Governing Prostitution: Differentiating the Bad from the Bad

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Abstract

Accounts of the governance of prostitution have typically argued that prostitutes are, in one way or another, stigmatised social outcasts. There is a persistent claim that power has operated to dislocate or banish the prostitute from the community in order to silence, isolate, hide, restrict, or punish. I argue that another position may be tenable; that is, power has operated to locate prostitution within the social. Power does not operate to 'de-socialise' prostitution, but has in recent times operated increasingly to normalise it. Power does not demarcate prostitutes from the social according to some binary mechanics of difference, but works instead according to a principle of differentiation which seeks to connect, include, circulate and enable specific prostitute populations within the social. In this paper I examine how prostitution has been singled out for public attention as a socio-political problem and governed accordingly. The concept of governmentality is used to think through such issues, providing, as it does, a non-totalising and non-reductionist account of rule. It is argued that a combination of self-regulatory and punitive practices developed during modernity to manage socially problematic prostitute populations.

Introduction: Prostitution as a Social Problem

The idea that prostitution constitutes a 'social problem' is largely taken for granted in criminological and, more broadly, social scientific research. Prostitution has been problematised since modernity with reference to criminal and public health frameworks, with both often overlapping (for example, public health regulations may be framed according to criminal sanctions) (Farley and Kelly 2000). In terms of responding to the problem of prostitution, Weitzer (2009) identifies two diametrically opposed paradigms in the literature, which he describes as 'oppression' and 'empowerment'. The oppression paradigm views sex work as a quintessential expression of patriarchal relations, while the empowerment paradigm looks at ways in which prostitution qualifies as work and involves human agency. Both positions seem to agree that there is something 'wrong' with prostitution; however there is marked disagreement concerning what exactly is wrong with prostitution, why it is wrong, and what solutions should be adopted to address the wrongs. It

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is for this reason that prostitution has been referred to as a 'dilemma' for feminist criminologists (Carpenter 1994).

Historically, while prostitution has invariably been viewed as problematic among various audiences of moral entrepreneurs, it has only recently been rendered *socially* problematic. In previous periods prostitution may have been problematised according to moral, spiritual or ethical frameworks (Brents and Hausbeck 2005), but thinking did not automatically define prostitution as a governmental problem. Prostitution has been problematic because it was considered sinful and it has been managed by separating or distinguishing those deemed to be prostitutes from other good, normal or law abiding individuals and populations. Yet, as a social problem, prostitution has not only been problematised in a unique manner (as a biopolitical issue), it has also been managed through specific techniques that have had the strategic objective of normalisation of the prostitute body. As a social problem, prostitution is problematic because prostitution exists within the community as a social practice. This point will be illustrated in some detail shortly. Moreover, our contemporary understanding of prostitution has been framed by historically situated technologies. For example, scientific practices have been significant in informing both official and popular understandings of prostitution (Scott 2003a). Prostitutes may have been subject to social controls at various historical junctures, but the rationale and ends of social control practices were quite different to those which hold today. Rather than 'punishment', the term 'protection' best reflects the current objectives of social control systems in the management of prostitution (Rekart 2005). Producing a healthy prostitute body and civil prostitute populations have been important objectives of social control measures during the modern period and beyond. Similarly, we might characterise recent trends in social control as having operated to invest in prostitution and empower the prostitute, rather than repress or disempower. Normalising controls seek 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 it is conducted complies with certain normative standards.

Social control operates not so much to set prostitutes apart from the broader citizenry (Hayes-Smith and Shekarkhar 2010), but to bind socially those so marked as problematic with other populations, establishing visible links between prostitutes and 'normal' populations. Prostitutes are not so much different as less normal, less perfect, less prudent, less responsible, or less healthy than others. Power works here according to relation, not separation (Foucault 1990a: 136–49, 180–84). The principle of power is not some absolute statement of difference that acts to demarcate the bad and the good. Instead, power operates more broadly and more subtly, visible as a constant anxiety or pressure to conform to shifting and forever unattainable norms. In the case of prostitution, power differentiates the bad from the bad and pluralises in order to bind and govern the circulation of populations.

In modernity, criminologists and other social scientists produced a typology of prostitution which not only demarcated prostitutes from other women, but internally divided prostitute populations into sub-classes according to their place of work. (Early pioneers included Acton (1972) [1857]; Lombroso and Ferrero (2004) [1895]; and Parent-Duchâtelet (1840).) An important division was produced to distinguish between prostitutes working in private and public spaces. These frameworks have informed the way in which prostitution has been socially controlled in modern period and beyond. For example, in liberal and neo-liberal regimes of governance, the street has presented as a space of surveillance and private space as a locus of consumption and civility (Scoular 2010). A complex scientific vocabulary has developed about prostitution which allows for the production of specific

classes of prostitute and evaluations to be made concerning their social status, which is determined according to calculations of relative safety and health. A range of prostitute types exist in the research literature, moving from the 'street worker' (placed at the lower end of the prostitute hierarchy) through to the 'escort' (normatively placed at the higher end of the prostitute hierarchy) (Weitzer 1999).

This paper will examine how the differentiation of prostitutes and their distribution within normative frameworks has informed the governance of prostitution. The governance of prostitution will be examined with reference to the constitution of prostitution as a social problem in the 19th century and the re-framing of prostitution as a public health and criminal problem in the late 20th century. Finally, recent trends in the governance of prostitution will be examined with reference to policy changes in a number of western jurisdictions. The paper further develops ideas I have previously presented (Scott 2033a, 2003b, 2005) by accounting for emerging debates and recent theoretical advances in the field.

