

On Prostitution, STDs and the Law in South Africa: The State as Pimp¹

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Introduction

Prostitution is by its very nature a contentious sphere for debate. Policy-makers all too often succumb to puritanical pressures to suppress this industry without fully understanding its dynamics. It is perplexing that, although it is regarded as the world's oldest profession, little is actually understood and supported by concrete research. It is an area clouded in myth, extreme prejudice and pietist hypocrisy. Hobson (1990:3) asserts that prostitution presents a moral conundrum to liberal democracies in that it beckons regulation whilst invading intimate sexual relations: "A society's response to prostitution goes to the core of how it chooses between the rights of some persons and the protection of others".

This article attempts to provide an overview of the workings and nature of the sex market. It focuses on a particular case study, namely the mining industry of the Free State Goldfields in South Africa, and studies the attitudes and practices of prostitutes regarding sexually transmitted diseases (STDs). The STD issue is an important one as it is often used as a rationale for the criminalization of prostitution. We argue that the effect is, in fact, to make STDs more difficult to control. Lastly, the article examines the case for the decriminalization of prostitution in South Africa.

The Economics of the Sex Market

Conceptually, we can attempt to incorporate sex into conventional neoclassical demand and supply analysis. Fundamentally, sex is a commodity like any other and, as such, falls within the ambit of standard economic theory. It yields utility at a diminishing rate in a given time period and obeys the rules of utility maximization. As such, the quantity demanded of sex is an inverse function of price. A rational being will consume sex up to the point where the marginal benefit equals the marginal cost. If the price of sex rises vis-à-vis other goods then the rational being will choose to consume less sex. A prostitute needs to be aware of these basic economic fundamentals so as to maximize her revenue. Increasing her price for sex will reduce the quantity demanded and potentially also her revenue, depending on the elasticity of demand. For her business to remain viable, the prostitute needs to remain an astute business person. An example of the dynamics

of the economics of commercial sex can be illustrated with reference to the 1988 Seoul Olympics. When the demand for prostitution rose as a result of visitors, the price of commercial sex rose by 50 per cent in one month (cited in Posel 1992:28).

The prostitution market is a fairly competitive one: there are a large number of participants, the product is fairly homogeneous (although prostitutes may choose to specialize in niche markets), and although legal barriers to entry exist, they are largely ineffectual. As such, the prostitute has rather limited control over her price, which tends to be dictated by the market. Obviously prostitutes who deviate from the industry norm and thereby differentiate themselves will either charge more or less (for example, if they are more attractive or unattractive than average). Likewise, in the 'real' world where pimps and syndicates exist, things become more complicated and the market starts resembling an oligopolistic or monopolistic one.

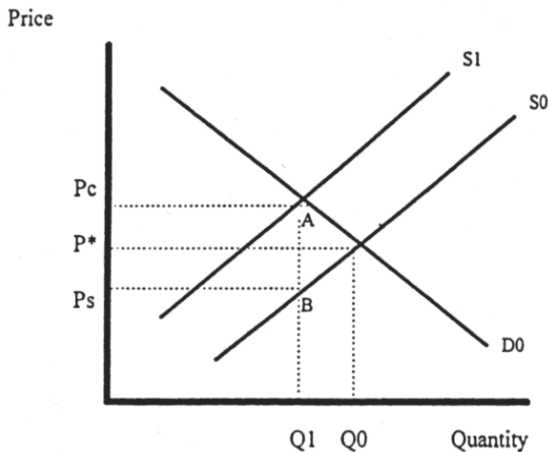
McKenzie and Tullock (1975:57-60) attempt to model normal sexual behaviour through economic analysis. They maintain that even though we have biological drives, we do as a rule have control over these drives and do not engage in sex to the extent of our biological capabilities. Using standard supply and demand analysis, if sex were determined solely by biological drives (and were equal for men and women) then the price of sex per se would be zero. Obviously this is not borne out in reality. Firstly, sex is not costless: there is the opportunity cost in terms of time and activities foregone, direct costs such as contraception and 'dolling' up, possibly the cost of 'wining and dining', the risk cost of pregnancy and STD infection, the psychological cost of violating moral standards and damaging one's reputation, and the time spent in plotting and manoeuvring one's strategy for sex.

McKenzie and Tullock (1975:58) affirm that traditional societal pressures have resulted in a decrease in the female's supply curve for sex by valuing abstinence in women. Men, however, achieve 'status' through sexual conquests and this has raised the male's demand for sex. Overall, the effect has been to raise the price of sex. More recently, it could be argued that the female supply curve for sex has shifted (from S1 to S0 in **Figure 1**), reflecting an increase in supply, as contraception and abortion have become more readily available, as societal norms regarding virginity have changed, and as women have become active pursuers of sexual pleasure for its own sake. Assuming that demand remains unchanged, we can anticipate that the quantity of sexual activity will increase and price will fall. The point is that normal sexual activity entails a cost, and it is this fact which makes prostitution viable. Even though a prostitute may cost R150-R200, the cost of normal legal sex may yet be higher. By hiring a prostitute, a male does not have to spend time seducing her or buying flowers and gifts. He is guaranteed a 'sure thing' and he does not have to become emotionally involved. He does not have to concern himself with her needs and desires and can enjoy pure, selfish pleasure.

