the public debate; one of them is the very way sex work is usually discussed through gender lenses. There are many alternative analyses to understand the numerical fact of gender being central to sex work and to introduce a political critique based (also) on gender. It is the exclusionary ones that must be exposed and changed. Self-awareness and the building of a powerful political position must go hand in hand. In particular in contemporary Europe the challenge is to develop a feminist viewpoint on sex work without hiding the issues of nationality, “race”, and economic privilege, and without erasing the experiences of male and trans (=transgender and transsexual) sex workers, and female and trans clients. Also it is essential to start recognising sex work as central to all discussions on sexuality, gender, and work and to stop treating it as some kind of copy of what “real” sex or “real” work are supposed to be.

What are the problems with gender debates on sex work?

Sex work has become a specific line of division within feminist movements, institutions and academia, so taking a clear position on sex workers' rights means taking part in a sort of civil war.

A very strong division exists in feminism between what are often called the “abolitionist” and the “sex work” approaches. The first refers to those who see sex workers as victims – of men, of poverty, of sexual violence, etc.- and aim at helping all of us-them to quit sex work. The “sex work” position indicates those who see sex work as one of the forms of **sexualised labour***, and seek to transform it to the advantage of sex workers by improving the conditions in which it is practised and thought of, without trying to eliminate or to hide it.

The opposition between these two groups is so strong, and the abolitionist group so powerful that people feel uncomfortable with taking a position in favour of sex workers' rights because they are easily blamed for being “pro-prostitution” and anti-feminists. However the struggles of sex workers' rights must not be reduced to an “anti” or “pro” prostitution discussion. It is important to resist such a naive and in fact regressive level of debate and to respond with an accountable political debate aiming at changing sex work realities. This does not mean excluding critique and feminism, but rather politicising them, i.e. making them tools for change.

In order to build a fresh feminist ground against the 'civil war attitude' it may be useful to remember what has been the original contribution of feminists regarding policies of prostitution. Feminists (sex workers and non- sex workers) have distinguished themselves by criticising the traditional attitude that sees prostitution as essentially **unmodifiable*** in its economic form and in its social and psychic meanings. Sex work is traditionally seen as naturally implying the exploitation of the sex workers, their-our stigmatisation and their-our relegation to a position of non-citizens and non-subjects.

In contemporary Europe gender is often used in order to hide other issues of power related to sex work

In the context of contemporary global migrations issues related to sex work take particular meanings in relation to gendered movements and **borders**. The total or partial non-recognition of sex work as a legitimate activity is central to denying residence permits to women, trans people and men coming from outside the European Union. Even in the Netherlands, where prostitution is legally recognised as equal to other professions, as a general rule there is no possibility for migrants coming from outside the EU to legally work in the sex industries. Also most of the calls for legalisation of the sex industries, as for instance in Italy or the UK seem to be fundamentally inspired by the wish for a clear-cut separation between European and non-European workers.

The point is that these policies are often justified on the grounds of gender or so called feminist arguments as protection for women who are considered at risk of being

'trafficked' due to their-our poverty or because they-we are seen as less emancipated. Yet, these are neo-colonialist and anti-migration arguments. They assume an essential difference between women from the South and women from the North by attributing only victimisation to the former and only agency to the latter. They prevent women, trans people and in particular sex workers from legally migrating. This kind of anti-trafficking arguments claim to protect the women from the South, but in fact they should be seen as instruments for Northern women to protect our-their privileged position in relation to other women.

Feminist analyses of sex work often look very similar to antifeminist analyses such as those proposed by fundamentalists, neo-conservatives etc.

Despite their obvious differences, feminists often find themselves talking about sex work in ways very close to those of fundamentalists and neo-conservative people. Also, since most of them do not meet sex workers, it is very easy for them not to see what impact their strategies have on sex workers.

By considering sex work as static, this kind of feminists together with anti-feminists invest most of their energies in two directions:

- the idea of an origin of sex work
- the possibility of a distinction between “voluntary” and “forced” sex work.

It is important to be aware that both of them are difficult grounds from a sex workers' rights perspective.

