

MAKING WORK, MAKING TROUBLE: PROSTITUTION AS A SOCIAL PROBLEM

Why have our efforts to 'clean up' prostitution failed? Even new programs, such as 'John Schools' for customers and training in life skills for service providers, have been ineffective. Deborah Brock asks if our approach to prostitution is fundamentally flawed. We generally think of it as a social problem, but prostitutes see it as a work relation.

Anti-prostitution campaigns and attempts to regulate the sex trade have been made and re-made over the past few decades. In the 1970s and 1980s urban development and new policing strategies displaced workers from established prostitution strolls. Movements for social and sexual liberation turned the business of selling sex into a complex political issue. The Canadian state was confronted with a range of regulatory approaches, advocated by competing interest groups. Deborah Brock examines how prostitution in Canada has been *produced* as a social problem. Contending that 'social problems do not exist objectively,' Brock interprets the role of various actors in mounting the urban sex-trade spectacle: the media, feminist organizations, rights advocates, residents' groups, and state agents and agencies such as the police, politicians, the courts, and government commissions.

Making Work, Making Trouble is the first critical survey of prostitution in Canada. It provides much needed context to all groups enmeshed in the mêlée over territory and rights and should become a standard source in Canadian criminology.

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DEBORAH R. BROCK

Making Work, Making Trouble: Prostitution as a Social Problem

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FOR MY MOM AND DAD

Faye Dawn Ruth Winnifred Walz Brock
1932-1993

Chuck (Charles Herbert) Brock
1932-1971

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The cover image is public domain clip art. It was used by CORP in its campaign for prostitutes' rights.

Canadian Criminal Code statutes and numbers are listed as they were at the time of the events being reported on. For current Canadian Criminal Code numbers and statutes, see Appendix C.

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Sexual Regulation and Sex Work

Late one morning in May 1977, 'Liz'¹ was making her way downstairs to the kitchen, still in pyjamas, when two policemen walked in her front door. Others followed and searched the house, while she was taken to the police station and charged with being an inmate of a 'common bawdy-house.' In all, about twenty-five women were arrested on the same charge that morning. After their release from jail in the evening, they found the contents of their homes in disarray as a result of a police search, and their bank accounts and safety deposit boxes frozen. Their places of work – four Calgary massage parlours – had been shut down by the police. Some of the women immediately applied for welfare assistance. Some began to work out of hotels and bars, others on the streets. Within a year, 'escort services' would begin to open, filling the space left by the disappearance of massage parlours.

What took place in Calgary was also occurring in other Canadian cities, such as Vancouver, Toronto, and Montreal. Massage parlours, 'nude encounter studios,' and other places for 'adult entertainment' were under attack as obvious fronts for prostitution. How is it that at this particular moment, the sex trade, which had been operating in relative privacy, had come to be considered a social problem worthy of national attention?

This is a story about the making of social problems. Rather than beginning with the assumption that social problems exist as social facts, as objectively discoverable conditions in a society, I explore them as the creation of a complex interplay of economic and social forces at particular historical moments in specific locations. We need to ask *why* prostitution in our time is considered to be a problem, and *for whom* (for example, police, residents' groups, feminists, and the media). This may seem an odd pursuit, given that, in our collective historical memory, prostitution has always

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appeared to be a social problem, for reasons that depend on one's ideological and analytic framework. For example, from a theological standpoint, the sale of sexual services offends Judeo-Christian morality, particularly as it flies in the face of the ideals of monogamy, fidelity, and chastity. From the mainstream feminist standpoint, prostitution represents women's subordination and degradation in patriarchal society. Through prostitution, women (and young people of both sexes) are bought and sold as commodities, according to the sexual whims and desires of men. The purpose here is neither to explain these positions, nor to debate their relative merits – prostitution as a sin against God versus prostitution as our society's clearest expression of the sexual domination of women and young people. Rather, it is to demonstrate how, regardless of approach, prostitution takes on greater social meaning at some times than others, and becomes the target of public, media, and state action. Prostitution as a social problem is clearly not a new concern. My focus, however, is on how particular forms of the business of prostitution were *produced* as visible and regulatable social problems from the 1970s through the 1990s.

Chapter 2 describes how indoor forms of prostitution, particularly massage parlours, became problematized in Toronto and other Canadian cities as a result of economic shifts, urban development, policing practices, and local state interests. Economic interests and local state interests worked to develop the idea that these forms of prostitution constituted an urban social problem, a process exacerbated by media participation in the organization of a moral panic. In the wake of the murder of a young boy in Toronto, public support for the elimination of these places was galvanized. Police were therefore mandated to act, and local business interests were addressed as Yonge Street was cleared of its indoor sex trade.