The quality of a prostitute's services may also be perceived as being higher than 'legal' sex, given her experience and professionalism.

The decriminalization of prostitution would probably lead to an increase in both the demand for and supply of prostitution given that the penalties associated with both soliciting buyers and buying sex would be removed. Transaction costs would be significantly reduced making the market more efficient. If a tax is imposed on prostitution, the effect would be to shift the supply curve backwards (decrease supply) by the tax amount. This can be illustrated in **Figure 1**, with the supply curve shifting from S_0 to S_1 . The price paid by consumers would increase to P_c and the price received by suppliers would decrease to P_s . The quantity consumed would fall from Q_0 to Q_1 , and the government would raise revenue equal to area P_cA-BP_s . This revenue could be used to make law enforcement more effective or to run a more effective education campaign on Aids. However, if the tax rate is too high then the illegal trade in prostitution will continue as prostitutes find it more attractive to operate outside the legal framework. This matter will be examined in greater detail in the section on public policy reforms.

Figure 1: The economic dynamics of the sex market



The Nature of Prostitution

Defining the nature of prostitution is not easy. Hobson (1990:3) questions whether it is a sexual relationship or work contract, a private act or public commerce. One's definition, in turn, raises other issues such as whether prostitution represents a form of extreme exploitation and gender enslavement. If prostitution is decriminalized, should it be regulated? And if prostitutes pay taxes, should they be entitled to maternity benefits and the like? Generally speaking, prostitution entails the exchange of sex for money or goods relatively indiscriminately to strangers. This definition is fraught with obvious deficiencies but will suffice for our purposes. Hobson (1990:3-4) affirms that the study of prostitution

becomes a two-way social and ideological mirror. The prostitution economy exposes social and sexual inequalities within society (women are overwhelmingly the sellers of sex and men the buyers, yet penalties are primarily aimed at the prostitutes). This reflects underlying sexual politics and class interests.

Anthropologists have found that in sexually permissive societies prostitution is rare for the simple reason that it is unnecessary. There are many other societies in which prostitution is condoned or even fostered. However, to a large extent industrialized societies have suppressed it with little success. Many ancient religions incorporated a form of prostitution in their religious rites, whilst in certain early Mediterranean cultures young girls earned their dowries through prostitution and thus became eminently marriageable. In ancient Greece and Rome, prostitutes were required to dress in distinguishing apparel and live in a restricted area (though this was done primarily to facilitate the search pattern of clients) (*Encyclopedia Britannica* 1981:75-81).

The early Christian church condemned prostitution as immoral but did not press for it to be outlawed because it was considered a necessary evil. St Augustine, in the fourth century AD, articulated this doctrine in a now famous passage (cited in Milton 1994:138):

What can be called more sordid, more void of modesty, more full of shame than prostitutes, brothels, and every evil of this kind? Yet remove prostitution from human affairs, and you will pollute all things with lust ...

Milton (1994:138-9) points out that the position in Europe during the Middle Ages and onward was that prostitution was tolerated though frowned upon. Regulation ensured that prostitutes were identified and localized in licensed brothels. This system of zoning and licensing had fiscal advantages as well as providing a measure of hygienic control. The Protestant Reformation adopted a much stricter view, not only condemning prostitution but also insisting upon its suppression by criminal sanction.

The Industrial Revolution with its accompanying urbanization and increasing anonymity facilitated the growth of prostitution, as did the growing economic exploitation of large numbers of people. Nineteenth century reforms and the rise of Victorian conservatism saw a move away from regulation (such as localization) towards attempted eradication by prohibition (*Encyclopedia Britannica* 1981:75-81). The effect was to drive the practice underground where it became even more disruptive to society. The enforcement of prohibitive laws (in Britain, beginning with the Vagrancy Act of 1824, and the Contagious Diseases Act of 1864) has been fraught with difficulties and has led to 'vice rackets' and the exploitation of prostitutes and clients by third parties, very often the police.

Forms of Female Prostitution

Stinchcombe (1994:856) affirms that prostitutes are disproportionately recruited from families disorganized by death or desertion, or by abusive and alcohol- and drug-dependent parents, or parents themselves in grey world commerce. Prostitutes tend to come from poverty-stricken backgrounds and get into the business because 'there was no alternative'. Stinchcombe (1994:856) argues that they start at very young ages as a result of finding it difficult to establish 'normal' adult kinship and occupational roles. They often have to cut all ties with their previous life and develop a new self-image.

Various forms of prostitution exist (*Encyclopedia Britannica* 1981:75-81). These include the following.

