SEX, LAW AND SOCIAL CONTROL: THE SEX INDUSTRY IN NEW ZEALAND TODAY

Jan Jordan
Lecturer
Institute of Criminology
Victoria University of Wellington
New Zealand

THE STRUCTURE OF THE SEX INDUSTRY IN NEW ZEALAND IS ESSENTIALLY similar to its structure in Australia. Most of those who earn their living from sex work are women; their clients overwhelmingly are men. The New Zealand Prostitutes' Collective (NZPC) estimates that approximately 8,000 women are currently working as prostitutes in New Zealand, with that number likely to rise in the light of increasing unemployment and recent benefit cuts. The women make their services available in a wide range of contexts and can be found working on ships, on the streets, from massage parlours, through escort agencies, from hotel bars and clubs, and from their own homes. Some are barely teenagers while others are approaching pensioner status—the majority are probably aged between eighteen and thirty. They come from a variety of social backgrounds representing women who have grown up economically disadvantaged, as well as those from families of the wealthy and privileged. Some may have been raised in strict Catholic schools while others have had little or no religious upbringing.

Their personal lives reflect a wide range of disparate lifestyles—some fit sex work around other work, study or parenting commitments while others may work full-time in the industry and see themselves as 'career prostitutes'. The women vary in their attitudes to personal relationships while working—some maintain they are able to sustain involvement with male partners or husbands; some prefer lesbian partners; and others may opt for celibacy. Drugs or alcohol may be used by some to help cope with their clients' sexual demands, while others maintain it is too hard working while they are 'out of it' and prefer feeling in control of the situation.

1 This paper, while acknowledging the existence of gay, transvestite and transsexual sex workers, is concerned primarily with sex work situations involving women interacting with male clients, since this is the most common arrangement and the one around which the author's research has been oriented.
Some stratification of the industry exists along class and ethnic lines—working-class and Maori women are more likely to be employed in situations characterised by lower pay and higher degrees of risk than are middle class and Pakeha women. For example, a Maori working-class woman may find it difficult to obtain employment in a massage parlour, especially if she has any tattoos on her face or body.

Recently the number of Asian women working in the country has increased, with growing numbers of Thai and Filipino women working in Auckland. Whereas there are comparatively few pimps in the New Zealand sex industry overall, these Asian women are considerably more vulnerable to exploitation by men because they often depend on male sponsors to bring them into the country and frequently have an insecure immigration status.

The aim in stressing these different factors is to emphasise the diversity of women who are involved in the sex industry. All too often we accept popular, stereotypical images of the prostitute. These images help those of us who do not work in the industry feel smug; firstly, in our ability to know ‘one of them’ at a glance and secondly, to feel reassured that clearly, we are not one of them. Yet it is increasingly difficult to sustain such a reassuring division.

Historically, one of the most effective tools of social control has been the principle of divide and rule. In the hands of patriarchy this principle has been evident in the division of women into two camps—madonnas and whores (Summers 1975). Men were thereby guaranteed access to both respectable women whom they could marry and trust to be fit and appropriate mothers for their children, as well as to wayward women with whom they could freely indulge in all the pleasures of the flesh. However, certain penalties are attached to being in the latter category and these dissuade many women from choosing whoredom. Hence, to be publicly identifiable as a prostitute became socially and legally dangerous. Such a tag could cost a woman not only her reputation, but could also be used to deprive her of her children and her freedom.

New Zealand's laws on prostitution essentially reflect the aims expressed in law codes since the days of St Augustine. Suppress prostitution, he said, and capricious lusts will overthrow society (Henriques 1963, p. 25). The madonna/whore dichotomy was seen as an effective way to curb men's adultery, the assumption being that men's sexual appetites were inherently more voracious than women's and thus required additional sources of satisfaction.

Laws on prostitution have not generally been oriented towards eradication but towards regulation. Men's interests were served too well by the existence of prostitution for them to wish to eliminate it completely. The existence of a pool of prostitutes was not only a source of sexual pleasure and a means of assisting in the patriarchal control of all women, but could also be a source of valuable revenue for the state. For example, during the days of the Roman Empire commercial sexual activity had been taxed by the emperor and the early Christian church was initially reluctant to lose the income from such activities. Increasingly, it was felt that for the state to accept revenue generated from prostitution effectively turned the state into a pimp and, therefore, implicitly condoned a trade about which there was growing ambivalence.

The current legal situation in New Zealand still reflects such ambivalence. To engage in the act of prostitution is not a criminal offence, but a range of offences exist which may be committed in association with acts of prostitution. The most common of these is soliciting, for which there is a maximum fine of NZ$200 (Summary Offences Act 1981, s. 26). Brothel-keeping is also illegal—whether by one woman on her own or more—as is living on the earnings and procuring (or pimping), all of which have maximum terms of imprisonment of five years (Crimes Act 1961, ss. 147-9). In practical terms, therefore, it is virtually impossible for a woman to work as a prostitute and stay within the law.