Chapter 3 describes how, with the resulting shift of prostitutes onto the streets, some residents' organizations, police, and city officials allied to 'inform' the federal government of the problem of street solicitation in Canadian cities and demand that it be resolved through criminal legislation. Some of the contradictions, which existed within the branches and levels of the state in addressing what to do about prostitution, are discussed. These led to the appointment of a government commission whose task was to provide recommendations for improvements to state regulatory mechanisms regarding pornography and prostitution.

Chapter 4 briefly analyses the work of this Special Committee on Pornography and Prostitution (the Fraser Committee) on prostitution. The committee's mandate – reform of the Criminal Code of Canada – produced a legislative 'solution' to the 'problem.'

Chapter 5 discusses Bill C-49, a new, punitive regulatory tool enacted in response to the interests of the alliance of residents' organizations, police, and city officials. The legislation, restricting communication for the purpose of prostitution, failed to clear the streets of prostitutes despite record arrests, and caused contradictions within the courts about how such legislation should be employed. Emergent tensions about the use of this law for the policing of prostitutes arose not because of the abrogation of prostitutes' rights, but because of the expansion of the rights of the affluent to determine the character of a city and its public spaces. Tension also grew as criticism of the continual expansion of police resources and powers increased.

Chapter 6 analyses how juvenile prostitution was produced as a social problem through its redefinition as a form of the sexual abuse of children. This was accomplished through the work of the Committee on Sexual Offences Against Children and Youths (the Badgley Committee). The committee's mandate structured this outcome and provided the directive to produce a new system of criminal classification of sexual offences, organized around a distinction between adults and youth. As well, the committee, without questioning the shortcomings in the organization of social services, recommended that they be expanded.

Chapter 7 shows how the deployment of this new understanding of juvenile prostitution via the media used the Badgley Report and police as 'expert' sources in a manner that produced a moral panic about juvenile prostitution. This panic further legitimated and expedited the implementation of the recommendations of the Badgley Committee, namely, an expansion of criminal law and social services, despite the questionable adequacy of these measures in meeting the needs of young prostitutes.

The Making of a Social Problem

In the decades following the Second World War, Canada's economic growth brought with it sweeping social and political changes.² The realm of the 'sexual' was in a process of renegotiation, and the Canadian state was forced to take an increasingly active role to maintain its hegemony in the face of movements for social and sexual liberation. Matters concerning sexuality and gender became prominent social issues. Abortion, homosexuality, pornography, and prostitution, as well as increasing awareness of sexual violence and abuse (for example, rape, incest, and other sexual abuse of young persons), came to comprise a contested terrain through which established sexual boundaries and moral codes were challenged, renegoti-

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ated, and shifted.³ The feminist and lesbian and gay rights movements confronted sex-power relations predicated on the privileging of heterosexual activity within the context of the patriarchal nuclear family. These struggles for greater sexual freedom⁴ took place during a period marked by the intensive sexualization of consumer capital (the use of sexual imagery to sell products). As Jeffrey Weeks has commented, the destabilization resulting from these occurrences means that Western industrialized nations no longer have 'an agreed upon moral framework.'⁵ Now, more than ever, sexual matters are recognized as contested political issues. 'Sex' does not refer simply to a constant, unchanging force or drive, but to a site of socially constructed power relations whose history needs to be uncovered. It is in the context of this renegotiation of sexuality that an overhaul of sex- and morals-related statutes in the Criminal Code of Canada was initiated, particularly since the late 1970s, on a scale not seen since the early twentieth century. It is also within this context that the most recent reconfiguration of prostitution as a social problem occurred.

Feminist organizations challenged the double standard at work in the regulation of prostitution, which punished prostitutes for the sex work that they were compelled to do, but, for most of this period, left their customers untouched by the law. Most of these organizations ultimately favoured the elimination of the sex trade, while in the more immediate term advocating, along with prostitutes, the decriminalization of prostitution. At the same time, prostitutes were beginning to organize and develop a political voice, asserting their right to work, free from harassment. The question of what was to be done about prostitution was a politically complex issue, and in the meantime, the available urban space for prostitutes to work in was rapidly shrinking as redevelopment of downtown cores increased. Throughout the 1970s and 1980s prostitutes were continually displaced from established working areas through inner city renewal practices and policing strategies. Police, residents' organizations, and city officials demanded both the legal tools and financial support for the control of the streets and of off-street prostitution.

