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Competition paper. Prostitution and public health in New South Wales

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Competition paper[†]

Prostitution and public health in New South Wales

JOHN SCOTT

Using historical and contemporary resources, this paper provides a critical account of the contemporary governance of prostitution in New South Wales. A Foucauldian approach is used to analyse the ways in which prostitution has been problematized as a health issue and managed as a public health problem. The analysis differs from other critical studies of prostitution in that it examines specific techniques of power, the operations of which have not been confined to the workings of a repressive criminal justice system. It is shown that there currently co-exists two broad understandings of prostitution in New South Wales, Australia, which have informed current initiatives to manage prostitution. Prostitutes working in public spaces have been presented as sexual agents wilfully engaged in criminal conduct and the spread of contagion. They have been subject to intense official scrutiny and regulated through criminal sanctions. In contrast, prostitutes working in private spaces have been presented as victims of adverse circumstance, deserving of protection and compassion. They have been made subject to strategic interventions that have attempted to normalize prostitution and render the prostitute a hygienic subject.

Introduction

Prostitutes, signified by their sexuality, and historically associated with the spread of disease, have become a focus for public scrutiny in the time of HIV/AIDS. HIV/AIDS has helped to legitimate understandings of contagion that were based upon an association between sex and disease, and increase fears grounded in proximity as opposed to difference. Prostitutes have been portrayed in epidemiological literature as reservoirs of disease and key transmitters of infection (Alexander 1988, Treichler 1988, Patton 1990, Scambler and Graham-Smith 1992). To understand how prostitution has been problematized as a 'health' issue and managed as a public health

[†]To coincide with the 3rd IASSCS Conference (1–3 October 2001) organized by the Key Centre for Women's Health in Society at the University of Melbourne, *Culture, Health and Sexuality* held a competition for the best paper by a new researcher. In this issue of the journal we have pleasure in publishing the paper awarded the first prize of £600. In the next issue, we will be publishing the runner up.

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problem, it is necessary to avoid ascribing essential characteristics to prostitutes and to reject totalizing accounts of the socio-political regulation of prostitution.

Strategies of social control do not function to eradicate prostitution or socially isolate *all* prostitutes. Deemed unhealthy, prostitutes have been punished or have had their behaviour restricted. However, prostitutes have also been governed according to pedagogic forms of intervention. Power has been practiced in terms of improving the health of the population, among whose number the prostitute is included. Through strategies emphasizing empowerment and self-management, the attempt has been made to reduce an apparent lack of health among prostitutes, or increase their civility. In discourses of public health, clear distinctions have been drawn between public and private acts of prostitution. The characterization of prostitutes working in public spaces as diseased and dangerous has legitimated current initiatives to police this population, while prostitutes working privately have been subject to normalization strategies. Normalizing strategies operate to ensure that a certain 'type' of person(s) engages in prostitution, that prostitution be visible only in certain locales, at particular times of the day, and that the environment in which prostitution is conducted complies with specific normative standards. The strategic objective of social policy has been to sanitise prostitution and render the prostitute a hygienic subject.

Practices of public health

Proponents of the medicalization critique of modern health practice have argued that power operates in a binary manner, setting one group apart from another and constructing barriers to repress action through the deployment of prohibitive mechanisms (Lupton 1997). Power here is typically understood to 'leperize' the unhealthy or contaminated body, through the deployment of rules and laws which silence, isolate, hide, restrict, or punish the body. The claims embodied in the medicalization critique have been challenged by Foucauldian accounts of health regulation. These accounts have been critical of attempts to make totalizing or essentialist claims about the operation of power, and have instead examined how multiple localities and institutions of power have been instrumental in the production and governance of the healthy body. Foucauldian analysis has sought to discover how power has been applied or practiced in a series of ongoing and multiple subjugations, that operate within the social body rather than from above it. It has also spoken of the productive capacities of power: power trains, shapes, and inscribes bodies through techniques of 'investiture' (see, among others, Armstrong 1983, Nettleton 1991, Rose 1994, Lupton 1995).

A negative and limited conceptualization of power has led to an almost total lack of consideration as to the way in which regimes of health have played a role in both the constitution and regulation of prostitution. Indeed, critical scrutiny has been so lacking that 'good health' is construed as a socially desirable and concrete goal to subscribe to, and the objectives of

public health are uncritically promoted as anathema to the rationale of power. Public health has been effective in the management of prostitution because it has enabled the regulation of prostitution in both 'private' and 'public' spaces, where technologies of control have often operated inconspicuously.

To facilitate an understanding of how prostitution has been singled out for public attention in recent times as a health problem, it is necessary to document particular strategies of problematization and techniques of problem management. The notion of *governmentality* is useful in thinking through such issues. Governmentality provides a non-totalizing and non-reductionist account of rule. Governmentality refers to attempts to think and practice power. Government is here used to refer to the 'conduct of conduct', by which is meant a 'form of activity aiming to shape, guide or affect the conduct of some person or persons' (Foucault 1990a: 119, Gordon 1991: 2, Rose and Miller 1992). Governmentality highlights the way in which individuals conduct themselves. Techniques of governance rely not only on the direct physical determination of objects, but also presuppose the activity, agency and freedom of those upon whom powers are exercised. Governmentality situates power in the practices of individuals. Power does not only target and shape conduct, it operates through conduct. Governmentality may, therefore direct attention to subtle procedures of power that operate in everyday settings (Foucault 1991: 102–103).

Governmentality allows for a consideration of public health as a historically specific initiative designed to resolve or manage a number of biopolitical problems (see Foucault 1990a: 139–144, 1990b). Public health constructs public and private spaces/bodies, which are then regulated in order to protect the vitality and integrity of the population. The health and physical well-being of population is rendered the primary objective of political power. Current regimes of public health utilize both practices of the self and practices of domination in the governance of bodies marked as healthy and unhealthy.