An additional piece of legislation was enacted in 1978 specifically to control the growth and operation of the massage parlour industry. Entitled the Massage Parlours Act 1978, it provides for the licensing and regulation of all parlours and parlour operators. Included in its
provisions are clauses prohibiting any woman who has had a conviction for drugs or
prostitution in the previous ten years from being employed in a parlour, as well as any
woman under the age of eighteen. The Act also requires each parlour to keep a register of
who works there, listing each person's name, age and address.

There is considerable scope within the criminal law statutes for the regulation and
control of prostitution. In practice, however, a high degree of selective law enforcement is
evident. Soliciting offences constitute the largest category, but numerically even they are
relatively few in number—125 reported offences for the year ended 31 December 1990
(New Zealand Police Department Statistics 1990). In total there were 140 brothel or
prostitution-related offences reported last year, plus a further ten associated with breaches
of the Massage Parlours Act. The number of convictions is low, but it is largely concentrated
on sex workers who operate in publicly accessible settings while those working privately
have comparatively little chance of detection (Robinson 1987, pp. 183-6). It is significant in
this regard that massage parlours have been defined in law as public places, thereby assuring
police access and control.

While the total number of offences recorded may not be very high, the impact of a
conviction relating to prostitution activities can be substantial. It can clearly affect a woman's
future work, travel prospects, her ability to raise mortgage or loan finance, acquire life
insurance and so forth. For women working in massage parlours, a conviction for
prostitution is sufficient to prohibit them from legally working in a parlour for the next ten
years and greatly increases their vulnerability. Either they may continue working in parlours
illegally, risking exploitation by bosses (and possibly clients) who are aware of their insecure
status, or they go to work on the streets or through escort agencies, both of which can
increase their vulnerability to physical attack or pressures to engage in unprotected sex.

Police enforcement of the prostitution laws in New Zealand has typically been highly
selective and idiosyncratic. Major cities such as Auckland and Wellington have only two or
three officers at a time charged directly with Vice Squad responsibilities. They may possess
considerable discretion concerning where to focus their energy and how to enforce the law.
Some, for example, may target escort agencies while others make it a priority to use
undercover police to charge street-walkers. Officers have at times chosen to check up on
the details which women have entered on massage parlour registers by visiting the listed
home address and inquiring whether a particular person from a particular parlour lives there.
Given the social stigma which still surrounds prostitution, and the fact that some women are
not known as sex workers to those with whom they live, this type of police action would
appear not only potentially hazardous but also a gross violation of civil liberties.

In Wellington, since the formation of the NZPC in 1987, members of the collective
have been instrumental in helping to develop a good working relationship with the police.
This has largely developed from a mutual acknowledgment that, as Catherine (an NZPC
spokesperson) says: 'In order to keep AIDS out of the sex industry, it is necessary to bring
the sex industry out of hiding'.

Unfortunately, however, relations with the police have become severely strained over
recent months. Trusted officers have moved on to other positions and a new tone of
harshness has characterised the enforcement of soliciting laws, evident in increased parlour
raids and street busts.

These actions have had negative repercussions for the individuals arrested as well as
rendering the Prostitutes' Collective promotion of safe sex counter-productive. Some
parlour managers are now nervous about having the Collective's magazine—Siren—or safe
sex posters on display, since this implies a knowledge that sexual acts occur on the
premises. Furthermore, many workers are now understandably anxious about being found in
possession of safe sex publications, lubricants or condoms, fearing that these may be used
as evidence against them in court. There is an urgent need in New Zealand for the police to expand their awareness of the health and safety implications of law enforcement policies.

Our laws on prostitution reflect the double standard of morality in society, which in the past has condemned women's behaviour, while condoning the same behaviour by men. Furthermore, the division of women into madonnas and whores disadvantages women, while it can be advantageous to men. The madonna/whore dichotomy has worked to men's advantage for centuries and it is unlikely this central support of the male power base would be dismantled easily.

In many ways, however, the madonna/whore division is a false dichotomy. It obscures the extent to which all women in our society end up making bargains around their sexuality with men (Jordan 1991). To be female in our society is to grow up with an awareness that men place a price-tag on women's sexuality. Even women who identify as lesbians may make similar arrangements with men, which while lacking in consistency and political correctness nevertheless become perfectly understandable given an analysis of where the power lies in our society. While men continue to occupy positions of authority, control access to jobs, flats and mortgages, and persist in defining a woman's value as residing in her sexuality, then it is inevitable that women will seek to use access to their sexuality as a means of advantaging themselves. It becomes an issue of survival.

Legal reform of the sex industry is necessary to remove some of the worst and most hypocritical abuses of power evident in the current situation. Ultimately, however, the success of such reforms will be limited, unless there is a fundamental shift in the power-base that lies at the very heart of our society. Maybe the strategy advocated by a lesbian feminist sex worker warrants consideration:

If every woman charged every man, including her husband, for every [act of sexual intercourse], then the whole ownership of the world's resources would start shifting to female control (Jordan 1991, p. 238).

References