Power and the Problem of Prostitution

Feminists have rightly sought to understand prostitution with reference to power relations. Yet a 'Hobbesian' (Clegg 1989) understanding of power has typically led political commentators on prostitution to subscribe to a one-dimensional view of power in which the locus of power is presented as monolithic state apparatuses, identified with the criminal justice system (Dworkin 1978, 1981; MacKinnon 1989; Millet 1975). It has also led to an anthropocentric understanding of power, concerned almost exclusively with the question of who holds and who lacks power. Rarely have commentators been troubled to examine how it is that power operates, scrutinising the strategic dimensions of power practices. Interest has settled on ideological aspects of power rather than practical techniques of power. The dominance of a juridico-discursive understanding of power has left critical studies of prostitution with a political vocabulary structured by oppositions between state and civil society, coercion and consent, criminalisation and decriminalisation (Shrage 1989). More often than not, power is constructed as exclusively repressive, there being little understanding of the way in which power may operate through investiture. This has led to research overemphasising the significance of the criminal justice system in the socio-political regulation of prostitution, and underestimating the significance of other sites of regulation, particularly sites of power associated with the production and maintenance of the civil and/or healthy body. Political reform has come to be defined in terms of 'more' (radical) or 'less' (liberal) legal intervention into prostitution. Scoular (2010), for example, indicates that legislation promising to protect prostitutes in Britain has resulted in greater policing of women's lives. This argument tends to quantify the operation of powers, in terms of more control or less, when what is absent is a qualitative focus, which examines powers in terms of new strategic directives which create new subjects and spaces of control. Moreover, it needs to be acknowledged that legislative change does not necessarily weaken or destroy powers. This said, while it is important not to overplay the significance of sovereign powers in the governance of prostitution, it is also important that we not entirely disregard such powers, neglecting both their symbolic and material dimensions (Scoular 2010).

One of the main problems with questions deriving from the Hobbesian position is that they fail to ask how particular classes of prostitutes have been singled out for contemporary political attention. All prostitutes are repressed by a unitary power that everywhere has the

same effects. Here the complex and varied directives of practices of governance are reduced to the purpose of 'abolition' (Phoenix 2008:39). There is a failure to understand the diverse strategic directives of powers. During the last two hundred years, the activities of individual prostitutes have been socially contextualised and made politically meaningful by discourses linking prostitution to issues of civil and national security, and by rendering the health/sexual behaviour of prostitutes socially and politically meaningful. It is this insertion of the prostitute into the social that has allowed for prostitution to be constituted as a political problem in recent times. For example, in the wake of HIV/AIDS, epidemiological narratives of social danger have (re)constituted links between prostitution and public health (Piot et al 1984; McKeagney 1994). Contemporary forms of power have as a primary objective the responsibilisation of prostitutes: that is, powers seek to train and improve the physical body of the prostitute in order that it be made more efficient and docile. Power is productive in that it seeks to produce 'healthy' and/or 'ordered' prostitute bodies.

The Hobbesian framework has had its discontents. Some recent accounts of prostitution have sought to 'deconstruct' current understandings of prostitution through adopting an uncomplicated form of pluralism which would invent or recreate multiple subject positions for prostitutes to occupy, so as to challenge the widely held idea that prostitutes are passive victims of power (Bell 1994, O'Neill 2000). Other accounts critique what present as apparent contradictions in reforms, which at once criminalise and invest in prostitute populations, creating a binary of mechanisms of freedom and repression (Sanders 2007). The problem with these types of approaches is that they assume that official discourses of prostitution have acted negatively to reduce and immobilise the meanings given to prostitution. Power actually multiplies the meanings given to prostitution and channels them towards specific political objectives. For example, scientific understandings of prostitution have not restricted the meanings that might be given to prostitution, but have expanded the range of meanings that might be accorded to prostitution within certain discursive boundaries. Here may be found the contradiction contained in contemporary discourses of prostitution: prostitutes are threatening *and* threatened, are in danger *and* dangerous. Power seeks to punish and protect prostitutes, enable and disable them, in order that they may better govern (themselves), and be governed. In recent years a number of studies have questioned the idea that legalisation or decriminalisation of prostitution involves a retreat of power. These studies have been critical of the idea that prostitution constitutes a public health problem or a threat to public order and that criminal laws are the primary means to regulate problems associated with prostitution (Scott 2003b; Rekart 2005; Agustin 2005; Scott 2005; Scoular and O'Neill 2007; Hayes-Smith and Shekarkhar 2010; Sanders 2009; Scoular 2010; Sullivan 2010). In various ways, this body of work has directed attention away from state-centred accounts of the regulation of prostitution, drawing attention to new regulatory strategies, frequently described as 'neo-liberal'. Drawing on Foucault's concept of governmentality, this paper attempts to advance this stream of contemporary work.

Governmentality, Public Health and Prostitution

It is only recently that the conduct of prostitutes has attracted governmental consideration. One of the first attempts to reflect on the governance of prostitution was Mandeville's 1973 [1724] *A modest defence of the publick stews*, in which he advocates a police regime for the control of prostitution and its associated ill health effects. Prior to this period, prostitution had not been conceived of as what Foucault has termed a *governmental* problem. Foucault developed the term 'governmentality' to refer to attempts to think and practise power

(Gordon 1991; Foucault 1991; Foucault 2007). Governmentality allowed him to synthesise and develop some of his earlier ideas concerning power: the term being associated with his on-going project to create an *analytics* of power. As such, the term governmentality represents a non-reductive and non-totalising attempt to come to terms with the contemporary experience of power (Rose 1993). Ideological accounts of power would have it that power exists only in the mind of the individual, as interiorisation, representation or acceptance (Foucault 1990b:119). In contrast, governmentality situates power in the practices of individuals. Power does not only target and shape conduct, it operates through conduct. Governmentality may, therefore, help formulate an understanding of the prostitute as both the subject and object of powers. Governmentality suggests that power is diffused throughout an entire social structure and is to be found embedded in everyday practices (Foucault 1991).

