

The regulation of sex work in Aotearoa/New Zealand: An overview

JOHANNA SCHMIDT

Abstract

The passing of the Prostitution Reform Act (PRA) in 2003 has resulted in Aotearoa/New Zealand being in a unique position internationally in terms of the regulation of sex work. In this paper, I provide an overview of the history of sex work in Aotearoa/New Zealand leading up to and subsequent to the passing of the PRA. Underlying this overview are theoretically informed discussions considering how discourses of heteronormative sexuality result in sex work being gendered in particular ways, and how different models of regulating prostitution reflect different ideological and political concerns, and have different outcomes. The specifics of the gendering of sex work means that these understandings and outcomes have particular effects on women. While the interests of women are thus prioritised in recent theorising and, in some instances, in the regulation of prostitution, it is apparent that what is considered to be in 'women's interests' varies. I conclude by suggesting that while the PRA may not challenge the gendered nature of the industry, it protects the immediate interests of the women who work within it. This paper is intended to serve the dual purpose of providing the reader of this special issue of the *Women's Studies Journal* with some relevant background, and giving students interested in the area – especially those in Aotearoa/New Zealand – a starting point for their research.

Keywords

Prostitution; sex work; Prostitution Reform Act; heteronormativity; heterosex; Swedish model

Introduction

Sex work in the general sense, and prostitution specifically, has been an area of intense debate and social concern throughout western history. Although sex work is ostensibly the provision of a 'service' like any other, the specific moral understandings related to sexuality at any given moment have meant that the commercial provision of sexual services is subject to levels and types of regulation that mark it out as distinct from other service industries. This has resulted in attempts to either abolish sex work, or to regulate the industry (Abel, Fitzgerald, & Brunton, 2009).

As I discuss below, heteronormative understandings of gendered sexuality have resulted in a situation in which the sex industry in general, and prostitution specifically, are contexts in which the 'clients' are overwhelmingly men and the 'providers' are overwhelmingly women (Farvid & Glass, 2014; Jordan, 2005; McCarthy, Benoit, Jansson, & Kolar, 2012; Weatherall & Priestley, 2001). Of course, there are markets for male and transgender sex workers, and it also seems likely that all sexual orientations and gender identities are represented among the purchasers of sexual services (Weatherall & Priestley, 2001). However, there is a marked gender division between the majority of the providers and the consumers of commercial sexual services. This gender division, coupled with the dominant discourses related to sex work, means that engaging in prostitution results in (primarily) women being entangled in a complex web of power relations that affect their working and non-working lives, and often their identities, in various ways that are not common among those engaged in other forms of work. Thus, the discourses around prostitution, and the experiences of sex workers themselves, are clearly a feminist concern.

The passing of the Prostitution Reform Act (PRA) in 2003 made Aotearoa/New Zealand the first (and at the time of writing the only) country in the world to fully decriminalise prostitution (Abel et al., 2009). Aotearoa/New Zealand's currently unique status in this respect means it is worth considering the effect this has had on those working in the industry and on society as a whole. This paper is intended to provide a theoretically-informed overview of the social and state regulation of prostitution in Aotearoa/New Zealand, serving the dual purpose of giving readers of this special issue of the *Women's Studies Journal* a foundation for the following articles, and providing students interested in this area (especially those in Aotearoa/New Zealand and the Pacific) with a starting point for their research.

I start by framing my discussion with the concepts related to heteronormative sexuality that lead to understandings of heterosex being gendered in particular ways, before considering how this has resulted in the supply and consumption of sexual services being stratified along gender lines, and also on the basis of class and ethnicity. I then consider sex work specifically in the context of Aotearoa/New Zealand, starting with an overview of the history of the regulation of the industry prior to the PRA, before moving on to discuss the ideological context in which the PRA was developed and passed. I then summarise some of the effects of the PRA, and finally consider whether the specifically feminist critiques of legislation such as this are likely to improve the lives of those who are engaged in sex work.

Terminology

The practices understood as 'sex work' and the sex industry as a whole incorporate a wide range of activities and enterprises, including prostitution, stripping, pornography, telephone sex lines, sex shops that sell a range of goods, trafficking, pimping, and various other commercially-motivated endeavours involving sexual or sexualised activities. The boundaries between these services are often fluid and permeable; there are many acts (e.g. topless waitressing, the sale and purchase of visual or written erotica) which constitute commercial transactions that have a sexual element, but are not generally considered part of the 'sex industry'. In recent decades, the internet has led to a widening of the range of sexual/sexualised services that can be purchased, and the means by which these transactions can be undertaken (e.g. webcam sites in which viewers 'tip' those on camera to perform specific acts, or sites on which clients can post reviews of escorts whose services they have used – see Henry & Farvid, this issue).