Sanitationist practices are typically prohibitive, operating through legislation to enforce quarantine or enforce a regime of treatment on the body. Sanitationist practices operate according to a binary mechanics of difference, the function of which is to isolate or separate polluted bodies from a moral community. Often the state is given the authority to act against 'anti-social' individuals who wilfully threatened to jeopardize the good health of the population by acting irresponsibly. Sanitationist practices appear similar to earlier sovereign forms of power in that they are typically deployed in the form of intermittent acts of domination and are experienced in the form of commands. They are, however, distinct from sovereign forms of power in that they have bio-political objectives, being guided by a strategic imperative to create and maintain good health among the 'general population'. Historically, sanitationist practices are a residue of earlier medical policing strategies that lingered in the social imagination after the totalizing ambitions of medical policing were abandoned (see Rosen 1974).

In a regime of public health there is no attempt to *enforce* conditions of health in all territories at all times. During the twentieth century, sanitationist measures have usually been mobilized intermittently, during

periods of socio-political crisis. For example, sanitationist practices have often been deployed as a response to moral panics, allowing for aspects of the social order to be affirmed and symbolically mapped out through ritualistic acts of exclusion or punishment. An example of the deployment of sanitationist controls has been the periodic enforced detention of women ('prostitutes' and 'good time girls') during wartime as a measure to control venereal disease (see Sturma 1988). The occasional use of sanitationist controls to isolate or enforce treatment upon bodies deemed to be polluted or at-risk has regularly been used as an attempt to resolve fears and ambiguities associated with disorder in situations where 'magic bullets' have been unavailable. Sanitationist practices have operated symbolically to relocate or reinforce old lines of demarcation that have eroded under the weight of normalizing interventions, reasserting sharp lines of difference in an age where the efficacy of older makers of difference have been challenged. Through the deployment of sanitationist interventions, the sovereign right of the state to provide security in a given territory is publicly affirmed.

In contrast to sanitationist practices, *hygienist* practices operate according to a principle of differentiation, which operates to connect, include and animate difference within the social. Rather than repress difference, hygienist practices might be said to have the strategic aim of empowering 'at-risk' bodies by providing protection, cure, reformation, and rehabilitation. These measures have had the common purpose of 're-socializing' the body, or ensuring that it reaches a certain standard of sociality deemed medically and socially desirable. Hygienist practices have sought to civilize individuals, invariably through subtle pedagogic techniques, so that they might become responsible subjects. Hygienist practices function as technologies of the self, allowing for bodies to be regulated at a distance through the promotion of social rights and responsibilities. Accordingly, observation is not only applied to others but is a practice of the self.

Historically, hygienist practices involved an increasing sensitivity regarding social relationships. What came to mark a person as healthy was their degree of self-control, with 'lifestyle' becoming an important determinant in socio-cultural understandings of assessments of health and illness. Self-control was seen as negative and coercive. It also became a cherished personal value and an important source of strength and personal empowerment. The unhealthy or 'potentially-sick' in society became those who lacked self-control, while the healthy were those who could display foresight, moderation and regularity.

The following discussion examines the way in which a specific regime of public health was mobilized to govern prostitution in New South Wales, following widespread publicity of the HIV/AIDS epidemic during 1984. Public discourses of prostitution are examined through an analysis of documentary data, including: legislation; parliamentary debates; government reports; social scientific research; and print and television media commentary. These data are used to examine *how* prostitutes have been governed in New South Wales. Rather than engaging in the practice of governing—adjudicating upon 'bad' government, correcting governmental mismanagement, or measuring the utility of governmental practices by

observing and scrutinizing the prostitute—the analysis seeks to understand the practical initiatives used to manage prostitution.

HIV/AIDS and prostitution

When it was first discovered during the 1980s that HIV/AIDS posed a danger to ‘the general population’ through so-called ‘vector’ groups, there were calls for people with HIV/AIDS to be isolated or banished from the community. The deployment of sanitationist practices attracted public debate in countries such as Australia, the UK and the USA.¹ Occasionally sanitationist controls were utilized to demobilize itinerant or recalcitrant populations who appeared to wilfully threaten the community. Non-compliant and recalcitrant populations who were regarded as unwilling to utilize appropriate resources and take precautions against illness, or were unwilling or unable to take public health advice in the same manner as responsible citizens, were constructed as either ‘mad’ or ‘bad’, and subjected to compulsory forms of private counselling or specific prohibitions (see Kinsmen 1996: 398–402).

Despite the occasional mobilization of sanitationist controls, Western governments generally responded to HIV/AIDS with hygienist interventions. Governments adopted a strategic goal of responsabilization and sought the participation of the communities (real and imagined) that the virus affected. This hygienist approach to the problem of HIV/AIDS was supported by many gay leaders, civil libertarians, physicians and health officials, who demanded that education should provide the central, if not sole, response to the virus (Bayer 1989: 207). The characterization of HIV/AIDS as a disease of lifestyle or spoiled identity helped to legitimate pedagogic forms of intervention. Risk-groups were found to share an embodied promiscuity, made real through statistical evidence that reported an association between HIV/AIDS incidence and number of sexual partners (see, for example, Darrow *et al.* 1987).