It was not until the 19th century that prostitution came to be viewed as a distinct socio-political problem requiring practical forms of management that sought to both discipline and civilise prostitution as a public health problem. The story of prostitution today commences with practical political initiatives designed to manage prostitution *socially*. A negative conceptualisation 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. Yet, the governance of prostitution as a health problem is not another example of 'medicalisation' (Lupton 1997:95). According to the medicalisation critique, public health may be understood as a tool that might be utilised to resist or counter the ill-effects of power in contemporary societies through 'de-medicalisation'. The medicalisation critique creates oppositions between state and civil society that are unhelpful when attempting to account for how public health practices actually work. Public health has been effective in the management of prostitution because it has enabled the criminal and civil regulation of prostitution in both 'private' and 'public' space. If feminists and other critical commentators have ignored the role of public health in the regulation of prostitution, it is because public health is an apparatus of power that typically requires the collusion of those in which it seeks to invest. Prostitutes have a right to be healthy and governments have an obligation to secure the health and well-being of subject populations. Public health is considered to be opposed to the criminalisation of prostitutes (Farley and Kelly 2000), empowering rather than oppressing (Weitzer 2009). Researchers, who have tended to examine how criminal laws repress prostitution, have tended to ignore public health and its role in the regulation of prostitution. (There are a number of exceptions here, notably Spongberg 1997, but the fact remains that even those critical of medicalisation and its associated effects have tended to focus on its more overt and oppressive sovereign measures involving legislative restrictions to freedom of movement and the like.) Indeed, an understanding of public health is vital to any understanding of the civil and criminal regulation of female bodies in contemporary society.

Deemed unhealthy, prostitutes have been punished or have had their behaviour restricted. However, prostitutes have also been governed according to pedagogic forms of intervention that have sought to reduce their apparent lack of health through strategies emphasising empowerment and self-management. The task of regulating sexual behaviour has been increasingly passed from medical and criminal authorities to individuals and communities. This has not signalled an end to governance but a change in approach to governing. Old armatures of law and discipline do not vanish, but their ability to continue to function is premised on the development of mechanisms of security which have as their targets whole populations rather than discrete bodies or territories. The task is not to establish limits or

frontiers which demarcate prostitutes from other populations, but to make possible the circulation of prostitutes within the broader population (Foucault 2007:10–29). One arm of public health has as its locus the institutions and individuals of civil society. Contamination is something to be avoided and prevented, particularly by those who are identified as 'at risk'. Public health might be described as a technology of everyday life in that social controls are embedded in the fabric of everyday interaction, rather than imposed from above in the form of sovereign commands (Garland 1996).

During the modern period, 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. Public health has historically established a strategic relationship between government and the governed in which the individual has been identified on the one hand as the *object* and target of governmental action and as in some sense the necessary (voluntary) *partner* or accomplice of government (Rose and Miller 1992; Osborne 1993, 1996). In this way, prostitution comes to be a social rather than, say, moral problem. The local space of disease and disease control has become the body of prostitute. This is not an isolated body but one situated in relation to other (healthy or civil) populations. The body of the prostitute has been made responsible, the remedy for illness resting with the ability and determination of prostitutes to resist culture, poor personal habits and institutional and environmental constraints. Prostitutes who fail to care for themselves and maintain their health adequately are often viewed as having social failings, having an unwillingness to be well, or an unconscious desire to be unhealthy. (Farley and Kelly (2000) highlight instances of 'victim blaming' in the research literature.) This recalcitrant population is popularly imagined to be comprised of street prostitutes (Weitzer 2005). There is intense pressure on prostitutes to stay 'healthy' and act in ways that might prevent or minimise potential harm to the social body. Failure to act prudently has become a sign of social, as well as individual irresponsibility.

A regime of public health incorporates two distinct, but intimately related, disciplinary and security modalities to care for the social body. The first may be termed, for the sake of convenience, 'sanitationist'. Sanitationist measures have sought, through *regulatory* interventions, to create conditions of security, chiefly through legislative action, which would ensure a satisfactory environment for the enjoyment of good health. The second regulatory apparatus of public health is *hygienist*. This has sought to *civilise* individuals, invariably through subtle pedagogic techniques, so that they might become responsible subjects. Hygienist technologies of power have operated to create a bodily culture that corresponds to biopolitical objectives. These interventions have sought to raise the overall standard of health of the population as a matter of *social responsibility* (Scott 2003b). As an apparatus of power, public health allows liberal forms of rule, premised on governing through freedom, to enter into relation with other zones of power relations premised on sovereignty and biopolitics (Dean 207:107).

The Transformation of Prostitution into a Social Problem

During the Middle Ages prostitutes were often viewed throughout Western Europe as 'untouchables', their hand contact alone being abominable (Rossiaud 1988:55–8). The association of prostitution with sin was strong, and it was this association that heightened awareness of the prostitute as polluting. The prostitute, as a lustful creature, was clearly

dangerous: however the remedy for danger was avoidance rather than prevention. For example, prostitutes were also subjected to *quarantining* practices (Rossiaud 1988:8–9, 58–9, 81). The repression of prostitution during the Middle Ages was neither systematic nor highly organised, although it reinforced the image of the prostitute as sinful other. Torture, floggings, branding and banishment were intermittently inflicted upon prostitutes (Mahood 1990:21–2; Rossiaud 1988:144–7).