While all the aspects of the sex industry noted above warrant discussion, in this paper I focus on prostitution. 'Prostitution' is notoriously difficult to define: the common definition of 'the sale of sexual acts' simplifies an extremely complex area in which even the definitions of 'sale' and 'sexual acts' are themselves problematic (Jordan, 2005). Ronald Weitzer points out that many of the activities that could be defined as 'prostitution' are those in which 'one party receives material benefits and the other receives some erotic pleasure but do not involve conventional sex-for-pay transactions' (2009, p. 217). Bill McCarthy and his various co-authors (McCarthy, Benoit, & Jansson, 2014; McCarthy et al., 2012) utilise a definition of sex workers which includes those 'who had one-to-one direct physical contact with their customers and who were paid directly by them' (McCarthy et al., 2014, p. 1381). For the purposes of this article, 'prostitution' is defined according to that 'conventional sex-for-pay transaction', and includes those occupational variations listed by Weitzer – call girls, escorts, brothel and massage parlour workers, and street-based sex workers (2009). Although also mostly following McCarthy et al.'s definition (2014), in this paper I include workers who, while they engage in 'one-to-one physical contact' with customers, are not necessarily paid directly by those customers, but are rather employed by a third party. While referring to sex work as 'prostitution' is contentious, here I echo Panteá Farvid and

Lauren Glass' (2014) adoption of the term to convey a critical feminist approach to the *industry*; however, following Farvid and Glass, I refer to those working in the industry as 'sex workers', so as to acknowledge their agency as well as their activities as 'work'.

Heteronormative sexuality

Before considering the regulation of prostitution in Aotearoa/New Zealand, in this section I outline the theoretical perspective that underpins this discussion: the notion that the discourse of heteronormativity results in understandings of heterosexuality that are gendered in ways which have a direct impact on how prostitution is practised, regulated, and understood. At its broadest level, heteronormativity positions heterosexual relations as superior to all others, constructing these as the 'norm' and all variations as 'deviant'. Within this hierarchy, reproductive heterosex occurring within the context of a monogamous relationship is situated at the pinnacle, and other forms of hetero- and other sex are positioned as inferior (S. Jackson, 2006; Rubin, 1984/1999). The privileging of reproductive relations is based on the notion that sexuality is intrinsically linked to the biological imperatives of the reproductive sex necessary to maintain the species, and that we have 'evolved' to enjoy particular forms of sex so as to guarantee the continuation of humanity (Tiefer, 2004; Warner, 1991). These 'facts' have a number of consequences in relation to sexuality, including the positioning of homosexuality as 'unnatural' and hence 'wrong'. While heteronormativity thus prioritises heterosex as normative, as Jackson (2006) makes clear, heteronormativity also polices actions, behaviours, and identities within the boundaries of heterosexuality. For example, the privileging of reproductive sex results in what Margaret Jackson has termed the 'coital imperative', according to which vaginal intercourse is the only 'real' sex, and all other practices are either foreplay, or substitutes, or 'deviant' (Jackson, 1984; see also Jackson, 2006; Tiefer, 2004). For the purposes of this paper, the most significant impact of heteronormativity's presumptions about the 'natural' basis of human sexual relations is the resultant heavily gendered assumptions about sexuality. Many of these assumptions are rooted in the apparently 'scientific' explanations of evolutionary psychology, based on the key premise 'that humans have an innate, genetically triggered impulse to pass on their genetic material through successful reproduction' (Rutter & Schwartz, 2012, p. 15; see also Jackson, 2006). According to this approach, motivations for sexually partnering 'naturally' vary between men and women. Women are physically capable of having relatively few children, and are assumed to be the 'natural' caregivers of infants and small children by virtue of their specific reproductive capacity. They are thus theoretically invested in partnering with a man who will remain with them and provide resources for them and their children. Conversely, men are capable of fathering numerous offspring, and are assumed to seek to maximise the number of children they produce through frequent sex with multiple partners (Rutter & Schwartz, 2012). Although this approach has been thoroughly critiqued as both incorrect and sexist (Tiefer, 2004), its grounding in 'natural' – and particularly in 'evolutionary' – explanations for differently gendered approaches to sex means that it continues to be utilised in some research related to human sexuality, and holds particular appeal within lay discourses.

In terms of understandings about sex work, the most significant concept to emerge from conceptualisations of heteronormative sexuality is what Wendy Hollway terms the 'male sex drive discourse'. According to this model:

First, the sexual drive is a natural propensity that men have. Second, it makes them want to have sex with women (note the heterosexist assumptions). Third, it is normal and healthy not just because it is natural but because it is part of a biological necessity – an evolutionary imperative – which ensures the survival of the human species (Hollway, 1984b, p. 63).

Hollway contrasts the male sex drive discourse with the ‘have/hold discourse’ that permeates understandings of female sexuality, according to which women primarily seek men who will provide for them and their children, and conform to men’s ideals as a means of ‘trapping’ them so as to keep them in a relationship (Hollway, 1984a). The resultant gendered understandings of heterosexuality then work to rationalise the sexual double standard, in which sexually active women are labelled negatively (‘sluts’), while sexually active men are labelled positively (‘studs’) (Allen, 2003; Farvid, Braun, & Rowney, 2017). The heteronormative gendering of attitudes to sexual relations is also linked to the ways in which women are more invested in the notion of sexual fidelity, with men being more likely to engage in extra-marital relations – particularly those which focus on sex (rather than emotional connection) (Blow & Hartnett, 2005).