The close association of HIV/AIDS with promiscuity has meant that a major goal of many health programmes has been to persuade people to reduce the number of sexual partners they have or to better ‘know’ their partners. Prostitution, which has been contrasted to marriage and equated with promiscuity, has, in HIV/AIDS narratives, become conflated with risk/danger. In HIV/AIDS discourse, the antonym for promiscuity has been monogamy, a concept that is clearly linked to marriage in which a single male and female are united (Bolton 1993). Safety has been translated in terms of adopting a normal/hygienic identity that monitors sexual practice. Nowadays, this means being a ‘professional’ prostitute as opposed to an ‘amateur’ or public prostitute. A regular and predictable lifestyle is a low-risk lifestyle. Sexual knowledge and expertise is not something to be feared, but something to be promoted and developed in accordance with normalizing objectives.

Prostitution in New South Wales

With the confirmation of the first case of HIV transmission through blood transfusion, HIV/AIDS was transformed into a ‘mainstream’ public health

issue in New South Wales in late July 1984. The gay community was immediately blamed for the spread of the virus to 'innocent' populations with the Reverend Fred Nile, the leader of the Christian Democratic Party, proposing the quarantine of all infected persons.

By December 1984, the New South Wales Transfusion Service announced they were considering adding prostitutes to 'high risk' categories (*Sydney Morning Herald* 1984: 3). In February 1985, AIDS was linked to female prostitutes and 'closet' bisexuals, reputed to be spreading the virus to Sydney's heterosexual community. Ita Buttrose, a prominent magazine editor and chair of the federal government's AIDS Advisory Committee, said: 'There's enough evidence to suggest that it [AIDS] could spread to heterosexuals, and I find that alarming. We are all at risk in a sense'. However, it was also publicly asserted that 'relatively few non-prostitute women will be at-risk', the inference being that it was only the promiscuous few who had something to fear, not the bulk of the population who were responsible citizens (Smark and Curtin 1985: 1).

In May 1985, the *Sydney Morning Herald* announced: 'AIDS Spread Linked to Prostitutes'. This claim was said to have been substantiated by research which showed evidence to suggest prostitutes 'might' become a major source in the spread of AIDS to the general population. Dr James Goedert of the Sydney Blood Bank, was reported as saying:

As evidence mounts that the sexual transmission of the virus [which causes AIDS] is increasing, consideration may need to be given to recommending that promiscuous men and women, particularly prostitutes, and their contacts, also refrain from giving blood. (*Sydney Morning Herald* 1985: 24)

Despite the connection drawn between HIV/AIDS and prostitution, there had been no evidence to suggest that prostitutes had a high rate of infection, and certainly no evidence to suggest that they were 'spreading' the disease to the 'general population'. Indeed, a study of 1100 sex workers visiting Sydney metropolitan sexually transmitted disease clinics between January 1985 and 1989 found all to be HIV negative (Watchirs 1991: 21).

The blood transfusion scare, amplified by the media, resulted in the first wave of proposals for the mandatory testing of selected populations in April 1985. During the early months of 1985, there were concerns of infection in schools and the never substantiated claim of a Sydney doctor to have seen the first case of HIV transmitted through prostitution in Australia (see Ballard 1992: 143). In 1986, two health professionals wrote a letter to *Australian Medical Journal* claiming to have treated a man who claimed he had contracted AIDS from a prostitute, observing: 'Our case highlights that female to male sexual transmission may occur through single episodes of exposure' (Cooper and Dodds 1986: 1). These medical claims signalled that a new understanding of HIV/AIDS was beginning to emerge. Prostitutes came to be viewed as vectors for the spread of HIV from sex and drug underworlds to heterosexual men who, in turn, would transmit the virus to 'innocent wives'. These 'wives' were depicted in medical narratives as 'vessels of procreation' and unintentional secondary vectors to their future and unborn children (Trieckler 1988, Patton 1990, Jackson *et al.* 1992: 281).

The connection that had readily been drawn between HIV/AIDS and prostitution during 1984 was finally made 'concrete' 4 years later when, in July 1989, fears for the security of the general population suddenly seemed founded with the appearance of a prostitute named Sharleen Spiteri on the national Channel Nine *Sixty Minutes* program. She 'admitted' to having had unprotected sex with clients after contracting HIV (New South Wales Parliamentary Debates 1989: 13205). As Donovan (1995: 117) has noted, her claim that if some of her clients 'were stupid enough to take the rubber off when having sex with me then it's their responsibility', appeared to account for little in the subsequent moral discourse which followed.

What is of interest here is not so much Sharleen Spiteri's claims, but the panic which ensued. For a time, HIV-infected prostitutes were news. Claims of the type and number infected grew, culminating in the appearance of Tanya Spence, a transsexual prostitute working in Sydney's Kings Cross in April 1989, who claimed to have had had sex with 'thousands' of men while HIV positive. Interviewed on the national television program *A Current Affair*, she emphasized that she had insisted that clients use condoms despite not telling them of her status. She also claimed to know of 15–20 other HIV positive prostitutes working the streets in Kings Cross (Garcia 1989).

Dramatic steps were taken in the New South Wales parliament to stop anyone knowingly spreading infection. The Minister for Health went so far as to urge doctors to report HIV-positive prostitutes, even if it broke the code of doctor-patient confidentiality. Sharleen Spiteri was detained and forced to seek medical treatment and psychological counselling under the *Public Health Act* (1902). She was the first person with HIV in Australia to face compulsory detainment. This Act was modified in November 1989 as the *Public Health (Proclaimed Diseases) Amendment Bill* which would be used as a 'management tool' with its penalties of a \$1000 fine or up to 6 months' jail imposed as a last resort for persons found to be recklessly endangering others by spreading disease. While it was claimed that the 'main at-risk group to be affected will more than likely, although not exclusively, be female prostitutes', a male prostitute found to be knowingly transmitting the HIV virus could be imprisoned for up to 6 months, if unable to pay the imposed fine (New South Wales Parliamentary Debates 1989: 13188). Under such a circumstance, the Act would restrict the person's ability to practice safer sex because of the unavailability of condoms in prisons. The order was subject to review by a magistrate if a person was thought to no longer constitute a public risk (New South Wales Parliamentary Debates 1989: 13192).

