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## Prostitution and public health in New South Wales: reply to Egger and Harcourt

JOHN SCOTT

Egger and Harcourt have formulated their response to my paper with regard to apparent 'conclusions concerning the impact of the law on the policing of prostitution and the structure and size of the sex industry' in New South Wales (NSW). It is with some difficulty that I respond to their criticisms, as my original article was neither concerned with the 'size' or 'structure' of the sex industry in NSW: at least, not in the narrow and positivistic sense the authors would indicate. Put simply, the paper was not concerned with measurement or producing specific 'facts' about the sex industry. To challenge the validity of my statements because I have not attempted to comprehend the 'structure and size' of the sex industry demonstrates a crude misunderstanding of the core thrust of the paper, which was framed according to a 'problem analysis' approach, as opposed to 'problem solving' approach (see Schneider 1985).

In fact, the paper was concerned with documenting *how* the sex industry is governed and the relationship between regulation and public perceptions of the sex industry. That said, there seems to be little of value in engaging the authors in an unnecessary polemical exercise by systematically addressing each of the points they have raised. To do so would only further remove the paper from its original context, which the authors have either deliberately ignored or failed to comprehend. It would be more constructive to restate and further clarify the objectives of the original paper with some reference to recent events in NSW, while urging readers to carefully re-read the paper with reference to the response.

### The management of prostitution in New South Wales

The regime under which prostitution has been managed in NSW has optimistically been referred to as 'liberal' or *laissez-faire*, both these terms being used to indicate progressive qualities of the regime (see Egger and Harcourt 1993). I was not so much interested in comparing or judging this regime in relation to other regimes, but in describing how it governed the

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sex industry. I chose to focus on the regulation of sex work in NSW because I saw what might be termed a 'neo-liberal' form of governance operating in this state. I chose NSW not because I considered it typical or representative of the governance of prostitution throughout other jurisdictions. What makes NSW notable is that new strategies for governing prostitution have emerged in this state. While the recent emergence of neo-liberal regimes of governance has been well-documented, particularly in relation to health care and law and order, I considered it peculiar that little work had been done to document the effects of neo-liberal regimes on specific populations traditionally considered deviant in social scientific discourse (see Barry *et al.* 1996). Prostitution presented as an interesting case for analysis, particularly given that prostitutes have been historically considered both criminal and diseased.

Mindful of the way in which neo-liberal regimes operate, I strongly disagree with the authors that the public/private distinction is less significant in NSW than in other jurisdictions. What I would suggest is that this distinction manifests in a particular way in neo-liberal regimes. If the distinction is not significant, why has NSW developed highly complex legislation that restricts sexual activity according to spatial boundaries? If the distinction were not relevant, why do media, politicians, health workers, social scientists and the public in general continue to make distinction between what I referred to as 'public' and 'private' sex workers? I sought to show how this manufactured distinction has legitimated specific strategies of social control. This distinction forms the core of current legislative activity in NSW. However, the distinction is not merely a binary distinction. As with other arenas of socio-sexual regulation, specific acts of prostitution are organized according to a logic which Rubin (1986) has clarified with reference to the 'charmed circle', demonstrating how a range of sexual conduct is tagged, valued, differentiated, and graded according to a range of norms.

Reviewing Egger and Harcourt's response, a reader would be tempted to conclude that sex workers in New South Wales 'have never had it so good'. My paper was not interested in evaluating the governance of the sex industry in NSW. Rather than engage 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 paper sought to understand the practical initiatives and efforts made to govern sex work. I sought to address and examine the basis of governmental claims concerning prostitution by: (1) adopting a 'fluid' and dynamic understanding of power that counters essentialist and totalizing claims; (2) rejecting the search for meta-narratives or truths and instead seeking to understand their construction through the adoption of an interpretive framework of understanding; (3) decentring the prostitute-subject, to instead focus on processes of objectification/subjectification.

To understand how prostitution is currently problematized it is necessary to understand the associations between prostitution and public health, and how notions of health are grounded in normative discourses that work to differentiate and evaluate the gendered and sexed body.

Specific powers have developed to manage discursively manufactured classes of prostitute. When examining the social control of prostitution, it is mistaken to assume that power has as its locus a repressive criminal justice system, or to conclude that power must originate in a will to dominate and repress.

