

STREET PROSTITUTION AND ITS MANIPULATION BY LAW IN NEW SOUTH WALES

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SIR WILLIAM ERLE, THE PROMINENT ENGLISH CHIEF JUSTICE, ONCE SAID:

The Law is for the protection of the weak more than the strong (*Reg. v. Woolley*
[1850] 4 Cox CC 196).

As an axiom of the law at no time does this statement drift further from truth than in the legislation and law-enforcement of street prostitution. In New South Wales laws against prostitutes' activities were first introduced to curb public soliciting, and today the only laws directly affecting commercial sex traders are those aimed at restricting street prostitution. Considering that only about a tenth of sex workers take their business onto the streets, or no more than 100 at any one time across Sydney, and since these comprise women from poverty-stricken backgrounds, the heaviest drug users, and women with the fewest economic, social and political skills, they are among the weakest members of society. On the other hand, those people granted legal protection from these 'denizens of immorality' are usually landowners, the job secure, and members of the affluent middle class, who are among the strongest groups in society. There is, therefore, much room for doubting that the weak have anywhere near the same access to the law as the strong.

This paper examines the situation of street prostitute women and the laws which have been used against them from both an historical as well as a current research perspective, and argues that these particular women have attracted more attention from the law and law-enforcers than other prostitutes because of a manipulation of the law by social forces whose chief concerns are morality, bourgeois tastes and political ambitions, rather than any real threat posed by street prostitutes.

Prostitution in Colonial Times

For the first hundred years of white colonisation in Australia there were no laws specifically aimed at prostitutes' activities. Street prostitutes, however, could be, and often were, arrested for vagrancy, riotous or offensive behaviour under the colonial statutes, along with numbers of other homeless or drunken men and women considered 'undesirable' by colonial society. In mid-century the various Contagious Diseases Acts gave police an opportunity to control prostitution through detention and health examination by medical authorities. Since prostitutes were singled out as an imagined threat to wholesome society, this form of discrimination gave them a focus that would eventually lead to specific legislation that prohibited the activities of sex workers in an effort to stamp out prostitution altogether.

Encouraged by English legislation on prostitution introduced in 1885 in response to evangelical moralism, the colonial governments of Australia passed laws on 'brothel keeping', 'procuring' and 'public soliciting' in the 1890s and early 20th century that brought an end to centuries of legal laissez-faire commercial sex. In Victoria in 1891 it became an offence to 'importune' in a public place (*Police Offences Act* sec. 7[2]), while in Western Australia the next year soliciting became illegal (*Police Act* sec. 59) and in 1899 the Queensland Criminal Code (sec. 217) referred to a 'common prostitute' as 'a woman who commonly offers her body to men for lewdness in return for payment'. However, South Australia maintained its control over street prostitution under an early statute, the *Police Act 1844*, by which Clause 18 enabled the arrest of prostitutes as 'public annoyances'. Tasmania introduced a law against 'soliciting for immoral purposes' in sec. 17, of the *Police Act 1905*.

Prostitution Prohibition in NSW

In New South Wales the *Vagrancy Act 1902* (sec. 4[1][c]) enabled the arrest of a 'common prostitute' wandering the streets if she behaved in a 'riotous or indecent manner'. This of course, was open to conjecture. Earlier comments like that expressed by the anonymous author of a booklet entitled *Vice and Victims in Sydney* in 1871 which stated, 'girls and young women . . . may be seen airing themselves in the Domain and gardens on Sunday afternoons and on Sunday nights in George Street, putting even rough modesty to the blush by their shameless speech and acts sapping the foundations of the state and urging youth to ruin and infamy', and those of the English traveller R.E.N. Twopenny in 1883 who thought Sydney prostitutes more numerous and more brazen than the street women in his native London, led to the same kind of moral outrage as that in England prior to the introduction of anti-prostitution laws.

Police gained greater power over prostitutes in 1908 when the *Police Offences (Amendment) Act* amended the Vagrancy Act so that a streetwalker could be arrested if she 'solicits or importunes for immoral purposes' (sec. 4 [1][i]). At the same time this statute included a law against those who 'live wholly or in part on the earnings of prostitution' (sec. 4[2][o][i]), which was aimed specifically at the women's lovers and husbands who acted as their protectors.

In addition, the Vagrancy Act also allowed the arrest of prostitutes for 'indecent behaviour' (sec. 8A), which became a major legal vehicle for controlling street

soliciting and other public prostitution. Table 1 includes arrest figures for prostitution-related offences in NSW police *Annual Reports* 1908-19.