It was argued that the modification to the *Public Health Act* (1902) ensured a balance between issues of individual rights and public health. The 1989 Act allowed for the closer monitoring and supervision of at-risk populations. The Act reformed older, draconian, 'contain and control' procedures, allowing for an intensification of practical and intellectual technologies that promised to 'rehabilitate' dangerous others through the monitoring of the moral behaviours of individuals who were thought in some way to be less rational than others and 'give the community the protection it rightly sought' (New South Wales Parliamentary Debates 1989: 13197–13204).

Although the legislation provided for the testing of people believed to be infected with HIV, no guidance was offered in determining which behaviours were likely to endanger public health. Prostitutes, particularly those like Sharleen Spiteri who worked in public spaces, were extremely vulnerable under the Act, as their behaviour could incite the prejudices of medical officers who were accorded significant discretionary powers. Testing was all the more problematic when considering the willingness that had been shown among medical practitioners, the media and prominent persons, to uncritically accept the statements of men claiming to have been infected with HIV through contact with prostitutes, despite a lack of any conclusive evidence to show high rates of infection among prostitutes (see Willis 1991).

Given the lack of any 'evidence' to implicate prostitutes in the spread of HIV to the 'general population', why was there public panic over a prostitute contracting HIV whose status effectively distinguished her behaviour from that of the general population? Attempts to transform or liberalize public perceptions of prostitution have encountered difficulties in challenging entrenched anxieties associated with prostitution. The development of prostitute advocacy organizations has been aimed at promoting the rights of sex industry workers and allowing for the participation of sex industry groups in HIV/AIDS education programmes. These organizations have attempted to change the image of prostitution, most often defined as an exchange of sex for money and drugs (Watchirs 1991). Prostitution has been re-defined as a sale of 'skill' rather than 'body' and presented as a 'work choice', the argument being, that to deny a woman her right to work under conditions of her choosing is a violation of civil rights (Jenness 1990). This new representation of the prostitute as 'sex worker' is aimed at giving the profession respectability by challenging traditional views of prostitutes as social misfits, sexual slaves, or the victims of drug addiction, pimps, and organized crime (Jenness 1990). As writers continued to emphasize following the appearance of HIV/AIDS, prostitutes were 'normal' women, many engaged in long-term heterosexual relationships, or married with children. Such observations while having the intent to undermine adverse representations of the prostitute, only reinforced fears that were grounded in proximity rather than difference. The idea that prostitutes were married, were mothers, or were 'amateurs' did little to calm fears excited by an epidemic that for long periods could leave no identifying signs upon the outer-body. The idea that prostitutes could slip 'unseen' into the general population created much anxiety within medical quarters.

Attempts to represent prostitutes as 'normal' women have done little to counter the representation of the prostitute as kinky or perverse, images of 'abnormal' prostitutes coexisting comfortably alongside those of 'normal' prostitutes. The transition to an image of the prostitute as a normal worker—a member of the general population—has become mired amidst the rhetoric of older languages of prostitution. Two typifications of prostitutes have emerged, representing two distinct poles. At one pole there is the 'high-class hooker' or escort, who can readily slip in and out of her role, flirting with the rich and famous and acting as a sophisticated entrepreneur in one instance, while mothering or marrying in the next. In this discourse on prostitution the use of sexual charm and seduction are

presented as a woman's most valuable asset and skill. Sexual skill is tolerable in that it serves to relieve the demands of male biological needs. The responsible whore is non-threatening, 'clean' and 'safe'. This prostitute contrasts vividly with the other pole of prostitution represented by the street worker, depicted as incorrigible and corruptible, a creature of the gutter and darkened back streets, with links to disease and vice. Uneducated, unglamorous and irresponsible, she is the end product of a ghastly social devolution, who threatens to wreak social disorder if not regulated. She is in many ways Sharleen Spiteri.

The panic that followed Sharleen Spiteri's confession was produced by the conflation of both of these discourses on the prostitute. Prostitutes are not confined to an allocated moral space outside the general population. Instead they appear to drift between states of abnormality and normality, and are within the community and outside it. The understanding that prostitutes resided *within* the community made their presence problematic. Danger was constituted in proximity rather than difference. The imperative of health was to be achieved through a regime of public health that utilized both sanitationist and hygienist strategies, which together offered the promise of a 'clean' and disciplined prostitute population.

A two tiered system of governance

The *Public Health Amendment Act* may appear to have signalled a draconian approach to the governance of prostitution, particularly when considering the treatment of Sharleen Spiteri. While the legislation attracted much public attention, it has rarely been utilized. By the late-1980s, health professionals had concluded that while some surveillance and monitoring of people with HIV/AIDS was necessary, the testing of whole populations was simplistic and offered little in the way of practical utility. The cost of testing every individual belonging to a risk group in New South Wales was estimated to be around \$500 and \$20 million, without follow-up testing (Donovan 1988). As well as the economic problems involved in mandatory testing, there were the legal and ethical issues to be considered. This involved anonymity and informed consent, and appeared to make any shift to a regime of medical policing impractical. The isolation of Sharleen Spiteri was largely a symbolic act, to both confirm and ritually exorcise dangers associated with a specific class of prostitute. As a symbolic measure, it reinforced the authority of the state to be able to police the borders demarcating specific populations.