Sex work and stratification

The gendered understandings regarding heterosex outlined above have played out in particular ways in the regulation of prostitution. The men who are *clients* in the sexual service transaction are generally presented as less problematic than the women who are the *providers* of the service (Jordan, 2010). For men to seek to purchase sex is not necessarily normative, but it can be readily rationalised using the ‘male sex drive discourse’ (Hollway, 1984a; Jordan, 2010; Weatherall & Priestley, 2001). Thus, in colonial New Zealand, both unmarried and married men were tacitly encouraged to utilise prostitutes (Jordan, 2010). For those who were unmarried, this was seen as a means of addressing the lack of available young women that resulted from the gender imbalance in the colonial population. For married men, prostitution to some extent became seen as a ‘complement to marriage’, as a means of addressing the apparent differential in sex drives between men and women (Jordan, 2010). This understanding is evident in suggestions by contemporary sex workers that their professional service is a better option than an affair for men whose wives do not wish to have sex with them (Weatherall & Priestley, 2001).

While men have thus been largely exonerated for creating the *demand* for prostitution, women who seek to *supply* sex commercially are seen as contravening ideals of femininity (Farvid & Glass, 2014; Jordan, 2010). Sex workers represent, at most, 1% of the world’s total female population (McCarthy et al., 2012). In Aotearoa/New Zealand estimates are much lower. As I discuss below, gaining accurate statistics for those working in the sex industry is almost impossible; an extremely generous estimate in 2005 placed the total number of sex workers at approximately 6000 (Prostitution Law Review Committee, 2008). Male clients, on the other hand, represent anywhere from 5% to 60% of the adult male population, depending on national context, with figures for countries similar to Aotearoa/New Zealand indicating that somewhere between 5% and 20% of the adult male population purchase sex at least once in their lifetime (McCarthy et al., 2012). In spite of this, prostitution continues to be predominantly positioned as a ‘women’s issue’, and, with the exception of the recent Swedish model (see below), policy has tended to focus on supply rather than demand.

The moral positioning of sex as something that ideally happens within monogamous relationships, and as an expression of intimacy between a man and a woman, has meant that the existence of sex as a commercial endeavour has been historically problematic. The marginalisation of prostitution and other forms of sex work has meant that it is often (although not always) an avenue pursued by women with limited employment options due to their low levels of ‘human capital’, evidenced through characteristics such as relatively low education

levels and limited experience in ‘mainstream’ employment (McCarthy et al., 2014). This is the case even in contexts where prostitution is not illegal. Although, as I discuss below, the legitimacy provided by removing legal strictures does have beneficial effects for women working in the sex industry, prostitution remains a socially marginalised means of earning money (Abel, 2011). This results in sex work having a class component that intersects with the gendered aspect of the industry. Even within the industry, some forms of sex work are seen as ‘better’, such as escort work (particularly at the more exclusive end of the market) (Weitzer, 2010). Researchers have referred to the industry in Aotearoa/New Zealand as ‘segmented’ into street and indoor sectors (Plumridge & Abel, 2001). The need for certain forms of cultural capital means that entry into those ‘better’ forms is likely to be limited to those who have more middle-class backgrounds (and consequently are more likely to be Pākehā), while street workers are more likely to be younger, Māori or Pasifika, and have less education (Plumridge & Abel, 2001). However, those working on the street do not necessarily see themselves as constrained in their options, with many stating that they chose to work on the street because of the increased autonomy that is possible, compared to managed environments such as massage parlours or brothels (Armstrong, 2014a). Further, it should be recognised that a range of structural issues (immigration status, drug use, employment conditions, other employment options) also create vulnerability for those not working on the street (Weitzer, 2009).

Prostitution in Aotearoa/New Zealand prior to the Prostitution Reform Act

In the context of Aotearoa/New Zealand, as in the rest of the world, prostitution has existed throughout history; although evidence suggests it has not been part of all cultures (Jordan, 2010):

[I]t is clear that prostitution has long been an established part of the social environment, with changes in debates around it being provoked more by shifts in ideologies and perceptions than significant increases in its incidence (Jordan, 2005, p. 26).

Jordan (2005, 2010) traces the history of prostitution in Aotearoa/New Zealand back to the early days of European colonisation (readers seeking a more comprehensive analysis of the history of prostitution in Aotearoa/New Zealand are referred to her work). Historically, prostitution has been officially understood as immoral in almost all western contexts, and it has thus been seen as in need of ‘special’ regulations that have not applied to other occupations (Jordan, 2005). As noted above, the ‘problem’ of prostitution has usually been located with the (predominantly female) sex workers. Although, in some instances, such women are seen as ‘victims’ in need of protection, the common attitude has been to position sex workers as ‘deviant’, and the regulation of prostitution has commonly focused on controlling what are understood to be the negative effects for wider society (Farvid & Glass, 2014). This was the case in colonial New Zealand, where there is evidence that prostitution was considered to some extent inevitable (see discussion above), but its ‘immoral’ status meant that women who worked in the industry were subject to special regulation (Jordan, 2010). In late nineteenth century New Zealand, public discourse was replete with the vilification of women engaged in sex work (Jordan, 2010), and attacks on the moral character of such women were seen as entirely appropriate.