It is the latter group of interests, supporting legal sanctions against street-level prostitution, which has had the greatest resonance in the media. The inclusion of a morally laden activity in the Criminal Code of Canada predetermined a 'common sense' perception of prostitution as a social problem requiring a legislative response. Marginalized through this process was an alternative approach: prostitution is work, and it must be treated as such. As Joseph Gusfield comments, to talk about a problem 'is to already assume the character of a phenomenon ... and to define it as having such

and such a shape.⁶ People, groups, and organizations then propose solutions based upon their definition of reality, and in keeping with their degree of access to the mechanisms of political power. By looking at how social problems are actually made, we can locate alternative possibilities for their resolution.

Advocates of criminalization and legalization strategies regard them as realistic and practical responses to street solicitation, by assuming that regulatory strategies will stem the transmission of HIV and sexually transmitted diseases (STDs), eliminate noise and traffic congestion from downtown (particularly residential) streets, and protect property values. Critics of these regulatory strategies point to how these laws are used to condemn and discipline a population of predominantly working-class women for the work that they do, while doing nothing to address the reasons why prostitution becomes an occupational choice for women and young people.⁷

Criminalization is what we have now. While prostitution itself is not illegal in Canada, legislation regulating prostitution-related activities like street solicitation is so broad that it may as well be. Although criminal legislation is not expected to lead to the abolition of prostitution, it is intended to control the trade and keep it as invisible as possible. It places moral judgments upon women's sexual conduct. It is only in recent years that customers and male prostitutes have been recognized as culpable in acts of solicitation in Canada, although the double standard continues since female prostitutes are more likely to be arrested and convicted than male clients. Those who uphold this view regard punitive legislation as necessary for defining and enforcing a society's moral code, a code that is considered the essential glue for holding a society together. The function of the law is therefore as important for its symbolic implications as for its practical application.

Advocates of legalization generally also support the stringent regulation of prostitution. A certain form of prostitution might be permitted, subject to licensing, taxation, and rigid codes determining what is and is not allowed, while other forms of prostitution, particularly street solicitation, remain illegal. The legalization of brothels in Nevada is evidence of the unsuitability of this tactic. Women employed in these brothels may leave the brothels infrequently for time off, and may only shop in nearby towns on certain days and during specific hours. The women may work fourteen-hour shifts (as no union or labour code exists for them as a basis for arbitration), during which they service ten to fifteen customers, in whose selection they are allowed no part. They are subject to mandatory medical inspections, and until the AIDS panic, they were not permitted to use condoms for protection against venereal disease. They are photographed and

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fingerprinted, and this information is kept in police files. In addition, on top of giving a percentage of their earnings to the brothel owner, they must pay for room and board and for the use of linen, and use personal care facilities like hairdressing and laundry services provided on the premises, all of which take a sizeable chunk from their weekly earnings. Although their work environment is at least more secure than where prostitution is conducted in a clandestine fashion, equally secure conditions could be arranged in other contexts, were prostitution not a criminal activity. Through legalization, prostitution may also be limited to certain areas of a city, the so-called red-light districts. Keeping prostitution concentrated within a particular area institutionalizes the control of women by profiteers and police, and many women justifiably refuse to work in these areas.

Decriminalization is the approach most favoured by feminists as it eliminates state interference into and control of the affairs of the prostitute. From a liberal or civil libertarian standpoint, we may question the legitimacy of prostitution laws, since they violate civil liberties like freedom of speech and the right to privacy. These kinds of arguments have been used (unsuccessfully, so far) in Canada to challenge the constitutionality of the legislation. The provision of sexual services by adults is considered to be a victimless crime in the legal sense, in that it is a crime without a complainant; it does not cause harm to others, is an act undertaken by consenting adults, and therefore should be outside the purview of the law. Some feminists also consider the legislation to be blatantly discriminatory, since it implies that the individual prostitute is responsible for prostitution, rather than society as a whole. Women should not be prosecuted for work which they do as a result of social and economic constraints.

Decriminalization would lessen the control of prostitutes by more powerful males: police could no longer demand pay-offs, and, where pimping does occur, their status as so-called protectors would be undermined. The lopsided application of the law, through which street prostitutes, particularly those who are Black, Native, or other women of colour, are more frequently arrested and imprisoned, would be eliminated through decriminalization. The state need neither condone prostitution, nor act as pimp through profiteering and stringent regulation. Finally, as legislation implies that prostitutes are responsible for prostitution, decriminalization would reduce the focus and blame placed on the prostitute, and would make it easier for women to leave the business should they choose to do so, as they would not be branded with a criminal record.