The underlying assumptions that resurfaced in relation to the *Public Health Amendment Act* have remained potent within subsequent governmental initiatives. These had concluded prostitutes to be a menace to public health and argued that the best means to prevent them from spreading disease was to rely on counselling and other 'voluntary' pedagogic procedures.

Three years before New South Wales politicians amended the *Public Health Act*, the state's Parliamentary Select Committee on Prostitution had published a report on prostitution which advocated a combination of

education and screening for reckless members of the prostitute population and the use of the criminal legislation to restrain 'those who wilfully endanger public health' (Parliament of New South Wales 1986: 178). This report contributed significantly to the reinvention of prostitution as a public health issue in New South Wales. The report confidently asserted:

There will be some spread of the disease [HIV] in Australia through heterosexual contacts. Prostitutes must be regarded as being in the front line of this threat to the entire community, and both male and female prostitutes must be included in the 'at-risk' groups. (Parliament of New South Wales 1986: 170)

The report was not only concerned with female prostitution but also male and transsexual prostitution which, for the first time, were perceived to be a bio-political menace in New South Wales. It was observed:

There is considerable evidence that male prostitutes are at greater risk [of HIV infection] than females and that anal intercourse is a more risky activity than vaginal intercourse ... female prostitutes, however, are still very much at risk, especially from their bisexual clients, and increasing numbers will show symptoms of exposure to the AIDS virus, and will contribute to a reservoir of infection spreading into the rest of the community. Female infection with AIDS brings that added danger that children born to such women will also be infected. (Parliament of New South Wales 1986: 170)

The report recommended a policy of decriminalization with controls, arguing that prostitution should be subject to town planning regulations. The recommendation of the report to decriminalize prostitution was ignored by the politically cautious Labor government during its final term in office. Instead, a new *Summary Offences Act* was introduced when a conservative Coalition government was elected in 1988, following a campaign largely fought around law and order issues.

The *Summary Offences Act* (1988) increased police discretionary powers, making it possible to charge prostitutes or their clients who solicited or committed a 'public' act of prostitution 'in', 'near', or 'within view' of a public street, dwelling, school, church, hospital or public place. It also expanded the definition of the 'act of prostitution' which, for the first time, included 'sexual activity between persons of different sexes or the same sex'. Interestingly enough, while legislation claimed to be inspired by public health concerns relating to HIV/AIDS, masturbation was also included as an offence for the first time under the new legislation.

The *Summary Offences Act* (1988) made no attempt to eradicate prostitution but instead was a conscious attempt to promote the better management of certain aspects of prostitution associated with social disorder (New South Wales Parliament 1988: 1388). The legislation operated to allay fears of pollution through the promise of spatial regulation. Proponents of the legislation were primarily concerned with the visibility of prostitution, or more specifically street prostitution, which was viewed as an affront to civilised standards. As the police minister observed, 'the aim of the proposed offence is to drive prostitutes away from private dwellings in the suburbs and 'stop them interfering in family life' (New South Wales Parliament 1988: 1339). 'Joe', an owner of two Sydney sex parlours, was quoted in the *Sydney Morning Herald* at the time of the reworking of the *Summary Offences Act*, as stating: 'I don't like to see prostitution on the

streets; it should be kept in parlours. I don't like my wife and children to see it happening' (Dean 1988: 15). It was also reported that a man was so disgusted with what was happening in a prime mover outside his home that he threw grass clippings through the window, only to have his house attacked and burgled and every window smashed (*Sydney Morning Herald* 1988: 13). The cause (street prostitution) and effects (social disorder) were clearly displayed. In these reports the street worker became a signifier of vice, disease, and immorality, a mythological representation that served to rally the fearful and outraged to support a community under siege.

In November 1995, the newly elected Labor government of New South Wales introduced legislation which sought to decriminalize aspects of prostitution through an amendment to the *Disorderly Houses Act* (1943). Labor's election campaign had been conducted around a 'law and order' platform, the party assuring the electorate that it would 'get tough on crime'. The *Disorderly Houses Amendment Act* sought to address the problem of public prostitution, popularly regraded as offensive and unhealthy, by decriminalizing brothel prostitution, while retaining or increasing penalties associated with unregulated or public prostitution. It should be noted, however, it was not the intention of legislators to leave brothels unregulated. Rather, they were subject to local council approval, councils being empowered to supervise brothels by application to the Land Environment Court.

The proposed legislation produced animated debate among parliamentarians, some of whom questioned the benefits of decriminalizing brothel work. Despite this, no one cared to question or debate the continued illegality of street-work and the effect this would have on the sex industry. Government members spoke warmly of the benefits of the legislation, uniting discourses concerned with the functionality of prostitution and its inevitability as a social fact, with humanitarian and civil libertarian discourses that addressed the rights of the prostitute to work in a safe and protected environment (New South Wales Parliamentary Debates 1995: 3410–3411). Both male and female parliamentarians argued substantial health benefits in the new legislation for both the community and sex workers themselves (New South Wales Parliamentary Debates 1995: 1937, 3074–37).

The main appeal of the legislation, for those who supported it, was that it offered a means by which to address the issue of street prostitution. Street prostitutes were characterized by parliamentarians as an unregulated and highly visible population who were a 'danger to the health of community' and threatened a 'public disturbance'. They were compared with 'well-adjusted' women who were driven into prostitution as a result of economic circumstances and who could not be distinguished from wife or mother (New South Wales Parliamentary Debates 1995: 1936).

Legislative change has secured the formation of a two-tiered system of governance that protects private acts of prostitution while condemning public acts of prostitution. Under current legislation, the New South Wales Police Service are primarily responsible for regulating the public acts of prostitution. The regulation of private acts of prostitution is the responsibility of various local, state and federal government departments.