In some instances, the regulation of the industry involves the criminalisation of all aspects of prostitution; in other instances, legislation has related primarily to the supply side. This was the case in Aotearoa/New Zealand until the passing of the PRA. In 1869 the passing of the Contagious

Diseases Act allowed for the detention of women with venereal disease and legislated for a system of registration for sex workers (Jordan, 2010). The 1886 Vagrant Act legislated against prostitutes engaging in ‘riotous or disorderly’ behaviour; this was replaced in 1884 by the Police Offences Act, which rendered soliciting illegal. As Jordan (2010) notes, these controls focused only on the sex workers, and the surrounding discourses related almost solely to women. Male clients were, and continued to be, invisible in legislation, policy, and public discourse until well into the twentieth century (Prostitution Law Review Committee, 2008).

Although the act of prostitution itself was not illegal, the vast majority of related activities were, most notably soliciting (*offering sex in exchange for money in a public place*) (Abel & Fitzgerald, 2010a; Abel, Healy, Bennachie, & Reed, 2010; Plumridge & Abel, 2001). However, *requesting sex in exchange for money* was not illegal, resulting in the double standard whereby those selling sexual services (predominantly women) and those employing sex workers were subject to criminal prosecution, while clients purchasing services (overwhelmingly men) were not (Abel et al., 2009; Farvid & Glass, 2014; Harrington, 2012; Plumridge & Abel, 2001; Prostitution Law Review Committee, 2008; Weatherall & Priestley, 2001). This approach to prostitution had a number of negative impacts on those working in the industry, including on their working conditions, access to health care, mental health, safety, and social status.

Working conditions

Working conditions relating to prostitution in Aotearoa/New Zealand were primarily legislated for in the Massage Parlours Act 1978, which effectively regulated the locations of indoor commercial sex (Plumridge & Abel, 2001). The open regulation of these venues indicated that they were tacitly approved of as the less ‘problematic’ aspect of the industry compared to working on the street, where the women concerned were and are often framed as a ‘public nuisance’ (Armstrong, 2014b, 2017). However, the actual sale of sexual services, regardless of venue, remained outside the law, meaning that the workers in managed contexts such as massage parlours had no means of addressing employment-related issues, and the actions of employers went unchecked. The owners of the parlours effectively employed the workers, but without the obligation to offer any of the protections afforded to those working in other service industries (Jordan, 2005). While not all parlour owners were exploitative, if they were, employees had no effective avenues for legal redress. As discussed below, a lower risk of exploitation is one of the reasons sex workers may choose to reject indoor environments in favour of working on the street (Armstrong, 2014a).

Health

As Jordan notes, ‘sex workers have often been reviled for being disease carriers and held responsible for the transmission of venereal diseases’ (2005, p. 62). However, research demonstrates that sex workers are entirely aware of the risks of unsafe sex, and are extremely proactive with regard to condom use; with very few exceptions, unprotected intercourse is either negotiated at the instigation of the client, or is non-consensual on the part of the worker (Farvid & Glass, 2014; Jordan, 2005; Plumridge & Abel, 2001). Prior to the PRA, criminalisation was a barrier to practising safer sex, because the provision of condoms is almost always the responsibility of the workers rather than the clients, but possession of large numbers of condoms could be used as evidence of prostitution (Jordan, 2005). The doubly marginal status of illegal sex work also made it difficult to deliver public health programmes around safe sex and related areas (Jordan, 2005).

Mental health

Some research suggests that sex workers are no more likely than other women of similar ages to have self-esteem or mental health issues (Weitzer, 2009). There is also evidence that some sex workers, especially those working in the ‘high end’ of the profession, receive positive reinforcements from interactions with clients, and have improved psychological well-being resulting from having control over their working life and the financial benefits of well-paid sex work (Weitzer, 2009). However, the stigma associated with prostitution also requires sex workers to engage in various strategies to create boundaries between their work and the rest of their lives (Abel, 2011), and this is exacerbated if prostitution is illegal (Weitzer, 2009). This need to compartmentalise one’s life can result in long-term emotional effects for some women, as a result of distancing and dissociation (Jordan, 2005). However, this is not necessarily because of the nature of the work itself, but may be more a consequence of negative social attitudes. It is also important to recognise that dissociation related to stigma is not necessarily the same as maintaining distinct roles, which is common in any industry with a high degree of emotional labour, and is a strategy that is protective rather than harmful (Abel, 2011). Although sex work remains a marginalised occupation, decriminalising prostitution is seen as an important part of lessening the stigma associated with the industry, and contributing to the improved mental health of sex workers (Abel & Fitzgerald, 2010b).