- (a) Brothels (in various guises) wherein prostitutes sometimes reside and are supervised by a 'madam' with sufficient social contacts to make them viable. The supervisor takes a percentage of the prostitute's earnings (anything from 20 per cent to a staggering 80 per cent).
- (b) Escort agencies — a variation of this theme, where the agency provides clients with an 'escort' for a fee, with sex being a 'private' matter between the escort and client.
- (c) 'Call girls' — prostitutes with their own residences and whose customers are provided by the operator of the calling system who screens prospective clients. Alternatively, these women operate independently and advertise their services through newspaper classifieds. They will normally meet their clients at their hotel rooms or at their own residences.
- (d) Street prostitutes, who share their revenue with either their pimps or others who facilitate their livelihood, such as hotel employees, bartenders or taxi drivers.

In terms of the prostitution hierarchy, street prostitutes are at the bottom and always have the lowest status and lowest pay, whilst call girls enjoy the highest status and pay. Mobility between these forms of prostitution is perplexingly low.

A study by Benson and Matthews (1995) conducted in Britain over a period of two years involved a survey of vice squads, prostitutes working in a range of settings, clients, residents groups and local authority representatives. The study yielded important insights, with 10 key facts emerging:

- (i) the majority of women who work on the streets became involved in prostitution at a relatively young age;
- (ii) most women who work on the street do so on a sporadic and temporary basis;
- (iii) there is very little mobility between street prostitution and commercial and organized forms of prostitution;
- (iv) the majority of women working as prostitutes have economic, social and health-related problems;

- (v) women who make contact with their clients on the streets are the repeated victims of both sexual and physical violent attacks;
- (vi) the majority of clients have regular partners or are married;
- (vii) many kerb crawlers are middle-aged, and a large proportion of them are middle class;
- (viii) clients who patronize saunas and massage parlours are not generally involved in kerb crawling;
- (ix) the regulation of prostitution is low-status police work; and
- (x) despite growing inequalities over the last decade, the number of women working as prostitutes on the streets in the majority of areas has either remained constant or decreased.

Barring the last point, our survey confirms these general patterns for South Africa.

Prostitution and STDs in South Africa

The configuration of the prostitution industry in South Africa varies from formal structures such as escort agencies, massage parlours and private brothels to less structured groupings. Both male and female prostitutes (heterosexual, homosexual and transgender) across all racial, religious, economic, social and cultural barriers operate in South Africa. However, certain types of prostitutes tend to be more synonymous with particular cohorts.

Prostitutes experience serious discrimination and social rejection throughout all sectors of society, even from their own clientele, for various social, cultural and religious reasons. Fear of this discrimination and prosecution under the Sexual Offences Act of 1957 forces prostitutes to operate primarily in unstructured ways which do not always provide a conducive environment for proper transacting or monitoring. Outlets include truck stops, shebeens/taverns, mines, and isolated places such as parking lots or national roads. Projects including Sex Workers Education and Advocacy Task Team (Sweat), Targeted Intervention Research (TIR), Periodic Presumptive Treatment (PPT) and Outreach targeting assistance to prostitutes, find it difficult to get access to them and encounter serious problems with the continuity of interventions due to their forced mobility.

The clientele of prostitutes represent all sectors of society. Payments are negotiable between the prostitute and the client, and amounts depend on the socio-economic status of the prostitute and the type of client. Sometimes special goods such as clothing or jewellery, special work-related rewards, transport, and drugs and alcohol can also serve as a form of payment. The needs of the prostitute will determine the number of clients, which can vary from 1-2 per day to as many as 15-18 per day, depending on the payment and the sexual act.

Stinchcombe (1994:857) maintains that gross prostitute earnings in industrialized countries are on average five to 10 times the minimum wage. Subtracting half for

business expenses (rents, bribes and so on), prostitutes might average as much as lower professionals (teachers, nurses, police). In South Africa, the sex market is much more differentiated. We found that, whilst call girls and escorts often earn in excess of R10 000 a month, the prostitutes working from taverns charge only R20 per session and live in desperate conditions.

Most prostitutes in South Africa do not have access to health-care programmes related to STDs, which makes it difficult to monitor the STD/HIV/Aids infection. The reasons for this include the distances between places of operation and health-care outlets, the discriminatory attitudes of health workers towards prostitutes, the social stigma attached to prostitution by society, and the costs entailed (both direct and opportunity costs). The criminalization of prostitution through the Sexual Offences Act of 1957 (specifically Section 20(1)(aA) which provides for the punishment of any person who has sex for reward) gives rise to official abuses by the judicial systems including the courts and the South African Police Services. For instance, Posel (1993:35) makes reference to the Point Road Women's Association in Durban (an informal association of prostitutes) which was formed in reaction to "victimization and harassment" by the South African Narcotics Bureau. Likewise, Posel (1994:28) describes the experience of an undercover journalist arrested for prostitution who was harassed by the police, not informed of her rights, and ordered to plead guilty.

