

# Budging Sex – What’s Wrong with the Pimp?

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The character of the pimp provokes special political and legal interest. He evokes community outrage and disgust, and has been cast in politics and law as parasitic<sup>1</sup> and wretched.<sup>2</sup> He has been described by Judges in English courts as ‘evil’<sup>3</sup> and as having ‘sunk as low it is possible for a man to sink’.<sup>4</sup> While male clients of prostitution have rarely been targeted by the criminal law, offences such as men ‘living on the earnings of prostitution’ have typically carried heavier penalties than the offences aimed at prostitutes themselves, such as soliciting.<sup>5</sup> Why the discrepancy? Barbara Sullivan observes a common theme of abhorrence for the male pimp in Australian Parliamentary debates of the 20th century. Attitudes to prostitutes themselves have varied in Parliament from moral disgust, to pity, to a form of working class conscious identification. However, the male pimp appears to have been universally despised throughout the last century. According to Sullivan, while clients were ‘not regarded as pathological’ in the period before World War II, ‘there was one category of men who were. This was the bludger, or in American parlance, the pimp, a man who lived on the earnings of prostitution’.<sup>6</sup> Even amid modern rhetoric of prostitution as ‘sex work’, just like any other job, the pimp (or the manager) is still irrationally suspect. The pimp is uniquely targeted. What is wrong with the pimp?

In this paper I examine the hatred of the pimp and note how this hatred translates into law, in English and Australian jurisdictions. I observe that the common justification for hating pimps is that they exploit the women who ‘work’ for them. Yet the law has exhibited very little interest in ‘exploitations’ of women, otherwise, in the form of clients who exploit women’s need to sell sex. In fact, in law, the exploitation by

pimps of men is a primary concern. I argue that the pimp is despised for two primary reasons: First,

1 Shaw v DPP [1962] AC 220 (HL) per Lord Reid.

2 Mr Holman, NSW Parliamentary Debates, Legislative Assembly, Hansard, 15 October 1908, 1675.

3 Times, 'Messina Guilty – Two Years in Gaol and Fine of £500', Times, 10 May 1951, 4.

4 C. H. Rolph, (ed) for and on behalf of the British Social Biology Council, Women of the Streets – A Sociological Study of the Common Prostitute, Secker and Warburg, London, 1955, 114.

5 David Brown, et al, Criminal Laws: Materials and Commentary on Criminal Law and Process In New South Wales, The

Federation Press, Sydney, 2001, 1063. Throughout this article I use the terms 'prostitution' and 'prostitutes' to refer to sex-work and sex-workers, consistent with the historical legislation to which I refer. I also address prostitution as a gendered transaction, that men buy from women, consistent with historical legislation. (Elsewhere, I acknowledge men selling sex, and very occasionally, women buying sex). My lack of interrogation of men selling sex in this paper does not inhibit my conclusions about pimps, for my focus on the gendered nature of prostitution is concerned with the sex of the buyer – which overwhelmingly is male.

6 Barbara Sullivan, The Politics of Sex – Prostitution and Pornography in Australia Since 1945, Cambridge University Press,

Cambridge, 1997, 30. However Brown et al are careful to remind that while the penalties for pimps are harsher in

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because he exploits his fellow man's 'need' for sex. And second, and perhaps more importantly, because he disrupts the mythology that prostitution is natural, by virtue of his economically interested presence. In prostitution law, from the Canon law to modern times, I identify the common premise that prostitution is natural. This is the primary 'fact' of prostitution law. However, the pimp reminds us that prostitution is an economic condition of women, not a product of their natural sexual disposition. I argue that the pimp disrupts the myth of natural prostitution and this is one important reason why he is despised.

To understand the hatred of the pimp, I must first quickly explain prostitution as the law understands it. To do this, I provide brief examples of the law's important inroads into regulating the commercial sex trade: the 19th century Contagious Diseases Acts and the 1957 Wolfenden Report. I then return to the pimp to explain how he is seen to exploit men's natural need for prostituted sex, and how he transgresses the 'fact' of the natural order of prostitution. I intersperse legal and political examples of the treatment of the pimp from Australia and England, that cut across historical and political periods. Although these examples might at first seem worlds apart in terms of modern history and social change, in fact, the analysis of prostitution in law has remained surprisingly consistent. Although at different times, and in different jurisdictions, the prostitute has been targeted differently (particularly since the partial decriminalisation of soliciting in NSW in 1979), the treatment and view of the pimp has remained particularly constant across both countries, throughout history. I emphasise this consistent treatment of pimps, and explain what this treatment reveals about the assumptions underpinning prostitution law. Even though NSW deviated from the English model for addressing prostitutes in 1979, I argue that the fundamental premise of both criminal models is the same: prostitution is a natural and inevitable product of heterosexuality. In explaining that the law understands prostitution as natural, I highlight its assumptions made about men's and particularly, women's sexuality.

#### Exploiting men – the real danger of the pimp

theory, in practice the enforcement of prostitution law is aimed primarily at prostitutes themselves (David Brown et al, Criminal Laws, 1063).

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The typical reason given for the law's interest in pimps is that the offence of 'living on the earnings of prostitution' concerns 'exploitation', which perhaps explains the harsher statutory penalties than soliciting offences.<sup>7</sup> Usually what first comes to mind here is the financial and/or sexual exploitation of prostitutes (typically women) by their pimps (fabled to be men). However there might be other considerations of exploitation informing the law. For example, the Wolfenden Committee was concerned with the exploitation by unscrupulous pimps of vulnerable men. The Wolfenden Committee was formed in 1954 in response to the British government's concerns over women soliciting in the streets of London. The Wolfenden Report is often seen as a turning point for a modern, liberal and civilised view of adult sexual behaviours. Martha Chamallas identifies the hallmark of the Report as the 'importance it attaches to individual freedom of choice'.<sup>8</sup> For Jeffrey Weeks the Report is the 'period's most influential liberal statement'.<sup>9</sup> It is often praised for its modern distinction between personal choices of morality, and the law's interest in public concerns of criminal harm. Weeks notes that it 'articulated principles which, though themselves not new, were to provide the pragmatic basis for the limited, but symbolically

significant, social reforms of the 1960s, and the framework for all the major 'official' proposals of morality throughout the 1970s as well'.<sup>10</sup>

The legislative outcome of the Wolfenden Report was the English 1959 Street Offences Act that confirmed the common law view of prostitution: the act of sex for money is not a crime, but the act of soliciting sex in public for money is an offence of public nuisance.<sup>11</sup> The Act was informed by the opinion of the Wolfenden Committee that to engage in prostitution is a private choice of adults', that should be informed by personal, individual morality. The Wolfenden Report also influenced the direction of prostitution law in Australia. As Barbara Sullivan notes, 'this does not mean that Australian legislatures took up all or even most of the specific recommendations of Wolfenden. Rather, it was the general approach which this

7 Brown et al, op cit, 1063.

8 Martha Chamallas, 'Consent, Equality, and the Legal Control of Sexual Conduct', Southern California Law Review, May 1988, 777, 5.