Table 1

Prostitution arrests, New South Wales, 1908-17

Years	Soliciting	Indecent behaviour
1908-11	347	1,596
1912-14	110	2,250
1915-17	32	4,273

Source: NSW Police *Annual Reports*, 1908-17

The decline in 'soliciting' arrests suggest that either street prostitution decreased after the introduction of the laws, or that it became more clandestine. In any case the increase in arrests for 'indecent' behaviour suggests that police used other tactics to entrap public prostitutes, reaching its peak in the war years, no doubt in an attempt to protect 'our boys' on leave or being mobilised at home from vice and corruption.

In the 1920s soliciting was subsumed under the title 'vagrancy' in the police records, while arrests for 'indecent behaviour' gradually increased throughout the decade, apparently in an effort to curb the sexual liberation of women occurring at the time.

Table 2

Prostitution arrests, New South Wales, 1919-28

Years	Vagrancy	Indecent behaviour
1919-22	421	4,429
1925-28	144	7,213

Source: NSW Police *Annual Reports*, 1919-28

The Depression years witnessed the increasing use of the Vagrancy Act, but the overall decline in prostitution arrests is very likely due to the police having their hands full with other poverty-driven crimes.

Table 3

Prostitution arrests, New South Wales, 1930-36

Years	Vagrancy	Indecent behaviour
1930	184	819
1932	40	384
1935	316	436
1936	232	491

Source: NSW Police *Annual Reports*, 1930-36

The next major legal attack on prostitution occurred in the post-war era of the 1940s and 1950s. The number of arrests gradually increased throughout the decade as a reaction to an increase in prostitution due to the influx of thousands of lonely migrant men arriving in Sydney. It might be assumed that police reacted to protect the morals of these migrants, but a comparison between the early years of the decade and the later years indicates that increases in arrests coincided with powerful lobbying against prostitution by the new Council of Churches.

Table 4

Prostitution arrests, New South Wales, 1949-59

Years	Soliciting	Offensive behaviour
1949-52	192	7,273
1956-59	650	16,633

Source: NSW Police *Annual Reports*, 1949-59

The 1960s witnessed an explosion of the brothel trade in East Sydney lanes. Prostitution arrests reached a peak in this period as lobbies to the state government by the churches and residents mounted in intensity. Street prostitution took a back seat for a while, although most of the women working in the brothels had moved there from the streets. Many women remember this period as one in which police corruption and abuse was particularly heavy. They might well agree with jurist Ramsey Clark's comment in 1969 : 'You have to respect the law. But you can't respect the law when the law is not respectable.'

Table 5

Prostitution arrests, New South Wales, 1960-68

Years	Soliciting	Offensive behaviour
1960-62	26	20,580
1963-65	51	40,515
1966-68	103	22,752

Source: NSW Police *Annual Reports*, 1960-68

In 1968 the East Sydney brothels were closed down, and to prevent an increase in street prostitution a new law was introduced into the Vagrancy Act, viz. an offence to 'loiter for the purpose of prostitution' (sec. 4 [1][k]). Two years later the street prostitution laws were incorporated into a new omnibus statute, the *Summary Offences Act 1970*, sec. 28 of which covered 'soliciting' and 'loitering' for prostitution. Once more sex working on the street grabbed the major police attention. The impetus for this was 'protecting' American soldiers on R & R leave from Vietnam and curbing the increasing drug dependency of streetwalkers. The 1970s witnessed the highest numbers of arrests specifically for street prostitution. In addition to having to endure repeated arrests, street prostitutes at this time complained that police extorted \$150 a week from each woman to keep arrests to a minimum.

Table 6

Prostitution arrests, New South Wales, 1971-78

Years	Soliciting	Vagrancy
1971	3,617	
1972	4,288	3,712
1974	3,301	2,007
1975	2,592	1,221
1976	1,930	1,032
1977	2,075	918
1978	1,804	718

Source: NSW Police *Annual Reports*, 1971-78

In the latter years of the 1970s the Wran Labor Government grappled with law reform under pressure from new groups arguing for social liberalism, such as the feminists and civil libertarians.

Finally, in 1979 the old prostitution laws aimed at prostitutes were repealed and a return of legal laissez-faire for streetwalkers occurred under the new Prostitution Act.