The 16th and 17th centuries mark the beginning of a biopolitical age. Foucault (1991:87) observes, '[g]overnment as a general problem seems to me to explode in the sixteenth century, posed by discussion of quite diverse questions'. The power of a state was measured by the strength and prosperity of its citizens rather than its territorial dimensions. It was not the size of the state that was important, nor even the quality of the territory it occupied. It was conduct, or specifically the conduct of all and each, which was thought to maintain happiness and determine prosperity. As such, government sought to foster individual lives in order to further its own development, achieving its own ends which became identifiable with the ends of subjects of rule. Government did not endeavour to develop a form of power that was repressive, but instead one which sought to ensure the life and liberty of its citizens. The sovereign form of power which typically showed itself in the right to take life became overshadowed by a power that sought to maintain and develop life: in short a power which sought to *administer* life, order it and make it multiply (Foucault 1990b:136–7). While sovereign controls had sought to isolate the polluted body, public health sought to train the body, creating a bodily culture that would prevent pollution (Osborne 1993).

Prostitution came to be positioned as a biopolitical problem during the eighteenth century (see, for example, Mandeville 1973 [1724]:21). It was the carnal aspects of prostitution that gave it notoriety in an age in which life, rather than death, had come to dominate the political imagination. Mahood (1990:34) notes that sexual acts became not simply practices to be condemned or tolerated, but practices to be regulated for the good of all. Sex was not just something to be judged by individuals at a safe distance but something to be administered and taken charge of as a governmental concern. Sex became a means by which to measure social utility. Prostitution would be problematic not because it breached God's laws, but because it was 'anti-social'. As noted above, prior to the biopolitical age prostitutes had been punished intermittently, with interventions designed to control dangers symbolically through isolating prostitutes or distinguishing them from good women. No effort was made to transform the behaviour of prostitutes so that it might be aligned with normative standards. Biopolitics allowed for the behaviour of prostitutes to be imbued with socio-political significance, linked to the mechanics of life, and managed through criminal apparatuses which sought to produce a civil and healthy social body.

A Science of Prostitution

During the 19th century, science facilitated the transformation of prostitution into a *social* problem and new scientific technologies multiplied and differentiated the body of the prostitute, allowing for prostitutes to be transformed into objectified subjects. With the use of scientific methods, men sought to discover for the first time the extent of prostitution, as well as the most intimate details of a prostitute's life (see Acton [1857] 1972; Parent-Duchâtelet 1840:41–2). In contrast to earlier periods, 'healthy' prostitutes, engaged in mundane 'everyday' activities, were as visible as those prostitutes found to be diseased or behaving in a riotous manner. The examination of the lives of prostitutes provided some

dramatic findings that called for a re-evaluation of existing truths associated with prostitution, as well as the tried methods for governing prostitution. The scientific dissection of the prostitute population allowed for the behaviour of prostitutes to be measured, their characteristics quantified, and calculations made concerning their conduct. Classes of prostitute were distributed along normalising scales according to measures of sociability. The behaviour of prostitutes was not classed according to a binary schema that would differentiate between good and bad, prostitute and mother, regulated and unregulated prostitution, and so on. Rather than produce the prostitute as 'other', scientific technologies operated to create and draw attention to multiple behaviours, emphasising fluctuation and fluidity among prostitute populations.

There also occurred a tightening of chains of social interdependence during this period: older lines that had separated and demarcated various populations were breached by criminological researchers, and there appeared normalising scales, which both individualised and homogenised bodies. Not only were prostitutes distinguished in their individuality from each other, they were also placed in relation to each other, it being possible for 'case' knowledge to be comparatively instrumentalised. One consequence of this was a rupturing of the divide that separated the prostitute from other members of the community. Nowhere was this more apparent than in the newly emerging cities of Europe, where old distinctions were being blurred, and new ones were developing. Increasingly the idea that prostitutes were somehow *different* from other women was being challenged in the new social landscapes of industrial Europe (Walkowitz 1992; Wilson 1991; 1992). The sexuality of prostitutes made them at once like other women and different from other women. It became possible to make social comparisons between prostitutes and other women, so that the social gaps that existed between classes of women were made visible and promoted as politically relevant.

Aetiological explanations of prostitution insisted that prostitutes differed from other women because they lacked femininity. Femininity was not just something that some women were born with and others were not. Instead, it was more an achievement, something to be created, maintained and upheld for extended periods of time. Nineteenth century sexological constructions of female sexuality as passive and male sexuality as hydraulic allowed for a conception to emerge of the prostitute as less feminine than other women, owing to a supposed promiscuity that was equated with masculine activity. In an extreme sense, the prostitute came to represent a male soul in a female body, her inner masculinity regularly confirmed by writers in descriptions of the appearance, mannerisms, and behaviours of prostitutes (Ellis 1936). If females departed from feminine norms it was a result of their poor self-governance or the inability of others to govern them appropriately. Within governmental regimes the idea took hold that the prostitute was redeemable or reformable. The problem with prostitutes was not that they were unfeminine, but that they lacked femininity. Prostitutes were found to diverge in varying degrees from an originating feminine essence. As such, solutions for the problem of prostitution during the nineteenth century typically relied upon normalising interventions.

The effect of the prostitution debates during the nineteenth century was to entrench in discourse two enduring images of the prostitute: the clandestine and the registered (Walkowitz 1981a, 1981b). The idea that there exist two poles of prostitution still informs current debates about prostitution, and influences legislation concerned with the management of prostitution. Contradictions that emerge, in which prostitutes are constructed as both agent and victim, and construed as both functional and dangerous, have for long

been managed by dividing and distributing the prostitute population along normalising scales identifying good and bad women, polluted and clean whores. This also made prostitution problematic in terms of issues of identification, distinction and classification. During the nineteenth century the question was asked: How might a 'good' or 'bad' prostitute be recognised?