No explanation of a specific **origin** of sex work can be a safe place for sex workers' rights. Every explanation - for instance “sex work exists because of biology”, “because of inequalities”, “because of individual choices” etc. - can indeed be easily used for purposes of eliminating or reducing the quantity of sex work, be it through genetics, hormones, or as part of various so called equality struggles.

The discourse of choice/non choice also shows several problems. The idea of a choice to do sex work may be politically valuable and indeed has been introduced by movements for the rights of prostitutes in the US and in Europe back in the 1970's in order to shift the attention from compassion to rights of subjects. However, because the choice usually refers to the a priori (=before even starting) **individual choice*** of practising sex work, the strategy then usually used in contemporary debates is to distinguish between women who have chosen it versus women who are forced into the sex industries.

In today's practice the first are called 'sex workers', and the others are called 'trafficked women' or 'slaves'. This is on the basis of the racist and classist assumption that a (migrant) woman from the South who works in the sex industries would never choose it, and the ones (if any) that are recognised the possibility of choosing it are usually white middle class EU citizens.

There are also other problems with the distinction between voluntary sex workers and forced sex workers. In particular “the so called forced women are denied autonomy and power to make choices, and this leads to an inadequate representation of their-our complex needs and realities, including those who work under exploitative and abusive conditions”(ICRSE).

Moreover, “this representation excludes the workers who consciously made the decision

to work in the sex industries but who are subject to force or abuse in the course of their-our work or who were promised other working conditions than those in which they-we find themselves- ourselves. The abuses they-we undergo are considered to be the natural consequences of their- our willingness to work as prostitutes, meaning it is their-our own fault. This reinforces the classic dichotomy between ‘innocent’ and ‘guilty’ women, thus fostering the idea that ‘innocent’ women deserve of protection, whereas ‘guilty’ ones can be abused with impunity. This distinction between innocent and guilty women has been severely attacked in any debate on other forms of violence against women, such as rape, but continues to bias the debate on sex work and the protection of the rights of sex workers” (ICRSE).

Self-awareness: the 'whore stigma'* as a general threat for women

Across different languages the word corresponding to “whore” does never exclusively indicate the precise position of a person exchanging sexualised services in a particular way. Rather it more generally applies to women who develop forms of autonomy and/or transgression in relation to certain spheres, such as sexuality, labour, movement, and reproductive work.

Women who challenge society in different ways - migration, singleness, lesbianism, economic independence, etc. - are threatened by the name of “whores”, and at the same time we-they may use sex work as a way of living our-their lives. For this reason feminists are directly threatened by the 'whore' stigma as autonomous women. This means that also positions on sex work elaborated by feminists must be double checked: indeed they could be mainly ways of **distancing*** themselves-ourselves from (other) 'whores'.

Thinking radical

A critique on the existent gender analyses of sex work is not enough. That is the basis to build a positive position on the specificity of sex work through a gender perspective to a more general perspective for social change.

One of the issues we need to address in order to change sex work realities is indeed why sex work is so problematic for societies and why sex workers are so stigmatised.

Society's condemnation of sex work has to be seen as political, as opposed to moral. It has to do with gender power relations, but not exclusively; it has to do with how power relations work in general, and how these power relations are supposed to be reinforced through sexual practices in particular.

To demand money for sex in a transparent and potentially contractual way is certainly a break in the way women are supposed to give 'female' services, such as sexual, caring, and reproductive activities. As women we-they are expected to give these services for no remuneration or as part of an exchange involving informal gifts or advantages. These informal exchanges can and often are actually profitable also for women individually, but only as long as we-they do not transgress certain socially ruled behaviours. What sex

work exposes and challenges with its potential transparency and contractuality is how these informal exchanges of personal services and material advantages, actually control women's lives (and also men's and trans people lives, although differently) in unnecessary and **exploitative*** ways. What it exposes is the exploitative division in society between what is 'private' (unpaid) and what is 'public' 'work' 'valuable' (paid).

This may be one reason why sex workers is so problematic and stigmatised generally, and also by feminists. It is indeed difficult to have a non superficial look at sex work realities without a complete questioning of one's own society and most intimate arrangements.