9 Jeffrey Weeks, Sex, Politics and Society: The Regulation of Sexuality Since 1800, 2nd Edition, Longman Group LTD, UK, 1989, 239.

10 Ibid. Emphasis added.

11 The other legislative outcome was the Sexual Offences Act 1967 that decriminalised gay male sex for men over 21 in private.

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report adopted in relation to the (de)criminalisation of private sexual behaviour between consenting adults which was so influential'.<sup>12</sup>

However, despite heralding prostitution as a private choice of rational adults, and affirming that prostitution is not a crime, the pimp was not treated lightly in the Report. One recommendation of the Wolfenden Report is to maintain as a major police target he who exploits his fellow man by living on the earnings of prostitution, and increasing the penalty for this offence from two to five years. According to the Wolfenden Report, it is an over-simplification to think that those who live on the earnings of prostitution are exploiting the prostitutes as such. What they are really exploiting is the whole complex of the relationship between prostitute and customer; they are, in effect, exploiting the human weaknesses which cause the customer to seek the prostitute and the prostitute to meet the demand.<sup>13</sup>

The British Medical Association submitted evidence to the Wolfenden Committee that features almost verbatim in its Report. The Association's opinion was influential to the Committee, that a prostitute's client is 'most frequently an unaccompanied male who has taken alcohol and who has probably no intention of seeking a sexual partner until solicited'.<sup>14</sup> The Association reasoned that this observation justified the primary goal of Wolfenden, to remove prostitutes out of sight, therefore out of temptation. The Association did concede that men might be responsible for some demand for prostitution, but as for the possibility of 'controlling' or punishing men for soliciting commercial sex, it apologised 'this is not a matter on which we feel able to express an opinion'.<sup>15</sup>

The Wolfenden Committee went as far as to allude to a commercial conspiracy of sorts, preying on men's feeble minds and bodies in a cleverly crafted milieu of 'suggestion and stimulation associated with

12 Sullivan op cit, 102.

13 Wolfenden Committee, Home Office, Scottish Home Department Report of the Committee on Homosexuality Offences

and Prostitution (The Wolfenden Report), Her Majesty's Stationery Office, London, 1968, 100. In fact, after debate in Parliament, the sentence was increased to 7 years.

14 British Medical Association, Evidence Submitted to the Wolfenden Committee on Prostitution and Homosexual Offences,

British Medical Association, London, 1955, 53.

15 Ibid.

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alcohol, late hours and sensuous amusements'.<sup>16</sup> The Report goes on to list an excited, dissociated parade of the co-conspirators men are up against in their never-ending battle against immoral exploitation: 'entertainments of a suggestive character, dubious advertisements, the sale of pornographic literature, contraceptives and 'aphrodisiac' drugs (sometimes all in one shop), and the sale of alcoholic liquor in

premises frequented by prostitutes'.<sup>17</sup> Yet women are identified in the Report as free agents who in these modern times engage in prostitution typically out of personal desire, rather than any particular economic need. Women are depicted as the ruthless, manipulative actors in the commercial sex contract.

The Wolfenden Committee briefly canvassed issues of exploitation and corruption of 'particularly those who are specifically vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence'.<sup>18</sup> Yet fundamentally, these concerns in regard to women were dismissed, except with regards the age of consent. The Report states: We have no doubt that behind the trade of prostitution there lies a variety of commercial interests....The evidence submitted to us, however, has disclosed nothing in the nature of 'organised vice' in which the prostitute is an unwilling victim, coerced by a vile exploiter. This does not mean that there is not 'organisation' in the sense of encouragement to willing girls and women to enter or continue upon a life of prostitution.

The present law seems to be based on the debate to protect the prostitute from coercion and exploitation. When it was framed, the prostitute may have been in some danger of coercion; but today, either through the effectiveness of the law or through changes which have removed some of the economic and social factors likely to result in a life of prostitution, she is in less danger of coercion and exploitation against her will.<sup>19</sup>

In Wolfenden, men are the victims of prostitution in their exploitation by pimps (or ponces, as the report preferred). Yet, oddly men are not implicated in the crime of soliciting or negotiating the prostitution contract. Barbara Sullivan notes similar sentiments in Australian Parliamentary debates of the 1920s where clients were represented as the victims of seduction by prostitutes. According to Sullivan, 'young men were seen to be most vulnerable to the wiles of women soliciting on the streets'.<sup>20</sup> This sentiment surfaced in Victorian Parliamentary debates of 1928 concerning venereal disease. Mr McKenzie, the

<sup>16</sup> Wolfenden Committee op cit, 100.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

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member for Wonthagai argued for a full assault on the source of the 'Red Plague' (not communism, but syphilis) which in his opinion, was women. He complained in the Lower House that, any person who walks down our magnificent Collins Street any evening will see 50 or 60 prostitutes frequenting the street at one time. From my own personal observation I am convinced that many lads are being led astray by these women. I understand that many young men are being contaminated from this source.<sup>21</sup> In this analysis, the exploitation identified in living on the earnings of prostitution, in fact involves the exploitation by men of fellow male punters. But how can the pimp be seen to exploit a choice made by men to use women as prostitutes for sex?