Parent-Duchâtelet's (1840) pioneering statistical research on French prostitutes called into question the symbolic line which had demarcated prostitutes from other populations. In his work, a normalising scale is produced through comparative methods of data analysis. Comparison allowed for essentialised notions of difference to be rendered problematic and questioned. Measurement became a means of constituting each individual prostitute as a unique 'case' according to their degree of departure from a common (feminine) norm. Yet, physically prostitutes were no different from other women. Parent-Duchâtelet argued that there was no difference between the vagina or anus of the prostitute, and that of a virgin. The 'shame' of prostitutes, which Parent-Duchâtelet frequently notes, indicates that they are social beings, notwithstanding their 'habits and vices'. Practices of segregation were not abandoned; however the object of such practices was to produce permanent and real behavioural transformation rather than symbolic distinction. The disordered mind and body of the prostitute were to be civilised. Fluctuation, mobility and spontaneity were to be replaced by order, permanence and consistency.

What made strategies of public health unique at this time was their capacity to provide universal coverage. Strategies of public health targeted healthy and unhealthy bodies, situated in both public and private spaces. When we think today of practices of power in relation to prostitution, we typically think of what might be referred to as sanitationist strategies which targeted those prostitutes who were, for myriad reasons, found to be irresponsible and/or threatening. Contemporary researchers contemplating the history of prostitution regulation are quick to cite the sanitationist interventions embodied in contagious diseases legislation (Walkowitz 1980a), as though this type of intervention embodies the spirit of modern social controls. Forgotten are those regimes of power that first appeared during the middle decades of the nineteenth century which sought to save some prostitutes, make others more responsible, and prevent yet others from becoming prostitutes by *feminising* the female population. In regimes of public health, those closest to the norm (young prostitutes and brothel workers) were subject to hygienist technologies of discipline, while those farthest from the norm ('public' prostitutes, whose appearance was an affront to dominant normative standards) were subjected to sanitationist intervention. Lock hospitals[1] provided an ideal form of sanitationist intervention for recalcitrant street prostitutes, while Magdalene asylums adopted what might be considered an approach more attuned to

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[1] In 1746 a lock hospital was founded in London, which sought to provide public treatment facilities for diseased prostitutes. The term 'lock' was derived from 'loke', the name given to a house for lepers. According to Acton (1972 [1857]), loke originated from the French word 'loques' meaning rags, bandages and lints. The hospitals acquired this name because they were first located on sites that had previously been leprosariums. The lock hospital performed a curing function, having the body of the prostitute as its object. The institution had its roots in state medicine and medical policing. Prostitutes could be detained in the hospital for a period of time under medical supervision, until cured. Release required a display of both physical and moral rehabilitation. Prostitutes who refused treatment could be subject to punishments which mirrored earlier sovereign control practices (such as head shaving and isolation).

hygienist strategies. The increasingly popular Victorian representation of prostitutes as 'victims' of circumstance or seduction helped to undermine resistance to the provision of charity for prostitutes, which had been significant amongst those who viewed prostitution as a sinful activity. The idea of the prostitute as 'victim' allowed for prostitution to be managed and imagined in new ways. Those seeking to characterise the prostitute as victim had to build a mythology, elaborating upon who the prostitute was, who they had been, and what they might become. The work of social scientists, such as Parent-Duchâtelet, was essential to this narrative.

Institutional Management of Prostitution

In accordance with the popular belief that the prostitute was beyond redemption, early state interventions into prostitution, such as lock hospitals, had only sought to cure the body of the prostitute (Bristow 1977:65–6). Following the more charitable Victorian view of prostitution, Magdalene asylums were established by religious reformers critical of poor houses and the penal system for hardening young offenders, particularly those charged with first offences and sexual misconduct. It was claimed that existing institutions lacked a moral focus and were incapable of treating the mind (Godden 1986; Mahood 1990:55). They sought to provide a humane regime of treatment for the prostitute that offered a compromise between the fundamentalist view of prostitution as a sin and what they saw as the 'scientific' response to prostitution, which imposed policing strategies that neglected treatment of the soul. Those who administered Magdalene asylums were against regimes of corporal punishment and force, attempting to instil in inmates not fear but a sense of love, confidence, and security, adopting techniques such as flattery in order to strengthen self-respect (Mahood 1990:104–105). The Magdalene asylums had as their goal the transformation of the outcast poor into the respectable and disciplined Christian poor (Godden 1986:300–301).

Magdalene asylums were revolutionary experiments in that they proposed the use of flexible and multiple strategies for managing prostitution. Indeed, the idea that some prostitutes could be cured or reformed was a radical departure from earlier beliefs concerning prostitution. Despite the radical agenda, these institutions survived for little more than a century, their functions being dispersed into an array of other institutions and programs that were to adopt more practical and efficient methods to manage prostitution. Indeed, Wahab (2002) has documented how some of the work of evangelicals was taken up formally by social workers in late 19th and early 20th century America. From an official perspective these institutions were not economical, being costly and labour intensive. They also failed to develop a strategy to 'prevent' women from *becoming* prostitutes. Governmental objectives were to be better realised through the development of more subtle and less intrusive forms of intervention (targeting the body), that would transform health into a desired standard of all and each. While it is not within the scope of this paper to account for these new approaches to public health, I will now briefly examine how prostitution has been re-configured as a social problem in the era of HIV/AIDS.