Legal Laissez-Faire in the Early Eighties

Almost immediately after this law reform, residents of Darlinghurst organised into lobby groups and argued that prostitution would run riot. Many of these residents had recently moved into the inner city despite its reputation for street and other forms of prostitution. Yet so confident were they of favouritism under the law that they felt they could easily manipulate the government into reversing its decision, particularly with the parliamentary seat of Bligh dependent on individual performance rather than party preference.

The local papers were crammed with news of residents supposedly suffering from the presence of prostitutes. A restaurant owner claimed his business had declined because of one prostitute sitting in the doorway of her brothel opposite his place. Resident women claimed they were accosted by men because of the presence of prostitutes and some took to wearing aprons in public to distinguish them from the streetwalkers. Other residents claimed sex workers and their clients were having sex on their front lawns, to which one prostitute in a public meeting wryly replied that their lawns were too full of thorns for her to consider using them. The traffic, the noise and discarded refuse in the area were all blamed on the prostitutes. Few journalists were interested in reporting the sex workers' side of the story. They were prepared to accept the residents' stories without question. One newspaper photographer was sent into Darlinghurst on three consecutive nights in the fruitless search for couples fornicating on front lawns. On the few occasions that prostitutes were granted space to speak in the media, journalists were more interested in reporting on the reasons the women took up sex work and how much money they made than in their responses to the residents' complaints.

In the meantime the police bemoaned their powerlessness without laws to use against the street prostitutes, while at the same time arrested the women for 'obstructing traffic' or, more often, for 'offensive behaviour' or causing 'serious alarm and affront' under the *Offences In Public Places Act 1979*. These were stop-gap actions by police frustrated by resident harassment for presumably failing to do their duty. In most cases the prostitutes were charged with 'alarming and affronting' people by merely standing on a street corner. A number of the women complained of being arrested simply walking home, and some were forced from their homes for running a brothel without council consent. In the first year of the law reform, 1979, almost seven times as many women were arrested for these offences as had been the year before. From 1976 to 1978 1,663 arrests were made of women for 'offensive behaviour', while from 1979 to 1981 10,480 arrests were made of women for 'serious alarm and affront'. Quite obviously police were determined to use whatever laws were available to them against streetwalkers regardless of the government's sentiments on the matter.

It was apparent that most of the reactions by residents and police were based on moral outrage at public solicitation. The prostitutes were upset by the increasing traffic of voyeurs brought about by the mounting publicity, yet they were still held to blame for the noise and hooliganism. The residents did not isolate the problem as one of voyeurism and the police failed to single out the real culprits, the tourist buses and car-loads of drunken young bucks and families cruising the area as sightseers. It was all too easy to make the street workers accountable by feeding upon ancient myths on prostitution and the supposed socially disreputable women who involved themselves in it.

The Wran Labor Government was not interested in reality either. It was more concerned over the seat of Bligh falling into the hands of the Opposition in a forthcoming by-election. The street prostitutes were the most disposable human component in the complex Darlinghurst dispute involving outraged churchmen; doctors blaming sex workers for spreading hepatitis B; residents claiming the mafia were moving in; other residents expressing concern for the corruption of children in streets where no children were living; hooligans in cars who were also potential customers of Kings Cross entertainment businesses; property developers whose main concern was a 'clean' neighbourhood to attract bourgeois home buyers; and police who wanted their job made easier by flexing muscles with tougher laws. The result was a backward step by the Wran Government, which re-introduced a street soliciting law (*Prostitution Act* sec. 8A [1]) on, perhaps not too inappropriately, Anzac Day 1983. It differed from the previous soliciting laws though in making it an offence only if the soliciting occurred 'near' a church, school, hospital or dwelling unattached to commercial premises. The Government thought it a good compromise. It could satisfy their inner city constituents while at the same time salvage their reputation as a libertarian reformist government.

The Current Situation in NSW

There were two major outcomes of the introduction of the new law. The first was a sudden rise in more serious crimes by women. The second was the relocation of most street prostitutes in Darlinghurst to other areas.

Between 30 April and 30 June 1983 there was a fluctuation rate of 13 per cent in the numbers of women incarcerated in the state's gaols, and the June numbers of detainees was 9 per cent higher than the April total. From 1 May to 26 June the number of female prisoners rose from 143 to 169. The June record for females in detention was the highest in 2.25 years. For the year ended 30 June 1983 the most notable increases in female crimes were 'break and enter', which rose by 52 per cent, and various petty thefts, such as shoplifting, which rose by 44 per cent of the previous year's figures. These increases were so extraordinary that the Department of Corrective Services supposed that female criminality was on the rise, giving support to the on-going argument in favour of another female gaol. At the time little thought was given to the consequences of police actions on the streets. However, the inference is that with the enforcement of the new soliciting law as many as twenty or more of the most desperate street prostitutes, being suddenly deprived of an income, turned to property crimes for survival.