The authors evaluate my paper by presenting a very deterministic understanding of the impact of legislation associated with the sex industry. Yet, as shown in the paper, powers operate according to a diverse array of strategies, and techniques, none of which may be characterized as static or mono-directional. It is not just that power has functioned to repress *the* prostitute or render the prostitute 'other': powers have operated to socially bind, to empower, educate, equip, and make responsible. Governance is often practiced in a subtle and benign manner, the rationale and ends of government viewed as coinciding with the interests of all and each. Despite the inferences of the authors, it was not my intention to state that *all* public acts of prostitution are illegal, a stance that is made abundantly clear throughout my discussion.

It is important to question the various truths that make the governance of prostitution possible. The idea that prostitution is a public health problem, or the notion that prostitutes can be divided into discrete categories and hierarchically ordered should be critically scrutinized so that the logic according to which prostitutes are currently governed might be recognized. Critical thought concerning prostitution has long been anchored to a juridical-discursive paradigm that has favoured a totalizing and reductionist account of power. This has obscured the multiple and often subtle practices of power which tag, differentiate, evaluate and order prostitutes according to a logic grounded in normative standards. The logic of contemporary rule has a history that can be remembered. There is a need to look beyond the silent gulf of difference so as to understand the logic of differentiation.

Egger and Harcourt have substantially amplified the significance and relevance of statistical claims to my overall thesis. The paper was less concerned with discovering and/or presenting statistical claims than it was examining the effects that scientific claims have. The paper was not so much interested in more or less, but focussed on specific events associated with the sex industry that would illuminate the strategic significance of current regulation. That said, my discussion clearly did not indicate an 'increase' in regulatory measures.

This is not to say that the statistics which the authors have diligently reproduced are not of relevance in further elaborating my arguments. The authors twice suggest that NSW has a 'thriving' legal street market place for sexual services, yet make the claim that street services constitute only 10% of the overall industry. I do not wish to dispute this claim as it lends weight to my overall argument that public acts of prostitution have been provided disproportionate attention in regard to sex work. Indeed, the current regulation of prostitution has been framed in terms of moral responses to sexual conduct in public spaces.

Something also ought to be said about how the statistics indicate significant fluctuations in the police response to prostitution in NSW.

However, in order to comprehend and give meaning to the statistics, it is not enough to read them in purely whiggish terms, looking to them as indicative of some broad movement to a 'better' or 'more' liberal regime of governance. The figures do indicate something about the politicization of the sex industry, drawing attention to the symbolic weight of contrived 'crackdowns' on specific sectors of the sex industry. Yet, they reveal little about the complex rationales driving strategies by which the sex industry is regulated. It is not an accident that some of the most dramatic increases in arrests have coincided with election years and changes to legislation. A back-lash against non-romantic forms of desire during the early 1970s and the advent of HIV/AIDS have each impacted upon the way in which sex work is policed in NSW. This is not to say there are no 'dark figures' amongst the current statistics. A particular area of concern is the impact of current reforms on the 'cottage' or home-based sex industry (Red and Saul 2003).

### Some recent developments

Since the 1995 legislative changes, the sex industry in NSW has attracted considerable media attention much of which has been grounded in the traditional imagery of sex workers as hapless victims or diseased and dangerous deviants. Media commentary has tended to focus on two issues: the incidence of street prostitution and the issue of creating 'zones' for authorized brothels. Over the course of the last year there have been a sway of calls from local government councillors in NSW to 'clean-up' so-called 'red light' districts. While my previous paper noted the association that had formed between public workers and disease, recently links have been made between public prostitution and 'sex slavery', presented in terms of underage and immigrant workers.

In understanding the effects of the 1995 legislative changes in NSW, it is worthwhile briefly touching upon their impact in the regional city of Newcastle. In the three years which followed the introduction of the *Disorderly Houses (Amendment) Act*, 25 illegal brothels were closed within the City's local government boundaries, contributing to more than a third of the state's total brothel closures during 1995–1996. The closures limited the market for prostitution: women and men were forced to work in a limited number of sites that had managed to secure official authorization.

The closure of brothels generated an unprecedented degree of public discussion in Newcastle about sex work which culminated in a 'law and order' response, with an apparent increase in street prostitution triggering a 'moral panic' regarding the supposed ineffectiveness of the legislative changes. In local suburbs, residents organized themselves into political lobby groups, demanding 'tough' measures be adopted by police to eradicate street prostitution. Police responded to these complaints, promising an increased presence in the working class suburb of Islington, which was apparently reeling from a 'plague' of street prostitution.