Most existing programmes that target prostitutes do provide basic STD education, but it is the prostitutes operating in unstructured ways who are not always accessible, due to their mobility between prostitution outlets. Another complicating factor is the fact that prostitutes operate primarily at night whilst health-care facilities are available during the day (when prostitutes rest). Projects that do provide evening clinics, such as Sweat and Outreach, have indicated that the STD prevalence has significantly dropped, and that prostitutes are more confident in seeking treatment when they know there is an Outreach staff member they can trust with confidential matters.

Problems Related to STDs and Prostitution

Below is a list of problems associated with the current policy on prostitution in South Africa and how it relates to the effective control of STDs.

- As already indicated, prostitution is still a criminal offence under the South African Sexual Offences Act of 1957. Convictions related to prostitution in selected years have been as follows: 91 in 1968/69, 115 in 1973/74, 69 in 1977/78, 170 in 1982/83, 112 in 1986/87, 129 in 1991/92, and 151 in 1993/94 (Central Statistical Services, various years). This raises serious concerns about the status of preventative work being done with prostitutes in order to combat the high prevalence of STD/HIV/Aids. The denial of the prostitution industry as a fully fledged labour force within South Africa prevents access to

basic services such as pensions, medical treatment, welfare and insurance. The loss of tax revenue to the state is potentially quite considerable.

- The social stigma attached to prostitution gives rise to unstructured underground prostitution. Health-care workers' attitudes towards prostitutes is cause for great alarm as it reinforces prostitutes' reluctance to seek help.
- Government's lack of a general response to the prostitution industry in South Africa and its absence of political commitment to move on the decriminalization of prostitution, despite calls for this by health-workers, undermines the development of a comprehensive targeted programme. It also legitimizes the abusive practices often inflicted by state agencies, such as the police, judicial and social services.
- The criminalization of prostitution forces prostitutes to be highly mobile which impedes effective follow-ups by health workers and the development of confidential, trusting relationships between health workers and prostitutes.
- Prostitutes tend to be highly illiterate, both socially and with respect to STDs, which makes awareness and education programmes difficult to implement.
- Projects which target prostitutes are understaffed and underresourced. Staff members themselves are often victims of discrimination, negative social stigma and burnout. Funding for these projects is also very limited due to the lack of commitment from national government.
- The severe dichotomy present in the prostitution industry between elite and ordinary prostitutes, often with racial undertones, presents a serious challenge to policy-makers. There is a tendency to focus on the more accessible prostitutes and to ignore the lowest tier who are the most vulnerable (see, for example, section on 'beer' prostitutes below).

Prostitution in a Goldmining Community: Free State Goldfields as a Case Study

This section presents the major findings of a qualitative research study examining the perceptions, attitudes and practices related to sexual exchange and STDs. The study took place within the context of the commercial sex environment in a South African gold mining community, namely the Free State Goldfields around the town of Welkom. The greater Goldfields area has a population of just over 500 000 people, with about a quarter situated in mine compounds (see Le Roux, Luiz *et al*, 1994). Control of STDs in gold mining communities such as this presents complex and diverse challenges, especially given the mining industry's long history of migrant workers. At least 36 000 cases of STDs are reported annually by the local clinics in the Welkom area. Commercial sex is a prominent feature around many South African mines where thousands of male mine workers live in single-sex hostels. This is a key factor in the maintenance of high STD rates in mining communities.

The field research was carried out primarily by researchers from Vista University guided by a local technical advisory committee, and with technical assistance from Aidsmap, South Africa. Funding was provided by USAID. Specific objectives of the research were: (i) to describe the structure and dynamics of commercial sex in the community; (ii) to explore issues surrounding illness management, gender-related access of treatment, partner notification, post-treatment behaviour and attitudes of health providers. The study findings were intended to assist programme planners in improving the design of STD services and communication messages targeting commercial prostitutes and their clients.

Interviews were conducted targeting mine workers and other clients, prostitutes and health workers. In addition, direct observations at specific research sites were recorded. Trained researchers from the local university conducted a total of 304 interviews over a period of three months. These consisted of 74 interviews with prostitutes, 80 with mine workers, 80 with health workers, 10 with tavern/shebeen owners, and 60 with other knowledgeable persons. The interviews were conducted at 15 sites: two shebeens in the townships, three mine taverns, four health clinics on gold mines, four local authority health clinics and two mine hostels. Due to the illegality of prostitution in South Africa, it soon became evident that the research team would have problems gaining access to prostitutes and their clients. Brief discussions were held with the local police about the research, and several 'gate keepers' were consulted to facilitate the necessary introductions. Initially, considerable time was spent observing the social structures of sex exchange at various mine taverns and shebeens.