However, if that is true for women mainly, more generally we can say that to people of every gender working with sex potentially offers a radical self-employment of their-our own **relational resources*** mainly in connection to gender, sexuality, 'race', nationality and class hierarchical positions. From such a perspective what is going on in sex work is actually the asking for remuneration for the use of relational resources that one has because of her-his position in the hierarchies of gender, race, sexuality, nationality, class etc.

In our societies one – especially if s/he belongs to certain groups - is supposed not to use these resources for one's advantage in a too explicit way, which is what happens through commercial sex practices. Indeed, one is also not supposed to openly pay for these relational resources as a direct and clear object of pleasure - as they happen to be in (all) sex. That is why also clients, although differently, are stigmatised.

This may at least partly explain why non stigmatised sex work and empowered sex workers are politically disturbing, why we-they may be tolerated only in a victimised position and not if we-they want to have direct control over our-their work and lives.

What we need is not a struggle against sex work - if it is not an ideal struggle against work in general. Here and now what we need is a struggle against the ways sex work is prevented from becoming a direct form of employing one's own relational resources in connection to hierarchical positions, and a direct exposition of power dynamics in society. This is yet another reason why the struggles of workers' rights in the sex industries are fundamentally important for social change, also a feminist change.

2005 年歐洲性工作、人權、勞工和移民研討會

2005 年 10 月 15-17 日於比利時布魯塞爾

該是誰的研討會？

商業性行為通常是由以女性為主的工作人員和以男性為主的消費者所構成。因此，性別在商業性行為中就成為了一個非常重要的課題，時至今日，女性在這場辯論中已公認為該有舉足輕重的份量。事實上，在歐洲的這場研討會，已是為數不多能提供女性更大空間發言的公開場合之一。然而，那些被予以發言權的女性皆不是

實際身處性行業中的女性。事實上，性工作者常被有系統的排除在公開辯論場合之外，甚至包括那些支持女性主義的性工作者，而那些非從事性行業的女性常以代表的身分發言，好似這些性工作人員無力為自己表達立場。

無論以女性主義或民主精神的角度來看，這種排他性都令人不能忍受。這就是為何一直到今日性工作者要發聲都還是困難無比，除非是擁有特權且教育程度高，或甚至是已準備好以一個受害者的身分現身。

女性中的非性工作者會成為性工作者在公開辯論場合的代言人有數個不同原因；其一即是性工作的討論通常經由性別議題才能觸及。除了根據數據，解讀性別為性工作議題的核心和引入(也是)以性別為基礎的政治評論來討論性工作，應該還有其他很多不同的分析方式。女性的性工作者被非性工作者排除在外的事實，不只應該被批露出來還要加以改善。而性工作者的自覺和擴大政壇勢力必須齊頭並進。當代的歐洲尤其該以發展出女性觀點來處理性工作為挑戰，而不迴避其內的國族、種族及經濟特權問題或忽略男性及變性者的性工作經驗和女性與變性者的消費經驗。除此之外，開始認同性工作為性行為、性別及職業討論的核心議題，而不再將它視為正當性行為或正當職業之外畸形的仿品，這些都是該繼續努力的方向。

性別議題成為性工作討論的阻礙？

性工作議題已變成女權運動、團體和學術界間明顯的分界點，因此，一旦表態擁護性工作者的權力即似宣戰。

在女權團體中，一派人堅持要廢止性行業，另一派人則支持，而她們之間壁壘分明、無法達成共識。前者視所有性工作者為男性慾望、窮困或性暴力下的受害者，而希望搶就所有女性性工作者遠離火窟。至於另一派的性工作支持者，她們認為從事性行業無異於另一種形式的勞力付出，她們努力的則是企圖揭露和改善性工作者的惡劣處境。