If decriminalization is to be judged on the basis of the stated objectives of its supporters (which included the improved health and safety of sex

workers), then it is to be judged problematic. Throughout New South Wales small/cottage operators have had their applications for brothel developments blocked by councils, who have adopted a 'not in my backyard' policy towards brothel applications. The cost of appeals to the Land and Environment Court has meant that individuals and consortiums with large cash resources are more likely to be successful in funding appeals. This situation has resulted in a contraction of the 'legalized' industry, with the control of brothels concentrated in the hands of non-prostitute organizations and consortiums who have established monopolies in a number of local government jurisdictions (see Clennell and McClymont 1999: 1, 12–13).

Since the legislative changes in 1995, it has been estimated that the number of brothels in Sydney has grown by 200–300%. Those investing in brothels, who have been among Sydney's more prominent accountants, lawyers and restaurateurs, have lobbied the New South Wales government to take a tougher stance in policing illegal street and cottage operations that pose a threat to the financial viability of their own investments (Clennell and McClymont 1999: 1, 12–13). The clearest trends to emerge in recent years have been the increasing power of clients and managers to influence work practices and health standards, a situation that has parallels in other Australian jurisdictions in which prostitution has been decriminalized (see Watchirs 1991, Kinnell 1991: 91, Koureskas 1995).

Frequent police 'crackdowns' on public prostitution have resulted in a cycle of poverty, with prostitutes compelled to work the streets in order to pay for accumulated fines. Public prostitutes are presented with the choice of either moving into dark and inaccessible areas to conduct their work or surrendering autonomy to brothel owner/operators (Edwards 1999). Despite the assurances of parliamentarians that legislative change in New South Wales would ensure the indiscriminate operation of the law, subsequent policing has typically resulted in the arrest and conviction of (street) prostitutes, with clients and pimps typically escaping conviction. Edwards (1999: 95) has observed that the legal definition of what constitutes soliciting is clearly ill understood by both police and prostitutes, arguing arrests and convictions under the legislation to be 'contrary to the principles of the law and purposes underlying the law'. Despite the problems associated with existing legislation, arrests and convictions for prostitution have remained high in New South Wales.

The 'two-tiered' approach to management sends a message to the public that prostitutes public spaces are polluted and prostitutes working in private spaces are clean and safe. Following the decriminalization of brothels, two journalists writing for the *Sunday Telegraph* observed this of one 'young' brothel working prostitute:

...tall, blonde and stylish, she recently completed her tertiary marketing course and is looking for employment in the field...

She provides her own condoms, which she gets in lots of 100 from the Sydney Sexual Health Centre and comes complete with a medical certificate. (Harris and Haverkamp 1995: 128)

In the above quote, the notion that the prostitute is a commodity is inescapable. However, it is not just any prostitution that is being promoted

here, but what is encountered is a category of prostitution, brothel prostitution being packaged so that it might be distinguished from and compared with other less marketable varieties of prostitution. What supposedly distinguishes regulated prostitutes here is their apparent ability to *care for themselves*. Care, in this instance, becomes a one-sided proposition, the maintenance of health being a duty or obligation placed upon the at-risk individual.

Conclusions

There currently co-exist two broad discourses of prostitution in New South Wales. In the first of these, the prostitute is presented as a responsible and clean professional. In the second, the prostitute is presented as dangerous, wilfully engaged in criminal conduct and the spread of contagion. While private acts of prostitution have been increasingly routinized as everyday activities, public acts of prostitution have been demonized. Public prostitutes have been regulated through criminal sanctions, while private prostitutes have been subject to civilising strategies that have attempted to normalize prostitution and render the prostitute a hygienic subject. In exchange for a right to work, certain sections of the prostitute population have been the target of responsibility-to-know health educational campaigns.

In New South Wales, decriminalization has not marked a retreat of power, but has signalled a shift in the way in which powers are practiced, from a criminal-law approach, dominated by sporadic and often draconian policing patterns, to an approach more reliant on localized controls. The State government has conceded an inability to effectively control all aspects of prostitution, passing on governmental obligations to local communities, local governments, brothel management and prostitutes. The decriminalization of prostitution has attracted the support of those who would liberate prostitutes from oppression, as well as government officials examining ways in which public expenditure on health and crime control may be effectively reduced. While totalizing techniques of surveillance have been increasingly abandoned, regulation has not ceased. From a governmental perspective, the decriminalization of specific acts of prostitution might be considered an advanced liberal strategy. In order to manage risk advanced liberal forms of government both enable and coerce specific populations, rule being accomplished through the construction of multiple forms of agency (see Burchell 1993, Barry *et al.* 1996).

Too much significance should not be accorded to contemporary appeals to isolate or punish polluted bodies, despite the symbolic and political assurances that quarantine practices and criminal penalties might provide in the midst of imaginary or real plagues. Public health, as a governmental apparatus, has not increased the power of the state or medical professionals to constrain or restrict the behaviour of prostitutes in some negative fashion. Another trend is apparent whereby prostitutes have been encouraged to become active participants in their own care. The conduct of prostitutes—their individual behaviour, attitudes, desires and emotions—has been

treated as politically relevant in terms of public health policy. The local space of disease and disease control has become the body of prostitute. There is intense pressure on prostitutes to stay 'healthy' and act in ways that might prevent or minimize potential harm to the social body. Public health does not sever links between the body and the social, but reinforces its own claim that the body as inherently social. Current trends in the control of prostitution do not represent a kind of 'net widening'; rather, we see a 'net reduction', in which private acts of prostitution have been allowed to slip *into* the community, and have been made subject to hygienist controls.

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Note

1. See, among others, Bayer (1989), Patton (1990) and Schramm-Evans (1990), Ballard (1992: 138–139), Bayer and Kirp (1992: 13–19), Street and Weale (1992: 200–201).