What feminists most commonly mean when they advocate the decrimi-

nalization of prostitution, however, is partial decriminalization. It is the legislation which most directly affects a woman's ability to work – soliciting and bawdy-house laws – which most feminists want to see repealed, while, at the same time, supporting the strengthening and more rigorous enforcement of legal sanctions against procuring and living on the avails of prostitution. Some also want customers to be liable to charges, as they now are in Canada.

I want to go beyond this legal analysis by demonstrating not only why problems appeared at the times that they did (for example, how popular fears are mobilized), but how regulatory procedures can actually *create* that which is being regulated. As Brophy and Smart find, 'the effect of law is never gender neutral.'⁸ Women stand as 'legal subjects and sexual objects' in relation to the law, and 'it is legislation and legal practice informed by specific ideologies of female sexuality which serves to construct prostitute women as mere "sexual objects."' In turn this sexual objectification of prostitute women reinforces their special status as denigrated legal subjects.⁹

The regulation of prostitution is structured, through criminal code provisions, as sexual regulation, because it is the sexual character of the activity which makes it a target of regulatory strategies. However, we must be clear that from the standpoint of prostitutes themselves, it is not their own sexuality which is being regulated, but their work. 'Sexual regulation' is produced through the practices I describe. Arguments advanced by police, politicians, and residents' organizations for the more stringent regulation of prostitution are not always expressed in moral terms. What may be at issue in the development of regulatory strategies are the assertion of property rights, shifts in policing practices, or the making of a news story through the construction of newsworthy events. Nevertheless, the sexual character of prostitution remains determinate in that prostitution is subject to special regulation, distinct from that of other indoor businesses or street vendors. The regulation of prostitution undoubtedly remains a form of *moral* regulation.¹⁰

Prostitution is designated as a social problem. Subsequently its regulation is affected by a concatenation of social relations and practices (albeit shaped by the economic context), including the production of legislation, changes in policing practices (often but not always connected to changes in the law), the work of government commissions, and the work of the media – the everyday process of 'making news.' These are organized to the constitution of social classes and the determination of property rights in a changing urban environment. Clearly, it is not state power alone that determines

how prostitution is problematized and regulated. For example, in the policing of prostitutes, the power of the police is accomplished as much through an alignment of police interests with the media and residents' organizations, as through the provision of a legal mandate to act through the federal state.

The following study demonstrates the difficulty of conceptualizing state power as always having a unified structure or purpose. For example, criminal legislation regulating prostitution may be in place, but the means by which police interpret and enforce it in Canadian cities varies by locale and time period. Similarly, judicial interpretation may vary by province and within a province's court system. Police and local-level officials may demand the passage of more stringent legislation in order to increase police powers of arrest, while federal-level politicians who are responsible for creating new legislation are reluctant to do so in an uncertain political climate. A federal government can establish a commission of inquiry to investigate the dimensions of a social problem (for example, pornography, prostitution, or the sexual abuse of children and youths) and direct it to make recommendations for changes to social policy and criminal law, but the government is not bound to act on those recommendations, and may in fact proceed with quite a different agenda. As well, while 'the state,' with its often diffuse and contradictory agencies and actors, clearly has the central role in moral regulation (indeed, the state is looked to as the site for the codification and enactment of rules), it is not the only source. Citizens' groups (for example, residents' groups and feminist organizations) compete to define the nature of the problem and determine the method of its resolution by convincing the rest of the public, as well as state agents, of the rightness of their position.

The media, which Stuart Hall refers to as 'the dominant means of social signification in modern societies,'¹¹ plays an important role in forming the contemporary public identity of the prostitute: as the brazen, loud-mouthed women who work residential streets until early in the morning, depriving respectable citizens of their sleep; as the lazy 'Josies' of the Yonge Street massage parlours; or as the young girl picked up by a pimp in the Eaton Centre and forced to work the streets. Part of this process entails reporting the perspectives of 'average citizens' whose lives are in some way affected by prostitution. These standpoints, along with those of 'authorized knowers'¹² (including police, social workers, politicians, and government commissions), whom the media consult for their expertise, can be assembled in ways that have the effect of organizing social problems and, at times, creating crisis situations, legitimating new initiatives to regulate