Safety

Those working in the sex industry are at increased risk of rape and sexual violence compared to the general population (Armstrong, 2014a; Jordan, 2005). While the risk of violence is to some extent associated with the nature of the work, it is exacerbated when sex workers feel unable to report such incidents to the police because their work is illegal (Armstrong, 2017), or when they are seen as less deserving of protection because they have ‘chosen’ to work in a profession with inherent risks of violence (Armstrong, 2014a, Farvid & Glass, 2014). Street prostitution in criminalised contexts is often subject to more active policing because of its perceived ‘public nuisance’; this can mean relations between the police and street workers are particularly fraught, further problematising the reporting of violence (Armstrong, 2017). Clearly, both increased risks and experiences of sexual violence are negative in and of themselves, but these are also likely to have a detrimental effect on the mental health of sex workers. These risks, and the associated negative effects, are more marked for street workers, who experience a greater proportion of physical threats and violence (Plumridge & Abel, 2001) and, in a criminalised environment, are less able to spend time screening potential clients (Armstrong, 2014b).

Social status

Finally, if soliciting and other activities associated with prostitution are criminalised, this automatically leads to the criminalisation of the sex worker who is charged with these offences. The existence of a criminal record lowers the possibility of finding employment in other industries (Jordan, 2005), making it difficult for sex workers who wish to exit the industry to do so. Even in the absence of criminalisation, including employment in the sex industry on a resumé or, alternatively, having an apparent gap in one’s employment history may negatively affect one’s ability to find employment outside the industry.

The capacity to move into other employment areas and the experiences of those working in the sex industry in Aotearoa/New Zealand are also affected by class. As noted earlier, women

often work in this sector because a lack of ‘human capital’ makes it difficult for them to find employment in other industries that offer similar levels of remuneration (McCarthy et al., 2014). While this means that sex workers in general are more likely to come from lower socio-economic backgrounds, and hence are also more likely to be Māori or Pasifika, considerations of human capital also affect the shape of the industry itself. In the context of Aotearoa/New Zealand, ‘[s]ome stratification occurs within the sex industry along class and ethnic lines, with lower socio-economic and Māori women being more likely to be employed in high-risk, lower-paid venues than middle class and Pākehā women’ (Jordan, 2005, p. 33; see also Plumridge & Abel, 2001). In this context, ‘high risk, lower-paid venues’ generally refers to working on the street. The visibility of street work also increases the chance of arrest in contexts where soliciting is illegal (Jordan, 2010), which is likely to contribute to the reasons for Māori and Pasifika women’s over-representation among those charged with soliciting prior to the PRA (Jordan, 2005).

The problems associated with historically common approaches to prostitution are almost universally experienced by the providers of sexual services – who are usually women – with the negative outcomes for the largely male clients limited to disapproval of the moral, rather than the legal, aspects of purchasing sexual services (Weitzer, 2009). In the discussion above, I have outlined how the criminalisation of prostitution had a direct impact on the conditions of the (predominantly female) sex workers in Aotearoa/New Zealand. Prior to the passing of the PRA, prostitution existed in spite of its fundamentally illegal status, but could not be regulated. This meant that sex workers were more vulnerable to exploitation by ‘pimps’ and business owners, feared being arrested, and were typically unable to report violence perpetrated against them by clients and other members of the public. The attempt to utilise legislation to vanquish prostitution from the social landscape was (as is almost always the case) ineffective, but resulted in presumably unintended negative outcomes for a group primarily comprising women.

Recent prostitution law reform and the Prostitution Reform Act

As we shift into a social and political climate marked by a more secular and rights-based approach to morality, and a more feminist approach to gender relations, perspectives on the sex industry have tended to take one of two approaches. These are summed up by Alison Laurie: ‘To regard the right to sell sex as an aspect of woman’s right to choose what she will do with her body, or to see prostitution as degradation and an aspect of male control over women’s bodies’ (2010, p. 85). Both feminist and non-feminist perspectives regarding sex work often cleave along these lines, seeing sex work either as ‘coercion and sexual subordination’, or as ‘a job, much like any other’ (Weatherall & Priestley, 2001, p. 325). Contemporary regulatory approaches to prostitution have tended to utilise one or the other of these approaches to serve as their framework, and to inform the intended outcomes of legislation and policy.

The first of these, commonly referred to as the ‘Swedish model’, is inspired by the radical feminist understanding that prostitution is inherently oppressive and/or exploitative, ‘a quintessential expression of patriarchal power relations’ (Weitzer, 2009, p. 214). Indeed, a factsheet produced by the Swedish government with respect to its legislation on the purchase of sexual services explicitly refers to prostitution as ‘a form of exploitation’ and states that ‘Prostituted persons are considered as the weaker party, exploited by both the procurers and the buyers’ (quoted in McCarthy et al., 2012, p. 259). Legislation adopting the ‘Swedish model’ seeks to eradicate prostitution by making the *purchase* rather than the *sale* of sexual services illegal (Abel & Fitzgerald, 2010a). This theoretically protects sex workers from the

harms of engaging in illegal activities and places men, not women, firmly under the moral gaze of the law. Under this model, prostitution is ‘treated as a problem of male conduct and ... policy should attempt to subject men to governmental discipline in the interests of women’ (Harrington, 2012, p. 239). This approach also tends to be aligned with understandings that sex workers are not selling a sexual service, but are rather selling their bodies (Harrington, 2012). Radical feminists suggest that this perpetuates patriarchal assumptions that access to women’s bodies is a ‘male privilege’ (Harrington, 2012, p. 349).