Female prostitutes on mines were described by interviewees as falling into three main categories:²

- 'Beer' prostitutes, who are the most visible around the mines. They tend to frequent the taverns and liquor outlets near the mines and will exchange sex for alcohol, money or gifts. Their clients are miners living mainly in the hostels.
- 'Money' prostitutes, who are usually found in more formal contexts such as escort agencies and shebeens/brothels. Their structure of operation is much more highly organized.
- 'Streetwalkers' who, as their name implies, work from street corners in and around wealthy suburbs of the city. Of all the prostitutes, these were the most reluctant to be interviewed.

The amount and method of payment varies according to the type of sex, the location and the duration. Sixty per cent of the beer prostitutes interviewed indicated that three beers would be sufficient for penetrative sex. The level of intoxication of both parties (prostitute and client) influences the type of sex and payment. In contrast, most of the money prostitutes operate through more structured appointments and charge much higher fees. Cash payments mentioned by prostitutes and clients averaged R150 to R200 for a 'full house' sex session

including penetrative sex. These prostitutes and their clients represent all spheres of society. 'Gate keepers', such as pimps or brothel owners, charge the prostitute up to R500 per day to introduce her to possible clients. Tavern owners also benefit from having prostitutes around their businesses because it increases daily business activities. In exchange, the tavern owner will provide the necessary infrastructure for appointments and a place to have sex. Cash payments are much lower for the beer prostitutes than for money prostitutes.

The Road to Commercial Prostitution A Case Study of a 32-year-old Single-parent Prostitute

I was born in Transkei and my grandmother was the one whom I have grown up with. I went to school there, and my grandmother was the one who mainly took care of me. My mother worked far from home and only visited us on Good Fridays and during the festive seasons. My mother got married and started to visit my grandmother and myself after a year or two.

When I was 11 years old my grandmother died and my mother took me to be with her and her new family. At that time I was doing my Grade 2 and my mother had three kids. I had to wake up early every morning, starting to clean the house and wash all my younger brothers before going to school. Then I had to make it a point that I gave them breakfast and washed the dishes before I could leave. After school I had to hurry because all the work in the house was waiting. My mother was not working but did not even try to help me. She just gave her work over to another child and would shout at her if she was slow or tired.

My friend and myself started hiking on lorries and at least found a lift which carried us half-way from where we were going. At first, the driver asked for sex before giving us a lift. When arriving at our destinations we would look for men who are contract workers. We knew that they would be people who would give enough money. We started hiking on the trucks and selling sex for money to those men.

I became pregnant and things became very hard. The father did not even want to know me. After giving birth to that child I did not even bother myself with the child because I had to go on with my life. My child died and my relatives phoned my mother and told her everything I was doing and that I was the cause of the death of my child because I did not look after it properly. My mother replied by letting me know that she was coming to see me. I ran away before she arrived and did not attend the baby's funeral. I was with my customers and did not want to see my mother's face. I told myself that I was living freely, no one controlling my life and I was not doing anything right or wrong. After some time I found a boyfriend who wanted me to stop selling myself and said that he

would provide everything I needed. He took me in to stay with him but immediately when he left for work I started to see men. I ran away from the boyfriend and lived with my friends. I hid myself from both the boyfriend and my relatives. I am still running and move from tavern to tavern away from my background. This work I will do as long as I live because it provides money and love. I have another child who is five years old.

This, we soon realized, was a fairly typical story of how some prostitutes become involved in prostitution, as illustrated by the following data.

The vast majority of prostitutes maintained that their entry into prostitution was a result of unemployment or family problems. Other reasons given included being sexually or physically abused, having poor role models, being illiterate, and being bored with their lives. A large proportion of streetwalkers became involved with prostitution as a way to supplement income from domestic work and operate in wealthy white suburbs. Over 75 per cent of prostitutes were found to support a household.

STDs and Prostitutes

Mine workers proved to have a more extensive knowledge of STDs than prostitutes or the general community, and could more easily understand the medical terminology relating to STDs. This may be due to the STD/Aids awareness campaigns institutionalized at most local mines through peer educators. Although local clinics are running STD education programmes, which are updated on a regular basis, STD knowledge in the general community outside the mines proved to be fairly limited.

Sixty-three per cent of the STD patients and most prostitutes had a lack of knowledge about the transmission and underlying causes of STDs. In most cases it was connected to a strong traditional value system. Some common responses from clients included: “having sex with someone who is not your wife”; “if a woman reaches her orgasm before the man and her dirt filled inside of the man, she has dropped me”; “having sex with a widow or a woman who uses contraceptive methods”.

The causes of syphilis, too, evoked some peculiar responses from clients: “germs which are like corkscrews entering the body through cracks in the moist area of the sex organs”; and “when a man has pre-cum [*sic*] it is causing fluids to harden before real cum”. Many STD patients asserted that Aids was primarily caused by males who did not go through initiation school or as a result of witchcraft. However, the majority of clients and prostitutes were aware that not using a condom facilitated the transmission of Aids.