這兩派人馬意見紛歧，甚至到劍拔弩張的地步，而反對的一方勢力尤其壯大，致使許多人因害怕被冠上「促成賣淫的罪魁禍首」或「男性沙文主義者」的污名而對表態支持性工作怯步。然而，希望為性工作者爭權、盡一己之力的原意，絕不該被簡化為一些污名而抹滅殆盡。如此的定義將事實太過簡化，甚至有退縮、走回頭路的傾向，思考如何實際藉由法令的通過來改善性工作者的現狀更應該是首要之務。而此積極作為並不代表是將所有輿論和女性主義者排除在外，反而應該是將她們納入，一起為了改變性工作者的處境而努力。

為了避免引起反對性行業的女性主義者太大反彈，回想最初女性主義對賣淫重新定義的貢獻應有所助益。傳統上，性工作很自然的被等同於一連串的剝削行為，它暗示了性工作者被污名化或貶低到不配享有公民權或沒有自主性可言的地位。而女性主義者（不論性工作者與非性工作者）非常反對將賣淫純粹視為金錢體制、社會不公與生理因素下既定且不可改變的形式。

現今的歐洲，「性別」這個詞常被用來隱藏關於性工作的爭論

全球現在與性工作有關的移民問題，主要與性別運動及抵制外國勞工有關。反對性工作者移民至歐盟國家的主要人士，是那些不知情或不了解性工作者為合法行業的人。甚至連賣淫為合法行業的荷蘭，也不允許歐盟以外的人民移居當地成為性工作者。追求性工作合法化的國家，例如義大利及英國，也深受影響。他們希望把歐洲的性工作者與其他國家作區分。原因是警察常認為來自外國的性工作者，可能是被販賣或遭強迫而從事色情行業。此外，新殖民主義者及反移民者對此事件也有異議。最主要的差別待遇是，他們對來自北方的女性進行懲處，對南方的女性則提供仲介。他們禁止女性、變性人、或是特定的性工作者擁有合法的移民權利。

這個反對販賣娼妓的團體，宣稱此政策是保護來自南方的女性。但事實上，這項舉動應該被視為保護來自北方女性的特權。女性主義者指出，基要主義者和新保守派所提出的論點，使性工作看起來帶有反女性主義的意味。除了主要的觀點不同外，女性主義者發現他們對性工作的想法，非常接近於基要主義者和新保守派人士。此外，由於他們大多沒有與性工作者接觸的經驗，致使他們易忽視其政策對性工作者帶來的影響。不支持性行業的女性主義者，聯合反女性主義者人士，積極往以下兩方面調查：

1. 從事性工作的原因
2. 將性工作者區分為「自願的」及「被迫的」的可能性

要注意的是，從性工作者的人權方面看來，他們致力調查的方向都有執行上的困難。但每個從事性工作的起因，都有其站不住腳的論點。生理需求、不公平待遇、個人選擇等各種的理由，都可透過遺傳學、賀爾蒙或是平權抗爭，使性工作這個行業減少甚至消失。自願從事性工作的說法也顯示出一些問題。依個人意願成為性工作者的想法，把其焦點由對娼妓的憐憫轉為人民的權力。而此一說法，在 1970 年代的歐美娼妓人權運動便被提出，且在當時可能有其政治價值。

然而，因為個人意願從事性工作者的人，在現今的說法中，通常是與被強迫成為娼妓的女性區分開的。我們稱第一種為「性工作者」，而第二種為「被販賣的女子」或「奴隸」。這種分法實際上包含了種族及階級上的歧視。他們假定南方移入的女性都是被迫進入性行業，而可能自願成為娼妓的女性，則通常來自歐洲的白人中層階級。自願及被迫的性工作者之間，還包含其他層面的問題。尤其是那些失去自治和選擇權的「被強迫」性工作者，無法陳述他們複雜的需求及現實問題，包括必須在剝削及受盡辱罵的狀況下工作等情形。除此之外 這些陳述還不包括那些自願在性行業工作但遭到暴力及虐待的女性，或是那些工作在非想像中工作環境下的女

人。他們因為娼妓的身分遭到辱罵，大家都認為這種對待方式理所當然，是他們自己咎由自取。

這種僅把娼妓分為「無辜」及「有罪」的二分法，致使大眾認為無辜的那群需要保護，而另外那群女性被辱罵則是自食惡果。這兩種女性在社會評價上的差別待遇，被視為強暴以外，另一種施暴於女性的形式，並在許多議題中遭到強烈質疑。但現今較受重視的爭論話題仍為「性工作議題」及「性工作者的人權保護」。