Re-positioning Prostitution as a Health Problem

In a survey of the literature on prostitution, Farley and Kelly (2000) have noted that 670 prostitution related references appear in the Medline database between 1980-1984 and 1992-

1996. The 1990s and 1980s marked a high point in recent government concern with prostitution as public health problem. Prostitutes, signified by their sexuality, and historically associated with the spread of disease, became a focus for public scrutiny with the advent of HIV/AIDS. HIV/AIDS helped to re-centre prostitution as a governmental concern (Phoenix 2008:34–5). Increasingly during the late 1980s and early 1990s, prostitutes were viewed in epidemiological literature as reservoirs of disease and transmitters of infection from the gay population (the 'original' source of the virus) to heterosexuals. This scenario could not have been imagined had not both male and female prostitutes already been constructed as fluid subjects—reformable creatures who vacillated between normality and abnormality. As writers continued to emphasise following the appearance of HIV/AIDS, *some* 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 prostitution, 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 (epidemiological) quarters (Morse et al 1992a:46).

The contemporary characterisation of prostitutes in epidemiological discourse has influenced the way in which prostitution has been governed. The characterisation of public prostitutes as diseased and dangerous has legitimated current initiatives, largely couched in terms of 'harm reduction', to police this population, while private prostitutes have been subject to responsibilisation strategies that have been advanced under the rubric of liberal public health initiatives. Increased regulation of public forms of prostitution has occurred in spite of evidence suggesting high levels of condom usage among street workers (Fox et al 2006; Phoenix 2008). Scientific methods have been utilised to measure the culpability of those who have the HIV virus, public health strategies being directed according to calculations of innocence and guilt (Triechler 1989:49). Those assessed to be sufficiently prudent (for example, prostitutes deemed to work in private spaces) have been subjected to broad public education initiatives which have focussed upon specific communities or the 'general population', and have allowed health professionals and social workers to assist people in making 'healthy' choices aligned with governmental initiatives. There has been an investment in specific populations, groups being 'empowered' so that they might develop certain skills to help them exercise greater control over their lives (see Kinsmen 1996; Loff et al:2003). For example, the Sex Workers Outreach Project (SWOP) in New South Wales has collaborated with the NSW Department of Health, following the decriminalisation of prostitution in New South Wales in 1995, to provide sexual health information and support to people who engage in prostitution. While this program has been largely viewed as a success, being imitated in other regions such as North America, other programs have been subject to criticism by feminists and sex workers for their more draconian approach to empowering sex workers. For example, the 100% Condom Use Program (100% CUP) established in 1989 in Thailand as a collaborative initiative between WHO and the Joint United Nations Programme on AIDS (UNAIDS) has been criticised for rendering sex workers the object of its progams rather than contributors to them (Loff et al 2003). Non-compliant and recalcitrant populations who are unwilling to utilise appropriate resources and take precautions against illness, or are unwilling or unable to take public health advice in the same manner as responsible citizens, are constructed as either 'mad' or 'bad', being presented as sociopathic or psychopathic (Scott 2003b).

In Australia and other jurisdictions where prostitution has been decriminalised or legalised, the compulsively-irresponsible are deemed unable to regulate themselves, and therefore they must be regulated by others through the application of disciplinary and civilising controls, involving either compulsory forms of private counselling or specific prohibitions (Kinsmen 1996:398–402). Two typifications of 'the' prostitute have emerged, representing two distinct poles. At one pole there is the 'high-class hooker' or escort, who 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, with links to disease and vice (Scott 2003b). Kantola and Squires (2004) also suggest that recent representations of prostitution distinguish between the 'street walking' prostitute, who according to the liberal framework, is a public nuisance, and the trafficked prostitute who, according to human rights and moral discourse, is a passive victim sexual and economic exploitation. While health has been the main focus of the re-evaluation of prostitution as a social problem, other, often interrelated, anxieties concerning prostitution have also emerged, including: increasing concern among residential communities regarding the negative impact of sex work on quality of life; heightened concern about children and minors in the sex industry; and concern with sex trafficking, enforced prostitution and migration (Hubbard 2006:21). Sanders and Campbell (2008:48) have observed:

> Assumptions of 'risk' are plenty when considering the sex industry. Whether considering the street or the massage parlour, it is generally assumed that any involvement in the sex industry will mean women are putting themselves at risk. 'Risk' is assumed to physical, mental and sexual health because of the nature of the work involves multiple sexual partnerships, dangerous working environments, risky activities (such as drug use and unsafe sex) and risky relationships such as coercive 'pimps' and boyfriends.

Risks may be managed through public health and criminal interventions. Sanitationist and hygienist technologies have recently had the strategic objective of risk-reduction. Hygienist strategies are particularly appropriate to reduce health risks in that risk is intimately related to human behaviour, unlike sin or taboo which may have external causes that are non-reducible to social or human affairs. Civilised individuals constantly evaluate their risks and modify their conduct accordingly, making appropriate adjustments to alter behaviour in accordance with future objectives. It is normal and rational to avoid risk, while taking risks is judged to be caused by weakness or miscalculation. For individuals to embark on a process of behavioural transformation they must first conclude that their current behaviour is problematic or undesirable, in that it may place them or others in danger. To be civilised is not to reach perfection, for there can be no such thing in a risk society. To be civilised is to be constantly observing oneself and others in the acknowledgment of personal imperfection. The civilised individual is always lacking, is always in deficit: it is the realisation of this that promotes socially responsible and appropriate conduct. At-risk individuals must be willing to do something about their vulnerability, to monitor and confront personalised deficiency in an effort to avoid danger (Peterson and Stunkard 1989). Prostitutes are interesting figures when considering the language of risk because they are considered to be both a danger to society and endangered by society. They are subjected to both regulatory and civilising strategies. Prostitutes have been constructed as both agents and victims. The typological differentiation of prostitute populations allows for such assessments.