Prostitution is necessary – the first and timeless tenet of prostitution law

To understand more the hatred of the pimp, we first must understand the nature of prostitution as the law sees it. In fact, the law does not understand prostitution as a choice made by either men or women. The law understands prostitution as necessary and natural. Often in English and Australian Parliaments, and elsewhere, prostitution is described as a 'necessary evil'. Indeed this is the premise on which law concerning prostitution is founded. Prostitution is understood as necessary and inevitable because it is viewed as natural. Its 'naturalness' is seen to come from the nature of men's sexuality: men need sex, therefore prostitution is inevitable and necessary. Barbara Sullivan observes these sentiments in the Australian Parliaments. She notes,

For men without other sexual outlets, prostitution was usually considered to be the lesser of two evils....If deprived of easy access to prostitution men were regarded as more likely to rape innocent women and children. This representation of male sexuality as an unstoppable force, as a drive that demanded an outlet, or if blocked, produced significant social consequences, meant that prostitution could continue in the 20th Century to be regarded as both inevitable and necessary.<sup>22</sup>

This is a familiar and ordinary understanding; there is little new here. However, less explicit and less frequently noted, is another equally important premise that informs the law about prostitution, that concerns women's sexuality. It understands that prostitution is inevitable because women are prostitutes by nature. The combination of these two ideas about men's and women's sexuality informs the law that

19 Ibid.

20 Sullivan op cit, 29.

21 Mr McKenzie, Victorian Parliamentary Debates, Legislative Assembly, Hansard, 20 December 1928, 3755. My emphasis.

22 Sullivan op cit, 30.

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prostitution is natural. So in general, men's use of it, and women's participation in it, is not understood as a choice. Prostitution is a natural human need. To exploit this human need is abusive; the pimp is abusive.

James Brundage notes these themes about men's and women's sexuality in Medieval Canon law. Brundage explains that the Canonists' treatment of prostitution was 'strangely ambivalent,'<sup>23</sup> despite the belief that 'fornication' was a 'species of sin'.<sup>24</sup> He points to St Augustine, who according to Brundage observed that if prostitutes were not available, 'established patterns of sexual relations would be endangered. Therefore thought Augustine, it was better to tolerate prostitution with all of its associated evils, than to risk the perils which would follow the successful elimination of the harlot from society'.<sup>25</sup> According to Leah Otis, the Church 'firmly rejected' the Roman notion of a 'permanent stigma attached to women who had once been prostitutes'.<sup>26</sup> She notes that 'because all people were considered sinners who must repent to be saved, prostitutes found themselves in no especially stigmatised category but were accepted, like all other sinners, provided they abandoned their former life. Indeed, several of the female saints of the early Church were former prostitutes'.<sup>27</sup> In the eyes of the Canonists, the prostitute was 'culpable, but not severely culpable, for her conduct' for she was simply a victim of her own sexual nature.<sup>28</sup> Women were identified as possessing sexuality different from men's, in that apparently they are 'always ready for sexual intercourse'.<sup>29</sup> The Canonists linked this sexual nature to the 'fact' that women are not created in the image of God, as is man, supposedly. So while 'the chastity of women, particularly young women, was always suspect' in Canon law, the prostitute was not the primary focus of punitive measures. She was, 'after all, simply acting in accord with her sexual character, as the canonists viewed it'.<sup>30</sup> In this approach Brundage identifies the 'wellsprings of later medieval and even modern attitudes

23 James A. Brundage, 'Prostitution in Medieval Canon Law', Signs, 1976, Vol 1 No 4, 829.

24 Ibid.

25 Id, 830.

26 Leah Lydia Otis, Prostitution in Medieval Society – The History of an Urban Institution in Languedoc, University of Chicago Press, Chicago and London, 1985, 13.

27 Ibid.

28 Brundage op cit, 835.

29 Id, 832.

30 Ibid.

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towards prostitution, the notion that it is a necessary evil and that its elimination, if possible, would disturb the social order'.<sup>31</sup>

Victorian pathologies – the 'common prostitute' as a natural persona

The thesis of the necessary evil nature of prostitution (therefore prostitutes) has consistently informed law. The 19th century saw the birth of the 'common prostitute', a term that was first used in 1824 in the English Vagrants Act to distinguish a group of women as 'separate and identifiable legal subjects', who could be targeted by the criminal law.<sup>32</sup> The 'common prostitute' was undefined. It was 'an exceptionally vague legal category generally meant to designate women who solicited men in public thoroughfares'.<sup>33</sup> Helen Self explains that 'common' was a pejorative term ranging in meaning from 'frequent' to 'vulgar', and which also had connotations of 'availability' in the sense of the woman being 'common to all' men.<sup>34</sup> The legal entity of the 'common prostitute' was integrated, undefined, into Australian legislation, starting with Vagrancy Acts of the 1800s. For Judith Allen, the legal identity bears little relation to the social identity of women in 19th century Australia. She argues that it is 'anachronistic to speak too literally of "the prostitute" as a distinct social identity, as many women moved in and out of prostitution as a temporary "trade", rather than a separate, long-term occupation'.<sup>35</sup>

The 'common prostitute' was understood as a natural immoral persona, rather than a 'profession'. She was identified in the early 1800s, and gained 'evil' stigma by the late 19th century. The discussion of sex in terms of 'nature' had become increasingly prominent, particularly since the publication of Darwin's *The Descent of Man and Selection in Relation to Sex* in 1871. For Roy Porter and Leslie Hall, Darwin's work signified the possibility that sex could become a subject of a scientific study distinct from the purely

31 Ibid.

32 Helen J Self, *Prostitution, Women and the Misuse of the Law – The Fallen Daughters of Eve*, Frank Cass, London, 2003, 38.

33 Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class and the State*, Cambridge University Press, London, 1980, 14.

34 Self op cit, 38.

35 Judith Allen, *Sex & Secrets – Crimes Involving Australian Women Since 1880*, Oxford University Press, Melbourne, 1990, 20.

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medical – no longer a question of pathology or disease, but a “natural” phenomenon’.<sup>36</sup> With the advent of Darwinism, the Church was beginning to be rivalled by medicine and natural science as ‘the key self-declared definers of sexuality’.<sup>37</sup> Sheila Jeffreys notes that sexology, the ‘science of sex’ was developed in the late 19th century, and was premised on a belief in the ‘naturalness of a sexual drive or instinct’.<sup>38</sup> Personality ‘types’ were understood as naturally occurring, including the immoral common prostitute.