In the submissions relating to the Prostitution Reform Bill and the surrounding discourse, this approach informed critiques made by a number of feminist organisations and individuals who opposed the bill, including Sandra Coney, who stated that ‘prostitution reinforces the urge of men to dominate women’ (cited in Laurie, 2010, p. 88). Submissions from this position also argued that sex workers have little-to-no ‘choice’ in terms of entering or exiting the industry. While some submitters noted that protecting the ‘choice’ of women sex workers would necessitate policy that ensured alternative employment options were available (Laurie, 2010), it seems that not all did so, and there were few apparent suggestions as to how this might be achieved. Some submitters suggested the bill would contravene the United Nations Convention on the Elimination of Discrimination Against Women by promoting the trafficking of women for sex work.

There were also some who opposed the specifics of this legislation in favour of the Swedish model of criminalising the clients, in spite of the fact that when the New Zealand bill was proposed, the Swedish legislation had been in place for only a few years (Laurie, 2010), and hence the long-term ramifications were unknown. Over time it has become apparent that there are a range of issues with the Swedish model. The development and implementation of legislation following this model tend to exclude the voice of actual sex workers, who tend to oppose the adoption of the Swedish model (McCarthy et al., 2014). Sex workers such as Molly Smith (2015) note that while legislation based on the Swedish model may be well-intentioned, at a pragmatic level it results in anxiety among the client base, who wish to negotiate transactions as speedily as possible so as to avoid detection, especially in outdoor contexts. Because the safety of sex workers in part depends on having time to screen potential clients (Armstrong, 2014b), pressure to finish negotiations as quickly as possible increases risk for sex workers. Research has also found that caution on the part of the now potentially criminalised client necessitates Swedish sex workers relocating to increasingly less visible contexts so as to protect their clients, resulting in the workers again being more vulnerable and less easily accessible by social and health workers (Abel et al., 2009; McCarthy et al., 2014). Anecdotal evidence suggests that criminalising the purchasers of sexual services has also discouraged the more ‘amenable’ customers, leaving a shrinking base of clients which is dominated by those who are ‘less pleasant’ (Harrington, 2012, p. 347).

Those submitting in favour of the Prostitution Reform Bill who mentioned the Swedish model suggested that it would have an adverse impact on sex workers, because prostitution would continue to be fundamentally illegal (Laurie, 2010). It has also been suggested that at a broader level, the perspectives which inform these initiatives are not thoroughly embedded in empirical evidence, but rather are premised on particular political understandings that sex work is inherently exploitative and a means by which patriarchal power is exercised (Weitzer, 2010). Policy based on such perspectives inevitably reinforces morally-based discourses about prostitution, meaning that even when the intention is to protect women from the (theoretically) negative aspects of sex work, an environment is maintained in which punitive measures taken against sex workers are seen as morally defensible (Smith, 2015).

The second approach is, to a large extent, informed by a more liberal feminist analysis of the sex industry and contemporary notions of human rights. It focuses on prostitution as ‘work’, akin to the selling of any other service, and seeks to reduce the harms historically associated with the sale of sexual services (Weitzer, 2009). This approach is generally aligned with the perspectives of sex workers themselves, who are less likely to articulate their occupation as the sale of their ‘bodies’ per se, and rather describe it as ‘allowing clients conditional access to their bodies for the purpose of providing specific, pre-negotiated sexual services’ (Armstrong, 2014b, p.215). Conceptualising sex work as provision of a service was the perspective taken by those organisations and individuals submitting in support of the Prostitution Reform Bill who identified as feminist (Laurie, 2010). Although feminist theorising from this perspective may also position prostitution as something that ‘involves human agency, and may be potentially empowering for workers’ (Weitzer, 2009, p. 215), legislators are less likely to be interested in these theoretical concerns, and more likely to focus on protecting the rights of sex workers and conditions of sex work. As Carol Harrington (2012) notes, this results in a situation in which neither the commercialisation of the sex industry nor the effects of gendered social relations are critically examined, but rather a more liberal approach emphasising respect for diversity and freedom of choice is dominant. Agitation from this perspective is more likely to include the voices of actual sex workers, but the resultant discourses can ultimately reinforce the male sex drive discourse (Hollway, 1984a; Weatherall & Priestley, 2001), ‘construct[ing] masculinity as requiring uncomplicated sexual release and sex workers as providing a necessary social service’ (Harrington, 2012, p. 341). For these reasons, not all those arguing from this perspective support the existence of prostitution per se – for many, the harm reduction approach would be best realised by eradicating the industry altogether. However, it has been recognised that any attempts to eliminate the industry will inevitably fail, and that resultant law will rather lead to the women who work within the industry being marginalised and without legal protection.

It was this intention of improving working conditions and protecting the rights of sex workers that underpinned the introduction and eventual passing of the Prostitution Reform Bill (Jordan, 2010). With the passing of the PRA, prostitution in Aotearoa/New Zealand was decriminalised, and the sex industry was firmly positioned in the law (if not in the public imagination) as one of a range of service industries (Abel & Fitzgerald, 2010a). The principal aims of the PRA were: safeguarding the human rights of sex workers; protecting those working in the sex industry from exploitation; promoting the welfare of sex workers; creating an environment which minimised harmful health outcomes for all involved; and protecting children from exploitation (Abel et al., 2010; Jordan, 2005; Mossman, 2007).