Responsibilisation strategies, presented as humane, economical and efficient, have become the chief line of defence against HIV/AIDS and the public disorder associated with prostitution (Sanders 2009; Scoular 2010). In epidemiological discourse, attention has

shifted from sexual identity to sexual practices. The objective regarding female or male prostitution is no longer to rehabilitate individuals so that they might assume 'normal' (productive, heterosexual etc) lives. Nor is it to eradicate prostitution by targeting either its supply or demand. Instead, the objective is less ambitious. The existence of prostitution has been accepted within governmental discourses which have sought to improve the conditions in which prostitution is practised. Those who identify as prostitutes are not expected to aspire to be 'normal' members of the community. They should, however, aspire to be 'good' prostitutes. Being a 'good' prostitute means different things in different contexts, though it may generally be understood to be a hygienic and socially responsible subject. Nowadays, this means being a 'professional' prostitute as opposed to an 'amateur' or public prostitute. Epidemiological and criminological discourses of prostitution as often emphasise the differences between prostitutes as they do the differences between prostitutes and non-prostitutes. Here we can see a shift from an emphasis on criminalising/sanitationist strategies which evoke a politics of difference, to a subtler form of management which posits relationship between disparate populations and works according to a logic of differentiation.

Re-positioning Prostitution as a Civil Problem

While the focus on prostitution as a public health problem has waned somewhat since the late 1990s as new cases of HIV declined in western nations, the idea that prostitution was socially disruptive remains potent. In the early twenty-first century prostitution has become one of a range of anti-social or uncivil activities that Sanders (2009) has referred to as 'contractual' forms of governance which promote self-regulation through coercion or sanction. Recent policy shifts in Britain illustrate how the public health distinction between private and public forms of prostitution has continued to be significant in shaping policy responses to prostitution.

In 2004 Britain instigated its first broad-ranging review of prostitution since the 1950s. New Labour's reform agenda in Britain was couched in the rhetoric of inclusion and participation, with the objectives of providing prevention, protection and support. Legislation in Britain subsequently increased surveillance of 'persistent' street workers who were considered to be an 'anti-social' population because of their public visibility and the link created between prostitution and public disorder. The British legislation seeks to pressure women out of street work through the adoption of: compulsory rehabilitation measures, including arrest; welfare referral programs; mandatory drug testing; compliance agreements to work with outreach programs to produce exiting plans; compulsory attendance at drug intervention programs; and application of civil and criminal sanctions, such as exclusion orders, curfews, and anti-social behaviour orders. Specifically, legislation required street workers to attend three meetings with an appointed supervisor in a six month period to identify causes of involvement in the sex industry and develop 'exit' routes. If rehabilitation was not complied with, criminal sanctions could be adopted (Sagar 2009). The legislation has been described as a 'neo-liberal' approach to the governance of prostitution which seeks to modify anti-social behaviour through forms of contractual governance. It is argued that licensing and exiting strategies in Britain have as their objective the production of the rational and self-governing subject, required by neo-liberalism. While prostitutes had been socially excluded in the welfare state through structural change, under neo-liberal regimes they have been managed through education and training, so that they might enter into the sphere of legitimate economies and social relationships (Scoular 2010).

Responsibilisation strategies direct individuals as to how they might best act if they are to receive social support (Sanders 2009). In Britain the governance of prostitution has moved from enforcement (punishment) to a multi-agency (regulatory) approach, in which more (civil) agencies are co-opted into wider and more dispersed structures of governance (Scoular and O'Neill 2007; Scoular 2010). Regulatory agents might include local authorities, businesses, policing agencies and private security. The British regime mirrors reforms in other European countries, such as Sweden and the Netherlands, which have increased penalties associated with public forms of prostitution while 'protecting' private forms of prostitution. Adopting a liberal dichotomy between public and private space, these present the streets as a space of surveillance and private space as an arena of consumption and civility (Scoular 2010).

In Australia, neo-liberal strategies have been mobilised during the last two decades to address a number of problems associated with prostitution, such as organised crime, police corruption, violence against women, the sexual exploitation of children, and disruption to neighbourhood amenities. As with Europe, new regulatory regimes have emerged which have devolved responsibility for the management of the sex industry to multiple agencies, including local government and health authorities (Sullivan 2010). In the States of Queensland and New South Wales, legislation and decriminalisation respectively, have resulted in regular health checks of prostitutes for sexually-transmitted infections, despite evidence to show that prostitutes have lower incidences of STIs than the general community (Sullivan 2010). In these states, regulation of prostitution has shifted from a criminal-law approach, dominated by sporadic and often draconian policing patterns, to an approach more reliant on 'localised' controls (Scott 2003b). In Queensland police may use 'move-on' powers to penalise public soliciting and encourage exit from illegitimate industry. Sullivan (2010) has observed that penalties for public soliciting have increased four-fold in Queensland since the introduction of licensing under the *Prostitution Act* (1992) (Sullivan 2010).

The idea that a sovereign state should provide security in all its territorial spheres, private and public, as Garland (1996) has noted, is no longer taken seriously by legislators in western jurisdictions. As Hubbard (2006:11–13, 22) suggests, the idea that sex work is inevitable and cannot be prevented (or eliminated) through the application of traditional sovereign measures presents as a key factor shaping the governmental response to prostitution. Commentators in the United Kingdom have observed that there is, for example, an acknowledgement among police that those charged with soliciting will soon return to the streets and that kerb-crawling legislation is a poor deterrent to those looking to buy sex (Hubbard 2006). Existing laws have been viewed as implanted in an ad hoc manner, with police unwilling to enforce laws that are considered inoperable or morally indefensible. As such, policing in the United Kingdom has adopted less ambitious policies which attempt to reduce the public visibility of prostitution, reduce surveillance costs, and gather intelligence on those who threaten sex workers with exploitation and violence (Hubbard 2006; Sanders 2009).