Once the common prostitute was identified in law, she was maligned. This shift signifies the greatest discrepancy in the history of prostitution law between the medieval and modern periods. The essentially sexual (prostituted) nature of woman is a consistent theme, but eventually the sympathy of the Canonists for this female weakness was surpassed with criminal sanctions and theories of female pathologies in the modern law. As Jeffrey Weeks observes, historically, ‘the widespread tolerance of prostitution was reflected in the absence of any serious legislative attack on the problem until the 1860s with the passing of the Contagious Diseases Acts’.<sup>39</sup> These so-called ‘attacks’ are of dubious motivation. Indeed, these most notorious of all statutory interventions into the prostitution market can be viewed with little effort as a glorified, state-sponsored, safe sexual access campaign for the Queen’s army. That is, little to do at all with deterrence of the market. The Acts were passed in response to high rates of venereal disease among male soldiers in the armed forces.<sup>40</sup> They applied to designated garrison and naval towns across England from 1864 until 1886, when Josephine Butler and the Ladies National Association had success in campaigns for their repeal. Similar Acts were passed in two Australian colonies: Queensland in 1868 and Tasmania in 1879. The Acts provided for the non-voluntary examination of women said to be common prostitutes, with the newly embraced speculum. Women identified to be infected with venereal disease were detained in lock hospitals until ‘clean’.

36 Roy Porter and Lesley Hall, *The Facts of Life – The Creation of Sexual Knowledge in Britain 1650-1950*, Yale University Press, London, 1995, 155.

37 Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality 1885-1914*, Penguin, London, 1995, 48.

38 Sheila Jeffreys, *The Idea of Prostitution*, Spinifex Press, North Melbourne, 1997, 98.

39 Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800*, 1st Edition, Longman Inc., USA, 1981, 85.

40 Mary E. Fissell, ‘Speculations on the Speculum’, *Women’s Health in Primary Care*, Vol 3, No 4, April. 2000, 298.

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Women were viewed as the source of men’s problem and thus were subject to regulation and scrutiny. As the ordinary serviceman was ‘not allowed to marry (unless the commanding officer’s permission was given), access to prostitutes was considered to be necessary’.<sup>41</sup> It was not until World War I that condom distribution became the preferred tactic for combating the spread of venereal disease.<sup>42</sup> The Contagious Diseases legislation enshrined the inevitability of prostitution in modern legislation. As Kay Saunders notes,

Women....were the targets of surveillance, harassment and incarceration. For at no time could medical practitioners and politicians, despite their misgivings about the ineffectiveness of a partial system of identification and compulsory treatment, challenge the collective privileges of men for unencumbered heterosexual indulgence.<sup>43</sup>

The fear of diseased prostitutes was based on an unquestioned acceptance of men’s large-scale commercial use of women. In an odd contradiction, prostitution came to be known at this time as the ‘great social evil’, with venereal disease demurely coined ‘social disease’.<sup>44</sup> In fact, the terms came to be used interchangeably. Prostitutes were seen as both ‘physically and metaphysically responsible for the spread of venereal disease’.<sup>45</sup> Early ‘social investigators’ had identified prostitution as an ‘intolerable evil that threatened the sanctity of the family as well as the social order’.<sup>46</sup> Yet access to ‘clean’ prostitutes was

deemed to be the appropriate remedy for this evil. The irony is inescapable: the great social evil was facilitated and legitimised by public health promotion. Men's natural urge for 'sexual satisfaction' was accepted as inevitable, yet it was still acknowledged as involved in a process of evil. The greater threats of male sodomy and masturbation (or 'self abuse') should men not be 'satisfied', outweighed concerns over men's 'promiscuity' with prostitutes.<sup>47</sup> The 'natural' evil of prostitution was maintained to be less dangerous than 'unnatural' evils, as sodomy and masturbation were understood.

41 Self op cit, 40.

42 Fissell op cit, 298.

43 Kay Saunders in Diane Kirkby (ed), *Sex Power and Justice: Historical Perspectives on Law in Australia*, Oxford University Press, Melbourne, 1995, 18.

44 Weeks 1981 op cit, 85.

45 Mary Spongberg, *Feminising Venereal Disease: The Body of the Prostitute in Nineteenth Century Medical Discourse*,

MacMillan Press, London, 1997, 45.

46 Walkowitz op cit, 33.

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The necessity of prostitutes for society's functioning is undisputed in this analysis. Presumably men cannot be trusted to contain their sexual urges, should appropriate outlets not be available. Augustine's fears for society undoubtedly were linked to the great Victorian fears for the armed services. Men without available women may indeed turn to other men (or to themselves) to satiate their sexual 'needs'. The necessity argument is premised on masculine concepts of personhood and society. Access to women is necessary to satisfy natural (if spiritually troubling) human needs. Otherwise society will be damaged in the outcome. Yet the needs are not human but rather, explicitly male. The public figure, man, constitutes society.

In an interesting conceptual manipulation, women are viewed as essentially prostitutes by nature, both in medieval and modern law. Sympathies have shifted to suspicion, but the theological interpretation of woman most basically as sex maintains prevalence in modern law, imposed in the 'identity' of the common prostitute. While women are deemed inevitably sex, men are cast as inevitably sexually active. Men must be served by prostitutes to maintain social stability. And women must act as prostitutes, for this is their nature. The sex of prostitution, which serves male desire, is cast as the sex of women in both eras.

Yet this is not a pleasant side of humanity, and the law has been invoked repeatedly to regulate or at least to grandstand against the necessary evil.

The Wolfenden Report – prostitution as promiscuity

The Wolfenden Report supposedly embodies the modern approach to prostitution and the law. Yet it is influenced profoundly by the traditional view of women as prostitutes by nature. In fact, it is far from radical or modern in its outlook on prostitution. In the Report, heterosexual prostitution is understood as promiscuity, similar to homosexual men's promiscuity, that should not be tolerated in public. This analysis would appear to favour the male client as subject - for it is his promiscuity that drives her 'trade'. But in perhaps a predictable twist, prostitution is typically blamed on the women involved, or perhaps on

47 In 1857 William Acton warned of the perils of men's masturbation: 'Indulgence is fatal....The pale complexion, the emaciated form, the slouching gait, the clammy palm of the glassy eye and averted gaze indicate the lunatic victim to this vice' (in John Chandos, *Boys Together – English Public Schools 1800-1864*, Hutchinson, London, 1984, 291).