Although decriminalisation ideally involves the removal of all legislation that treats prostitution as a specific criminal offence (Mossman, 2007), the PRA did prohibit the purchase of sexual services from anyone under 18 years of age (Farvid & Glass, 2014), two years higher than the legal age of sexual consent in Aotearoa/New Zealand. Legislating for a higher age for entry into the sex industry signalled the understanding that it was inappropriate for younger people to be engaging in sexual activities as a commercial transaction (Prostitution Law Review Committee, 2008). Although not part of the legislation, the policy of Work and Income New Zealand at the time the PRA was passed (and presumably since then) was to not include sex work among the employment options suggested to clients (Te Karere, 2003). While the PRA removed almost all instances of the legally specific status of prostitution, these and other minor details within the law and within the enactment of policy by state agents indicate that even at a state level, prostitution is still seen as unique in relation to other service industries. However, not all policy specific to the sex industry is related to moral concerns: regulations regarding the minimisation of the risk of transmission of sexually transmitted infections (Abel et al., 2010)

represent health and safety precautions relevant to the nature of the work, while restrictions on advertising (Abel et al., 2010) echo similar restrictions applied to alcohol, tobacco products, and other sexually explicit products and services.

Although the PRA provides relatively neutral regulation of the industry, sex work continued to have a 'special status' in the policy context for some years after the passing of the Act into law. This coalesced around the requirement within the Act that a committee be formed – the Prostitution Law Reform Committee (PLRC) – to monitor and review certain aspects of the industry, in order to ascertain how the legislative shift had altered it (Abel et al., 2010; Prostitution Reform Act, 2003). This included assessing the impact of the PRA on the numbers of those engaged in prostitution, making recommendations regarding avoiding and exiting the industry, and reviewing the operation of the Act in general, including the consideration of whether any amendments were necessary (Prostitution Reform Act, 2003). These actions were to be carried out within three to five years of the passing of the Act. It is difficult to imagine the government taking a similar interest in the employment levels of any other service industry, or there being any other industry where workers are considered in potential need of special 'assistance' to exit it, again signalling the continued perception of sex work as a morally problematic occupation. However, it is notable that the legislated composition of the Committee avoided some of the pitfalls identified by Crofts and Summerfield (2007) in relation to the regulatory agencies in some Australian states, which lacked any representation from the sex industry itself. The New Zealand Committee not only had members nominated by the Ministries of Justice, Health, Police, Commerce, and Local Government, but also included a representative of the Ministry of Women's Affairs, and three of the 11 members were to be nominated by the New Zealand Prostitutes' Collective or a similar advocacy agency. This had the obvious effect of ensuring that the voices of those immediately affected by any regulation were considered.

The effects of the PRA

In the debate leading up to the passing of the PRA, there were predictions that the decriminalisation of prostitution would have a range of negative outcomes, including increases in: the size of the sex industry; the visibility of street workers; violence against sex workers; child prostitution; drug use; rates of sexually transmitted infections; and the involvement of gangs and organised crime (Jordan, 2005). The possibility that the passing of the PRA would result in an increase in the number of sex workers was a particularly significant concern. The positioning of this as a potential issue is, as suggested above, an indication of a particular moral stance towards the sex industry, in that increases in any other employment sector are unlikely to cause similar public or political concern. The previously illegal status of sex work and its continued social marginalisation, along with the transitory nature of the industry, means that (as noted above) ascertaining accurate numbers of those involved in prostitution is impossible, and even estimates vary in reliability (Abel et al., 2009; Prostitution Law Review Committee, 2008). However, researchers using methods that are as rigorous as possible within these constraints suggest that there has been no meaningful increase in the numbers working in the industry, in either street or indoor sectors (Abel et al., 2009; Prostitution Law Review Committee, 2008).

Research undertaken by the PLRC as part of their statutory obligation to review the operation of the PRA concluded that the goals of the Act had been realised in terms of protecting a range of rights (not to be used in sex work if under 18, not to be forced into sex work, to be

able to refuse particular clients or practices, and not to be subject to exploitative or degrading employment practices) (Prostitution Law Review Committee, 2008). Although most sex workers interviewed for the PLRC's review still identified economic hardship or necessity as the main reason for entering the sex industry, the majority felt that they had legal rights under the PRA, and that they were more able to exercise control over their interactions with clients and their employment conditions. The right to refuse clients is a particular issue with sex workers who work in managed contexts, where employers can effectively override a worker's judgement about a specific client. The majority of sex workers felt more able to refuse clients since the enactment of the PRA (Prostitution Law Review Committee, 2008). Subsequent research has also found that negotiating specific sex acts is easier post-PRA because there is now no risk of entrapment (Armstrong, 2014b), and sex workers also feel more empowered in asserting their rights in interactions with clients because they are able to (or at least threaten to) report problematic clients to the police (Armstrong, 2017).