Whilst most of Darlinghurst's street prostitutes relocated along William Street, where they were not breaking the law, some of the more redoubtable risked arrest by continuing to work on residential streets. Their descendants are still there today causing concern to police and outrage to residents. A number, though, moved out west to Canterbury Road in the suburbs of Campsie, Lakemba and Belmore. Although in some areas along this major western artery the women were not breaking the law, in others they were working 'near' a residence, a school or church. The term 'near' caused some confusion with police, the courts and the prostitutes. The Parliamentary Select Committee Upon Prostitution, which at the time was investigating prostitution, attempted to overcome this ambiguity by recommending the law be changed to include the phrase 'directly in front of or in close proximity to or directly opposite'

instead of 'near to' and that churches and schools should be 'in use or being occupied' when the offence is committed.

However, following the antics of local residents whose suburbs include Canterbury Road, even though most did not live on that road, the Greiner Liberal Government in 1988 decided to resolve the matter with yet another change of law disfavoured to the prostitutes. Once again no serious investigation of the residents' claims were made, and these were accepted as fact. Apart from the familiar claims of fornication in front yards, corruption of children and dropping of needles, one highly unlikely claim was the discovery of a prostitute's diary which included a comment on having sex with a fifteen-year-old boy. It was highly suspect, more akin to popular mythology than to reality. Prostitutes refuted the diary as something prostitutes do not keep and even if they did they would not carry such an item onto the streets.

Members of the prostitute organisation PROS (Prostitutes Rights Organisation for Sex Workers) conducted their own investigation of the area. On three consecutive nights they found no more than fourteen women working the four and a half kilometre stretch of Canterbury Road each night, and never more than eight at one time.

In spite of these findings the Greiner Government showed its get tough policy by recalling the *Summary Offences Act* and including an amended soliciting law (sec. 19) which prohibited soliciting 'within view from' a dwelling, church, school or hospital, and a new law to convict clients as well, viz., 'an act of prostitution' in a public place (sec. 20), which meant that both a prostitute and her client having sex in a car in an isolated parkland could be arrested. The morality underwriting these laws is obvious. In 1989 the Minister for Police proudly announced having made thirteen times more arrests for soliciting than the previous year. The following table indicates the extent of this on prostitutes.

Table 7

Prostitution arrests, New South Wales, 1985-89

Years	Soliciting
1985-88	132
1988-89	808

Source: NSW Police *Annual Reports*, 1985-89

Most of these arrests were of women along Canterbury Road. In view of PROS findings this means that a small number of women were arrested over and over, some as often as fifty times. This meant that these women ended up on a never-ending treadmill of working illegally to pay fines. The Attorney-General sought to alleviate this problem by even more stringent legal action. Prostitutes failing to pay their fines would be singled out for special treatment by receiving prison terms instead of doing community service as other fine defaulters were made to. Fortunately, a majority of more reasonable legislators defeated the motion.

The response to this pressure upon the women on Canterbury Road was that some of them moved further west to work on the dark and dangerous Great Western Highway, where they were joined by a handful of western suburbs women feeling the effects of unemployment in the present economic recession. So the whole sorry story began all over again.

Conclusion

What the above discussion illuminates is that street prostitution in a city the size of Sydney is inevitable given the economic, social and sexual inequalities of the sexes, regardless of laissez-faire or prohibition. Governments, more concerned for votes than the real effects of the law on prostitute women's lives, continue to make the same mistakes by thinking tough laws will eradicate prostitution. They are too often influenced by the most vocal moralists in our community under the mistaken belief that these represent the majority.

One recent example illustrates the ridiculous extent to which moralism can be taken at others expense. One resident in East Sydney said that she would not complain to police if street prostitutes working a block away used the back entrance to a house where they took their clients for servicing instead of the front entrance opposite her place. While the front door faced a well-lit street, the back entrance opened onto a dingy back lane. One woman was stabbed, the wound opening her stomach from vagina to navel, and several other women have been savagely beaten. So, in pandering to this one resident's moral sensibilities, young women are being seriously damaged and it is only a matter of time before one of them is murdered.

This paper concludes with a comment by the jurist Rosalind Fergusson which succinctly sums up the sentiments of this paper:

'Much law but little justice.'