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their mothers. The Wolfenden Report dismisses economic need as a motivation for prostitution by women, as 'in these days, in this country at any rate, economic factors cannot account for it to any large or decisive extent'.<sup>48</sup> The Wolfenden Committee rather found that although factors such as 'a bad upbringing, seduction at an early age, or a broken marriage' might be relevant to a woman's prostitution, in fact 'many women surmount such disasters without turning to a life of prostitution'.<sup>49</sup> Therefore it concluded, there 'must be some additional psychological element in the personality of the individual woman who becomes a prostitute'.<sup>50</sup> No such analysis or interest was given to determining why individual men use women as prostitutes for sex.

In Wolfenden, the prostitute is pathologised as promiscuous, and morally weak, lazy, self indulgent, and possessing an 'innate deviation of temperament which amounts to a perversion of the normal female

sexual impulse'.<sup>51</sup> This is despite the observation that she presumably does not have indiscriminate sex by definition, but upholds a strict criterion for sexual partners in this context – payment. Certainly she does not pay for the luxury of sex in a promiscuous manner. The British Medical Association submitted influential evidence to the Wolfenden Committee concerning men's homosexual sex and women's heterosexual prostitution, both in the terms of promiscuity. It argued that While many people would regard gross homosexual acts as more serious than promiscuous heterosexual intercourse in that they are 'unnatural', it must be emphasised that it is illogical to condemn the one and condone the other. Both homosexual indulgence and heterosexual promiscuity have important consequences, such as psychological trauma and venereal disease, but with the latter there is, of course, the additional risk of bastardry.<sup>52</sup>

As per Wolfenden recommendations, the 'common prostitute' of the Victorian legislation was transported into the English 1959 Street Offences Act. But she was targeted even more severely. The 1959 Act, at the direction of Wolfenden, removed the 'annoyance requirement' from the crime of soliciting. Until 1959 in England, it was a requirement for a woman to be charged with soliciting, that 'annoyance' had to be complained of by someone. Wolfenden recommended removing the annoyance requirement and making

48 Wolfenden Committee op cit, 79.

49 Ibid.

50 Ibid.

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soliciting for the purposes of prostitution (for money or gain, thereby not including the client) prima facie a crime of strict liability. This was intended along with harsher fines and the threat of imprisonment for repeat offenders, to make it less feasible for women to survive on street prostitution, thereby driving them into cafes or apartments and out of sight and thus emphasising the private legal status of prostitution.

The Act has been criticised by Helen Self for making both loitering and soliciting criminal offences that only registered female prostitutes can commit, 'making it impossible for her to step outside her home without risking the possibility of arrest'.<sup>53</sup> Self identifies the Wolfenden Report recommendations as having been used tendentiously in the Street Offences Act to strengthen the impact of a law which incorporated the "common prostitute" as a member of a legally defined group of women and placed a judicial stamp of approval on [their] social stigmatisation....This enabled legislators to formulate normally unacceptable measures (including a presupposition of guilt, arrest without warrant on police evidence alone and the prostitutes' caution) in order to ensure prosecution.<sup>54</sup>

Maxwell Fyfe was the Home Secretary who instigated the Wolfenden Committee in 1954. In 1957, as his alter ego The Lord Chancellor Viscount Kilmuir in the House of Lords, he explained the Report's premise, after having finished his tenure as Home Secretary. Fyfe was a long time proponent of the political excuse that prostitution was inevitable. He tackled the accusation that the Wolfenden Committee had simply 'swept the dirt under the carpet', by not criminalising prostitution, or targeting the men who bought sex, by enquiring of the House, 'human nature being what it is, what practicable alternative can be found?'<sup>55</sup>

Timeless anathema for the pimp

I return now to the pimp. I have briefly outlined the fundamental consistent premise of prostitution law: the tacit sanctioning of prostitution as heterosexual promiscuity, immoral but not criminal. However, despite theories of naturalness, necessity and inevitability, the pimp surfaces as the most detestable participant in the sexual trade. The pimp's 'immorality' has consistently been deemed worthy of criminal

51 British Medical Association op cit, 51.

52 Id, 9. My emphasis.

53 Self op cit, 205.

54 Id, 9.

55 The Lord Chancellor, House of Lords, Hansard, 4 December 1957, 776.

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punishment. The Canon lawyers were preoccupied with penalties for pimps and brothel keepers, while professing sympathy for prostitutes.<sup>56</sup> Procuring was particularly heavily punished in London in the Middle Ages: procurers were 'ordered to be pilloried for a first offence, pilloried and imprisoned for ten days for a second, and pilloried, gaoled and expelled from the city for the third'.<sup>57</sup> Leah Lydia Otis notes



that Canonical wrath was focused on those who profited from prostitution, for 'while prostitution was regarded as a social phenomenon distinct from the sin of fornication, procuring was considered by the Church to be synonymous with the sinful act of encouraging debauch....Procuring was therefore considered to be a matter of spiritual jurisdiction, and strong measures were taken against it.<sup>58</sup>

These medieval sentiments and legal anomalies prevail in modern law. In 1908 the NSW Parliament passed the Police Offences (Amendment) Act, a sweeping Act to amend various Vagrancy, Gaming and Obscene Publications acts. It was aimed in part to 'fill the gaps'<sup>59</sup> of existing legislation to prevent 'soliciting for the purpose of prostitution' and to tighten up Vagrancy provisions to target men who lived on the earnings of prostitutes.<sup>60</sup> The Act created the offences of soliciting for the purposes of prostitution and living on the earnings of prostitution. Previously, pimps or bludgers could only be charged with offences such as 'being an idle and disorderly person',<sup>61</sup> and a 'common prostitute' had to wander the streets and behave in a 'riotous or indecent manner' to commit an offence under the Vagrancy Act of 1902.<sup>62</sup> Notably, under the 1908 Act, women who solicited for prostitution were punishable by sentences of up to six months, while men who lived on their earnings were liable for sentences of up to 12 months, in comparison.