Most of the money prostitutes interviewed indicated that condom use largely depended on the decision of their clients. They might introduce a condom to a

client but would not insist if the client had objections. Many felt afraid to insist because of the possibility of violence. Beer prostitutes were the least likely to use condoms. The reasons they gave included lack of time due to client pressure, or lack of money to buy condoms. The absence of proper lighting and running water around the taverns were also given as reasons for not using condoms. Most of the male prostitutes indicated that they have better access to condoms because of the peer education programmes on STDs and Aids presented on the mines. These programmes not only provide proper education on correct condom use, but supply condoms free of charge to local mine workers.

About 75 per cent of clients and prostitutes indicated that condom use is low because both parties prefer 'flesh-to-flesh' sex. A client may even pay more if the prostitute does not insist on using a condom. Clients commonly expressed the belief that a condom might hinder a man's performance during sex and that it required too much effort to put on. Less than 10 per cent of the prostitutes interviewed indicated that they would refuse sex if a condom was not worn. Enigmatically, many married men affirmed that using a condom was a sign of unfaithfulness and would therefore not use one either with their wives or with prostitutes.

Beer prostitutes demonstrated a high level of medical illiteracy by trying to treat themselves with antiseptic fluids, such as Jeyes Fluid and Dettol or with a strong type of washing powder like OMO around their vaginal areas. Other forms of self treatment included swallowing potassium permanganate, purchased from local pharmacies or supermarkets. Almost all beer prostitutes indicated that they would first turn to a traditional healer before approaching local clinics. Likewise, 65 per cent of the STD patients first sought treatment from traditional healers and only turned to formal clinics once traditional methods had failed. Traditional healers are very easy to find at mine hostels as many are full-time mine workers. This makes them accessible to both beer prostitutes and miners.

Partner notification is rarely carried out. Beer prostitutes in most cases do not even know who the client was or how many they have seen. Most prostitutes explained that they do not abstain from sex during treatment due to loss of income. They find it difficult to abstain because of socio-economic circumstances such as single-parenthood, poverty, drug abuse and alcoholism. Health workers advise patients to return to the clinic for test results and condoms, but few prostitutes or clients actually return. Reinfection is a common problem, according to health providers.

These findings point to the urgency with which the South African authorities need to target sex workers appropriately in the management of STDs. The reality is that the criminalization of prostitution has hampered our ability to monitor the spread of STDs. Prostitutes are reluctant to seek help or get information. The criminalization of their work renders them powerless to insist on condom use and other precautions.

Public Policy and the Search for Alternative Reforms

On the issue of whether prostitution should be decriminalized, one has to re-examine the question of what prostitution is and why it was criminalized at all. Milton (1994:142) maintains that an examination of the literature and law indicates the following justifications for the criminalization of prostitution: (i) the prevention of crime, (ii) the prevention of the spread of STDs, (iii) the prevention of public nuisance, and (iv) because it is immoral. All these reasons are unpersuasive. There is no clear evidence that by criminalizing prostitution the incidence of crime is reduced. In fact the converse may be true. Likewise, there is no empirical evidence that the suppression of prostitution will bring an end to venereal epidemics. This article argues that appropriate education rather than prohibition is the answer. Criminalizing prostitution drives it underground and makes it more difficult to monitor and manage. Whilst public nuisance behaviour such as 'kerb-crawling' is a manifestation of prostitution, this is relatively easy to control, through zoning for instance. Lastly, on the issue of morality, we would argue that puritanical judgements must be subordinate to the greater importance of eliminating the discrimination faced by sex workers. Prostitution will exist whether we prohibit it or not.

If one adopts the libertarian position that sees prostitution as a normal contract entailing a fee for a service, then as long as no coercion is involved and participation is freely chosen, the state should not interfere. The usual objections are based upon moral judgements which are outdated in the post-modern world in which morality is not absolute. The problem with the libertarian position lies in its assumption that we are masters of our own fate and in its heavy reliance on the assumption of other things being equal. The reality is that many women 'choose' prostitution as a living as a result of socio-economic circumstances which often lie outside their control. 'Choosing' to work as a prostitute to avoid destitution is not a choice. However, in most industrialized societies generous forms of welfare make indigence unlikely and yet women still choose to act as prostitutes. These are not mutually exclusive, though, as a prostitute can choose to supplement her welfare benefits through sex. Likewise, Alexander (1987:206) finds that programmes which attempt to assist prostitutes in making the transition to boring, low paid work tend to fail.

Radical feminists adopt a quasi-marxist approach and focus on how women's subordination allows their sexuality to be appropriated. Prostitution and marriage are assimilated, as both entail the exploitation of female sexuality by men in exchange for economic stability (Zatz 1997:288). Men abuse sexuality so as to enslave women and make them instruments for sexual gratification and reproduction. The criminalization of prostitution is largely seen as irrelevant because of the wider societal sanction of the subordination of women which will perpetuate trade in sexuality. Radical feminists see prostitution as degrading to women and as an outcome of a male repressive order. Whilst they would support the

decriminalization of prostitutes' actions, they would push for the criminalization of the peripheral trade in prostitution, including that of pimps.