As with earlier media accounts of prostitution in NSW, journalists ignored the sex workers' side of the story, accepting residents accounts

uncritically. Interviews with sex workers focused on the reasons sex workers entered the industry and titillating details of their work and earnings (see Perkins 1993). The local media described Islington as an 'outdoor brothel', 'gripped by prostitution, drug use and crime.' In one report it was noted that over 100 local residents had met with police and members of the Newcastle City Council in an effort to explain how their 'nice civilized suburb' had 'developed into a "cancer" with residents fearing for their safety and well-being'. It was reported that thieves were breaking into residents homes as they slept, while the public amenities in Islington Park had become a haven for drug addicts, homosexuals and pimps. Residents gravest fears were reserved for children who 'would become infected with hepatitis or HIV from the hundreds of syringes and condoms left in yards and streets each day' (Connolly 1997).

Despite the assurances of parliamentarians that legislative change in New South Wales would ensure the indiscriminate operation of the law, subsequent police raids in the suburb of Islington have resulted in the arrest and conviction of (street) prostitutes, with clients or pimps typically escaping convictions. That the marks of sin are no longer clearly visible upon the bodies of prostitutes, has done little to comfort a public yearning for an imagined and symbolic certainty offered by regulatory practices emphasizing difference.

At the time of the 'law and order' crackdowns, a sex worker had written a letter to Newcastle City Council, part of which stated:

I'm writing in concern with the closure of brothels or the redirection of them.

I am writing on behalf of other sex workers and with [sic] private situations...

We have been established for three ½ years ... The neighbours are very kind and helpful, one mows our lawns another sends us cake and biscuits slices now and then. The [suburb] police have not had one complaint about us, nor has the Newcastle council.

A red light district will attract a lot of bad elements for workers and the public, which has been proven with other known red light districts, also causing bitchiness between each brothel. Gentleman do like to go to a private home because of the discretion and privacy.

On ending this letter I would like to ask *the council members*: if prostitution is legalized, why are you making it hard for us to operate and earn a living?

The difficulty in quantifying the impact of the current legislation is apparent when considering its significant impact on the organization and regulation of sex work in regional and rural centres. Much of the current legislative framework in NSW was designed to regulate a small section of the sex industry—that which was publicly visible in highly urbanized settings. As such, the amendments to existing legislation have had unanticipated consequences in other sites. For example, prostitution suddenly became a critical political issue in many rural and regional settings following 1995.

What the statistics have not recorded is what has happened to the numerous sex workers (estimates have ranged to as many as 4,000), not dissimilar to the woman quoted above, who have had their businesses closed or have been simply forced from the industry through stigmatization and harassment (Red and Saul 2003). Many of these women migrated

to the 'authorized' industry. Some further isolated themselves from existing social networks and service providers.

Many of these workers had operated unnoticed in commercial or mixed residential zones. Legislation, which required sex workers to lodge a development application with local councils gave visibility to small brothels, sometimes impacting negatively on the viability of businesses which were successful because they had managed to operate anonymously. As noted in my previous paper, cottage or home-based sex industries have become unviable in the current legislative landscape. Many councils in NSW have discouraged or expressed hostile opposition to the current reforms, employing a range of strategies which counter the intent of the legislation by clearly opposing the sex industry on moral grounds. One response has been to limit brothels to approved zones or to attempt to establish brothel-free zones. The NSW-based Sex Workers Outreach Project estimates that less than 10% of the sex industry can currently comply with the regulations (SWOP 2004).

### Concluding comments

In analysing the contemporary regulation of prostitution in NSW, I sought to avoid adopting reductionist and totalizing frameworks for understanding prostitution, to document specific shifts in the way in which power is practiced. I was not attempting to discover solutions regarding the 'problem' of prostitution, or 'truths' concerning prostitution. Instead, I was attempting to dislodge and problematize some certainties, which have previously escaped critical scrutiny. The article examined aspects of the operation of power neglected or underwritten in other accounts of prostitution, so as to question the assumption that *all* prostitutes have been subjected to repression in the form of sovereign controls. It made the point that power has enabled as much as it has disabled, and emphasized how 'good' governance does not dislocate and make visible populations deemed different, but seeks to normalize and render transparent *lacking* populations through a combination of regulatory and civilizing strategies.

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