In debates in the NSW Parliament over the second reading of the Act, prostitutes were generally described in sympathetic terms. The bludger or pimp was targeted as the villain. Mr Holman, the member for Cootamundra introduced the debate in the NSW Legislative Assembly in October 1908. He was critical

<sup>56</sup> Brundage op cit, 835.

<sup>57</sup> Jeffrey Richards, *Sex, Dissidence and Damnation – Minority Groups in the Middle Ages*, Routledge, London, 1991, 128.

<sup>58</sup> Otis op cit, 13.

<sup>59</sup> Mr Wade, NSW Parliamentary Debates, Legislative Assembly, Hansard, 6 August 1908, 468.

<sup>60</sup> Police Offences (Amendment) Act 1908.

<sup>61</sup> Allen op cit, 92.

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of the piecemeal Act, arguing that the 'social evil' of prostitution should not be addressed by simply 'tinkering with an act which dates, practically, from Henry VIII'.<sup>63</sup> For Holman, prostitutes were unfortunate victims of 'misfortune, poverty or desertion', that drove them to the streets.<sup>64</sup> He believed that the amendments of the Police Offences Act would worsen their lot by gaoling them and punishing them for their misfortune. However, he was quick to note that he was not arguing against the Act to protect the bludger or the pimp, explaining: 'I said that any man at all who lives upon the earnings of prostitution ought to be punished. I recognise that. It is not in the interests of those men I am speaking. God forbid!'.<sup>65</sup> For Holman, bludgers who lived on the earnings of these poor creatures are the most detestable wretches on the face of the earth, and if we could find a method for wiping them out, I for one, would be only too happy to support it. I have no sympathy either for what the French call *souteneurs* – men who live by these women – or with the landlords and brothel keepers who supply them with rooms.

I should be very glad to see action taken which would have the effect of showing these people what the attitude of society is towards them and how completely they earn the detestation of all those who object to the harpies that prey upon the misery of their fellow creatures.<sup>66</sup>

Holman was concerned that the new amendments would drive women further into the arms of their despicable pimps, as they would not be free to solicit independently in the streets. Judith Allen observes that there were 'low rates of arrest' for soliciting and brothel keeping in NSW after 1908. She suggests that the legislative amendments 'provided the occasion for reorganising prostitution into a more professionalised, less visible and therefore less controversial form. One implication of the soliciting measure was to drive prostitution "indoors"'.<sup>67</sup> This outcome would not have allayed fears for the ascendancy and institutionalisation of the wretched bludger, who remained despised. Although the NSW

<sup>62</sup> Vagrancy Act 1902.

<sup>63</sup> Mr Holman, NSW Parliamentary Debates, Legislative Assembly, Hansard, 15 October 1908, 1674.

<sup>64</sup> Id, 1674-75

<sup>65</sup> Id, 1677.

<sup>66</sup> Id, 1675. My emphasis.

<sup>67</sup> Allen op cit, 93.

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parliament decriminalised soliciting for sex in 1979, it maintained the crime of living on the earnings of prostitution, which was described in Parliament as 'one of the most repugnant aspects of prostitution'.<sup>68</sup>

Hatred for pimps combined with sympathy for prostitutes has been common throughout history. In 1955 the British Social Biology Council published a 'sociological study of the common prostitute', parts of which were very influential to the Wolfenden Committee.<sup>69</sup> The Council observed that in times when the prostitute has been regarded sympathetically, the ponce has been unreservedly condemned; indeed, at these periods the condemnation seems to have been particularly severe. Today, in this country [the UK], official and public attitudes are becoming increasingly tolerant towards the prostitute, but remain unrelenting towards the man who lives with her.

No other aspect of prostitution excites so much emotionally charged criticism and is so universally execrated. Probably no other criminal has provoked such exaggerated and entirely condemnatory reports in the press, or such scathing comments from the legal profession.<sup>70</sup>

The reason for the universal and timeless objection to the male pimp is unexplained. As I noted, it might simply relate to the exploitation of fellow men's base human needs. Or it might be related to fears for the exploitation of women by male pimps. The British Social Biology Council did not elaborate on reasons for the general hatred, merely asserting that 'law against these men is based on a desire to protect the prostitute from coercion and exploitation'.<sup>71</sup> David Brown et al suggest that the general hatred is based in abhorrence of the sexual exploitation of women, particularly by men,<sup>72</sup> and this reason does typically seem to come to mind, when exploitation by pimps is raised. Yet a focus on concern for women's

68 In Sullivan op cit, 182. Eventually various jurisdictions in Australia came to distinguish between men who profited from 'large-scale prostitution' and 'those who were simply the lovers or spouses of sex workers' and changed their laws in the 1990s to reflect this understanding, targeting the 'professionals' (Sullivan op cit, 221).

69 Helen Self documents the controversy surrounding the report. She notes that Rosalind Wilkinson was commissioned by the Council in 1949 to research prostitution in London. Her report was 'eventually edited by CH Rolph, the pseudonym of an ex-Chief Inspector (Hewitt) of the City of London Police'. Rolph stated that Mrs Wilkinson had 'lived among the prostitutes of the West End and some of the inner suburbs and had come up with a manuscript that was so vivid and human and at the same time so factual and carefully documented'. Yet Rolph was compelled to cull the report due to length, and the report appeared with his name in prominence as the editor, and Wilkinson listed as a 'research worker'. Self claims that Wilkinson's work, under the banner of the British Sociological Council was quoted out of context in the Wolfenden Report and then in Parliament. For Self 'the SBC's behaviour was probably legal in that it had employed her to work on its behalf, but I would have thought it was morally indefensible either to abridge Miss Wilkinson's work without her consent or to continually quote her out of context to support a point that could not be substantiated' (Self op cit, 191).

70 Rolph, op cit., 112-13.

71 Id, 115.

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exploitation is confusing. It might be misleading and erroneous to assume that the law is concerned with the exploitation of women. As noted, the Wolfenden Committee was more concerned with the exploitation of vulnerable men. And concern for women's exploitation does not explain the contradictory acceptance of small-scale exploitation of prostituted women by male clients. Men buying sex has rarely been of serious concern to the criminal law. In Australian Parliaments, the 'use' of prostitutes has been viewed as the 'right of working class men [and others]'.<sup>73</sup> Yet the profiteering of pimps is simply wretched.