However, Zatz points out that the radical position contradicts the testimony of many prostitutes who find prostitution empowering, or at least no worse than an ordinary job (1997:291). Getting paid for what all women are expected to do for free is a source of power. Ultimately we are all in the business of selling parts of our bodies: be it our brains, our muscles, or our fingers. Zatz (1997:295) asks whether prostitution concerns the use of a woman's body by a man for his own pleasure, or the use of a man's desire by a woman for her own profit. Ultimately, both these statements are correct, which is what makes the trade of sex for money possible. The two parties are using each other. Prostitutes experience their sexual act as a mundane meaningless exercise whilst their clients perceive it as a real sexual encounter. Prostitutes are generally able to separate their own sex lives from their profession. The actual sexual act is not intended to produce pleasure for the prostitute and, in fact, having an orgasm is considered 'unprofessional' by her. Radical feminists also have great difficulty in trying to explain the incidence of male prostitution, as well as lesbian and bisexual prostitution.

The real source of vulnerability that prostitutes experience lies with the criminalization of their work which creates a power imbalance:

As long as prostitution is criminalized, sex workers' access to institutional power and ability to organize for more are frustrated by economic and legal marginalization. Instead of offering protection against abusive pimps and customers, the police are a constant threat. Exclusion from social benefits premised on employment (e.g. workers' compensation, disability and unemployment insurance, the earned income tax credit) and the added burdens of illegality undermine the possibilities for financial independence and encourage reliance on pimps and alliances with organized crime and drug trafficking (Zatz 1997:304).

The decriminalization of prostitution would offer real improvements to the lives of prostitutes. At the moment they are often victims of sexual crimes, rape, physical abuse and theft and are powerless to seek legal assistance due to the illegality of their profession.

Criminalization of prostitution has also exacerbated racist and classist aspects of the trade. Zatz (1997:302) cites studies which point to the continued harassment of poor women and women of colour. Although about 40 per cent of prostitutes are women of colour in the United States, they make up 85 per cent of those imprisoned for prostitution. Part of the reason lies in the fact that police are more tolerant of indoor prostitution and concentrate on harassing street prostitutes who are the poorest in the profession and those are mostly black.

Further discrimination is evidenced by the fact that it is largely the prostitutes who have been imprisoned and not their clients (see Cohen 1982). In South Africa

there has been an overwhelming majority of female convictions related to prostitution. For instance in 1982/83, of the 170 people convicted 147 were women; and in 1993/94, of the 151 people convicted 93 were women (CSS, various years). The standard argument for this has been that since the prostitutes do the soliciting, they should therefore be punished. However, when police departments employed female decoys, they found that in many instances men were doing the soliciting in prostitution exchanges (Hobson 1990:212).

It is believed that decriminalizing prostitution would assist in empowering prostitutes and would prevent the systematic discrimination to which they have been subjected. However, it is possible that it could result in an increase in exploitation via the commercialization of the sex industry. Benson and Matthews (1995:398) argue that, given the potential profits in this industry, entrepreneurs could resort to ruthless tactics in attempting to control the sex market, restricting competition, undermining competitors and maximizing output. It may be even more difficult to operate as an independent prostitute after decriminalization, as the stakes will be so much greater.

The other major alternative is to be found in the legalization of prostitution. This would entail the provision of a safer and more manageable environment for the trade. The state would sanction the establishment of state-sponsored brothels which would then be regulated to ensure better access to health, welfare and education services for both parties (Benson and Matthews 1995:396). Prostitutes would be required to undergo regular medical check-ups for STDs, which would make control over the spread of infection more manageable. Of course there is no guarantee that the prostitute will not become infected inbetween check-ups and transmit the disease to her clients, but at least some safety measures would be in place. Our study indicates the difficulty that health workers have in monitoring prostitutes due to the latter's high mobility and fear of prosecution. However, many street prostitutes find the option of regulated prostitution in a strictly controlled environment unattractive and would resist registration. In Germany, for instance, only 12 per cent of prostitutes work in the state-run sex centres whilst the majority prefer to operate illegally but with more flexible conditions (Benson and Matthews 1995:396). However, another study maintains that state regulation in Germany has reduced prostitution-related crime and STDs, and even increased state revenue (cited in Hobson 1990:225). A further problem, cited by Posel (1993:38), is that the screening of only prostitutes for STDs ignores the role of the client as a possible carrier. This may encourage clients to refuse to use condoms on the grounds that they are not at risk from prostitutes.

A further alternative lies in the establishment of zones of tolerance away from residential areas, from where prostitutes can operate. The problem with this system is that these areas tend to become magnets for illegal activities so that many prostitutes refuse to work in them (Benson and Matthews 1995:397). Also, these zones tend to be in isolated areas on the outskirts of towns which reinforces the negative stigma associated with the profession. The Dutch system employs a

zoning model, but with state intervention kept to a minimum and without isolating its sex districts. The 'red light' zone in Amsterdam is located in the heart of the city where prostitution hotels exist side by side with churches, shops, residences and the like. A tradition of tolerance has thereby been inculcated.