However, this retreat from traditional forms of social control in the United Kingdom and other jurisdictions such as Australia has also been subject to sporadic criticisms and reversals, with calls from policy makers for 'zero-tolerance policing in an effort to get 'tough on crime' (Scott 2003b; Hubbard 2006). As such, decriminalisation and legalisation, while less ambitious in scope, have not signalled a cessation of attempts to normalise the deviation associated with prostitution, and it is this very process of normalisation that

validates the states limits, confirming the necessity of governing at a distance. Regulation has not ceased, but has become more specialised and focussed, with some prostitutes being 'protected' and 'cared' for, while others are subjected to penalisation (Scott 2003b). Hubbard (2006) details how measures for controlling prostitution in the United Kingdom have included the use of both environment-based crime prevention initiatives and direct police interventions. Measures have included closed circuit television cameras in areas of street soliciting, traffic management schemes to discourage kerb-crawling, lighting schemes designed to discourage street workers from operating in certain neighbourhoods and the deployment of community watch initiatives to gather intelligence on prostitutes and their clients (this has included 'name and shame' tactics). Anti-Social Behaviour Orders (ASBOs), publicised through the courts, media and police websites, have been deployed effectively to ban sex workers from certain areas. In Nottingham a police initiative used covert operations to make 350 arrests, serve six ASBOs, and used street signs and posters in public spaces to publicise successful enforcement actions. Hubbard (2006:14) notes that such enforcement amounts to a form of social exclusion that marginalises sex workers within the communities where they live and work. But two caveats need to be noted here: the focus of such exclusionary practices is not all prostitutes; and such exclusionary strategies, where they exist, are enmeshed with other strategies which seek to re-socialise prostitutes. As Dean (2007:14–15) states:

> While the headline value and proposed *telos* of liberalism is liberty, we should examine the ways in which practices of governing divide populations, so that some and be governed by freedom, others by obligation and sanction, still others by sovereign force and coercion. We might also examine the division between state – or government in its formal sense – and civil society constitutive of liberalism as a limited form of government and the effects of different version of that division.

Conclusion

In the last 200 years, social control has largely been concerned with the 'protection', cure, reformation, rehabilitation of the prostitute: all measures that have had the common purpose of normalising the prostitute, or ensuring that prostitutes reach a certain standard of sociality deemed desirable. For example, a common goal of authorities and reformers has been to sanitise prostitution and render the prostitute a hygienic or civil subject in order to promote public health and prevent social disorder. Prostitution has been governed as a social issue, with certain classes of prostitute having been classified as uncivil, 'diseased and dangerous' or 'at-risk' of disease. Power has been practised in terms of improving the health and civility of the population, among whose number the prostitute is included (Foucault 1986d). Discourses of health and civility—what we might refer to as *social* discourses, in terms of their modern articulation—have amplified the significance of prostitution, not by severing the links between prostitute and community but by expanding, multiplying and reinforcing them.

While research has emerged which examines some of these shifts in governance, not all those writing on prostitution have been ready to abandon Hobbesian understandings of power which emphasise repressive regimes of governance. What is required is an approach which accounts for how the exercise of power in liberal democracies involves the melding of heterogeneous forms of power, which may include sovereign controls woven into more mundane forms of government (Dean 2007:96). For example, Weitzer (2005:62), writing of the social control of prostitution in the United States, argues prostitutes are 'increasingly

being demonized, marginalized and criminalized' as a result of a 'moral crusade'. While it needs to be noted that there is no unified experience of prostitution law reform in varied contexts and the need to account for local deployments of power (Sullivan 2010), a longer term historical trend is apparent whereby the regulation of prostitution has been advanced, emphasising rehabilitation, protection and inclusion. For example, Brents and Hausbeck (2005) have documented how laws in the US state of Nevada have sought to protect private workers by developing regulations to monitor everyday work practices in brothels. These include the provision of guidelines for negotiations between client and workers, audio monitoring of rooms, routine testing requirements and mandatory condom use. Where local reversals are evident in the adoption of excessively punitive controls, it may be useful to consider Garland's (1996) argument that in response to the 'crisis of penal modernism' two distinct criminological projects have emerged. The first, 'criminologies of the other', re-enacts the myth of the penal sovereign and its law and order powers. These can be witnessed in sanitationist controls and police 'crackdowns' on public forms of prostitution. The second, 'criminologies of the self' trend in a different direction and operate according to a different kind of rationality. These new developments might be best described as new modes of governing crime and incivility. They have typically had as their target private forms of prostitution. They each entail new kinds of objectives, new criminological discourses and forms of practical knowledge, and new techniques and apparatuses for implementation (Garland 1996:450). These new criminologies tend to mobilise what Garland refers to as responsibilisation strategies which govern at a distance and adopt 'multi agency' approaches to produce active citizens. Where punitive strategies are invoked, as has been the case with forms of public prostitution, we witness what might be considered a symbolic and hysterical denial of a more pervasive trend towards what I have referred to elsewhere here as hygienist or environmental forms of regulation. In terms of considering these shifts, we must be critical of 'top-down' and state approaches which give the impression that regulatory regimes possess an inherent unity. Rather, the recent trends in the regulation of prostitution suggest governmental apparatuses will often have what appear to be contradictory and provisional strategies, which produce a patchwork of local norms, of which law forms only one component (Scoular 2010).

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