The pimp, the ponce and the bludger - The real villain

Barbara Sullivan argues it is a gendered hatred and notes the different treatment granted female brothel managers or madams who traditionally were invisible in prostitution statutes. The offence of pimping has traditionally been that of 'men living on the earnings of prostitution'. Even in the modern English 1959 Street Offences Act, the offence is gendered. Sullivan alludes to those mythologised white shod police who pursue prosecutions of male pimps, while romantically turning a blind eye to the lady of the house.<sup>74</sup> In Queensland, during the Fitzgerald inquiry of the Royal Commission into police corruption in 1987 'several senior police suggested that they had always acted against men who were involved in managing brothels and who lived on the earnings of prostitution. However the management of brothels by women (who presumably also lived on the earnings) was regarded as "quite an acceptable standard".<sup>75</sup> Sullivan's point is emphasised further in the fabled success of Sydney madam, Tilly Devine, who rose to infamy due

to the gendered language of the 1908 Police Offences Act. Devine ran a string of lucrative brothels from the 1920s until 1968 on the premise that 'the Act made it illegal for a male pimp or brothel-keeper to profit from the immoral earnings of prostitutes but not for a woman to do so'.<sup>76</sup> Tilly Devine is heralded as an

<sup>72</sup> Brown et al op cit, 1063.

<sup>73</sup> Sullivan op cit, 28.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Larry Writer, *Razor*, Pan MacMillan, Sydney, 2001, 30.

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Australian legend, a rough diamond of a dame - the 'chaperone of Magdalenes'.<sup>77</sup> She escapes the hatred directed toward the male bludger.

The hatred of the male pimp coupled with the acceptance prostitution seems inconsistent. If men's widespread use of prostituted women is acceptable, why is it wrong for men to profit from the exchange? The Australian vernacular provides some insight into what might provoke the disdain. 'Pimp' is an American term. In the UK 'ponce' was traditional. In France, it was *souteneur* (procurer). However in Australia, traditionally the 'bludger' was the detestable wretch who lived on the immoral earnings of prostituted women. The phrase is telling. Now, 'to bludge' connotes the idea of not working and obtaining for free, something for which one should work or pay. Originally the term was derived from 'bludgeon', and suggested someone who got their way without working, by way of force or threats.<sup>78</sup> But in the context of prostitution it came to mean a man who 'bludged off' prostitutes. The bludger receives a cut of the prostitute's money, apparently while doing little himself to have earned it. But why should this economic arrangement provoke such particular anathema, when compared to other forms of 'management' by which the proletariat is exploited? As Judith Allen notes, in the early 20th century prostitution was a dangerous business for women. The bludger provided protection to women both from the police and from street violence.<sup>79</sup> In this sense, the bludger could be viewed as a noble rogue. But rarely has he been.

Bludging sex rights – the pimps takes sex for free

The pimp is often thought to reap benefits other than money, and this furthers the idea of him as a bludger. The pimp is usually depicted as controlling 'his' woman and having 'access' to her sexual services at his whim and command, particularly if he is the woman's partner or husband as often is the case. In this view, the pimp is bludging something more important than money. Evelina Giobbe argues that the function of prostitution is to 'allow males unconditional sexual access to females, limited solely by

<sup>77</sup> Judith Allen and Baiba Irving, 'Matilda Mary Devine' in Bede Nairn & Geoffrey Serle (eds) *Australian Dictionary of National Biography*, Volume 10: 1891-1939, Melbourne University Press, Melbourne, 1986, 297.

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their ability to pay for this privilege'.<sup>80</sup> Yet the pimp takes for free what other men must pay for. He also manipulates and dictates men's access to the prostituted sexual contract. The 'detestable wretch' intrudes on men's otherwise unconditional access to women and sex. He bludges this right for himself and controls it for others.

Barbara Sullivan, deferring to the work of Carole Pateman, suggests that the pimp is despised for his transgression of male contractual rights. He is 'a traitor to his sex because he disrupts the sexual boundaries between the seller and the purchaser of prostitution services....[He] is on the wrong side of the prostitution contract'.<sup>81</sup> John Stoltenberg has identified the social definition of personhood for men as premised importantly on the prostitution of women. He writes of an 'eroticism of owning' as integral to male sexuality and gender in general,<sup>82</sup> and argues that by owning a live human being through sex makes gender make sense; it lends owning an emotional and physical resonance; it lodges social gender in bodies and brains. The social fiction of gender feels real only within the erotics of economics – when "owning" becomes the same sexual turn-on as "being the man there".<sup>83</sup>

For Stoltenberg, buying prostituted sex is part of being a man. In this view, men who profit from prostitution may be viewed as exploiting the very essence of manhood. But the pimp does something else as well.

### Discrediting natural 'promiscuity'

The pimp acts as a reminder that prostitution might not be a natural relationship. Pimps are often depicted in popular culture and in the mass media as violent towards 'their' women. The stereotypical pimp beats 'his' women, and controls them through violence, drugs and fear. The bludger is indeed the bludgeoner. Perhaps violence alone is sufficient to provoke a general hatred. But in reality, as Evelina Giobbe notes, 'pimping has been institutionalised in our society by the legalisation of pornography, strip

78 Lucy Bland notes that in the 19th century in England, pimps were referred to as 'bullies', which has connotations similar to 'bludgeoning' (Bland op cit, 101).

79 Allen op cit, 25.

80 Evelina Giobbe, 'An Analysis of Individual, Institutional, and Cultural Pimping', Michigan Journal of Gender and Law,

Vol. 1, 1993, 51.

81 Sullivan op cit, 30.

82 John Stoltenberg, 'Male Sexuality: Why Ownership is Sexy', Michigan Journal of Gender and Law, 1993, Vol 1, 60.

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clubs, and peep shows'.<sup>84</sup> These relationships surely are not all physically violent. And a dictated level of 'domestic violence' has long been accommodated otherwise in our society, attracting little outrage or interest, anyhow. Nonetheless, the mythology of men 'controlling girls' is generally troubling, and perhaps the myth of physical violence is used to deflect the deeper, subterranean concern that provokes the general hatred directed towards pimps: Why would a woman need to be controlled and dominated to take part in prostitution? The image of the tyrannical pimp suggests perhaps, that prostitution is not natural after all. Aside from bludging off prostitutes, and exploiting men's 'need' for sex, the pimp also stands as testament to the coercive nature of the prostitution arrangement. He is a dangerous man. He threatens the fiction of the natural order of prostitution, on which the law is premised.