Health and safety have also improved. Sex workers in Aotearoa/New Zealand have always had low rates of STIs, including HIV/AIDS. However, the PRA created a legal obligation for clients to practise safe sex (McCarthy et al., 2014), meaning that the worker's right to refuse to engage in unsafe sexual practices is now legally protected. It was felt that the PRA had led to a decrease in violence, and sex workers reported that they would be more likely to report violence to the police (Prostitution Law Review Committee, 2008; see also Armstrong, 2017, regarding the improved relationship between sex workers and the police since the PRA). It was, however, suggested by the Committee that the welfare of street-based workers could not be fully protected. Even under the PRA, outdoor sex workers were more likely to experience abuse and violence than those working indoors. As a result, the Committee suggested that these workers be assisted to move to indoor settings or to exit the industry (Prostitution Law Review Committee, 2008). Research conducted since the PRA (e.g. Armstrong, 2014a) suggests that street workers continue to have an increased risk of violence and threats of violence compared to indoor workers, although decriminalisation has also improved the safety of street workers, who are now able to work in more open locations, and spend more time screening potential clients (Armstrong, 2014b). There is little evidence that the Committee's recommendation regarding assisting the transition from the street to indoor contexts has been followed up on to date.

Sex workers also reported increased levels of wellbeing and validation as a result of working in a profession that is no longer illegal (Weitzer, 2009). While the PRA has improved the conditions of sex workers, social attitudes cannot be altered as readily as the law, and sex work remains stigmatised (McCarthy et al., 2014). The PLRC (2008) suggests that this has a range of effects, including (but not limited to) a reluctance among sex workers to disclose their profession to their doctors or to follow through on legal complaints of violence; there can also be issues with partners, especially at the commencement of relationships.

These effects are likely to be exacerbated by the larger structural issues that result from the fact that, as noted above, one of the reasons many women work in the sex industry is their relative lack of various forms of 'human capital' (McCarthy et al., 2014). This leads to a stratification of the industry, which may impact on the benefits associated with the PRA and the subsequent lessening of stigma associated with sex work. While research suggests that post-PRA, sex workers in Aotearoa/New Zealand are increasingly professionalising their work (and consequently are more able to manage the 'boundaries' between their working and private lives), this professionalisation is engaged in more by indoor workers than by street workers, who continue to be more vulnerable than their indoor counterparts (Abel, 2011).

Conclusion

Crofts and Summerfield (2007) outline how Aotearoa/New Zealand's regulatory regime regarding prostitution is morally neutral; the requirements for applying for any relevant licences are unambiguous, and no more stringent than the requirements for a licence relating to any similar service. Provided these requirements are met, licences relating to businesses operating with the sex industry are granted. This can be compared with the regulatory regime in some Australian states, where the licensing bodies have the capacity to introduce additional requires or deny licences on little or no grounds (Crofts & Summerfield, 2007). Legislatively, Aotearoa/New Zealand is frequently cited as the model of regulation that provides the most morally neutral and consistent protection for workers, avoiding the ways in which policy based on either abolition or regulation tends to reinforce moral understandings of prostitution, and forces some sex workers into illegal and often unsafe contexts (Abel et al., 2009).

While the PRA has been generally beneficial for sex workers, the manner in which it has failed to challenge wider patriarchal gender relations means it could be argued that 'New Zealand's prostitution policy exemplifies how advanced liberal techniques of government integrate resistant knowledge without challenging existent hierarchies' (Harrington, 2012, p. 343). Dominant gender norms are not questioned, and from some perspectives, '[t]his model treats social inequality and sexual exploitation as inevitable and focuses on "harm reduction" for individuals' (Harrington, 2012, p. 343). In fact, both the PRA and the Swedish model miss the opportunity to critically examine how 'both the men who buy sex and the women who sell sex are a product of specific social, political, cultural and economic power relations' (Farvid & Glass, 2014, p. 49). While both these approaches represent significant shifts in how prostitution has been understood, and accommodate approaches to the profession that have particularly (although varied) feminist foundations, it could be argued that wider gendered power relations have not been significantly challenged in either case. However, it is difficult to imagine how legislation concerning the sex industry could successfully shift social norms regarding heteronormative sexuality, especially given the tenacity of the profession. Attempts to use the law to either eradicate prostitution altogether, or, alternatively, to criminalise the (predominantly male) clients rather than the (predominantly female) workers, seem inevitably to increase the risks experienced by women working in the industry. Given this, feminist work needs to continue provoking public discussion and deconstruction of the heteronormative power relations that shape the gendered dynamics of the sex industry. But in the immediate sense, it seems clear that policy should be informed by the voices of sex workers themselves, who tend to agitate for decriminalisation and a level of regulation commensurate with any similar service industry.

JOHANNA SCHMIDT is a lecturer in the School of Social Sciences at the University of Waikato, where she teaches social sciences, social policy, and gender studies. Her research interests consistently revolve around gender and sexuality, with a significant focus on non-heteronormative identities. Her monograph Migrating genders: Westernisation, migration, and Samoan fa'afafine, published by Ashgate in 2010, is an examination of the impacts of globalisation on the identities of fa'afafine – transgender Samoans.

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