References

- Alexander, P. (1988) Prostitutes are being scapegoated for heterosexual AIDS. In F. Delacoste and P. Alexander (eds) *Sex Work: Writings by Women in the Sex Industry* (London: Virago Press), pp. 248–263.
- Armstrong, D. (1983) *Political Anatomy of the Body: Medical Knowledge in Britain in the Twentieth Century* (Cambridge: Cambridge University Press).
- Barry, A., Osborne, T. and Rose, N. (eds) (1996) *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government* (London: UCL Press).
- Ballard, J. (1992) Australia: innovation and participation in a federal system. In D. L. Kirp and R. Bayer (eds) *AIDS in the Industrialised Democracies: Passions, Politics, and Policies* (New Brunswick, N.J.: Rutgers University Press, 134–168).
- Bayer, R. (1989) *Private Acts, Social Consequences: AIDS and the Politics of Public Health* (New York: The Free Press).
- Bayer, R. and Kirp, D. L. (1992) The United States: at the centres of the storm. In D. L. Kirp and R. Bayer (eds) *AIDS in the Industrialised Democracies: Passions, Politics, and Policies* (New Brunswick, NJ: Rutgers University Press), pp. 7–48.
- Bolton, R. (1993) AIDS and promiscuity: muddles in the models of HIV Prevention. In R. Bolton and M. Singer (eds) *Rethinking AIDS Prevention: Cultural Approaches*. (Switzerland: Gordon & Breach), pp. 6–86.
- Burchell, G. (1993) Liberal government and techniques of the self. *Economy and Society*, **22**, 267–282.
- Clennell, A. and McClymont, K. (1999) Sydney's sex trade. *Sydney Morning Herald*, 30 August, 1, 12–13.
- Cooper, D. A. and Dodds, A. J. (1986) AIDS and prostitutes. *The Medical Journal of Australia*, **145**, 1.
- Darrow, W., Echenberg, D. F., Jaffe, H. W., O'Malley P. M., Byers, R. H., Getchell, J. P and Curran, J. W. (1987) Risk-factors for human immunodeficiency virus (HIV) infections in homosexual men. *American Journal of Public Health*, **77**, 479–483.
- Dean, A. (1988) Hey, babe take a walk on the Canterbury Road side. *Sydney Morning Herald*, 11 March, 15.

- Donovan, B. (1988) Is compulsory AIDS testing in the interests of public health. *Venerology*, **1**, 51–53.
- Donovan, R. (1995) The plauging of a faggot, the leperizing of a whore: criminally cultured AIDS bodies and 'carrier' laws. In J. Bessant and K. Carrington (eds) *Cultures of Crime and Violence: The Australian Experience* [A Special Edition of the *Journal of Australian Studies*], **43**, 110–124.
- Edwards, K. (1999) Soliciting: what's the go? *Alternative Law Journal*, **24**, 76–95.
- Foucault, M. (1990a) *The History of Sexuality, Volume 1: An Introduction* (New York: Random House).
- Foucault, M. (1990b) Politics and reason. In L. D. Krizman (ed.) *Michel Foucault—Politics, Philosophy, Culture: Interviews and Other Writings, 1977–1984* (New York: Routledge), pp. 56–85.
- Foucault, M. (1991) Governmentality. In G. Burchall, C. Gordon and P. Miller (eds) *The Foucault Effect: Studies in Governmentality, with Two Lectures by Michel Foucault* (Chicago, IL: University of Chicago Press), pp. 87–104.
- Garcia, L. M. (1989) Alarm over second AIDS carrier. *Sydney Morning Herald*, 4 August, 1.
- Gordon, C. (1991) Governmental rationality: an introduction. In G. Burchall, C. Gordon, and P. Miller (eds) *The Foucault Effect: Studies in Governmentality, with two Lectures by Michel Foucault* (Chicago, IL: University of Chicago Press), pp. 1–52.
- Harris, S. and Haverkamp, R. (1995) Happy hooker's rich pickings: it's a bed of roses for \$200-an hour beauty. *The Sunday Telegraph*, 6 August, 128–129.
- Jackson, L., Highcrest, A. and Coates, R. (1992) Varied potential risks of HIV infection among prostitutes. *Social Science and Medicine*, **35**, 281–286.
- Jeness, V. (1990) From sex as sin to sex as work: COYOTE and the reorganization of prostitution as a social problem. *Social Problems*, **37**, 403–407.
- Kinnell, H. (1991) Prostitutes: Perceptions of Risk and Factors Related to Risk Taking. In P. Aggleton, G. Hart and P. Davies (eds) *AIDS: Responses, Interventions and Care* (Taylor & Francis: London), pp. 79–94.
- Kinsmen, G. (1996) Responsibility as a strategy of governance: regulating people living with AIDS and lesbians and gay men in Ontario. *Economy and Society*, **25**, 393–409.
- Koureskas, H. (1995) In a different voice: the prostitute's voice. *The Australian feminist Law Journal*, **5**, 99–107.
- Lupton, D. (1995) *The Imperative of Health: Public Health and the Regulated Body* (London: Sage).
- Lupton, D. (1997) Foucault and the medicalization critique. In A. Peterson and R. Bunton (eds) *Foucault, Health and Medicine* (London: Routledge), pp. 94–112.
- Nettleton, S. (1991) Wisdom, diligence and teeth: discursive practices and the creation of mothers. *Sociology of Health and Illness*, **13**, 98–111.
- New South Wales Parliament (1902) *Public Health Act*.
- New South Wales Parliament (1988) *Summary Offences Act, No. 25*.
- New South Wales Parliament (1989) *Public Health (Proclaimed Diseases) Amendment Act*.
- New South Wales Parliament (1943) *Disorderly Houses Act*.
- New South Wales Parliament (1995) *Disorderly Houses Amendment Act*.
- New South Wales Parliamentary Debates (1989) *Assembly*, 22 November, vol. CCXI.
- New South Wales Parliamentary Debates (1995) *Disorderly Houses Bill*, vol. CCXLVI.
- New South Wales Parliamentary Debates (1995) *Disorderly Houses Bill*, vol. CCXLVII.
- Parliament of New South Wales (1986) *Select Committee of the Legislative Assembly Upon Prostitution* (Sydney: Government Printer).
- Patton, C. (1990) *Inventing AIDS* (New York: Routledge).
- Rose, N. (1994) Medicine, history and the present. In C. Jones and R. Porter (eds) *Reassessing Foucault: Power, Medicine and the Body* (London: Routledge).
- Rose, N. and Miller, P. (1992) Political power beyond the State: problematics of government. *British Journal of Sociology*, **43**, 173–205.
- Rosen G. (1974) *From Medical Police to Social Science: Essays on the History of Health Care* (New York: Science History Publications).
- Scambler, G. and Graham-Smith, R. (1992) Female prostitution and the fear of AIDS: The realities of social exclusion. In P. Aggleton, P. Davies and G. Hart (eds), *AIDS: Rights, Risk and Reason* (London: Taylor & Francis, pp. 68–76).
- Schramm-Evans, Z. (1990) Responses to AIDS: 1986–1987. In P. Aggleton, P. Davies and G. Hart (eds) *AIDS: Individual, Cultural, and Policy Dimensions* (London: Falmer Press), pp. 221–232.
- Smark, P. and Curtin, J. (1985) AIDS ... now it's non-gay victims. *Sydney Morning Herald*, 2 May, 1.
- Street, J. and Weale, A. (1992) Britain: policy-making in a hermetically sealed system. In D. L. Kirp and R. Bayer (eds) *AIDS in the Industrialised Democracies: Passions, Politics, and Policies* (New Brunswick, NJ: Rutgers University Press), pp. 185–220.