In South Africa, the Sexual Offences Act of 1957 which criminalized prostitution has not resulted in effective policing. Escort agencies have successfully circumvented the law, while prostitutes have used these agencies to build up their own clientele and to operate as call girls from their apartments, making policing almost impossible. Instead the police have become notorious harassers of street prostitutes, often demanding sex in exchange for indemnity. Once again, it is the poorest of the prostitutes who bear the brunt of such harassment (see Posel 1993:32).

There is an urgent need to address the issue of prostitution in South Africa with a proactive, non-moralistic approach. We suggest, firstly, that prostitution be decriminalized but regulated, as a matter of urgency. Posel (1992:147) quite rightly affirms that decriminalization will not necessarily lead to the disappearance of the associated culture of violence and crime. This necessitates the active protection of prostitutes and control over the industry.

We support Lotter's (1994:131) call for the legalization of escort agencies/brothels which would be regulated by local authorities, as this internalizes the market with protection given 'in-house'. Prostitutes would be required to undergo regular medical check-ups which would assist in the control of STDs. The problem with this formal method is that it once again excludes the poorest prostitutes who will not find employment in escort agencies or be able to afford the cost of rentals, registration and so forth. We therefore reject Lotter's (1994:131) call for the criminalization of solicitation because it would reinforce this discrimination. However, street prostitution should be more tightly regulated and restricted to certain areas along the lines of the Dutch model. These zones already exist in most centres (Hillbrow, Braamfontein and Joubert Park in Johannesburg, and around the mine taverns in the Goldfields). Ideally, it would be useful if all prostitutes had to apply for an annual licence which would be contingent upon favourable medical check-ups and attendance at an annual sex education seminar. Unfortunately, this would be impossible to manage in South Africa at this stage. Van Wyk argues that the decriminalization and regulation of prostitution is a vital ingredient in controlling the spread of STDs by making it easier to monitor (1990:174).

More importantly, exit routes for prostitutes should be set up which would provide assistance and training to those women who wish to leave the industry. The availability of sex education and medical advice should be improved. Our study found an extremely poor understanding of STDs and their prevention, and clearly indicated that not enough has been done to reach these women. Posel (1993:38) makes the point that the only practical and effective means of reducing the risk of

STD infection in prostitution is for the wearing of condoms to be made compulsory in law, as in Australia. Obviously this would be impossible to police, but it would give prostitutes the ammunition to insist on condom use. Female condoms have the potential to be an important weapon in the fight against STDs as they do not depend on client attitudes.

McKeganey (1994) notes that condom use with prostitution is much lower in developing countries than in developed countries, whilst the incidence of HIV in prostitutes is much higher. Further, prostitutes have reported that they tend to experience condom failure about 20 per cent of the time. Nevertheless, condom use remains our most effective weapon in the fight against HIV both in society in general and within the prostitution industry in particular. Lastly, police need to redefine their attitudes towards prostitutes and should be responsible for providing a safer environment in which the industry can operate.

Conclusion

South Africa's transition to democracy has necessitated much policy analysis and reform. However, the government can no longer afford to ignore the pressing issues presented by the prostitution industry. The lack of political will is evidenced by the debacle concerning the Gauteng government's shelving of its plans to decriminalize prostitution, fearing a backlash from conservatives ahead of the 1999 elections. This paper has demonstrated that prostitution is not just about sex, but more fundamentally about sexual and social equality. Current policy is out of line with the spirit of the new constitution which guarantees equality and protection for all. Prostitutes are being abused by the agents of the state with the state's tacit sanction (see Posel 1993:33).

Much research still needs to be conducted in this field. The approximate size of the industry has yet to be calculated both in monetary and human terms. The incidence of HIV amongst prostitutes has important implications for future regulations. The first step entails the decriminalization and regulation of prostitution. This, in itself, should improve the working conditions of prostitutes and make them fully-fledged members of South African society, entitled to the same protection as other citizens. Decriminalization would also empower prostitutes to stand up for their rights and take control over their own bodies: they would be entitled to say no; and to insist on condom use. An education programme must accompany this process to teach prostitutes their rights as women and as workers, and to improve the level of knowledge regarding STDs. The role of the state will be to regulate the industry to ensure that it operates in an orderly manner and that protection against abuse is provided. The state in effect needs to become a benevolent pimp.

Notes

1. The South African case study in this article draws partly on two reports: "A Community Perspective on Sexual Exchange and STDs in a Goldmining Community", prepared for

AIDSCAP/Family Health International; and our appendix to the "National STD/HIV/AIDS Review: Comprehensive Report 1-4", prepared for the National Department of Health. The authors are indebted to Professor Harry Zarenda and three anonymous referees for the helpful comments they provided on this article.

2. We have retained the use of their simplistic terminology to identify the categories of prostitution.

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