翻譯者 曾靖雯

自我警覺：妓女標籤是女性普遍的威脅

在各種不同的語言中，「妓女」這個詞從未能單純地表達從事性服務工作者的真實立場。相反地，它通常指向那些意欲提高自主權，或者逾越了性，勞力，運動，養育等某些特定範圍的女性那些以不同方式挑戰社會的女人，像是遷移，單身，女同主義，經濟獨立等，常有被貼上「妓女」標籤的憂慮；在挑戰的同時，她們也很可能地從事性工作來維持生計。因為這個原因，這些女性主義者雖然身為獨立自主女性，卻面臨刻以「妓女」烙印的威脅。這也代表女性主義者必須為性工作立場的闡述做好雙重的把關：因為她們確實可以變成區隔她們和（其他）妓女的主要橋樑。

極端思考

目前關於性工作性別分析方面的評論還是不足夠，它是讓性工作的特殊性得以建立正面觀念的基礎，藉由性別的角度使得社會進階到一種更廣泛的層面。為了改變性工作的現況，我們不得不提出一個爭議，那就是為什麼性工作的存在對社會是種問題與性工作者為何如此地被污名化。社會上對於性工作者們的指責常出於違反的政策和道德倫理，這通常和兩性間勢力有關。尤其是在男性統治的社會裡，性工作更容易變成強化這種勢力關係的實踐。女人提供自身的「女性」服務，譬如性交易，照顧養育，用以要求金錢作為一種公開、可行的交易媒介。相較於過去傳統，這些作為無疑是一大突破。身為女人，過去在服務的同時，被期望著能懷抱著無私奉獻而不求回饋的心態，把服務當作是一種隱含回饋和利益的交易。這些非正式的交易對女性個體來說，其實可以是一種有利可圖的交易，通常事實也往往如此。但這必須在她們不違反所謂社會規範的情形下才可成立。有著公開契約交易的性工作真正意圖影響挑戰的是如何以非正式的個人服務和實質利益主宰女人們的生活（在不同形式下，男人和變性人的生活亦是如此）。也就是說，它揭露了社會剝削的區別：什麼是「私人的」（不計報酬）和什麼是「公眾的」、「有價值的」工作（有報酬）。這應該是性工作者和女性主義者之所以普遍被問題化、污名化的原因之一。然而，眼前性工作的現況的確很難可以全然判斷個人的安排而不是被膚淺的看待。儘管如此，假若這情況符合了大部分女人的情形，我們可以粗略地把它延伸到性別工作者上。性工作者認為性是種個體極端的自我雇用，提供屬於她們的個人資源，這些個人資源通常與性別、性、種族、國籍和階級地位相關聯。從這樣的觀點看來，性工作實際訴求的是替她（他）們在性別、性、種族、國籍和階級等地位上擁有的個人

資源的使用要求報酬。在我們的社會上，個體並沒有辦法以直接的方式利用個人資源來為本身謀求利益，尤其是當她／他屬於某些族群時。當性行為商業化就是如此。更甚者，他人亦沒辦法公開地消費這些個人資源當作享樂，只因為它是「性」。這就是為什麼性工作的顧客在性工作者被污名化的同時，也以不同的方式被貼上標籤。無論如何，這可以大致解釋了為何擁有自主權的性工作者與其工作被政策性地干涉，還有為何她們只能以被害者的角度被容許而不能是想對自己的工作及生活有完全的掌控。我們所需要的不是和性工作搏鬥，如果這不是一種抵抗一般工作的理想奮鬥。現階段，性工作被阻撓成為一種直接雇用自己，利用本身在各種階級地位得到的個人資源和一種直接對社會說明的有利力量，我們極力所需的是與阻礙搏鬥。所以，這也是另一個原因，為何性工業的工作者的奮鬥對於整個社會和女性主義著的變革有著奠定基礎的重要性。

翻譯者 陳??