Aside from highlighting coercion, the pimp also reminds of the commercial, economic and impersonal nature of prostitution. Evelina Giobbe notes that the 'ultimate justification for prostitution' lies in heterosexism which 'supports the male sexual imperative, the belief that men have uncontrollable sexual urges which, if not fulfilled, will drive them to rape "innocent" females'.<sup>85</sup> As noted, men's 'need' for sex does inform prostitution law, which is premised on the supposed inevitability of the commercial sex trade. However, the law is also premised on a tenet concerning women's nature. From the Canonists to the Contagious Diseases Acts, and culminating in Wolfenden, women have been cast in law as essentially prostitutes, by nature. For St Augustine, this nature is due to physiology and the fact that women, who are not made in the image of God, are always 'ready for sex'. They are not to be punished severely for their nature as prostitutes. In the 19th century and the era of medicalisation and the ascendancy of Darwin's ideas on 'nature', women were viewed metaphysically as disease and the pathological legal identity of the 'common prostitute' was spawned, casting a 'trade' as a psychological temperament and destiny. The crowning glory of this thesis of women's nature is Wolfenden, which defined prostitution as promiscuity, inevitably driven by women's immoral nature. The Wolfenden Report is informed profoundly by the spirit of psychoanalysis as interpreted by the British Medical Association, which

83 Id, 61.

84 Giobbe op cit, 51.

85 Id, 53.

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defined prostituted women as possessing an 'innate deviation of temperament'.<sup>86</sup> In this analysis, prostitution as promiscuity is the inevitable product of women's nature. Given that clients who demand prostituted sex in all its forms overwhelmingly are men, this manipulation of the nature of the 'trade' is staggering in its boldness and its hegemonic success within the law and in society.

In contrast, Sheila Jeffreys argues that the sex of prostitution is 'so clearly male sexuality'.<sup>87</sup> For Andrea Dworkin, 'you can't think about prostitution unless you are willing to think about the man who needs to fuck the prostitute'.<sup>88</sup> Yet the manipulative analysis on which law is based promotes the thesis that prostitution is inevitable and natural because of women. The history of prostitution law is the sanctioning of prostitution by the Church and state, as a form of (immoral) promiscuity. The sanctioning of prostitution as promiscuity or 'just sex' defines 'sex' as that which is predicated on the fulfilment of male desire. Prostitution is the service of men. Calling it 'sex' or promiscuity allows for 'sex' to be re-defined as that which services men. Linking this service-as-sex to women's nature is perverse in its manipulation of female

sexuality. And it provides for a possible broader understanding of all sex as concerned with male desire and fulfilment. It is dangerous for women to think of prostitution in terms of female sexuality. In fact, the silly, sanitising metaphor of the 'oldest profession' might be more useful in its emphasis on women's economic interest and motivation in prostitution, which reflects male sexuality and desire. Prostitution sanctioned as promiscuity, the inevitable product of women's nature, defines women's sexuality as concerned with male fulfilment and non-mutual desire. This is the premise of the law.

The pimp threatens this normative theory. If prostitution is natural, because of women, why is the bludgeoning pimp found lurking in the shadows, enforcing the trade? Even if the myth of the abusive pimp is rejected and he is not viewed as physically enforcing the commercial sex contract, he is still testament to women's economic motivation and interest in prostitution. The pimp is the ultimate reminder that prostitution is a choice of economics made by women and that it is not a product of their

86 British Medical Association op cit, 51.

87 Jeffreys op cit, 214.

88 Andrea Dworkin, 'Prostitution and Male Supremacy', Michigan Journal of Gender and Law, Vol 1 1993, 8.

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manifest destiny, or their special female human nature. The pimp reminds us about profit and incentive. Andrea Dworkin stresses the political importance of rejecting the notion that prostitution is a product of women's nature. She argues that 'prostitution comes from male dominance, not from female nature. It is a political reality that exists because one group of people has and maintains power over another group of people'.<sup>89</sup>

The pimp reminds us of this dominance, and that prostitution in fact is a male trade. Prostitution is based on male sexuality as male sexuality is politically enforced and inflicted on women in the form of an hierarchical, economic transaction. Prostitution occurs because men want prostituted sex and women want money. By definition, it would not exist if both these factors were not present. If sexual desire were 'mutual', prostitution would not have occurred. To use the law's own pejorative term, this would simply be 'promiscuity'. Prostitution is not a product of women's sexuality. As the pimp reminds us, prostitution is an economic choice or condition of women. The pimp threatens the mythology of 'natural prostitution'. He is despised.

Conclusions – why study the pimp?

Across jurisdictions and throughout history, the pimp has been cast as evil and immoral, a suitable target of the criminal law. While attitudes towards prostitutes and clients ostensibly have varied in the political and legal approaches to the regulation of commercial sex, the character of the pimp provides a constant. Despite this constant approach, I have argued that the attitude of politics and law towards the pimp seems inconsistent with the otherwise routine acceptance of prostitution. It is consistently inconsistent to hate the pimp and yet sanction men buying sex. However, the unearthing of this inconsistency is not my primary goal. I am not particularly interested in social justice for pimps.

89 Id, 10.

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Exploring the constant hatred of pimps provides a truth, and helps to illuminate the fundamental assumptions of the law with regards prostitution. Although attitudes towards prostitutes seem to have varied throughout history, and between governments and countries, in fact, the legal and political approach to prostitutes has been informed by one important primary tenet – that women are prostitutes by nature. This tenet goes unspoken, and it is only in assessing the overt anomalies of prostitution law that it becomes apparent. Modern law is steeped in historical and political prejudice, that often is not apparent or generally well understood.

Occasionally we need to ask questions to ascertain whether the law we have inherited is consistent with our contemporary political values. Unearthing singular inconsistencies might start to unravel the whole

fabric of a system we have so far taken for granted. These questions are particularly important to the dynamic and evolving area of sexual rights. Occasionally we need to ask: What is wrong with the pimp?

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