- Sturma, M. (1988) Public health and sexual morality—venereal disease in world war two Australia. *Signs*, **13**, 725–740.
- Sydney Morning Herald* (1984) Talk on AIDS and prostitutes, 12 December, 3.
- Sydney Morning Herald* (1985) AIDS spread linked to prostitutes, 4 May, 24.
- Sydney Morning Herald* (1988) Prostitutes make Canterbury Road tremble, 30 April, 13.
- Triechler, P. A. (1988) AIDS, Gender and biomedical discourse: current contests for meaning. In E. Fee and D. Fox (eds) *AIDS and the Burdens of History* (California: University of California Press), pp. 191–233.
- Watchirs, H. (1991) *Discussion Paper: Legal Issues Relating to HIV/AIDS, Sex Workers and Their Clients* (Canberra: Department of Health and Community Services).
- Willis, A. E. (1991) Public health, AIDS and sex workers in New South Wales. *National AIDS Bulletin*, 39–43.

Résumé

En utilisant des ressources historiques et contemporaines, cet article dresse un bilan critique de la gestion contemporaine de la prostitution dans les Nouvelles Galles du Sud, en Australie. Une approche foucauldienne est employée pour analyser les moyens par lesquels la prostitution a été problématisée comme une question de santé et traitée comme un problème de santé publique. L'analyse se différencie d'autres études critiques sur la prostitution au sens où elle examine les techniques spécifiques du pouvoir, dont le fonctionnement ne se limite pas à celui d'un système répressif de justice criminelle. Il est démontré que deux interprétations larges de la prostitution co-existent actuellement dans les Nouvelles Galles du Sud, guidant les initiatives actuelles de gestion de la prostitution. Les prostitué(e)s travaillant dans les lieux publics sont présenté(e)s comme des agents sexuels volontairement engagé(e)s dans une conduite criminelle et dans la propagation de la contagion. Ils/elles sont l'objet d'une surveillance officielle intense et contrôlé(e)s par des sanctions pénales. A l'inverse, les prostitué(e)s opérant en espace privé sont présenté(e)s comme des victimes de circonstances défavorables qui méritent protection et compassion. Ils/elles sont l'objet d'interventions stratégiques qui tentent de normaliser la prostitution et de transformer le/la prostitué(e) en un sujet hygiénique.

Resumen

Con la ayuda de fuentes históricas y contemporáneas, este documento presenta un informe crítico sobre la manera en que el Estado trata la prostitución en Nueva Gales del Sur. Se utiliza un enfoque foucaultiano para analizar los métodos que se han utilizado para catalogar a la prostitución como un problema de salud y tratarlo como un asunto de Salud Pública. El análisis es diferente a otros estudios críticos sobre la prostitución, puesto que analiza las técnicas específicas de poder cuyos mecanismos no se limitan al funcionamiento de un sistema judicial represivo contra el delito. Se demuestra que en Nueva Gales del Sur, Australia, actualmente coexisten dos conceptos amplios de prostitución, que influyen en las iniciativas actuales para tratar la prostitución. Las prostitutas que trabajan en espacios públicos han sido clasificadas como agentes sexuales que voluntariamente

participan en conductas delictivas y en el contagio de enfermedades. Han sido sometidas a una intensa vigilancia oficial y reguladas mediante sanciones al delito. Sin embargo, las prostitutas que trabajan en espacios privados son consideradas víctimas de circunstancias adversas que merecen protección y compasión. Han sido sujeto de intervenciones estratégicas con la intención de normalizar la prostitución y limitarla a una cuestión de higiene.